

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 12 OCTOBER 2022



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 12 October 2022
via teleconference
Commencing at 10:00am**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 28 September 2022	
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	5
3.1	DA2022/0033 - 30A Addison Road MANLY - Demolition of a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping.....	5
3.2	DA2022/0855 - 23 Plateau Road COLLAROY PLATEAU - Alterations and additions to a dwelling house including a swimming pool.....	71
3.3	DA2022/0936 - 39 Seaforth Crescent SEAFORTH - Alterations and additions to a dwelling house	116

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 28 SEPTEMBER 2022

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 28 September 2022 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2022/0033 - 30A ADDISON ROAD MANLY - DEMOLITION OF A DWELLING AND DETACHED GARAGE, CONSTRUCTION OF A NEW TWO AND PART THREE STOREY DWELLING AND ASSOCIATED LANDSCAPING.
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2022/614279
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/0033 for demolition of a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping on land at Lot B DP 360797, 30A Addison Road MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0033
Responsible Officer:	Kirilee Boulton, Mecone (Consultant Planner - Mecone)
Land to be developed (Address):	Lot B DP 360797, 30A Addison Road MANLY NSW 2095
Proposed Development:	Demolition of a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping.
Zoning:	Manly LEP 2013 - C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level	DDP
Land and Environment Court Action:	No
Owner:	Joseph Shamia
Applicant:	Chateau Constructions (Aus) Ltd
Application Lodged:	25/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	N/A
Notified:	Yes - 02/02/2022 to 16/02/2022
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Yes – Clause 4.3 Height of Buildings 8.23%-24.7%
Recommendation:	Approval
Estimated Cost of Works:	\$4,481,000.00

EXECUTIVE SUMMARY

Development Application (DA2022/0033) seeks consent for the demolition of a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping. It is to be referred to the Development Determination Panel (DDP) as more than 5 (five) submissions by way of objection were received.

The site is located at 30A Addison Road, Manly and is zoned C4 Environmental Living under the MLEP 2013. The site is legally described as Lot B within DP 360797. Development for the purposes of a dwelling house is permissible with development consent.

The DA seeks consent for the demolition of a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping. This includes a Clause 4.6 variation of Clause 4.3 – Height of Buildings. The proposed height is 0.7m-2.1m above the maximum height limit of 8.5m, presenting a variance of 8.23%-24.7%.



The DA was notified in accordance with Council's Community Participation Plan to adjoining properties on two (2) occasions resulting in nine (9) submissions. Below are the main concerns raised by neighbours:

- Loss of privacy
- View Loss
- Height
- Excessive Bulk & Scale
- Preservation of Trees
- Noise

A Request for Information was issued to the Applicant on 6 June 2022 requesting information addressing several issues identified pertaining to the following:

- Clause 3.4.3 Maintenance of Views
- Biodiversity
- Riparian
- Landscape

The applicant issued a response on 15 August 2022 addressing the below:

- Clause 3.4.3 Maintenance of Views – Height poles were erected upon instruction and verified by a surveyor. Following this a site inspection took place on 22 July 2022 at the neighbouring properties: 3/28 & 30 Addison Road, Manly, to ensure the views were not negatively impacted.
- Biodiversity – A comprehensive 'Construction Environmental Management Plan' addressing how assumptions made regarding potential indirect impacts to the AOBV resulting from noise, vibration and water quality can be complied with was provided within the amended 'Flora and Fauna Assessment Report'.
- Riparian – A Sediment Erosion Control Plan has been provided in place of an Aquatic Ecology Report as per instruction from Council's Riparian Officer within an 'Addendum' to the 'Statement of Environmental Effects'.
- Landscape – An amended landscaping plan and 'Arborist Report' have been prepared to clarify the extents of the driveway treatment and clean up any minor discrepancies.

PROPOSED DEVELOPMENT IN DETAIL

Demolition of a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping.

The proposed works take the following form:

- Part two storey (at the north elevation) and part three storey (at the south elevation) dwelling.
- The built form steps down the existing contours of the land from the north-western boundary towards the waterfront boundary (south-east).
- Basement contains a cellar, media room powder room and terrace.
- Ground floor contains a double garage, kitchen, lounge, laundry, scullery, powder room, dining room, living room and terrace.
- First floor contains five (5) bedrooms, sitting room, four (4) ensuites and balcony.
- Roof level contains a roof terrace and solar panels.
- New external landscaping and paving.
- Existing swimming pool is to be retained.
- Existing driveway to be resurfaced, and extend to previous garage area for reversing bay.
- New sliding entry gate.

Amended Landscape, Stormwater and Architectural plans were issued following the Request for Further Information with the below main amendments:

- All trees along driveway to be replaced
- Temporary sediment basin proposed at the rear of the property
- Surcharge pit
- Bioretention Basin
- Connection to existing outlet



- Raise top of lower wall for OSD basin

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 – Clause 4.3 Height of buildings

Manly Local Environmental Plan 2013 – Clause 4.6 Exceptions to development standards

Manly Development Control Plan 2013 – 3.3.2 Preservation of Trees or Bushland Vegetation

Manly Development Control Plan 2013 – 3.4.3 Maintenance of Views

Manly Development Control Plan 2013 – 4.1.4.2 Side setbacks

Manly Development Control Plan 2013 – 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot B DP 360797, 30A Addison Road, MANLY NSW 2095
Detailed Site Description:	The site is a battle axe lot with long access handle to the dwelling from Addison Road. The land contains an existing dwelling, detached garage, driveway, and swimming pool, with associated landscaping. The site is sloped from the north western corner of the site to the south eastern corner of the site. The site contains a sewer main that runs to the north-west of the basement level media room, traversing the site from north to south. The driveway runs between #30 and # 28 and is shared with #28A. All utilities and services are available to the lot. The site overlooks Little Manly Cove.

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 DA 4099/1991** – DA4099/91 Sec 102 Rec 17.11.92 (Submitted: 26/07/1991) – Determined 03/09/1991
- **Development Application DA 385/2001** – Alteration and/or Additions to existing Alterations & Additions to Dwelling (Submitted: 20/08/2001) – Approved 24/10/2001
- **Construction Certificate CC 385/2001** – Alteration and/or Additions to existing Alterations & Additions to Dwelling (Submitted: 04/09/2002) – Approved Under Delegation 13/09/2002
- **Development Application DA 341/2016** – Alterations and additions to the existing dwelling house (Submitted: 09/12/2016) – Approved 20/04/2017
- **Section 455 Modifications S96 341/2016 (part 2-modification)** – Section 96 to modify approved Alterations and additions to the existing dwelling house – Part 2 (Submitted: 29/05/2017) – Approved 27/07/2017

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<u>Division 8A</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2021, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was requested on 06 June 2022 with regard to Clause 3.4.3 Maintenance of Views, Biodiversity, Riparian, and Landscape. Details of these are discussed later within the report and all can be resolved through the information provided to council and/or conditions of consent. <u>Clause 92</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>iii) Economic Impact The proposed development will not have a detrimental economic impact on the</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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of ten (10) submissions from:

Name:	Address:
Mr Adam Risely Linforth Elizabeth Maria Hearne	1 / 28 Addison Road MANLY NSW 2095
Mrs Gyongyver Endre	2 / 28 Addison Road MANLY NSW 2095
Melissa Browning & Simon Jeffrey James Lee Miss Philomena Lee	3 / 28 Addison Road MANLY NSW 2095
Mr Lee Michael Johns Ms Michelle Lindsay Bolding	30 Addison Road MANLY NSW 2095
Mrs Annelis Matthews	34b Addison Road MANLY NSW 2095
Mrs Pauline Maria Hammond	2 / 34 Addison Road MANLY NSW 2095
Mr Robin Geoffrey Taylor	29 Darley Road MANLY NSW 2095
Annalise Dry	6 / 8 Bruce Avenue MANLY NSW 2095
Mr Drago Banjac Coby Banjac	8 / 8 Bruce Avenue MANLY NSW 2095

Concern is raised from surrounding property owners in relation to the following:

- Loss of privacy
 - It is noted that concern is raised by multiple submissions in relation to loss of privacy from proposed removal of driveway trees. The loss of privacy from the removal of the trees along the driveway is considered too great and therefore a condition has been imposed to retain the trees.
 - It is noted that concern is raised by multiple submissions in relation to loss of privacy due to a proposed roof terrace. The loss of privacy from the proposed roof terrace is considered low as the proposed terrace is significantly smaller than the existing and is focused towards the harbour through the use of material for balustrades. A privacy screen is not proposed as this will further impact upon view loss.
- Height
 - It is noted that concern is raised by multiple submissions to proposed height. This is covered in detail below at 'Detailed Assessment' under 'Manly Development Control Plan 2013'.
- Excessive Bulk & Scale
 - It is noted that concern is raised by multiple submissions to excessive bulk and scale. The bulk and scale of the proposed development is similar to the existing approved development and therefore is not found to be excessive in nature. It is also noted that the development is characteristic of the established built environment of the area (see below further).
- Preservation of Trees
 - It is noted that concern is raised by multiple submissions to the preservation of trees alongside the driveway. Please refer to 'loss of privacy' above.
- Noise
 - It is noted that concern is raised by multiple submissions to noise from proposed rooftop terrace. The noise which may be produced through the use of the proposed roof terrace is expected to be less than the current larger roof terrace and therefore is an improvement upon the existing development. As such the proposed smaller roof terrace is not found to result in an unreasonable impact upon acoustic privacy of surrounding residential development.
- Overdevelopment
 - It is noted that concern is raised by multiple submissions to overdevelopment. The proposed development is of similar bulk and scale to the existing approved development and is consistent with the surrounding development. It is therefore not found to be overdevelopment of the site.
- View loss
 - It is noted that concern is raised by multiple submissions to view loss. This is covered in detail below at 'Detailed Assessment' under 'Manly Development Control Plan 2013'.



- Safety – fence preventing 3-point turn
 - It is noted that concern is raised by multiple submissions in relation to the provision of a proposed sliding vehicular gate impacting on vehicle manoeuvring within the shared driveway. However, the proposed vehicular gate is located within the private property for the subject site and it is not unreasonable for a gate to be proposed to provide improved security. In this regard the proposed gate is not found to be unreasonable.
- Side setback
 - It is noted that concern is raised by multiple submissions in relation to the side setbacks. This is covered in detail below at 'Detailed Assessment' under 'Manly Development Control Plan 2013'.
- Loss of solar access
 - It is noted that concern is raised by multiple submissions in relation to change in solar access. The change in solar access is negligible and meets relevant controls for solar access for surrounding properties (refer to DCP assessment below).
- Rear setback
 - It is noted that concern is raised by multiple submissions in relation to rear setback. The rear setback has been increased from the existing non-compliant setback and therefore is an improvement upon the existing development.
- Inconsistent with local character
 - It is noted that concern is raised by multiple submissions in relation to inconsistency with local character. The proposed development is a part two and part three storey dwelling house in an area where residential flat buildings exist, therefore the proposal is found to be consistent with local character.
 - The bulk and scale of the proposed development is similar to the existing approved development and therefore is found to be consistent with local character.
- Wall Height
 - It is noted that concern is raised by a submission from 30 Addison Road in relation to wall heights. The wall heights have been reviewed and these are found to be compliant (refer to DCP assessment below).
- Floor Space Ratio (FSR)
 - It is noted that concern is raised by multiple submissions in relation to FSR calculations. The expectation that the access handle be removed from the FSR calculation is not standard. The FSR has been reviewed and is found to be compliant.
- Lack of green space
 - It is noted that concern is raised by submission from 1/28 Addison Road in relation to overall lack of green space. This is covered in detail below at 'Detailed Assessment' under 'Manly Development Control Plan 2013'.
- Set a precedence for future projects
 - It is noted that concern is raised by multiple submissions in relation to setting a precedence for future projects. Each development is considered on its merits and the proposal is not found to be inconsistent with the surrounding character, therefore achieving a desirable outcome for the site and area.
- Driveway damage caused by construction vehicles
 - It is noted that concern is raised by multiple submissions in relation to driveway damage caused by construction vehicles. A pre- and post-construction dilapidation report is recommended to be prepared for the driveway. Please refer to draft conditions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>Updated Biodiversity Referral (24 August 2022) These updated referral comments are based upon the following additional information:</p> <ul style="list-style-type: none"> • Amended Flora and Fauna Assessment Report (Narla Environmental, v3.0, August 2022)

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Stormwater/Sediment/Erosion/Drainage Plans (Engineering Studio, submitted to Planning Portal 16 August 2022) <p>The amended Flora and Fauna Report now includes a Construction Environmental Management Plan (CEMP) which outlines mitigation measures (including construction timing restrictions) to address likely indirect impacts to nearby penguin breeding habitat. The CEMP also identifies water quality standards to be adhered to during construction, while the amended stormwater/sediment/erosion/drainage plans provide further detail on engineering measures to manage offsite water quality impacts, including further details on design and operation of the onsite detention/bioretention basin. Minor amendments to the CEMP have been conditioned to further mitigate construction-related impacts to breeding and moulting penguins.</p> <p>Subject to implementation of recommended conditions, it is considered that the proposal is unlikely to impact upon the endangered little penguin and long-nosed bandicoot populations, or other native vegetation or wildlife habitat.</p> <p>Original Biodiversity Referral (14 March 2022) The application seeks approval for the demolition of a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping.</p> <p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p>Biodiversity Conservation Act 2016 (BC Act) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p> <ul style="list-style-type: none"> Foreshore and Waterways Area (Part 3) <p>Manly Local Environmental Plan (MLEP)</p> <ul style="list-style-type: none"> Clause 6.5 (Terrestrial Biodiversity) <p>Manly Development Control Plan (MDCP)</p> <ul style="list-style-type: none"> Clause 3.3.1. a) iv) Landscaping Design Clause 5.4.2 (Threatened Species and Critical Habitat Lands) <p>Council's Biodiversity Unit do not have sufficient information to provide a recommendation on the application.</p> <p>A detailed Construction Schedule is required in order to</p>

Internal Referral Body	Comments
	<p>demonstrate how assumptions made regarding potential indirect impacts to the AOBV resulting from noise, vibration and water quality can be complied with.</p> <p>The Flora and Fauna Assessment Report (Narla Environmental 2021) is to be amended to include a Construction Schedule which details the following:</p> <ul style="list-style-type: none"> • Each stage or task, • Equipment required for each stage, • Location (e.g. foreshore, above foreshore [rear], above foreshore [front], driveway etc.), • Timing (e.g. outside breeding and moulting period, breeding period or moulting period) • OSD discharge, including acceptable water-quality parameters for penguins based on literature and/or the expert opinion of a qualified ecological consultant <p>All high-intensity works with potential to disturb penguins as determined by the Project Ecologist are to be restricted to outside the breeding and moulting periods, particularly those involving demolition, rock sawing and rock hammering or any works below the foreshore building line.</p> <p>The proposed development is located within known habitat for the endangered populations of Long-nosed Bandicoots at North Head and Little Penguins at Manly. The site also occurs approximately 20m north-east of the Area of Outstanding Biodiversity Value for Little Penguins (AOBV; formerly Little Penguin Critical Habitat) declared under the <i>Biodiversity Conservation Act 2016</i> (BC Act), with the nearest recorded nest being approximately 25m from the western property boundary. Tests of Significance for Little Penguins and Long-nosed Bandicoots, prepared in accordance with Section 7.3 of the BC Act, have been included within the submitted Flora and Fauna Assessment Report (Narla Environmental 2021).</p> <p>On review of the Test of Significance for the Little Penguin population, it is noted that limited consideration is afforded to indirect impacts on Little Penguin and their habitats. Where consideration of indirect impacts is provided, without evidence to the contrary, many of the conclusions appear to be based on assumptions particularly those relating to noise, vibration, light and water-quality impacts. This is of concern as the Flora and Fauna Assessment Report does not recommend restricting development above the foreshore building line to outside the breeding and moulting periods, as would normally be recommended.</p> <p>The Test of Significance must be prepared in accordance with the <i>Threatened Species Test of Significance Guidelines</i> (OEH 2018) which requires short and long-term indirect impacts to be considered. Additionally, s7.3(1)(d) must take into consideration the <i>Declaration of critical habitat for the Endangered population of Little Penguins at Manly</i> (NPWS 2002).</p>

Internal Referral Body	Comments
	<p>The provided Test of Significance within the Flora and Fauna Assessment Report (p52,53) concludes that indirect impacts are avoided by way of mitigation measures. On review of the mitigation measures (p41), the following are noted that relate to indirect impacts to the Little Penguin population:</p> <ul style="list-style-type: none"> • (1) <i>Appropriate erosion and sediment control must be erected and maintained at all times during construction in order to avoid the potential of incurring indirect impacts on biodiversity values. As a minimum, such measures should comply with the relevant industry guidelines such as 'the Blue Book' (Landcom 2004). A erosion and sediment control plan has been produced to mitigate any potential impacts to biodiversity and the environment (Engineering Studio 2021).</i> • (2) <i>Any construction activities in close vicinity of potential Little Penguin habitat (i.e under rocks on the foreshore and under structures such as stairs) should be undertaken outside peak the peak breeding period (July – February) and moulting period (December – February) for the species to avoid any potential impacts when they are most vulnerable. This will particularly apply to the any activities required to fix the stairs that access the rock platform / pool area.</i> • (3) <i>Noise and light spill have the potential to interrupt the lifecycle of both the Long-nosed Bandicoot and Little Penguin. Therefore, all construction activities should be restricted to day light hours to avoid potential indirect impacts.</i> • (4) <i>An Onsite Detention Basin (OSD) has been proposed on the middle terrace to allow for the slow release of stormwater into Little Manly Cove. This will be connected to the existing outlet, which the builder will verify the adequacy of to provide scour protection. Such protections will mitigate against potential indirect stormwater impacts the Little Penguin population.</i> • (5) <i>Construction vibration will be undertaken in line with Australian Standard AS 2187: Part 2-2006 and the recommendations of the Geotechnical report (AssetGeoEnviro 2021). Construction should cease and action taken if any unanticipated impacts to natural rock wall on the foreshore are observed.</i> <p>The following concerns are raised with regard to each proposed mitigation measure:</p> <ul style="list-style-type: none"> • Mitigation Measure (1): the referenced Erosion and Sediment Control Plan (Engineering Studio 2021) does not provide any assurance that it has been prepared to mitigate sedimentation or water-quality impacts to the Little Penguin population. No water-quality parameters are detailed within the Erosion and Sediment Control Plan for acceptable limits prior to discharge of OSD, nor

Internal Referral Body	Comments
	<p>are these parameters certified by the Ecologist as being acceptable to the Little Penguin population.</p> <ul style="list-style-type: none"> • Mitigation Measure (2): the recommendation only includes proposed works taking place on the foreshore ("<i>under rocks on the foreshore and under structures such as stairs</i>"). No justification is provided for the exception of works above the foreshore from this mitigation measure that include demolition and construction, rock hammering and other high-impact works that would be likely to generate significant noise and vibration impacts. • Mitigation Measure (3): the recommendation is limited to construction impacts, and must also consider light spill from the operation stage, a threat to the population listed under the Critical Habitat Determination (NPWS 2002). • Mitigation Measure (4): the recommendation must address impacts arising from OSD discharge, including acceptable water-quality parameters for penguins based on literature and/or the expert opinion of a qualified ecological consultant. • Mitigation Measure (5): the indirect impacts arising from noise and vibration to penguins and their habitat within the AOBV area are inadequately assessed. No commentary is provided on the acceptable limits of vibration, nor those that will be generated by the proposed development. <p>Without evidence to support assumptions, particularly as works are proposed to be carried out within sensitive periods of the year (i.e. breeding and moulting), the conclusions of the Flora and Fauna Assessment Report are unsupported by Council's Biodiversity Referral Team based on the advice of OEH (2018) which states: "<i>All factors must be considered and an overall conclusion must be drawn from all factors in combination. Where there is doubt regarding the likely impacts, or where detailed information is not available, it should be assumed that a significant impact is likely.</i>"</p> <p>Evidence in the form of a Construction Schedule is required to be included within the Flora and Fauna Assessment Report to ensure these proposed mitigation measures are sufficient and assumptions correct.</p> <p>In addition to the above, it is not specified whether construction and operational access is to be solely by Addison Road, or if barge access is proposed which would not be supported due to the likely marine impacts caused by loading and offloading supplies.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.</p> <p>The site sits above the rocky intertidal foreshore of Little Manly Cove which adjoins North Harbour Aquatic Reserve. The marine environment lies less than 10 meters from the property boundary and is the recipient of all stormwater and overland flow from the site. The rocky foreshore and aquatic environment is potential</p>

Internal Referral Body	Comments
	<p>habitat for little penguins as well as other sensitive marine flora and fauna. Given the sensitive nature of the receiving environmental and the iconic location, there is currently insufficient information to satisfy Council that all threats and risks to the marine environment and the biodiversity within it have been considered and protection measures developed for implementation during the demolition and completion of the project.</p> <p>Council will require an Aquatic Ecology Report that includes a Construction and Environmental Management Plan which describes details on best practice measures to protect the environment from all aspects of demolition and construction processes.</p> <p>Updated Note - 29-08-2022</p> <p>The applicant has provided an addendum to the Statement of Environmental Effects which acknowledges the sensitive nature of the receiving environment which adjoins the proposed development site.</p> <p>The proposal is therefore supported, with conditions.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021, State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour waterways area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clause 2.12 of the SEPP R&H.</p>

Internal Referral Body	Comments
	<p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>State Environmental Planning Policy (Biodiversity & Conservation) 2021</p> <p>Harbour Foreshores & Waterways Area</p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 10.2, Clause 10.11 and Part 10.3, Division 2 apply in assessing this DA.</p> <p>On internal assessment, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management</p> <p>The subject site is also shown to be as “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report and addendum prepared by Claron Consulting Pty. Ltd. dated January 2022 and 15 August 2022, respectively, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.</p> <p>Development on Foreshore Area</p> <p>The subject site is also shown to be as “Manly Foreshores Area” on Council’s Area “within the foreshore building line Map” in Manly LEP 2013. Hence, Part 6, Clause 6.10 –Limited development on foreshore area of the Manly LEP 2013 applies for any development within the foreshore area.</p> <p>The DA proposes works on the footprint of the existing building and are consistent with Clause 6.10(2).</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report and addendum</p>

Internal Referral Body	Comments
	prepared by Claron Consulting Pty. Ltd. dated January 2022 and 15 August 2022, respectively,, the DA satisfies the objectives and requirements of the Manly LEP 2013.
Landscape Officer	<p>The development application is for the demolition of existing structures, and the construction of a new dwelling and associated landscape works, as described and illustrated in the reports and plans. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable <p><i>updated comments 18/08/2022:</i></p> <p>The updated Landscape Plans include landscape proposals across the property within landscape areas including replacement of the Thuja conifer hedge, ornamental tree planting, and other native and exotic garden planting. However as raised previously native tree planting is required to satisfy 4.1.5.2 (c) Minimum Tree Plantings, and conditions shall be imposed should the application be approved. No other concerns are raised with the updated Landscape Plans.</p> <p>The amended Arboricultural Impact Assessment provides recommendations for removal and retention of trees within the property, and no concerns are raised. Existing trees within adjoining property shall be protected, and it is noted that there is no impact to the existing Spotted Gum in adjoining property, identified as tree number 3, in consideration of the distance of the tree from the works and as existing driveway pavement is sufficient protection.</p> <p><i>previous comments 02/03/2022:</i> Clarification is required to continue the landscape referral assessment.</p> <p>The Arboricultural Impact Assessment report includes removal of existing conifers along the existing driveway within a landscape strip. The report includes a plan that shows this strip as a pedestrian access with paverslabs and thus removal of the trees would be required to accommodate the access path. However, neither the Site Plans nor the Landscape Plans show this area as an access path. The Site Plan indicates this area as a landscaped area with the retention of the low brick wall and the Landscape Plan shows this area as newly planted including the low retaining wall. Therefore the reason for tree removal is uncertain as these trees (Thuja orientalis) are not Exempt Species and any at 5 metres or higher require Council consent.</p> <p>Other existing trees within the property in vicinity of the existing</p>

Internal Referral Body	Comments										
	dwelling are proposed for removal and no concerns are raised as these are Exempt Species by either proximity to an existing dwelling, size or species type. No concerns are raised regarding the Landscape Plan, subject to conditions to be imposed for native small tree planting, and the resolution of the existing driveway landscape area and the status of the existing Thuja orientalis along the driveway.										
Heritage Referral Response	<p><i>Discussion of reason for referral</i></p> <p>The proposal has been referred to Heritage as the subject property adjoins two heritage items:</p> <p>Item I2 - All stone kerbs - Manly municipal area - along Addison Road</p> <p>Item I1 - Harbour Foreshores - Manly municipal area boundary adjacent to the Harbour</p> <p><i>Details of heritage items affected</i></p> <p>Details of the items, as contained within the Heritage Inventory, are:</p> <p>Item I2 - All stone kerbs</p> <p><u>Statement of Significance</u></p> <p>Stone kerbs are heritage listed.</p> <p>Physical Description</p> <p>Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century.</p> <p>Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p> <p>Item I1 - Harbour Foreshores</p> <p><u>Statement of Significance</u></p> <p>Natural landscape type - Aesthetic.</p> <p>Physical Description</p> <p>Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</p> <p><i>Other relevant heritage listings</i></p> <table> <tr> <td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td> <td>No</td> </tr> <tr> <td>Australian Heritage Register</td> <td>No</td> </tr> <tr> <td>NSW State Heritage Register</td> <td>No</td> </tr> <tr> <td>National Trust of Aust (NSW) Register</td> <td>No</td> </tr> <tr> <td>RAIA Register of 20th Century Buildings of Significance</td> <td>No</td> </tr> </table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Australian Heritage Register	No	NSW State Heritage Register	No	National Trust of Aust (NSW) Register	No	RAIA Register of 20 th Century Buildings of Significance	No
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No										
Australian Heritage Register	No										
NSW State Heritage Register	No										
National Trust of Aust (NSW) Register	No										
RAIA Register of 20 th Century Buildings of Significance	No										

Internal Referral Body	Comments
	<p>Other N/A</p> <p><i>Consideration of Application</i></p> <p>The proposal seeks consent for the demolition of the existing dwelling and construction of a new dwelling with attached garage and associated landscaping. There is an existing swimming pool between the heritage listed Harbour Foreshore and the proposed building.</p> <p>The proposal does not involve any works to the existing driveway crossover and the heritage listed kerbs. The proposed building is on a similar footprint as the existing building at the rear, near the heritage listed foreshore area. The subject site is also located within the Foreshore Scenic Protection Area and the objective of Foreshore scenic protection area is "to protect visual aesthetic amenity and views to and from Sydney Harbour, the Pacific Ocean and the foreshore in Manly." The proposal is considered to not have a significant impact upon the visual aesthetic quality of the foreshore or the views to and from the foreshore.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u></p> <p>Is a Conservation Management Plan (CMP) Required? No</p> <p>Has a CMP been provided? No</p> <p>Is a Heritage Impact Statement required? No</p> <p>Has a Heritage Impact Statement been provided? No</p> <p>The proposal is therefore supported.</p>
Parks, reserves, beaches, foreshore	<p>The development application is for the demolition of existing structures, and the construction of a new dwelling and associated landscape works, as described and illustrated in the reports and plans.</p> <p>The property adjoins Little Manly Beach harbour foreshore downslope. An existing encroachment (swimming pool) into the foreshore is noted.</p> <p>No physical encroachments under the scope of the development application over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.</p> <p>Parks, Reserves and Foreshores Referral raise no concerns with the development proposal.</p>
NECC (Development Engineering)	<p>1st Development Engineering response referral</p> <p>Development Engineering has no objection to the application subject to the following conditions of consent.</p>

Internal Referral Body	Comments
	2nd Development Engineering response referral Development Engineering has no objection to the amended design. The suggested conditions are updated as the change of the drawing.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	A response was received from Ausgrid advising that no assets were present, and therefore no action is required.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs 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)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate was lodged with this application (see BASIX Certificate No. A438415, dated 4 November 2021). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.



SEPP (Resilience and Hazards) 2021

Clause 2.12 of the SEPP (Resilience and Hazards) 2021 apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour waterways area. Refer to Natural Environment Referral Response – Coastal Officer's response for further detail.

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who provided a response stating that no Ausgrid assets present on the subject site.

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	Bettar: 9.2m	8.23%	No - See variation
		Merman: 10.6m	24.7%	

Note: The maximum building height is taken to be RL19.500

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No, clause 4.6 provided
4.4 Floor space ratio	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.5 Terrestrial biodiversity	Yes
6.6 Riparian land and watercourses	Yes
6.9 Foreshore Scenic Protection Area	Yes

Detailed Assessment

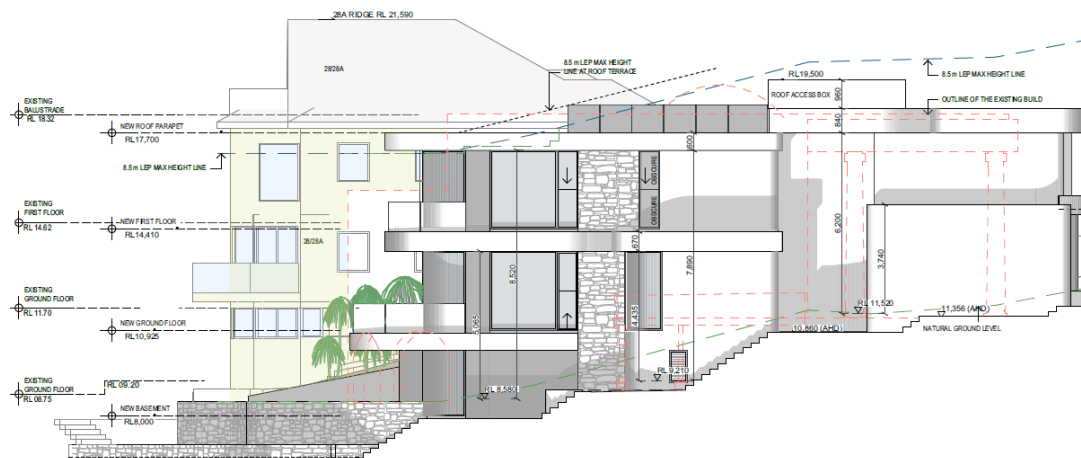
4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	4.3 Height of buildings
Requirement:	8.5m
Proposed:	9.2m-10.6m
Percentage of variation to requirement:	8.23%-24.7%

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 10.6 metres, thereby non-compliant with the height standard. The figure below depicts the extent of the non-compliance.

East Elevation



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.

(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.*

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 Planning Secretary has been obtained.

25



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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:



“A development that strictly complies with the building height standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The breach in the building height Control is directly related to the constraints imposed upon the design by site topography and orientation. The design solution adopted by the project architect responds appropriately to the substantial change in levels across the site with a low impact and heavily modulated and articulated dwelling form. It is also designed to present an interesting façade to the public space in Little Manly Cove and the headland of Little Manly Point.*
- The area in question constitutes an extended eave overhang and is required for the proper shading of the upper balcony and to maintain the architectural form of the façade and roof. Deleting or reducing the eave overhang would compromise the amenity of the upper floor and the integrity of the architecture.*
- Reducing the overall building height may consequently result in an increase to the depth of the excavation, which is an undesirable environmental outcome.*
- The minor breach of the building height has no material effect upon streetscape.*
- There is no material impact upon solar access, privacy or view loss for any adjoining neighbour or the public realm as a direct result of the breach in height.”*

This assessment generally agrees with the above that strict compliance with the building height development standard is unreasonable in the case of being consistent with the surrounding ‘built form’ development pattern and similar to the building it replaces.

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 9.2 metres, which would not comply with the 8.5 metre exception provision permitted by Clause 4.3 of Manly LEP 2013. Hence, the proposal would need a Clause 4.6 variation request which has been provided. The main non-compliance 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 reasonable non-compliance in 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).

The proposed works that result in the non-compliance are similar to the building it replaces. The extent to which proposed building extends beyond the prescribed building height is reduced when compared to the existing with the non-compliant built form limited to the roof structure at the southern end of the dwelling and a minor area of glass balustrade on the roof terrace.

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 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,*

The development is proposed as a dwelling that steps down the existing contours of the land from the north-western boundary towards the waterfront boundary (south-east). The height of the overall development is very similar to the existing dwelling, as identified in the elevation plans. The roof form takes shape of a rooftop terrace, similar to the existing roof form, however the footprint has been reduced from the existing terrace.

The proposed dwelling will not have impact on the existing streetscape character as it is located on a battle axe block.

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

While the proposal includes some numerically non-compliant built form elements, the development remains sympathetic to the surrounding and nearby development by providing a built form that is largely contained within the existing building footprint. The height non-compliance represents a marginal increase on the existing building height. However notwithstanding this the extent of built form beyond the maximum height is found to be minimal as previously discussed above.

The proposal maintains the existing two- to three-storey built form, which is consistent with the surrounding development. The building height non-compliance is confined to the roof parapet at the rear of the property and the glass terrace balustrades. Notwithstanding the building height encroachment, the height is largely a result of the existing dwelling which already protrudes the building height plane. The height non-compliance represents a marginal increase on the existing building height.

- c) *to minimise disruption to the following—*
i) *views to nearby residential development from public spaces (including the harbour and foreshores),*

The visual impact of development as viewed from any nearby public places, such as parks and reserves, roads and community facilities is minimised with the height non-compliance located lower than the surrounding development.

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



The site and surrounding development have views to Little Manly Beach and North Head. The proposed development is largely contained within the existing footprint with only a marginal increase on the existing building height in a small section, minimising disruption to views of the public space from the nearby residential development.

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

The proposed development will have minimum potential visual impact between Little Manly Beach and North Head, and the foreshore as it is not proposed to further encroach into the foreshore than the existing 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,*

The proposed development is largely contained within the existing footprint with only a marginal increase on the existing building height in a small section. The shadow diagrams provided demonstrate adequate maintenance of sunlight access to private open spaces and to habitable rooms of adjacent dwellings.

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

The development is proposed as a dwelling that steps down the existing contours of the land from the north-western boundary towards the waterfront boundary (south-east). The existing vegetation is to be retained where possible, and where not possible new vegetation will be added following the construction of the dwelling. The proposal is supported by the internal Landscaping officer.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

The proposed development is a single residential development replacing an existing single dwelling which is largely contained within the existing footprint.

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

The proposal represents a consistent residential development with a sympathetic bulk and scale to that of the surrounding development. The dwelling has been strategically located to be largely located within the existing footprint. This has been done in order to minimise impact to any special ecological, scientific or aesthetic values.

3. *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

The proposed dwelling is replacing an existing dwelling of similar bulk and scale, and so there is no anticipated increase in dominance of the natural scenic qualities of the foreshore. There is no impact upon tree canopies.

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

There is no loss of natural vegetation, or impact upon nearby foreshores, nor the natural environment caused by the height of the dwelling.



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

The building height has no impact upon these criteria.

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

The height and bulk of the proposed dwelling is consistent with surrounding development and the existing building. The existing vegetation is to be retained where possible, and where not possible new vegetation will be added following the construction of the dwelling

Conclusion:

For the reasons detailed above, the height variation is found to be consistent with the objectives of the C4 Environmental Living 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 PS 20-002 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, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Development Determination Panel.

MANLY DEVELOPMENT CONTROL PLAN 2013

Built Form Controls

Built Form Controls - Site Area: 334.50sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.5 metres (based on gradient 0)	6.5 metres	N/A	Yes
	S: 6.5 metres (based on gradient 0)	5.8 metres	N/A	Yes
	E: 6.7 metres (based on gradient 1:30)	7.0 metres	N/A	Yes
	W: 6.7 metres (based on gradient 1:30)	6.5 metres	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5 metres	0.8 metres	N/A	Yes
	Pitch: maximum 35 degrees	8 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6 metres	12.4 metres	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: Semi-detached dwelling	Nil to boundary wall	N/A	Yes
	W: 2.2 metres (based on wall height of 6.7 metres)	1.2 metres (Ground and first floor additions) Nil (rear patio)	45.5% - 100%	No
	Windows: 3 metres	1.2 metres	60%	No
4.1.4.4 Rear Setbacks	8 metres	17.3 metres	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (184m ²)	46.4% (155.3m ²)	15.6%	No
	Open space above ground 25% of total open space	-	-	N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (54.4m ²)	57.8% (89.8m ²)	N/A	Yes
	2 native trees	2 trees	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	>18m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1.2 Front Fences and Gates	Yes	Yes
3.1.1.4 Garages, Carports and Hardstand Areas	Yes	Yes
3.2.1.1 Development in the vicinity of heritage items, or conservation areas	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1.1 Overshadowing Adjoining Open Space	Yes	Yes
3.4.1.4 Overshadowing Clothes Drying Areas	Yes	Yes
3.4.1.6 Sunlight Access to Communal Living Areas	Yes	Yes
3.4.2.2 Balconies and Terraces	No	Yes
3.4.2.3 Acoustical Privacy (Noise Nuisance)	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.2 Height of Buildings	No	Yes
4.1.2.1 Wall Height	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4.2 Side setbacks	No	Yes
4.1.4.4 Rear Setbacks	Yes	Yes
4.1.4.5 Foreshore Building Lines and Foreshore Area	Yes	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6.4 Vehicular Access	Yes	Yes
4.1.6.5 Driveways and Crossings	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes
5.4.4 Riparian Land and Watercourses	Yes	Yes



Detailed Assessment

3.4.3 Maintenance of Views

The views under consideration include the following:

- 30 Addison Road
 - Living room and adjoining deck area
 - Upper deck area
- 3/28 Addison Road
 - Living room
 - Kitchen
 - Upper deck area
 - Master bedroom
 - Bedroom

In assessing and determining any potential impact upon view sharing it is considered necessary to undertake a view assessment in accordance with planning principle, *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. The planning principal outlines four (4) key steps in assessing a proposal in relation to view sharing.

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

The views from the neighbouring properties high use areas, such as living room and kitchen, are towards Little Manly Point Park and North Head. The North head views are considered Iconic views. There are some water views. These views would be considered partial views.

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

Notwithstanding the views being enjoyed across the rear boundaries of #3/28 and #30, the proposal does not unreasonably impact on these views by ensuring view sharing is maintained for these properties. This is demonstrated in the supporting photos provided further in this report. Height poles were erected on the subject site to demonstrate the extent of any impact across the rear boundary of these properties which found the impact to be minor.

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

The extent of the impact on the overall properties at 3/28 and 30 Addison Road is found to be minor, as the surrounding properties continue to enjoy views of North Head, Little Manly Point Park and water views.. Below are the sight lines from high traffic areas at the neighbouring properties, with height poles marked. Of the five (5) height poles constructed only two (2) are visible, and an additional one (1) is visible from the upper deck #3/28. The one (1) visible from only #3/28 is level with the existing solid balustrades which would result in no additional view loss. The two (2) height poles in the position of the roof access box are visible, and whilst they are within the maximum height limit of 8.5m, they appear to impact views as outlined below:

- #30 – partial views to North Head

- #3/28 – living room: sky views, upper deck area: partial views to Little Manly Point Park



View from living room at 30 Addison Road, Manly. Height poles highlighted in yellow.



View from living room at 3/28 Addison Road, Manly. Height poles highlighted in yellow.



View from upper deck area at 3/28 Addison Road, Manly. Height poles highlighted in yellow.

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

The development does not comply with the controls of Clause 4.3 of the LEP – Height of buildings, as it exceeds the maximum height by 0.7m. A Clause 4.6 has been submitted along with this application and it is found to be an appropriate amendment to the planning controls for the proposed development. The impact would be found minor as the view that is currently taken by the existing dome roof and solid balustrade will be returned through removal of the dome. All future balustrades facing the harbour to be made of glass, and a reduction in the roof terrace, resulting in less balustrades overall. It is found there will be a minor impact on views to the harbour, Little Manly Cove, and North Head.

4.1.4.2 Side setbacks

The proposed side setbacks are 1.4m to the north-eastern boundary, increased from existing 1.338m, and 1.2m to the south-western boundary, increased from existing 0.643m.

Notwithstanding the non-compliance, the proposed setbacks are found to be reasonable, having regard to the objectives of the clause. An assessment is provided as follows:

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

Response: The streetscape is not affected as the development is on a battle axe block and only the driveway has a street frontage.



2. *To ensure and enhance local amenity by:*

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

See also objectives at paragraph 3.4 Amenity.

Response: The proposed side setbacks are found to be an improvement from the existing development in the above objectives of privacy, view sharing, adequate space between buildings, equitable access to light, sunshine and air movement as the setback has been increased.

3. *To promote flexibility in the siting of buildings.*

Response: The building siting is similar to the existing approved building.

4. *To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Response: The side setbacks allow for planting along the side setbacks. The landscape plans detail the location of the planting areas.

5. *To assist in appropriate bush fire asset protection zones.*

Response: The site is not in a bushfire zone.

4.1.5 Open Space and Landscaping

The open space component of 52.48% is marginally under the control (55%), noting that the proposal is an improvement over that of the current dwelling in both quantitative and qualitative terms. The proposal is supported by the internal landscape officer. An assessment is provided as follows:

1. *To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

Response: The proposal is an improvement of the existing total open space with an increase in overall quantity, it also retains much of the existing vegetation. A condition has been imposed to retain the Thuja orientalis located along the driveway.

2. *To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

Response: The proposed total Landscaped Area is greater than required, all of which is proposed on the ground floor. The proposal also retains much of the existing vegetation

3. *To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*



Response: The proposed non-compliance of overall total open space does not give rise to impacted sunlight and views more than existing vegetation. A condition has been imposed to retain the *Thuja orientalis* located along the driveway for privacy purposes.

4. To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Response: The landscaped area notwithstanding the shortfall is appropriate in ensuring the ongoing infiltration of water on the site to minimise stormwater runoff.

5. To minimise the spread of weeds and the degradation of private and public open space.

Response: The marginal reduction in landscaped area will not result in the spread of weeds and will ensure the retention of high quality private and public space.

6. To maximise wildlife habitat and the potential for wildlife corridors.

Response: There is no impact expected on potential Little Penguin habitats located on the foreshore as the proposed dwelling is consistent with the existing dwelling therefore mitigating and minimising any potential impact of wildlife habitat and corridors.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$44,810 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,481,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan 2013;
- Manly Development Control Plan 2013; 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 found to be acceptable and is recommended for approval.

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



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

The assessment of the proposal has found that the proposed development does not strictly comply with the requirements of the applicable controls related to the MLEP 2013, including building height, and the MDCP 2013, including building height and side setbacks. Notwithstanding these, the proposal is found to be acceptable on merit, having regard to the objectives of the respective clauses.

It is considered that these non-compliances would not result in unreasonable amenity impacts to surrounding properties or result in a development that is out of character with the style and scale of surrounding newer development in the immediate area.

A total of nine (9) submissions were received in response to the notification of the application during one (1) notification period. The issues raised in the submissions along with those raised during Council's preliminary assessment have been addressed in the "Public Notification Section" of this report. A number of the concerns initially raised within the submissions were concurred with by Council's assessment of the application. Amended plans were received and the application was renotified, with no submissions being received in response.

The assessment reveals the submission issues do not warrant the refusal or further amendment of the application.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of buildings development standard pursuant to clause 4.6 of the 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.

THAT Council, as the consent authority APPROVE Development Consent to Development Application No DA2022/0033 for the demolition of a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping on land at Lot B DP 360797, 30A Addison Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Proposed Site Plan - DA 02, Rev M	20 July 2022	Chateau Architects & Builders
Basement Level - DA 03, Rev M	14 January 2022	Chateau Architects & Builders

Ground Floor Plan - DA 04, Rev M	14 January 2022	Chateau Architects & Builders
First Floor Plan - DA 05, Rev L	14 January 2022	Chateau Architects & Builders
Roof Plan - DA 06, Rev L	14 January 2022	Chateau Architects & Builders
Elevations 1 & 2 (North and East) & Material/Finishes Schedule - DA 07, Rev L	14 January 2022	Chateau Architects & Builders
Elevations 3 & 4 (South and West) - DA 08, Rev L	14 January 2022	Chateau Architects & Builders
Sections A, B and C - DA 09, Rev L	14 January 2022	Chateau Architects & Builders

Engineering Plans		
Drawing No.	Dated	Prepared By
General Notes - C00.01, Rev F	15 August 2022	Engineering Studio
Roof Drainage/Sediment & Erosion Control Plan - C01.01, Rev F	15 August 2022	Engineering Studio
Sediment & Erosion Control Details - C01.02, Rev F	15 August 2022	Engineering Studio
Sediment & Erosion Control Details 2 - C01.03, Rev F	15 August 2022	Engineering Studio
Ground Drainage Plan - C02.01, Rev F	15 August 2022	Engineering Studio
Basement Drainage Plan - C02.02, Rev F	15 August 2022	Engineering Studio
Stormwater Details Sheet 1 - C02.03, Rev F	15 August 2022	Engineering Studio
Stormwater Details Sheet 2 - C02.04, Rev F	15 August 2022	Engineering Studio
Stormwater Details Sheet 3 (Grated Drain, Floor Outlet, Planter Box) - C02.05, Rev F	15 August 2022	Engineering Studio
Stormwater Details Sheet 3 (Bio-Retention Basin, Surface Inlet Pit) - C02.05, Rev F	15 August 2022	Engineering Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report - Amended	29 July 2022	Urban Arbor
BASIX Certificate (No.1256549S)	30 November 2021	Building Sustainability
Flora & Fauna Report	August 2022	Narla Environmental
Geotechnical Report	14 November 2021	AssetGeoEnviro
NatHERS Certificate (No.0006852792)	29 November 2021	Building Sustainability

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscaping Plan - DA L01, Rev M	20 July 2022	Chateau Architects & Builders
Boundary Fencing - DA L02, Rev L	14 January 2022	Chateau Architects & Builders

Waste Management Plan		
Drawing No./Title.	Dated	Prepared By
Waste Management Plan	n.d.	Chateau Architects & Builders

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

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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



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

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

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

\$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.



- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls



Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$44,810.00 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 \$4,481,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2022 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

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

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

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

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

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

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

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

All pre-construction mitigation measures specified in Table 8 and Appendix F of the amended Flora and Fauna Assessment Report (Narla Environmental, August 2022) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance is to be



certified by the Project Ecologist and evidence provided to the Certifying Authority prior to issue of the Construction Certificate.

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

7. Engagement of Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the Flora and Fauna Assessment Report (Narla Environmenta, August 2022).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

8. Erosion and Sediment Control Plan

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

9. Water Quality Management

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

10. Construction Environment Management Plan

A Construction Environmental Management Plan (CEMP) must be prepared that considers and specifies the environmental risks and mitigation methods needed to protect the sensitive marine environment (Little Manly Cove) that adjoins the property. The CEMP must be kept in the site office.



An induction plan for site personnel must be prepared that addresses the CEMP.

The CEMP and site induction plan must be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife, habitats and receiving waterways.

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

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

Prior to issue of the Construction Certificate, review of the geotechnical content of all structural designs is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY ", and generally in accordance with the concept drainage plans prepared by Engineering Studio, job number 210258, drawing C00- C02 , rev F , dated 15/08/2022.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer. The drainage plans must address the following:

1. the total depth of the basin shall not be higher than 300mm. Alternatively, a swimming pool fence must be installed around the basin where the depth of the ponding exceeds 300mm.
2. the grate level of the proposed overflow pit must be same as the wall around the basin.
3. an erosion and scour control device must be installed before the discharge into the ocean in accordance with the above policy,

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

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

13. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

**14. Waste Management Plan**

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

Details demonstrating compliance must be provided to the Principal Certifier prior to the issue of the Construction Certificate.

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

15. Compliance with Standards

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

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

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

16. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

17. Sydney Water "Tap In"

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

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

i) "Tap in" details - see <http://www.sydneywater.com.au/tapin>

i) Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**18. Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

- i) tree 4, 6, 8 and 9,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Exempt Species (by species type or by height) as listed in the Development Control Plan do not require Council consent for management or removal, and the following exempt species are identified in the Arboricultural Impact Assessment: tree 5 and 7.

Reason: To enable authorised development works.



19. **Pre-demolition check of penguin habitat**

Prior to commencement of demolition works, a suitably qualified ecologist is to confirm that no penguins are breeding or moulting on the site or within 20m of the site. If penguins or bandicoots are found on the site, works must cease and advice must be sought from the site ecologist.

Reason: Wildlife protection

20. **Installation and Maintenance of Sediment and Erosion Control**

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

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

21. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: 28, 28A, and 30 Addison Road, Manly, and 8 Bruce Avenue, Manly.

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

22. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of



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

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

23. **Compliance with Ecologist's Recommendations - During Construction and Demolition**

All applicable mitigation measures specified in Table 8 and Appendix F of the amended Flora and Fauna Assessment Report (Narla Environmental, August 2022) and these conditions of consent are to be implemented during construction and demolition. Compliance with these measures is to be certified by the Project Ecologist in writing and evidence provided to the Certifying Authority prior to issue of any Occupation Certificate.

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



24. **Construction Environmental Management Plan**

All workers, including sub-contractors, are to be briefed on measures specified in the Construction Environmental Management Plan (CEMP) and biodiversity-related consent conditions by the Project Ecologist and given a copy of the CEMP prior to commencing their works.

A record of receipt of the CEMP is to be signed by all workers and this record is to be provided to the Principal Certifying Authority

Reason: To protect native vegetation, wildlife and habitats.

25. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, the Project Ecologist must be contacted for advice.

Reason: To protect native wildlife.

26. **Water Quality**

Appropriate runoff and sedimentation control devices must be installed prior to and maintained for the duration of construction and demolition works, in accordance with the approved Stormwater/Sediment/Erosion/Drainage Plans and these conditions of consent.

Evidence of compliance is to be provided to the Principal Certifying Authority prior to any Occupation Certificate.

Reason: To prevent impacts to Little Penguins and their habitat, including the Area of Outstanding Biodiversity Value, in accordance with the Biodiversity Conservation Act 2016.

27. **Protection of Natural Features**

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

Reason: To protect wildlife habitat.

28. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

29. **Geotechnical Requirements**

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.



30. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

31. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

32. **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.

33. **Works below Foreshore Building Line to be undertaken outside penguin breeding and moulting season**

No demolition, excavation or rock removal works are to be undertaken in the area below the Foreshore Building Line during the penguin breeding season (1 July to 29 February) or if there are penguins nesting within 20m of the property at any time of year.

Compliance must be certified by the Project Ecologist and details provided to the Principal Certifying Authority prior to issue of any Occupation Certification.

Reason: To prevent disturbance to nesting and moulting penguins on the foreshore

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

34. **Landscape Completion**

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

- i) two (2) native tree planting species selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, or Council's Tree Guide, shall be planted at a minimum pre- ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.



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

Reason: Environmental amenity.

35. **Implementation of Construction Environmental Management Plan**

Construction and demolition are to be undertaken in accordance with the Constructional Environmental Management Plan (CEMP) provided in Appendix F of the amended Flora and Fauna Assessment Report (Narla Environmental, August 2022) and these conditions of consent. Where there is inconsistency between the CEMP and these consent conditions, the condition/s will prevail to the extent of the inconsistency.

Compliance is to be certified in writing by the Project Ecologist and this written evidence provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect native vegetation, wildlife and habitats including the Little Penguin Area of Outstanding Biodiversity Value.

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

Prior to issue of the Occupation Certificate, the applicant is to submit details to the Principal Certifying Authority demonstrating compliance that the recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 have been undertaken.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

38. **Compliance with Ecologist's Recommendations – Post Construction**

All applicable post-construction mitigation measures specified in Table 8 and Appendix F of the amended Flora and Fauna Assessment Report (Narla Environmental, August 2022) and these conditions of consent are to be implemented following construction.

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist and evidence provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

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



39. Post-Construction Dilapidation Report

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

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

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

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

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

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

40. Landscape Maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

Reason: To maintain local environmental amenity.

41. Compliance with Ecologist's Recommendations – Ongoing

All ongoing biodiversity-related measures are to be implemented in accordance with Table 8 and Appendix F of the Flora and Fauna Assessment Report (Narla Environmental, August 2022), and these consent conditions.

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

42. General Foreshore Matters

Unless in accordance with the approved works the Consent holder must ensure that:

- a) No materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area.
- b) All drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation.
- c) The foreshore is graded to enable the unimpeded flow of water and retaining structures result in a stable foreshore banks.
- d) Any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted.
- e) The foreshore is to function as an ecological system and as such, all works, access, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond the foreshore other than provided by the consent.

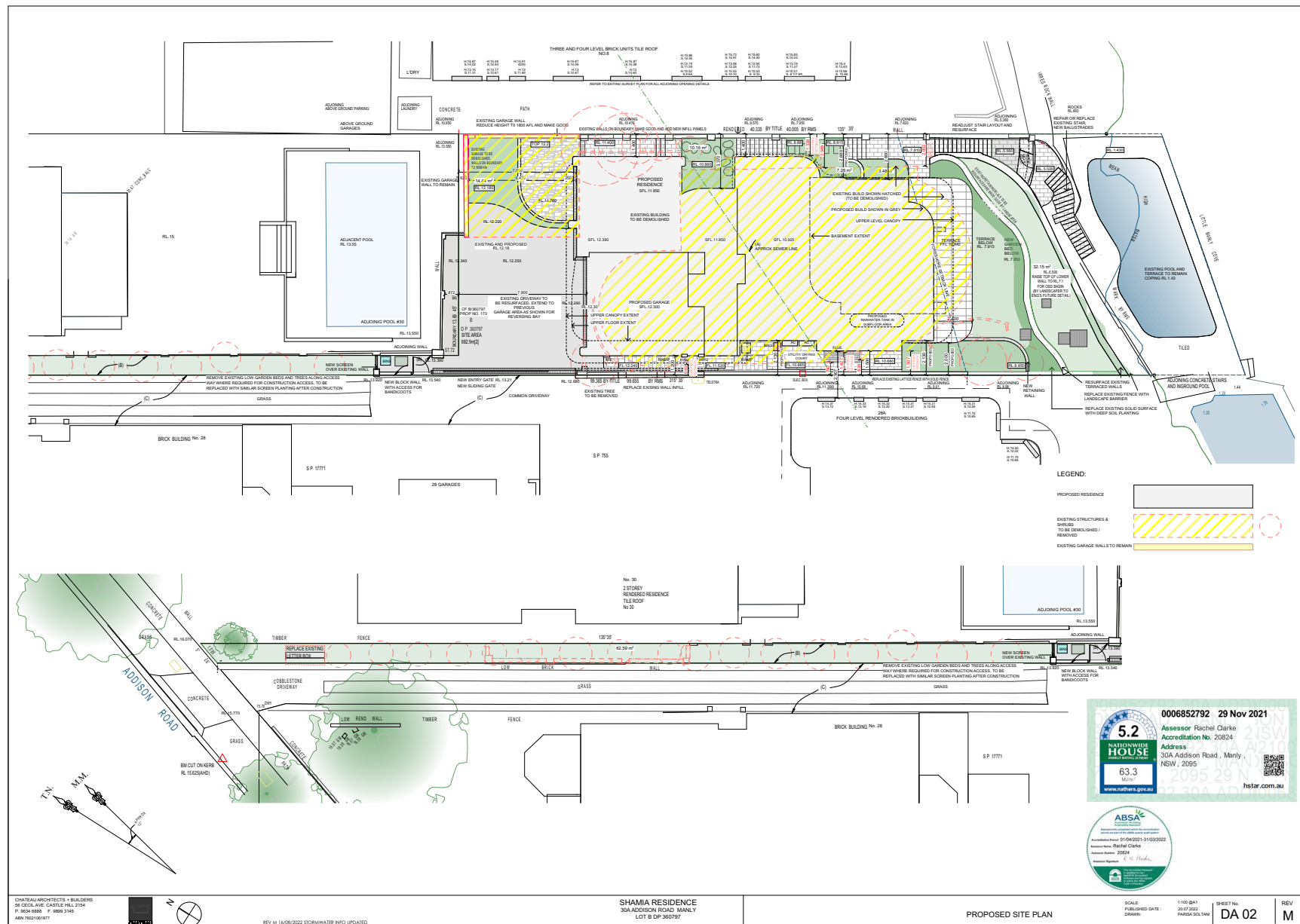
Reason: Environmental protection, monitoring and enhancement of the foreshore.

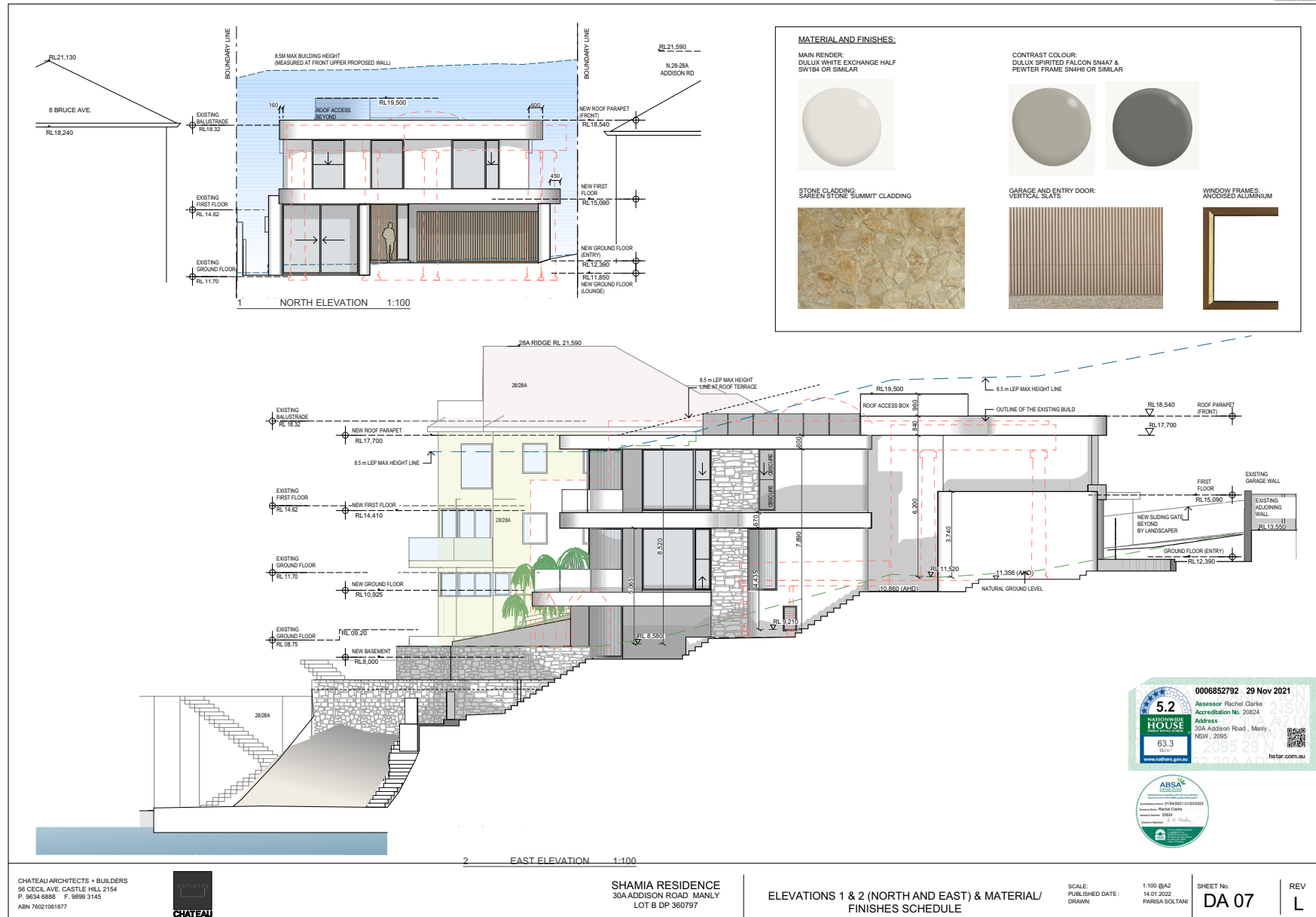
43. Tree Retention

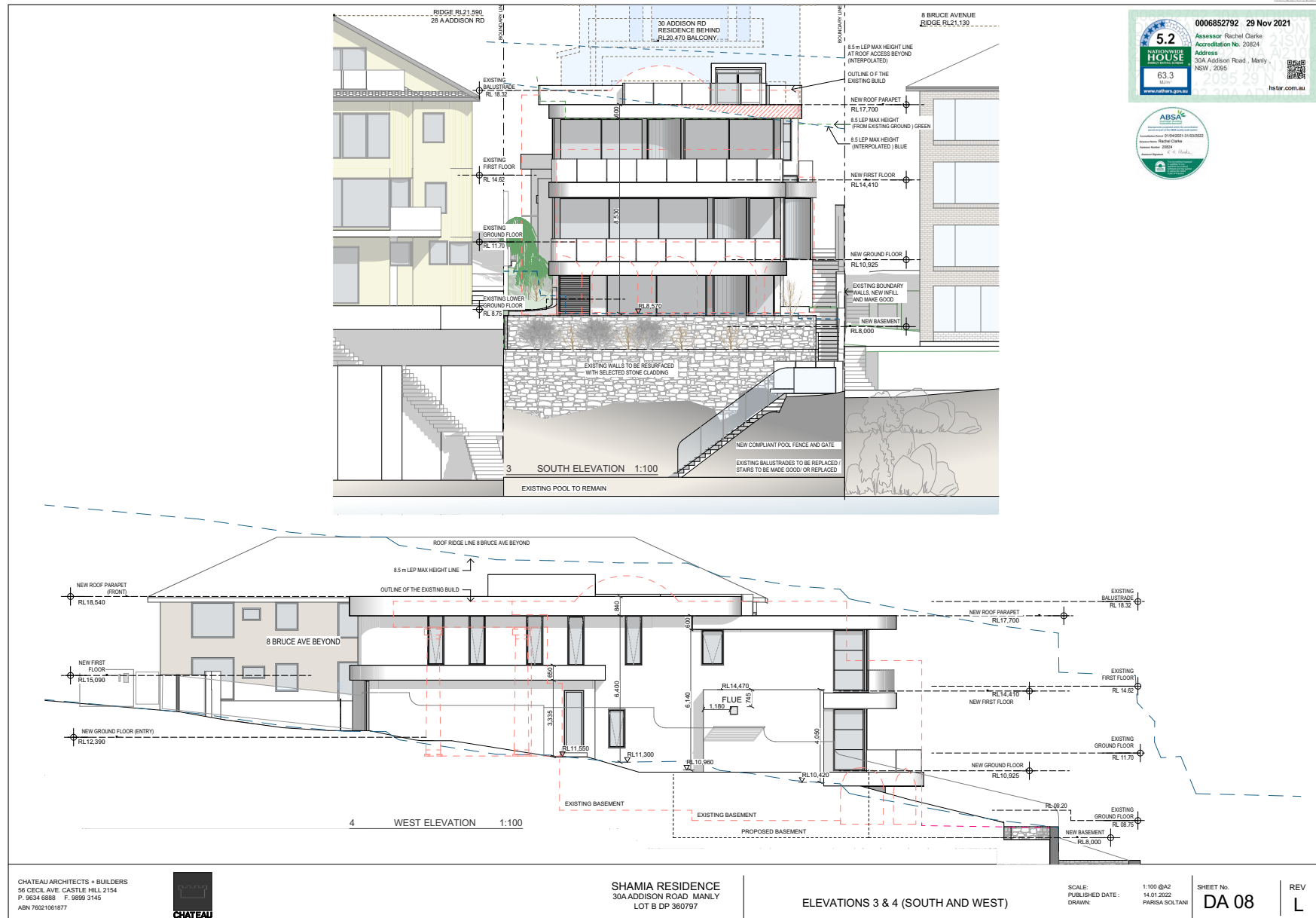
The group of trees known as 'Group G1 – Thuja orientalis', identified within the Arboricultural Report, prepared by Bryce Claassens Urban Arbor Pty Ltd, dated 29 July 2022 are to be retained.



Reason: To provide privacy for adjoining properties.







**CLARON**
CONSULTING PTY LTD

Planning, Project Management, Construction & Property Development

PO Box 542
Lindfield NSW 2070 Australia
Mobile +61 418 242 738
Email bmwinning@claron.com.au
www.claron.com.au

ABN 29 148 922 089

Clause 4.6 Exceptions to Development Standards Variation (Clause 4.3 – Height of Buildings)

Address: 30A Addison Road Manly NSW

1. Background

This submission is prepared pursuant to Clause 4.6 of *Manly Local Environmental Plan ('MLEP') 2013* and seeks a variation to the Building Height development standard.

The proposal involves the demolition of an existing single dwelling and detached garage, construction of a new part single dwelling and associated landscaping.

This application has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline *Varying development standards: A Guide, August 2011*, and the NSW Department of Planning and Environment (DPE) Planning Circular *Varying Development Standards PS 18-003*.

From the Planning Circular *Varying Development Standards PS 18-003*

Assumed concurrence conditions

Numerical and non-numerical development standards

The Secretary's concurrence may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

...In all other circumstances, delegates of a consent authority may assume the Secretary's concurrence in accordance with the attached written notice.

The development standard proposed to be varied is a numerical Control and is <10% thus the Local Council being the Consent Authority may assume that they hold the concurrence of the Secretary and have the necessary authority to approve the variation sought herewith.

2. Description of the planning instrument, development standard and proposed variation

2.1 What is the name of the environmental planning instrument that applies to the land?

Manly Council Local Environment Plan 2013 (MLEP2013).

2.2 What is the zoning of the land?

The zoning of the land that is the subject of the development application is *C4 Environmental Living*.

2.3 What are the objectives of the zone?

The objectives of the *C4 Environmental Living* 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 protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

2.4 What is the development standard being varied?

The development standard being varied is the maximum building height development standard Clause 4.3.

2.5 Is the development standard a performance-based control?

No. The building height development standard is a numerical control.

2.6 Under what clause is the development standard listed in the environmental planning instrument?

The development standard is listed under clause 4.3 of the MLEP 2013.

2.7 What are the objectives of the development standard?

The objectives of clause 4.3 are:

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

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3 of the MLEP 2013 establishes a maximum building height control of **8.5 m** for the site as shown on the Height of Buildings Map tile HOB_004.

2.9 What is proposed numeric value of the development standard in your development application?

The proposed maximum height for the dwelling is 9.2 m. This equates to a numerical non-compliance of **700 mm**.

2.10 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage breach is $700/8500 = 8.2\%$.

3. Assessment of the Proposed Variation

3.1 Overview

Clause 4.6 Exceptions to Development Standards provides the methodology for varying development standards applying under a local environmental plan.

Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

In addition, the 4.6(4)(i) requires that development consent must not be granted for a development that contravenes a development standard unless the:

(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),

An assessment and justification of the building height variation is provided hereunder in accordance the requirements of Clause 4.6. In addition, this variation has also been prepared in accordance with the Guidelines, which identifies matters to be addressed in an application to vary a development standard. The matters identified in the Guideline are consistent with the SEPP 1 objection principles identified in *Winten v North Sydney Council* outlined below:

1. Is the planning control in question a development standard;

2. What is the underlying object or purpose of the standard;

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act 1979;

- 4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;*
- 5. Is a development which complies with the development standard unreasonable or unnecessary; and*
- 6. Is the objection well founded.*

In accordance with the Guideline, the assessment also addresses the 'five-part test' established by the NSW Land and Environment Court. The five-part test was established in *Wehbe V Pittwater [2007] NSW LEC 827* to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

- 1. Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives¹;*
- 2. Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;*
- 3. Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;*
- 4. Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or*
- 5. Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.*

¹ Note – the Planning Principle references the previous EP&A Act 1979. This Application has considered the amended Act for which the relevant Objects are now to be found at s.1.3.

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

The provision of strict numerical compliance would be unreasonable due to the following:

1. Despite the noncompliance with the height control the proposal is consistent with the objectives of the *C4 Environmental Living zone*, as demonstrated in the assessment of the objectives below:

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

The proposal is for a new single dwelling to replace an existing single dwelling of similar height, bulk and scale; it essentially replaces a degraded single dwelling sited largely within the existing footprint.

The proposal is consistent with Objective 1.

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

The minor breach of the height control has no discernible adverse impact upon the values set out in Objective 1.

- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

There is no impact upon tree canopies. The minor breach of the height control does not cause the building to dominate the foreshore, noting that the building is lower than the building it replaces. The proposal is not in conflict with Objective 3.

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

There is no impact upon nearby foreshores, nor the natural environment. There is no loss of natural vegetation caused the height of the dwelling. The proposal is not in conflict with Objective 4.

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

The building height has no impact upon these criteria. The proposal is not in conflict with Objective 5.

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

The overall building height is consistent with the surrounding 'built form' development pattern and slightly lower than the building it replaces. It is for a low density residential use and there is no change to the existing land use. Existing vegetation is minimal and potential impacts are inconsequential. The proposal is not in conflict with Objective 5.

2. The proposal remains consistent with the objectives of the building height standard outlined in subclause 4.3 despite the non-compliance, as is demonstrated below:

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

The proposed building adopts a low-profile flat roof form with an extended overhang over the balcony at the upper level, which is the offending component for the breach in the overall roof height. The roof form and building height closely follows and is informed by the challenging site topography. There is no direct presentation to the streetscape of Addison Road, and the presentation to the public foreshore of Little Manly Cove is not appreciably different in bulk, scale or architectural style to its immediate neighbours, particularly the

more modern infill development that is evident in close proximity to the subject site. The modest breach in the overall height imposes no additional impacts upon the environmental capacity of the land. Objective (a) is satisfied.

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

The modest breach in a small section of the roof overhang does not fundamentally alter the building's bulk and scale. Objective (b) is satisfied.

(c) to minimise disruption to the following—

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

The modest breach in a small section of the roof overhang is highly unlikely to be discernible from the public vantage point in Little Manly Cove. There is no conflict with Objective (c)(i).

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

The modest breach in building height is highly unlikely to impact current view lines from adjoining residential development across the subject site. There is no conflict with Objective (c)(ii).

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

Due to the location of the site upon a battleaxe lot with no presentation to Addison Road, the building height has no impact upon views between public spaces. There is no conflict with Objective (c)(iii).

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

The modest breach in a small section of the roof overhang at the rear of the building does not affect the solar access enjoyed by any adjoining neighbour. There is no conflict with Objective (d).

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

The height of the proposed building is directly related to the topography of the site and has taken due regard of the surrounding land uses and the relationship of the site to the surrounding sensitive environment and its presentation to Little Manly Cove. There is no conflict with Objective (e).

3.3 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act².

The objects of the Act are set down in Section 1.3(a) to (j) of which the relevant clauses are as follows:

(c) to promote the orderly and economic use and development of land,

(g) to promote good design and amenity of the built environment,

Compliance with the standard would be contrary to the objects of section 1.3 of the Act, which are to encourage development that promotes the orderly and economic use and development of land and to encourage good design and amenity in buildings.

² Now s.1.3 of the amended EP&A Act 1979

The proposal replaces an aged and dilapidated existing building with a new layout that is more environmentally efficient and provides superior accommodation. The proposal is designed to respond to the opportunities and constraints of the site in an orderly and economic manner.

It should also be noted and recognized that the problematic site topography imposes considerable design challenges which necessitate balancing choices between complying with numerical planning controls, meeting the Zone objectives and achieving a reasonably cohesive floorplan that meets accessibility requirements for the occupants whilst simultaneously limiting environmental impacts upon neighbours and the public realm.

Strict compliance with the development standard would not provide a measurable public benefit, nor is it required in order to achieve compliance with the objectives.

3.4 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the building height standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The breach in the building height Control is directly related to the constraints imposed upon the design by site topography and orientation. The design solution adopted by the project architect responds appropriately to the substantial change in levels across the site with a low impact and heavily modulated and articulated dwelling form. It is also designed to present an interesting façade to the public space in Little Manly Cove and the headland of Little Manly Point.
- The area in question constitutes an extended eave overhang and is required for the proper shading of the upper balcony and to maintain the architectural form of the façade and roof. Deleting or reducing the eave overhang would compromise the amenity of the upper floor and the integrity of the architecture.
- Reducing the overall building height may consequently result in an increase to the depth of the excavation, which is an undesirable environmental outcome.

- The minor breach of the building height has no material effect upon streetscape.
- There is no material impact upon solar access, privacy or view loss for any adjoining neighbour or the public realm as a direct result of the breach in height.

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

Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard being:

- The proposal satisfies the objectives of the *E4 Environmental Living* zone and the objectives of the building height standards as described in Section 3.2 above;
- The non-compliance with the standard does not contribute to unacceptable adverse environmental impacts in terms of overshadowing, visual impacts or view loss;
- The variation offers opportunities to improve upon the relationship of the building to its neighbours, by adopting a built form that minimises alteration to the existing site topography and elevated location;
- The proposed non-compliance with the numerical building height control does not result in a discernible increase in the overall bulk and height of the proposed buildings when viewed from the neighbouring and surrounding area;
- The non-compliance with the standard does not result in a scale of building that is out of character with the existing or anticipated future character of the surrounding neighbourhood;
- The proposed development is generally compliant with the controls and consistent with the underlying Objectives of the *Manly Development Control Plan 2013*; and
- The development as proposed is consistent with the provisions of orderly and economic development.

3.6 Is the variation well founded?

The submission is considered to be well founded for the following reasons:

- The proposed breach of the maximum building height standard is numerically insignificant.
- The development is consistent with Council's DCP controls and there are no unreasonable amenity, density or streetscape impacts that result from the breach.
- The proposal is a practical balance between planning controls. Strict compliance would not materially change the proposal nor result in a better outcome.
- The proposal provides for: orderly and economic development of land, high quality housing and environmental protection.
- The development is consistent with the objective of Clause 4.6, to provide flexibility. The merits have been demonstrated and a better planning outcome is achieved.
- The proposal upholds the objectives of the zoning and Clause 4.3.
- The breach is <10% from the Control and Council has concurrence from the Secretary to properly assess and approve the variation

4. Conclusion

Development standards are provided as a means of achieving planning outcomes for an individual development, site or area.

The building height control is considered appropriate to the context and circumstances of the site and does not result in a scale of development that is unsympathetic with the existing or intended future character of this neighbourhood of the Northern Beaches LGA.

A development strictly complying with the numerical standard would not discernibly alter the scale of the building or improve the amenity of adjoining neighbours or the public domain.

On the contrary, if the building height was reduced this may potentially compromise other areas of the design by increasing the excavation depth on a topographically challenging site, this being an undesirable environmental outcome and contrary to the MLEP objectives.

It should be noted that the current design has been closely informed by the consultative process between the applicant and their relative experts in order to address certain site constraints; the minor breach of height is a consequence of this collaborative approach and should be supported in order to promote and encourage superior design outcomes.

This submission satisfies the provisions of cl. 4.6 of the MLEP as it has been demonstrated that compliance with the building height development standard is both unnecessary and unreasonable in the circumstances of this case and there are sufficient planning grounds to justify contravening the standard.

CLARON CONSULTING PTY LTD



Brent M Winning JP [B.Build. Hons.), GDURP, MAIB, RPIA, LREA]
Registered Planner, Building & Development Consultant, Chartered Builder

6th December 2021

ITEM 3.2**DA2022/0855 - 23 PLATEAU ROAD COLLAROY PLATEAU -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL**

REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2022/614384
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/0855 for alterations and additions to a dwelling house including a swimming pool on land at Lot 9 DP 27482, 23 Plateau Road COLLAROY PLATEAU, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0855
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 9 DP 27482, 23 Plateau Road COLLAROY PLATEAU NSW 2097
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Chris McKenna Katie Louise McKenna
Applicant:	Nigel White
Application Lodged:	04/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/07/2022 to 26/07/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 10.59%
Recommendation:	Approval
Estimated Cost of Works:	\$ 461,618.00

EXECUTIVE SUMMARY

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

The maximum height of the proposed development measures at 9.4 metres above the existing ground level, which represents a 10.59% variation to Clause 4.3 - Height of Buildings of Warringah LEP 2011. The proposed development is referred to the Northern Beaches Development Determination Panel (DDP) on the basis of the development breaching the height standard by more than 10%.

The height breach is largely a consequence of a distorted height plane that has been created by previous excavation below the natural contours of the site. The height non-compliance 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. The height of the proposed altered dwelling is generally compliant at 8.5 metres, when extrapolated ground levels are applied.

The first floor addition includes variations to the Warringah DCP 2011 side building envelope and wall height provisions on the southern elevation of the dwelling. Amended plans were submitted during the assessment process to articulate this wall plane, in turn mitigating the bulk and scale of the southern elevation. The amended plans are found to be satisfactory.

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 alterations and additions to an existing dwelling house, primarily comprising ground floor alterations, a first floor addition and a new in-ground swimming pool.

Key components of the proposal are as follows:

Ground Floor

- New deck and entryway.
- Create an internal staircase accessing the upper level and demolish some internal walls to create an open floor plan.
- New kitchen, pantry, bathroom and laundry.

First Floor

- Main bedroom with ensuite, WIR and east facing balcony.
- Three additional bedrooms.
- Additional bathroom.

Swimming Pool

- New in-ground swimming pool and fencing within the south-western corner of the site.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 9 DP 27482 , 23 Plateau Road COLLAROY PLATEAU NSW 2097
Detailed Site Description:	<p>The subject site consists of one allotment located on the corner of Plateau Road and Hilma Street, Collaroy Plateau. Vehicular and pedestrian access to the site is provided via the Collaroy Plateau frontage.</p> <p>The site is irregular in shape with a frontage of 13.715 metres to Plateau Road and a frontage of 32.005 metres to Hilma Street. The site has a surveyed area of 630m².</p> <p>The site is located within the R2 Low Density Residential zone pursuant to Warringah LEP 2011 and accommodates a part 1-2 storey dwelling house comprising a subterranean storage area on the lower floor (formerly used as a garage) and habitable rooms on the ground floor.</p> <p>The site is devoid of significant vegetation and contains lawn areas, garden beds and shrubbery.</p> <p>The site experiences a fall of approximately 3.2 metres that slopes away from the north-west towards the south-east.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses), ranging from 1-3 storeys in height.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed no recent or relevant applications on the site.

APPLICATION HISTORY

A site inspection was undertaken on 25 July 2022.

Following the preliminary assessment of the application, which included the aforementioned site inspection, written correspondence on 17 July 2022 was provided to the applicant raising the following concerns:

- **Southern wall height/side building envelope non-compliances:** Concern was raised with regards to these non-compliances and the un-articulated wall on the southern elevation of the dwelling. It was recommended that the first floor be stepped in on the southern elevation to alleviate the height and bulk of the development.
- **Secondary front setback:** Concern was raised of the non-compliant secondary front setback to Hilma Street on the first floor component. It was recommended that the first floor component comply with the DCP 3.5 metres secondary front setback provision.
- **Building Height:** A revised Clause 4.6 request was requested to accurately calculate the maximum building height when taking the lower floor slab to be 'existing ground level'.

Subsequently, amended plans were submitted to demonstrate the following:

- Reduce the overall height of the building by 0.39 metres.
- Increase the secondary front setback of the first floor from 2.7 metres to 3.5 metres.

- Increase the southern side setback of the first floor by 0.55 metres to provide articulation to the southern elevation of the development.

The amended plans did not alter the BASIX commitments and thus, a new BASIX Certificate was not required. It is noted that a revised Clause 4.6 request was submitted to accurately reflect the maximum height of the proposal.

The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact</p>

Section 4.15 Matters for Consideration	Comments
	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

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

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/07/2022 to 26/07/2022 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 has been assessed against Warringah DCP 2011 controls E2 Prescribed Vegetation and E4 Wildlife Corridors as these controls are mapped within the south-east portion of the property . The site is also mapped as bushfire prone land and a brief bush fire hazard letter has been provided that identifies BAL 40

Internal Referral Body	Comments
	<p>as the highest construction level required.</p> <p>It is evident that trees and vegetation within the site has been recently cleared so the presence of native vegetation at the time of this assessment is limited, and therefore the applicability of the DCP controls limited. An objective of the E2 control is to reconstruct habitat in non vegetated areas of wildlife corridors that will sustain the ecological functions of a wildlife corridor and that, as far as possible, represents the combination of plant species and vegetation structure of the original 1750 community.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The NSW Rural Fire Service (RFS) have reviewed the application and raised no objections, subject to recommended conditions that will be included as recommended conditions 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 submitted with this application (see BASIX Certificate No. A456899, dated 12 May 2022). A condition is recommended with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The 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 recommended condition of consent.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5 metres	9.4 metres	10.59%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

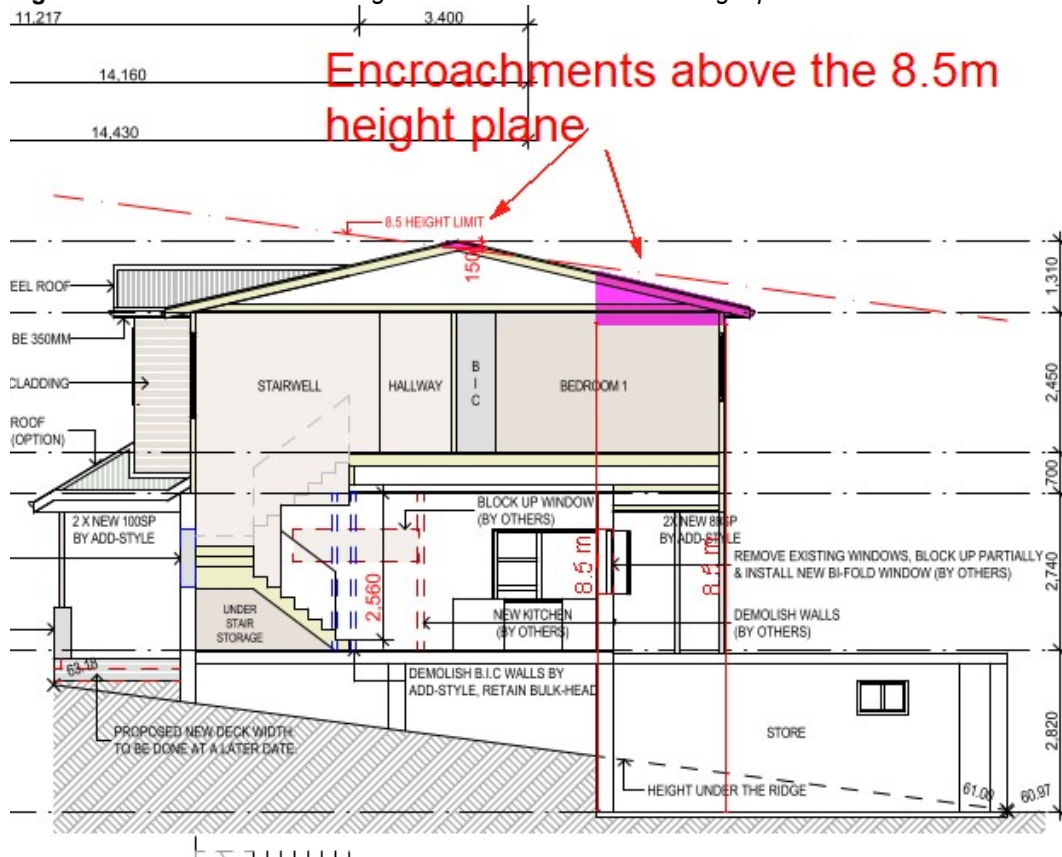
Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5 metres
Proposed:	9.4 metres
Percentage variation to requirement:	10.59%

Clause 4.3 of Warringah LEP 2011 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 to the existing lower floor slab as 'existing ground level', the maximum building height of the proposed development measures at 9.4 metres, thereby non-compliant with the height standard. Figure 1 below depicts the extent of the non-compliance.

Figure 1: elements of the building that exceed the 8.5 metre height plane



Note: The applicant's Clause 4.6 written request has taken the ground level below the existing lower ground floor slab to be existing ground level and stipulated that the maximum building height is 9.52 metres (12% variation). The level below this slab is not known and hence, the existing ground level is taken to be the existing lower floor slab level of RL60.97 AHD.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

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

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

Comment:

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

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

(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:

"Compliance with the building height control in this instance would not achieve any additional architectural integrity or urban design merit of the development, as previously discussed.

Indeed, a lower roof pitch would result in an inferior design. The proposal represents the orderly and economic development of the land and does not give rise to adverse amenity issues to neighbours.

The ground level is an artificial level created by historic excavation within the footprint of the existing dwelling and the proposal complies when adopting an extrapolated ground level around the building footprint. The extent of the building height non-compliance is therefore not as severe when viewed from a public place or neighbouring property.

The variation will promote good design and internal amenity by providing a conventional finish to the rear elevation. The variation will allow for the orderly and economic development of land and will promote ecologically sustainable development by integrating the built form within the immediate locality. There are no adverse economic, environmental or social impacts arising.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance".

Comment:

The justification provided by the applicant is well founded and agreed with generally. In particular, it is agreed that the non-compliance is largely derived from an artificial ground level that has been created by previous excavation below the natural contours of the site. When extrapolating the ground levels around the building footprint, as per the NSW Land and Environment Court Case of *Bettar v Council of City of Sydney [2014] NSWLEC 1070*, the building remains largely compliant with the 8.5m height standard, with only a small portion of the roof ridge encroaching above the 8.5 metre height plane, amounting to a 150 millimetre encroachment. Removing this portion of the roof will not result in a materially improved outcome in terms of the bulk and scale of the built form on the site. The proposed development will present as a two storey building when observed from the Collaroy Plateau and Hilma Street frontage, which is commensurate with the scale of surrounding development.

It is further agreed that the height non-compliance does not result in adverse amenity impacts to neighbouring properties, specifically with regards to view sharing, visual bulk and solar access.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed development presents as a two storey dwelling within the streetscape and maintains a building height and scale that is compatible with the surrounding built environment.

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

Comment:

The non-compliant elements of the building pertain to elements of the roof and do not result in adverse privacy impacts. In relation to view sharing, an examination of the site and the surrounds has concluded that the proposal is unlikely to compromise any significant view corridors from surrounding private and public land. The application was notified to surrounding properties and no submissions have been received in relation to view loss.

In regards to solar access, it is noted that the Warringah DCP 2011 requires at least 50% of the required amount of private open space (i.e. 30m²) on adjacent properties to received 3 hours of sunlight between 9am and 3pm on June 21. The private open space on the southern adjacent property (21 Plateau Road) is located within the south-eastern corner of the adjacent site and is already significantly overshadowed by the adjacent dwelling on June 21. The height breach does not create any further overshadowing of this area.

Overall, the proposal satisfies this objective.

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

Comment:

The overall height, bulk and scale of the development is commensurate with the surrounding built environment. The proposed development will not adversely impact upon the scenic qualities of the locality.

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

Comment:

The proposed development responds appropriately to the local context through providing a two storey presentation to the street with compliant primary and secondary front setbacks on the first floor addition. The development will not have an unreasonable visual impact when viewed from the public domain.

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 provides additional floor space within the existing dwelling, which will provide for the housing needs of the community within this low density residential environment.

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

Comment:

The proposal maintains the existing low density residential land use.

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

Comment:

The proposed development will maintain an appropriate visual relationship with the surrounding environment.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and the objectives of Clause 4.3 - Height of Buildings of Warringah LEP 2011.

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

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

Planning Circular PS20-002 dated 5 May 2020, issued by the NSW Department of Planning &

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2 metres	8.0 metres	11.11%	No
B3 Side Boundary Envelope	4 metres x 45 degrees (east)	Within Envelope	-	Yes
	4 metres x 45 degrees (south)	Outside Envelope	30.67%	No
B5 Side Boundary Setbacks	0.9 metres (east)	Dwelling GF: unchanged Dwelling FF: 11.3 metres Pool: nil setback	100%	No (pool only)
	0.9 metres (south)	Dwelling GF: unchanged Dwelling FF: 1.95 metres - 2.91 metres Pool: 1.61 metres	-	Yes
B7 Front Boundary Setbacks	Primary Frontage (Plateau Road): 6.5 metres	Dwelling GF: 14.7 metres (deck) Dwelling FF: 16.48 metres	-	Yes
	Secondary Frontage (Hilma Street): 3.5 metres	Dwelling GF: unchanged Dwelling FF: 3.5 metres Pool: 6.3 metres	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (252m2)	34.46% (217.1m2)	13.85%	No

Notes:

1. The site is a corner allotment with dual frontages to the northern and western boundaries. In this case, there is no applicable rear boundary and the eastern and southern boundaries that adjoin private

allotments are considered to be the side boundaries.

2. The building envelope is applied to the eastern and southern boundaries as these boundaries adjoin private allotments.

3. FF refers to the first floor of the dwelling house, whilst GF refers to the ground floor.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	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
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The control limits the maximum wall height of buildings (when measured from the underside of the upper floor ceiling to the existing ground level) to 7.2 metres. The maximum external wall height of the development measures at 8.0 metres, which exceeds the numeric requirement. The highest point of the wall is within the south-eastern corner of the first floor addition.

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The proposed development responds appropriately to the local context through providing a two storey presentation to the street with compliant primary and secondary front setbacks on the first floor addition. The non-compliance is located on the southern elevation of the building and will not be visible when observing the development from Plateau Road or Hilma Street (i.e. both street frontages). The development will not have an unreasonable visual impact when viewed from the public domain.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The height of the building is situated below the larger established tree canopy within the locality.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

An examination of the site and the surrounds has concluded that the proposal is unlikely to compromise any significant view corridors from surrounding private and public land. The application was notified to surrounding properties and no submissions have been received in relation to view loss.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The first floor addition has been stepped in from the ground floor on the southern side elevation to mitigate the height of bulk of the development when observed from the southern adjacent property (21 Plateau Road).

- *To ensure that development responds to site topography and to discourage excavation of the*

natural landform.

Comment:

The overall building height and massing steps down with the slope of the land to ensure an appropriate response to the natural topography. No significant earthworks are proposed.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposal includes a varied roof form that will add visual interest to the streetscape.

Conclusion

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

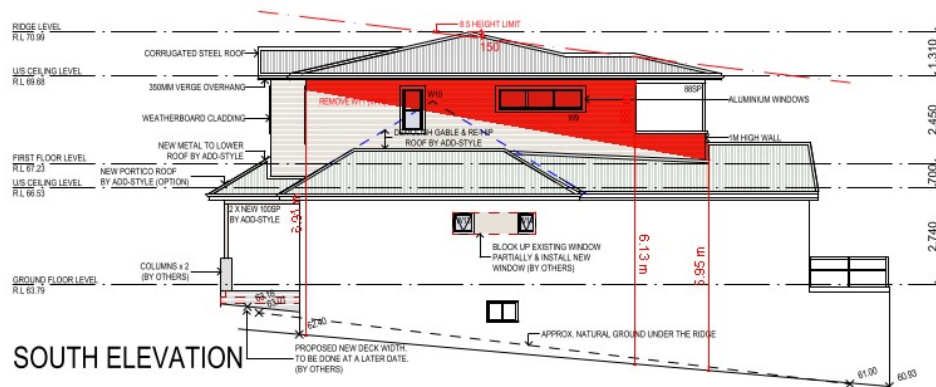
B3 Side Boundary Envelope

Description of non-compliance

The control requires development to remain within a side building envelope determined by projecting planes at 45 degrees from a height of 4m above the existing ground level at side boundaries.

The first floor addition protrudes outside of the prescribed side building envelope on the southern elevation. The extent of the variation is depicted on Figure 2 below.

Figure 2: envelope breach on southern elevation



Merit consideration

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

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

Comment:

The proposed development presents as a two storey dwelling within the streetscape and maintains a building height and scale that is compatible with the surrounding built environment. The bulk and scale of the built form has been minimised through the employment of minimal floor to ceiling heights on the first floor addition, including stepping the northern and southern elevations of the first floor in from the ground floor to mitigate the height and bulk of the development. Overall, it is considered that the proposed development will not be visually dominant by virtue of its height and bulk, notwithstanding the technical non-compliance.

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

Comment:

As discussed earlier within this report, the proposed development is not in contravention of the Warringah DCP 2011 solar access provision. Moreover, the south facing bedroom window is a highline window, which will prevent adverse visual privacy impacts. The larger south facing window adjoins a walk-in-robe (i.e. an area that receives very limited volumes of pedestrian movement) and does not represent unreasonable privacy impacts, whereas the balcony adjoining the bedroom is located over 9 metres from private open space on adjoining properties, which through adequate separation mitigates overlooking. Overall, the proposal satisfies this objective.

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

Comment:

The overall building height and massing steps down with the slope of the land to ensure an appropriate response to the natural topography.

Conclusion

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

B5 Side Boundary Setbacks

The proposed swimming pool concourse presents a nil side setback to the eastern side boundary, representing a 100% variation to the numeric requirement. The applicant has not provided sufficient justification for this non-compliance and it is considered that full compliance with this requirement is reasonable in the circumstances of the case.

Accordingly, a condition is recommended with this consent requiring the swimming pool area to be setback at least 0.9 metres from the eastern side boundary. Subject to compliance with this condition, the proposal will comply with the requirements of this control.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The control requires at least 40% (252m²) of the site to consist of landscaped open space. The application proposes 34.46% (217.2m²) of the site area as landscaped open space, which does not satisfy the numeric requirement.

It is noted that the existing landscaped open space on the site equates to 38.36% (241.7m²) of the site area. Hence, the proposal results in a 3.91% (24.5m²) reduction in landscaped open space.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

Whilst the proposal involves a variation to the Warringah DCP 2011 landscaped open space provision, adequate areas of deep soil landscaping have been provided on the site to enable additional planting to enhance the streetscape.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The proposed development does not result in the removal of prescribed vegetation, important topographical features or wildlife habitat.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

Notwithstanding the numeric non-compliance, the areas of landscaped open space on the site are sufficient to enable the establishment of additional planting to soften the built form. It is noted that the reduction in landscaped open space on the site is a consequence of the proposed swimming pool. The proposed swimming pool will provide for improved amenity on the site for the occupants of the dwelling, without creating any material consequences to the streetscape with regards to the landscaped setting. The proposed swimming pool will also provide a suitable water source in a bushfire emergency, noting that the site is mapped as being bushfire prone land. A further reduction to the existing landscaped open space is therefore warranted in this case.

- *To enhance privacy between buildings.*

Comment:

The proposal does not result in adverse visual and acoustical privacy impacts.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

There is ample private open space and landscaped open space on the site to meet the recreational needs of the occupants of the dwelling. As noted above, the proposed swimming pool, which is the case of the reduction in landscaped open space, will provide for improved amenity on the site for the occupants of the dwelling by virtue of additional outdoor recreational opportunities.

- *To provide space for service functions, including clothes drying.*

Comment:

There is adequate outdoor open space to service functions, including clothes drying.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

Suitable conditions are recommended with this consent to ensure that stormwater generated from the development is adequately managed and disposed of. Moreover, there is adequate deep soil landscaping on the site to assist in water infiltration, thereby minimising runoff.

Conclusion

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of the control. Therefore, the application is supported on merit in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$4,616 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$461,618.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to an existing dwelling house including a swimming pool, has been referred to the DDP due to the maximum height of the development measuring at 9.4 metres above the existing ground level, which represents a 10.59% variation to Clause 4.3 - Height of Buildings of Warringah LEP 2011.

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

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 the case and the encroachment does not result in any unreasonable impacts to surrounding residential properties. The height non-compliance does not result in unreasonable building height and bulk, and the scale of the development is commensurate with the surrounding built environment.

In addition, the assessment of the proposed development against the provisions of the Warringah DCP 2011 has found that the proposal does not comply with the wall height and southern side building envelope provisions on the southern elevation of the first floor. Given the constraints on the

development by virtue of the sloping topography and the retention of the existing ground floor levels, which are elevated above the existing ground level, some flexibility in applying these controls is necessary. There will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the desired future character of the locality.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval, subject to the 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 Buildings development standard pursuant to Clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/0855 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 9 DP 27482, 23 Plateau Road, COLLAROY PLATEAU, 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
Drawing No. 1451 DA1 (Revision E)	23 September 2022	Add-Style Home Additions

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A456899	12 May 2022	Add-Style Home Additions
Preliminary Geotechnical Assessment Ref. J4317	16 June 2022	White Geotechnical Group
Bushfire Report	29 July 2021	Bushfire Planning

		Services Pty Limited
--	--	----------------------

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	21 April 2022	Chris & Katie McKenna

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated
NSW Rural Fire Service	RFS Referral Response Ref. DA20220706009126-Original-1	7 August 2022

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges

paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,616.18 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 (as amended).

The monetary contribution is based on a development cost of \$461,618.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

6. **Security Bond**

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

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

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

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

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

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

7. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

8. **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.

Plans are to be certified as complying with this condition and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

9. **Stormwater Drainage Disposal**

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

10. **Amendments to the approved plans**

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

- The edge of the swimming pool paving must be setback at least 0.9 metres from the eastern side boundary. The area between the eastern side boundary and the swimming pool paving must consist of landscaping with a minimum soil depth of 1 metre.

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

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

11. **Compliance with Standards**

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

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

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

12. **External Finishes to Roof**

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

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

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

13. **Sydney Water "Tap In"**

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

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

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

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

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

14. **Certification of Bushfire Requirements**

A suitably qualified bushfire consultant is to provide written certification that the recommendations of the NSW Rural Fire Service referenced in Condition 2 of this consent have been incorporated into the Construction Certificate plans.

Documented evidence is to be provided to the Certifying Authority prior to the issuance of the Construction Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife.

16. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

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

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

- 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

- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

18. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

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

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

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

20. **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.

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

21. **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.

22. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

23. **Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

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

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

24. **Stormwater Drainage Disposal Certification**

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

25. **Certification of Bushfire Requirements**

A suitably qualified bushfire consultant is to provide written certification that the

recommendations of the NSW Rural Fire Service referenced in Condition 2 of this consent have been incorporated into the as-built development.

Documented evidence is to be provided to the Certifying Authority prior to the issuance of the Occupation Certificate.

Reason: To ensure compliance with Planning for Bushfire Protection 2019.

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

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

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

Reason: To ensure bushland management.

27. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**28. Swimming Pool/Spa Motor Noise**

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

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

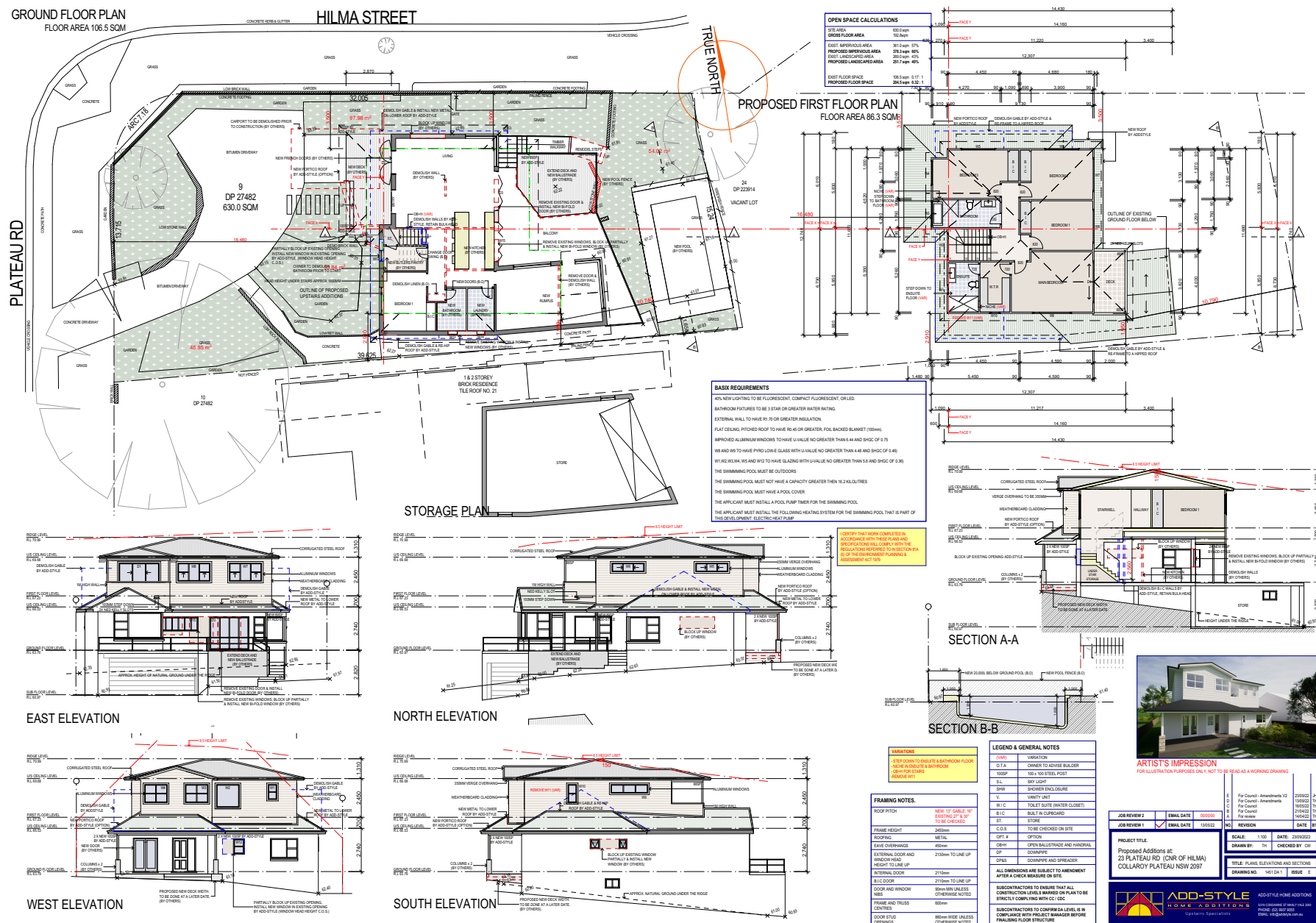
29. New Vegetation Planting

Landscaping is to incorporate locally native species are to be consistent with the relevant section of the Native Plant Species Guide available on Council's website.

Reason: To ensure compliance with the Wildlife Corridor and Prescribed Vegetation DCP requirement to implement native planting and fauna habitat on the site.

GROUND FLOOR PLAN
FLOOR AREA 106.5 SQM

HILMA STREET



Appendix A

Clause 4.6 Justification

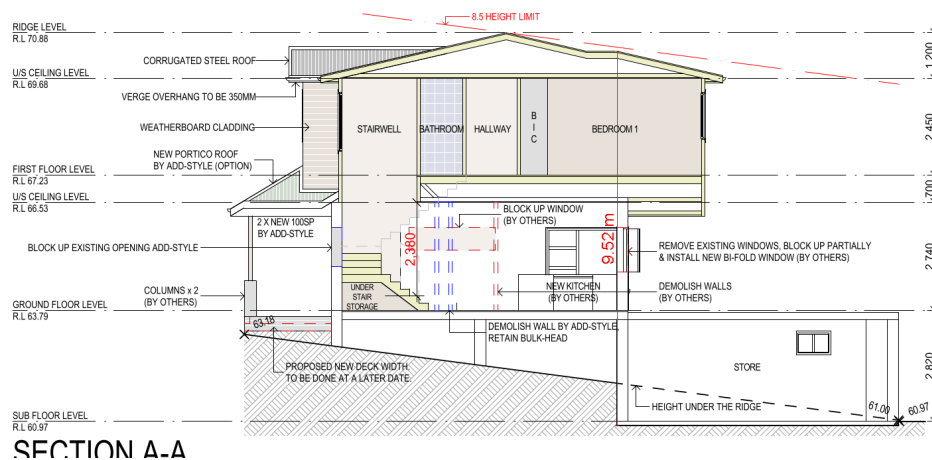
No 23 Plateau Road Collaroy Plateau

Introduction - Content of the clause 4.6 request

Clause 4.3 of the Warringah LEP 2011 relates to Building height. The maximum permissible building height for the subject site is 8.5m.

The proposed development has a maximum building height of 9.52m being non-compliant with the maximum allowable building height for the subject site by 1.02m or 12%.

Given the above non-compliance with clause 4.3 of the LEP, consideration of the matter is given pursuant to the provisions of clause 4.6 of the Warringah LEP 2011.



Extent of non-compliance identified above

The objectives of clause 4.6 of the LEP are as follows:

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

Clause 4.6 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome.**

The proposed increase in building height arrives owing to the fall in the land and the elevated nature of the existing ground floor of the dwelling. In addition, a recent L&E Court case, *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* states that the existing ground level on a brownfield site must be taken from the excavated ground level below the previous natural contours of the site. Accordingly, an exaggerated building height eventuates.

A degree of flexibility to the application of the building height development standard is warranted in this instance.

It is significant to note that the variation does not result in excessive floor space ratio or development density. The variation does not manifest in an overdevelopment of the site. The existing dwelling is structurally sound and retains quality floor space worthy of retention. The location of the upper level as proposed is logical and appropriately relates to the streets, rear yard and neighbouring dwelling circumstances.

Clause 4.6 of the instrument provides flexibility when applying development standards.

The proposed development has been architecturally designed to provide a well composed building that provides good amenity for future occupants, which respects the amenity of existing and future neighbouring development and which is compatible with the emerging character and development pattern of the locality.

No adverse planning consequences (privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise from the variation with the proposed development sitting comfortably on-site within the required setbacks. Rather, in this particular case the variation facilitates a good design outcome in terms of amenity, streetscape and built form.

The provision of a flat roof profile can be provided to achieve numerical compliance however such would appear disjointed and lack architectural expression. Further a lower roof pitch would not comply with the relevant Australian Standard.

The proposed departure from the building height relates to a small portion of the roof ridge only, which is located centrally on-site.

For reasons expressed in this submission the ‘flexibility’ provided by clause 4.6 of the LEP facilitates design outcome that does not impact on any adjoining property despite the proposed variation to the building height standard.

(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:

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

Objectives of development standard

The objectives of the height control development standard are:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The subject site is zoned to accommodate low density residential and the immediate precinct does contain dwellings built on similar sized lots which contain similarly scaled dwellings and larger dwellings on the western side

of the road. The proposed dwelling is proportionate with its site boundaries and will be consistent in this regard.

There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and orientation.

There will be no erosion of bushland or scenic quality.

Compliance unnecessary

The proposed development proffers alternative means of achieving the objective of the minimum building height standard. The surrounding precinct maintains sloping land and regular detached dwellings in the zone. Pitched roofs are common in the precinct.

The proposed development achieves the desired residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access. A pitched roof is proposed in this instance and considered necessary.

The minor exceedance of the building height standard does not result in a building that is excessively bulky particularly as a typical two storey elevation is generated to the street frontage.

The containment of the proposed addition within the footprint of the dwelling is preferred relative to extending the dwelling into the green spaces/recreational area at the rear or into the front setback.

The non-compliance will not give rise to adverse impacts, which would affect neighbouring.

As the development proffers alternative means of achieving the objectives of clause 4.3 based on the site context, strict compliance is unnecessary.

Compliance unreasonable

There would be no purpose served if strict compliance was required by the consent authority.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse 'flow on' non compliances or adverse environmental impacts arising from the variation in this instance.

A compliant development (building height) would have a similar performance in regards to overshadowing and bulk/scale. A flat roof profile could be provided to achieve compliance with the standard. Such would appear disjointed with the lower roof profile and is not the preferred outcome from an architectural perspective.

Despite the building height variation, a standard floor space ratio is achieved facilitating the orderly and economic development of the land.

No particular benefit would be derived from the application of the standard in this instance (rather compliance would result in negative urban design outcomes); strict compliance is therefore unreasonable.

The proposed design is effectively a better and more cost effective outcome than that of the approved design.

Environmental planning grounds

A written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

The term “environmental planning grounds” is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in cl 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 & Meaher JA; Leeming JA in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

Such grounds include matters that ‘relate to (the) subject matter, scope and purpose of the Act, including the objects in s 1.3.’^[14] This leaves developers with a wide range of grounds on which they can rely to justify a 4.6 request, including, for example, that the variation will promote good design and amenity, will allow for the orderly and economic development of land or that it will promote ecologically sustainable development by integrating relevant economic, environmental and social considerations.

In this particular case the variation to the building height control does not impact on the ability of the proposal to accord with all other development standards and controls.

Compliance with the building height control in this instance would not achieve any additional architectural integrity or urban design merit of the development, as previously discussed.

Indeed, a lower roof pitch would result in an inferior design. The proposal represents the orderly and economic development of the land and does not give rise to adverse amenity issues to neighbours.

The ground level is an artificial level created by historic excavation within the footprint of the existing dwelling and the proposal complies when adopting an extrapolated ground level around the building footprint. The extent of the building height non-compliance is therefore not as severe when viewed from a public place or neighbouring property.

The variation will promote good design and internal amenity by providing a conventional finish to the rear elevation. The variation will allow for the orderly and economic development of land and will promote ecologically sustainable development by integrating the built form within the immediate locality. There are no adverse economic, environmental or social impacts arising.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

(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.

Comment:

The objectives of the R2 low density zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The matters required to be demonstrated by subclause (3) have been adequately addressed.

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

The proposed development is consistent with the objectives as follows:

The proposed development provides for the construction of a standard and well proportioned upper level addition. The development has been site specifically designed and will positively contribute to the streetscape and enhance the streetscape relative to the existing built form on the site. A general upgrade of the existing built form will also occur.

The proposed development assists in establishing the desired future character for the locality. The proposed development is well contained on-site and will not result in significant adverse amenity impacts on adjoining properties.

The proposed development provides an appropriate low-density infill development and contemporary construction.

There has been a progressive change in the built character of the locality with a number of older style dwellings being replaced with new contemporary two and three level dwellings. The height mass and scale of the development is compatible with that of other development in the locality.

The design solution respects the development pattern of the locality (the spatial arrangement of buildings having regard to side, rear and street building setbacks) maintaining the rhythm of the street.

The proposed height variation is of no consequence in respect of this objective. Approval of the proposed development will have no adverse impact on any other nearby development opportunities.

It is expected that the Council will obtain the concurrence of the Director-General as required (possibly through delegation).

The proposed height encroachment does not result in any significant view loss, loss of privacy or overshadowing in the context of the site.

There are no adverse heritage impacts associated with the proposed development. The height and scale of the development is typical within the residential context.

Standard floor to ceiling height is proposed over two levels inclusive of a standard roof pitch. Having regard to the above the proposal is consistent with the objectives of the height control and the objectives of the zone.

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

Comment:

It is expected that the Council will obtain the concurrence of the Director-General as required (possibly through delegation).

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

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

Comment:

The proposed variation does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining the development standard or compromised by approving the building as proposed.

Conclusion

No adverse matters arise in respect of the above considerations.

In view of the above, the proposed variation from the development standard is reasonable in this instance. A typical pitched roof profile is proposed maintaining a consistent built form with other dwellings in the vicinity and appropriately addressing site circumstances.



Prepared by: Nigel White
Bachelor of Applied Science (Environmental Planning)

September 2022

ITEM 3.3	DA2022/0936 - 39 SEAFORTH CRESCENT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2022/623896
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6 - Height of Building 4 ↓ Clause 4.6 - Special Height Provisions

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority grant a **Deferred Commencement** Development Consent to DA2022/0936 for alterations and additions to a dwelling house on land at Lot 11 DP 1026519, 39 Seaforth Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0936
Responsible Officer:	Nick Keeler
Land to be developed (Address):	lot 11 DP 1026519 Maritime Lic 30002506, 39 Seaforth Crescent SEAFORTH NSW 2092 lot 11 DP 1026519 Maritime Lic 30002506, 39 Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Ronald Shaw Thomson Pamela Robertson-Gregg
Applicant:	Ronald Shaw Thomson
Application Lodged:	04/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/07/2022 to 27/07/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 31.65%
Recommendation:	Deferred Commencement Approval
Estimated Cost of Works:	\$ 560,181.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling.

The clause 4.6 request for the non-compliance with the building height development standard arises from alteration of an existing element of the building that is above the maximum permitted building

height. The building height of the proposed development has been measured at 11.19m which represents a variation of 31.65% to the maximum prescribed building height of 8.5m.

The proposal does not increase the overall height of the existing dwelling and all new elements are contained within the existing building footprint and envelope. The proposal does not discernibly alter the existing bulk and scale of the dwelling when viewed from the street, foreshore or adjacent properties.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. No submissions have been received.

Potential amenity issues to surrounding properties and the public domain have been reviewed and have been determined to be reasonable having regard to the spatial characteristics of the site and its context within the locality.

A site inspection revealed that construction of some internal works that consent under this development application is sought has commenced, including the following:

- internal room reconfiguration
- partially constructed stud walls

These elements do not cause any environmental impact to adjacent properties or the public domain. As such, a deferred commencement condition is recommended requiring the applicant obtain a Building Information Certificate for the commenced works prior to the operation of the development consent.

This report concludes with a recommendation that the DDP grant deferred commencement 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.

The elements of the proposal are summarised below:

Level 1

- Internal alterations to reconfigure kitchen create internal room within the dining/lounge
- Extend balcony at southwest corner
- New gas fireplace

Ground Floor Level

- Extend dwelling to the west to provide bedroom with deck
- Extend existing rear balcony
- Internal layout alterations

Lower Ground Floor Level

- New outdoor cooking area and wet bar within existing covered terrace
- Internal alterations to suite room reconfiguration

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.8 Waste Management

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

SITE DESCRIPTION

Property Description:	lot 11 DP 1026519 Maritime Lic 30002506 , 39 Seaforth Crescent SEAFORTH NSW 2092 lot 11 DP 1026519 Maritime Lic 30002506 , 39 Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Seaforth Crescent.</p> <p>The site is irregular in shape with a frontage of 25.17m along Seaforth Crescent and a maximum depth of 76.3m. The site has a surveyed area of 1,307m².</p> <p>The site is located within the C3 Environmental Management zone and accommodates a three storey dwelling. An attached garage is located on the west of the dwelling and the existing swimming pool is located at the rear of the dwelling on the lower ground floor terrace.</p> <p>The site falls approx. 40m from the north to the foreshore at the south. The slope falls across the property at an average angle of 30 degrees to the waterfront. The slope above the property eases to moderate angles.</p>

The site contains rock outcrops, lawn areas, mature trees, garden beds and a range of low lying and medium lying shrubs. There are no details of any threatened species on the subject site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by predominately large multi level single detached dwellings oriented to the south to maximise water views.

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 **DA0535/2004** for Alterations and additions including construction of new swimming pool was approved on 21/01/2005 by Council staff.

Application **DA2022/0808** for Construction of a spa was approved on 15/08/2022 by Council staff.

Application **DA2022/1305** for Alterations and additions to a dwelling house was under assessment at the time of writing.

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 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>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact</p> <p>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>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/07/2022 to 27/07/2022 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 has been assessed against Manly LEP Clause 6.5 Terrestrial Biodiversity. The proposed works are generally within the existing development footprint and will not require removal of native vegetation or wildlife habitat. The proposal is therefore considered to comply with the applicable biodiversity control
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2018 (section 2.12); • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005; and • Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>The site is bisected by the foreshore building line, as shown on the Foreshore Building Line Map of MLEP 2013. No works are proposed within the foreshore area.</p> <p>The application is supported subject to conditions:</p> <ul style="list-style-type: none"> • Installation and maintenance of erosion and sediment controls (prior to commencement)

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</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

A BASIX certificate has been submitted with the application (see Certificate No. A457054_04, dated 23/05/2022). 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) 2021Ausgrid

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 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	11.19m	31.65%	No
Special height provisions:	RL 41.58	RL 41.57 (existing)	N/A	Yes
Floor Space Ratio:	0.4:1 (522.8m ²)	0.384:1 (501.8m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.3A Special height provisions	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes

Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.19m
Percentage variation to requirement:	31.65%

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 applicants written request argues, in part:

The additions/alterations to the dwelling house are located beneath the existing roof form and requiring strict compliance would prohibit any further work to the upper level of the existing dwelling. The alterations and additions do not extend above the height of the existing dwelling.

Council agrees with the applicant's justification to vary the building height development standard as the overall height of the existing dwelling is not increased by the proposed development. No additional amenity impacts upon adjacent properties or the public domain will result from the proposal.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the MLEP 2013 are:

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

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

Comment:

The proposed development does not increase the overall height of the existing dwelling. The existing roof form is to remain. The development is consistent with the prevailing height of other dwellings in the locality.

b) to control the bulk and scale of buildings,

Comment:

As above, the proposed development does not increase the overall height of the existing dwelling. The proposed alterations will not increase the bulk and scale of the existing dwelling.

c) to minimise disruption to the following:

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

Comment:

The proposed development will not impact upon existing view corridors.

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

Comment:

The proposed development will not alter the existing amount of solar access enjoyed by 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:

The proposed development maintains the overall height of the existing dwelling. The proposal is considered to appropriately respond to the site topography.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposed development is contained within the existing footprint of the dwelling. No adverse impact to the natural significance of the site is expected.

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

Comment:

The proposal maintains the existing low density residential land use.

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

Comment:

No trees are required to be removed to facilitate the proposed development. The overall height of the dwelling is to be maintained and therefore will not cause unreasonable visual dominance or detract from the scenic quality of the foreshore.

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

Comment:

As above, the proposed development is contained within the existing footprint of the dwelling. The proposal will not result in the loss of natural vegetation or impact upon natural features on the site.

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

Comment:

The proposed development does not increase the total amount of hard surface on the site.

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

Comment:

The overall height of the dwelling is to be maintained. The existing bulk and scale of the building will not be significantly altered by the proposal. The development is considered to be compatible with the existing vegetation, topography and surrounding land uses.

Conclusion:

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,307m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 8m (based on gradient 1:4)	12.4m (existing)	Existing	Acceptable, as existing
	W: 8m (based on gradient 1:4)	10.6m (existing)	Existing	Acceptable, as existing
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	2.2m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 4.09m (based on wall height)	3.2m (existing)	Existing	Acceptable, as existing
	W: 3.5m (based on wall height)	Garage - Nil (existing)	Existing	Acceptable, as existing
4.1.4.5 Foreshore Building Lines and Foreshore Area	Above FSBL	Above FSBL	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (784.2m ²)	62.2% (812.8m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (325.1m ²)	87.2% (708.7m ²)	N/A	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	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	No	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 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
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.8 Waste Management

A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

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

Description of non-compliance

The wall height of the existing dwelling do not comply with the control requirement. It is noted that the proposal does not increase the existing height of the dwelling walls.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposed development is acceptable as it does not increase the overall height of the existing dwelling. No additional amenity impacts upon adjacent properties or the public domain are expected.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$5,602 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$560,181.

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 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

DEFERRED COMMENCEMENT APPROVAL

A. Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 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.

Accordingly Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2022/0936 for Alterations and additions to a dwelling house on land at lot 11 DP 1026519 Maritime Lic 30002506,39 Seaforth Crescent, SEAFORTH, lot 11 DP 1026519 Maritime Lic 30002506,39 Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. Building Information Certificate

The applicant must obtain a Building Information Certificate for the internal works that have been carried out without development consent as highlighted in yellow on the following stamped plans:

- o DA.03 Issue Q, prepared by All Australian Architecture, dated 23/05/2022
- o DA.04 Issue Q, prepared by All Australian Architecture, dated 23/05/2022
- o DA.05 Issue Q, prepared by All Australian Architecture, dated 23/05/2022

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. Approved Plans and Supporting Documentation

The development must be carried out in compliance 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
DA.02 Issue Q	23/05/2022	All Australian Architecture
DA.03 Issue Q	23/05/2022	All Australian Architecture
DA.04 Issue Q	23/05/2022	All Australian Architecture
DA.05 Issue Q	23/05/2022	All Australian Architecture
DA.06 Issue Q	23/05/2022	All Australian Architecture
DA.07 Issue Q	23/05/2022	All Australian Architecture
DA.08 Issue Q	23/05/2022	All Australian Architecture
DA.09 Issue Q	23/05/2022	All Australian Architecture
DA.10 Issue Q	23/05/2022	All Australian Architecture
DA.11 Issue Q	23/05/2022	All Australian Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A457054_04	23/05/2022	All Australian Architecture

Geotechnical Investigation (Ref: J4201B)	14/06/2022	White Geotechnical Group
--	------------	--------------------------

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

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

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

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

3. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	22/07/2022

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

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

4. **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.

5. **Prescribed Conditions**

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

6. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of 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.

7. **Wet Bar**

Built-in cooking facilities are not permitted to be installed in the wet bar/kitchenette at the lower ground floor.

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

FEES / CHARGES / CONTRIBUTIONS

8. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$5,601.81 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 (as amended).

The monetary contribution is based on a development cost of \$560,181.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

9. **Security Bond**

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

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

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

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

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

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

10. **Stormwater 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.

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

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

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

12. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

13. **Waste Management Plan**

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

Details demonstrating compliance must be provided to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is

reused, recycled or disposed of in an environmentally friendly manner.

14. **Compliance with Standards**

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

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

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

15. **Sydney Water "Tap In"**

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

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

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

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

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

16. **Fireplace**

The proposed fireplace must not utilise solid fuel or oil combustion for heating.

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

Reason: To ensure air pollution is mitigated and residential amenity is maintained.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Installation and Maintenance of Sediment and Erosion Control**

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Wildlife Protection**

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

Reason: To protect native wildlife.

19. **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.

20. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

21. **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.

22. **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.

23. **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.

24. **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 to assess the finds.

Should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) must be contacted.

Reason: Aboriginal Heritage Protection.

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

25. **Protection of Habitat Features**

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

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

Reason: To protect wildlife habitat.

26. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

27. **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.

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

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

29. **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.

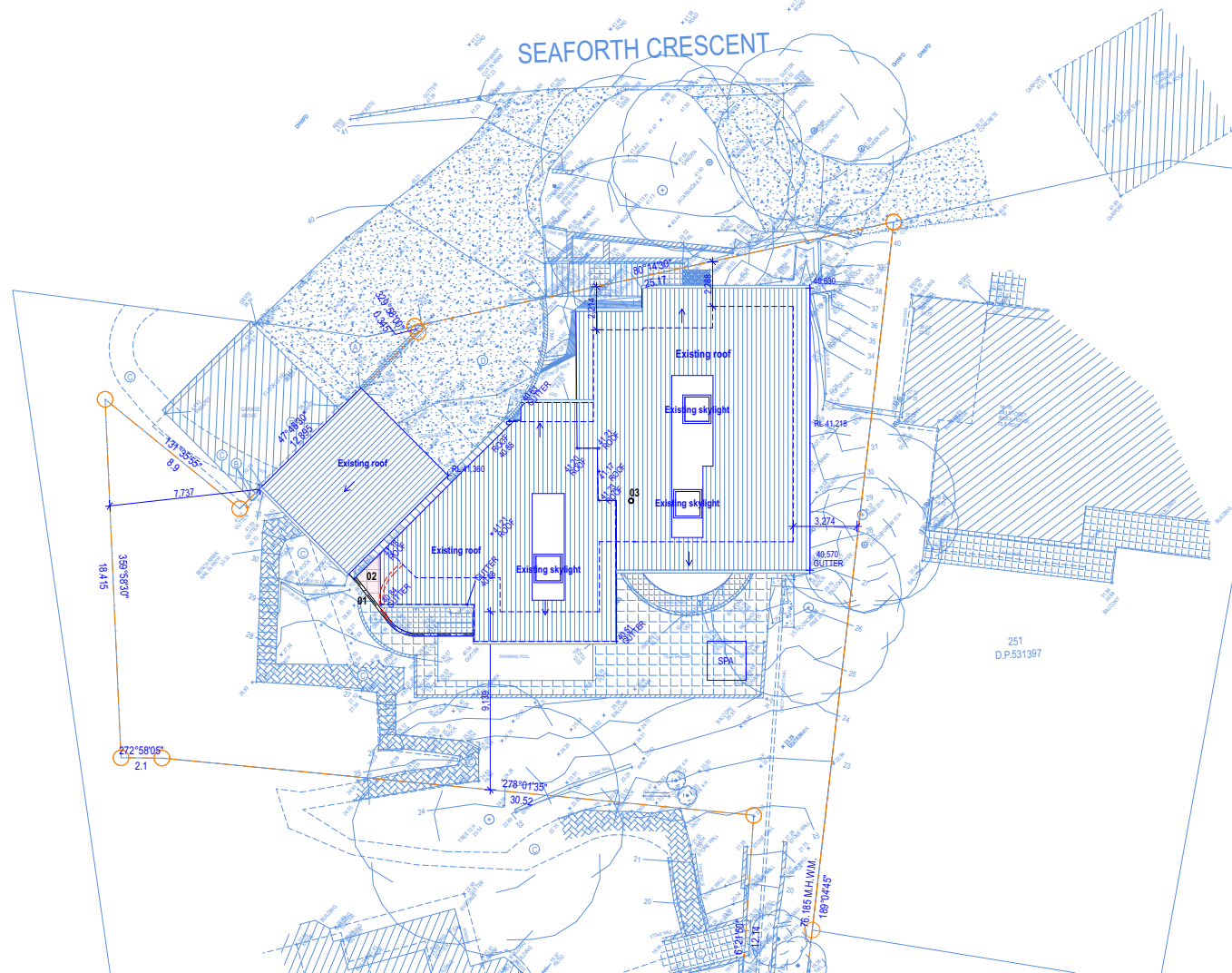
COLOURS:

PROPOSED ITEM IS BLACK

EXISTING ITEM IS BLUE / BLUE

DEMOLISHED ITEM IS RED

DA COLOURS TO
AS 1100.301-1985 & AS 2700S-1996



Drawing Notes

- 01 New glass balustrade
- 02 Extended tiled balcony
- 03 Flue for new gas fireplace
- 04 -
- 05 New opening
- 06 New timber weatherboards to match existing
- 07 Metal balustrade and overhang timber deck
- 08 New fireplace / tv wall
- 09 -
- 10 New outdoor cooking

Highlighted work is partially completed for deferred commencement approval and building information certificate.

Amended DA Plans - For Approval



Address:
Suite 206, 20 Dale Street
Brookvale NSW 2100
info@aaarchitect.com.au
www.aaarchitect.com.au
Mobile: 0412 348 575

Architect:
Adam Pressley FRAIA
Principal & Nominated Architect
NSW No.6007

ABN 95 492 673 232



Project:
Alterations & Additions

Printed: Monday, 23 May 2022
/Volumes/AAA Serv/01 Projects Active/39Sea/02 Models/
39Sea_Model.pln

Client:
Ron Thomson & Pamela Robertson-Gregg

39 Seaforth Crescent Seaforth 2092
Lot 11 & D.P.1026519

Title:
Site / Roof Plan
Scale 1:200 @ A3

0 1 2 3 4 5



39Sea
DA.02

Issue:
Q

Drawing Notes

- 01 New glass balustrade
- 02 Extended tiled balcony
- 03 Flue for new gas fireplace
- 04 -
- 05 New opening
- 06 New timber weatherboards to match existing
- 07 Metal balustrade and overhang timber deck
- 08 New fireplace / tv wall
- 09 -
- 10 New outdoor cooking

Highlighted work is partially completed for deferred commencement approval and building information certificate.

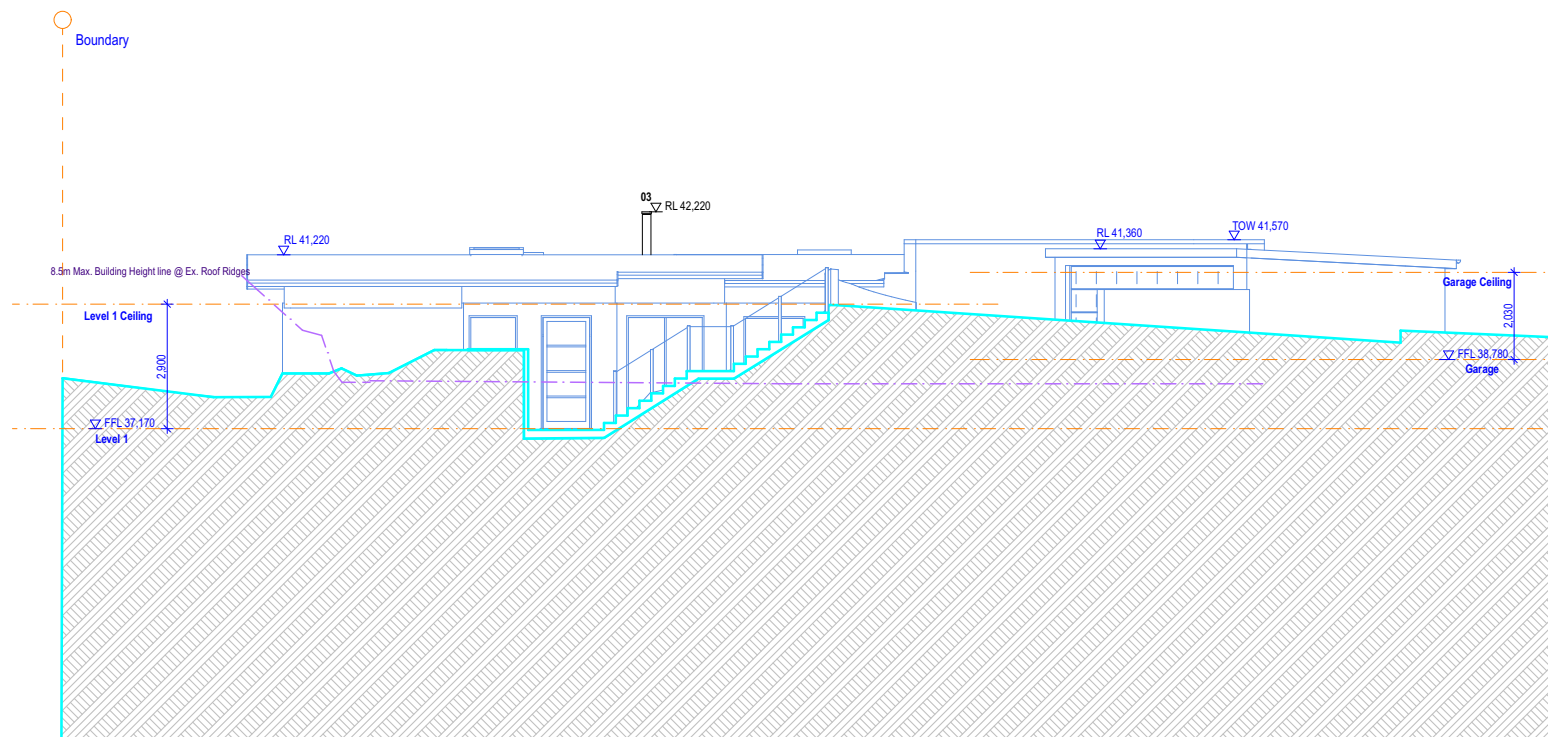
COLOURS:

PROPOSED ITEM IS **BLACK**

EXISTING ITEM IS **BLUE / BLUE**

DEMOLISHED ITEM IS **RED**

DA COLOURS TO
AS 1100.301-1985 & AS 2700S-1996



Amended DA Plans - For Approval



Address:
Suite 206, 20 Dale Street
Brookvale NSW 2100
info@aaarchitect.com.au
www.aaarchitect.com.au
Mobile: 0412 348 575

Architect:
Adam Pressley FRAIA
Principal & Nominated Architect
NSW No.6007

ABN 95 492 673 232



Project:
Alterations & Additions

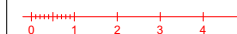
Printed: Monday, 23 May 2022
/Volumes/AAA Serv/01 Projects Active/39Sea/02 Models/
39Sea_Model.pln

Client:
Ron Thomson & Pamela Robertson-Gregg

39 Seaforth Crescent Seaforth 2092
Lot 11 & D.P.1026519

Title:
North / Street Elevation

Scale 1:100 @ A3



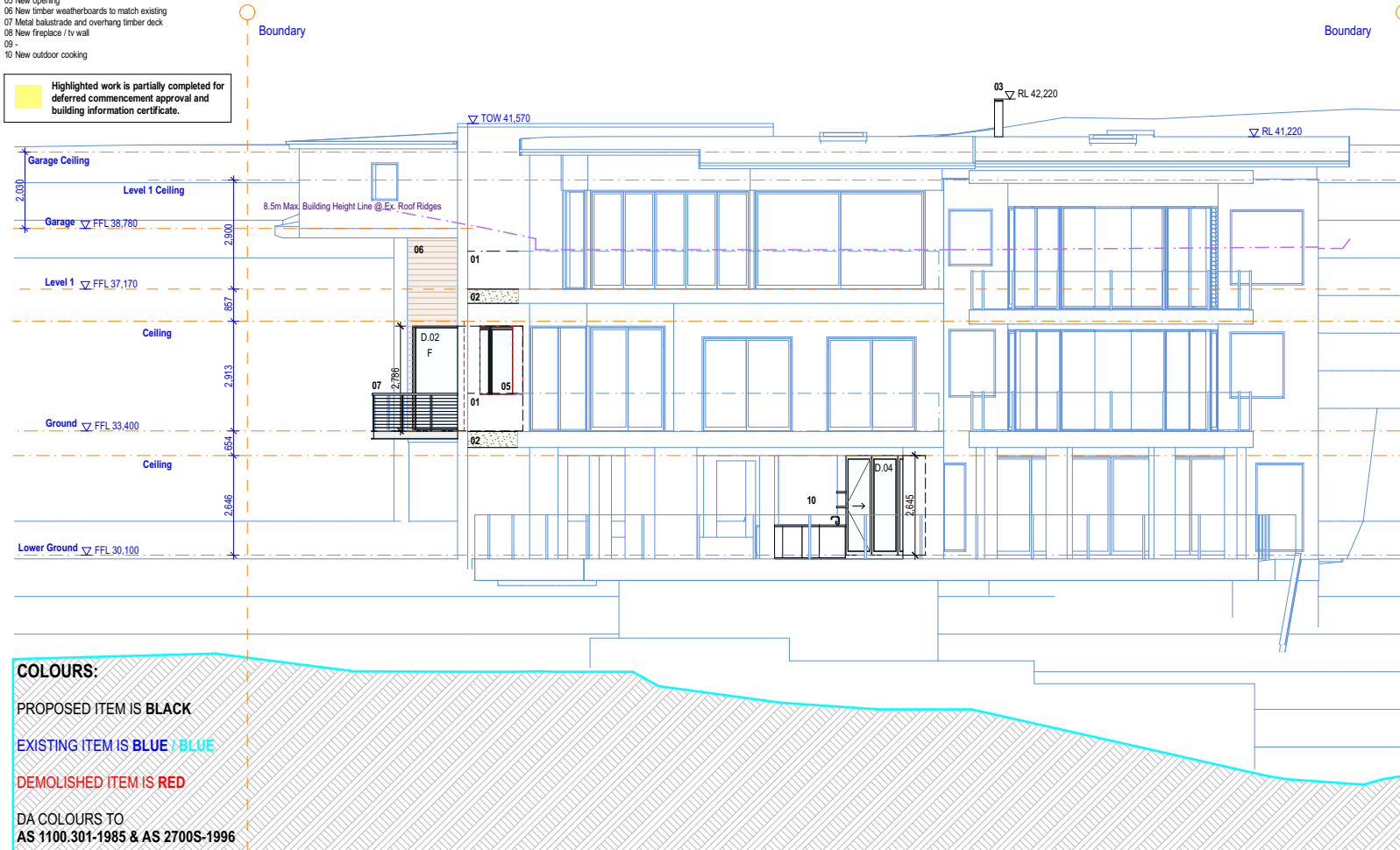
39Sea
DA.06

Issue:
R

Drawing Notes

- 01 New glass balustrade
- 02 Extended tiled balcony
- 03 Flue for new gas fireplace
- 04 -
- 05 New opening
- 06 New timber weatherboards to match existing
- 07 Metal balustrade and overhang timber deck
- 08 New fireplace / tv wall
- 09 -
- 10 New outdoor cooking

Highlighted work is partially completed for deferred commencement approval and building information certificate.



Address:
Suite 206, 20 Dale Street
Brookvale NSW 2100
info@aaarchitect.com.au
www.aaarchitect.com.au
Mobile: 0412 348 575

Architect:
Adam Pressley FRAIA
Principal & Nominated Architect
NSW No.6007
ABN 95 492 673 232



Project:
Alterations & Additions

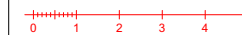
Printed: Monday, 23 May 2022
/Volumes/AAA Serv/01 Projects Active/39Sea/02 Models/
39Sea_Model.pln

Client:
Ron Thomson & Pamela Robertson-Gregg

39 Seaforth Crescent Seaforth 2092
Lot 11 & D.P.1026519

Title:
South Elevation

Scale 1:100 @ A3



39Sea
DA.07

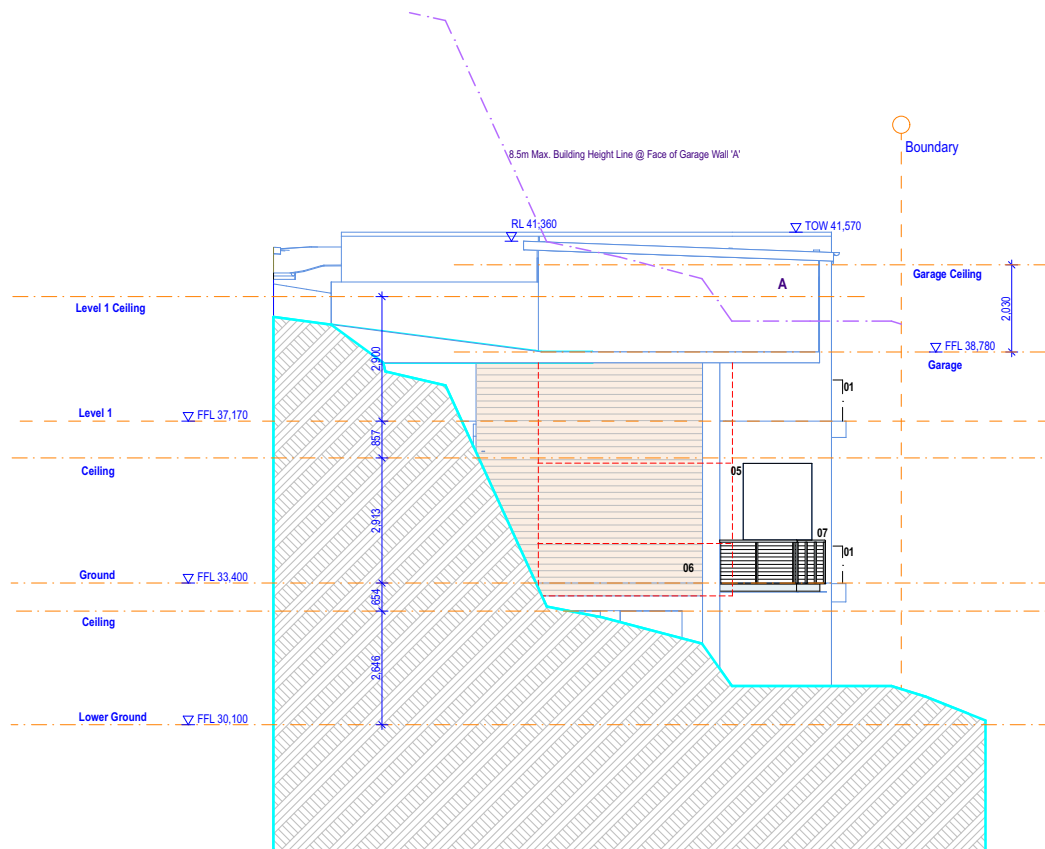
Issue:
Q

Amended DA Plans - For Approval

Drawing Notes

- 01 New glass balustrade
- 02 Extended tiled balcony
- 03 Flue for new gas fireplace
- 04 -
- 05 New opening
- 06 New timber weatherboards to match existing
- 07 Metal balustrade and overhang timber deck
- 08 New fireplace / tv wall
- 09 -
- 10 New outdoor cooking

Highlighted work is partially completed for deferred commencement approval and building information certificate.



COLOURS:

PROPOSED ITEM IS **BLACK**

EXISTING ITEM IS **BLUE / BLUE**

DEMOLISHED ITEM IS **RED**

DA COLOURS TO
AS 1100.301-1985 & AS 2700S-1996

Amended DA Plans - For Approval



Address:
Suite 206, 20 Dale Street
Brookvale NSW 2100
info@aaarchitect.com.au
www.aaarchitect.com.au
Mobile: 0412 348 575

Architect:
Adam Pressley FRAIA
Principal & Nominated Architect
NSW No.6007

ABN 95 492 673 232



Project:
Alterations & Additions

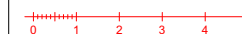
Printed: Monday, 23 May 2022
/Volumes/AAA Serv/01 Projects Active/39Sea/02 Models/
39Sea_Model.pln

Client:
Ron Thomson & Pamela Robertson-Gregg

39 Seaforth Crescent Seaforth 2092
Lot 11 & D.P.1026519

Title:
West Elevation

Scale 1:100 @ A3



39Sea
DA.08

Issue:
Q

Drawing Notes

- 01 New glass balustrade
- 02 Extended tiled balcony
- 03 Flue for new gas fireplace
- 04 -
- 05 New opening
- 06 New timber weatherboards to match existing
- 07 Metal balustrade and overhang timber deck
- 08 New fireplace / tv wall
- 09 -
- 10 New outdoor cooking

Highlighted work is partially completed for deferred commencement approval and building information certificate.

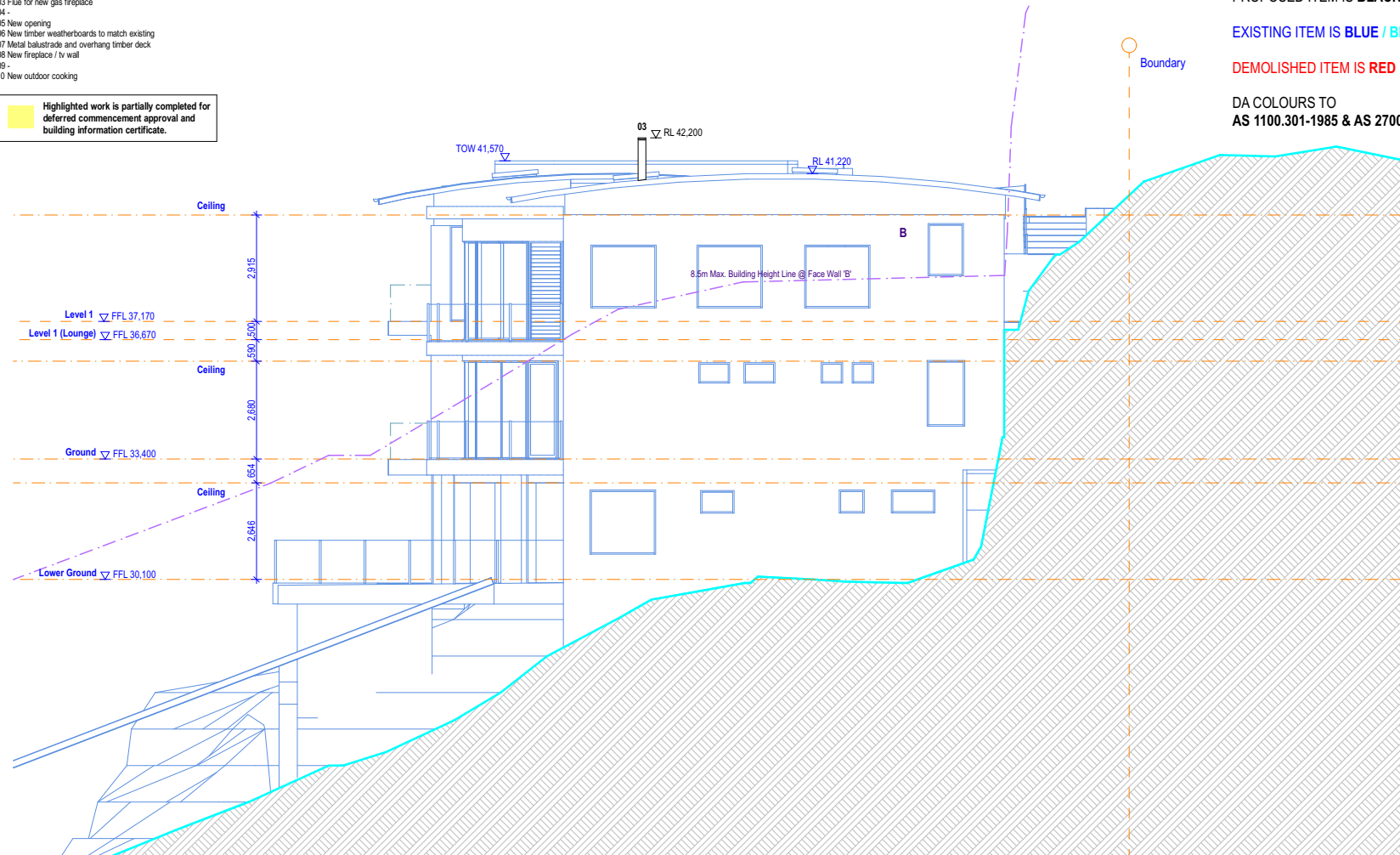
COLOURS:

PROPOSED ITEM IS BLACK

EXISTING ITEM IS BLUE / BLUE

DEMOLISHED ITEM IS RED

DA COLOURS TO
AS 1100.301-1985 & AS 2700S-1996



Amended DA Plans - For Approval



Address:
Suite 206, 20 Dale Street
Brookvale NSW 2100
info@aaarchitect.com.au
www.aaarchitect.com.au
Mobile: 0412 348 575

Architect:
Adam Pressley FRAIA
Principal & Nominated Architect
NSW No.6007
ABN 95 492 673 232

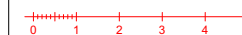


Project:
Alterations & Additions

Printed: Monday, 23 May 2022
/Volumes/AAA Serv/01 Projects Active/39Sea/02 Models/
39Sea_Model.pln

Client:
Ron Thomson & Pamela Robertson-Gregg
39 Seaforth Crescent Seaforth 2092
Lot 11 & D.P.1026519

Title:
East Elevation
Scale 1:100 @ A3



39Sea
DA.09
Issue:
Q

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
HEIGHT OF BUILDING AS DETAILED IN CLAUSE 4.3 OF THE MANLY
LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions & Alterations to Existing Dwelling
At: 39 Seaforth Crescent, Seaforth
Owner: Mr R. Thomson & Ms P. Robetson-Gregg
Applicant: Mr R. Thomson & Ms P. Robetson-Gregg

The subject development application relates to the construction of alterations and additions to an existing dwelling upon land at No. 39 Seaforth Crescent, Seaforth (**Site**).

The proposal provides for a maximum height of 11.19m as measured to the new window (replacing a door) on the upper level eastern elevation and 12.21m to the flue for the new gas fireplace.

Therefore, the proposal seeks approval for a variation to the **Height of Building** development standard in clause 4.3 of the Manly Local Environmental Plan 2013.

4.3 Height of Buildings

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
 - (b) to control the bulk and scale of buildings,*
 - (c) to minimise disruption to the following—*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
 - (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
 - (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Building Map indicates that the maximum height of building that applies to the Site is 8.5m.

The following clause 4.6 written request has been prepared having regard to clauses 4.3 and 4.6 of the Manly Local Environmental Plan 2013 and recent judgments of the Land & Environment Court. It is submitted that the variation is well founded and is worthy of the support of the Council.

1. Objectives of Clause 4.6

The objectives of Clause 4.6 of the LEP are:

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

2. The standard to be varied is a Development Standard to which Clause 4.6 applies

Clause 4.3 of the Manly Local Environmental Plan 2013 is contained within Part 4 which is titled Development Standards to be complied with. It is also considered that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

It is also noted that clause 4.3 does not contain a provision which specifically excludes the application of clause 4.6 and vice a versa.

On this basis it is considered that clause 4.3 is a development standard for which clause 4.6 applies.

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 Manly Local Environmental Plan 2013):

(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.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The objectives of the Maximum Height of Building standard are set out in clause 4.3(1) of Manly Local Environmental Plan 2013 and are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following—*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Compliance with the Height of Building standard is unreasonable or unnecessary in the circumstances because the objectives of the standard are achieved notwithstanding the non-compliance, in light of the following:

- a. The proposed modifications do not increase the overall height of the building, with the exception of the flue. The works to the dwelling are below the existing roof form. The new flue is required to meet the Australian Standards and relevant controls for fireplaces. The works to the dwelling will not be visible from the street and have no impact on the streetscape. The flue is minor ancillary element and will not have a detrimental impact on the streetscape.
- b. The proposal does not result in any perceived additional bulk, with new work to the dwelling beneath the existing roof form and within the existing footprint.

The alterations are well setback from all boundaries and surrounding dwellings.

- c. The proposed additions which are located beneath the existing dwelling will not obstruct existing views from the street, public domain or adjoining views. The flue is a minor structure which does not obstruct views from the adjoining properties or the streetscape.
- d. The proposed additions are located beneath the existing roof form and will not result in any additional overshadowing to the adjoining properties or the public domain.
- e. The proposed additions do not result in the removal of or impact on any existing vegetation. The additions do not alter the existing topography of the site and do not conflict with the bushland or surrounding properties.

4. There are sufficient environmental planning grounds to justify contravening the development standard

The proposed development promotes the objectives identified in the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the “promote the orderly and economic use of the land” and “good design and amenity of the built environment”. In this regard the proposed works, with the exception of the flue, are located within the existing footprint and below the existing roof form. Therefore the proposed additions do not alter the existing height.

Accordingly, the proposal promotes the objectives of the Environmental Planning and Assessment Act 1979 and there are also sufficient environmental planning grounds to justify the contravention of the Height of Building standard, which include:

- The additions/alterations to the dwelling house are located beneath the existing roof form and requiring strict compliance would prohibit any further work to the upper level of the existing dwelling. The alterations and additions do not extend above the height of the existing dwelling.
- The flue height is required to meet the requirements of the Australian Standard and relevant standards/legislation.

5. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the Height of Building development standard, which is demonstrated in the analysis above.

The proposed development is also consistent with the C3 Environmental Management Zone objectives in Manly Local Environmental Plan 2013.

The objectives for the C3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses*

In relation to the above objectives for the C3 Environmental Management zone the proposal is consistent with those objectives given that:

1. The proposed works are located within the existing footprint and does not impact on any existing ecological, scientific, cultural or aesthetic values.
2. The proposal does not require the removal of or impact on any vegetation with all works within the existing footprint. The works are minor and will not dominate the natural scenic qualities of the foreshore.
3. The development is well setback from the foreshore and natural bushland. The additions do not impact on geological features or vegetation.
4. The works are not within proximity of the foreshore and does not result in additional stormwater runoff.
5. The resultant development is compatible with the existing surrounding development.

As the proposal is consistent with the objectives of the Height of Building development standard and the objectives of the C3 Environmental Management Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice. One circumstance where the Planning Secretary's concurrence cannot be assumed is where the development contravenes a numerical standard by greater than 10% and such applications are required to be deferred to the Local Planning Panel.

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

7. Conclusion

This written request justifies the proposed variation to the Height of Building development standard in the terms required under clause 4.6 of Manly Local Environmental Plan 2013. In summary, the proposed variation in relation to the non-compliant height of building is justified for the following reasons:

- The proposal will not result in any adverse streetscape impacts.
- The proposal will not result in any impacts upon existing trees and vegetation and will not result in any tree loss.
- The proposal will not result in any additional overshadowing of adjoining properties.
- The proposal will not result in any visual or acoustic impacts upon adjoining properties.
- The proposal will not result in any loss of outlook for any adjoining properties.
- The proposal will continue to provide for a built form which is compatible with the surrounding locality.

Natalie Nolan
Graduate Diploma (Urban & Regional Planning)
Ba App Sci (Env Health & Bldg).

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE SPECIAL
HEIGHT PROVISIONS AS DETAILED IN CLAUSE 4.3A OF THE MANLY
LOCAL ENVIRONMENTAL PLAN 2013**

For: Additions & Alterations to Existing Dwelling
At: 39 Seaforth Crescent, Seaforth
Owner: Mr R. Thomson & Ms P. Robetson-Gregg
Applicant: Mr R. Thomson & Ms P. Robetson-Gregg

The subject development application relates to the construction of alterations and additions to an existing dwelling upon land at No. 39 Seaforth Crescent, Seaforth (**Site**).

The proposal provides for a new flue to service the proposed gas fireplace. The flue has a maximum height of RL42.220.

Therefore, the proposal seeks approval for a variation to the **Special Height Provisions** development standard in clause 4.3A of the Manly Local Environmental Plan 2013.

4.3A Special Height Provisions

- (1) *The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.*
- (2) *Despite clause 4.3 (2), the height of a building on a lot identified as "Special height provisions" on the Height of Buildings Map must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot.*

The survey depicts the road adjoining the centre point of the lot boundary with a level of approximately RL41.44. The flue has a height of RL42.22, the remainder of the additions complies with this clause.

The following clause 4.6 written request has been prepared having regard to clauses 4.3A and 4.6 of the Manly Local Environmental Plan 2013 and recent judgments of the Land & Environment Court. It is submitted that the variation is well founded and is worthy of the support of the Council.

1. Objectives of Clause 4.6

The objectives of Clause 4.6 of the LEP are:

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

2. The standard to be varied is a Development Standard to which Clause 4.6 applies

Clause 4.3A of the Manly Local Environmental Plan 2013 is contained within Part 4 which is titled Development Standards to be complied with. It is also considered that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

It is also noted that clause 4.3A does not contain a provision which specifically excludes the application of clause 4.6 and vice versa.

On this basis it is considered that clause 4.3A is a development standard for which clause 4.6 applies.

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 Manly Local Environmental Plan 2013):

(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.

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The objective of the Special Height Provisions standard are set out in clause 4.3A(1) of Manly Local Environmental Plan 2013 and are as follows:

The objective of this clause is to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land.

Compliance with the Special Height Provisions standard is unreasonable or unnecessary in the circumstances because the objectives of the standard are achieved notwithstanding the non-compliance, in light of the following:

- a. The non-compliance relates only to the flue. The flue height is designed to comply with the height of relevant standards and legislation. This minor element will not obstruct any significant view of the harbour given the minor nature of the element.

4. There are sufficient environmental planning grounds to justify contravening the development standard

The proposed development promotes the objectives identified in the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the “promote the orderly and economic use of the land” and “good design and amenity of the built environment”.

Accordingly, the proposal promotes the objectives of the Environmental Planning and Assessment Act 1979 and there are also sufficient environmental planning grounds to justify the contravention of the Special Height Provisions standard, which include:

- The non-compliance relates only to the flue. The flue height is determined by the relevant standards and a flue could not be provided that complies with this clause.
- The non-compliance relates only to the minor element of the flue. All the additions comply with the Special Height Provisions.

5. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the Special Height Provisions development standard, which is demonstrated in the analysis above.

The proposed development is also consistent with the C3 Environmental Management Zone objectives in Manly Local Environmental Plan 2013.

The objectives for the C3 Environmental Management zone are:

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

- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses*

In relation to the above objectives for the C3 Environmental Management zone the proposal is consistent with those objectives given that:

1. The area of non-compliance relates only to the flue. The flue is located within the existing footprint and does not have any impact on the ecological, scientific, cultural or aesthetic values of the site or the locality.
2. The flue does not have any impact on existing vegetation or the natural scenic qualities of the foreshore.
3. The flue does not impact on the foreshore, bushland or natural vegetation.

As the proposal is consistent with the objectives of the Special Height Provisions development standard and the objectives of the C3 Environmental Management Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice. One circumstance where the Planning Secretary's concurrence cannot be assumed is where the development contravenes a numerical standard by greater than 10% and such applications are required to be deferred to the Local Planning Panel.

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

7. Conclusion

This written request justifies the proposed variation to the Special Height Provisions development standard in the terms required under clause 4.6 of Manly Local Environmental Plan 2013. In summary, the proposed variation in relation to the non-compliant special height provisions is justified for the following reasons:

- The proposal will not result in any adverse streetscape impacts.
- The proposal will not result in any impacts upon existing trees and vegetation and will not result in any tree loss.
- The proposal will not result in any additional overshadowing of adjoining properties.
- The proposal will not result in any visual or acoustic impacts upon adjoining properties.
- The proposal will not result in any loss of outlook for any adjoining properties.
- The proposal will continue to provide for a built form which is compatible with the surrounding locality.

Natalie Nolan
Graduate Diploma (Urban & Regional Planning)
Ba App Sci (Env Health & Bldg).