

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

WEDNESDAY 2 NOVEMBER 2022

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 2 November 2022

1.0 APOLOGIES & DECLARATIONS OF INTEREST

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Construction of a dual occupancy.5

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5.0 NON PUBLIC MEETING ITEMS

A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. There applications do not satisfy that criterion.

Nil

ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Local Planning Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 19 OCTOBER 2022

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 19 October 2022 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2022/0153 - 8 MAXWELL STREET, MONA VALE - DEMOLITION WORKS AND CONSTRUCTION OF A DUAL OCCUPANCY.
AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2022/633882
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans & Elevations 3 ↓ Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards and it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2022/0153 for Demolition works and Construction of a dual occupancy on land at Lot 4 DP 221609, 8 Maxwell Street, MONA VALE for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0153
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 4 DP 221609, 8 Maxwell Street MONA VALE NSW 2103
Proposed Development:	Demolition works and Construction of a dual occupancy
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ping Mui Yim
Applicant:	Urban Future Organisation
Application Lodged:	15/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	29/09/2022 to 06/10/2022
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	4.1B Minimum lot sizes for dual occupancies: 12.9%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 988,900.00

EXECUTIVE SUMMARY

This application seeks consent for demolition of an existing dwelling and the construction of an attached dual occupancy.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP), firstly as it involves a Clause 4.6 Variation to the development standard for the Minimum Lot Size for Dual Occupancies under PLEP 2014, and secondly, as there are ten (10) submissions in objection, raising issues with regard to non-compliance with the planning controls, impact on character and traffic safety and parking.

A critical in the assessment of the application is the non-compliance with the minimum lot size for dual occupancy developments under the PLEP 2014. The extent of variation proposed to the minimum allotment size of 800m², which is a primary development standard in the LEP is significant and the applicants' clause 4.6 variation is not supported. The density of development that would occur if the



variation was supported would be much greater than anticipated when setting the Planning controls in the Pittwater LEP 2014.

The non-compliance with the minimum lot size for dual occupancies does not satisfy the planned residential density and character for the area. Accordingly, the Clause 4.6 variation is not supported.

The departure from the minimum allotment size in the LEP, coupled with the non-compliances with DCP controls such as side boundary envelopes and off-street parking, show that the site is undersized for this form of development and the application is recommended for refusal.

Specifically, the proposal does not comply with the carparking provisions P21DCP, in that each dwelling has only one (1) space behind the front building line. The number of parking spaces provided on the site further demonstrates that the site is undersized for dual occupancy development. In this regard, an 800sqm lot could provide suitable space for 2 car parking spaces per dwelling and behind the 6.5m front building line, and in doing so, avoid parking spaces within the front setback which impacts on the streetscape and/or necessitating parking cars on the street.

This report concludes with a recommendation that the NBLPP should refuse to grant consent to the development application for the reasons provided.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition works and the construction of a dual occupancy.

In detail, the proposal involves:

- Demolition of the existing dwelling
- Tree removal
- Construction of an attached dual occupancy
- Single garages and hard stand parking
- Landscaping
- Fencing

Amended Plans

Amended plans were submitted on 20 July 2022. These plans involved the following amendments:

- Increase to upper level side setbacks by 850mm
- Updated Schedule of Colours and Materials
- Reduction in building height through a changed roof design
- Shift in the footprint to the south (with a 2.5m setback to the north and a 1.0m setback to the south)

ASSESSMENT INTRODUCTION

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

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



1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.8 Dual Occupancy Specific Controls
Pittwater 21 Development Control Plan - D9.6 Front building line
Pittwater 21 Development Control Plan - D9.9 Building envelope

SITE DESCRIPTION

Property Description:	Lot 4 DP 221609 , 8 Maxwell Street MONA VALE NSW 2103
Detailed Site Description:	<p>The subject site consists of an allotment located on the eastern side of Maxwell Street.</p> <p>The site is regular in shape with a frontage of 18.29m along Maxwell Street and a depth of 38.1m. The site has a surveyed area of 696.7m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site is relatively flat and contains vegetation to the front and rear of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development.</p>

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report. In summary, the provision of parking in the front setback will detract from the streetscape and character.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The site is considered unsuitable for the proposed development due to the undersized nature of the subject site for a more dense form of residential development and the extent of variation to the development standard (lot sizes for dual occupancies).</p> <p>In this area, dual occupancies require a lot size of 800sqm to achieve the planned residential density. As such, the proposal for a dual occupancy on a lot which more than 100sqm less than the required 800sqm, is not a circumstance that is envisaged for the "planned residential density" of the area.</p>
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. In summary, the issues raised in the submissions are concurred with where related to the reasons for refusal of the application.
Section 4.15 (1) (e) – the public interest	The proposal is contrary to the planning controls under the PLEP 2014 and justifies 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 29/09/2022 to 06/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Mr Oliver John Oxenham	10 Maxwell Street MONA VALE NSW 2103
Mr Gordon Clifford Love Mrs Marilyn Margaret Love	12 Maxwell Street MONA VALE NSW 2103
Mr Nigel Phillip Gibbs Mrs Yvonne Anne Gibbs	45 Mona Street MONA VALE NSW 2103
Mrs Margaret Ann Wright	1 Bergonia Street MONA VALE NSW 2103
Mr Gary John Gleeson	14 A Maxwell Street MONA VALE NSW 2103
Mr Anthony Joseph Farrell Mrs Christine Joy Farrell	21 Maxwell Street MONA VALE NSW 2103
Mrs Sharon Judith Coward	7 / 6 White Street BALGOWLAH NSW 2093
Withheld	MONA VALE NSW 2103
Judy Moulit	Address Unknown
Mr Neil Bernard Colombari	1 Jeanette Avenue MONA VALE NSW 2103

The above issues are addressed as follows:

- Building Envelope**

The submissions raised concerns that the first floor breaches the side boundary envelope, which results in excessive visual bulk and causes inconsistency with streetscape and character.

Comment:

Amended plans were submitted to Council on 20 July 2022 which reduced the overall bulk and scale of the building. This involved a reduction in the non-compliance with the side boundary envelope control. The remaining non-compliance is a minor breach at the southern elevation. Whilst this breach in isolation may be acceptable, it is considered that the breach is a symptom of the undersized allotment, and that the scale is not appropriate on an undersized allotment.

- Lot Size and Dual Occupancy**



The submissions raised concerns that the lot size is inadequate for a dual occupancy development and is inconsistent with the single occupancy character of the area. Concern is also raised for the precedent that will be set for dual occupancies on undersized lots in the area. Concern is also raised with the size and scale of the dual occupancy, including its two storey nature.

Comment:

An application to vary the control in relation to the lot size development standard for dual occupancies has been reviewed against the provisions of Clause 4.6 of the PLEP 2014 and is not considered to be well founded. The variation is not supported for the reasons outlined in this report. These concerns are concurred with.

- **Traffic Safety**

The submissions raised concerns that the development is proposed at a dangerous bend in the road, and is a dangerous area for traffic generally.

Concern is also raised with vehicles reversing out of the driveway.

Comment:

Council's Traffic Manager has reviewed the amended plans and information, and is satisfied with the proposal, due to the sight lines available for vehicles reversing out onto the road. However, it is noted that a larger site area compliant with the LEP standard would enable the provision of additional onsite parking (avoiding the need to park on the street) and allow maneuvering of vehicles to exit the site in a forward direction.

- **Construction and Traffic management concerns**

The submissions raised concerns that traffic chaos and dangerous conditions will be caused during construction.

Comment:

This concern can be addressed by a condition to require a Construction Traffic Management Plan should the Panel decide to approve the application.

- **Access to sunlight**

The submissions raised concerns that the proposal forward of the neighbouring defacto building line will have an unreasonable impact on access to sunlight.

Concern is also raised with regard to overshadowing of gardens.

Comment:

The proposal provides for solar access that complies with the controls under the P21DCP. Further, the proposal provides for a compliant building height and setbacks. As such, the dual occupancy has been designed to provide for adequate solar access.

- **Fire Risk**

The submissions raised concerns with regard to fire risk given proximity of the proposed dwelling to the northern boundary.



Comment:

Should the application be approved, a condition will require the development to comply with the requirements of the Building Code of Australia. This provides mitigation regarding building fire and the risk of spread to adjoining buildings.

- **Parking**

The submissions raised concerns that the proposal does not comply with the requirements for parking.

Comment:

Under Clause B6.3 of the P21DCP, two (2) parking spaces are required for a dual occupancy development. The DCP does allow for an assessment on merit for a lesser parking provision, but for reasons that are outlined in this report, the proposal for two parking spaces (1 per dwelling) in this circumstance is not considered satisfactory.

- **Privacy**

The submissions raised concerns with regard to privacy in relation to the southern boundary.

Comment:

The proposal involves windows and openings that have design, orientation and size that minimise and prevent overlooking.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Team.</p> <p>There are no concerns regarding this application, subject to conditions.</p>
Landscape Officer	<p><u>Additional Information Comment 18/08/22:</u> The amended architectural plans by /NDRSN (15/07/22), stormwater plans by Civil and Stormwater Engineering Services (date not updated), and Arboricultural Impact Assessment (AIA) by Joshua's Tree Service and Solutions (21/07/22) are noted.</p> <p>Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D9 Mona Vale Locality <p>The AIA identifies 5 trees for removal, trees 4-8, which are all exempt by species, and should the development application be approved</p>

Internal Referral Body	Comments
	<p>these trees do not require consent for removal. All other trees are to be retained, which is supported, and all trees shall be protected as per the recommendations in the AIA and subject to the imposed conditions. Works will encroach on some tree protection zones and as such a Project Arborist shall be engaged to supervise all works within the tree protection zones of trees to be retained, subject to the imposed conditions. Any pruning of neighbouring trees must not exceed 10% of the canopy without written approval from the trees owner. If the low retaining wall adjacent to tree 27 is to be replaced, it must only be done under supervision and advice from the Project Arborist.</p> <p>A Landscape Plan is included in the application and will be assessed as part of the Landscape Referral. Four trees are proposed which is supported; however, <i>Cupaniopsis anacardioides</i> is considered an environmental weed and shall be substituted, subject to the imposed conditions. No planting is shown in the raised planter at the front of the dwelling and as such an amended Landscape Plan shall be submitted prior to issuing a Construction Certificate to meet the requirements outlined in the conditions of consent.</p> <p><u>Original Comment:</u> The development application is for demolition works and construction of a dual occupancy.</p> <p>The Survey identifies existing trees within the property boundary, in the neighbouring properties (along the northern and southern boundaries) and street trees within the road reserve. Landscape Referral notes there is no Arboricultural Impact Assessment included in the application, however an assessment will be required to address these concerns:</p> <ul style="list-style-type: none"> the impact the proposed second driveway, to service 8A, will have on the existing street trees, the impact the proposed excavation to the front and rear of the property (as indicated on drawings DA 2.1, DA 3.2, DA 3.3, DA 3.5, DA 4.1 and Stormwater Concept Plan) will have on the trees in the neighbouring properties along the northern and southern boundaries, the impact the stormwater trenching will have on the existing street trees and neighbouring trees, the impact the excavation of OSD tanks will have on neighbouring trees. <p>An Arboricultural Impact Assessment, prepared by an Arborist with minimum AQF Level 5 in arboriculture, is required to continue the Landscape Referral.</p>
NECC (Development Engineering)	<p>05/05/2022 The development application is for demolition works and construction of a dual occupancy with single garages and hardstands.</p>

Internal Referral Body	Comments
	<p>Access Council's Traffic team has not supporting the provision of 2 driveways with hardstand due to safety reasons. They have recommended widening and use of existing driveway. The use of existing driveway to provide access to both proposed dwellings will require amendments to the plans.</p> <p>Development Engineer can not finalise the assessment until Traffic Engineers requirements are addressed.</p> <p>21/09/2022: Access: Traffic Team has assessed and conditioned accordingly, hence there are no engineering objections subject to conditions.</p> <p>Stormwater: Both dwellings are proposed with individual onsite stormwater detention tanks. Concept drainage plans prepared by NDRSN, Project No-210928, Issue B, Drawing No-101 to 104, Dated 18/07/2022 are in general satisfactory except the orifice diameter. To minimise blockages, orifice diameters should be ≥ 50 mm as conditioned.</p> <p>For Planner: Please include Traffic Assessment Report by Zait Engineering Solutions Pty Ltd, Reference 22-3232-RFLA, Dated 13th July 2022 as part of approval/ final assessment.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The property is partially affected by the Low Flood Risk Precinct. There are no applicable flood related development controls for this Residential Development.</p>
Traffic Engineer	<p><u>Final Traffic Review (Manager Traffic Team)</u></p> <p>Reviewed for line of sight requirement on site in relation to proposed northern driveway. The line of site when assessed on site is close to the 40 metre requirement. The precinct is in the program to have the speed limit reduction to 40km/h local traffic zone in the 24/25 capital work program.</p> <p>As such, the DA can be supported subject to conditions provided.</p> <p>Comments on Additional Information - 19/9/22</p> <p>The additional material provided by the applicant has not satisfactorily addressed the concerns previously raised by the traffic team.</p> <p>The sight line analysis undertaken by Zait Engineering Solutions has been prepared on the basis of a speed limit of 35km/h and an assumption that vehicles approaching the driveway will do so at a speed of 40km/h. The speed limit on Maxwell Street is 50km/h and traffic counts conducted by Council in November 2020 found an 85th percentile speed of 46km/h for southbound vehicles at No.4 Maxwell</p>

Internal Referral Body	Comments
	<p>Street and an 85th percentile speed of 53km/h for southbound vehicles at No.18. It is therefore considered that a more appropriate approach speed at which to assess sight lines would be 50km/h. At this speed, AS2890.1 Fig 3.2 requires that clear sight lines for a distance of 40m be available at a domestic driveway. The sight line analysis undertaken by Zait has found that there is approximately 32m of approach sight distance which is insufficient to adequately cater for safe egress from the property. It is also noted that there are some nature strip trees and shrubs which partially impact on sight lines. For the above reasons the applicant should amend the plans to make provision for on site turning to enable forwards entry to and exit from the northernmost driveway. This will maximise sight lines and eliminate the need for vehicles to reverse to or from this driveway onto Maxwell Street. The applicant's suggestion to install Caution Driveways signage while supported is not considered sufficient to satisfactorily address the sight distance concerns at this driveway.</p> <p>The southern driveway may remain in its proposed configuration.</p> <p>Original Comments - 30/3/22</p> <p>The development application is for demolition works and construction of a dual occupancy, which includes a new access driveway located near the northern property boundary with No.10 Maxwell Street.</p> <p>Maxwell Street is a collector road, connecting the western part of Mona Vale with Mona Vale Road. The street carries higher traffic volumes than most surrounding local roads and 3 School bus routes operate along Maxwell Street. There are safety concerns with the driveway access to the property as the site is located on the opposite side of the T-intersection with Jeanette Avenue. The existing driveway is also located on the inside of the curve 25m south of the bend, where traffic sight distances to southbound traffic are limited. An additional new access driveway is proposed closer to the bend (approx. 15m), where traffic sight distances are further restricted and visibility obstructed by existing trees in the nature strip. Parking on street along the full frontage of the site and around the bend has been banned given the sight distance issues at the location.</p> <p>The proposed hardstand areas to provide for the necessary off-street parking are essentially part of the access driveway between Council's Road Reserve and the enclosed garage, used in a stacked parking arrangement. It is not possible for a parked vehicle in the garage to exit the property without the second vehicle also needing to leave the property. Furthermore, both vehicles are required to reverse out of the driveway (or reverse into the property) as there is no turning area provided within the site. This means that there will be a heavy reliance</p>



Internal Referral Body	Comments
	<p>upon vehicles reversing to or from the site within close proximity to the bend with the number of such movements intensifying as a result of the dual occupancy. This is unacceptable and unsafe.</p> <p>The proposed separate driveways and parking arrangement can not be supported for safety reasons. The second driveway at the northern end of the property closest to the bend is not acceptable, however use of a driveway in the same location as the existing driveway, potentially widened, can be retained for access. In order to address the access and parking concerns, the Applicant needs to demonstrate that all off-street parking requirements (2 spaces for each two-bedroom dwelling) can be provided on the property with provision on site to enable all vehicles to enter and exit in a forward direction using a single driveway located at the the southern edge of the site.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis) *

All, Environmental Planning Instruments (SEPPs 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 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. 1275730M) .

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

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Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes



Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum Lot Sizes for Dual Occupancies	800sqm	Lot size: 696.7sqm	12.91%	No (see comments)
Height of Buildings	8.5m	8.0m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.1B Minimum lot sizes for dual occupancies	No
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development Standard	Minimum lot sizes for dual occupancies
Requirement	800sqm
Proposed	696.7sqm
Percentage Variation to Requirement	12.91%

Assessment of Request to Vary a Development Standard

The following assessment of the variation to Clause 4.1B - Minimum lot sizes for dual occupancies 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 4.1B - Minimum lot sizes for dual occupancies development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

Clause 4.6 (4)(a)(i) (Justification) Assessment

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

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved.

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

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

Comment:



In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that 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.*

Applicants Written Request

The applicants written request argues, in part:

- The dual occupancy will cater for housing needs whilst providing negligible environmental impacts.
- The proposal complies with the FSR standard.
- The use is permissible.

It is agreed that the dual occupancy will provide an additional dwelling to assist in providing for housing supply, and that the built form of the development is generally reasonable to not cause any unacceptable environmental impacts on neighbouring properties.

However, the extent of the variation to the minimum lot size for a dual occupancy, being in excess of 100sqm (i.e. 103sqm) or 12.9%, is excessive and a significant departure from the LEP development standard. The consequence of this lack of site area is the inability of the proposed development to accommodate the required 2 spaces per dwelling behind the front building line, which will have impacts on the streetscape, amount of landscaping within the front setback and the diminished amenity of the street and neighbours of having designated parking spaces in the front setback area.



Accordingly, the proposal will not maintain a high level of residential amenity and is indicative of the fact that the site it is not suitable a dual occupancy development.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly use of land, and has not demonstrated that the development will provide a good level of amenity for the neighbouring properties, street and the locality, therefore not satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not 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 not 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 4.1B – 'Minimum lot sizes for dual occupancies' of the PLEP 2014 are:

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

(a) to achieve planned residential density,

Comment:

The minimum allotment size permitted for dual occupancies in the Pittwater LEP 2014 is 800m². For sites less than 800sqm, anticipated built form is single dwelling houses and secondary dwellings. The site does not satisfy the minimum allotment size for dual occupancy development, being 696sqm. As such, given the relevant planning controls and development standards, it is not anticipated or desirable to have a residential density of 1 dwelling per 350sqm (as is proposed under this application) .

The proposed development does not satisfy this objective.

(b) to maintain a high level of residential amenity, including adequate provision of private open space.



Comment:

The proposal is generally satisfactory in relation to residential amenity, including solar access and visual and acoustic privacy. Additionally, the proposal provides sufficient private open space for each dwelling. However, the proposal involves the provision of parking within the front setback which will have a detrimental effect on streetscape and amenity of adjoining properties.

The development does not satisfy this objective.

Zone Objectives

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

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

Comment:

The proposal involves a dual occupancy but given the undersized allotment will result in a residential density not anticipated in the R2 zone.

It is considered that the development does not satisfy this objective.

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

Comment:

This objective is not relevant to this application.

- ***To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses***

Comment:

This objective is not relevant to this application.

Conclusion:

For the reasons detailed above, the proposal is not considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation with the objectives of the standard, the concurrence of the Secretary for the variation to the Minimum lot sizes for dual occupancies Development Standard is not



assumed by the Local Planning Panel.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.5m (building) 1.0m (parking)	N/A	Yes No (see comments)
Rear building line	6.5m	11.7m	N/A	Yes
Side building line	2.5m (S)	2.5m	N/A	Yes
	1.0m (N)	1.0m	N/A	Yes
Building envelope	3.5m (S)	Outside envelope	N/A	No (see comments)
	3.5m (N)	Within	N/A	Yes
Landscaped area	50% (348.35sqm)	54.1% (377sqm)	N/A	Yes
Floor Space Ratio (Site area: 696.7sm)	0.4:1 (278.7sqm)	0.4:1 (278.7sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	No
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.8 Dual Occupancy Specific Controls	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9 Mona Vale Locality	No	No
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	No	No
D9.7 Side and rear building line	Yes	Yes
D9.9 Building envelope	No	Yes
D9.10 Landscaped Area - General	Yes	Yes
D9.12 Fences - General	Yes	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The control requires two (2) carparking spaces per dwelling, hence four (4) spaces are required. The proposal involves 2 car parking spaces for the development, comprising one space for each dwelling.

Under the provisions of this clause, a reduction in the number of car parking spaces to 2 spaces per allotment (1 per dwelling) may be considered on merit. However, given the significant variation to the minimum lot size requirement for a dual occupancy, a reduction in the car parking provision is not supported. In particular, a compliant lot size would be capable of accommodating a compliant car parking provision without resulting in detrimental impacts on residential amenity and streetscape.

C1.8 Dual Occupancy Specific Controls

Compliance with Dual Occupancy Specific Controls

Control/ Requirement	Proposed	Complies
A 1.5m landscaping strip is to be provided along the side boundary where any driveway is located	North: 2.78m South: 1.4m	Yes No (see comments)
Detached Dual occupancies to be 2 storey for 1 dwelling and 1 storey for other dwelling	Dual occupancy is attached	N/A
Second storeys to cover maximum 50% of the ground floor area	Ground floor: 159.4sqm First Floor: 119.2sqm First floor covers 74% of Ground floor	No (see comments)
Where a building site is less than 16.5 metres wide the rear dwelling of a dual occupancy must be single storey unless there are adverse slope or topography issues.	N/A - there is no rear dwelling	N/A
Floor Space Ratio (0.4:1)	Site area = 697sqm Gross floor area = 278.7sqm	Yes

Merit Assessment

The numerical non-compliances are considered against the Outcomes of the control as follows:

Limitation of the visual bulk and scale of development.

Comment: The built form of the dual occupancy generally complies with the relevant controls, with the exception of a minor non-compliance with the building envelope on the southern elevation. These controls are the controls applying to single dwellings in the area. As such, the bulk and scale of the dual occupancy will match what can be reasonably expected in the area for both single dwellings and dual



occupancies. Further, the proposal complies with the Floor Space Ratio and Building Height controls. This provides for a reasonable limitation on bulk and scale for the site.

Provision of design flexibility for second storey development.

Comment: In this circumstance, flexibility is warranted for the second storey to cover more than 50% of the ground floor. This is due to the substantial stepping, articulation, compliance with other controls, and lack of resulting amenity impact.

Restriction of the footprint of development on site.

Comment: The proposed footprint complies with all setbacks, floor space ratio and landscaped area controls. This provides a circumstance in which the footprint of the development is suitably restricted.

Retention of the natural vegetation and facilitation of planting of additional landscaping.

Comment: The proposal complies with the requirement for landscaped area on the site, and a landscape plan provides suitable planting for the site (to the satisfaction of Council's Landscape Officer). As such, the proposal provides a suitable design with regard to landscaping.

Provision of rental accommodation.

Comment: The proposal will provide for two dwellings on the land, which would provide opportunities for rental accommodation.

D9.6 Front building line

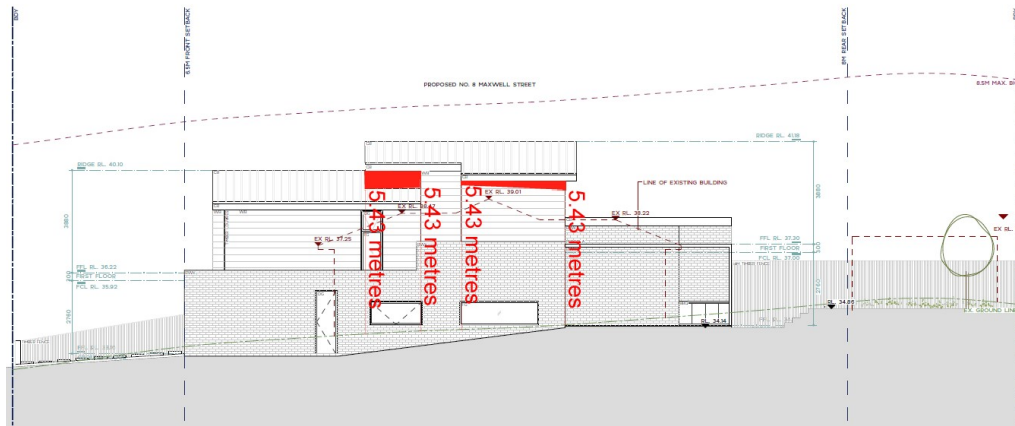
Although it is not marked on the plans, the traffic report suggests a tandem parking situation could be provided for the site.

This is not supported due to the non-compliance with the control and objectives for front building line. In particular, the parking would have an unreasonable visual impact on the street (given the street context).

D9.9 Building envelope

Description of Non-compliance

A representation of the non-compliance with the side building envelope control on the southern elevation is provided below:



Merit Consideration

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

To achieve the desired future character of the locality.

Comment:

The proposal complies with building height and floor space ratio, provides a two storey presentation and provides articulation to reduce the presentation of bulk. The rear of the site also maintains substantial vegetation so that the desired future character of the locality is achieved.

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

Comment:

The proposal provides a compliant building height and articulation of the built form to ensure an appropriate scale in relation to the surrounding natural environment. Furthermore, the proposal provides a compliant landscaped area on the site, and will provide new vegetation so as to assist in enhancing the streetscape presentation.

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

Comment:

The proposal does not involve significant excavation or the removal of any significant vegetation to allow for the development. As such, the development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised.

Comment:

The built form has been designed to effectively minimise the presentation of bulk and scale by providing



an upper level that is well articulated, set in from the lower levels, by providing distribution of the built form across the site and by providing natural features across the site.

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

Comment:

The proposed development maintains appropriate views and vistas.

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

Comment:

The proposed dwelling is well separated from neighbouring living spaces and also provides a window design that is of a sufficient size to minimise overlooking. The proposal also maintains compliance with the requirements for solar access under the Pittwater DCP.

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

Comment:

The proposal maintains substantial landscaped area across the site and there is also planting to surround the site. These landscaped areas ensure that the presentation of built form is appropriately minimised.

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 \$9,889 is required for the provision of new and augmented public infrastructure if the application is approved by the panel. The contribution is calculated as 1% of the total development cost of \$988,900.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;



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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is **not** satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size has adequately addressed and demonstrated that:

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

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

Planning Conclusion

The proposal involves a significant non-compliance with the minimum lot size for dual occupancy development standard under the PLEP 2014.

The size of the variation, at 103sqm or 12.9%, is considered excessive. This extent of variation is not appropriate, as the planned residential density for the area, as envisaged by the planning controls, is for dual occupancy dwellings to each have a minimum area per dwelling of 400sqm. The proposal allocates 348sqm per dwelling, which is significantly under the minimum for this type of development. The unsatisfactory aspects of the proposal, including the lack of parking is symptomatic of the inadequate area for each dwelling and will diminish the residential amenity of the area and the streetscape.

Therefore, the Clause 4.6 variation request is not supported as it does not provide demonstrate that the minimum lot size for dual occupancies development standard is unreasonable or unnecessary in the circumstances of the case, and does not provide sufficient environmental planning grounds to vary the development standard. The proposal is inconsistent with the objectives of the development standard.

The proposed development is compliant with the built form controls including height, setbacks and landscaped area, however it does not comply with the size restriction for the second storey of the building and the side building envelope.



The proposed development is not suitable or appropriate for the site or the locality and the approval of the application has the potential to set an undesirable precedent for similar developments on undersized lots.

Finally, the proposal is inconsistent with the desired future character of the area as embodied in the applicable planning controls and has the potential to negatively impact on the character of the area and undermine the development standard, which is contrary to maintaining the public interest.

Accordingly, the application is recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/0153 for the Demolition works and Construction of a dual occupancy on land at Lot 4 DP 221609,8 Maxwell Street, MONA VALE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1B Minimum lot sizes for dual occupancies of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.3 Off-Street Vehicle Parking Requirements of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9.6 Front building line of the Pittwater 21 Development Control Plan.
6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.



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LEGEND

		LOT BOUNDARY
		PROPOSED SUBDIVISION
		EXISTING BUILDING
		LANDSCAPE / DEEP SOIL

DRAWING TITLE
SITE ANALYSIS PLAN

PROJECT
NO. 8 MAXWELL STREET
MONA VALE NSW 2103

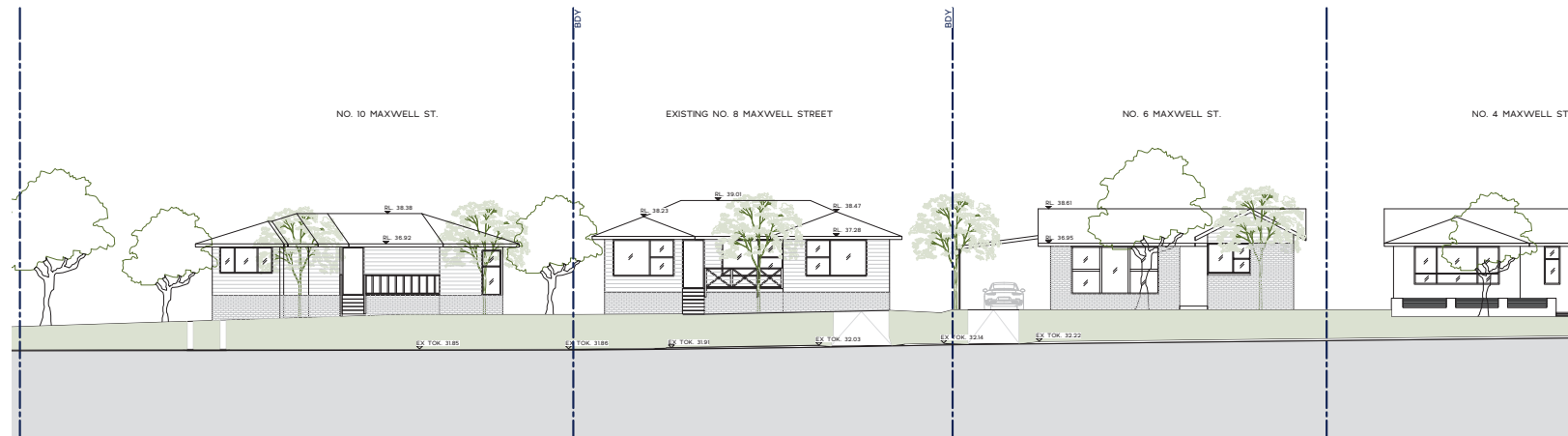
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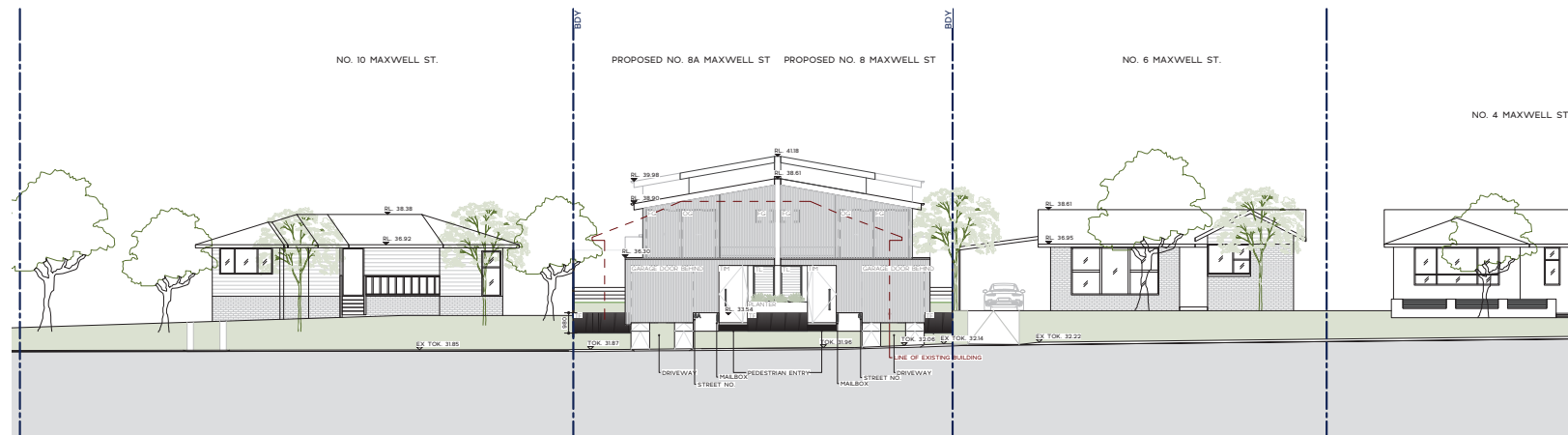
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DRAWING NO.	ISSUE	DATE	DRAWN BY	REVIEWED BY
DA 11	B	15 Jul 2022	GP, MA	DA

NDRSN
SUITE 201A / NO. 77-83 WILLIAM ST.
DARLINGHURST NSW 2010
INFO@NDRSN.COM.AU 02 9331 7060



EXISTING STREETScape ELEVATION



PROPOSED STREETScape ELEVATION

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LEGEND

- LOT BOUNDARY
- EXISTING BUILDING
- NATURAL GROUND
- EXISTING MAXIMUM BUILDING HEIGHT
- OD: OPERABLE GLAZING
- CTG: OPERABLE TRANSLUCENT GLAZING
- FG: FIXED GLAZING
- FTG: FIXED TRANSLUCENT GLAZING
- TL: TRANSLUCENT LOUVER
- BWK: BRICKWORK
- TR: THREE BATTENS
- TRF: THREE FORCE
- MB: METAL BALUSTRADE
- WB: WEATHERBOARD
- CB: COLORBOND METAL ROOF

DRAWING TITLE

**EXISTING AND PROPOSED
STREETScape ELEVATIONS**

PROJECT
**NO. 8 MAXWELL STREET
MONA VALE NSW 2103**

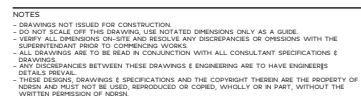
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DRAWING NO. B
ISSUE 15 JUL 2022
DATE 15 JUL 2022
DRAWN BY GP, MA
REVIEWED BY DA

NDRSN

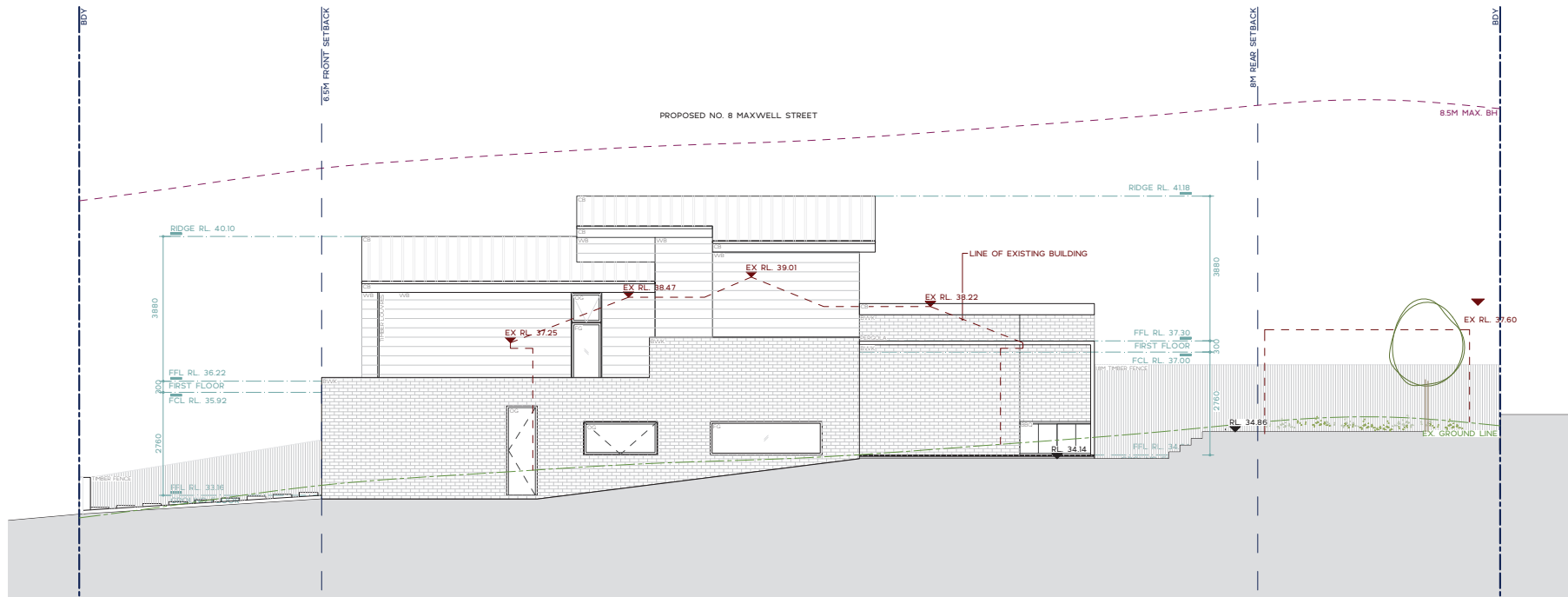
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PROJECT
NO. 8 MAXWELL STREET
MONA VALE NSW 2103



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LEGEND

LOT BOUNDARY	EXISTING BUILDING	NATURAL GROUND	EXISTING BUILDING HEIGHT	OD - ODESSABLE GLAZING	OG - ODESSABLE GLAZING	FG - FIXED GLAZING	FTG - FIXED TRANSLUCENT GLAZING	TL - TRANSLUCENT LOUVRES	BWK - BRICKWORK	TR - TRIM	TRB - TRIM BATTENS	TF - TRIM FENCE	MB - METAL BALUSTRADE	WB - WEATHERBOARD	CB - COLORBOND METAL ROOF
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DRAWING TITLE
PROPOSED SOUTH ELEVATION

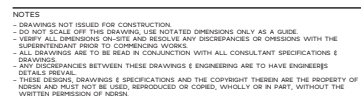
PROJECT
**NO. 8 MAXWELL STREET
MONA VALE NSW 2103**

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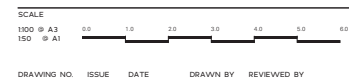
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ISSUE B
DATE 15 Jul 2022
DRAWN BY GP, MA
REVIEWED BY DA

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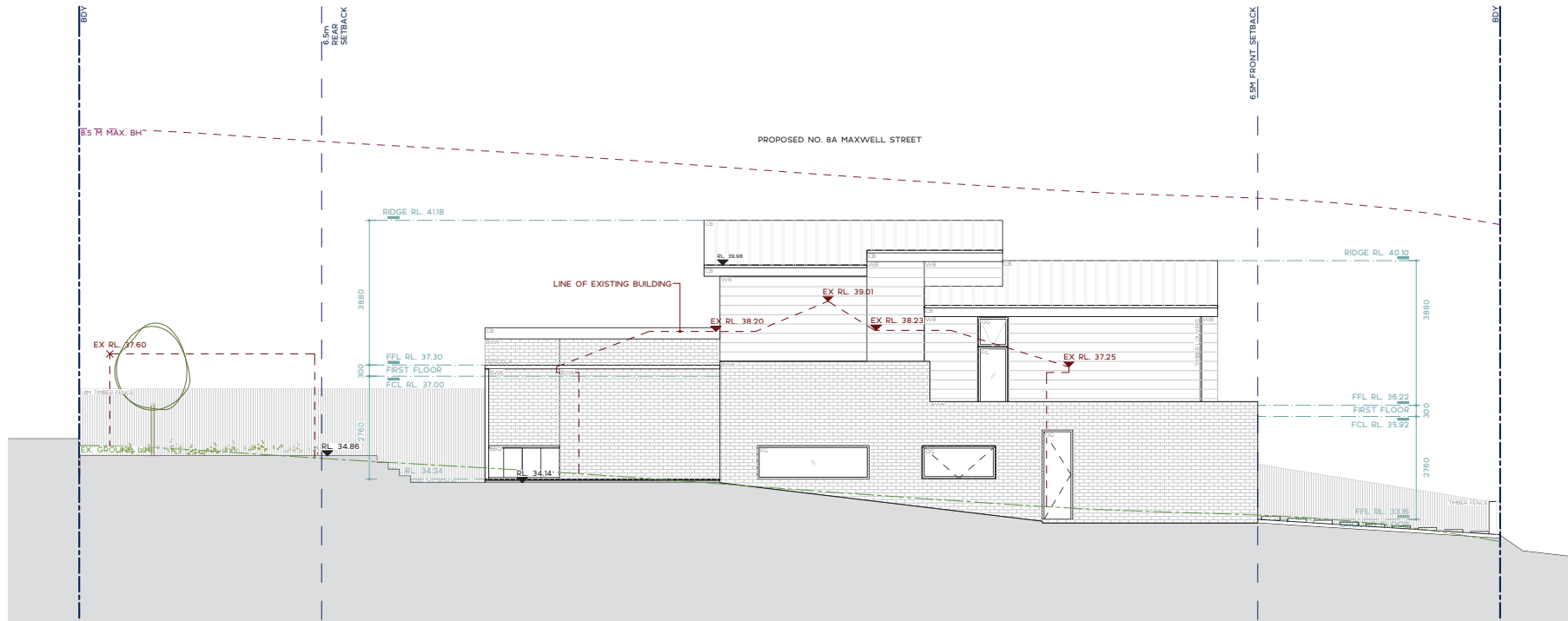


PROJECT
NO. 8 MAXWELL STREET
MONA VALE NSW 2103



DRAWING NO.	ISSUE	DATE	DRAWN BY	REVIEWED BY
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LEGEND

- LOT BOUNDARY
- EXISTING BUILDING
- NATURAL GROUND
- EXISTING BUILDING HEIGHT
- OD: ODESSABLE GLAZING
- CTG: ODESSABLE TRANSLUCENT GLAZING
- FG: FIXED GLAZING
- FTG: FIXED TRANSLUCENT GLAZING
- TL: TRANSLUCENT LOUVER
- BWK: BRICKWORK
- TR: TRIM
- TRB: TRIM BATTENS
- TRF: TRIM FENCE
- MB: METAL BALUSTRADE
- WB: WEATHERBOARD
- CB: COLORBOND METAL ROOF

DRAWING TITLE

PROPOSED NORTH ELEVATION

PROJECT
**NO. 8 MAXWELL STREET
MONA VALE NSW 2103**

SCALE

1500 @ A3
150 @ A1

DRAWING NO. 15 JUL 2022
ISSUE B
DATE 15 JUL 2022
DRAWN BY GP, MA
REVIEWED BY DA

NDRSN

SUITE 201A / NO. 77-83 WILLIAM ST.
DALEIGHUSETT NSW 2103
INFO@NDRSN.COM.AU 02 9331 7060
WWW.NDRSN.COM.AU

/NDRSN

CLAUSE 4.6 to CLAUSE 4.1B OF PITTWATER LEP 2014

EXCEPTIONS TO DEVELOPMENT STANDARDS – VARIATION TO MINIMUM LOT SIZES FOR DUAL OCCUPANCIES

This Clause 4.6 submission has been prepared to accompany the Development Application for demolition of the existing dwelling and construction of a two storey dual occupancy with single garages and hardstand to No. 8 Maxwell Street, Mona Vale 2103.

The proposal seeks a variation to the development standards contained within Clause 4.1B of the Pittwater Local Environmental Plan 2014 – Minimum lot size of 800 sqm for the purpose of dual occupancies, as No. 8 Maxwell Street has a site area of 696.77 sqm (as per calculations).

This submission contends that strict compliance with the minimum lot size for dual occupancies is unreasonable and/or unnecessary in the circumstances of the case and that the variation sought can be supported and that the Clause 4.6 exception to the development standard should be upheld.

Clause 4.6 Exceptions to development standards

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

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

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

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

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

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

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

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

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

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

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

/NDRSN

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

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

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

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

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – clause 4.6(3)(a)

It is considered that strict compliance with the development standard for minimum lot size for dual occupancies on the site is unreasonable and unnecessary for the following reasons:

COMPLIANCE WITH OBJECTIVES OF THE STANDARD

Notwithstanding the non-compliance with the numerical control of the standard (Clause 4.1B of Pittwater LEP 2014), the proposal meets the objectives of the standard as demonstrated below as well as in Subclause 4 of this submission;

Assessment of the objectives of the standard:

(a) to achieve planned residential density

Notwithstanding the shortfall to the minimum lot size for the purposes of dual occupancies it is considered that the planned residential density for the site is achieved given the following reasons:

- Dual occupancies are permitted with consent in the R2 zoning under the Pittwater LEP 2014, which demonstrates the proposed density for the subject site has been envisaged by the LEP
- The proposal complies with the maximum FSR and building height which ensures the proposed density is consistent with the planned residential density

(b) to maintain a high level of residential amenity, including adequate provision of private open space

As demonstrated in the accompanying architectural drawings and the Statement of Environmental Effects, the proposed dwellings and the existing neighbouring properties maintain high level of residential amenity, in terms of solar access and privacy, and the variation to the minimum lot size for dual occupancies does not create any issues in this regard.

Importantly, despite the shortfall to the minimum lot size for the purpose of the dual occupancy, both proposed dwellings achieve private open spaces larger than 80 sqm, as envisaged by the Pittwater DCP, whilst maintaining adequate solar access to the said private open spaces.

DEGREE OF VARIATION

The site has an area of 696.77 sqm (by calculations), resulting a shortfall of 103.23 sqm to the minimum lot size for the purposes of dual occupancies. The variation to the minimum lot size is calculated at 12.9% which is relatively minor and could be seen acceptable.

/NDRSN

MERITS OF THE PROPOSAL

The site has a frontage of 18.29M which is sufficient to comfortably accommodate the proposed dual occupancy development on the subject site. It is considered that the shortfall to the minimum lot size for the purposes of dual occupancies is due the depth of the site. The additional 5.6M depth required to achieve 800 sqm of land, would not make a significance improvement to the proposal. In particular, the proposed dwellings include adequate rear yards as well as sufficient rear setback to minimise overshadowing and visual bulk impact to the neighbouring properties.

The above factors demonstrate that strict compliance with the SLEP building height standard is unreasonable and unnecessary in the circumstance of the case.

2. Sufficient environmental planning grounds to justify contravening the development standard – clause 4.6(3) (b)

Following points demonstrate environmental planning grounds to justify the variation to the standard:

BETTER PLANNING OUTCOME

It is considered that the proposed dual occupancy development provides for a better planning outcome that is suitable for the area given the following reasons:

- Dual occupancies are permitted within the R2 zoning and achieve the desired density for the site, as opposed to a single dwelling which is not a desirable outcome on a 696.77 sqm parcel of land

In order to provide for the housing needs of the community, in accordance with the objectives of the R2 zoning, it is a better planning outcome to propose a dual occupancy on the site as opposed to a single dwelling house. Having a dual occupancy on the site means two dwellings which will accommodate two families and so provide for the housing needs of the community.

NEGLIGIBLE ENVIRONMENTAL IMPACTS

It is considered that the variation to the minimum lot size results in negligible environmental impacts, as discussed below:

1. Overshadowing

Notwithstanding the shortfall to the minimum lot size for the purpose of dual occupancies, and the east-west orientation of the site, given the significant rear setback to the first floor, the overshadowing to the private open spaces and the rear neighbouring properties has been minimised.

2. Visual Bulk

The variation to the minimum lot size for the purpose of the dual occupancies does not result in additional visual bulk impact to the neighbouring properties. Adequate setbacks and high degree of articulation provide for a build form that has minimum visual bulk impact.

EXISTING DUAL OCCUPANCY ON A LOT SMALLER THAN 800 SQM

It is noted that No. 6 and No.25 Brinawa St currently contain a dual occupancy despite having a site area of approximately 690 sqm & 701 sqm.

/NDRSN

3. Adequately addressed the matters required to the demonstrative by subclause (3) – clause 4.6(4)(a)(i)

This report has adequately addressed the matters required to be demonstrated by subclause 3.

4. 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 – clause 4.6(4)(a)(ii)

The proposed development is in the public interest as it is consistent with the objectives of the standard and the zone.

PITTWATER LEP 2014 MINIMUM LOT SIZES FOR DUAL OCCUPANCIES OBJECTIVES

Below is the assessment of the objectives of the standard:

Objectives	Comments
(a) to achieve planned residential density	<p>Notwithstanding the shortfall to the minimum lot size for the purposes of dual occupancies it is considered that the planned <u>residential density</u> for the site is achieved given the following reasons:</p> <ul style="list-style-type: none"> - Dual occupancies are permitted with consent in the R2 zoning under the Pittwater LEP 2014, which demonstrates the proposed density for the subject site has been envisaged by the LEP - The proposal complies with the maximum FSR and building height which ensures the proposed density is consistent with the planned residential density
(b) to maintain a high level of residential amenity, including adequate provision of private open space	<p>As demonstrated in the accompanying architectural drawings and the Statement of Environmental Effects, the proposed dwellings and the existing neighbouring properties maintain high level of residential amenity, in terms of solar access and privacy, and the variation to the minimum lot size for dual occupancies does not create any issues in this regard.</p> <p>Importantly, despite the shortfall to the minimum lot size for the purpose of the dual occupancy, both proposed dwellings achieve private open spaces larger than 80 sqm, as envisaged by the Pittwater DCP, whilst maintaining adequate solar access to the said private open spaces.</p>



CONSISTENCY WITH THE OBJECTIVES OF THE ZONE R2 LOW DENSITY RESIDENTIAL

Below is the assessment of the objectives of the zoning:

Objectives	Comments
<i>To provide for the housing needs of the community within a low density residential environment</i>	The proposed dual occupancy development provides for two dwellings which will accommodate two families and so provide for the housing needs of the community.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i>	The variation to the minimum lot size for the purpose of dual occupancies does not raise any inconsistencies with these objectives.
<i>To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses</i>	

ITEM 4.2

DA2021/2083 - 5 FOREST ROAD, WARRIEWOOD - INCREASE IN STUDENT NUMBERS AT AN EXISTING EDUCATIONAL ESTABLISHMENT FROM 850 STUDENTS TO 1100 STUDENTS.

AUTHORISING MANAGER Steve Findlay
TRIM FILE REF 2022/657982
ATTACHMENTS 1 [↓](#) Assessment Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2021/2083 for Increase in student numbers at an existing educational establishment from 850 students to 1100 students on land at Lot 13 DP 1083731, 5 Forest Road, WARRIEWOOD, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2083
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 13 DP 1083731, 5 Forest Road WARRIEWOOD NSW 2102
Proposed Development:	Increase in student numbers at an existing educational establishment from 850 students to 1100 students
Zoning:	SP2 Infrastructure
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Trustees of the Roman Catholic Church
Applicant:	Trustees of the Roman Catholic Church
Application Lodged:	03/11/2021
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Community facility
Notified:	15/11/2021 to 29/11/2021
Advertised:	15/11/2021
Submissions Received:	12
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 0.00

EXECUTIVE SUMMARY

This application seeks consent to increase the maximum number of students at Mater Maria College from 850 to 1100, an increase of 250 students or 29.4%. The applicant has proposed a flexible condition to allow for fluctuation in student numbers without the need for subsequent Development or Modification Applications.

The application is referred to the Northern Beaches Local Planning Panel due to the number of submissions exceeding 10.

A pre-lodgment meeting for this proposal was held with Council and the applicant responded to the majority of the matters in the advice provided.

The notification of the application resulted in 12 submissions being made, all of which were in objection to the proposal. Concerns raised in the objections predominantly relate to traffic and parking.

Critical assessment issues include the impact on the local traffic network and parking. The existing College does not provide any parking within the school grounds for students and relies on the availability of kerbside parking in surrounding streets. The application has been supported by a Traffic Impact Assessment which has been reviewed by Councils Traffic Engineer and Transport for NSW, both of which have not raised any objections to the increase in student numbers, subject to special conditions.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval to increase the maximum enrolment capacity of the Mater Maria College from 850 students to 1100 students.

The College is currently operating above the approved maximum student number, with approximately 1040 student enrolments in 2021.

The College is proposing a flexible condition for enrolment capacity in line with the Planning Circular (PS 21-038) released on 2 December 2021 called "*Regulating expansion of schools*".

The circular discusses how non-government schools can experience fluctuations in enrolments due to changes in population and parental preference. This is evident by the significant growth experienced by the College since the original consent was granted in 2001.

The College has recently completed major works within the campus and does not anticipate any significant capital projects in the next 5 years. Based on the existing facilities on site, the College has the capacity to accommodate up to 1100 students in current facilities and allows for an approximate 10% fluctuation (based on the assessment of traffic and bushfire arrangements).

The applicant has proposed the following flexible condition:

Approved Enrolment Capacity

At the commencement of each school year, the school must submit to Council, the number of students enrolled for the current calendar year and the number of enrolments for the previous calendar year.

The number of students may increase over 1,100 by a maximum of 10% (110 students) subject to the submission of the following information to the satisfaction of Council:

- *An updated traffic and pedestrian management plan to reflect the increased number of students. The plan is to provide details of any road works or other necessary traffic management and/or operational measures that would be required to support the increased number of students.*
- *An updated Bushfire Emergency Management and Evacuation Plan shall be prepared, consistent with 'Development Planning- A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan December 2014' to account for the increase in student numbers and to ensure the safe evacuation of the school in the event of a bushfire.*

Any additional increase in students above the 10% permitted by this condition will require development consent.

The applicants submission and supporting documents to increase the numbers is based on 1100 students, however, the environmental impacts of an increase above 1100 students (1210 students) has not yet been tested or modelled in any of the supporting documentation submitted with the application. As such, Council cannot consider any further increase to what has been submitted and assessed in the report, that being 1100 students. A separate application would need to be lodged to increase the student numbers beyond the 1100 proposed in this Development Application.

No physical works are proposed under this development application.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - B6.6 On-Street Parking Facilities

SITE DESCRIPTION

Property Description:	Lot 13 DP 1083731 , 5 Forest Road WARRIEWOOD NSW 2102
Detailed Site Description:	<p>The subject site consists of one allotment located on the western end of Forest Road.</p> <p>The site is irregular in shape with a frontage of approximately 165m along Forest Road and a depth of approximately 214m. The site has a surveyed area of 51470m².</p>

The site is located within the SP2 Infrastructure zone - educational establishment and accommodates Mater Maria Catholic College. The school currently comprises of ten buildings including administration, classrooms, a lecture theatre, a gymnasium, and a library. Vehicle and pedestrian access to the College is via Forest Road and Angaphora Circuit.

The site contains undeveloped areas of native bushland to the west, north and south of the established building elements. Fern Creek traverses the southern portion of the site. There are no known threatened species on the site.

Detailed Description of Adjoining/Surrounding Development

The site is located within the Warriewood Valley Urban Land Release Area. The locality is characterised by a mix of residential, retail, commercial, industrial, recreational, and educational land uses.

Development to the east and north-east of the site is characterised mostly by two storey medium density residential flat buildings, and two storey single detached dwellings. Land to the west, south, and north of the site is comprised of native bushland. Further north and north-east is characterised generally by light industrial and commercial land uses.

Site Inspection

A site inspection was conducted 15 March 2022.

Map:



SITE HISTORY

The Mater Maria College has been in its current location since 1964.

A search of Council's records has revealed the following relevant site history:

Relevant Applications:

Application N1038/00 for Redevelopment of Mater Maria College, Warriewood was determined 23/11/2001

The application was for the upgrade to the existing school facilities to meet the current needs of students, staff and visitors. Condition D232 of the consent states: "the capacity of the school is to be restricted to a maximum of 850 students."

Application N1038/00/S96/2 for Modification to consent N1038/00 for the redevelopment of Mater Maria College, Warriewood was determined on 06/12/2017

The application included changes to building footprints and envelopes, including:

- A two-winged building containing administration areas, staff studies and general amenities (canteen), library; and
- Additions to existing Block D.

Application Mod2019/0293 for Modification of Development Consent N1038/00 granted for the redevelopment of Mater Maria Catholic College was withdrawn 24/09/2019

The Modification application was lodged in June 2019 seeking to modify condition D232 to increase the student cap to 1100 students to align with current numbers and associated minor car park upgrades to accommodate the additional students. A request for withdrawal was sent 16 September 2019, advising that:

- *Council was not satisfied that the development is substantially the same as that approved.*
- *Issues were identified with the traffic assessment submitted with the application.*
- *The application be withdrawn, and a DA submitted.*

The application was withdrawn on 24 September 2019.

Prelodgement Meeting

PLM2020/0143

A Prelodgement Meeting was held with the applicants on 21 July 2020, to discuss a proposal to increase the number of students from 850 to 1100.

The prelodgment meeting raised several concerns with the proposal, specifically to do with traffic and parking, and that an evacuation plan is required showing that the school can control egress from the site through the Garden Street or McPherson Street. Furthermore, Council was open to considering a **flexible condition** as discussed in the Planning Circular PS17-004 (replaced by PS 21-038 2 December 2021). The applicant would need to propose such a condition as part of the development application, including clear criteria for any such outcomes-based condition for Council to assess.

The notes concluded that the proposal may be supported subject to Council's Traffic Engineers being satisfied with the information provided with the application and the impacts created by the proposed

increase in student numbers. Those impacts were not able to be assessed at the prelodgement stage due to the absence of the information.

Council was unable to give a firm indication at the prelodgement stage as to whether the application would be supported.

Other Associated Applications:

- Application N0006/13 for Shade Structure was determined 03/06/2013.
- Application N0508/10 for Erection of shade sails was determined 28/10/2010.
- Application N0513/08 for Erection of three new shade sails was determined 08/12/2008.
- Application N0243/08 for Erection of security fencing around perimeter of site was determined 02/10/2008.
- Application N0057/07 for Construction of a waste water disposal system was on 21/12/2007.
- Application N0021/07 for a shade structure was determined 26/03/2007.
- Application N0020/05 for Construction of a shade structure was on determined 23/02/2005.
- Application 0128/88 for School Additions was determined 20/06/1988.

The land has been used for educational purposes for an extended period.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period. The proposed development retains the residential use of the site and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of

Section 4.15 Matters for Consideration	Comments
Regulation 2000) - Note, the DA was lodged prior to the 2021 Regulation 2021.	<p>consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land and the proposed development is to increase the number of students that attend the school. The site is used for a special fire protection purpose under Section

100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/11/2021 to 29/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 12 submission/s from:

Name:	Address:
Mrs Noeline O'Connor	11 Ilford Road FRENCHS FOREST NSW 2086
Mrs Deborah Louise Hallam	30 Tango Avenue DEE WHY NSW 2099
Mr Robert Scott	3 Edwin Ward Place MONA VALE NSW 2103
Mr Craig Everett	19 / 13 - 19 Angophora Circuit WARRIEWOOD NSW 2102
Rebecca Hurley	57 / 2 Forest Road WARRIEWOOD NSW 2102
Judith Ann Tye	8 / 10 Angophora Circuit WARRIEWOOD NSW 2102
Mr Gregory Brian Tye	154 Warriewood Road WARRIEWOOD NSW 2102
Mrs Lynette Judith Bradley	2 / 10 Angophora Circuit WARRIEWOOD NSW 2102
Ms Judy Anne Spicer	17 / 13 - 19 Angophora Circuit WARRIEWOOD NSW 2102
Mrs Caitlin Judy Mullane	4 / 10 Angophora Circuit WARRIEWOOD NSW 2102
Sue Jenkins	Address Unknown
Mrs Jo-Anne Patricia Stanning	Po Box 1604 MONA VALE NSW 1660

The following issues were raised in the submissions:

- Traffic and Parking
- Compliance with previous approval
- Emergency Evacuation

The above issues are addressed as follows:

- **Traffic and Parking**
The following is a list of concerns relating to traffic and parking:
 - *The local area does not have the capacity for additional on-street parking to offset the increased student numbers;*
 - *Increased traffic congestion in the surrounding streets during the peak morning and afternoon periods;*
 - *Existing issues relating to rubbish collect, street cleaning and Council clean up will be exacerbated by the increased student parking;*

- Concern that emergency vehicles will not be able to access the surrounding streets due to illegal and overparking;
- The TIA was inaccurate as it was completed during 'Covid' times and Term 3, when there is/was reduced school attendance and general traffic is/was reduced;
- Compliance with the Green Travel Plan will be impossible for the school to implement;
- Request for Council to apply additional parking measures - the request includes Angophora Circuit to be one way, more timed parking, residential parking permits and more enforcement of parking restrictions by Council Rangers.

Comment:

The College currently does not provide any onsite car parking for students and no car parking is proposed to accommodate the increased student numbers. A *Traffic Impact Assessment (TIA)* was submitted with the application, which assessed the availability of parking in the streets surrounding the College and the potential impact on the road network. The TIA has been reviewed by both Council's Traffic Engineer and TfNSW, who have raised no objections to the proposed increase in student numbers to 1100 subject to conditions. These conditions include the implementation of the applicants *Green Travel Plan*, *Drop-Off/Pick-Up Management Plan*, monitoring and reporting back to Council. The matter has been addressed in detail elsewhere in this report.

The kerbside of the road is for car parking, unless marked otherwise. Rubbish bins are to be located on the kerb and not on the road for collection. If a rubbish bin is located on the kerb and a car is parked in front of the bin, the Waste Collection Officer is required to exit the Rubbish Truck and manoeuvre the rubbish bin into a location where it can be accessed. If cars are parked legally, then it is Council's responsibility to make appropriate allowances for the collection of rubbish bins, as well as street cleaning or Council clean up. Any incidents of rubbish not being collected should be reported to Council for investigation.

The roads and streets surrounding the College have been designed in accordance with standard road design. The application has been reviewed by Councils Traffic Engineers and TfNSW who have raised no concerns regarding access for emergency vehicles.

The parking study in the TIA was completed 11 August 2021, which falls within Term 3 of the school year and the *Travel Behaviour Survey* was completed March 2021, which falls within Term 1. The College, through the applicant, has confirmed that in-person learning was occurring during these dates. High School Certificate takes place in Term 4 and Year 12 students do not attend school during normal school hours from the end of Term 3. The application has been reviewed by both Councils Traffic Engineers and TfNSW, who have not raised any concerns with the date and time these surveys were completed.

Councils Traffic Engineer has reviewed the *TIA*, *Green Travel Plan* and proposed flexible student numbers condition. As part of the recommendations of the *Green Travel Plan*, there will be annual monitoring of student and staff travel habits and this will inform future decision making, including when to make interventions. The plans also recommend a designated staff member who will be responsible for the Green Travel Plans' administration and monitoring as well as being the liaison for Council and the TfNSW. The recommendations of the Green Travel Plans have been included as a condition of consent. Councils Traffic Engineer has raised no objections to the proposed Green Travel Plan subject to conditions.

The application was referred to Councils Traffic Engineers, who have not recommended any additional parking or traffic requirements for surrounding streets near the College. Councils Rangers regularly patrol the area in question. However, they are unable to be always be there. If a car is parked illegally (double parked, blocking traffic, parked longer than the required) then

this should be reported to the Council Rangers to investigate.

- **Compliance with Previous Approval**

The submission raised the following; *"The original planning approval was for 850 students, this number was surpassed in 2012. I am not sure why this was not addressed previously. The school has shown disregard in the approved student numbers and I doubt will restrict the number of students to the 1100 planned".*

Comment:

Schools can experience fluctuations in enrolments due to changes in population and parental preference. The College is the only Catholic co-education High School on the Northern Beaches and has experienced significant growth since 2001. While the College has exceeded the approved student capacity, it is in the process of rectifying this issue, by lodging a new development application.

If the College exceeds 1100 students this can be reported to Council to investigate. The College can also apply for a new development application to increase students numbers. A new development application would require the College to demonstrate any increase in student numbers will not adversely affect on-street parking and the local road network.

- **Emergency Evacuation**

The submissions raised concern that the school or surrounding area would not be able to evacuate from the area efficiently and quickly.

Comment:

The application has been reviewed by Councils Traffic Engineers and TfNSW, who have raised no concerns regarding access for emergency vehicles or emergency egress from the College or surrounding area. Furthermore, the school has submitted an Emergency Management Plan and Bushfire Evacuation Plan, which has been developed in accordance with 'A Guide for Developing a Bushfire Evacuation Plan' Planning and Environment Services - NSW Rural Fire Service and provides details for how the College will evacuate in the event of an emergency.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. As there are no physical works proposed as part of the application, there are no concerns with the application and no conditions are imposed.
Environmental Health (Industrial)	Supported The proposed increase in cap of student numbers is not likely to affect the criteria which the Environmental Health team assess. We have no objections to the proposal.
Strategic and Place Planning (Development Contributions)	Supported DA2021/2083 proposes the increase in the enrolment capacity of Mater Maria Catholic College at 5 Forest Road, Warriewood Valley

Internal Referral Body	Comments
	<p>from 850 to 1,100 students. The DA seeks an amendment to an operational condition for 850 students previously granted in 2001 on the site under N1038/00.</p> <p>No physical works are proposed under this DA. Physical works associated with the increase in enrolment capacity have been levied under previous development applications.</p> <p>As no physical works are proposed under this DA, contributions are not payable under the Warriewood Valley Contributions Plan.</p>
Traffic Engineer	<p><i>Supported, subject to conditions</i></p> <p>The existing consent (N1038/00) for Mater Maria College permits a maximum enrolment capacity of 850 students. The College is currently operating above this cap, with approximately 1,040 students.</p> <p>Modification Application (MOD2019/0293) was lodged to change the capacity. However, Council directed the College to apply through a DA process. Therefore, DA (DA2021/2083) has been lodged to increase the capacity to 1,100 students.</p> <p>There are no changes to the existing land use on the site. No physical work is required.</p> <p>Parking:</p> <p>PDCP 2014 does not specify parking rates for Educational Land Uses.</p> <p>A Traffic Impact Assessment (TIA) has been submitted (2021/759155) and provides the following parking breakdown:</p> <p><u>Available Parking:</u></p> <ul style="list-style-type: none"> • Off-Street: 97 among them 91 for Staff (including 5 Accessible parking), 2 visitor parking, 1 bus bay and three (3) 30 minutes parking. No parking is available for students. Current parking occupancy is 85%. • On-Street: 174 spaces available on surrounding streets Forest Road, Casuarina Drive, Callistemon Way and Angophora Circuit. Among them 27 are 4-hour parking, 1 is 1-hour parking and the rest are unrestricted. About 50% are used by School. The maximum occupancy rate is about 77.

Internal Referral Body	Comments
	<p><u>Required:</u></p> <ul style="list-style-type: none"> Based on the existing parking rate of staff parking (0.75), the required number of parking for 120 staff = 90, Based on the existing parking rate of student parking (0.05), the required number of parking for 1,100 students = 55, Total = 90+55=145, Based on RMS Guidelines, by considering average parking rate (0.11) for 1,100 students total parking requirement (Staff + Student) = 121 <p>The TIA indicates that the school currently has a larger reliance on private vehicles than the RMS Guidelines suggest is likely for secondary schools. Further, existing travel behaviour indicates the demand associated with the approved and proposed student capacities both exceed the existing on-site parking provision by 40.</p> <p>Behavioural changes and strategies by encouraging staff, students and parents to use sustainable transport modes for their travel to and from the College could reduce this parking demand and therefore reduce the number of on-site parking spaces required. This not only prevents the need for additional on-site school car-park but also frees up parking spots in the surrounding streets and improves traffic flow around the school. Hence, safety will be improved.</p> <p>Based on the benefits of behavioural changes and in line with Council's comments at the pre-lodgement meeting (2020/369278), a Green Travel Plan (GTP) has been prepared and submitted (2021/759156). The GTP approach offers the opportunity to address long-standing issues often associated with secondary schools by reducing congestion, reducing car parking in surrounding residential streets, reducing local pollution, and importantly increasing physical activity in students.</p> <p>The proposed GTP will address this long-standing issue, with strategies to create a mode shift toward sustainable travel across the school community and a focus on reducing student parking demand. This is considered a better outcome than the development of a new on-site car park. The GTP initiative is impressive. However, behavioural changes are difficult to achieve and some strategies may be legally challenging and few others rely on external bodies like Council, TfNSW etc.</p>

Internal Referral Body	Comments
	<p>TfNSW has reviewed the submission and notes there are no physical works proposed and that the school is already operating with approximately 1040 student enrolments. As such, TfNSW raises no objections to the formal increase of enrolments from 850 to 1100 students.</p> <p>Traffic: Primary vehicle access to the School via Forest Road. Also, a pedestrian entrance is located on Angophora Circuit.</p> <p>There are two key intersections on Casuarina Drive used to access the school. Both are controlled by roundabouts.</p> <ul style="list-style-type: none"> - Forest Road/Casuarina Drive/Macpherson Street; - Angophora Circuit/Casuarina Drive/Callistemon Way. <p>Sidra Modelling has been done to analyse traffic impact based on TfNSW <i>Trip Generations Surveys, Schools Analysis Report 2014</i> and tested for approved, current and proposed student capacity.</p> <p>Both key intersections used to access the school on Casuarina Drive remain the same level of service (A & B) in the three tested scenarios (approved, current, and proposed), indicating that the proposed additional enrolments are unlikely to have any adverse impacts on the existing operations of these intersections.</p> <p>Drop-Off / Pick-Up Management Plan</p> <p>A drop-off/pick-up management plan is provided to address safety and operational issues. It will be communicated to new and existing parents and be adopted by the school during morning and afternoon drop-off/pick-up periods.</p> <p>Also, to facilitate a Drop-off / Pick-up facility and ensure pedestrian safety, Council required the Developer to build a footpath at the cul-de-sac end of Forest Road.</p> <p>Public transport</p> <p>There are limited public bus connections between the school and local areas. However, there are many school services in the morning and afternoon peak periods providing access for north (Avalon), south (Manly) and east (Terrey Hills) residing students.</p>

Internal Referral Body	Comments
	<p>Active transport</p> <p>The local road network (including Forrest Road, Macpherson Street and Casuarina Drive) provides shared footpaths on both sides of the road. Pedestrian islands are available in all directions at the roundabout at the Forest Road and Casuarina Drive intersection. This facilitates safe pedestrian access to the school from the surrounding residential areas and bus stops.</p> <p>Pedestrian safety: No concerns.</p> <p>Bushfire / Emergency Evacuation: As per the DA Pre-lodgement Meeting, the developer was required to provide an evacuation plan that demonstrates the school can control egress from the site through Garden Street or Macpherson Street. The Council recommended this to prevent the development from trying to evacuate to the north in the event of an Emergency and impacting the network at the Ponderosa Parade and Mona Vale Road intersection.</p> <p>However, the submitted Bushfire / Emergency Evacuation Plan includes Pittwater RSL Club carpark as an offsite emergency assembly point. This would require the school to evacuate to the north through the Ponderosa Pde/Jubilee Ave intersection, a scenario Council specifically wanted to avoid. The Evacuation Plan will therefore require revision so as to minimise evacuation traffic impacts.</p> <p>The New South Wales Rural Fire Service (NSW RFS) / Bush Fire Safety Authority confirms that subject to the General Terms of Approval being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under s100b of the Rural Fires Act 1997. (Trim: 2022/587059).</p> <p>The Bushfire / Emergency Evacuation Plan will be reviewed periodically and no less frequently than once every three years from the date of implementation or in the event of any information, incident, injury, or illness that would demonstrate the need for a review, or resulting from any legislative or organisational change that would warrant a review. The reviewed Plan should be submitted to Council for consideration.</p>

Internal Referral Body	Comments
	<p>Footpath: To assist pedestrian access to/from the school a footpath, in accordance with Council's standard specifications, will be required around the cul-de-sac at the western end of Forest Road. The footpath to extend between the western edge of the vehicular crossing serving the School and the driveway serving No.2 Forest Road. Detailed designs demonstrating compliance will be requested as consent condition for Roads Act approval with construction to be completed prior to the issue of an Occupation Certificate.</p> <p>Ongoing All facilities should be maintained throughout the lifetime of the project. Parking impacts are reviewed annually and evaluate the success of the GTP. Necessary measures need to be taken to minimise the impacts.</p> <p>Conclusion Given the above, the development proposal can be approved with conditions.</p>

External Referral Body	Comments
Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.122 - Traffic generating development	Supported TfNSW has reviewed the submission and notes there are no physical works proposed and that the school is already operating with approximately 1040 student enrolments. as such, TfNSW raises no objection to the formal increase of enrolments from 850 to 1100 students.
Integrated Development - Rural Fire Service - Rural Fires Act, s100B - Subdivisions and Special Fire Protection Purposes	Supported, subject to conditions The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted. General Terms of Approval, under Division 4.8 of the Environmental Planning and Assessment Act 1979, and a Bush Fire Safety Authority, under section 100B of the Rural Fires Act 1997, are now issued subject to conditions.

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 Educational Establishments and Child Care Facilities 2017

PART 4 - SCHOOLS

Part 4, Clause 35 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 stipulates that:

(6) Before determining a development application for development of a kind referred to in subclause (1), (3) or (5), the consent authority must take into consideration—

(a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 4, and

(b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.

Comment:

The proposal is for the increase in student numbers. No works are proposed as part of the application. The design quality principles set out in Schedule 4 do not apply and there is no change in school facilities.

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 educational facility purposes for a significant period 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 suitable for the educational facility land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

No physical works are proposed as part of the application and there will be no changes to the

Development Standards under the PLEP2014 .

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Warriewood Valley Release Area	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.4 Floodplain risk management	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

No physical works are proposed as part of the application. There will be no changes to the Built Form Controls under the P21DCP.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
C6.5 Utilities, Services and Infrastructure Provision	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Merit Consideration

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

- ***An adequate number of parking and service spaces that meets the demands generated by the development.***

Comment:

P21DCP does not have a parking requirement for an educational institution and the parking rate is calculated from the *RMS Generations Survey, Schools Analysis Report, 2014*. The applicant has provided a TIA, which provides the required carparking spaces for the site, which has been reviewed by Councils Traffic Engineer.

Required Parking:

- Based on the existing parking rate of staff parking (0.75), the required number of parking for 120 staff = **90 spaces**
- Based on the existing parking rate of student parking (0.05), the required number of parking for 1,100 students = **55 spaces**
- Total = 90+55=**145**
- Based on RMS Guidelines, by considering the average parking rate (0.11) for 1,100 students, the total parking requirement (Staff + Students) = **121 spaces**

Available Parking:

Off-Street: 97 among them 91 for Staff (including 5 Accessible parking), 2 visitor parking, 1 bus bay and 3 x 30 minute parking spaces. No parking is available for students. Current parking occupancy is **85%**.

On-Street: 174 spaces are available on surrounding streets, including; Forest Road, Casuarina Drive, Callistemon Way and Angophora Circuit. Among them, 27 are 4-hour parking, 1 is 1-hour parking and the rest are unrestricted. About 50% are used by the College. The maximum occupancy rate is about 77.

The College currently does not supply onsite car parking for students and no car parking is proposed for students under this DA. A TIA submitted with the application assessed the availability of parking in the streets surrounding the College. The parking study was based on the number of Provisional 'P' plates found to be parking on the surrounding streets.

A Green Travel Plan (GTP) was prepared by the applicant to reduce the Colleges reliance on private vehicles, with a focus on reducing student parking demand. The applicant has proposed changes and strategies to reduce parking demand and therefore reduce the number of onsite/off site parking. The GTP provides a plan to reduce the Colleges reliance on private vehicles, by introducing student parking permits. A condition is recommended limiting the number of parking permits the school issues to students. This along with greater monitoring by the College should help to curb the current reliance on on-street parking.

Councils Traffic Engineer has also reviewed the application and supports the proposal subject to conditions. These conditions include the implementation of the Green Travel Plan and Drop-Off / Pick-Up Management Plan, monitoring and reporting back to Council.

The TIA has demonstrated that there is on-street parking available to accommodate student numbers and residents. If student enrolment exceeds 1100, the College needs to submit a revised Development Application to Council with a new TIA, demonstrating that the surrounding streets and road network can accommodate the increased traffic and parking demand. The applicant will also need to demonstrate that they have/will implement any recommendations of the reports, such as details of any road works or other necessary traffic management and/or operational measures that would be required to support the increased number of students.

It is considered that there is adequate carparking within the College and surrounding area to accommodate the proposed increased numbers of students.

- ***Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.***

Comment:

No changes are proposed to the existing car parking on the site.

- ***Safe and convenient parking.***

Comment:

No changes are proposed to the existing car parking on the site.

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

B6.6 On-Street Parking Facilities

To facilitate the Pick-up/ Drop-off zone and ensure pedestrian safety, Councils Traffic Engineer has recommended a condition requiring the College to provide additional footpaths within the Drop-off/Pick-up zone.

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.

Planning Circular (PS 21-038) Regulating expansion of schools

As recognised in Planning Circular (PS 21-038) released 2 December 2021 *Regulating the Expansion of Schools*, Non-government schools can experience fluctuations in enrolments due to changes in population and parental preference. This is evidenced by the significant growth experienced by the College since the original consent was granted in 2001.

The Circular provides options for the consent authority to consider whether a capacity condition should be addressed as a prescriptive, numerical cap or an outcome-based condition with criteria to assess. Where caps on student or staff numbers are to be applied, they are to be based on clear evidence that the operational capacity of the school should be limited according to the environmental constraints of the site and/or the surrounding locality.

The College has recently completed major works on the current campus and does not anticipate any significant capital projects in the next 5 years. Based on the existing facilities on site, the school has the capacity to accommodate up to 1100 students and the applicant in their proposed condition proposed to allow a further 10% fluctuation of student numbers (up to 1210 students).

The current 2022 enrolment numbers for the school are 1072 with an enrolment forecast for 2023 of 1100. The current number for Year 7 enrolments in 2023 is 235, which is likely to drop to 225 by Term 1

2023. Generally, the College finalises enrolments two years prior, at the end of Term 1 and sends out first round offers at the beginning of Term 2. It is anticipated Year 7 enrolments will be maintained at approximately 225 students.

Due to the ongoing nature of fluctuating student enrolment numbers the applicant proposed the following flexible Student Capacity condition:

Student Capacity

At the commencement of each school year, the school must submit to Council the number of students enrolled for the current calendar year and the number of enrolments for the previous calendar year.

The number of students may increase over 1,100 by a maximum of 10% (110 students) subject to the submission of the following information to the satisfaction of Council:

- An updated traffic and pedestrian management plan to reflect the increased number of students. The plan is to provide details of any road works or other necessary traffic management and/or operational measures that would be required to support the increased number of students.*
- An updated Bush Fire Emergency Management and Evacuation Plan shall be prepared consistent with 'Development Planning- A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan December 2014' to account for the increase in student numbers and to ensure the safe evacuation of the school in the event of a bushfire.*

Any additional increase in students above the 10% permitted by this condition will require development consent.

The applicant's submission to increase student numbers assessment is based on 1100 students. No evidence has been provided to Council to demonstrate that an increase to student numbers above 10% will not impact on the local traffic network or on-street parking. The environmental student limit for the site (1,210 students) has not yet been tested. As such, Council cannot consider any further increase to what has been submitted and assessed in this report (that being 1100 students). If the applicant wishes to pursue an outcome based consent condition in the future that anticipates a further increase in student numbers, they would be required to undertake traffic and parking modelling to establish what specific traffic measures would be provided if the student population were to grow beyond the 1100. This is to ensure that an appropriate assessment of impacts of the additional students can be completed, and Council is satisfied with the mitigation measures. A separate application would need to be lodged to increase the student numbers beyond the 1100 proposed in this Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

This proposal involves an increase in the student enrolment capacity from 850 to 1100 students and is being referred to the NBLPP due to it being a "contentious development", in that it attracted 10 or more unique submissions (total of twelve (12) submissions).

The concerns raised within the submissions have been addressed within the report and a merit assessment was carried out against the relevant planning controls and other policies and legislation.

The critical assessment issues are traffic and parking, which have been comprehensively considered by Councils Traffic Engineers and TfNSW and have been addressed within this report.

It has been found that the increase in the student enrolment capacity from 850 students to 1100 students will not have an adverse effect on the local road network or the availability of on-street parking. Additional measures proposed by the applicant, such as the GTP and pick-up and drop-off management plan, will help to alleviate some of the traffic and parking issues associated with the College.

The proposed flexible enrolment condition as proposed by the applicant, allowing the College to exceed 1100 students (to a maximum of 10% or a further 110 students) cannot be supported, as the environmental student limit for the site (1,210 students) has not yet been tested. As such, Council cannot consider any further increase to student numbers above what has been submitted and assessed in this report.

On the balance of all relevant matters, and after a comprehensive assessment of all documentation submitted by the applicant and issues raised by the residents, this report concludes that the NBLPP, as the consent authority, should APPROVE the development application, subject to the attached conditions.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2021/2083 for Increase in student numbers at an existing educational establishment from 850 students to 1100 students on land at Lot 13 DP 1083731, 5 Forest Road, WARRIEWOOD, subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS

1. **Bushfire / Emergency Evacuation Plan**

The Bushfire/Emergency Management Plans shall be amended to avoid evacuation procedures which rely upon or propose emergency evacuation to the north to/through the Ponderosa Parade/Jubilee Avenue intersection or other egress routes linking to Mona Vale Road.

The revised plans are to be lodged with Council for review by Council's Transport Network Manager and confirmation that the plans have satisfied the requirement.

Reason: To minimise traffic impacts on the network associated with evacuation procedures.

2. **Footpath Construction Approval**

A footpath shall be constructed around the cul-de-sac of Forest Road between the western edge of the vehicular crossing serving the College and the driveway of No.2 Forest Road. The design and construction shall be in accordance with Council's standard specifications.

Detailed designs demonstrating compliance are to be submitted to Council in the form of an application for a s138 Approval under the Roads Act.

Reason: To facilitate a Drop-off/Pick-up facility and to ensure pedestrian safety.

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

3. **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

| _____ |

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Marta Maria College Green Travel Plan	April 2021	Urbis
Traffic Impact Assessment - Mater Maria College, Warriewood	7 September 2021	Urbis
Mater Maria College 5 Forest Road, Warriewood NSW	3rd July 2017	Morris Goding Accessibility Consulting
PRELIMINARY BCA ASSESSMENT REPORT 16/357 BCA Assessment	7 July 2017	Building Control Group
EMERGENCY MANAGEMENT PLAN - BUSHFIRE IN CATASTROPHIC CONDITIONS	Effective Date January 2020	-
EMERGENCY MANAGEMENT PLAN	Effective March 2022	-
BUSHFIRE PROTECTION ASSESSMENT DEVELOPMENT APPLICATION FOR AMENDMENTS TO THE DEVELOPMENT CONSENT FOR THE MATER MARIE CATHOLIC COLLEGE LOT 13 in DP 1083731, FOREST ROAD, WARRIEWOOD Assessment number - B223880	21.06.2022	Australian Bushfire Protection Planners Pty Limited

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.

4. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Service	Response NSW RFS Referral	14 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.

5. **Footpath Construction**

A footpath shall be constructed around the cul-de-sac of Forest Road between the western edge of the vehicular crossing serving the College and the driveway of No.2 Forest Road in accordance with s138 Approval under the Roads Act.

Reason: To facilitate a Drop-off/Pick-up facility and to ensure pedestrian safety.

6. **Accessible parking facilities**

Any future accessible parking needs for the school should be provided within the school premises and designed in accordance with 'AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities'.

Reason: To provide access to persons with mobility impairment or disabilities.

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

7. **Review of Bushfire / Emergency Evacuation Plan**

The Bushfire / Emergency Evacuation Plan will be reviewed periodically and no less frequently than once every three years from the date of implementation or in the event of any information, incident, injury, or illness that would demonstrate the need for a review, or resulting from any legislative or organisational change that would warrant a review. The reviewed Plan must be submitted to Councils Transport Network Manager for consideration.

Reason: To ensure the Bushfire / Emergency Evacuation Plan has been up to date to incorporate changes.

8. **Maximum Student Numbers**

The maximum number of students at the school must not exceed 1100.

Reason: To restrict the impacts of the school on the local area.

9. **School Issued Car parking Permits**

The College is to issue a maximum of 50 on-street Student Parking Permits.

The number of parking permits issued by the College needs to be provided to Council yearly for review.

Reason: To minimise the impact of student car parking on streets/roads surrounding Mater Maria College.

10. **Parking review of Green Travel Plan**

Parking impacts relating to school operations are to be reviewed for the first two years of the consent's operation. This is to evaluate the success of the Green Travel Plan. The parking review report which reviews on-street parking occupancies in streets within a 400m walking catchment of the school shall be submitted to Councils Transport Network Manager annually for review.

Reason: To minimise parking impacts.

11. **Off-Street Parking Facilities**

Existing off-street parking facilities should be maintained to the intended purpose throughout the lifetime of the project

Reason: To facilitate and manage off-street parking facility.

ITEM 4.3**DA2022/0362 - 241 MCCARRS CREEK ROAD, CHURCH
POINT - CONSTRUCTION OF A DWELLING HOUSE.****AUTHORISING MANAGER****Steve Findlay****TRIM FILE REF****2022/658024****ATTACHMENTS**

- 1** [↓ Assessment Report](#)
- 2** [↓ Site Plans & Elevations](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/0362 for Construction of a dwelling house on land at Lot 30 DP 20097, 241 McCarrs Creek Road, CHURCH POINT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0362
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 30 DP 20097, 241 McCarrs Creek Road CHURCH POINT NSW 2105
Proposed Development:	Construction of a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Able Developers Pty Ltd
Applicant:	Arquero Architects Pty Ltd
Application Lodged:	12/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	20/05/2022 to 03/06/2022
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,360,000.00

EXECUTIVE SUMMARY

The proposed development involves the construction of a 4 storey dwelling house on a vacant allotment. The application has attracted 10 submissions by way of objection to the proposal, which requires referral to the Northern Beaches Local Planning Panel (NBLPP).

The key issues raised within the submissions relate to building bulk and scale, tree removal, excavation and impacts upon local fauna. These issues have been assessed in detail and the proposal is found to be satisfactory.

The proposed development complies with the 10.0m maximum building height development standard for steeply sloping sites under the PLEP 2014 and the design of the dwelling employs a stepped built form that progressively steps down in height with the slope of the land to integrate with the landform

and landscape. The earthworks proposed are also limited to the building footprint, which minimises the visual impacts upon the development by virtue of the retention of the existing topographical levels around the sides and rear of the proposed dwelling house.

The proposed development involves minor numerical breaches to the Pittwater 21 DCP side setback and landscaped area provisions. These technical non-compliances are minor in nature and do not result in any unreasonable environmental or amenity impacts that would warrant refusal of the application.

Overall, the proposed development represents a well-considered design that has responded to the environmental constraints of the site.

It is recommended that the NBLPP approve the application, subject to the recommended conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks approval for the construction of a four storey dwelling house including tree removal, earthworks, a vehicle crossing and internal driveway. The proposed dwelling house is only three storeys above ground level atop of a basement garage.

Key components of the proposed development are as follows:

Level 1

- Integrated double garage
- Storage and access
- Lift shaft

Level 2

- Entry foyer
- Two bedrooms accompanied by ensuites
- Living space
- Lift shaft
- Staircase to access upper floors

Level 3

- Main bedroom with WIR and ensuite
- Two additional bedrooms
- Additional bathroom
- Lift shaft
- Staircase to access upper floor

Level 4

- Open plan kitchen, living and dining room
- Elevated terrace on front elevation
- Multi-purpose room

- Powder room
- Level turfed private open space adjacent to the rear façade

Landscaping

- Removal of 19 prescribed trees within the site and road reserve.
- New external stairs.
- New 1.8m high side and rear boundary fencing.
- New screen planting along the northern side boundary.
- New replacement canopy planting.

Driveway

- New vehicle crossing and internal driveway.

Stormwater Management

- Stormwater to be conveyed to McCarrs Creek Road via on-site detention tanking.

Earthworks

- Excavate a 241sqm footprint to accommodate for the proposed dwelling house.
- Filling within a 35sqm footprint to accommodate for the dwelling house.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - A4.4 Church Point and Bayview Locality
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation
Pittwater 21 Development Control Plan - D4.5 Front building line
Pittwater 21 Development Control Plan - D4.6 Side and rear building line
Pittwater 21 Development Control Plan - D4.8 Building envelope
Pittwater 21 Development Control Plan - D4.10 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D4.12 Fences - Flora and Fauna Conservation Areas

SITE DESCRIPTION

Property Description:	Lot 30 DP 20097 , 241 McCarrs Creek Road CHURCH POINT NSW 2105
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of McCarrs Creek Road, Church Point.</p> <p>The site is regular in shape with a frontage of 12.425m and respective depths of 44.215m and 45.56m along the northern and southern side boundaries. The site has a surveyed area of 547.5sqm.</p> <p>The site is located within the C4 Environmental Living zone pursuant to Pittwater LEP 2014 and is currently a densely vegetation vacant lot.</p> <p>The site experiences a fall of approximately 17.63m that slopes away from the rear boundary towards the front boundary. This represents an approximate slope of 38.7%. The slope of the land becomes steeper through the front third (i.e. western third) of the site.</p> <p>Natural environmental constraints on the site include geotechnical and bushfire hazards.</p> <p>Description of Surrounding Development</p> <p>The site forms part of 7 vacant allotments that have recently been sold into private ownership by Transport for NSW. All of these sites are currently vacant. However, No. 243 to the south has obtained a Development Consent for a 4 storey dwelling house and No. 245 further to the south has obtained a Development Consent for a 2 storey dwelling house with a detached parking area with inclinator.</p>

	<p>Located to the east of the site comprises Council owned land zoned C2 Environmental Conservation, which contains remnant bushland. Other development along McCarrs Creek Road comprises detached low density residential development (i.e. dwelling houses) on sloping sites, ranging from 2 to 4 levels in height.</p>
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Map:



SITE HISTORY

The site is vacant and was previously owned by Transport for NSW. There are no applications relevant to this site.

APPLICATION HISTORY

A site inspection was carried out on 18 May 2022.

Following the preliminary assessment of the application, which included the aforementioned site inspection, Council wrote to the applicant raising concern with the following aspects of the proposal:

- Non-compliance with Clause 4.3(2D) of Pittwater LEP 2014, which permits a 10m building height on sloping sites.
- Excessive bulk and scale through lack of terracing the built form to progressively step down in height with the slope of the land.
- Excessive tree removal, noting that 100% of the existing tree canopy was proposed for removal.

Subsequently, the applicant submitted a series of amended plans to demonstrate the following:

- Comply with the 10.0m building height standard.
- Terrace the built form to ensure that the facade of each level is progressively stepped back from

the lower floor. The amended floor plate is consistent with the recently approved 4 storey dwelling on the southern adjacent site (243 McCarrs Creek Road).

- Retain 3 native trees on the subject site (NB - Council's Landscape Officer has recommended that additional trees be retained via condition).

In addition, the following revised documentation was also submitted:

- Amended stormwater plans
- Amended Bushfire Report
- Amended Flora and Fauna Report
- Amended Arborist Report

The amended plans constitute a reduced environmental impact. Therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans, amended stormwater plans, amended arborist report, amended biodiversity report and amended bushfire report. This documentation was subsequently received to Council's satisfaction.</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</p>

Section 4.15 Matters for Consideration	Comments
	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 Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

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 20/05/2022 to 03/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:

Name:	Address:
Mr Josko Simundza	132 McCarrs Creek Road CHURCH POINT NSW 2105
Amit Dusseja	1 Gillingham Street SCHOFIELDS NSW 2762
Mr Davyd Bornstein	4 Burraga Avenue TERREY HILLS NSW 2084
Mrs Karrayan Rozenberg	152 McCarrs Creek Road CHURCH POINT NSW 2105
Ms Leigh McGaghey	13 The Circle BILGOLA PLATEAU NSW 2107
Pittwater Natural Heritage Association	PO Box 187 AVALON BEACH NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Bayview Church Point Residents Association	PO Box 348 CHURCH POINT NSW 2105
Mrs Edna May Blanchard	230 McCarrs Creek Road CHURCH POINT NSW 2105
Pittwater Community Alliance (PCA)	19 Belinda Place NEWPORT NSW 2106

Following the public exhibition period, a total of 10 submissions were received, all of which raised objection to the proposal.

The following issues were raised in the submissions:

- **Bulk and Scale**

The submissions raised concerns that the bulk and scale of the proposed dwelling house is excessive and out of character with the locality.

Comment:

The proposed dwelling house, as proposed to be amended via conditions, is consistent with the bulk and scale of the recently approved 4 storey dwelling house on the southern adjacent property (243 McCarrs Creek Road). The proposed development sits under the 10.0m height plane and the facades of the building have been terraced to ensure the development adequately steps down in height with the slope of the land, in turn integrating with the landform and landscape. It is also worth noting that there are numerous examples of 4 level dwellings along McCarrs Creek Road. Overall, the bulk and scale of the proposed dwelling house, as amended via conditions, will be generally consistent with the existing and desired character of the area.

- **Excavation/Geotechnical Hazards**

The submissions raised concerns that the proposal results in excessive excavation.

Comment:

It is noted that due to the significant slope of the site, a substantial degree of excavation is required to accommodate construction of a dwelling house, whilst maintaining a reasonable building height. The proposal has stepped the excavation on each level to prevent unnecessary excavation and limited the cut in the building footprint. These factors constitute a well-considered and site responsive approach to this constrained site. The resulting earthworks will

not have a detrimental impact upon the visual amenity of the area, once the dwelling house has been constructed.

The application is accompanied by a Geotechnical Report (prepared by Geo-Environmental Engineering, dated 7 February 2022), which concludes that the proposal will achieve an acceptable level of geotechnical risk, subject to recommendations stipulated within the report. These recommendations have been included as recommended conditions of consent.

- **Privacy**

The submissions raised concerns that the proposed front balconies and various windows on the side elevations will result in unreasonable privacy impacts.

Comment:

The front balconies are orientated towards the street and would only provide for overlooking onto terrace/balcony areas or windows that are located within the front portions of future adjacent dwelling houses. Screening on the side elevations of the front balconies is not considered necessary in this instance, noting that the main private open spaces on adjacent buildings would be situated to the rear of the dwellings. The approved private open space on the southern adjacent property (243 McCarrs Creek Road) will not be adversely impacted by the proposed development.

In relation to the side windows, it is noted that a number of the large window openings adjoin low use rooms (i.e. bedrooms) and do not represent unreasonable privacy impacts. A large north facing window (W06) adjoins the dining room at the rear of the proposed dwelling. However, the proposed side boundary fencing will prevent overlooking into the northern adjacent site, as the window is located in close proximity to ground level.

- **Solar Access**

The submissions raised concerns of overshadowing.

Comment:

As detailed later in this report, the southern adjacent dwelling house will maintain the required 3 hours of solar access to living room windows and private open space.

- **Tree Removal**

The submissions raised concerns that the proposal results in excessive tree removal.

Comment:

The proposal results in the removal of 19 prescribed trees. Council's Landscape and Biodiversity Officers note that significant tree removal is unavoidable as the site is vacant, heavily vegetated, bushfire prone and not subject to previous development. Due to the bushfire hazards, significant tree removal is necessitated to enable an Inner Protection Area that accords with the requirements of Planning for Bushfire Protection 2019. However, the proposal will include new planting and retains three canopy trees, which will maintain a compliant Inner Protection Area and will assist in softening the built form.

Council's Biodiversity and Landscape referral bodies raise no objections to the nature and extent of tree removal, subject to conditions requiring replanting.

- **Impacts upon local native Fauna**

The submissions raised concerns that the proposed development will adversely impact upon native fauna.

Comment:

Council's Biodiversity Officer has reviewed the application in this regard and raised no objections to approval, subject to recommended conditions that are in accordance with the Consulting Ecologist's proposed mitigation measures to reduce impacts to native wildlife during demolition and construction works.

- **External Finishes**

The submissions raised concerns that the external finishes to the dwelling are not sympathetic to the natural environment.

Comment:

The proposed external finishes consist of 'dark and earthy' tones that comply with the Pittwater 21 DCP colours and finishes control.

Conclusion

The concerns raised within the submissions have been addressed above and are alleviated through the recommended conditions where appropriate. The concerns do not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported - subject to recommended conditions</p> <p>Additional Information Comment 30/08/22: The amended Arboricultural Impact Assessment (AIA) by NSW Trees Arboricultural Consultants</p> <p>It is noted that the property has not previously been developed and as such requires extensive <i>australis</i> recommended for removal in the AIA; however, the driveway works are approximately to supervise all work within the tree protection zone of trees to be retained. The vegetation</p> <p>The Landscape Plan provides a landscape setting with predominantly native tree and undergrowth</p> <p>No stockpiling, storage of materials or builders amenities is permissible in the tree protection zone</p> <p>All new landscaping should be implemented in accordance with the Asset Protection Zone</p> <p><u>Original Comment:</u> The development application is for the construction of a new dwelling, and associated works</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (LLEP) 2017</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping

Internal Referral Body	Comments
	<p>• D4 Church Point and Bayview Locality</p> <p>The site is located in the C4 Environmental Living zone, requiring development to achieve</p> <p>An Arboricultural Impact Assessment is included in the application and it is noted the neig</p> <p>A tree root mapping investigation can be undertaken, by an Arborist with minimum AQF L</p>
NECC (Bushland and Biodiversity)	<p>Supported - subject to recommended conditions</p> <p>Updated Biodiversity Referral (25 August 2022) This updated referral is based on the following additional information:</p> <ul style="list-style-type: none"> • Updated Arboricultural Impact Assessment (NSW Tree Services, 12 August 2022) • Updated Bushfire Hazard Assessment (Bushfire Planning & Design, 15 August 2022) • Updated Flora and Fauna Impact Assessment (SIA Ecological, 9 August 2022) • Amended Architectural Plans (Arquero Architects, 22 August 2022) <p>The amended design now proposes to retain an additional three onsite trees (Trees 7, 28</p> <p>The site is identified on the Northern Beaches Bush Fire Prone Land Map (2020) as Cate</p> <p><i>"The project has an assessed rating of BAL-FZ due to the fact that the APZ is deficient. I</i></p> <p>The proposal to retain these trees within the constraints of bush fire risk management rec</p> <p>Conditions are recommended in accordance with the Consulting Ecologist's proposed mi</p> <p>Original Biodiversity Referral (9 June 2022) The proposed development has been assessed against the following applicable biodiver:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • SEPP (Resilience and Hazards) - Coastal Environment Area • Pittwater LEP Clause 7.6 - Biodiversity Protection • Pittwater DCP Clause B4.2 - Flora and Fauna Conservation Category 1 and Wildl <p>The submitted arboricultural impact assessment assess 45 trees within the site, adjoining</p> <p>The relevant biodiversity-related controls require developments to be designed to minimi:</p> <ul style="list-style-type: none"> • the integrity and resilience of the biophysical, hydrological (surface and groundwa • marine vegetation, native vegetation and fauna and their habitats, undeveloped h <p>The SEPP also requires that development consent not be granted unless the consent au</p> <ul style="list-style-type: none"> • the development is designed, sited and will be managed to avoid an adverse imp:

Internal Referral Body	Comments
	<ul style="list-style-type: none"> if that impact cannot be reasonably avoided—the development is designed, sited if that impact cannot be minimised—the development will be managed to mitigate <p>Furthermore, cl 7.6 of the Pittwater LEP stipulates that development consent must not be</p> <ul style="list-style-type: none"> the development is designed, sited and will be managed to avoid any significant a if that impact cannot be reasonably avoided by adopting feasible alternatives—the if that impact cannot be minimised - the development will be managed to mitigate <p>The proposal to remove all existing trees on site appears excessive for construction of a</p> <p>Therefore at this stage, the Biodiversity Referrals Section is not satisfied that the propose</p>
NECC (Development Engineering)	<p>Supported - subject to recommended conditions</p> <p>The proposal is for the construction of a new dwelling and associated works on an undeveloped</p> <p>No objections to approval subject to conditions as recommended.</p> <p>Review 31/8/2022</p> <p>Amended stormwater plan has been reviewed. No objections to approval subject to conditions</p>
NECC (Riparian Lands and Creeks)	<p>Supported - subject to recommended conditions</p> <p>This application has been assessed against relevant legislation and policy relating to water</p> <p>The proposed development, which drains to McCarrs Creek and the Pittwater Estuary, must</p> <p>Therefore, sediment and erosion controls must be installed prior to any disturbance of soil</p>
NECC (Water Management)	<p>Supported - subject to recommended conditions</p> <p>The proposal was assessed under the current creek and water management legislation for</p> <p>The supplied reports and plans were considered. The supplied documentation has been</p> <p>Water Quality</p> <p>The proposed stormwater system is integrating an online combined OSD/rainwater tank.</p> <p>Dewatering</p> <p><i>Tailwater (surface water, rainwater, minor seepage): Please contact catchment@northernbeaches.nsw.gov.au. A Council dewatering permit application must be made for expected multiple instances of</i></p> <p>Sediment management</p> <p>Due to the sensitivity of the downstream environment it is imperative that an erosion and sediment</p> <p>Should the applicant demonstrate that this is achieved, the application can be supported,</p>

External Referral Body	Comments

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported - subject to recommended conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Rural Fire Service - Local Branch - EP&A Act, s4.14	<p>Supported - subject to recommended conditions</p> <p>The NSW Rural Fire Service have reviewed the application and raised no objections, subject to conditions. The conditions have been included as part of this consent.</p>
Aboriginal Heritage Office	<p>Supported - subject to recommended conditions</p> <p>Application No. DA2022/0362</p> <p>Description: Construction of a dwelling house</p> <p>Address: 241 McCarrs Creek Road CHURCH POINT</p> <p>There are known Aboriginal sites in the area although no sites are recorded in the current lot and the area has been subject to previous disturbance reducing the likelihood of unrecorded Aboriginal sites.</p> <p>If areas of in situ sandstone outcrop are in the proposed development area (such as overhangs over 1m in height or level platforms over 2m square), the Aboriginal Heritage Office would recommend a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional prior to any development. If there are no existing sandstone outcrops present (or if any outcrops that were present were properly excluded from future impacts), then no further assessment is required and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal.</p> <p>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.</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. 1272892S, dated 28 January 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	53

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been

included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is located within Coastal Environmental Area and Coastal Use Area pursuant to Chapter 2 of this SEPP. Accordingly, the proposal is considered against Divisions 3, 4, 5 and 6 of this Chapter as follows:

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

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

Comment:

The application has been referred to Council's Riparian, Biodiversity and Landscaping Officers, who have reviewed the proposal and raise no objections, subject to conditions. In this regard, it is considered that the proposal will not have an adverse impact upon native flora and fauna, including marine vegetation. The site is located on the eastern side of McCarrs Creek Road and physically and visually separated from the foreshore by the roadway and existing development on the eastern side of McCarrs Creek Road. Therefore, the proposal will not preclude access to or along the foreshore. Furthermore, the application has been referred to the Aboriginal Heritage Office, who have reviewed the proposal and raise no objections, subject to conditions. Therefore, the proposal will not

have an adverse impact upon Aboriginal cultural heritage, practices, and places.

For the reasons outlined above, it is considered that the development is designed, sited, and will be managed to avoid an adverse impact upon the matters referred to in Division 3.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

As noted above, the proposed development will not preclude access to or along the foreshore or adversely impact upon Aboriginal cultural heritage, practices, or places. Furthermore, the works are sufficiently separated from the foreshore, such that the proposal will not result in overshadowing or wind funneling to the foreshore. Existing development to the rear (upslope) of the site is located over 100m to the east and elevated over 70m above the roofline of the proposed dwelling. As such, the works will not compromise existing view lines towards the foreshore. Furthermore, the site is not located within a heritage conservation area or located in close proximity to heritage items. In this regard, the works will not have an adverse impact upon cultural and built environmental heritage.

This assessment has taken into account the surrounding coastal and built environment and the bulk, scale and size of the development and concluded that the dwelling is appropriately designed and sited to harmonise with the coastal setting.

Division 5 General

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

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

coastal hazards on that land or other land.

Comment:

Council is satisfied that the proposed development has been adequately designed to respond to the environmental constraints of the site, such that it can be stated that the proposed development is not likely to cause increased risk of coastal hazards within the locality.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposal is not in contravention of any coastal management programs.

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 vacant for a significant period 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 suitable for the residential land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	10m	9.6m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The proposed development pertains to a new dwelling house. Dwelling houses are permissible land uses within the C4 Environmental Living zone. An assessment against the zone objectives is provided below as follows:

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

Comment:

The proposed development has minimised the impact upon the natural environment through limiting excavation to the building footprint and maintaining sufficient native canopy planting on the site to ensure compliance with Planning for Bushfire Protection 2019. It is noted that removing the remaining trees is essential to enable an Inner Protection Area that accords with the requirements of Planning for Bushfire Protection 2019. The proposed dwelling has employed a terraced built form that steps down in height with the slope of the land, thereby integrating with the landform and landscape. The proposal has also been designed to respond to the environmental constraints of the site, which includes geotechnical and bushfire hazards. Council's Biodiversity, Landscape and Riparian Officers have also reviewed the application and raised no objections, subject to recommended conditions. Overall, it is considered that the proposal provides for low-impact residential development within this environmentally constrained area.

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

Comment:

As demonstrated above, the proposed development does not have an adverse effect on the ecological, scientific, or aesthetic values listed above.

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

Comment:

The 4 storey built form is similar to the recently approved dwelling house on the southern adjacent property (243 McCarrs Creek Road). The proposal integrates well with the natural landform and landscape, in that each level is progressively stepped back to follow the slope of the land; the site remains dominated by deep soil landscaping; and the excavation has been limited to the building footprint, with the natural levels of the site being maintained around the

building footprint. It is noted that due to the significant slope of the site a substantial degree of excavation is required to accommodate for a dwelling house whilst maintaining a reasonable building height. The proposal has stepped the excavation on each level to prevent unnecessary excavation and limited the cut to the building footprint. These factors constitute a well-considered and logical response to the site constraints. Overall, the proposal satisfies this objective.

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

Comment:

The site is located to the east of the allotments that adjoin the foreshore area. The proposal does not have an adverse impact on nearby foreshore vegetation. In addition, Council's Biodiversity Officer has reviewed the application and is satisfied that the proposal will not have an adverse impact on wildlife corridors. Overall, the proposal achieves this objective.

Conclusion

As demonstrated above, the proposal satisfies the objectives of the C4 Environmental Living zone.

4.3 Height of buildings

The site is located within Area I on the Pittwater LEP 2014 Height of Buildings Map. Within this area, the maximum building height permitted is 8.5m above the existing ground level.

The maximum height of the proposed development is 9.6m above the existing ground level, which exceeds the 8.5m numerical requirement.

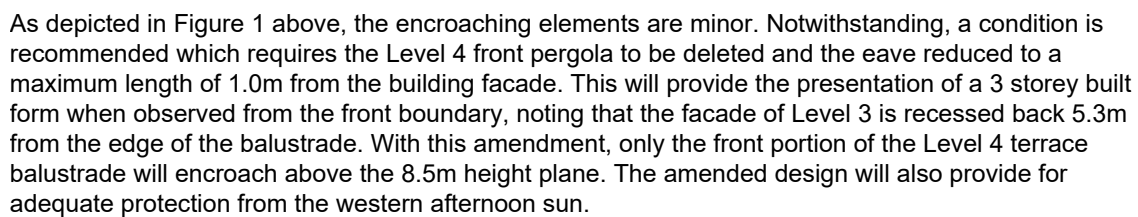
Notwithstanding, Clause 4.3(2D) of Pittwater LEP 2014, contains an exemption provision that stipulates that the maximum building height within Area I can be increased to 10.0m, providing the following is demonstrated:

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor,

Comment:

The elements of the proposed dwelling that exceed the 8.5m height plane relate to the Level 4 pergola over the front terrace and Level 4 terrace balustrade, as depicted in Figure 1 below.

Figure 1: Elements of the proposal that exceed the 8.5m height plane



Comment:

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

Comment:

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

Comment:

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height. The proposal has stepped the excavation on each level to prevent unnecessary excavation, and limited the cut to the building footprint, with the existing levels around the side and rear boundaries being maintained. These factors constitute a well-considered and site responsive design to the constraints.

When considered against the objectives of Clause 4.3 of Pittwater LEP 2014, it is noted as follows:

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

Comment:

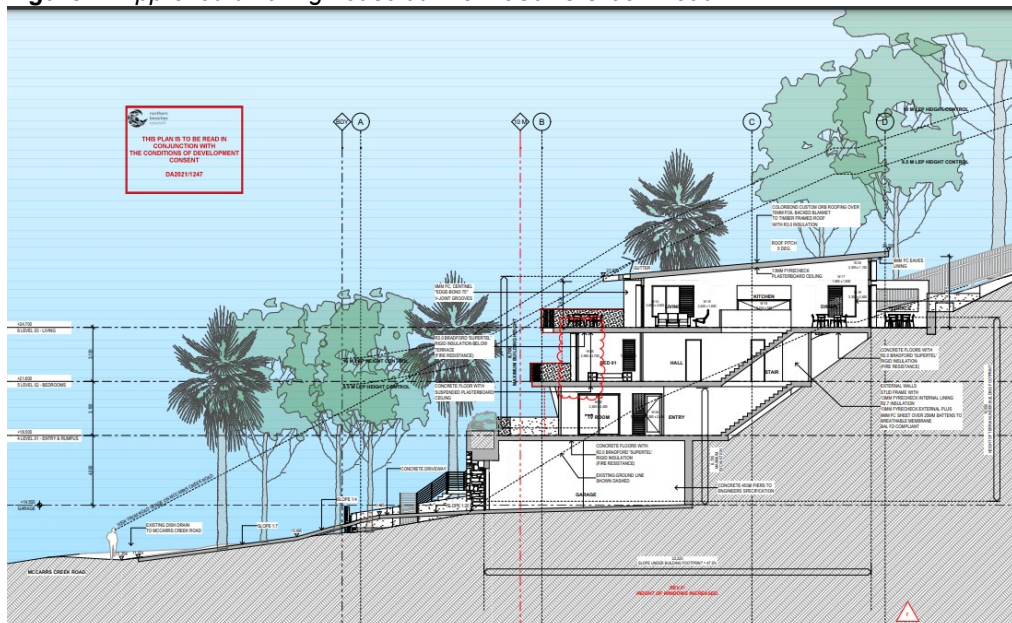
The proposed development is consistent with the intent of the *Church Point and Bayview Desired Future Character Statement*. A detailed discussion of this matter is provided in the section of this report relating to Clause A4.4 of the Pittwater 21 DCP.

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

Comment:

The overall height, bulk and scale of the proposed dwelling house is comparable with the recently approved 4 storey dwelling house on the southern adjacent site (243 McCarrs Creek Road). Each level of the proposal has been terraced to ensure the floor plates correspond with the recently approved dwelling on the adjacent property. Figure 2 below illustrates the floor plates of the approved dwelling house on the adjacent property.

Figure 2: Approved dwelling house at 243 McCarrs Creek Road



The proposed development, as modified via condition (i.e. deletion of upper level pergola), will be similar to the approved dwelling house at 243 McCarrs Creek Road by virtue of the overall building height, level of excavation and terraced floor plate.

(c) to minimise any overshadowing of neighbouring properties,

Comment:

The overshadowing of the adjacent dwelling house is considered to be acceptable in the circumstances of the case, noting that the approved rear terrace adjoining the living room (i.e. main private open space) will obtain the required 3 hours of solar access on June 21, whilst the west facing living room windows will also receive direct sunlight from 12.00pm onwards.

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

Comment:

Existing development to the rear (upslope) of the site is located over 100m to the east and elevated over 70m above the roofline of the proposed dwelling. As such, the works will not compromise existing view lines towards the foreshore. Future developments on the adjacent vacant allotments will maintain primary view lines over the front (western) boundaries. The proposal will not compromise potential view lines from the adjacent properties.

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

Comment:

The proposal has been designed to respond sensitively to the natural topography, through stepping the built form down in height with the slope of the land. Additionally, the excavation works are generally limited to the building footprint, which ensures the works integrate with the landform and landscape.

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

Comment:

The proposed development is well-articulated on the front and side elevations, which alleviates the building mass. Furthermore, the chosen external finishes consist of earthy tones, which harmonise with the natural environment. The proposal includes numerous native landscape treatment to further soften the built form. For these reasons, it is considered that the development will not have an adverse impact upon the natural environment. In conjunction with the above, it is noted that the site is not located within a heritage conservation area and is not located near heritage items. Therefore, the proposal will not have an adverse impact upon environmental and built heritage.

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements of Clause 4.3(2D) of Pittwater LEP 2014. Therefore, the 10.0m maximum building height is applied to the site. The maximum height of the proposed development is 9.6m above the existing ground level, which complies with the 10.0m provision.

5.10 Heritage conservation

The objectives of Clause 5.10 of Pittwater LEP 2014 are as follows:

(a) to conserve the environmental heritage of Pittwater,

(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,

(c) to conserve archaeological sites,

(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Comment:

The site is mapped within an Aboriginal Heritage area. The Aboriginal Heritage Office have reviewed the application and raised no objections to the proposal, subject to recommended conditions. The recommended conditions have been included as recommended conditions of consent. Hence, the proposal is found to be consistent with the objectives of Clause 5.10 of Pittwater LEP 2014.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5.0m Australian Height Datum and by which the watertable is likely to be lowered below 1.0m Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The site is located approximately 70m to the east of nearby Class 1 land and elevated over 20m above the nearby Class 1 land. As such, a Preliminary Acid Sulfate Soils Assessment is not required.

The proposal satisfies the requirements of Clause 7.1 of Pittwater LEP 2014.

7.2 Earthworks

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

The development was referred to the Aboriginal Heritage Office, who provided comments and conditions that have been included in the consent.

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

Comment:

Council's Natural Environment Unit (i.e. Landscape, Biodiversity and Riparian Officers) have assessed the application and raised no objections, subject to recommended conditions. Therefore, it is considered that the proposal is not likely to have an adverse impact upon the natural environment.

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

Comment:

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

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

or heritage conservation area.

Comment:

The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Conclusion

Having regard to the above assessment, it is concluded that the requirements of Clause 7.2 of Pittwater LEP 2014 are satisfied.

7.6 Biodiversity protection

The site is located on the Pittwater LEP 2014 Biodiversity Map.

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

(a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and**
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and**
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and**
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and**

Comment:

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

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

Comment:

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

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

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

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

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

Conclusion

As demonstrated above, the proposal satisfies the requirements of Clause 7.6 of Pittwater LEP 2014.

7.7 Geotechnical hazards

The site is located on the Pittwater LEP 2014 Geotechnical Risk Map.

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

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

Comment:

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

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

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

Comment:

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

- (b) the consent authority is satisfied that:***
 - (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or***
 - (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or***

(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment:

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

Conclusion

As demonstrated above, the proposal satisfies the requirements under Clause 7.7 of Pittwater LEP 2014.

7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,***
- (b) the supply of electricity,***
- (c) the disposal and management of sewage,***
- (d) stormwater drainage or on-site conservation,***
- (e) suitable vehicular access.***

Comment:

The aforementioned essential services are available for the proposed development. Therefore, the proposal complies with Clause 7.10 of Pittwater LEP 2014.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
Front building line	10.0m	7.7m (garage) - 10.2m (Level 2 facade)	23% (garage)	Yes - variation applies for garages - see discussion
Rear building line	6.5m	14.39m	-	Yes
Side building line	2.5m (north)	1.84m - 2.5m	26.4%	No
	1.0m (south)	1.0m - 1.3m	-	Yes
Building envelope	Merit Assessment as slope >30% (north)	Acceptable on Merit	-	Yes - see discussion
	Merit Assessment as slope >30% (south)	Acceptable on Merit	-	Yes - see discussion
Landscaped area	60% (328.5sqm)	59.27% (324.5sqm)	1.28%	No

Note: Landscaped Area calculations include permitted variations as described in Clause 4.10 of

Pittwater 21 DCP.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	No	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	No	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	No	Yes
D4.8 Building envelope	Yes	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D4.12 Fences - Flora and Fauna Conservation Areas	No	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.4 Church Point and Bayview Locality

The Church Point and Bayview Locality Statement notes as follows:

"The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on lowlands in the locality on land that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Retail, community and recreational facilities will serve the community".

Comment:

The proposed development provides for a terraced built form that is vertically 4 storeys for a portion of the development. This exceeds the DCP requirement of a maximum 2 storeys in any one place.

Notwithstanding the non-compliance, the proposed dwelling house (as amended via recommended condition), will be entirely commensurate with the height, bulk and scale of the recently approved 4 storey dwelling house at 243 McCarrs Creek Road (southern adjacent site). Moreover, the height of the development will be consistent with other multi-storey dwelling houses on McCarrs Creek Road, noting that there are numerous examples of dwelling houses with 4 separate levels, similar to that of the proposal.

The proposal has terraced the floor plates to ensure the overall building height and mass steps down with the slope of the land, in turn ensuring a sensitive response to the natural sloping topography. Whilst there are substantial excavation works involved, particularly within the footprint of the garage, the natural ground levels along the side boundaries and rear yard have been maintained, thereby ensuring the works integrate with the natural landform and landscape. Additional native landscape treatment is proposed to offset the tree removal and soften the built form.

"Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. The locality is characterised by steeply sloping blocks so the provision of facilities such as inclinator, driveways and carparking need to be sensitively designed. The shared use of vehicular/pedestrian access, and the use of rooftops as parking areas can be solutions that minimise the physical and visual impact on the escarpment or foreshore".

Comment:

The proposal results in the removal of 19 prescribed trees. Council's Landscape and Biodiversity Officers note that significant tree removal is unavoidable as the site is vacant, heavily vegetated, bushfire prone and not subject to previous development. These internal referral bodies raise no objections to the removal, subject to conditions requiring replanting. The provision of additional native trees on the site will offset the trees proposed for the removal and will soften the built form, thereby ensuring the development blends into the natural environment. It is noted that the roofline of the development will remain under the remaining mature tree canopy.

The proposed development incorporates highly articulated facades, which alleviates the visual bulk of the development. Furthermore, the chosen external finishes consist of earthy tones that will harmonise with the natural environment. The provision of planter boxes on level 2 will further assist in softening the

built form. As previously asserted, the built form has been designed to respond to the topographical conditions, through employing a terraced style approach that steps down with the slope of the land. Additionally, the dwelling house has been designed to respond to the geotechnical and bushfire hazards of the land.

"The locality is visually prominent particularly from Scotland Island, Bilgola Plateau, and the Pittwater waterway. Therefore, a balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors".

Comment:

The subject site is located within an area of McCarrs Creek Road that is not visible from nearby localities, including Scotland Island or Bilgola Plateau. Furthermore, the site is visually and physically separated from the Pittwater waterway by McCarrs Creek Road and existing development along the foreshore area and will not be visually imposing on the waterway.

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

Comment:

The Aboriginal Heritage Office have reviewed the proposal and raise no objections to the development, subject to conditions.

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

Comment:

Vehicular and pedestrian access to the site will be provided via McCarrs Creek Road.

"Pedestrian/cycle access around the foreshore and to areas of open space will be upgraded and maintained".

Comment:

The proposal will not compromise pedestrian/cycle access around the foreshore area.

"Church Point will remain an important link to the offshore communities".

Comment:

The site is located approximately 1.5km to the south-west of the Church Point Wharf.

Conclusion

Whilst the proposal involves a four storey dwelling house, it is concluded that the development is consistent with the intent of the Church Point and Bayview Desired Future Character Statement and that the development will maintain an appropriate visual relationship with the surrounding environment.

B6.1 Access driveways and Works on the Public Road Reserve

The application involves a new vehicle crossing from McCarrs Creek Road. The portion of McCarrs Creek Road that adjoins the site is not the portion of McCarrs Creek Road that is identified as a Classified Road. Thus, concurrence from Transport for NSW is not required for the new vehicle crossing.

B8.3 Construction and Demolition - Waste Minimisation

The application was not accompanied by a detailed Waste Management Plan that quantifies the amount of waste generated by the development or outline the location of the off-site disposal centre.

To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to prepare a Waste Management Plan in accordance with Council's Waste Management Guidelines. The plan is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

D4.5 Front building line

The control prescribes a 10.0m front setback from McCarrs Creek Road. The proposed garage is setback 7.7m from the front boundary, which does not meet the 10.0m requirement. It is noted that the upper levels comply with the 10.0m requirement.

Notwithstanding, the control permits an exemption which reads as follows:

"Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable".

The site is constrained by its steep topography and the application of this exemption is considered to be appropriate for the following reasons:

- If the garage were to be setback 10.0m the proposal would require additional excavation into the natural landform.
- The road reserve is unusually wide and the garage will be setback approximately 18.7m from the roadway.
- The setback to the garage corresponds with the approved garage front setback on the southern adjacent site (243 McCarrs Creek Road), which provides a 7.6m front setback.
- The upper levels of the dwelling house comply with the 10.0m requirement.

D4.6 Side and rear building line

Description of Non-compliance

The control requires development to be setback at least 2.5m from one side boundary and 1.0m from the opposing side boundary. For this assessment, the 2.5m side building line is applied to the northern boundary and the 1.0m side building line applied to the southern boundary.

The facades of the proposed dwelling comply with the prescribed side setback requirements. However, the entryway to the dwelling on the northern side of the building is setback 1.84m from the northern side

boundary, which does not satisfy the numerical requirement.

Merit Consideration

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

To achieve the desired future character of the Locality.

Comment:

As discussed in detail within the section of the report relating to Clause A4.4 of the Pittwater 21 DCP, the proposal is consistent with the intent of the Church Point and Bayview Desired Locality Statement.

The bulk and scale of the built form is minimised.

Comment:

The proposal is a well-articulated design that steps down in height with the slope of the land to mitigate the overall height, bulk and scale of the proposal and ensure an appropriate response to the sloping topography. The use of dark and earthy tones will also ensure the building harmonises with the natural environment. The minor side setback non-compliance for the dwelling entryway does not result in any unreasonable building bulk. Overall, it is considered that the bulk and scale of the built form is appropriately minimised.

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

Comment:

As noted earlier in this report, the proposal will not give rise to unreasonable view loss.

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

Comment:

As stated above, the proposal will allow for reasonable view sharing.

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

Comment:

As discussed within the section of this report relating to Clause 4.3 of the Pittwater LEP 2014, the southern adjacent property will maintain the required amount of solar access to the rear terrace adjoining the living room (i.e. main private open space) and west facing living room windows on June 21. The side setback non-compliance for the entryway does not create any further overshadowing to the adjacent property. In addition, the entryway to the dwelling house does not result in unreasonable privacy impacts. The rear terrace on the subject site and adjacent property will maintain adequate visual privacy due to the 1.8m high side boundary fencing. Overall, it is considered that the proposal achieves this outcome.

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

Comment:

The site will remain dominated by deep soil landscaping and the proposed landscape treatment, coupled with landscaping required via conditions, will ensure a high-quality landscape outcome for the site.

Flexibility in the siting of buildings and access.

Comment:

Flexibility is afforded to the minor side setback non-compliance for the entryway to the dwelling as the numeric non-compliance does not give rise to unreasonable amenity impacts or result in unreasonable building bulk.

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

Comment:

The proposal results in the removal of 19 prescribed trees. Council's Landscape and Biodiversity Officers note that significant tree removal is unavoidable as the site is vacant, heavily vegetated, bushfire prone and not subject to previous development. These internal referral bodies raise no objections to the removal, subject to conditions requiring replanting. The provision of additional native trees on the site will offset the trees proposed for the removal and will soften the built form, thereby ensuring the development blends into the natural environment. It is noted that the roofline of the development will remain under the remaining mature tree canopy.

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

Comment:

The site does not adjoin commercial development and therefore, this outcome is not relevant.

Conclusion

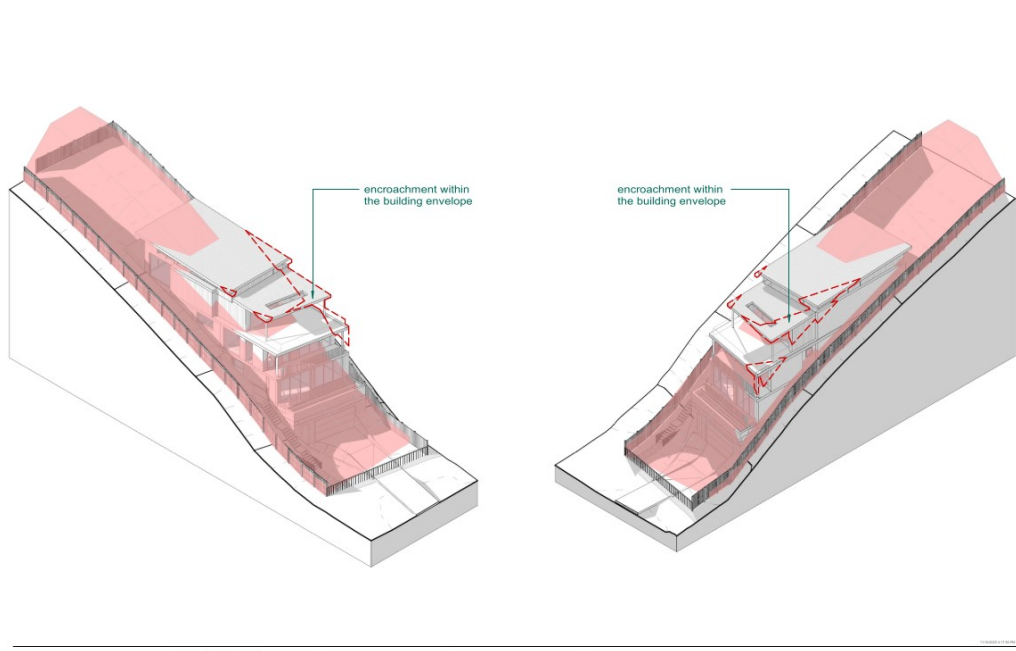
Having regard to the above assessment, it is concluded that the outcomes of this control are achieved. Therefore, the application is supported on merit in this particular circumstance.

D4.8 Building envelope

The slope of the land under the proposed building footprint has a 45.95% grade. As the slope of the land under the building footprint is greater than 30%, the proposed development is subject to a merit assessment when applying the envelope control.

The standard envelope applied to sites with slopes less than 30% is determined by projecting planes at 45 degrees from a height of 3.5m above the existing ground level at side boundaries. The proposal protrudes outside of the standard envelope requirement that is applied for sites with slopes less than 30%, as depicted in Figure 3 below.

Figure 3: Elements of the building that protrude outside of the standard envelope (outlined in red lines)



When considering the development on its merits, it is concluded that the outcomes of the control are achieved. A detailed assessment against the outcomes is provided below as follows:

To achieve the desired future character of the Locality.

Comment:

As discussed in detail within the section of the report relating to Clause A4.4 of the Pittwater 21 DCP, the proposal is consistent with the intent of the Church Point and Bayview Desired Locality Statement.

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

Comment:

The building scale and density is entirely commensurate with the recently approved 4 storey dwelling house at 243 McCarrs Creek Road (southern adjacent site). In addition, the height of the building complies with the 10m building height standard and sits below the remaining tree canopy.

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

Comment:

The proposed development responds to the topographical conditions of the site through employing a terraced styled form that steps down in height with the slope of the land, which falls from east to west.

The bulk and scale of the built form is minimised.

Comment:

The proposal is a well-articulated design that steps down in height with the slope of the land to mitigate the overall height, bulk and scale of the proposal and ensure an appropriate response to the sloping topography.

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

Comment:

As noted earlier in this report, the proposal will not give rise to unreasonable view loss.

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

Comment:

Adequate internal amenity is provided within the site. Furthermore, the proposal will not significantly detract from the amenity of the adjacent vacant allotments once they are redeveloped in the future, with specific regard to solar access, views, visual bulk and privacy.

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

Comment:

The proposal results in the removal of 19 prescribed trees. Council's Landscape and Biodiversity Officers note that significant tree removal is unavoidable as the site is vacant, heavily vegetated, bushfire prone and not subject to previous development. These internal referral bodies raise no objections to the removal, subject to conditions requiring replanting. The provision of additional native trees on the site will offset the trees proposed for the removal and will soften the built form, thereby ensuring the development blends into the natural environment. It is noted that the roofline of the development will remain under the remaining mature tree canopy.

Conclusion

As demonstrated above, the proposal is consistent with the outcomes of this control. Therefore, the proposal is consistent with the merit assessment requirement of this control for sloping sites, which requires the development to be consistent with the outcomes of the envelope provision.

D4.10 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance

The control requires at least 60% (328.5sqm) of the site to be landscaped. The application proposes **59.27%** (324.5sqm) of the site as landscaping, which represents a 1.28% variation to the numerical requirement.

It is noted that these calculations have excluded the proposed impervious driveway, as it cannot be included as a private recreation area, which is a permitted landscaped area as described in the variations of this control. Including this portion of the driveway would result in 61.75% (338.1sqm) of the site being landscaped, which is numerically compliant.

It is noted that the proposed landscaped area exceeds the approved quantum of landscaping on the southern adjacent site (243 McCarrs Creek Road), which was 57.58% of the site area.

Merit Consideration

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

To achieve the desired future character of the Locality.**Comment:**

As discussed in detail within the section of the report relating to Clause A4.4 of the Pittwater 21 DCP, the proposal is consistent with the intent of the Church Point and Bayview Desired Locality Statement.

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

The proposal is a well-articulated design that steps down in height with the slope of the land to mitigate the overall height, bulk and scale of the proposal and ensure an appropriate response to the sloping topography. The use of dark and earthy tones will also ensure the building harmonises with the natural environment. The proposed landscape treatment will also soften the visual impacts of the built form. Overall, it is considered that the bulk and scale of the built form is appropriately minimised.

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

As discussed earlier within this report, a reasonable level of amenity will be provided for occupants of the dwelling and future developments on the adjacent vacant allotments.

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

The site is constrained with bushfire hazards and therefore, significant vegetation removal is required to enable an Inner Protection Area that accords with the requirements of Planning for Bushfire Protection 2019. However, the proposal will include new planting and retains three canopy trees, which will maintain a compliant inner protection zone and will assist in softening the built form.

Conservation of natural vegetation and biodiversity.**Comment:**

Council's Biodiversity Officer has reviewed the proposal in relation to biodiversity conservation and found the development to be acceptable, subject to conditions.

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

Suitable conditions have been included with this consent to ensure stormwater is appropriately managed.

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

Comment:

The proposal is consistent with the intent of the Church Point and Bayview Desired Future Character Statement and therefore, will maintain the bushland character of the area.

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

Comment:

There is adequate deep soil landscaping on the site, which will assist in water infiltration. Conditions included with this consent will further ensure that stormwater is adequately managed on the site.

Conclusion

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

D4.12 Fences - Flora and Fauna Conservation Areas

The site is located within the Category 1 Flora and Fauna Conservation Area. Within this area, no fences within the front setback area are permitted. The proposal involves a timber front fence within the front setback area, which fails to meet this requirement. Side boundary fencing is also proposed.

To ensure compliance with this control and to conserve a sense of openness within the frontage and allow unhindered movement of native fauna, a suitable condition has been included with this consent requiring all fencing located forward of the garage to be deleted in its entirety. Subject to compliance with this condition, the proposal will achieve the outcomes and requirements of this control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$13,600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,360,000.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

This proposal, for construction of a 4 storey dwelling house has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the application attracting 10 submissions by way of objection.

The key issues raised within the submissions relate to building bulk and scale, tree removal, excavation and impacts upon local fauna. Amended plans were submitted throughout the assessment process, which enabled the retention of additional canopy trees and terraced the built form to minimise the bulk and scale of the proposed dwelling house. The amended plans are found to be satisfactory, subject to a condition requiring the deletion of the Level 4 pergola, which will reduce the height of the dwelling and result in an acceptable built form.

The proposed development involves minor variations to the Pittwater 21 DCP landscaped area and side setback provision. However, these minor variations do not preclude the development from achieving the overall outcomes of these control.

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

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/0362 for Construction of a dwelling house on land at Lot 30 DP 20097, 241 McCarrs Creek Road, CHURCH POINT, 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
A100 (Revision B) - Plan - Site	22 August 2022	Arquero Architects Pty Ltd
A120 (Revision B) - Cut and Fill Plan	22 August 2022	Arquero Architects Pty Ltd
A130 (Revision B) - Demolition and Tree Removal	22 August 2022	Arquero Architects Pty Ltd
A200 (Revision B) - Plan - Garage	22 August 2022	Arquero Architects Pty Ltd
A201 (Revision B) - Plan - Level 1	22 August 2022	Arquero Architects Pty Ltd
A202 (Revision B) - Plan - Level 2	22 August 2022	Arquero Architects Pty Ltd
A203 (Revision B) - Plan - Level 3	22 August 2022	Arquero Architects Pty Ltd
A204 (Revision B) - Roof Plan	22 August 2022	Arquero Architects Pty Ltd
A300 (Revision B) - Elevations	22 August 2022	Arquero Architects Pty Ltd
A310 (Revision B) - Elevations	22 August 2022	Arquero Architects Pty Ltd
A350 (Revision B) - Elevations	22 August 2022	Arquero Architects Pty Ltd
A400 (Revision B) - Sections - Overall	22 August 2022	Arquero Architects Pty Ltd
A900 (Revision B) - Driveway Section	22 August 2022	Arquero Architects Pty Ltd

Engineering Plans		
Drawing No.	Dated	Prepared By

21MB8818/D01 (Issue B) - Site & Roof Drainage Plan	12 August 2022	United Consulting Engineers Pty Ltd
21MB8818/D02 (Issue B) - Drainage Details	12 August 2022	United Consulting Engineers Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Hazard Assessment No. BR-453822-B	15 August 2022	Bushfire Planning & Drainage
Arboricultural Impact Assessment Ref. AIA –ADEV 08/22	12 August 2022	Sam Allouche
Flora & Fauna Impact Assessment	9 August 2022	SIA Ecological & Environmental Planning Pty Ltd
Geotechnical Investigation Report Ref. G21079CP-R01F	7 February 2022	Geo-Environmental Engineering
BASIX Certificate No. 1272892S	28 January 2022	Outsource Ideas (ss)

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
21-4601 LO1 - Landscape Plan	7 February 2022	Zenith Landscape Designs
21-4601 LOS - Landscape Plan	7 February 2022	Zenith Landscape Designs

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated
New South Wales Rural Fire Service	RFS Referral Response Ref. DA20220516007837-Original-1	4 July 2022

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on

Council's website www.northernbeaches.nsw.gov.au)

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

3. **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 \$13,600.00 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 (as amended).

The monetary contribution is based on a development cost of \$1,360,000.00.

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 \$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 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. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

- i) updated existing trees to be retained and removed as per the amended Arboricultural Impact Assessment, including the retention of tree 8,
- ii) remove the proposed *Acmena smithii* in the location of retained trees 7 and 8,
- iii) update planting around the new entry stair and foyer design,
- iv) show proposed planting in the on-slab planter above the garage, to achieve at least 1 metre height at maturity.

Certification shall be provided to the Certifying Authority that these amendments have been documented.

Reason: Landscape amenity.

8. **Footing Design Near Trees to be Retained**

Footing structural layout plans for the retaining walls shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a tree root mapping investigation near existing tree(s) identified in the Arboricultural Impact Assessment as tree numbers 7, 8 and 44, to locate critical tree roots and recommend footing locations for the construction of the retaining walls. The Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.

A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.

The Arborist shall submit certification to the Certifying Authority, that the locations of the footings are accepted. The agreed footing structural layout plans shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

9. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 600mm for shrubs.

Design certification shall be submitted to the Certifying Authority by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Geo-environmental Engineering dated 7/2/2022 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Preparation of a Tree Removal Protocol**

The Project Ecologist is to prepare a Tree Removal Protocol which includes the provision of (at a minimum):

- a pre-clearance survey
- direct supervision of tree removal
- protocol for rescue of fauna and relocation of log hollow sections onsite to provide fauna habitat

The Tree Removal Protocol must also include procedures for stop work and formal impact assessment in the event that threatened fauna species are found during the pre-clearance survey.

The Tree Removal Protocol is to be submitted to the Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native wildlife.

12. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

13. **Installation of Nest Boxes**

A minimum of two nest boxes suitable for native birds (minimum one box) and arboreal mammals (minimum one box) are to be installed in retained trees on the site. Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods). Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To maintain wildlife habitat.

14. **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.

15. **Amendments to the approved plans**

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

- All front and side boundary fencing located forward of the garage must be deleted in its entirety.
- The pergola sited at RL27.100 located over the uppermost floor front terrace is not consented to and must be replaced by an eave with a maximum depth of 1 metre from the facade of the uppermost floor living room.

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.

16. **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 United Consulting Engineers, drawing number 21MB8818/D01, 21MB8818/D02, issue B, dated 12/8/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. OSD to be provided in accordance with Clause 9.3.1 of Council's Water Management for Development 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.

17. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

18. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

19. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

20. **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 these conditions of consent.

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

- o Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- o 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.

21. **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.

22. **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 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.

23. **Waste Management Plan**

A detailed Waste Management Plan must be prepared for this development. The plan must be prepared in accordance with Council's Waste Management Guidelines.

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

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

24. **Construction Management Program**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular parking, site access areas, with no access across public parks or reserves being allowed without Council approval.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.

- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees .
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250 metre radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practicing Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

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

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 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 THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

26. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and the recommendations of the Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- i) tree protection measures under section 7 Tree Protection Measures,
- ii) works under section 6 Recommendations II., IV., V. and VI,
- iii) additionally, the Project Arborist shall be in attendance and supervise any landscaping works within the TPZ of all existing trees to be retained.

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

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

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

Note:

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

Reason: Tree protection.

27. **Tree Removal Protocol to be Implemented**

Removal of native trees approved to be removed with cavities/hollows is to be undertaken in accordance with the protocols and recommendations specified in the Tree Removal Protocol prepared by the Project Ecologist in accordance with these conditions of consent.

The Project Ecologist is to provide written certification of compliance to the Principal Certifying Authority prior to commencement of tree removal.

Reason: To protect native vegetation.

28. **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:

- 243 McCarrs Creek Road, Church Point.
- 239 McCarrs Creek Road, Church Point.

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

29. Tree Removal Within the Property

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

- i) tree 9 - *Livistona australis*, trees 11 to 13 - *Livistona australis*, tree 14 - *Eucalyptus* sp., tree 17 - *Allocasuarina torulosa*, tree 30 - *Eucalyptus* sp., tree 31 - *Syncarpia glomulifera*, trees 32 to 33 - *Allocasuarina torulosa*, trees 36 to 37 - *Allocasuarina torulosa*, trees 40 to 42 - *Allocasuarina torulosa*, tree 43 - *Syncarpia glomulifera*, tree 45 - *Allocasuarina torulosa*,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal,
- iii) the Project Arborist shall liaise with the Project Ecologist to ensure all precautions are adhered to prior to tree removal.

Reason: To enable authorised building works.

30. Tree Removal Within the Road Reserve

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

- i) tree 3 - *Livistona australis*, and tree 6 - *Allocasuarina torulosa*,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal,
- iii) the approved tree contractor shall liaise with the Project Ecologist to ensure all precautions are adhered to prior to tree removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

31. **Protection of Existing Street Trees**

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

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

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

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

Reason: Street tree protection.

32. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

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

Reason: Tree and vegetation protection.

33. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from the Project Arborist during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of trees.

34. **Road Reserve**

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

Reason: Public safety.

35. **Pre-clearance Survey of Wildlife Habitat**

Any trees or native vegetation to be removed are to be inspected for native wildlife by the Project Ecologist prior to its removal. If native wildlife is found within habitat to be removed, the wildlife is to be safely relocated by the Project Ecologist.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be prepared by the Project Ecologist and provided to the Principal Certifying Authority prior to any Occupation Certificate.

Reason: To protect native wildlife.

36. **Hollow relocation**

All hollows are to be salvaged from cleared trees and reused as fauna habitat within areas of retained native vegetation on the site.

Reason: To protect wildlife habitat.

37. **Clearing of vegetation for APZs**

Clearing of vegetation for APZ establishment must prioritise removal of exotic and invasive species in the first instance, with removal of locally native vegetation undertaken only where required to achieve required inner protection area standards.

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifying Authority.

Reason: To protect native vegetation and wildlife.

38. **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 Arquearo Architects Pty Ltd 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.

39. **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.

40. **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.

41. **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.

42. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

43. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing Normal High and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

44. **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.

45. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

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

46. Street Tree Planting

Street trees shall be planted in accordance with the following:

- i) substitute 1 x *Angophora floribunda* with 1 x *Angophora costata*.

All street trees shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees.

All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be located at least 2.0 metres from any structures including driveways, kerbs, and paths, and shall generally be centralised within the road verge.

Reason: To maintain environmental amenity.

47. Landscape Completion

Landscaping is to be implemented in accordance with the approved Landscape Plan (drawing 21-4601 LO1 and 21-4601 LO2 by Zenith Landscape Designs dated 07/02/22), and inclusive of the amended Landscape Plan conditions, plus the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres or as otherwise scheduled if greater in size, and shall meet the requirements of Natspec - Specifying Trees,
ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
iii) mass planting shall be installed at minimum 1 plant per metre square for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at least 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

48. Condition of Retained Vegetation - Project Arborist

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during

- excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

49. **Fauna and Tree Hollow Relocation**

The Project Ecologist is to certify in writing that:

- a) any fauna that was displaced or disturbed during tree clearing and/or construction works was safely and appropriately relocated; and
- b) any tree hollows were salvaged from trees by the project arborist and placed within areas of retained native vegetation on the site.

Written certification of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect native wildlife.

50. **Fencing for Wildlife Passage – Ecologist Certification**

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.

The Project Ecologist is to provide written certification of compliance to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To preserve wildlife corridors.

51. **Clearing for Asset Protection Zones – Project Ecologist to Certify**

Clearing of vegetation for APZ establishment must only occur within the lot. No clearing is to be undertaken outside of the lot boundaries.

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native vegetation and wildlife.

52. **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.

53. **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.

54. **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.

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

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches

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

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

57. **New Landscaping**

Any new landscaping is to incorporate a minimum 80% locally native vegetation species (as a proportion of the total number of plants) selected from the relevant section of the Pittwater Native Gardening Guide available on Council's website: <https://www.northernbeaches.nsw.gov.au/environment/native-plants/native-planting-guide/pittwater-ward>

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

Reason: To maintain biodiversity values on the site and avoid weed encroachment into the adjoining bushland reserve.

58. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

59. **Landscape Maintenance**

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

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

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

Reason: To maintain local environmental amenity.

60. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

61. **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within the lot. No clearing is to be undertaken outside of the lot boundaries.

Reason: To protect native vegetation and wildlife.

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

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

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

Reason: To protect native wildlife in accordance.

63. **Maintenance of Stormwater Treatment Measures - Minor**

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

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

Reason: Protection of the receiving environment.

64. **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.

65. **Noise - Internal Lift**

The internal lift 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.

66. **Retained trees and vegetation**

Future removal of any retained prescribed (i.e. protected under PDGP B4.22) trees or native

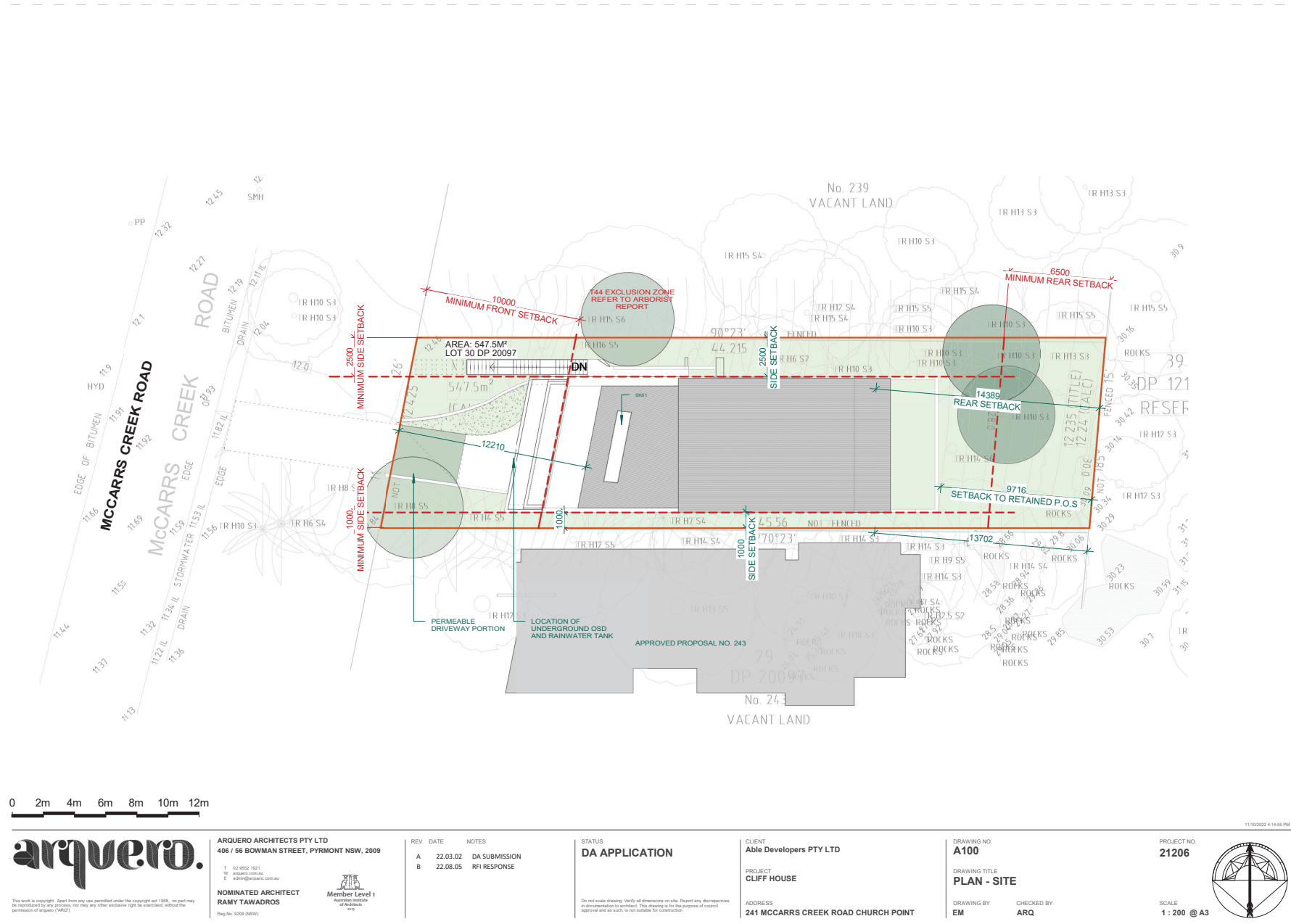
vegetation on the site will require either an applicable exemption or approval under Part 2 of the SEPP (Biodiversity and Conservation) 2021 or Part 4 of the Environmental Planning and Assessment Act 1979, unless amendments to the 10/50 Clearing Code result in the property becoming eligible for use of the Code.

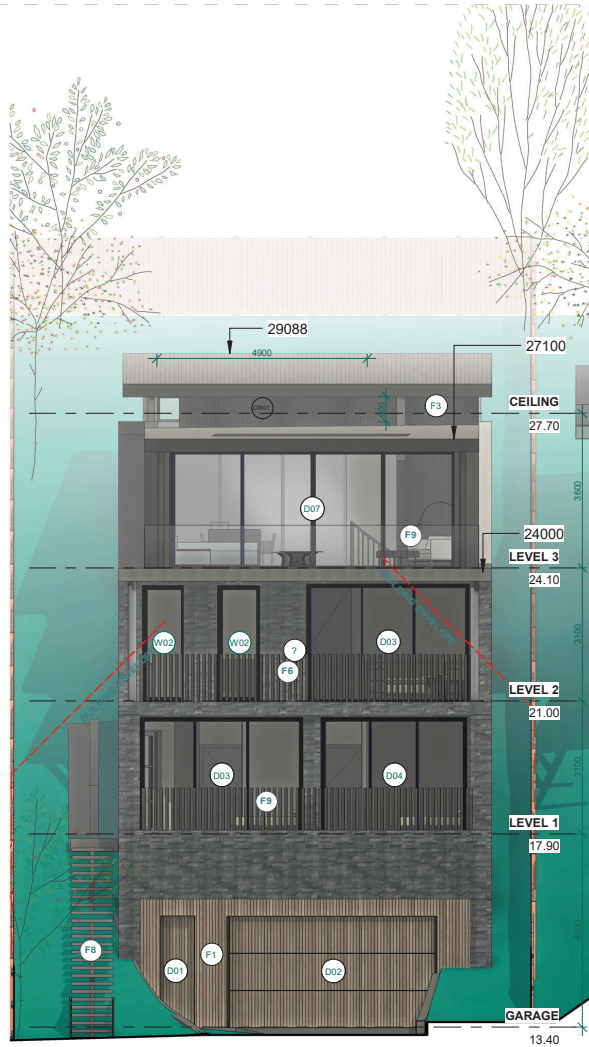
Reason: To maintain biodiversity values on site and ensure compliance with relevant bush fire risk management provisions including applicable restrictions.

67. **On-going Geotechnical Inspections**

A suitably qualified geotechnical engineer/geologist is to inspect the natural slope and cliff lines located to the rear of the site periodically at a 10 year period from this consent to ensure the stability of the nearby boulders.

Reason: To ensure that geotechnical risk is minimised.



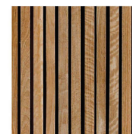


WESTERN (FRONT) ELEVATION



EASTERN (REAR) ELEVATION

- F6 - "KNOTWOOD" OR SIMILAR BATTEN STYLE BALUSTRADING IN "FRENCH WALNUT" OR SIMILAR
- F7 - 1.1m HIGH GLASS BALUSTRADE TO TOP FLOOR BALCONY
- F8 - EXTERNAL STEEL STAIRS & BALUSTRADES, PAINT FINISH "DARK GREY".
- F9 - TIMBER PALING FENCE, 1.8 M HIGH, 300 MM HIGH GAP AT BOTTOM.
- F10 - SELECTED MOTORISED FRONT DRIVEWAY GATE 1000MM HIGH
- FIRE SHUTTER:1 FIRE SHUTTER TO ALL WINDOWS & GLAZED DOORS, COLOUR "DARK GREY".
- 9 MM FIBRE CEMENT SOFFIT, PAINT FINISH "WHITE".
- DOWNPIPES, COLORBOND "MONUMENT".
- 9 MM FIBRE CEMENT FACIA, PAINT FINISH "DARK GREY".
- FIRE SHUTTER TO ALL WINDOWS & GLAZED DOORS, COLOUR "DARK GREY".
- CUSTOM ORB ROOF DECK, COLORBOND "MONUMENT".



F1 - KNOTWOOD CLADDING SYSTEM TO BE SELECTED IN "FRENCH WALNUT" OR SIMILAR



F2 - SILSTONE DRY STONE WALL CLADDING TO BE SELECTED OR SIMILAR



F3 - KNOTWOOD CLADDING SYSTEM TO BE SELECTED IN GREY OR "MONUMENT" COLOUR OR SIMILAR



F4 - BLACK PAINTED FINISHES "MONUMENT"



F5 - RENDERED AND PAINTED EXTERNAL WALLS DULUX "TRANQUIL RETREAT"

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**NOMINATED ARCHITECT
RAMY TAWADROS**

Reg No. 9259 (NSW)

Member Level 1
Australian Institute
of Architects

REV	DATE	NOTES
A	22.03.02	DA SUBMISSION
B	22.08.05	RFI RESPONSE

**STATUS
DA APPLICATION**

Do not scale drawing. Verify all dimensions on site. Report any discrepancies in documentation to architect. This drawing is for the purpose of council approval and is not suitable for construction.

**CLIENT
Able Developers PTY LTD**

**PROJECT
CLIFF HOUSE**

**ADDRESS
241 MCCARRS CREEK ROAD CHURCH POINT**

**DRAWING NO.
A300**

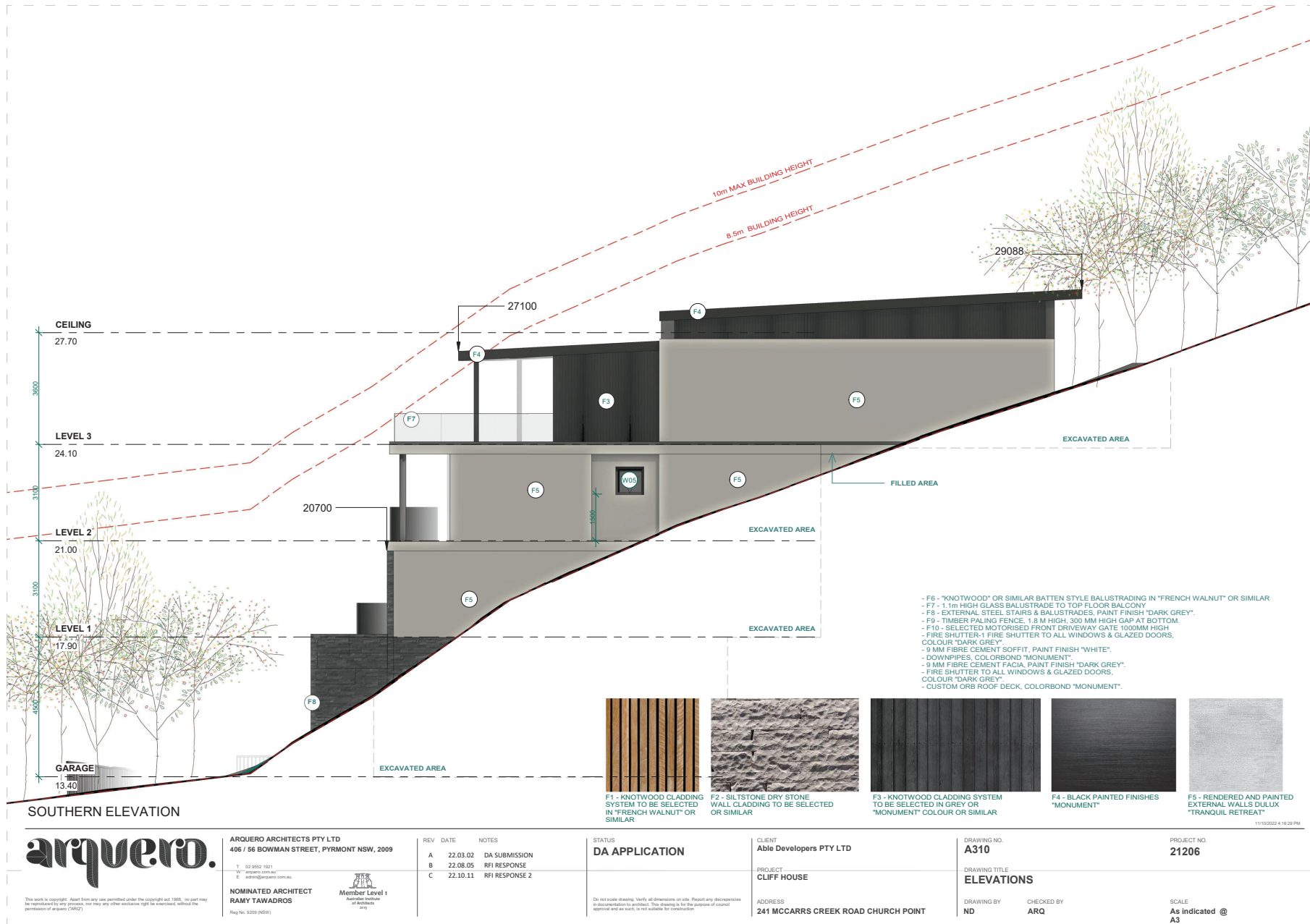
**DRAWING TITLE
ELEVATIONS**

**DRAWING BY
ND**

**CHECKED BY
ARQ**

**PROJECT NO.
21206**

**SCALE
As indicated @
A3**





ITEM 4.4	DA2022/1025 - 25 CLIFF STREET, MANLY - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING.
AUTHORISING MANAGER	Phil Lane
TRIM FILE REF	2022/658040
ATTACHMENTS	<ol style="list-style-type: none">1 ↓ Assessment Report2 ↓ Site Plans & Elevations3 ↓ Clause 4.6 - Floor Space Ratio4 ↓ Clause 4.6 - Height of Building

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1025 for Alterations and additions to a residential flat building on land at Lot CP SP 12958, 25 Cliff Street, MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1025
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot CP SP 12958, 25 Cliff Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 12958
Applicant:	Pittwater Design & Draft
Application Lodged:	06/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/07/2022 to 03/08/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 49.76% 4.4 Floor space ratio: 171.67%
Recommendation:	Approval
Estimated Cost of Works:	\$ 437,415.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing residential flat building. The development at large involves new elevated balconies on the rear elevation of the existing flat building and enclosing the existing ground floor rear alfresco to provide additional floor space.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to proposed development involving variations to Clause 4.3 - Height of Buildings and Clause 4.4 - Floor Space Ratio that exceed 10%. Any variations to principal development standards that are greater than 10% must be referred to the NBLPP for development pertaining to Class 2-9 buildings.

The applicant has submitted written requests pursuant to Clause 4.6 of Manly LEP 2013 to justify the technical breaches to the height and FSR development standards. The applicant's written requests are

well-founded and adequately demonstrate that compliance is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the technical variations to the height and FSR standards.

The Clause 4.6 request for the non-compliance with the FSR standard arises from a 28.6sqm increase in floor space. The existing building has an existing floor space of 1.55:1, which is 157.95% above compliance with the LEP standard of 0.6:1 based on historical approvals. The proposal increases the existing floor space from 1.55:1 (529sqm) to 1.63:1 (557.6sqm). The additional floor space is located within the footprint of the existing ground floor rear alfresco and does not increase the perceived bulk and scale of the existing residential flat building.

The Clause 4.6 request for the non-compliance with the height of buildings standard is largely attributed to the height of the existing residential flat building, which is measured at 15.08m above the existing ground level and is 77.41% above compliance with the LEP standard of 8.5m based on historical approvals. The top of the proposed rear colourbond roofing above the proposed rear balconies is located 4.25m below the ridge level of the existing residential flat building and does not exacerbate the existing non-compliance.

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

When assessing the proposal on its merits, it is concluded that the proposed alterations and additions will not substantially alter the bulk and scale of the existing building. The proposal will also not result in unreasonable amenity impacts to neighbouring properties, subject to compliance with recommended conditions.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing residential flat building. Specifically, the works consist of:

- Enclose lower ground floor rear alfresco to provide additional floor space.
- New elevated balconies on the rear elevation of the residential flat building.
- New colourbond roof sheeting on the first floor rear elevation.
- New external cladding.
- Demolish existing shed in rear yard.

ASSESSMENT INTRODUCTION

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

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

Development Control Plan;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.2 Privacy and Security

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

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot CP SP 12958 , 25 Cliff Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the north-western side of Cliff Street, Manly. The site is devoid of vehicular access and does not contain any off-street parking.</p> <p>The site is regular in shape with a frontage of 14.02m and a depth of 24.385m. The site has a surveyed area of 341.8sqm.</p> <p>The site is located within the R1 General Residential zone pursuant to Manly LEP 2013 and accommodates a 4 storey residential flat building.</p> <p>The site is devoid of significant canopy planting and contains a lawn area with a palm tree to the rear of the subject flat building.</p> <p>The site experiences a fall of approximately 3.3m that slopes away from the front boundary towards the rear.</p> <p>The site is burdened by a right of carriageway along the north-eastern side boundary.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is characterised by a mix of residential land uses, including multi-storey residential flat buildings, dual occupancies, semi-detached dwellings and dwelling houses.</p>

Map:



SITE HISTORY

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

- **Development Application DA2021/0151** for alterations and additions to a residential flat building refused by the Northern Beaches Local Planning Panel on 2 June 2021. The works refused under this application are similar to what is proposed under the current application. The reason for refusal is as follows:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, no owners consent been provided for the encroaching balcony affecting Lot 7 within SP 12958 which is not part of common property.

Planner Comment:

It is noted that the correct owners consent has been submitted for this current application. It is noted that the previous development application did not propose additional gross floor area to Unit 7 (within the footprint of the existing private open space), but rather included the elevated balconies over the footprint of the existing private open space for Unit 7 (i.e. which is proposed to be enclosed under this application).

APPLICATION HISTORY

A site inspection was undertaken on 15 July 2022.

Following the preliminary assessment of the application, which included the aforementioned site inspection, Council wrote to the applicant requesting that a revised Clause 4.6 variation request be submitted to accurately stipulate the proposed maximum building height. In addition, a Clause 4.6 variation request was requested for the breach to the FSR development standard through providing additional gross floor area to Unit 7 on the lower floor.

The additional information was subsequently submitted to Council's satisfaction. The additional information did not alter the scope of works proposed and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended Clause 4.6 variation requests. This information was received and assessed accordingly.</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 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 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 2013 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	No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/07/2022 to 03/08/2022 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
Building Assessment - Fire and Disability upgrades	<p><i>Supported - subject to recommended conditions</i></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Team. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with many requirements of the BCA. Issues such as this however may be determined at Construction Certificate stage.</i></p>

Internal Referral Body	Comments																																							
NECC (Bushland and Biodiversity)	<p>Supported - subject to recommended conditions</p> <p>The subject site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head, as listed under Schedule 1 of the NSW Biodiversity Conservation Act 2016 (BC Act). As such, a 'threatened species test of significance' is required to be undertaken in accordance with Section 7.3 of the BC Act. This assessment has been undertaken and has concluded that the proposal will not have a significant impact on the endangered bandicoot population, as the proposed extension is generally within the existing development footprint.</p>																																							
NECC (Development Engineering)	<p>Supported - subject to recommended conditions</p> <p>Development Engineering has no objection to the application subject to the following conditions of consent.</p>																																							
Strategic and Place Planning (Heritage Officer)	<p>Supported - no recommended conditions</p> <table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3">The proposal has been referred to Heritage as the subject property adjoins a heritage item</td></tr><tr><td colspan="3">I2 - Stone kerbs</td></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><td colspan="3">Details of the item as contained within the Manly inventory is as follows:</td></tr><tr><td colspan="3"><u>Statement of Significance</u> Stone kerbs are heritage listed.</td></tr><tr><td colspan="3"><u>Physical Description</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust</td><td>No</td><td></td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			The proposal has been referred to Heritage as the subject property adjoins a heritage item			I2 - Stone kerbs			Details of heritage items affected			Details of the item as contained within the Manly inventory is as follows:			<u>Statement of Significance</u> Stone kerbs are heritage listed.			<u>Physical Description</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.			Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust	No	
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Internal Referral Body	Comments		
	(NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for alteration and additions to a residential flat building. Specifically, the replacement of infill panels and windows at the rear of the building and the creation of rear balconies. The heritage item is located outside the property along Cliff Street. As the works are contained to the rear of the property and there is no changes to the front, the proposal is considered to not impact upon the heritage item or its significance.		
	Therefore, Heritage raises no objections and requires no conditions.		
	Consider against the provisions of CL5.10 of MLEP.		
	Is a Conservation Management Plan (CMP) Required? No		
	Has a CMP been provided? No		
	Is a Heritage Impact Statement required? No		
	Has a Heritage Impact Statement been provided? No		
External Referral Body	Comments		
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported - subject to recommended conditions		
	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.		

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,*
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
- (iii) the conversion of an existing building, and*

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development involves alterations and additions to an existing 4 storey residential flat building, largely involving new elevated balconies on the rear elevation and providing additional floor space to Unit 7 on the lower floor.

The proposed alterations and additions do not constitute a substantial redevelopment or substantial refurbishment of the existing residential flat building. Hence, as per the definition of a residential flat building and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

Accordingly, no further assessment is required regarding the provisions of SEPP 65.

SEPP (Building Sustainability Index: BASIX) 2004

A number of BASIX Certificates have been submitted with this application. A condition is recommended with this consent to ensure compliance with the aforementioned BASIX Certificates.

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

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken below as follows:

10.1 Aims of Chapter

(1) This Chapter has the following aims with respect to the Sydney Harbour Catchment—

(a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained—

(i) as an outstanding natural asset, and

(ii) as a public asset of national and heritage significance,

for existing and future generations,

(b) to ensure a healthy, sustainable environment on land and water,

(c) to achieve a high quality and ecologically sustainable urban environment,

(d) to ensure a prosperous working harbour and an effective transport corridor,

(e) to encourage a culturally rich and vibrant place for people,

(f) to ensure accessibility to and along Sydney Harbour and its foreshores,

(g) to ensure the protection, maintenance and rehabilitation of watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity,

(h) to provide a consolidated, simplified and updated legislative framework for future planning.

Comment:

The proposed development involves relatively minor alterations and additions to an existing residential flat building. The works do not substantially alter the height, bulk and scale of the existing building and the development is sufficiently separated from the foreshore area, thereby ensuring the development

will not have an unreasonable impact upon the environmental and visual qualities of the Sydney Harbour catchment. Overall, the proposal is consistent with the aims of this Chapter.

10.10 Sydney Harbour Catchment

The planning principles for land within the Sydney Harbour Catchment are as follows—

- (a) development is to protect and, where practicable, improve the hydrological, ecological and geomorphological processes on which the health of the catchment depends,*
- (b) the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geodiversity,*
- (c) decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment,*
- (d) action is to be taken to achieve the targets set out in Water Quality and River Flow Interim Environmental Objectives: Guidelines for Water Management: Sydney Harbour and Parramatta River Catchment (published in October 1999 by the Environment Protection Authority), such action to be consistent with the guidelines set out in Australian Water Quality Guidelines for Fresh and Marine Waters (published in November 2000 by the Australian and New Zealand Environment and Conservation Council),*
- (e) development in the Sydney Harbour Catchment is to protect the functioning of natural drainage systems on floodplains and comply with the guidelines set out in the document titled Floodplain Development Manual 2005 (published in April 2005 by the Department),*
- (f) development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour,*
- (g) the number of publicly accessible vantage points for viewing Sydney Harbour should be increased,*
- (h) development is to improve the water quality of urban run-off, reduce the quantity and frequency of urban run-off, prevent the risk of increased flooding and conserve water,*
- (i) action is to be taken to achieve the objectives and targets set out in the Sydney Harbour Catchment Blueprint, as published in February 2003 by the then Department of Land and Water Conservation,*
- (j) development is to protect and, if practicable, rehabilitate watercourses, wetlands, riparian corridors, remnant native vegetation and ecological connectivity within the catchment,*
- (k) development is to protect and, if practicable, rehabilitate land from current and future urban salinity processes, and prevent or restore land degradation and reduced water quality resulting from urban salinity,*
- (l) development is to avoid or minimise disturbance of acid sulfate soils in accordance with the Acid Sulfate Soil Manual, as published in 1988 by the Acid Sulfate Soils Management Advisory Committee.*

Comment:

Due to the scale of the proposed proposes, coupled with the sufficient separation from the foreshore,

the proposal is not likely to adversely impact upon the environmental qualities of the harbour catchment. Sediment and erosion controls have been recommended as conditions to prevent sediment migration towards waterways. Overall, the proposal is consistent with Clause 10.10 of this Chapter.

10.19 Biodiversity, ecology and environment protection

The matters to be taken into consideration in relation to biodiversity, ecology and environment protection are as follows—

- (a) development should have a neutral or beneficial effect on the quality of water entering the waterways,*
- (b) development should protect and enhance terrestrial and aquatic species, populations and ecological communities and, in particular, should avoid physical damage and shading of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (c) development should promote ecological connectivity between neighbouring areas of aquatic vegetation (such as seagrass, saltmarsh and algal and mangrove communities),*
- (d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow, current and wave action and changes to water quality) as a result of increased access,*
- (e) development should protect and reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (f) development should retain, rehabilitate and restore riparian land,*
- (g) development on land adjoining wetlands should maintain and enhance the ecological integrity of the wetlands and, where possible, should provide a vegetative buffer to protect the wetlands,*
- (h) the cumulative environmental impact of development,*
- (i) whether sediments in the waterway adjacent to the development are contaminated, and what means will minimise their disturbance.*

Comment:

Council's Biodiversity Officer has reviewed the application and raised no objections, subject to recommended conditions. Hence, it is considered that the proposal is not likely to impact upon local biodiversity, ecology or the natural environment within the harbour catchment.

Conclusion

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is located within the Coastal Use Area within the meaning of this Chapter. Therefore, the application is assessed against Divisions 4, 5 and 6 of this Chapter as follows:

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - iii) *foreshores,*
 - iv) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - v) *Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and*
 - b) *is satisfied that:*
 - i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- 2) *This section does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).*

Comment:

The works do not substantially alter the height, bulk and scale of the existing building and the development is sufficiently separated from the foreshore area, thereby ensuring the development will not detract from the visual qualities of the foreshore area. The works are confined to private property and do not preclude access to or along the foreshore area. In addition, the development will not result in overshadowing or wind funnelling of the foreshore area, nor will the development obstruct public domain views towards the foreshore area.

The site is not located within an area known for containing Aboriginal heritage significance and therefore, the development is not likely to have an adverse impact upon Aboriginal cultural heritage, practices, or places. Council's Heritage Officer has also reviewed the application and is satisfied that the proposed development will not have an adverse impact upon surrounding items identified with cultural and built environmental heritage.

The assessment has considered the surrounding coastal and built environment, and the bulk, scale and size of the proposal, and concluded that the development will have an acceptable impact upon the locality.

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:

Given the relatively minor nature of the proposal, coupled with the sufficient separation from the foreshore area, it is concluded that the proposal is unlikely to cause increased risk of coastal hazards within the locality.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The proposal is not inconsistent with any certified coastal management programs.

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 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 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	12.73m	49.76%	No
Floor Space Ratio	0.6:1 (205.08sqm)	1.63:1 (557.6sqm)	171.67%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 - Height of Buildings

Description of non-compliance:

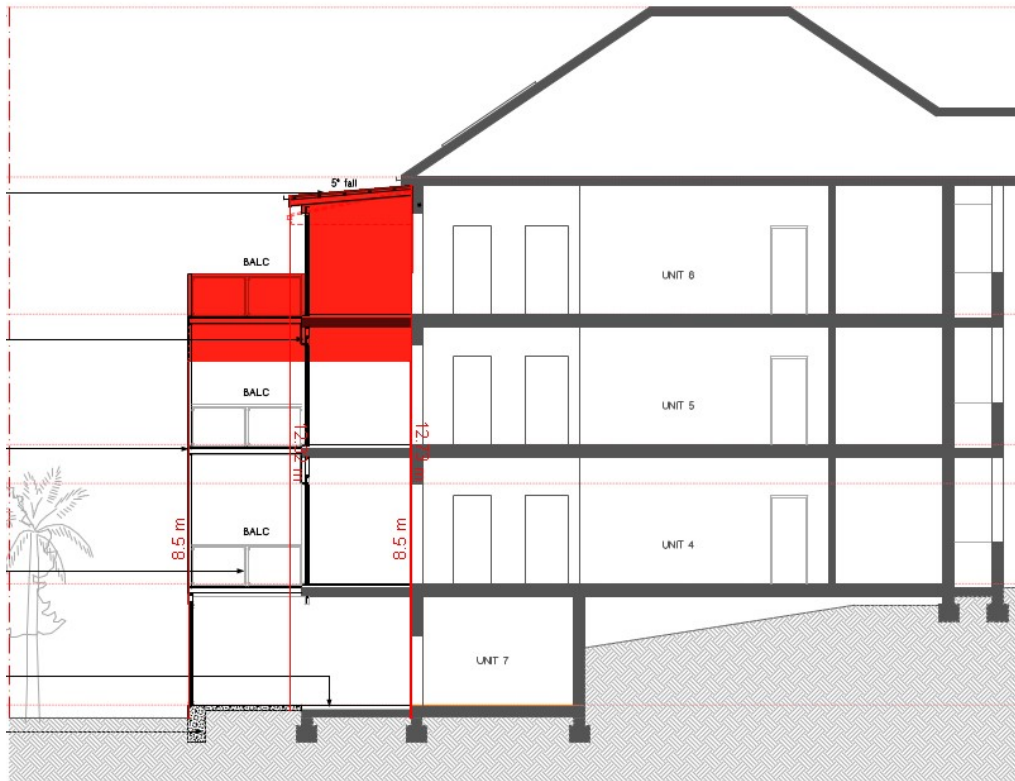
Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	12.73m
Percentage variation to requirement:	49.76%

Clause 4.3 of Manly LEP limits the height of buildings on the subject site to 8.5m above the existing ground level. The colourbond roof sheeting located above the upper floor rear facing balcony is located 12.73m above the existing ground level, which represents a 49.76% variation to the development standard.

It is important to note that the existing residential flat building encroaches above the 8.5m height plane and that the top of the colourbond roof sheeting located above the upper floor rear facing balcony is located 4.25m below the ridge level of the existing building. The top of the ridge level of the existing building measures at 15.08m above the existing ground level. Hence, the development does not exacerbate the existing height non-compliance.

Figure 1 below depicts the new building elements that encroach above the 8.5m height plane.

Figure 1: new building elements that encroach above the 8.5m height plane



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

- The variation is a result of the existing non compliant building being approximately 15m in height.
- The proposed new balconies are compatible with the height and scale of surrounding development as it is considerably lower than the roof of the existing building.
- There is public benefit in maintaining a degree of flexibility in specific circumstances, particularly when site constraints warrant a variation that is still able to achieve the outcomes of the control.

Comment:

The justification provided by the applicant to contravene the development standard and well-founded and agreed with.

It is accepted that the existing residential flat building significant encroaches above the 8.5m height plane and that the new works are located 4.25m below the roofline of the existing building. The proposal seeks to provide for balconies at the rear of the site to enhance residential amenity for occupants without any unreasonable impacts on surrounding sites. The new works do not substantially alter the height and scale of the existing residential flat building and whilst the proposal exceeds the height plane, the resulting development will maintain an appropriate visual relationship with the surrounding built environment. In this instance, there is public benefit in maintaining a degree of flexibility to the standard.

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

Therefore, the applicant's written request has adequately demonstrated that there are sufficient

environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

In considering whether 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 R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – '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 works are compatible with the surrounding development and are situated 4.25m below the roofline of the existing residential flat building. The works comprise of a similar rear setback to the adjoining site to the south-west. It should also be noted the works are sited to the rear of the property and will not be visible from Cliff Street. Overall, the proposal is consistent with this objective.

b) to control the bulk and scale of buildings,

Comment:

The proposed new balconies are not considered to result in any substantial bulk and scale in the context of the existing building given their open nature and the proposed colours and finishes.

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 proposal is not considered to unreasonably impact views to, from or between residential development and public spaces.

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

Comment:

The proposed development will not result in unreasonable overshadowing of adjoining properties due to the works being located significant below the existing building height and due to the north-western orientation and slope of the land.

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 height of the proposed works are compatible with the surrounding environment and are not expected to cause conflict with the bushland and surrounding land uses.

Zone Objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal seeks to provide for increased amenity for the existing occupants.

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

Comment:

The proposal provides for balconies on an existing residential flat building.

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

Comment:

The proposal will provide for facilities to meet the day to day needs of residents.

Conclusion:

For the reasons detailed above, the proposal is consistent with the objectives of the R1 General Residential zone and Clause 4.3 of Manly LEP 2013.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Clause 4.4 - Floor Space Ratio

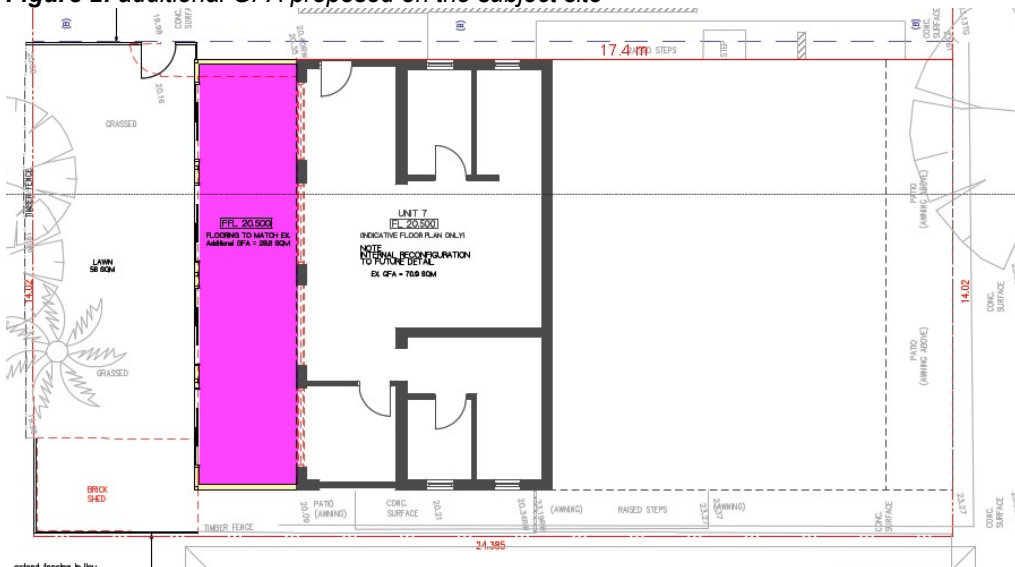
Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (205.08sqm)
Proposed:	1.63:1 (557.6sqm)
Percentage variation to requirement:	171.67%

Clause 4.4 of Manly LEP 2013 limits the floor space ratio (FSR) on the subject site to 0.6:1 (205.08sqm). The existing residential flat building significantly breaches this requirement and has a FSR of 1.55:1 (529sqm). The proposed development encloses an existing alfresco area (i.e. existing private open space for Unit 7) to provide additional floor space to Unit 7. This provides for an additional 28.6sqm of gross floor area, thereby increasing the FSR on the site from 1.55:1 to 1.63:1.

Figure 2 below depicts the additional gross floor area that is proposed on the site.

Figure 2: additional GFA proposed on the subject site



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

- The proposed development is general alterations and additions to an existing building that will allow the owners of the dwelling units to utilise their alfresco areas for additional spaces without the need to demolish and rebuild the building.
- The proposed development is utilising existing balconies of the building for floor space and as such the impact on landscaping is minimal.
- The proposed alterations and additions to the residential flat building has been designed to be compatible with the character of the area as shown in the statement of environmental effects. The development is low impact compared to the surrounding developments and is considered to be consistent with the established bulk and scale of the area.

Comment:

The justification provided by the applicant to contravene the development standard and well-founded and agreed with.

It is agreed that the additional FSR on the site is attributed to enclosing an existing alfresco area on the lower floor. The additional FSR provided on the site does not contribute to any unreasonable amenity impacts or significant building bulk, noting that the additional GFA is located within the existing building footprint.

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 the proposed development will be in the public interest, consideration must be given to the underlying objectives of the FSR development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The additional FSR provided on the site is located on the lower floor within the footprint of an existing alfresco area at the rear of the residential flat building. As such, the additional FSR will not significantly alter the bulk and scale of the existing residential flat building. The proposed development will remain consistent with the existing and desired streetscape character.

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

Comment:

The additional floor space is located within the existing building footprint and will not obscure any important landscape or townscape features.

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

Comment:

The additional FSR on the site will not be visible from Cliff Street and therefore, the development will not detract from the existing streetscape character.

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

Comment:

The FSR non-compliance results in negligible amenity impacts to neighbouring properties, specifically in relation to view sharing, solar access, visual bulk, and privacy.

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

Comment:

The site is not located within a local centre.

Zone Objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal seeks to provide for increased amenity for the existing occupants.

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

Comment:

The proposal provides for balconies on an existing residential flat building.

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

Comment:

The proposal will provide for facilities to meet the day to day needs of residents.

Conclusion:

For the reasons detailed above, the proposal is consistent with the objectives of the R1 General Residential zone and Clause 4.4 of Manly LEP 2013.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 341.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	NE: 7.5m (based on gradient 1:6)	11.82m - no change to existing	57.6%	No
	SW: 7.5m (based on gradient 1:6)	12.5m - no change to existing	66.67%	No
4.1.2.2 Number of Storeys	2 storeys	4 storeys - no change to existing	100%	No
4.1.2.3 Roof Height	Pitch: maximum 35 degrees	5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	17.4m	-	Yes
4.1.4.2 Side Setbacks	NE: 3.94m (1/3 of wall	1.39m - no change to	64.72%	No

and Secondary Street Frontages	height) SW: 4.17m (1/3 of wall height)	existing 1.24m - no change to existing	70.26%	No
4.1.4.4 Rear Setbacks	8m	4.29m	46.38%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (187.99sqm) of site area	16.38% (56sqm) - improvement on existing	70.21%	No
	Open space above ground max. 25% of total open space	nil (as above ground decks not 3m x 3m in dimension)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of proposed open space	100% (56sqm) - improvement on existing	-	Yes
4.1.5.3 Private Open Space	12sqm per apartment	> 12sqm each apartment, excluding Unit 7, which has no private open space	100%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The proposed development contains a number of elevated balconies on the rear elevation of the existing residential flat building. It is noted that these balconies are devoid of privacy screens and are in close proximity to the side boundaries.

To ensure that adequate visual privacy is maintained for the adjacent properties and each individual unit within the existing residential flat building, a suitable condition is recommended with this consent requiring the side elevations (i.e. north-eastern and south-western) of the level 1, 2 and 3 balconies to be affixed with 1.65m high privacy screens. It is noted that screening of the rear (i.e. north-western) elevation of these balconies is not required as the balconies only provide for overlooking onto the roof and driveway of the north-western adjacent property.

Subject to compliance with the recommended condition, the proposal will be consistent with the requirements and outcomes of this control.

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

Description of non-compliance

The proposal presents a non-compliance to the following controls:

- Maximum wall height of 12.5m, which exceeds the numeric requirement of 7.5m. It is noted that the proposal does not increase the overall maximum wall height of the existing building.
- 4 storey built form, which exceeds the numeric requirement of 2 storeys. It is noted that the proposal does not increase the number of storeys to the existing residential flat building.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposal satisfies the objectives of the development standard, notwithstanding the technical non-compliances.

4.1.3 Floor Space Ratio (FSR)

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

Furthermore, it is noted that the site is not an 'undersized allotment, as defined by the Manly DCP 2013.

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

Description of non-compliance

The proposal presents a non-compliance to the following controls:

- North-eastern side setback of 1.39m, which does not satisfy the numeric requirement of 3.94m (1/3 of wall height). It is noted that the proposed north-eastern side setback is consistent with that of the existing residential flat building on the site.
- South-western side setback of 1.24m, which does not satisfy the numeric requirement of 4.17m (1/3 of wall height). It is noted that the proposed south-western side setback is consistent with that of the existing residential flat building on the site.
- Rear setback of 4.29m, which does not satisfy the numeric requirement of 8m.

Merit consideration:

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

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

Comment:

The proposed works are located within the rear of the site and are not visible from Cliff Street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed alterations and additions to the existing residential flat building to provide for internal works and balconies seeks to increase amenity for the occupants. The proposed works are in line with the side setbacks of the existing dwelling and are not expected to have any unreasonable impacts on local amenity enjoyed by surrounding residents. A condition has been recommended with this consent requiring privacy screens to be erected on the side elevations of the rear balconies to ensure a balanced privacy outcome for the occupants of the building and the neighbouring properties. Overall, the proposal satisfies this objective.

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

Comment:

The non-compliances are as a result of the siting of the existing development and the side and rear setbacks are compatible with the setback of buildings on adjoining sites. Therefore, flexibility is afforded in this circumstance.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development results in a net increase of soft landscaping on the site. In addition, the proposal does not result in the removal of prescribed vegetation.

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

Comment:

The site is not bushfire prone.

Conclusion

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

4.1.5 Open Space and LandscapingDescription of non-compliance

The proposal presents a technical non-compliance to the total open space provision as only 16.38% of the site comprises total open space, which does not meet the numeric requirement of 55%. However, the application results in a 3.33% (11.3sqm) net increase in total open space on the site through the removal of the existing rear shed.

Moreover, the enclosure of the Unit 7 alfresco area results in the removal of the private open space to this apartment. The control requires each apartment to have 12sqm of private 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:

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

Comment:

The proposal does not result in the removal of prescribed vegetation and results in a net increase of soft landscaping on the site.

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

Comment:

The proposal complies with the soft landscaped area controls and does not seek to remove any of the existing landscaping, but rather increases the existing soft landscaping on the site.

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

Comment:

Whilst the proposal removes the existing private open space for Unit 7, the enclosure of the existing private open space will provide for increased amenity for the occupants of Unit 7 through the provision of additional floor space, noting that the existing alfresco has limited utility value as it is sited near ground level adjacent to the common property area. The proposed development at large will increase the amenity for the occupants of each unit, without creating any detrimental amenity impacts to neighbouring properties, specifically with regards to view sharing, visual bulk, privacy and solar access.

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

Comment:

The proposal results in a net increase of landscaped area, which will assist in water infiltration. Council's Development Engineers have also recommended suitable conditions to ensure that stormwater generated by the proposal is adequately managed.

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

Comment:

The proposal will not lead to a significant spread of weeds.

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

Comment:

The proposed development does not have an adverse impact upon wildlife corridors.

Conclusion

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$4,374 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$437,415.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to an existing residential flat building, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to proposed development involving variations to Clause 4.3 - Height of Buildings and Clause 4.4 - Floor Space Ratio that exceed 10%.

The applicant has submitted written requests pursuant to Clause 4.6 of Manly LEP 2013 to justify the technical breaches to the height and FSR standards. The applicant's written requests are well-founded and adequately demonstrate that compliance is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the technical breaches to the height and FSR standards. The technical breaches do not significantly alter the bulk and scale of the existing 4 storey residential flat building and do not result in unreasonable amenity impacts to neighbouring properties.

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

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 recommended conditions attached.

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 Clauses 4.3 Height of Building and 4.4 Floor Space Ratio development standards pursuant to Clause 4.6 of the MLEP 2013 as the applicant's written 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1025 for Alterations and additions to a residential flat building on land at Lot CP SP 12958, 25 Cliff Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-01 (Issue 1) - Site Plan + Analysis	22 April 2022	Pittwater Design + Draft
DA-02 (Issue 1) - Level 0 Plan	22 April 2022	Pittwater Design + Draft
DA-03 (Issue 1) - Level 1 Plan	22 April 2022	Pittwater Design + Draft
DA-04 (Issue 1) - Level 2 Plan	22 April 2022	Pittwater Design + Draft
DA-05 (Issue 1) - Level 3 Plan	22 April 2022	Pittwater Design + Draft
DA-06 (Issue 1) - Roof + Stormwater Concept Plan	22 April 2022	Pittwater Design + Draft
DA-07 (Issue 1) - North Elevation	22 April 2022	Pittwater Design + Draft
DA-08 (Issue 1) - East Elevation	22 April 2022	Pittwater Design + Draft
DA-09 (Issue 1) - West Elevation	22 April 2022	Pittwater Design + Draft
DA-10 (Issue 1) - Section 1	22 April 2022	Pittwater Design + Draft
DA-12 (Issue 1) - Sediment + Erosion Control Plan	22 April 2022	Pittwater Design + Draft
DA-13 (Issue 1) - Example of Finishes	22 April 2022	Pittwater Design + Draft

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment Ref. AG 20169	23 July 2020	Ascent Geotechnical Consulting
Geotechnical Letter Ref. AG 20169	27 May 2022	AscentGeo Consulting Geotechnical Engineers

DA Stage BCA and Fire & Lift Safety Audit Report Ref. 111845-BCA-r2	24 May 2022	BCA Logic
BASIX Certificate No. A387180_03 (Unit 1)	16 June 2022	Leigh Sym
BASIX Certificate No. A387184_03 (Unit 2)	16 June 2022	Leigh Sym
BASIX Certificate No. A387186_03 (Unit 3)	16 June 2022	Leigh Sym
BASIX Certificate No. A387187_03 (Unit 4)	16 June 2022	Leigh Sym
BASIX Certificate No. A387188_03 (Unit 5)	16 June 2022	Leigh Sym
BASIX Certificate No. A387189_03 (Unit 6)	16 June 2022	Leigh Sym
BASIX Certificate No. A387190_03 (Unit 7)	16 June 2022	Leigh Sym

b) 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.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	not dated

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

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

3. **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.

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 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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,374.15 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 \$437,415.00.

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. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. **Amendments to the approved plans**

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

- The south-western and north-eastern outer edges of the elevated rear balconies on levels 1, 2 and 3 must be affixed with non-transparent privacy screens to a height of 1.65 metres above the finished floor level of the balconies. The screens shall be of fixed panel or louvre style construction (with a maximum spacing of 20 millimetres), in materials that complement the design of the approved development. The screens shall span the entire side elevations of the approved balconies.

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

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

9. **Fire Safety Upgrade**

The existing levels of fire safety within the premises are to be upgraded to achieve an adequate level of fire safety in accordance with the provisions of section 64 of the Environmental Planning and Assessment Regulation 2021.

The fire safety upgrading works are to be included in the Construction Certificate and be implemented prior to occupation of the new building or part.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

10. **Fire Safety Schedule**

A Schedule of existing and proposed Essential Fire Safety measures including their Standard of Performance must be included with the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

11. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with Council's Waste Management Guidelines.

Details demonstrating compliance must be provided to the 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.

12. **Compliance with Standards**

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

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

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

13. **External Finishes to Roof**

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

Details demonstrating compliance are to be submitted to the 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **Road Reserve**

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

Reason: Public safety.

15. **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.

16. **Pre-clearance survey - bandicoot habitat**

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared or the immediate vicinity. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

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

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

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

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

18. **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.

19. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

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

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

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

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

21. **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**

22. **Stormwater Disposal**

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

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

23. **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.

24. **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.

25. **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.

26. **Fire Safety Upgrade**

The existing levels of fire safety within the premises are to be upgraded to achieve an adequate level of fire safety in accordance with the provisions of section 64 of the Environmental Planning and Assessment Regulation 2021.

The fire safety upgrading works are to be implemented prior to the issue of the Occupation Certificate.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

27. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures that apply to the building (as listed in the fire safety schedule) The certificate confirms that each of the fire safety measures have been installed and checked by a properly qualified person. This helps verify that the required fire safety measures can perform to the minimum standard. A Fire Safety Certificate must be issued using a standard template form published by the Government.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard

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

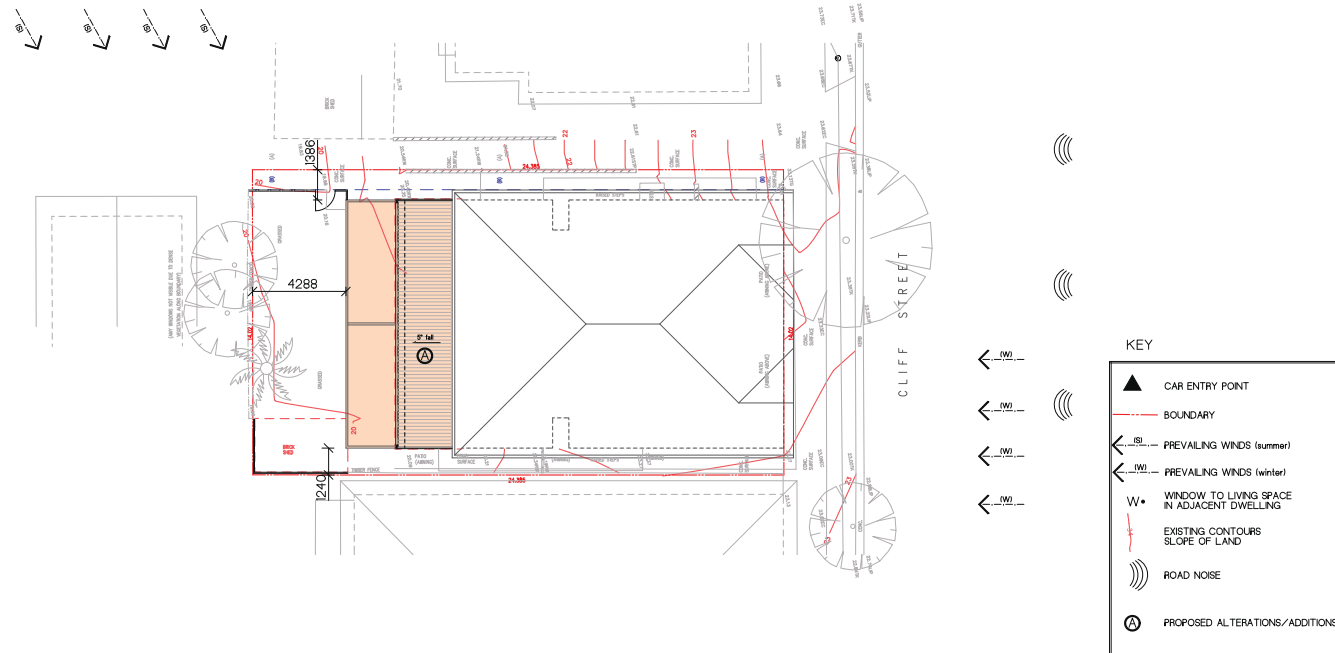
Reason: Statutory requirement under Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

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

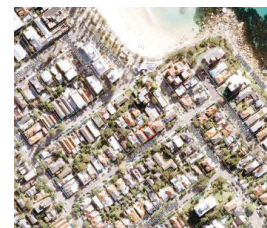
28. **Geotechnical Recommendations**

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.



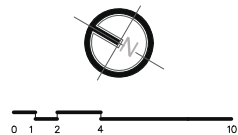
Zoning Map of 25 Cliff Street, Manly



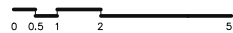
Aerial View of 25 Cliff Street, Manly

SITE CALCULATIONS

	Existing	Proposed
Site Area	3418m ²	
4.1.3 Floor Space Ratio	1.55:1	1.84:1
4.1.4 Setbacks		
-South (front)	0mm	0mm
-North (rear)	6989mm	4288mm
-East (side)	1386mm	1386mm
-West (side)	1240mm	1240mm
EXISTING RESIDENTIAL AREA	170.4m ²	
PROPOSED RESIDENTIAL AREA	170.4m ²	
EXISTING HARD SURFACE AREA	293.6m ²	
PROPOSED HARD SURFACE AREA	293.6m ²	
EXISTING LANDSCAPED AREA	48m ²	
PROPOSED LANDSCAPED AREA	65.8m ² (required)	56m ²



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ISSUE	DATE	AMENDMENT
1	22.04.22	DA ISSUE 1

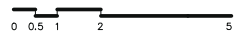
ADDRESS
LOT CP SP 12598
25 CLIFF STREET, MANLY

CLIENT:
STRATA PLAN 12958

SHEET TITLE
NORTH ELEVATION

DATE
22.04.22

SCALE: 1:100 @ A3	PROJECT No: 1727	DWG No: DA-07	ISSUE 1
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DO NOT SCALE FROM DRAWINGS. BUILDER/CONTRACTORS ARE TO VERIFY ALL DIMENSIONS PRIOR TO COMMENCEMENT OF SITE WORK OR OFF-SITE FABRICATION.

ISSUE 1
DATE 22.04.22
AMENDMENT DA ISSUE 1

ADDRESS
LOT CP SP 12598
25 CLIFF STREET, MANLY

CLIENT:
STRATA PLAN 12958

SHEET TITLE:
EAST ELEVATION

DATE
22.04.22

SCALE:
1:100 @ A3

PROJECT No:
1727

DWG No:
DA-08

ISSUE
1



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**CLAUSE 4.6 EXCEPTION TO DEVELOPMENT
STANDARD**

Floor Space Ratio Variation

**25 Cliff Street
Manly**

Clause 4.6 (Floor Space Ratio)
25 Cliff Street Manly

Clause 4.6 Exception to Development Standard

25 Cliff Street Manly

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Clause 4.6 (Floor Space Ratio)
25 Cliff Street Manly

1 Introduction

This clause 4.6 report accompanies a development application for alterations and additions to an existing residential flat building complex at 25 Cliff Street Manly

2 Clause 4.4 Floor Space Ratio - Variation Request

FSR requirement: 60% (205.08sqm)

Proposed FSR: 1.63:1 (557.6sqm)

Variation Requested: 352.52sqm

The request seeks exception to a development standard under clause 4.6 - Exceptions to Development Standards of Manly Local Environmental Plan 2013. The development standard for which a variation is sought is that of Floor Space Ratio restriction contained within Clause 4.4. The proposed alterations and additions seek a minor increase in the GFA for the building with the existing balconies being enclosed to be utilized as alfresco areas. The non compliance is in relation to a historical non compliance regarding the FSR for the building relying on existing use rights and therefore is not required to comply with the development standard. It is noted that variations within the Manly locality have been approved with much greater non compliances.

The variation has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP & I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant, principles identified in the *Wehbe v Pittwater Council [2007] NSWLEC 827*

Clause 4.6 Exceptions to development standards establishes framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) 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(3)(a) and 4.6(3)(b) require 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:

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

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- (a) the consent authority is satisfied that:*
 - (i) the applicants written request has adequately address 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*

Clause 4.6 (Floor Space Ratio)
25 Cliff Street Manly

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

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

A detailed assessment has been carried out below:

2.1 What is the Development Standard proposed to be varied?

Clause 4.4 of the Manly LEP provides the following development standard in relation to Floor Space Ratios.

- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

Objectives of clause 4.4

The objectives of clause 4.4 are as followed:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

2.2 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining this, the 5 Part test established in *Wehbe v Pittwater Council [2007] NSWLEC 827* has been utilised as a guide

1. Is the proposal consistent with objectives of the standard notwithstanding non-compliance;

The proposal, despite non-compliance with Clause 4.4(2) of the Manly LEP, is considered to remain consistent with the underlying objective of the development standard as follows:

Clause 4.6 (Floor Space Ratio)
25 Cliff Street Manly

Objective A: *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: The proposed alterations and additions to the residential flat building has been designed to be compatible with the character of the area as shown in the statement of environmental effects. The development is low impact compared to the surrounding developments and is considered to be consistent with the established bulk and scale of the area.

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

Comment: The proposed development is utilising existing balconies of the building for floor space and as such the impact on landscaping is minimal.

Objective C: *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment: As mentioned above the development is appropriate for the area and the character and landscape of the area. It is considered that the proposed design of the development will not be visually intrusive from a public place and results in a good design outcome.

Objective D: *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment: The building has been designed to take advantage of the existing balcony areas of the residential flat building and to minimise the impact on the site and the adjoining public domain.

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

Comment: The development does not impact the viability of the nearby business zone.

2. Is the underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;

The underlying objective or purpose of the Standard is relevant. As demonstrated above, the proposal retains consistency with the objectives of Clause 4.4 of Manly Council LEP, despite non-compliance.

3. Would the underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives or purpose of the standard would not be defeated or thwarted if compliance was required however it is noted that the development proposed to be of a size that is similar to surrounding dwellings in the locality and due to the small nature of the site the FSR does not comply.

Clause 4.6 (Floor Space Ratio)
25 Cliff Street Manly

- 4. Has the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;**

The standard has not been abandoned or destroyed however it is noted from Council's Clause 4.6 Variations register that the Council regularly grants consent for development despite a non compliance with the Floor Space Ratio clause 4.4.

It is considered that Council will often approve FSR non compliances on small sites with site constraints such as the proposed development.

- 5. Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.**

The zoning of the land is appropriate for the site.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is considered to appropriately address and respond to the relevant matters for consideration under S4.15(1) of the EP&A Act 1979.

Specifically, it is considered that the development has been designed in accordance with the objectives outlined in section 1.3 of the EP&A Act 1979 as followed:

***Object (b)** to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Comment: The proposed development is general alterations and additions to an existing dwelling that will allow the owners of the dwelling units to utilise their alfresco areas for additional spaces without the need to demolish and rebuild the building.

The proposed extensions has been designed to minimise the impact on the site and on the adjoining neighbours while providing a visually attractive dwelling that promotes a good design for the streetscape.

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

Comment: The proposed development has been designed to improve the appearance of the dwelling units through architectural features of the alfresco areas but not result in a visually intrusive development. It is noted that the design of the alterations and additions is in context to the future character of the area.

It is considered that there are sufficient environmental planning grounds to justify the non-compliance with the development standard as provided above. Additionally, the development complies with the outcomes of the Residential zone.

Clause 4.6 (Floor Space Ratio)
25 Cliff Street Manly

2.3 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and zone as set out above.

There is public benefit in maintaining a degree of flexibility in specific circumstances, particularly when site constraints warrant a variation and the development is still able to achieve the outcomes of the control. In the current case, strict compliance would limit the development potential of the site and limit the lifestyle of the occupants of the dwelling. As identified above, the development achieves the outcomes of the development standard and is considered to be in the public interest.

3 Conclusion

As provided above, the development complies with the outcomes of the development standard and is considered to be in the public interest. Strict compliance with this control is deemed unnecessary and restricts the use of the site by the owners due to the site constraints. It is considered that the development results in a good planning and design outcome for the property and the community.



Outlook

Planning &
Development

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD

Height of Building Variation

Lot CP/-/SP12958

25 Cliff Street,

Manly 2095

Clause 4.6 (Height of Building)
25 Cliff Street Manly

Clause 4.6 Exception to Development Standard

25 Cliff Street Manly

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Clause 4.6 (Height of Building)
25 Cliff Street Manly

1 Introduction

This clause 4.6 report accompanies a development application for alterations and additions to an existing residential flat building at 25 Cliff Street Manly. The proposed development seeks consent for enclosing the existing sunrooms (aside from unit 7) and adding new balconies on the northern elevation of the building.



Figure 3: East Elevation of proposed development

2 Clause 4.3 Height of Buildings - Variation Request

Maximum height: 8.5m

Proposed/existing height: 12.73m

Variation Requested: 4.23m

The request seeks exception to a development standard under clause 4.6 - Exceptions to Development Standards of Manly Local Environmental Plan 2013. The development standard for which a variation is sought is that of Height of Building restriction contained within Clause 4.3. The variation is extremely minor and is a result of the existing non compliant building being approximately 15m in height.

The variation has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP & I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant, principles identified in the *Wehbe v Pittwater Council [2007] NSWLEC 827*

Clause 4.6 Exceptions to development standards establishes framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) are as follows:

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

Clause 4.6 (Height of Building)
25 Cliff Street Manly

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

Clause 4.6(3)(a) and 4.6(3)(b) require 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:

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

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

(a) the consent authority is satisfied that:

*(i) the applicants written request has adequately address 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*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

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

A detailed assessment has been carried out below:

2.1 What is the Development Standard proposed to be varied?

Clause 4.3 of the Manly LEP provides the following development standard in relation to height of buildings.

(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.

Objectives of clause 4.3

The objectives of clause 4.3 are as followed:

*(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—*

Clause 4.6 (Height of Building)
25 Cliff Street Manly

- (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.*

2.2 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining this, the 5 Part test established in *Wehbe v Pittwater Council [2007] NSWLEC 827* has been utilised as a guide

1. Is the proposal consistent with objectives of the standard notwithstanding non-compliance;

The proposal, despite non-compliance with Clause 4.3(2) of the Manly LEP, is considered to remain consistent with the underlying objective of the development standard as follows:

Objective A: *(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 new balconies are considered to be compatible with the height and scale of surrounding development as it is considerably lower than the roof of the existing building.

Objective B: *to control the bulk and scale of buildings,*

Comment: The proposed development is not considered to contribute to the bulk and scale of the building.

Objective C: *to minimise disruption to the views to nearby residential development from public spaces (including the harbour and foreshores) and views between public spaces (including the harbour and foreshores),*

Comment: The proposed development does not cause an impact on views of neighbouring residences or from public spaces or between public spaces.

Objective D: *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment: The proposed development maintains adequate sunlight for the units and adjacent dwellings.

Clause 4.6 (Height of Building)
25 Cliff Street Manly

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

Comment: The proposed development does not impact the existing vegetation and topography as it is built over an existing hard surface area. It will not cause conflict with the bushland and surrounding land uses.

2. Is the underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;

The underlying objective or purpose of the Standard is relevant. As demonstrated above, the proposal retains consistency with the objectives of Clause 4.3 of Manly Council LEP, despite non-compliance.

3. Would the underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives or purpose of the standard would not be defeated or thwarted if compliance was required, however, as outlined above consistency with objectives is achieved despite noncompliance.

4. Has the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The standard has not been abandoned or destroyed however it is noted from Council's Clause 4.6 Variations register that the Council regularly grants consent for development despite a non compliance with the Height of Buildings' clause 4.3.

5. Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.

The zoning of the land is appropriate for the site.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is considered to appropriately address and respond to the relevant matters for consideration under S4.15(1) of the EP&A Act 1979.

Specifically, it is considered that the development has been designed in accordance with the objectives outlined in section 1.3 of the EP&A Act 1979 as followed:

Objective (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

Comment: The proposed development is alterations and additions to the existing residential flat building to provide new balconies and will result in ecologically sustainable development.

Clause 4.6 (Height of Building)
25 Cliff Street Manly

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

Comment: The proposed alterations to the existing residential flat building promote good design and amenity of the built environment. It is noted that the non compliance is minor and is a result of a depression in the site.

It is considered that there are sufficient environmental planning grounds to justify the non-compliance with the development standard as provided above. Additionally, the development complies with the outcomes of the R2 Low Density Residential zone.

2.3 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and zone as set out above.

There is public benefit in maintaining a degree of flexibility in specific circumstances, particularly when site constraints warrant a variation and the development is still able to achieve the outcomes of the control. In the current case, strict compliance would limit the development potential of the site and limit the lifestyle of the occupants of the dwelling. As identified above, the development achieves the outcomes of the development standard and is considered to be in the public interest.

3 Conclusion

As provided above, the development complies with the outcomes of the development standard and is considered to be in the public interest. Strict compliance with this control is deemed unnecessary and restricts the use of the site by the owner due to the site constraints. It is considered that the development results in a good planning and design outcome for the property and the community.

ITEM 4.5**DISCLOSURES OF INTEREST**

In accordance with Clause 4.22 & 4.23 of the NSW Code of Conduct for Local Planning Panel Members, pursuant to Clause 28 of Schedule 2 of the Environmental Planning and Assessment Act 1979, all returns by Panel members disposing interests are tabled and it is noted that they are published on Council's website.

<https://www.northernbeaches.nsw.gov.au/council/committees-and-panels/development-panels/northern-beaches-local-planning-panel/members>.