

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Mona Vale Conference Room/Manly Cove/Walamai on

WEDNESDAY 16 AUGUST 2017



Ashleigh Sherry
Manager Business System and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 16 August 2017 in the Mona Vale Conference Room

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 2 AUGUST 2017

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 2 August 2017 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	36 MALVERN AVENUE, MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING SEMI-DETACHED DWELLING
REPORTING OFFICER	Tom Prosser
TRIM FILE REF	2017/275114
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ DDP Plans

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application No. DA340/2016 for alterations and additions to the existing semi-detached dwelling at 36 Malvern Avenue, Manly be approved subject to the conditions outlined in the report.

Development Assessment Report

MC/17/49500

DA No.	DA340/2016
Site Address	36 Malvern Avenue, Manly. Lot B1 DP433559.
Proposal	Alterations and additions to the existing semi-detached dwelling
Officer	Tom Prosser

SUMMARY:

Application Lodged:	9 December 2016
Applicant:	Mr C. Shortus
Owner:	C. Shortus.
Estimated Cost:	\$1,498,959.00
Zoning:	MLEP, 2013 – R3 Medium Density Residential
Heritage:	I169- Street trees to Malvern Avenue.
Notification:	13 December 2016 to 17 January 2017
Re-notification (amended plans):	14 June 2017 to 30 June 2017
Submissions received:	4
Site Inspected:	17 May 2017 and various inspections to assess view loss.
LEP (4.6) Variations proposed:	FSR
DCP Variations proposed:	Setbacks
Recommendation:	Approval

Subject Property and surrounding area

The subject property is commonly known as 36 Malvern Avenue, Manly and legally known as Lot B1 DP433559. The site is located on the eastern side of Malvern Avenue and has rear access at Pine Lane. The property is rectangular in shape and has a frontage of 6.095m to Malvern Avenue, an average depth of 45.72m and an overall site area of 278.7m². The property currently contains a one and two storey dwelling with vehicular access via an existing driveway from Pine Lane to an existing garage to the rear of the existing dwelling. The property has a slight slope from the front to the rear of the property, being approximately 0.3m

A variety of low and medium density development along Malvern Avenue being predominantly 1, 2 or 3 storey dwellings but also higher density residential development including 33 Malvern Avenue (directly opposite the subject site) and residential flat buildings to the east at North Steyne.

The subject site is within close vicinity of the beach and ocean foreshore, sharing a rear lane with North Steyne which is adjacent to the beach.

Property Burdens and Constraints

There are no burdens or constraints that would preclude the proposed development.

Site History/Background

DA124/93- BA135/93- 1st Floor additions.

DA434/2001- Installation of In-Ground Swimming Pool within rear setback.

DA130/2010 (including Section 96) for alterations and additions to the existing dwelling.

DA267/2010- Alterations and additions including basement storeroom.

Description of proposed development

The proposed development involves alterations and additions to the existing dwelling including the addition of an upper storey and the addition of a secondary dwelling as follows:

Ground Floor

- New Bathroom
- New Laundry
- New Pantry
- New staircase

First Floor

- Extension to front including new bedroom and bathroom
- Extension to the rear including family room
- Addition of a balcony with a privacy screen
- New staircase
- The remaining space on the floor is for 2 bedrooms and a study.

New second floor

- Main bedroom with robe and ensuite.
- Stairs to level below

Amended Plans

Amended plans were received as part of this application in response to issues raised by Council. These plans were re-notified between 14 June and 30 June 2017. The changes made by the amended plans included a reduction in bulk to the top floor, a change in roof style and associated reduction in height, the removal of top level storage, the removal of a top level void, the removal of a window seat and the addition of a balcony. Further to this the proposed "studio" was deleted from the proposal, but was not removed from the plans. A condition is included in the Recommendation deleting the studio from the plans.

Internal Referrals

Engineering Comments

Council's Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Building Comments

Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Landscaping Comments

The Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Heritage Comments

Council's Heritage Officer provided the following comment on the original plans lodged on 9 December 2016:

"The subject site is NOT include on Schedule 5 of the Manly Local Environmental Plan 2013 (MLEP) as amended, nor is it located within a Conservation Area.

The subject site IS within the vicinity of Item I169 – Street Trees

The area surrounding the site could have heritage significance and may meet the criteria for inclusion on the Local Environmental Plan as a Conservation Area. Therefore, whilst it is acknowledged that the site is not protected by the heritage clauses of the MLEP, it is the opinion of this officer that the proposal is unlikely to comply with Objective 1(a) of Clause 5.10 to conserve the environmental heritage of Manly. Accordingly, the potential heritage impact of the proposed alterations and additions have been considered in this report.

The subject property comprises a small detached early 20th Century brick cottage with a gable ended roof form and bullnose verandah fronting the street, positioned on a narrow lot. The building has already undergone some alterations and additions, and has a first floor addition to the rear.

The building forms part of a fairly intact row of houses, including attached and semi-detached dwelling houses, dating to the early 20th Century. Some of these houses have undergone alterations and additions, including first floor additions, however these have generally been undertaken in a manner which allows for the original building form to be understood. The streetscape has been compromised by various residential flat building developments along the street, including opposite the subject site, however the row from 24-44 remains an intact representation of the original streetscape from the early 20th Century.

The proposal comprises an additional two levels fronting Malvern Ave (with the proposed third floor is set back slightly), as well as a first floor addition above the garage fronting the rear laneway. The scheme will substantially modify not only the building itself, but also the broader streetscape. Whilst within the height limit for the zone, a design of that height is an inappropriate solution for the site which does not appear to consider its context. Consequently, it will have a negative impact on the potential heritage significance of the group of buildings, particularly when considering the building and roof form of the two immediately adjoining buildings.

Beyond the heritage issues, there are broader urban design concerns associated with the proposed scheme which should be analysed separately to this advice. For example, the proposal has given only cursory, if any, consideration to Section 2.1.2 Context and Site Analysis in the Manly Development Control Plan. This section requires applications to consider potential impact of the scheme on streetscape, particularly with regard to building form and bulk and scale. The current scheme is not a sympathetic solution in this regard.

It should be noted that pre-DA heritage advice was sought regarding this scheme in July this year, and it was clearly stated at that time that the proposal, specifically the forward alignment of the second storey and the third storey in its entirety, was not supported from a heritage perspective."

As a result Council's Heritage Officer provided the following recommendation for the proposal (as well as recommending a condition if approved):

"It is clear that the proposal will have significance impact on the streetscape, from a general contextual perspective as well as when considering heritage significance. However, given the lack of statutory protection for the site (in the form of inclusion on Schedule 5 of the MLEP as an individual item or for inclusion within a Conservation Area), it is not possible to recommend refusal on solely heritage grounds. It is possible however that the identified heritage issues could support a broader argument for refusal."

Assessing Officer Comment

The proposal is for alterations and additions to the existing dwelling. This dwelling is not listed as a heritage item nor is it in a heritage conservation area under the Manly LEP, 2013. The site is adjacent the heritage listed street trees which are item I169 under the Manly LEP. The proposal for alterations and additions to a dwelling with a compliant height under the Manly LEP would not detract from the significance of these trees due to the physical separation and the existing varied building densities in the streetscape.

Council's Heritage officer noted that the proposal would have a significant impact on the streetscape, contextually as well as when considering heritage significance. An assessment of the reasonableness of the impact of the proposed development has been made in this report under Part 4 of the Manly DCP, 2013.

Waste Comments

Council's Waste Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Traffic Comments

Council's Traffic Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

External Referrals

AUSGRID

The proposal was referred to AUSGRID for comment. No comment was received at the time of writing this report.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) **the provisions of:**
 - (i) **any environmental planning instrument, and**

Manly Local Environmental Plan 2013

The subject site is located in Zone R3 Medium Density Residential under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone R3 Medium Density Residential

Objectives of zone

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

The proposal is for alterations and additions to the existing semi-detached dwelling which contributes to the housing needs of the community in a residential environment.

- *To provide a variety of housing types within a medium density residential environment.*

The proposal for a three storey dwelling contributes to providing a variety of housing types in the medium density residential environment.

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

Not applicable.

- *To encourage the revitalization of residential areas by rehabilitation and suitable redevelopment;*

Given the variety of development densities and types in the surrounding area, the redevelopment of an existing building to a height which is compliant with the development standard and ensures no unreasonable amenity impact, is suitable. This is subject to the removal of the studio at the rear which would result in an overall bulk inconsistent with the surrounding area whilst also having an impact on privacy and sunlight access.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Not applicable.

Part 4 Principal development standards

The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Proposed	Complies Yes/No	Comments
4.3	Height of buildings	11m	10.3m	Yes	Complies.
4.4	Floor Space Ratio Site area: 278.7m ²	0.75:1 209.02m ²	0.775:1 216m ²	No	The amended clause 4.6 application submitted on 25 July 2017 included confirmation and agreement for the studio to be deleted through conditions of consent. See comment below.

4.6 Exceptions to development standards

Floor space ratio

It is noted that the following is based on the recommended condition to delete the studio from the plans.

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46.

Requirement	0.75 (209.02m ²)
Proposed	0.775 (216m ²)
Is the planning control in question a development standard?	Yes.
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical.
If numerical enter a % variation to requirement	3.3%

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

What are the underlying objectives of the 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 proposal includes the extension of a first floor toward the street and the addition of a second floor. This is consistent with the bulk and scale of the existing and desired streetscape as a result of the compliant building height, building modulation, narrow allotment and complementary nature with surrounding development.

The narrow allotment, setbacks of the top floors and compliant building height provide a situation in which the minor Floor space ratio non-compliance does not provide an unreasonable presentation of bulk and scale to the front of the site at Malvern Avenue. The narrow allotment and setback of the top floors ensure that the floor space is extended to the rear of the site so as not to present bulk or scale that is inconsistent with the existing or desired streetscape. The length of the site also means that the rear (Secondary Street) setback is compliant with the Manly DCP meaning there would be no unreasonable impact on Pine Lane. In combination with this modulation, the compliant building height ensures the development would be 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 minor floor space ratio non-compliance results in a proposed development that is reasonably controlled in terms of density and bulk so as to not obscure landscape and townscape features. The subject site is located within close vicinity to Manly Beach and as a result the addition of floor space has the potential to obstruct views to this feature. However, the compliant building height and narrow allotment ensure that reasonable views are maintained toward Manly Beach. This view maintenance and sharing includes the reasonable retention of views to the east toward the ocean for the neighbouring dwellings and the opposite dwelling at 33 Malvern Avenue (as assessed later in this report). It is also noted that the heritage listed pine trees in Malvern Avenue and pine trees further to the east toward the beach will not be unreasonably obscured. This provides a situation in which the minor Floor space ratio non-compliance does not lead to any unreasonable obstruction of landscape or townscape features.

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

Comment: In the immediate vicinity and on the same side of the street, the predominant built form in the streetscape is that of one storey. However, further to the south along Malvern Avenue, the density and variety in presentation to the street is greater.

Additionally, directly opposite the site exists a multi storey residential flat building and the site also shares a lane (Pine Lane) with opposite buildings which are predominantly multi-storey residential flat buildings. As a result of this varied streetscape and the compliant building height, the proposed development would be appropriate given the existing character. Although the proposed development would not match the dwellings immediately adjacent, it would complement the surrounding character, despite the minor floor space ratio non-compliance.

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

Comment: Subject to the deletion of the studio, the proposal does not have any unreasonable impact on access to sunlight, views or privacy. This is a result of the consistent building alignment (in relation to front and rear setbacks), compliant building height and modulation of the top levels providing a development that would minimise environmental impact.

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

Comment: Not applicable.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R3 Medium Density Residential zone.

An assessment of the floor space ratio non-compliance has been made against the underlying objectives of Zone R3 Medium Density Residential below:

- *To provide for the housing needs of the community within a medium density residential environment. and,*
- *To provide a variety of housing types within a medium density residential environment.*

Comment: The proposal including the extension of the first floor and the addition of a top floor (and the associated floor space ratio non-compliance) would contribute to housing needs of the community as well as the variety of housing type within the medium density residential environment.

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

Comment: Not applicable.

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment: Subject to conditions, the redevelopment is appropriate in terms of revitalisation and suitability by ensuring no unreasonable amenity or visual impacts.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment: Not applicable

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development.*

Comment: In this circumstance, a degree of flexibility is considered to be appropriate as the proposal would not cause any unreasonable impact and the development would contribute to providing housing needs for the community, as is consistent with the objectives of the zone under the Manly LEP, 2013.

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

Comment: The outcome of providing a redevelopment that includes an extension to the first floor and addition of a second floor provides a better outcome in terms of the provision of housing floor space. This is appropriate given the lack of unreasonable environmental impact the development would cause.

(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.*

Comment: In this case, compliance with the development standard is unreasonable and unnecessary due to the proposal ensuring no unreasonable amenity impacts and the lack of discernible difference in impact of compliant proposal. That is, a compliant proposal would have 7m² less floor space and this reduction would not substantially change any impact to amenity in this situation. Given the minor non-compliance does not have any unreasonable amenity impact and is on a narrow allotment in an area with varied development bulk and density, there are sufficient 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*

Comment: A written request has been provided which gives sufficient reasoning as to why the compliance with the development standard is both unreasonable and unnecessary and that there are sufficient grounds to justify contravening the standard. This includes the following reasoning:

- *The proposal is consistent with the objectives of the zone in that it would maintain the variety of housing types in the zone.*
- *The floor space proposed is reasonably anticipated in and consistent with the zone.*
- *The massing and density is complementary and compatible with other development in the zone.*

- *In terms of streetscape character the proposed development complies with building height and wall height controls. Upper levels are also recessive in the streetscape context.*
- *Subject to conditions, there will be no adverse impacts to the rear lane.*
- *A considered opinion has been formed that bulk and scale is consistent with existing and desired streetscape.*
- *The proposed upper floor is set in from boundaries to maintain view corridors from residential apartments at 33 Malvern Avenue.*
- *The proposed development would not be inappropriate or jarring in the context of the street and will not require the removal of trees or vegetation.*
- *The proposed height and FSR would not result in unacceptable impact on the enjoyment or use of the surrounding public domain.*
- *The shadow diagrams show a reasonable area of east facing living room fenestration and the adjacent private open space at 34 Malvern Avenue will continue to receive 2 hours of solar access between 9am and 12pm. A further 2 hours will be maintained to the southern adjoining property at the street facing verandah and adjacent courtyard.*
- *The majority of windows have been orientated to the front and rear of the property to be appropriate in terms of privacy.*
- *Existing views are partial and vulnerable to impact. Views are obscured by the existing Norfolk Island Pine and views from Level 5 and above are not impacted. It is considered that view impact is negligible to minor at most and the FSR variation does not result from a poor design as floor area is distributed across site to maintain view corridors.*
- *It is stated that "Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its gross floor area, height or massing offensive, jarring or unsympathetic in a streetscape context and having regard to the built form characteristics of development within the sites visual catchment." and also, "having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design."*

- (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: The proposal is consistent with both the objectives of the standard and objectives of the zone allowing it to be in the public interest. In particular, suitable redevelopment in terms of complementary nature with the surrounding environment and lack of unreasonable amenity impact is in the public interest.

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone in the MLEP 2013.

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

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General 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 Director-General for the variation to the Floor Space Ratio Development Standard is assumed.

Part 5 Miscellaneous Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comments
5.9	Preservation of trees or vegetation	Yes	Yes	Council's Landscape officer has no objection to the proposal, subject to recommended conditions. The proposal does not involve any building in the existing landscaped area and this would "preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation", as required by the objective of the clause.
5.10	Heritage Conservation	Yes	Yes	This dwelling is not listed as a heritage item nor is it in a heritage conservation area under the Manly LEP, 2013. The site is adjacent the heritage listed street trees which are item 1169 under the Manly LEP. The proposal for alterations and additions to a dwelling with a compliant height under the Manly LEP would not detract from the significance of these trees due to the physical separation and the existing varied building densities in the streetscape. As a result, the proposal would reasonably conserve environmental heritage as required by objective (a) of Clause 5.10 of the Manly LEP, 2013.

Part 6 Local Provisions

The relevant provisions of the Manly LEP 2013 are referred to below as part of this assessment:

6.	Local Provisions	Applies	Complies	Comments
6.1	Acid Sulfate Soils	Yes	Yes/No	The proposal is located in land identified as Class 4 for Acid Sulfate soils. The proposed works would not lower the water table more than 2 metres below natural ground surface.
6.3	Flood Planning	No	N/A	
6.4	Stormwater Management	Yes	Yes	Subject to conditions.
6.5	Terrestrial Biodiversity	No	N/A	
6.6	Riparian land and watercourses	No	N/A	
6.7	Wetlands	No	N/A	
6.8	Landslide Risk	No	N/A	
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed site is located within the Foreshore Scenic Protection Area. As outlined below, the development reasonably protects views to and from the Pacific

				Ocean, given the compliant building height and the side setbacks of the top floor from the lower floors. These setbacks contribute to maintaining view corridors that would protect views for dwellings at 33 Malvern Avenue (directly opposite the subject site). Subject to the removal of the studio and given site circumstances, the dwelling provides a compliant building height and a reasonable bulk so as to maintain visual aesthetic amenity.
6.12	Essential services	Yes	Yes	Existing and subject to conditions.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013

The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with Principle	Inconsistent with Principle
Streetscape	✓ See comment.	
Heritage – In Vicinity	✓	
Landscaping Design	✓	
Landscape/Tree Preservation	✓	
Sunlight Access and Overshadowing	✓ See comment.	
Privacy and Security	✓ See comment.	
Maintenance of Views	✓ See comment.	

Comment:

3.1 Streetscapes and Townscapes

Streetscape

An assessment of the objectives for Streetscapes under Clause 3.1 is made below:

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

The proposal maintains the existing height of the front fence and includes the addition of new timber battens. This height is consistent with the dwellings in immediate vicinity to the south and the design including timber battens provides a reasonable balance between a fence and wall style, being suitable given the varied fence characteristics in the streetscape.

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

The proposal includes the extension of a first floor toward the street and the addition of a second floor. In the immediate vicinity and on the same side of the street, the predominant built form in the streetscape is that of one storey. However, further to the south along Malvern Avenue, the density and variety in presentation to the street is greater. Additionally, directly opposite the site exists a multi storey residential flat building and the site also shares a lane (Pine Lane) with opposite buildings which are predominantly multi-storey residential flat buildings.

Given the opposite multi storey dwelling is an anomaly in the street and the opposite buildings in Pine Lane have a different zone for height of building and associated desired character, this in itself does not provide a sufficient reason to increase height and bulk at the subject site. However, it does provide a context in which the proposed compliant building height is appropriate and complementary to the surrounding area despite not matching height of dwellings immediately adjacent. Furthermore, the variety in development to the south along Malvern Avenue provides a context in which the proposed dwelling would not detract from the visual amenity by being an anomaly in the streetscape. This compatible scale is supported by the compliance with LEP height of building standard and compliance with DCP controls for wall and roof height and number of storeys (being consistent with 3.1.1.1a.iii). Given the narrow allotment, the proposed setback of the top floors and the recommended deletion of the rear studio, the presentation of bulk is complementary despite a minor floor space ratio non-compliance. As a result, the proposal would provide a development that complements the identified streetscapes of Malvern Avenue and Pine Lane.

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

Not applicable.

3.4.1 Sunlight Access and Overshadowing

An assessment of the objectives for Sunlight Access and Overshadowing under Clause 3.4.1 is made below:

Objective 1) To provide equitable access to light and sunshine.

The proposed studio would cause non-compliance with the control for sunlight accessing private open space at 34 Malvern Avenue, with more than one-third of the existing sunlight eliminated. Given other non-compliances and associated impacts on amenity of this studio, this impact on sunlight access is unreasonable and has no sufficient justification. As a result, it is recommended by conditions of consent that the studio be deleted.

Given the existing side setbacks and semi-detached nature of the proposed dwelling, the additional overshadowing caused by an additional storey would not be unreasonable. This is because the existing situation does not provide any substantial sunlight to any living room at the eastern elevation of 34 Malvern Avenue. Furthermore, the proposal does not involve any additional shadowing to the living room at the rear at winter solstice and the proposed building has a rear alignment which is similar to 34 Malvern Avenue. As so, equitable access to light and sunshine is retained.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

The subject site is a semi-detached dwelling on an east-west orientated lot. As a result of this orientation and close siting (lack of setback), the majority of sunlight which penetrates private open space and habitable rooms of 34 Malvern Avenue is to the rear. Subject to the deletion of the proposed studio and as a result of the compliant rear setback of the additions, adequate sunlight would penetrate this area.

- Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:*
- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
 - *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Given the existing semidetached nature and the lack of southern setback, modulation in this area would not be substantially beneficial in this circumstance. Alternatively, the deletion of the studio provides an adequate control of bulk leading to the maximisation of sunlight penetration.

3.4.2 Privacy and Security

An assessment of the objectives for Privacy and Security under Clause 3.4.2 is made below:

- Objective 1) To minimise loss of privacy to adjacent and nearby development by:*
- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
 - *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The extensions to the first floor and proposed addition of the second floor are aligned similarly to the neighbouring dwellings in terms of front and rear setbacks. This minimises the loss of privacy, particularly in relation to private open space at the rear of the subject site and neighbouring dwellings. The proposal involves alterations to windows at ground level, the addition of windows to first floor level; and the addition of highlight windows to the top floor. With the exception of the first floor windows at the northern elevation including stairwell windows, the proposed windows reasonably minimise loss of privacy through design such as highlight style and opaque nature.

As a result of the non-compliant setback for the first floor at the northern elevation (being 0.9m), conditions have been recommended to ensure the staircase and bedroom windows at this boundary are opaque. In particular, this is a result of clear glazed windows at this location and with this setback being undesirable in terms of future privacy in the street.

- Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.*

The proposed balcony at the top level and to the rear of the proposed development is reasonable in terms of privacy due to size and associated overlooking aspect. The balcony is designed to extend no more than 1.5 metres beyond the rear of the top floor. This provides a situation in which the main overlooking and view corridor from this balcony would be to the rear toward the ocean. Given this design, an appropriate compromise is made particularly between view sharing and privacy without the need for any screening at this location.

- Objective 3) To encourage awareness of neighbourhood security.*

The proposal provides windows to the front elevation which provide appropriate opportunity for awareness of neighbourhood security.

3.4.3 Maintenance of Views

It is noted that height poles were requested to be re-positioned in accordance with amended plans. A confirmation of the amended height pole locations was received from a Surveyor. However, a note was received with this confirmation from the applicant stating the poles were located 600mm higher than the application proposes. This being at the ridge height, rather than 600mm lower as proposed at the eastern side of the building. This was not confirmed by the surveyor so the following view analysis was done based on the location of the poles.

An assessment of the objectives for Maintenance of Views under Clause 3.4.3 is made below:

- Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

The subject site is in a location in which ocean views are obtained to the east from the subject site and neighbouring dwellings as well as from dwellings on the opposite side of Malvern Avenue.

In this situation, the provision of view sharing for the proposed development relates particularly to the neighbouring dwellings at 34 Malvern Avenue and 38 Malvern Avenue, and the multi-level building directly opposite the subject sit at 33 Malvern Avenue.

Firstly, in relation to the neighbouring dwellings at 34 and 38 Malvern Avenue, the proposed development provides for view sharing in the following ways:

- The compliant rear setback and associated consistent rear building alignment ensure that development within the rear setback would not obstruct existing views to the east. This alignment allows for each of the three dwellings (subject site and neighbours) to maintain views to the east which a positive outcome for view sharing.
- The setback of the top floor from the lower floor allows for view corridors to be maintained.
- The compliant building height ensures that outlook and potential future view corridors are maintained.

Secondly in relation to the units at 33 Malvern Avenue, view sharing is maximised through a design with a compliant building height and a top floor that has sides which a setback from the lower floor alignments. This ensures that view corridors are obtained both to the side and over the development from units at 33 Malvern Avenue. These corridors provide for reasonable view sharing and would result in development that would have ocean views from the subject site whilst maintaining view corridors for dwellings at 33 Malvern Avenue.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths). and,

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

An assessment of view loss has been undertaken with reference to the Views Principle established by the NSW Land and Environment Court. This has been made with consideration of view sharing and the importance of minimising disruption of views (particularly to the ocean views in this circumstance). The areas with potential for substantial view loss as a result of the proposed development are the neighbouring dwelling at 38 Malvern Avenue and the multi-level unit building at 33 Malvern Avenue (Levels 3 and 4). These areas have been assessed separately under the view loss principle with consideration of each step below:

33 Malvern Avenue- Level 3

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

Comment: The views obtained from level 3 of 33 Malvern Avenue include views toward Manly Beach being partial to extensive water views and partial land-water interface views. These water views are somewhat interrupted by the heritage listed pine trees (I169 under the Manly LEP) as well as medium density development along North Steyne. As a result of these obstructions, it is dependent on the viewing location as to whether the view is partial or more extensive. The importance and value of these more extensive views is greater. A consideration relation to view extent is made below for how and where the views are obtained as well as the reasonableness of the proposal given the views to be affected.

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

Comment: The views obtained from level 3 are from the balconies at the front of 33 Malvern Avenue. As a result, similar views are also obtained from the living areas which adjoin these balconies but apparent size of the view is lesser due to the greater distance. It is also noted that the window/door which adjoins the living room is on the left hand side of the unit 8 balcony and right hand side of unit 7 balcony (as can be seen on strata plan in figure 1). The photos (1 and 2) below are taken from a standing position at the balcony of Unit 8. Given these views are obtained over a front boundary and from standing position, the importance of protecting these views is greater as it is more realistic and reasonable.

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

As can be seen in *Photo 1* below, a pine tree is located between the left hand side of unit 8 (adjacent to right hand side of unit 7) the subject site and the water. Instead, the view corridor of water available is to the side of the subject site. As a result, the view loss of water from this location is negligible. This location for each balcony is also the point of access for the adjoining living rooms and as a result the view loss from the living areas is also negligible.

Comment: As can be seen in *photo 2*, at the right hand side of the balcony, a view corridor is available over the subject. The loss caused from this location would be minor to moderate. This is reasonable and particularly given it is not a living area nor is it a highly usable section of private open space due to the narrowness at this section of the balcony (See *figure 1* below).

Although the assessing officer was not able to gain access to Unit 7, the central location of the pine tree in relation to the two balconies (Unit 7 and 8) provides a similar situation in view loss given the similar design ('mirror image') of the balconies. As a result, the overall view loss for level 3 is qualitatively assessed as being negligible to minor.

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

Comment: Given the proposal is compliant with the development standard under the Manly LEP 2013 for building height and the overall impact has been assessed as being negligible to minor, the proposal is reasonable in terms of the view loss to Level 3 of 33 Malvern Avenue.



Photo 1: Taken from left hand side of Unit 8 Balcony, 33 Malvern Avenue.



Photo 2: Taken from right hand side of Unit 8 Balcony, 33 Malvern Avenue (a red line has been imposed in location and height of the southern pole for clarity).

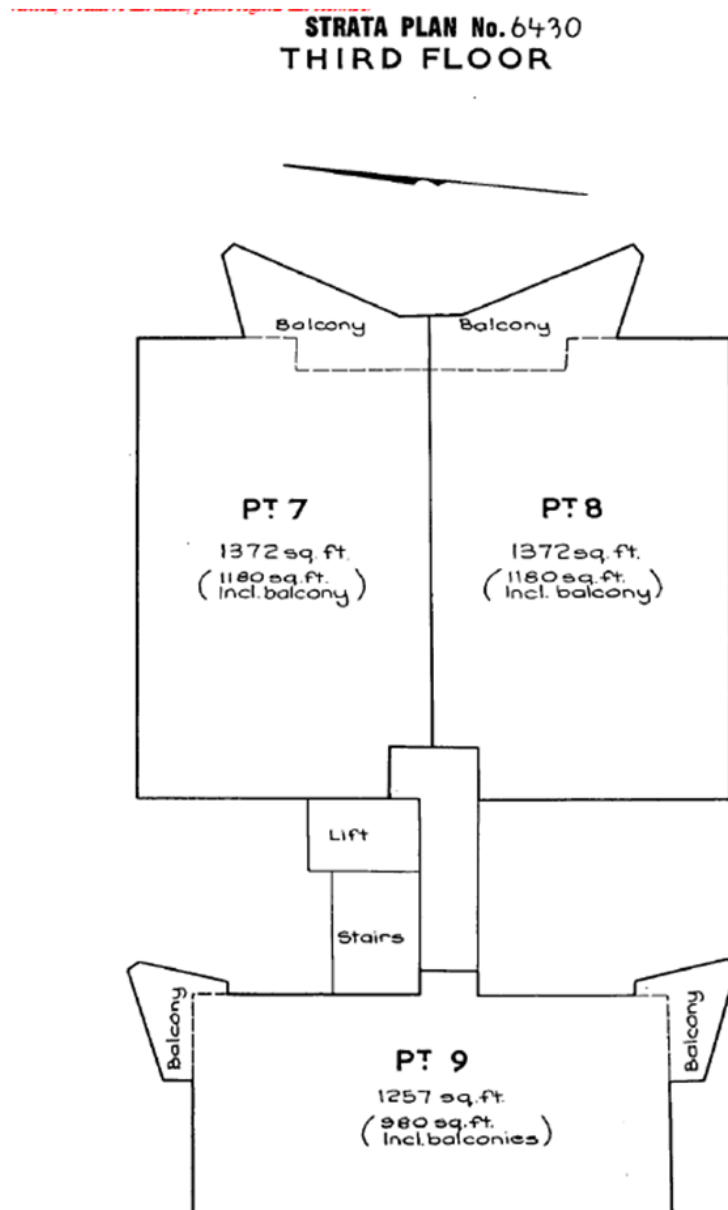


Figure 1: Strata Plan for Level 3 of 33 Malvern Avenue. Note that photos were taken from Pt 8 Balcony.

33 Malvern Avenue-Level 4

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

Comment: The views obtained from level 4 of 33 Malvern Avenue include views toward Manly Beach, these being reasonably extensive water views including a land-water interface. This land-water interface is adjacent to pine trees which contribute to the view becoming less whole and extensive. The extent of both the land-water interface and the ocean views are reduced by the medium density development that existing on North Steyne. The extent of the land-water interface is also reduced by a tree on a private property on the opposite side of Malvern Avenue. These obstructions result in a view corridor that is majorly over the subject site at 36 Malvern Avenue. Consideration of the impact on this corridor is made below.

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

Comment: The views from Unit 10 are obtained from the front balcony and living room across the front boundary of 33 Malvern Avenue from both sitting and standing positions. The protection of these views is therefore more relevant and reasonable. The photos below (photos 3 and 4) give a representation of the view obtained from standing position at the balcony of Unit 10.

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

Comment: The major view impact and loss to Level 4 would be to the land-water interface. The majority of the land-water interface would be obstructed as a result of the proposed development. Conversely, the impact on the water views alone, is negligible. This is because the high point of the ridge for the proposed development would be at a similar level to the land water interface. As the existing land-water is partial in nature and the majority of the water view is maintained, the view loss is qualitatively assessed as being minor to moderate in this circumstance.

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

Comment: The proposed building height is compliant and the proposed Floor space ratio has a minor numerical non-compliance (subject to the deletion of the studio). This minor non-compliance with Floor space ratio would not have any direct impact on views in this instance as a similar proposal that was compliant with Floor space ratio could have the same or possibly greater impact on views. As a result, this gives rise to the question presented in the view in the final step of the view loss principle being, "[could] a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours." Given the design of the roof and the setback of the top floor walls on a narrow allotment, it is not considered that a more skillful design could reach the same development potential. As a result the view loss and view sharing is reasonable.



Photo 3: Taken from central location on Unit 10 Balcony, 33 Malvern Avenue. (red lines have been imposed in location and height of poles for clarity)



Photo 4: Taken from right hand side of Unit 10 balcony (red lines have been imposed in location and height of poles for clarity)

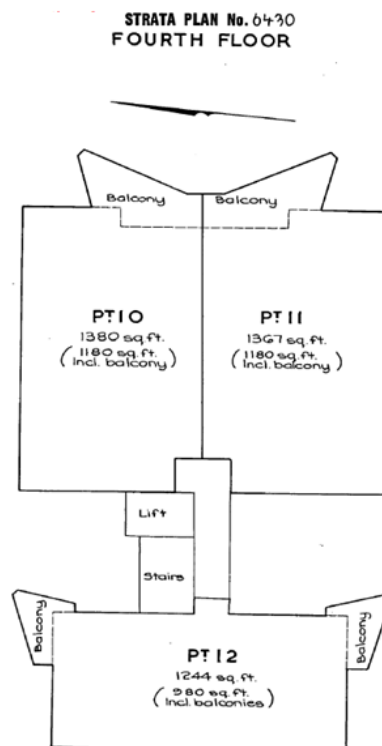


Figure 2: Strata Plan for Level 4 of 33 Malvern Avenue. Note that photos were taken from Pt 10 Balcony.

38 Malvern Avenue

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

Comment: The views affected are partial water views to the east, being of the ocean at Manly Beach. These views are valued highly as water views but due to the partial nature are not given as much value as would be given with a full view with an interface between land and water.

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

Comment: The views are obtained from two bedrooms at the second level. In this situation, it is unrealistic to protect outlook over the side boundaries, given the compliant building height and narrow nature of the lots (which leads to lack of physical separation). Instead, reasonable views and outlook is maintained to the rear of the site due to the rear setback being maintained and subject to the deletion of the proposed studio above the rear garage.

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

Comment: Given the partial nature of the existing views and given the views affected are from bedrooms rather than living rooms, the impact is assessed as being negligible to minor.

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

Comment: Subject to deletion of the proposed rear studio, the view loss caused by the proposed development does not directly arise as a result of a non-compliance. Although side setbacks are non-compliant, the compliance with the rear setback control is the most important and substantial requirement for the protection of views in this situation. Compliance with the side setback would have no substantial benefit in the protection of views. Additionally, the minor non-compliance with Floor Space Ratio contribute to loss of views directly. It is noted that reconfiguration to be compliant with Floor Space, side setbacks and rear setbacks could have a potentially greater impact on view loss. As a result, under this step, the consideration of a more skillful design to protect views should be made. In this situation, due to the building alignment, rear setback, compliant height and the recommended deletion of the studio, it is not considered that a more skillful design would have any substantial improvement to the protection of views nor would it be reasonable in terms of view sharing.

Part 4 - Development Controls

Site Area: 278.7m ²	Permitted/ Required	Proposed	Complies Yes/No
Wall height North side	9m	8.9m	Yes.
South side	9m	8.9m	Yes.
Number of Storeys	3	3	Yes.
Roof height	2.5m	0.9m	Yes.

Site Area: 278.7m ²	Permitted/ Required	Proposed	Complies Yes/No
Setback Front	<ul style="list-style-type: none"> - Prevailing building line of buildings in immediate vicinity or 6m. - Street setback is to be increased for any first floor addition in predominant single storey area. 	<ul style="list-style-type: none"> - Prevailing building line of immediate vicinity (being 5.4m) - The street setback has been increased for both the first floor extension and second floor additions in relation to existing ground floor building line. 	Yes.
North setback side	2.97m	1m to top floor 0.9m to second floor extension 0m for proposed balcony.	No. See comments .
South setback side	2.97m	1m to top floor 0.9m to second floor extension	No. See comments .
Setback Rear	8.0m	17m for proposed upper floor.	Yes
Open space - total	50% (139.35m ²)	32.3% (90m ²)	No but as existing.
Open space - landscaped	30% (30m ²)	38.9% (35m ²)	Yes.
Open space - above ground	No more than 25% of total (22.5m ²)	10m ²	Yes.
Private Open Space	12m ²	45m ²	Yes.
Car Parking – Residents	2 spaces	2 spaces	Yes.
Fence height	Up to 1.5m with transparency	1.4m	As existing with new timber battens.

Comment:

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

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.

The proposal is compliant with the controls for front setback under the Manly DCP, 2013. This includes that the proposed extension of the first floor and addition of the second floor are both setback from the floors below. Although the side setbacks are numerically non-compliant, the existing semi-detached nature of the building and the narrow allotments in the street ensure the proposal would maintain the existing and desired spatial proportions of the street.

Objective 2) To ensure and enhance local amenity by:

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

Subject to conditions and as assessed under Part 3 the proposal will provide reasonable levels of amenity, despite the non-compliance with side setbacks.

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

The proposed siting of the ground floor remains as existing whilst the second floor is proposed to be extended and a third floor is proposed to be added. Given the consistency with streetscape and lack of unreasonable amenity impact, this siting is reasonable.

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.*

There are no proposed changes to natural features or open space. The proposed non-complaint setbacks do not relate to the maintenance or enhancement of natural features on site in this circumstance due to the works being within the existing building envelope.

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

Not applicable.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area	✓ See comment	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening	✓ See comment.	
Gurney Crescent and Clavering Road, Seaforth		✓

Comment:

Road Widening

Subject to the deletion of the proposed studio, this is not applicable.

Foreshore Scenic Protection Area

The proposal is consistent with the provisions for consideration under subclause 5.4.1.1. The second floor addition is setback from the street and will have no unreasonable visual impact on the existing natural environment.

79C(1)(a)(iia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into in relation to the proposed development.

79C(1)(a) (iv) - the regulations

The proposed development has been assessed having regard to the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 (Amendment 8) and is considered to be satisfactory.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed development as modified by the conditions of consent is not considered to have any detrimental impact on the natural and built environments and is accordingly recommended for approval.

79C(1) (c) - the suitability of the site for the development,

The proposed development as modified by the conditions of consent is considered to be suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Section 2.2 of Council's Development Control Plan 2013 with four submissions received from the following objectors raising the following concerns:

Submission and Address	Main Issues raised in the submission	Comments on submission
1. Confidential.	<ul style="list-style-type: none"> Inconsistency of proposed development with neighbouring properties. The DA is not compliant in regards to set-backs, open space and FSR, which is well over the allowed 0.75. Privacy issues arising from lower ground windows, windows of staircase. Privacy issues from proposed granny flat. Privacy issues caused by balcony. Loss of water views from upstairs bedrooms. 	<ul style="list-style-type: none"> An assessment of consistency with streetscape has been made under Part 3 of this report. Subject to the recommended deletion of the studio, FSR will be reduced. An assessment of the reasonableness of FSR, privacy, views and setbacks has been made earlier in this report. The proposed open space is deemed to be reasonable given no increase in existing non-compliance and no change to open space.

	<ul style="list-style-type: none"> Loss of outlook from all but one window. 	<ul style="list-style-type: none"> The proposed studio would be unreasonable in terms of privacy. Subject to conditions, it is to be deleted from the plans prior to construction certificate.
2. G. Hammond, 34 Malvern Avenue, Manly.	<ul style="list-style-type: none"> Impact of overshadowing caused by 3rd storey. The impact of the granny flat including loss of privacy and visual impact. Overshadowing to garage, an area which has potential for solar heating for a potential pool. Major work to garages requires setback from Pine Lane. Visual impact on the streetscape caused by 3rd storey. Overdevelopment shown by major non-compliance with FSR. There is no special circumstance to justify this. 	<ul style="list-style-type: none"> An assessment of overshadowing impact, , non-compliance with FSR, removal of ocean views and impact on streetscape (including visual impact caused by third storey) has been made earlier in this report. The proposed studio would be unreasonable in terms of privacy. Subject to conditions, it is to be deleted from the plans prior to construction certificate.
3. J. Hickey, 10/33 Malvern Avenue, Manly.	<ul style="list-style-type: none"> Height and associated removal of ocean views for 9 residences at Malvern Towers. Height, bulk and scale is out of context with surrounding residences. This includes 3 storey nature. Density and gross exceedance of FSR as a result of 3rd storey addition. The only solution to meet FSR and appease residents would be to remove the 3rd storey. 	<ul style="list-style-type: none"> An assessment of view loss to Level 4 including Unit 10 of 33 Malvern Avenue has been made earlier in this report in accordance with the view loss principle. Given the water views retained, the proposal is considered reasonable in terms of view sharing and view loss. An assessment of consistency with streetscape relating to height, bulk and scale has been made under Part 3 of this report. It is recommended that the studio be deleted. This reduces the FSR non-compliance. Given the 3rd storey is compliant with building height and has been assessed as having no unreasonable amenity impact, a further reduction in FSR would not necessarily improve views. Additionally, as satisfied earlier in this report, compliance with the development standard is unreasonable and unnecessary in this circumstance.

<p>4. B. Hoschke on behalf of Mr & Mrs Bushell.</p>	<ul style="list-style-type: none"> • Overdevelopment of the site. The FSR exceedance does not come as a result of any special circumstances and there are no significant constraints on site to warrant the variation. • The proposal fails to "maintain an appropriate visual relationship between new development and the existing character and landscape of the area" as required by FSR objective under the Manly LEP. • Variations to side setbacks, wall height and lack of landscaping support excessive size and indicate gross overdevelopment. • Proposed two storey garage. Pine Lane has consistent built form of single garages with the one exception having been approved under a previous environmental planning instrument. The Secondary dwelling (studio) also results in unreasonable amenity impacts including overlooking, loss of privacy and overshadowing. There is also concern for Stormwater management relating to two storey garage/granny flat. 	<ul style="list-style-type: none"> • An assessment of the FSR non-compliance is made earlier in this report including an assessment against the objectives for FSR under the Manly LEP 2013. • An assessment of variations to the side setbacks has been made earlier in this report. • The proposed wall height is compliant with the numerical control under the Manly DCP, 2013 and as so deemed to comply with the relevant objectives under the DCP. • The proposed studio would be unreasonable in terms of privacy. Subject to conditions, it is to be deleted from the plans prior to construction certificate.
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79C(1) (e) - the public interest.

The proposed development as modified by the conditions of consent is not considered to have an adverse impact on the public interest.

S94 Contribution towards provision or improvement of amenities or services

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
 - (b) *the payment of a monetary contribution, or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, the proposal does not involve any additional dwellings and as so, contributions are not applicable.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 (Amendment 8) and is considered to be satisfactory for **approval**, subject to conditions.

RECOMMENDATION

In consideration of the written request made by the applicant pursuant to Clause 4.6 of the Manly Local Environmental Plan 2013, the consent authority is satisfied that compliance with the development standard contained in Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

That Development Application No. DA340/2016 for alterations and additions to the existing semi-detached dwelling at 36 Malvern Avenue, Manly be **Approved** subject to the following conditions:-

GENERAL CONDITIONS

1. The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

Drawings affixed with Council's 'Development Consent' stamp relating to Development Consent No. DA340/2016:

Plan No. / Title	Issue/ Revision & Date	Prepared By
A02- Site & Roof Plan	Issue Y- 13.06.17	Watershed Design
A03- L1 Ground Floor Plan	Issue Y- 13.06.17	Watershed Design
A04- L2 Upper Floor Plan	Issue Y- 13.06.17	Watershed Design
A05- L3 Top Floor Plan	Issue Y- 13.06.17	Watershed Design
A06- Section A-A	Issue Y- 13.06.17	Watershed Design
A07- Section B-B	Issue Y- 13.06.17	Watershed Design
A08- Elevation East Elevation and Deck Section	Issue Y- 13.06.17	Watershed Design
A09- North and South Elevations	Issue Y- 13.06.17	Watershed Design

Reference Documentation affixed with Council's stamp relating to Development Consent No. DA0340/2016:

- BASIX Certificate with certificate number A267181 dated Monday 28 November 2016.

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

Reason: Legislative Requirement (DACPLB09)

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

ANS01

The proposed studio at the rear of the dwelling is to be deleted from the plans and the garage is to be maintained as existing. Details notating compliance are to be provided, prior to the issue of a Construction certificate.

Reason: To ensure the proposed development has no unreasonable amenity or visual impact.

ANS02

The proposed bedroom windows (W8 and W9) are to be either opaque or amended to be highlight windows to a level of 1.7 metres above floor level. Details notating compliance are to be provided, prior to the issue of a Construction certificate.

Reason: To minimise privacy impact to the adjoining property.

ANS03

The proposed staircase window (W12) is to be opaque. Details are to be provided prior to the issue of a Construction certificate.

Reason: To minimise privacy impact to the adjoining property.

1 (2CD01)

Pursuant to Section 97 of the Local Government Act, 1993, Council requires prior to the issue of Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit as per the current rates in Council's Fees and Charges. The Deposit is required as security against damage to Council property during works on the site. The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Note: Should Council property adjoining the site be defective e.g. cracked footpath, broken kerb etc., this should be reported in writing, or by photographic record, submitted to Council at least seven (7) days prior to the commencement of any work on site. This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicants interest for it to be as full and detailed as possible.

Where by Council is not the Principal Certifying Authority, refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Reason: To ensure security against possible damage to Council property.

2 (2CD05)

Detailed engineering drawings of all work must be submitted for approval by the Council/Accredited Certifier prior to the release of the Construction Certificate.

Reason: To ensure the provision of public infrastructure of an appropriate quality arising from the development works to service the development.

3 (2CD07)

A Certificate of Adequacy signed by a practising structural engineer stating the existing structure is capable of supporting the proposed additions, is to be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

Reason: The existing building must be able to support proposed additional loading.

4 (2DS01)

A detailed stormwater management plan is to be prepared to fully comply with Council's Specification for On-site Stormwater Management 2003 and Specification for Stormwater Drainage 2003 and must be submitted to Council prior to issue of the Construction Certificate. The stormwater management plan and designs are to be prepared by a suitably qualified engineer with experience in hydrology and hydraulics.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that infrastructure reverting to Council's care and control is of an acceptable standard.

5 (2DS02)

A Stormwater Management Plan (SWMP) in line with Council's stormwater management guidelines and signed off by a practising Chartered Professional Engineer on the National Professional Engineer's Register (NPER) at Engineers Australia is to be submitted to the Council/Accredited Certifier, prior to issue of the Construction Certificate. The SWMP is to include but is not limited to the following:

- Increase in the impervious area (m²)
- Impervious percentage (%) post development
- Demonstration of no-adverse flooding issues to the downstream and upstream properties
- Peak flow rate to street drainage system in a 1:100 Average Recurrence Interval (ARI) flood event
- Connection details and location of the outlet drainage pipe, if applicable.
- If it is an absorption trench zone (Zone 2 as per Storm Water Management guidelines), then the detail calculations along with the soil report to be submitted for review by demonstrating no-adverse drainage issues due to this development.
- Details of the Chartered Engineer including full name, signature and registration number is required.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure public infrastructure in Council's care and control is not overloaded.

6 (2HT11)

A simple photographic record is to be made of all the existing buildings and structures prior to commencement of works or any demolition works. This should include photographs of all elevations, interiors and key features (including garden, fences, architectural details such as windows, joinery etc.), as well as a number of contextual shots, depicting the site's surrounding environment. This should be compiled into a single hard copy document which also includes the exiting plans of the building (Floor Plans and Elevations), and should be submitted with a digital version of the photos to Council's Heritage Advisor, prior to the issue of Construction Certificate. Written confirmation that the Council reserves the right to use the photographs for its own purposes and genuine research purposes is also to be included.

Reason: To provide a historic record of heritage significant works on the site for archival purposes.

7 (2MS01)

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including drawings and specifications must be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Manly Council Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Sediment Control Plan must incorporate and disclose:

- 1) all details of drainage to protect and drain the site during the construction processes,
- 2) all sediment control devices, barriers and the like,
- 3) sedimentation tanks, ponds or the like,
- 4) covering materials and methods, and
- 5) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing these design requirements have been met must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier prior to issuing of the Construction Certificate.

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

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

8 (3BM01)

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with Australian Standard AS 3740. Certification is to be provided to the Principal Certifying Authority from a licensed applicator prior to the fixing of any wall or floor tiles.

Reason: To prevent the penetration of dampness through walls and floors.

9 (3CD01)

Building work, demolition or excavation must not be carried out until a Construction Certificate has been issued.

Reason: To ensure compliance with statutory provisions.

10 (3CD02)

Demolition must be carried out by a registered demolition contractor. Documentary evidence of registration must be submitted to Council prior to the commencement of demolition work.

Reason: To ensure demolition is carried out in an appropriate manner that is non-disruptive to the locality and the public.

11 (3CD03)

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

Reason: To protect the public interest and safety.

12 (3PT01)

In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.

Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

13 (3PT02)

Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.

Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14 (4BM01)

All materials and finishes of the proposed additions are to match, as closely as possible the material and finish of the existing building.

Reason: To enhance the visual quality of the development and the streetscape.

15 (4CD01)

All of the following are to be satisfied/complied with during demolition, construction and any other site works:

- 1) All demolition is to be carried out in accordance with Australian Standard AS 2601-2001.
- 2) Demolition must be carried out by a registered demolition contractor.
- 3) A single entrance is permitted to service the site for demolition and construction. The footway and nature strip at the service entrance must be planked out.
- 4) No blasting is to be carried out at any time during construction of the building.
- 5) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.

- 6) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- 7) Any demolition and excess construction materials are to be recycled wherever practicable.
- 8) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- 9) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997. All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- 10) All waste must be contained entirely within the site.
- 11) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- 12) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities likely to pollute drains or water courses.
- 13) Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal or recycling.
- 14) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- 15) Public footways and roadways adjacent to the site must be maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 16) Building operations such as brick-cutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 17) All site waters during excavation and construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.
- 18) Any work must not prohibit or divert any natural overland flow of water.

Reason: To ensure that demolition, building and any other site works are undertaken in accordance with relevant legislation and policy and in a manner which will be non-disruptive to the local area.

16 (4CD02)

In order to maintain the amenity of adjoining properties, audible site works must be restricted to between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm Saturday (including works undertaken by external contractors). No site works can be undertaken on Sundays or public holidays.

Unless otherwise approved within a Construction Traffic Management Plan, construction vehicles, machinery, goods or materials must not be delivered to the site outside the approved hours of site works.

Reason: To prevent disturbance to the surrounding community.

17 (4CD03)

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

Reason: To maintain sanitary conditions on building sites.

18 (4CD07)

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Workcover NSW. Before starting work, a work site-specific permit approving each asbestos project must be obtained from Workcover NSW. A permit will not be granted without a current Workcover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011.
- The Work Health and Safety Regulation 2011.
- How to Safely Remove Asbestos Code of Practice – WorkCover 2011.

The owner or occupier of the premises must consult an appropriately qualified and Australian Institute of Occupational Hygienists registered professional to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must develop a management plan and be issued with Clearance Certificate before the commencement of any work.

Reason: To ensure the health of site workers and the public.

19 (4LD04)

The following precautions must be taken when working near trees to be retained:

- harmful or bulk materials or spoil must not be stored under or near trees,
- prevent damage to bark and root system,
- mechanical methods must not be used to excavate within root zones,
- topsoil from under the drip line must not be added and or removed,
- ground under the drip line must not be compacted, and
- trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

20 (4LD06)

All disturbed surfaces on the land resulting from the building works authorised by this approval must be revegetated and stabilised to prevent erosion either on or adjacent to the land.

Reason: To prevent/contain erosion.

21 (4MS04)

An approved Erosion and Sediment Management plan is to be implemented from the commencement of works and maintained until completion of the development.

The design and controls addressed in the Sediment and erosion management plan must comply with the criteria identified in:

- Manly Development Control Plan 2013, Amendment 2, and
- Manly Councils Guidelines for Sediment and Erosion Controls on building sites, 2005, and
- The document "Managing Urban Stormwater: Soils and Construction" Volume 1, 2004.

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

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

ANS04

Any solid fuel heater must be certified against AS/NZS 4013 in accordance with the *Protection of the Environment Operations Act 1997* (the Act) and *Protection of the Environment Operations (Clean Air) Regulation 2010* (the Regulation). It must be marked in accordance with AS/NZS 4013 and have a certificate of compliance issued by the *NSW Environment Protection Agency (NSW EPA)*. The installation must also comply with relevant Australian Standards and the Building Code of Australia (BCA). Modifications and alterations must be conducted in accordance with the Regulation, relevant Australian Standards and the BCA, and must have a certificate of compliance or certificate of exemption.

Reason: To ensure compliance with legislation and to protect public health and amenity.

22 (5DS01)

Stormwater drainage from the proposed addition/extension must be disposed of to the existing drainage system. All work is to be carried out in accordance with Council standards and specifications for stormwater drainage. Work is to be completed prior to the issue of the Occupation Certificate.

Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure infrastructure reverting to Council's care and control is of an acceptable standard.

23 (5FR01)

An automatic fire detection and alarm system must be installed in the proposed dwelling in accordance with the requirements of the Building Code of Australia.

Reason: To comply with the Environmental Planning and Assessment Act 1979.

ONGOING CONDITIONS RELATING TO THE OPERATION OF THE PREMISES OR DEVELOPMENT

24 (6MS02)

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Reason: Statutory requirement, Environmental Planning and Assessment Act 1979.







List of Abbreviations

[illegible]**BASIX** Certificate[illegible]

Drawing list

A01	Site Analysis Plan	U	- not issued
A02	Site Plan	Y	
A03	Ground Floor Plan	Y	
A04	Upper Floor Plan	Y	
A05	Top Floor Plan	Y	
A06	Section AA	Y	
A07	Section BB	Y	
A08	East & West Elevations	Y	
A09	North & South Elevations	Y	
A10	Grimy flat plans section & Elevation	U	- not issued
A11	Area Diagrams	Y	
A12	Shadow Diagrams Plan	Y	
A13a	Shadow Diagrams 3D Elevation	Y	
A13b	Shadow Diagrams 3D Elevation	Y	
A13c	Shadow Diagrams 3D Elevation	Y	
A14	Open Space Diagrams	U	- not issued
A15	Open Space & Landscape Area Diagrams	U	- not issued
A16	Materials & Finishes	U	- not issued

Legend

	Existing walls, floor & roof
	Approved walls, floor & roof
	Demolished walls
	Proposed new masonry walls
	Proposed new Concrete walls / floor
	Proposed new timber framed walls

Amended Development Application

JUNE 2017

Alterations and Additions to Existing Residence

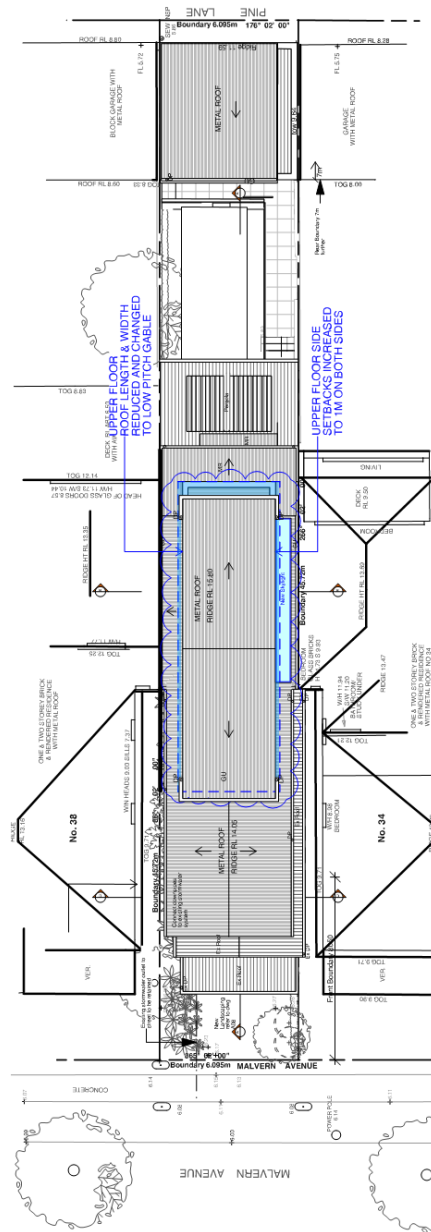
at

**36 Malvern Ave,
Manly
for**

Kathy Ostin and Craig Shortus



Address: L1 / 167 Pittwater Rd, Manly
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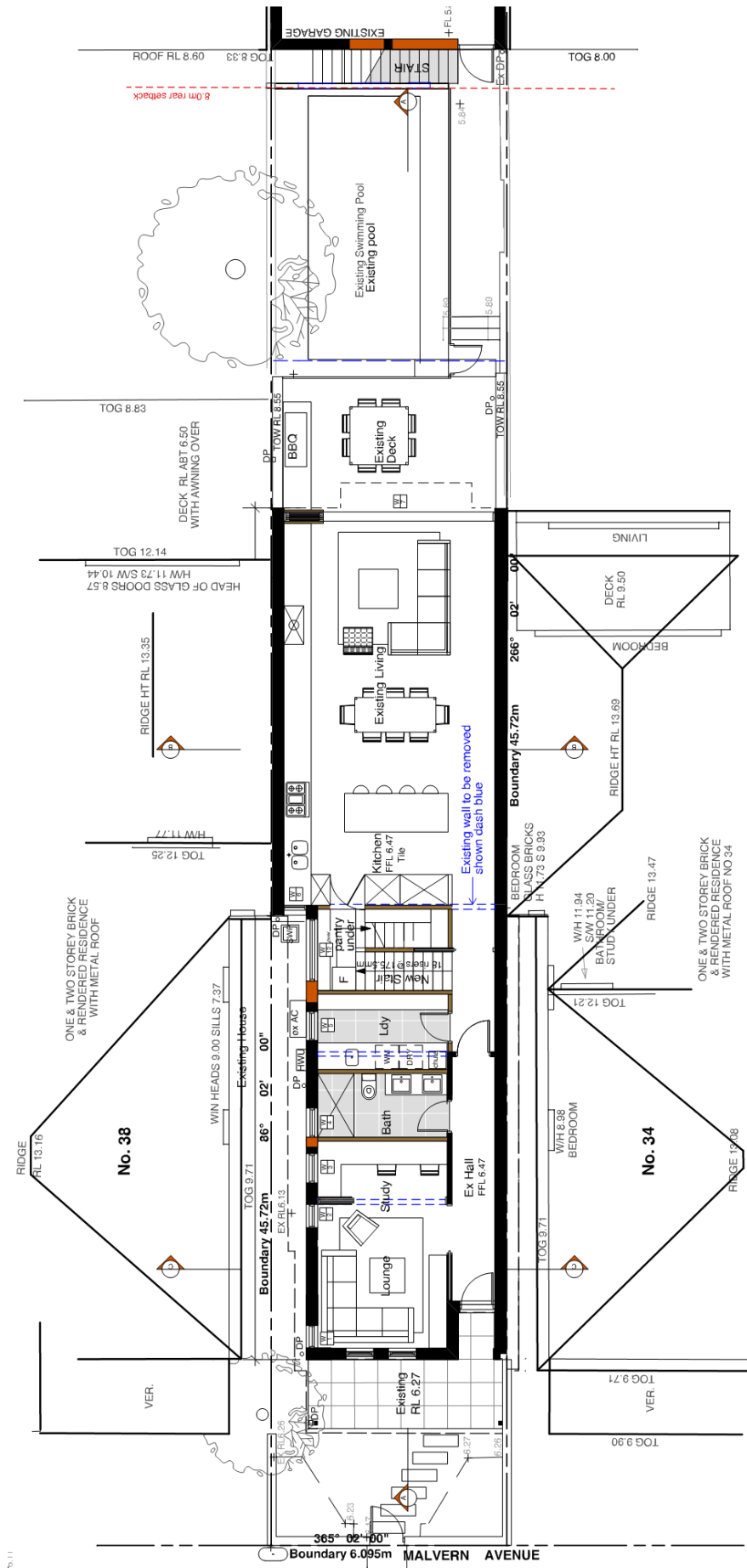
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2	U A ISSUE	09.12.16	
3	U A ISSUE	01.03.17	
4	REVISED DA ISSUE	01.03.17	
5	W ISSUED FOR INFORMATION	06.06.17	
6	X ISSUED FOR INFORMATION	07.06.17	
7	Y AMENDED DESIGN FOR DA	13.06.17	

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CLIENT	Craig & Kathie Shortus	ADDRESS	35 Malvern Ave, Manly
PROJECT	Alterations & Additions	TITLE	Site & Roof Plan

JOB NO	09020	DRAWING NO	A02
DRAWN	PJ/CV	ISSUE	Y
CHECKED	MK		
SCALE	1:200		



NOTE:
NEW WALLS REBUILT IN EXISTING
LOCATION TO MATCH EXISTING

NO CHANGE

NOTES

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U	DA ISSUE	01.12.16
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Y	AMENDED DESIGN FOR	13.06.17

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PROJECT	Alterations & Additions

ADDRESS	36 Malvern Ave, Manly
TITLE	L1 - Ground Floor Plan

JOB NO	09020
DRAWN	PJ/CV
CHECKED	MK
SCALE	1:100

DRAWING NO
A03
ISSUE
Y



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NOTES		REVISIONS	
1	no amendment	28	10.16
2	no amendment	26	10.16
3	no amendment	09	12.16
4	no amendment	09	12.16
5	no amendment	01	03.17
6	no amendment	01	03.17
7	no amendment	06	06.17
8	no amendment	07	06.17
9	no amendment	13	06.17

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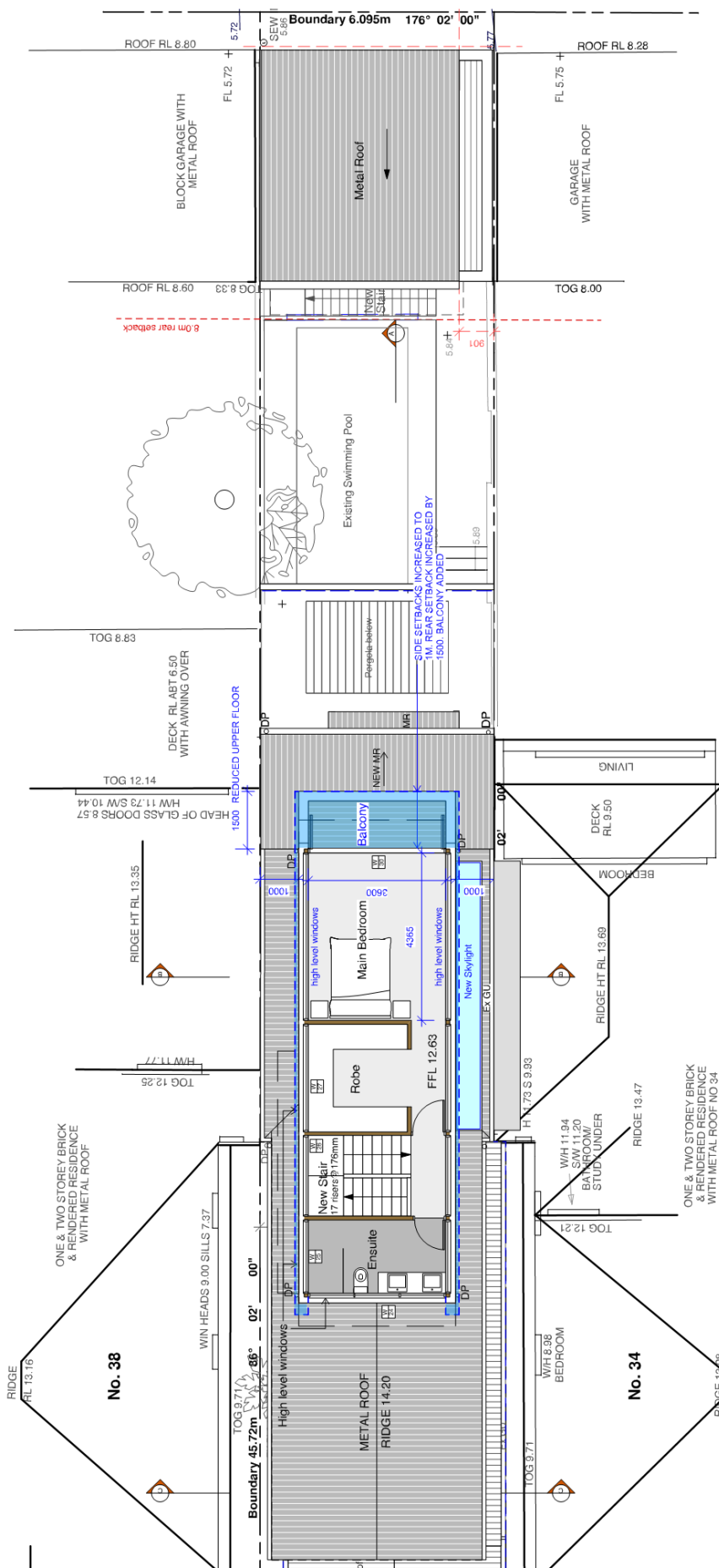
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PROJECT	Alterations & Additions	TITLE	L3 - Top Floor Plan	DRAWN	PJ/CV	ISSUE	Y
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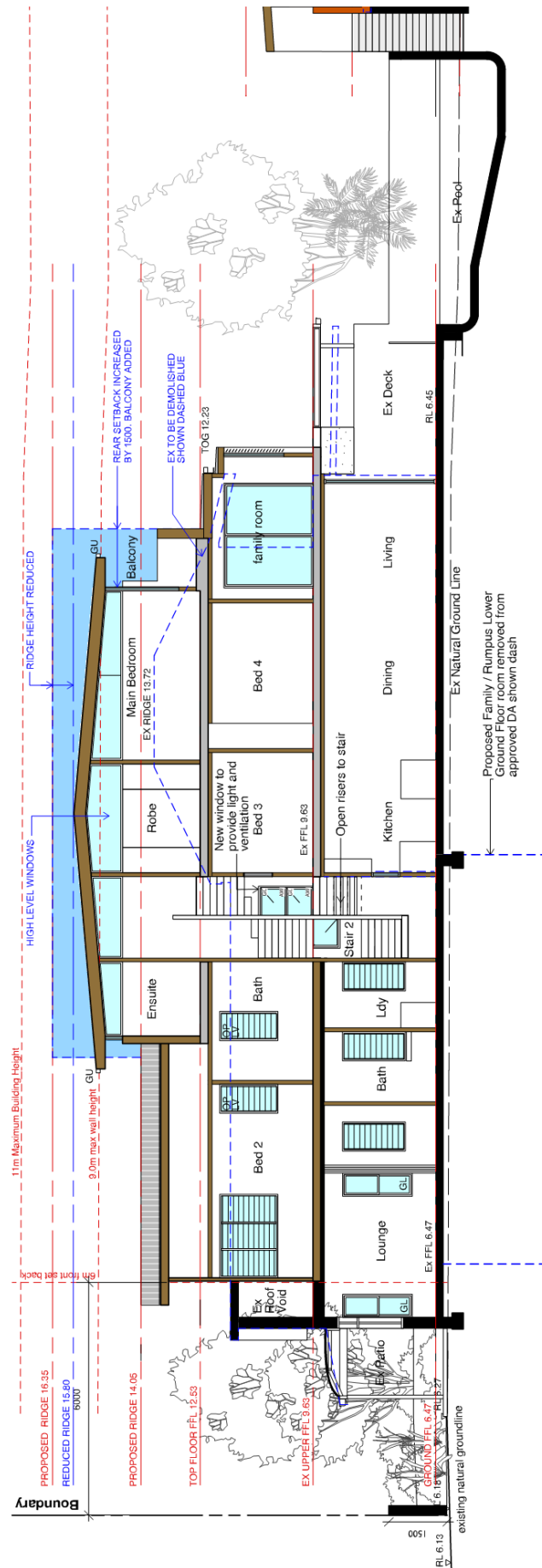
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NO	REVISION	DATE
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2	PLANNING ISSUE	08/06/17
3	REVISED DA ISSUE	08/06/17
4	REVISED DA ISSUE	08/06/17
5	ISSUED FOR INFORMATION	08/06/17
6	ISSUED FOR INFORMATION	08/06/17
7	AMENDED DESIGN FOR DA	13/06/17

NOTES



Section A-A

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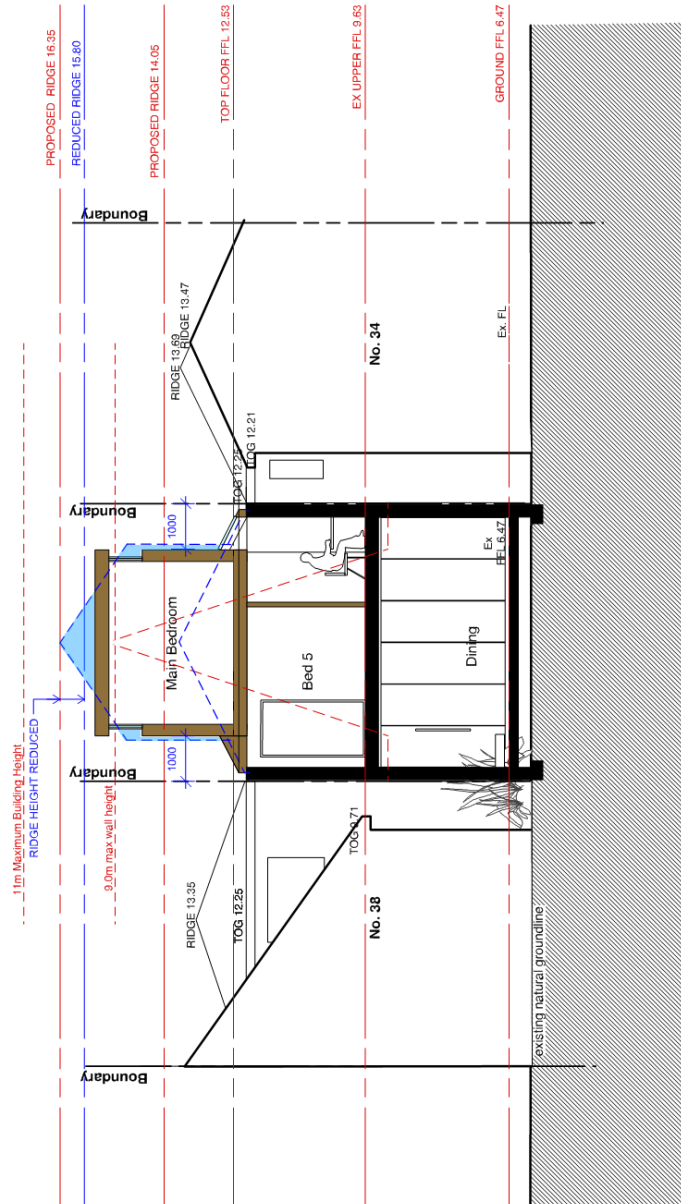
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PROJECT	Alterations & Additions	TITLE	Section A-A	DRAWN	PJ/CV	ISSUE	Y
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Section B-B

REVIEWS		no	amendment	date
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U	DA ISSUE	09.12.16		
V	REVISED DA ISSUE	01.03.17		
W	ISSUED FOR INFORMATION	06.06.17		
X	ISSUED FOR INFORMATION	07.06.17		
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PROJECT	Alterations & Additions	TITLE	Section B-B	DRAWN	PJ/CV	ISSUE	Y
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ISSUE
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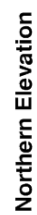
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V	REVISED DA ISSUE			01.03.17
W	ISSUED FOR INFORMATION			06.06.17
X	ISSUED FOR INFORMATION			07.06.17
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CLIENT	Craig & Kathie Shortus	ADDRESS	35 Malvern Ave, Manly	DRAWING NO			
				JOB NO	09020	A08	
PROJECT	Alterations & Additions	TITLE	Elevation East Elevation & Deck Section	DRAWN	PJCV	ISSUE	Y
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							@ A3

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CLIENT	Craig & Kathie Shortus	ADDRESS	35 Malvern Ave, Manly	JOB NO	09020	DRAWING NO	A09
PROJECT	Alterations & Additions	TITLE	North & South Elevations	DRAWN	PJ/CV	ISSUE	Y
				CHECKED	MK		
				SCALE	1:100		

ITEM 3.2 **120 MONA VALE ROAD, WARRIEWOOD - SECTION 82A
REVIEW OF REFUSAL TO N0485/16 FOR SALES OFFICE
(TEMPORARY USE) AND THREE BUSINESS IDENTIFICATION
SIGNS**

REPORTING OFFICER Heath Dennerley

TRIM FILE REF 2017/275182

ATTACHMENTS 1 [↓](#) Assessment Report
 2 [↓](#) Site Plan

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application N0485/16 for S82A review of determination of refused sales office (temporary use) and three business identification signs at 120 Mona Vale Road, Warriewood be refused for the reasons outlined in the report.

SUBJECT: N0485/16/R - 120 MONA VALE ROAD, WARRIEWOOD NSW 2102
Sales office (temporary use) and three business identification signs.

Determination Level: Manager – Planning Assessment

SUMMARY OF RECOMMENDATION: REFUSAL

REPORT PREPARED BY: Heath Dennerley

APPLICATION SUBMITTED ON: 22 June 2017

APPLICATION SUBMITTED BY: Sam Mustaca
Opera Properties Pty Ltd
4 Vuko Place
Warriewood NSW 2102

OWNER(S): OPERA PROPERTIES PTY LTD

1.0 INTRODUCTION

This assessment has been undertaken following the request for a review of the determination made in respect of Development Application N0485/16 and should be read in conjunction with the assessment report prepared for N0485/16. This request has been made pursuant to s.82A of the *Environmental Planning and Assessment Act 1979*. N0485/15 sought consent for a sales office (temporary use) and three business identification signs at 120 Mona Vale Road, Warriewood and was refused by Council on 22/02/2017 for the following reasons;

1. The Easement (registered dealing 1045166 as varied by registered dealing AB605380M) does not provide lawful access to Lot 5 DP 124602 for the purpose of a temporary sales office
2. The use of shipping containers and associated signage does not reflect a high quality design and it is considered there are alternatives that are more compatible with the desired amenity of the area.

2.0 SITE DETAILS

The site is known as 120 Mona Vale Road, Warriewood and legally referred to as Lot 5 DP 124602. The site is irregular in shape and has a total area of 73990sqm. The site is bound by Mona Vale Road to the north and Boundary Street to the east. Adjoining the site are low density residential dwellings and an environmental conservation area to the south and south-west. There are light commercial and residential areas to the east.

3.0 PROPOSAL IN DETAIL

The proposal seeks consent for a temporary sales and information office and signage. More specifically:

- The sales office is to comprise a shipping container that will be converted into a sales office of 12.19m long, 2.44m wide and a height of 2.59m;
- Three temporary car parking spaces;
- Two signs on the eastern elevation of the sales office fronting boundary street of 2.3m x 2.5m; and
- One sign of 5m x 2m to be located on the south western corner of Boundary Street and Mona Vale Road. The sign is to be attached to the top most of two stacked shipping containers. The overall height of the stacked containers will be 5.18m.

4.0 STATUTORY AND POLICY CONSIDERATIONS

The site is zoned E4 Environmental Living and R2 Low Density Residential under Pittwater Local Environmental Plan 2014. The temporary sales office is proposed to be located on land zoned R2 Low Density Residential and the signage proposed on land zoned E4 Environmental Living.

The temporary sales office is considered to be permissible with consent under the provisions of Clause 2.8 – Temporary Use of Land. The proposed signage is considered to be an advertising structure which is prohibited development within the E4 Environmental Living Zone.

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy No 64 - Advertising and Signage (SEPP 64)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Class 5
 - Biodiversity Map
 - Geotechnical Hazard Map
 - Height of Buildings Map - 8.5m
- Pittwater 21 Development Control Plan (P21 DCP)
 - Warriewood Locality
 - Geotechnical Risk Management Policy for Pittwater
 - Flood Risk Management Policy for Development in Pittwater
 - Bush Fire Prone Property
 - Overland Flow - Major
 - Land within Risk to Life H3, H5 and H6 Flood Categories
 - Land containing areas of wetlands other than Sydney Freshwater wetland
 - Land within 40m of a stream/river/foreshore
 - Land containing areas of Saltmarsh Endangered Ecological community
 - Land containing Heathland/Woodland vegetation

Development Determination Panel Report

Variation to development standards:

The application of Clause 4.6 is not required.

5.0 BACKGROUND

Application History

24/10/2016

N0485/16 was lodged at Council and referred to Council's Development Engineer and Natural Resources Officer.

22/02/2017

The application was subsequently refused under the delegation of the Manager- Planning and Assessment, for the reasons identified in the introduction above.

22/06/2017

The subject reconsideration application was lodged at Council and referred to Council's Natural Environment officer, Development Engineer, Catchment Management officer for comment/recommendations.

25/07/2017

The applicant was requested to withdraw the development application on 25/07/2017.

Property History

A search of council's records revealed the following:

Development Application (N0330/16) for 120 Mona Vale Road, Warriewood NSW 2102 is being determined by the NSW Land and Environment Court. This application is a proposal for staged residential development on the property including subdivision to create 62 residential allotments, demolition of existing structures and construction of associated infrastructure/civil works (including works within the Boundary Street road reserve) and landscaping.

Note:

Following the site inspection it became evident that the proposed sales office and signage shipping containers have already been placed at the property. A submission has also been received in this regard and the issue is currently being investigated by Council's Environmental Compliance Department.

6.0 NOTIFICATION

N0485/16/R was notified from 28/06/2017 to 12/07/2017 to adjoining property owners in accordance with council's notification policy. During the notification period, one (1) submission was received which has been addressed in the compliance table below.

7.0 COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Comments in **bold text** relate to the changes proposed as part of the s82A Review of Determination.

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone R2 Low Density Residential			Y	Y	Y
Zone SP2 Infrastructure			Y	Y	Y
Zone E4 Environmental Living		See 8.0 Discussion of Issues	Y	Y	Y
2.8 Temporary Use of Land		See 8.0 Discussion of Issues	N	N	Y
4.3 Height of buildings			Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
5.11 Bush fire hazard reduction		The bushfire assessment letter prepared by Advanced Bushfire Performance Solution (dated 21 October 2016) states that <i>the locations of both the signage and site office are suitable in that they allow for compliance with bushfire standards and do not present a hazard to existing adjacent development.</i> The applicant has not submitted a Bushfire Risk Assessment Certificate.	Y	Y	Y
6.1 Warriewood Valley Release Area			Y	Y	Y
7.1 Acid sulfate soils			Y	Y	Y
7.3 Flood planning			Y	Y	Y
7.6 Biodiversity protection			Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y

Control	Standard	Proposal	T	O	N
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.16 Warriewood Valley Locality			Y	Y	Y
B1.4 Aboriginal Heritage Significance		No apparent issues. No excavation proposed and area of works is modified.	Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.22 Flood Hazard - Flood Category 3 - Overland Flow Path - Major			Y	Y	-
B3.25 Flood Hazard - Flood Emergency Response planning			N	Y	-
B6.3 Off-Street Vehicle Parking Requirements		See 8.0 Discussion of Issues	Y	N	N
		See 8.0 Discussion of Issues	Y	N	N
C2.10 Pollution Control			Y	Y	Y
C2.11 Signage		See 8.0 Discussion of Issues	N	N	N
		See 8.0 Discussion of Issues	N	N	Y
D16.1 Character as viewed from a public place			Y	Y	Y
D16.6 Front building lines			Y	Y	Y
D16.7 Side and rear building lines			Y	Y	Y
D16.9 Solar access			Y	Y	Y

Control	Standard	Proposal	T	O	N
D16.11 Form of construction including retaining walls, terracing and undercroft areas			Y	Y	Y
D16.12 Fences			Y	Y	Y
D16.13 Building colours and materials			Y	Y	Y
State Environmental Planning Policies and other					
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y
SEPP No 64 - Advertising and Signage			N	N	Y

8.0 DISCUSSION OF ISSUES

Zone E4 Environmental Living

The application proposes a sign of 5m x 2m on land zoned E4 Environmental Living. The applicant argues in the submitted Statement of Environmental Effects that the proposed sign would be classified as a Business Identification Sign under the Pittwater Local Environmental Plan 2014 (PLEP 2014) and is permitted with consent in the E4 Zone. Pursuant to PLEP 2014, Business Identification Sign means a sign:

- (a) that indicates:
 - (i) the name of the person or business, and
 - (ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and
- (b) that may include the address of the premises or place and a logo or other symbol that identifies the business, but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

The proposed sign is not considered to satisfy these requirements noting no business is currently operating nor been approved at the property. The sign is considered to constitute an Advertising Structure, which is prohibited development in the E4 Environmental Living zone.

The objectives of the E4 Zone are:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

The sign is proposed to be attached to the top most of two stacked shipping containers with an overall height of the stacked containers to be 5.18m. In the context of the site, the sign is considered to be a dominant and bulky structure uncharacteristic of the surrounding locality. The proposed design is of an excessive density and scale that does not integrate with the landform and landscape, and is considered to detract from the special aesthetic values of the land. The sign is therefore inconsistent with the objectives of the E4 Environmental Living Zone and is not supported.

2.8 Temporary Use of Land

The applicant considers the temporary sales office to be permissible pursuant to the provisions of Clause 2.8 Temporary Use of Land under PLEP 2014. Clause 2.8 stipulates the following;

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*
- (2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 42 days (whether or not consecutive days) in any period of 12 months.*
- (3) Development consent must not be granted unless the consent authority is satisfied that:*
 - (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*
 - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*
 - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*
 - (d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*
- (4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.*
- (5) Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).*

The proposed temporary sales office is not considered to satisfy the requirements of Clause 2.8. As lawful access has not been demonstrated, the proposed access via land owned by Pittwater Uniting Church does not satisfy the requirements of Clause 2.8 (3)(b) of Pittwater Local Environmental Plan 2014 (refer to B6.3 Off-street Parking Requirements for further discussion).

Given the structure in which the sales office is located is not a dwelling, the provisions of clause 4 do not apply, and therefore pursuant to Clause 2, the sales office would only be permitted to remain for a maximum period of 42 days in any period of 12 months. As the sales office has already been transported to the property and Development Application (N0330/16) is still being determined by the NSW Land and Environment Court, there is significant concern that the sales office would remain for a longer period than 42 days. Whilst it is considered that these concerns could be adequately addressed through the imposition of appropriate conditions of consent, given the recommendation is for refusal, no further action has been taken in this regard.

Noting that the proposed signage is prohibited in the E4 zone, it could be argued that the sign may also be permissible pursuant to the provisions of Clause 2.8, specifically under clause (3)(c) as 'a structure related to the use'. However, as outlined above, the proposed shipping container sign is considered to be a dominant and bulky structure that would detract from the amenity of the neighbourhood and aesthetic values of the land, inconsistent with clause 3(b) as outlined above.

B6.3 Off-Street Vehicle Parking Requirements

The previous assessing officer provided the following comment with regard to N0485/16:

The application proposes a temporary sales and information office and signage. The sales office and signage is located on 120 Mona Vale Road, Warriewood (Lot 4 DP 124602). The only vehicular access to this lot is currently by a right of carriageway located on 10 Jubilee Avenue, Warriewood (Lot 10 DP 5055) owned by the Pittwater Uniting Church. A submission was received by the Pittwater Uniting Church objecting to the use of the right of carriageway as the Easement does not authorise access for a temporary sales office.

The easement authorises the following persons to use the road over Pittwater Uniting Church's land:

*owners, occupiers, invitees and all other visitors of and persons requiring lawful access to the Approved Dwellings.
For the purposes of this clause, "Approved Dwellings" shall mean:*

...

c) a maximum of 3 dwellings on Lot 5 of DP 124602

... as such lots are shown on the plans annexed and mark "C".

No other persons other than the authorised persons may use the easement without the owner of the land first obtaining the approval in writing from Pittwater Council.

Lot 5 of DP 124602 is marked on the annexure as the property known as 120 Mona Vale Road.

The temporary sales office cannot be considered a dwelling and does not have any relationship to the existing Approved Dwellings. Therefore, visitors to the sales office would not be considered "visitors" or "invitees" to an Approved Dwelling and would not be permitted to use the Easement.

As the Easement only permits lawful access to the Approved Dwellings and the temporary sales office cannot be considered a dwelling, it is recommended the proposal be refused.

The previous assessment officer's comments are supported. During the notification period, a supplementary submission was received from the Pittwater Uniting Church raising similar concerns with regard to use of the Right of Carriageway.

The application for review has provided no additional information or sought approval in writing from Pittwater Council for the use of the easement. Further to this, internal referral comments from Council's Land Release Department provided as a component of the original application indicate that as the proposed use is not a 'Dwelling', it is unlikely that Council (as the authority able to release, vary or modify the restriction or positive covenant) would agree to amend or release the restriction that would allow access onto the development site via the driveway that is the subject of the 88B Instrument. Land release also comment that:

Regardless that this application is for a temporary use (as a sales office), there remains uncertainty given that development consent has not been secured for any future residential lots (that would forecast a on said lot(s) and there is no associated Construction Certificate issued) on this property to warrant favourable support to the temporary use (the subject DA) as a 'sales office'.

For the reasons outlined above, the application is not supported.

C2.11 Signage

The previous assessing officer provided the following comments with regard to N0485/16:

The application proposes two stacked shipping containers at a height of 5.18m. Signage with dimensions of 5m x 2m will be fixed on to the shipping containers. The shipping containers and signage are visually excessive and uncharacteristic of the surrounding locality. The use of shipping containers does not reflect a high quality design and it is considered there are alternatives that are more compatible with the desired amenity of the area. The shipping containers and associated signage are recommended to be refused.

Further to the previous assessment officer's comments, the proposed sign is prohibited development in the E4 Environmental living Zone. Clause C2.11 also states that "Third party signage is not permitted", with no variations applicable to the control.

As outlined previously, whilst it could be argued that the sign is permissible pursuant to the provisions of Clause 2.8 Temporary Use of land of PLEP 2014, the proposed shipping container sign is considered to be a dominant and bulky structure that would detract from the amenity of the neighbourhood and aesthetic values of the land, inconsistent with the requirements of clause 3(b).

The application proposes two signs of 2.5m x 2.3m to be attached to the sales office. Pursuant to P21 DCP, the signs are best described as 'wall signs'. The DCP stipulates a maximum signage area of 4.5sqm for wall signs and the proposed signs have area of 5.75sqm. As such, the proposed signs exceed the size requirements of P21 DCP and are not supported.

The proposed 5m x 2m sign to be attached to the top most of two stacked shipping containers is not defined under P21 DCP. However, the DCP states that "*any signage erected within a residential, environmental or rural zone shall not be visually intrusive or have dimensions greater than 0.75sqm in area (other than for bed and breakfast accommodation)*".

The total area of the sign is 10sqm, resulting in a significant non-compliance with the technical requirement. Furthermore, the non-compliance is exacerbated by the dominant bulk and scale of the overall structure, noting the stacked shipping containers reach a height of 5.18m. As highlighted by the previous assessing officer, *the shipping containers and signage are visually excessive and uncharacteristic of the surrounding locality and do not reflect a high quality design.*

Overall, the proposed signs are inconsistent with the technical requirements and outcomes of the control. For these reasons, the proposed signage is not recommended for approval.

SEPP No 64 - Advertising and Signage

A consent authority must be satisfied that proposed signage satisfies the assessment criteria specified in SEPP 64. The proposed shipping container sign is considered to be inconsistent with the aims and objectives of SEPP 64, and does not satisfy the assessment criteria as listed under Schedule 1.

The sign is not considered to be compatible with the desired amenity and visual character of the area and is not of a high quality design and finish. The proposed design is of an excessive density and scale that does not integrate with the landform and landscape, and is considered to detract from the special aesthetic and environmental values of the land.

The proposed signage is therefore not supported.

9. INTERNAL REFERRALS

Development Engineering

Council's Development Engineer provided the following comments:

The proposal is for a temporary sales office and signage for a future subdivision. The location is supported subject to the conditions provided with the signage component potentially visible from neighbouring lots as well as the classified road corridor, which may require RMS concurrence. The signage should possibly be conditioned if approved to have no illumination outside of daylight hours to minimise the visual distraction for drivers on Mona Vale Road.

Referral recommendation: Supported subject to conditions

Phillip Devon: 26/07/2017

Flooding

Council's Floodplain Management – Principal officer provided the following comments:

*The proposed temporary sales office and signage are to be located outside of the flood affected parts of the property.
There are no flood related objections.*

Referral recommendation: Supported

Valerie Tulk: 06/07/2017

10. CONSIDERATION OF S.82A

The applicant has made an application for review within the timeframe permitted under s.97 of the Act. Council has considered the request for a review in accordance with the requirements of s.82A of the Act, as follows;

*(a) it has notified the request for review in accordance with:
(i) the regulations, if the regulations so require, or
(ii) a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations, and*

The s.82A review application was notified in the same manner as the original application in accordance with the regulations and Council's Notification Policy.

(b) it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan, as the case may be, and

Submissions received in regards to the proposal have addressed in accordance with the relevant control within PLEP 2014 and P21 DCP.

(c) in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same development as the development described in the original application.

The applicant has made no amendments to the proposal and, as such, the development is substantially the same as the development described in the original application.

The proposed development is considered to meet the provisions of s.82A of the Act.

11. CONCLUSION

The Development Application has been assessed in accordance with the provisions of Sections 79C and 82A of the Environmental Planning and Assessment Act 1979, PLEP 2014, P21 DCP and other relevant Council policies.

The proposal has been found to be inconsistent with the outcomes of the relevant controls of P21 DCP and PLEP 2014. The proposal is considered to be inconsistent with the existing and desired future character of the Warriewood locality. As a result of these considerations, the proposal is recommended for refusal.

RECOMMENDATION OF PLANNER

That Development Application N0485/16 for S82A review of determination of refused sales office (temporary use) and three business identification signs at 120 Mona Vale Road, Warriewood be refused for the following reasons:

1. The Easement (registered dealing 1045166 as varied by registered dealing AB605380M) does not provide lawful access to Lot 5 DP 124602 for the purpose of a temporary sales office;
2. As lawful access has not been demonstrated, the proposed access via land owned by Pittwater Uniting Church does not satisfy the requirements of Clause 2.8 (3)(b) of Pittwater Local Environmental Plan 2014;
3. The proposed advertising structure to be constructed of shipping containers is prohibited in the E4 Environmental Living Zone and is inconsistent with the objectives of the E4 Environmental Living Zone;
4. The proposed signage is inconsistent with the technical requirements and outcomes of Part C2.11 Signage of Pittwater 21 Development Control Plan; and
5. The proposed signage is inconsistent with the aims and objectives of SEPP 64 – Advertising and Signage, and does not satisfy the assessment criteria as listed under Schedule 1 of the policy.

Report prepared by

Heath Dennerley

PLANNER



ITEM 3.3	893 BARRENJOEY ROAD, PALM BEACH - SECTION 82A REVIEW OF REFUSAL TO N0519/16/R FOR AN INCLINATOR
REPORTING OFFICER	Nick Armstrong
TRIM FILE REF	2017/275217
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site and Elevation Plan

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application N0519/16/R for Section 82A review of determination of the refused inclined lift be refused for the reasons outlined in the report.

**SUBJECT: N0519/16/R - 893 BARRENJOEY ROAD, PALM BEACH NSW
2108 Installation of inclinor**

Determination Level: Development Determination Panel

REFUSAL

SUMMARY OF RECOMMENDATION:

REPORT PREPARED BY:	Nick Armstrong
APPLICATION SUBMITTED ON:	22/06/2017
APPLICATION SUBMITTED BY:	MICHAEL LOCKLEY 893 BARRENJOEY ROAD PALM BEACH NSW 2108
OWNER(S):	MICHAEL LOCKLEY SALLYANN COWELL

1.0 SITE DETAILS

The site is known as 893 Barrenjoey Road, Palm Beach and legally referred to as Lot 6 in DP 13620. The site is rectangular in shape with a total area of 810.8m² with a 14.43m wide road frontage facing the western side of Barrenjoey Road and a 16.1m wide water frontage facing the Pittwater Waterway. The site currently contains a two and three storey concrete block and brick residence located centrally, a detached garage located at the road frontage. The slope of the site is 37.3% and falls from road frontage to the Pittwater Waterway. Adjoining the site are similar low density residential dwellings to the north, south and east and the Pittwater Waterway to the west.

2.0 PROPOSAL IN DETAIL

A Section 82A review application has been lodged in relation to development application N0519/16 which refused an inclinor at 893 Barrenjoey Road, Palm Beach.

The review application has made the following changes to the original development:

- Inclusion of a timber privacy screen between RL 13.05 to RL 15.00.

3.0 DEVELOPMENT CONTROLS

The site is zoned E4 Environmental Living under the provisions of Pittwater Local Environmental Plan 2014. Pursuant to the PLEP 2014, the proposed development being an inclinor is permissible on this land. The following relevant local and state policies apply to this site:

- Environmental Planning and Assessment Act 1979 (the Act);
- Environmental Planning and Assessment Regulation 2000 (the Regulation);
- State Environmental Planning Policy No 71 – Coastal Protection (SEPP 71);
- Pittwater Local Environmental Plan 2014 (PLEP 2014);
 - Acid Sulphate Soils – Class 5
 - Biodiversity Map
 - Height of Buildings – I ~ 8.5m
 - Lot Size Map – Q ~ 700m²
 - Geotechnical Hazard Map – H1 Hazard
- Pittwater 21 Development Control Plan

- Palm Beach Locality
- Geotechnical Risk Management Policy for Development in Pittwater
- Estuarine Risk Management Policy for Development in Pittwater
- Landscaped Area Map: Area 1
- Land Containing or Adjoining Pittwater Spotted Gum Forest
- Wave Action and Tidal Inundation

4.0 BACKGROUND

N0519/16/R was lodged at Council on 22/06/2017 and referred to Council's Development Engineers and Natural Environment Officer.

Property History

01/03/2017

Development Application N0519/16 for the construction of an inclinator was refused for the following reasons:

1. The inclinator foundation columns are considered to be excessively high and not in character of the surrounding area
2. The inclinator poses an acoustic privacy concern as the top landing level is within close proximity to the neighbouring bedrooms.

Application History

02/08/2017

The applicant was requested to withdraw the application due to concerns raised under Section 8.0.

5.0 NOTIFICATION

N0519/16/R was notified for a minimum period of fourteen (14) days from 28/06/2017 to 12/07/2017. The site inspection on the 20/07/2017 confirmed the placement of the notification sign. During the notification period one (1) submission was received.

Objector Concerns

7 Thyra Road

- Visual privacy
- Acoustic privacy
- View loss
- Setbacks
- Excavation
- Bulk and scale

6.0 ISSUES

- 7.8 Limited development on foreshore area
- B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community
- C1.3 View Sharing

- C1.5 Visual Privacy
- C1.6 Acoustic Privacy
- C1.19 Incline Passenger Lifts and Stairways
- D12.6 Side and rear building line
- D12.8 Building envelope
- D12.10 Landscaped Area – Environmentally Sensitive Land

7.0 COMPLIANCE TABLE

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings			Y	Y	Y
5.5 Development within the coastal zone			Y	Y	Y
5.9 Preservation of Trees or vegetation			Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
7.1 Acid Sulphate soils			Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.6 Biodiversity protection			Y	Y	Y
7.7 Geotechnical Hazards			Y	Y	Y
7.8 Limited development on foreshore area		See Section 8.0 for discussion.	Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Pan					
3.1 Submissions of a Development Application Form and Payment of Appropriate Fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - site plan / survey plan / development drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.12 Palm Beach Locality			Y	Y	Y

B1.3 Heritage Conservation – General			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.6 Contaminated Land			Y	Y	Y
B3.7 Estuarine Hazard – Low Density Residential			Y	Y	Y
B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community		See Section 8.0 for discussion.	Y	Y	Y
B4.19 Estuarine Habitat			Y	Y	Y
B4.20 Protection of Estuarine Habitat			Y	Y	Y
B4.22 Preservation of Trees or Bushland Vegetation			Y	Y	Y
B8.1 Construction and Demolition – Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition – Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition – Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition – Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition – Works in the Public Domain			Y	Y	Y
C1.1 Landscaping			Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing		See Section 8.0 for discussion.	N	N	N
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy		See Section 8.0 for discussion.	Y	Y	N
C1.6 Acoustic Privacy		See Section 8.0 for discussion.	Y	Y	N
C1.7 Private Open Space			Y	Y	Y
C1.12 Waste and recycling facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.19 Incline Passenger Lifts and Stairways		See Section 8.0 for discussion.	N	N	N
D1.21 Masterplan – Careel Bay			Y	Y	Y
D12.1 Character as viewed from a public place			Y	Y	Y
D12.3 Building colours and materials			Y	Y	Y
D12.5 Front building line			Y	Y	Y

D12.6 Side and rear building line		See Section 8.0 for discussion.	N	N	N
D12.8 Building envelope		See Section 8.0 for discussion.	N	N	N
D12.10 Landscaped Area – Environmentally Sensitive Land		See Section 8.0 for discussion.	N	Y	Y
D12.13 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D12.14 Scenic Protection Category One Areas			Y	Y	Y

8.0

DISCUSSION OF ISSUES

- **Pittwater Local Environmental Plan - Clause 7.8 Limited development on foreshore area**

The subject site is affected by the Foreshore Building Line (FBL). Approximately half of the proposed inclinor will be located forward of the FBL. The assessment of Clause 7.8 is as follows:

Clause 7.8(2) states:

- (2) *Development consent must not be granted for development on land in the foreshore area except for the following purposes:*
 - (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
 - (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

An inclinor is not specified development under this clause. However, due the proximity of the existing boatshed to the proposed lower landing the inclinor could be considered as ancillary development to the boatshed as the exceptional site features, including the slope, make access to the boatshed from the dwelling difficult for non-abled bodied persons.

Clause 7.8(3) states:

- (3) *Development consent must not be granted under this clause unless the consent authority is satisfied that:*
 - (a) *the development will contribute to achieving the objectives for the zone in which the land is located, and*
 - (b) *the appearance of any proposed structure, from both the waterway and the adjacent foreshore areas, will be compatible with the surrounding area, and*
 - (c) *the development will not cause environmental harm such as:*
 - (i) *pollution of siltation of the waterway*
 - (ii) *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - (iii) *an adverse effect on drainage patterns, or*
 - (iv) *the removal or disturbance of remnant riparian vegetation, and*
 - (d) *the development will not cause congestion or generate conflict between people using open spaces or the waterway, and*
 - (e) *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*

- (f) *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- (g) *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- (h) *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

The development results in the construction of an inclinator that will be visible when viewed from The Pittwater Waterway. Inclinators are common development with the former Pittwater Local Government Area as the steep topography creates difficulties with regards to pedestrian access. The section of the works that is intended to be located within the foreshore area is not considered to create impacts in relation to unreasonable environmental degradation, sea level rise, public access to the waterway and foreshore or the historic, aesthetic values on the land which the development is located on. However, concerns do relate to the elements of the inclinator that fall outside the foreshore area. These issues are discussed further within this report under the relevant sections.

- **Pittwater 21 Development Control Plan – B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community**

Council's Natural Environment Officer provided the following comments;

The Section 82A review for the construction of an inclinator has been modified by the addition of a screen only. The positioning and line of the inclinator remains unchanged. An addendum to the original arborist report has been submitted (Joanne Leigh, 20 June 2017) which assesses the impact of the proposed changes. The arborist has recommended works within the TPZ of Tree 3 are done by hand with no woody roots greater than 40mm being cut.

Original comments:

The property contains a modified landscape typical of a suburban garden. The proposed works include the installation of an inclinator. An arborist report has been submitted (Tree Consulting by Jo, 21 September 2016, Revision A) which assesses four (4) trees potentially impacted by the proposed works. One (1) of those is an exempt species (T4) and will not be discussed further. All the other trees can be safely retained provided the construction methods and tree protection measures as recommended in the arborist report are adopted. No changes to landscaping have been proposed.

- **Pittwater 21 Development Control Plan – C1.3 View Sharing**

During the site inspection to the objector's property, view loss was raised as a new concern due to the location of the proposed 'timber privacy screen' directly adjacent to the neighbours deck at RL 13.05.

The photos below indicate the views currently obtained by the residents of 7 Thyra Road when viewed from the deck at RL 13.05 and the adjoining living room.



Image 1: View from deck at 7 Thyra Road looking south



Image 2: View from deck at 7 Thyra Road looking southwest



Image 3: View from deck at 7 Thyra Road looking west



Image 4: View from deck at 7 Thyra Road looking northwest



Image 5: View from living room at 7 Thyra Road looking southwest

The location of the proposed privacy screen is recognised to create a potential view loss impact to the neighbouring property. As stated under C1.3 View Sharing, concerns relating to the loss of views are to be considered under the planning principle for view sharing *Tenacity Consulting v Warringah Council [2004] NSWLEC 1046*.

Step one is to assess the reasonableness of the view loss concern in order to determine the views which are to be affected

The occupants of 7 Thyra Road currently enjoy a mixture of filtered and unfiltered land and water views of The Pittwater Waterway, Avalon Beach (suburb), Stokes Point, Ku-ring-gai Chase National Park, Pugnose Point, Soldiers Point, Currawong Beach, Sinclair Point and Great Mackerel Beach looking from south to northwest. A portion of the view is obscured by existing vegetation located within the subject site and the neighbouring property. The land-water interface of The Pittwater Waterway and Kur-ring-gai Chase National Park is considered to be the most significant element of the view.

Step two is to determine the location from which the views are obtained

The views are obtained from the rear deck (RL 13.05), adjoining living room, rumpus room/home office and rear yard. The views potentially impacted by the works include partial views of The Pittwater Waterway and Avalon Beach (suburb).

Step three is to assess the extent of the impact to the entire property, not just the view that is affected

The application will result in the loss of views to the property when viewed from the rear deck and adjoining living room looking south-southwest, across the shared side boundary from both a seated and standing position. The extent of view loss is best described as minor.

The final step is to determine the reasonableness of the proposal based on compliance with the relevant planning controls

The area of works that will result in the potential loss of views will be non-compliant with Council's built form controls including D12.6 Side and rear building line and D12.8 Building envelope. Whilst the proposed privacy screen is recognised to improve concerns raised regarding visual and acoustic privacy under the original development application, the resultant view loss impact and non-compliance with Council's built form controls is not considered to be an appropriate compromise.

- **Pittwater 21 Development Control Plan – C1.5 Visual Privacy**

Visual privacy was raised as an area of concern under the original development application due to the proximity of the proposed inclinator landings and carriage to the neighbouring property's main private open space including the deck at RL 13.05 and the rear yard. Vegetation, in the form of one (1) tree, was also proposed to be removed to accommodate the proposed works which raised additional concerns.

The current application now proposes a timber privacy screen located between RL 13.05 to RL 15.00 to provide additional screening between 893 Barrenjoey Road and 7 Thyra Road, with the main area of privacy protection provided to the rear deck of 7 Thyra Road. Whilst this arrangement is acknowledged to largely resolve the original concerns regarding the visual privacy impact of the inclinator, the screen will result in multiple built form non-compliances and additionally contributes to the potential loss of views.

- **Pittwater 21 Development Control Plan – C1.6 Acoustic Privacy**

The application was previously refused due to concerns regarding the acoustic impact of the inclinator on noise sensitive rooms at the adjoining dwelling 7 Thyra Road with specific reference to the proximity of the upper landing to the bedrooms causing the greatest concern. The upper landing is proposed to be located approximately 2m from the southern façade of the neighbouring dwelling with the rooms that share this wall including the living room and two bedrooms. An Acoustic Assessment Report, Ref. 47.5271.R1:MSC, prepared by The Acoustic Group, dated 28/05/2017, has been submitted with the application which provides an assessment of the acoustic impact of the proposed inclinator on the neighbouring property.

The report clarifies that the original application did not comply with the maximum noise requirements of the P21 DCP and the EPA guidelines, being 60dB(A) when measured 1m from adjoining premises, whilst the current application with the inclusion of the proposed timber privacy screen acting as an acoustic dampener will allow for compliance with the 60dB(A) requirement to be achieved. This measurement however relates to the rear deck at RL 13.05, whereas the reason for refusal references the proximity of the bedrooms to the upper landing. The report comments *'for compliance with the EPA criteria a second screen would be required to be added from the east of the proposed screen but would be elevated so that the top of the screen would be 1m above the top of the rail at the subject landing.'*

The addition of a further screen in order to achieve compliance with the EPA requirements for noise transmission will likely further increase the proposed bulk and scale of the

development and contribute to additional non-compliances with Council's built form controls. As the current arrangement is considered to result in an unreasonable bulk, scale and amenity impact to the neighbouring property the addition of a further non-complying built form element is unacceptable.

- **Pittwater 21 Development Control Plan – C1.19 Incline Passenger Lifts and Stairways**

The application was previously refused due to concerns regarding the visual impact of the inclinator columns and the acoustic privacy impact of the inclinator to the upper floor bedrooms of the adjoining property at 7 Thyra Road. The acoustic privacy concerns have been discussed previously under control C1.6 of this report.

C1.19 states that incline passenger lifts and stairways shall:

- i) *be designed and located so they do not involve excessive exaction, or the removal of natural rock or trees, and*
- ii) *be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and*
- iii) *be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and*
- iv) *be painted to blend in with surrounding vegetation and screened by landscaping, and*
- v) *be setback two (2) metres from the side boundary to the outer face of the carriage, and*
- vi) *be located wholly on private land, and*
- vii) *have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.*

The development will again be unable to comply with the technical requirements of C1.19 as the inclinator proposes the following:

- Setback to outer face of carriage = 400mm
- Highest pier = 4.5m above existing ground level
- Highest point of rail = 5.1m above existing ground level

Whilst it is acknowledged that the topography of the site and the siting of the existing dwelling does present difficulties in achieving the technical requirements of the control, the multiple non-compliances are considered to unreasonably impact the amenity of the residents of the property at 7 Thyra Road. The location of the inclinator and its intended height above the existing ground level results in a visually prominent structure when viewed from the neighbouring dwelling that will not allow for the establishment of vegetation to effectively screen the works.

- **Pittwater 21 Development Control Plan – D12.6 Side and rear building line**

The proposed timber privacy screen will be unable to comply with the minimum side setback requirements of 2.5m from one side and 1m to the other side as a nil setback is intended to be provided in order to accommodate the inclinator carriage within the upper landing. As the screen will be located at the exact level of the neighbouring deck at 7 Thyra Road, it will therefore be visually prominent when viewed from the neighbouring property. Whilst the screen will reduce the potential visual and acoustic privacy impacts created by the inclinator, the bulk, scale and potential view loss impact is not considered to be a reasonable alternative.

- **Pittwater 21 Development Control Plan – D12.8 Building Envelope**

The application will be unable to comply with the building envelope control as the inclinator rail, upper and mid landings and the timber privacy screen will fall outside the building envelope as prescribed under D12.8. The inclinator will be highly visible when viewed from the neighbouring property due to the height above the existing ground level and the reduced setback creates difficulty in terms of providing sufficient vegetation to screen the development. Additionally, the location of the proposed privacy screen raises additional concerns in relation to view loss as previously discussed under C1.3.

- **Pittwater 21 Development Control Plan – D12.10 Landscaped Area – Environmentally Sensitive Land**

Existing Landscaped Area = 205.7m² or 25.4% of the total site area.

Whilst the existing site is substantially non-compliant with the minimum 60% landscape area requirement the development does not contribute to a further loss in landscaped area. One exempt tree has been proposed for removal and this is discussed by Council's Natural Environment Officer under control B4.7.

9.0 ASSESSMENT – CONSIDERATION OF SECTION 82A OF THE EP&A ACT 1979

The modification application has been lodged and considered in accordance with Section 82A of the Environmental Planning & Assessment Act 1979.

Section 82A of the Environmental Planning & Assessment Act 1979 is considered as follows;

(4) The council may review the determination if:

- (a) it has notified the request for review in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for review of its determinations, and*
- (b) it has considered any submissions made concerning the request for review within any period prescribed by the development control plan, as the case may be, and*
- (c) in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is*

substantially the same development as the development described in the original application.

The application was notified for a minimum period of fourteen (14) days between 28/06/2017 to 12/07/2017 in accordance with the regulations and P21 DCP. The notification period attracted one (1) submission. The concerns raised within the submission have been discussed previously under Section 8.0.

The original development application was lodged for the construction of an inclinator. The current review application has been correctly lodged and defined as the construction of an inclinator with the only amendment being the inclusion of a timber privacy screen adjacent to the northern boundary. The proposal is considered to fall under the provisions of Section 82A of the EP&A Act 1979.

10.0 CONCLUSION

The modification application has been assessed in accordance with the provisions of Section 82A of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan 2014 and Pittwater 21 DCP and other relevant Council policies.

The proposal being the construction of an inclinator and privacy screen are not considered to resolve the concerns that were raised within the original development application. The application is therefore recommended for refusal.

11.0 RECOMMENDATION

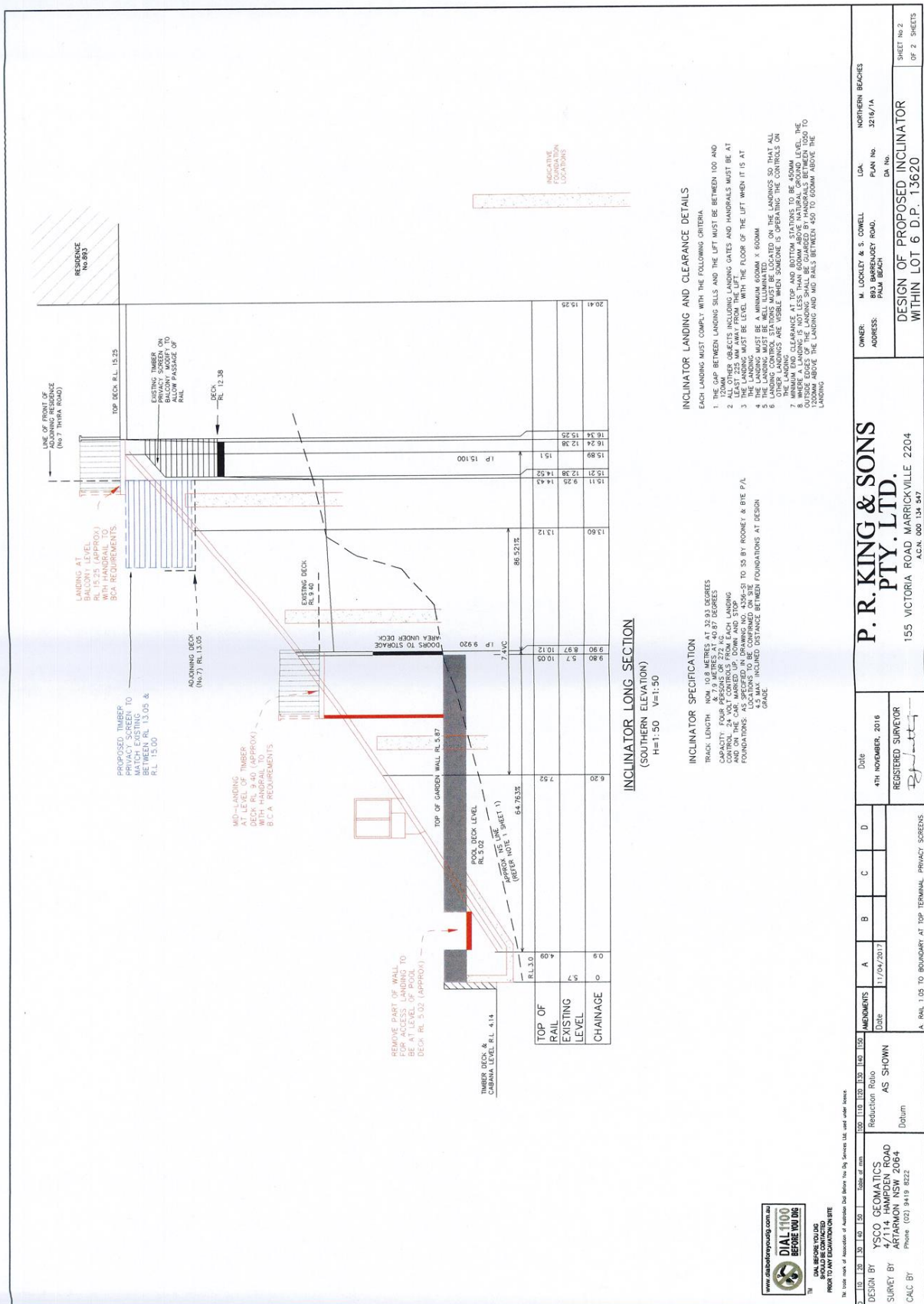
That Development Application N0519/16 for Section 82A review of determination of the refused inclined lift be refused for the following reasons:

1. **The development is unable to achieve the technical requirements and objectives of P21 DCP controls C1.19 Incline Passenger lifts and Stairways, D12.6 Side and rear building line and D12.8 Building envelope for the following reasons**
 - a. **The inclinator piers will have a maximum height of 4.5m above the existing ground level where the control requires the inclinator to be as close to the ground level as possible and not involve the erection of high piers. The piers are considered to be excessively high and visually prominent;**
 - b. **The outer face of the inclinator carriage will have a minimum setback of 400mm to the boundary where the control requires a minimum 2m setback. This results in a potential visual privacy impact to the neighbouring property;**
 - c. **Multiple elements of the inclinator and privacy screen are intended to be located outside the prescribed building envelope. This results in an unreasonable bulk, scale and amenity impact to the neighbouring property;**
 - d. **The nil setback to the proposed privacy screen results in an unreasonable bulk and scale impact when viewed from the neighbouring property.**
2. **The privacy screen results in the unreasonable loss of views to the neighbouring property at 7 Thyra Road.**

Report prepared by

Nick Armstrong
PLANNER





ITEM 3.4 **7 PACIFIC ROAD, PALM BEACH - SECTION 82A REVIEW OF
REFUSAL TO N0565/16/R FOR ALTERATIONS AND ADDITIONS
TO AN EXISTING DWELLING**

REPORTING OFFICER Heath Dennerley

TRIM FILE REF **2017/275259**

ATTACHMENTS 1 [↓](#) **Assesment Report**
 2 [↓](#) **Consent Conditions**
 3 [↓](#) **Site and Elevation Plan**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application N0565/16/R for Section 82A review of determination of refused Alterations and Additions to an existing dwelling at 7 Pacific Road, Palm Beach be approved subject to the conditions of consent as outlined in the report.

Development Determination Panel Report

SUBJECT: N0565/16/R - 7 PACIFIC ROAD, PALM BEACH NSW 2108 Alterations and additions to dwelling.

Determination Level: Manager – Planning Assessment

SUMMARY OF RECOMMENDATION: CONSENT WITH CONDITIONS

REPORT PREPARED BY: Heath Dennerley

APPLICATION SUBMITTED ON: 24 May 2017

APPLICATION SUBMITTED BY: HOUSED PTY LTD

OWNER(S): PO BOX 275
AVALON BEACH NSW 2107
MR ALEXANDER DAMIEN HARRY BEARD
MRS MARIE PASCALE BEARD

1.0 SITE DETAILS

The site is known as 7 Pacific Road, Palm Beach and legally referred to as Lot 401 DP 19651. The site is rectangular in shape and the total area of the site is 1026.2m². The site contains a single dwelling that is located centrally on the site. Adjoining the site are low density residential dwellings.

2.0 PROPOSAL IN DETAIL

This application is a review of the determination of Development Application N0565/16 previously refused on 20 March 2017. This request has been made pursuant to s.82A of the *Environmental Planning and Assessment Act 1979*.

The proposal seeks consent for alterations and additions to the existing dwelling, including:

- Internal reconfigurations;
- Refurbished timber deck to pool area;
- New concrete stairs to deck and balcony;
- Lower ground floor recreation room; and
- New ground floor terrace.

3.0 STATUTORY AND POLICY CONSIDERATIONS

The site is zoned E4 Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, alterations and additions are permissible with consent.

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Class 5
 - Geotechnical Hazard Map
 - Height of Buildings Map - 8.5m
 - Lot Size Map - 700sqm
- Pittwater 21 Development Control Plan (P21 DCP)
 - Palm Beach Locality
 - Geotechnical Risk Management Policy for Pittwater
 - Landscaped Area Map: Area 1
 - OSD Required

Variation to development standards:

The application of Clause 4.6 is not required.

4.0 BACKGROUND

Application History

08/12/2016

N0565/16 was lodged at Council and referred to Council's Development Engineer and Natural Resources Officer for comment. During the notification period, two (2) submissions were received from the following:

- 5 Pacific Road, Palm Beach
- Ingham Planning Pty Ltd (on behalf of 5 Pacific Road)

20/03/2017

N0565/16 was refused for the following reasons:

1. The proposal does not comply with C1.3 View Sharing as there is an unreasonable impact on view sharing for adjoining neighbours.
2. The proposal does not comply with D12.8 Building Envelope as the extension of the roof falls outside of the envelope parameters.
3. The proposed roof form over the terrace extends beyond the minimum height limit of 8.5m and therefore does not comply with Cl 4.3 Height of Buildings under the *Pittwater Local Environmental Plan 2014*.
4. The slope of the site where the proposed building footprint is situated is not over 30%. The proposal has not included a Clause 4.6 Statement to justify the breach of the height limit.

24/05/2017

N0565/16/R was lodged at Council and referred to Catchment Management, Development Engineer and Natural Environment officer for comment. A search of Council's records revealed no related documentation.

5.0 NOTIFICATION

N0565/16/R was notified from 30/05/2017 to 13/06/2017 to adjoining property owners in accordance with council's notification policy. A site inspection was conducted on 13/06/2017 which confirmed the placement of the notification sign. During the notification period, one (1) submission was received from 5 Pacific Road, Palm Beach, raising concern with regard to the following:

- Visual privacy; and
- Construction management.

6.0 COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Comments in **bold text** relate to the changes proposed as part of the s82A Review of Determination.

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings	Maximum height limit of 8.5m	Max. 8.2m	Y	Y	Y
4.6 Exceptions to development standards			Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils			Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.12 Palm Beach Locality			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y

B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land		The property contains a modified landscape typical of a suburban garden. The proposed works include alterations and extensions to the rear/east deck and internal alterations. No trees are proposed for removal. No vegetation is within the area of proposed works. No changes to landscaping have been proposed.	Y	Y	Y
B5.4 Stormwater Harvesting			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security		Supplementary submission received from 5 Pacific Road, palm Beach. See discussion.	Y	Y	N
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan		CTMP required as the site has access restrictions, and the deliveries need to be managed through this process.	Y	Y	Y
C1.1 Landscaping			Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing			N	Y	N

		Amended plans propose to replace pitched roof over upper floor terrace with a lowered flat roof. The objector at 5 Pacific Road, Palm Beach has raised no concern with regard to the amended design. The proposal is considered to satisfy the outcomes of the control and achieve a reasonable level of view sharing.	Y	Y	Y
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy		Supplementary submission received from 5 Pacific Road, Palm Beach. See discussion.	Y	Y	N
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.23 Eaves			Y	Y	Y
D12.1 Character as viewed from a public place			Y	Y	Y
D12.3 Building colours and materials		Conditions shall be imposed for finishes to match the existing dwelling.	Y	Y	Y
D12.5 Front building line			Y	Y	Y
D12.6 Side and rear building line			Y	Y	Y
D12.8 Building envelope		See discussion.	N	Y	Y
D12.10 Landscaped Area - Environmentally Sensitive Land	Minimum 60% landscaped area	Proposed landscaped area is approx. 695.75m ² (67.8%).	Y	Y	Y
D12.11 Fences - General		No new fences or modifications to existing fences proposed	Y	Y	Y
D12.13 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D12.14 Scenic Protection Category One Areas			Y	Y	Y
State Environmental Planning Policies and other					
SEPP (Building Sustainability Index: BASIX) 2004			Y	Y	Y

EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y
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8.0 DISCUSSION OF ISSUES

B8.4 Construction and Demolition - Site Fencing and Security

A submission has been received from the adjoining owner at 5 Pacific Road, Palm Beach raising concern with regard to construction management processes. In particular, the objection raises concern that the application does not provide details regarding the transfer of construction materials, plant and equipment to and from the roadside to the construction area.

The application has been reviewed by Council's Geotechnical Engineer and appropriate geotechnical and construction works conditions have been imposed. The application has been conditioned such that the applicant must prepare and submit a pre-commencement and post-construction dilapidation report and a CTMP. A further condition has also been included in the recommendation which prohibits the storage of construction materials/equipment/waste/access on or through 5 Pacific Road, Palm Beach. Recommended conditions are considered to adequately address neighbours concerns.

The submission also requests that the entire site area be fully enclosed by site fencing for materials, plant and equipment handling. A standard condition has been imposed within the recommendation in this regard.

C1.5 Visual Privacy

A submission has been received from the adjoining owner at 5 Pacific Road, Palm Beach with regard to visual privacy. More specifically, the submission raises concern that the south facing window DW06 on the lower ground floor will overlook the objector's lower ground bedrooms and rear yard.

This objection was addressed as a component of the previous officer's assessment, who provided the following comments:

Upon conducting a site inspection at 7 Pacific Road, it was noted there is no boundary fence between 5 and 7 Pacific Road and therefore the neighbours have open views into each other's main private open spaces. The occupants of 7 Pacific Road would have views towards the objector's ground floor bedroom windows when facing south from window DW06. The below photo shows the rear of 7 Pacific Road when viewed from the objector's rear deck.



The visual privacy issue between both neighbours is primarily a result of no boundary fencing or vegetation along the adjoining boundary. As such, there are large open views into each other's rear yards and windows. To impose conditions for privacy screens to the terrace of fixed louvred screens to window DW06 would not alleviate the existing visual privacy concern currently experienced between both neighbours.

Views towards the objector's bedroom windows from window DW06 are only possible if facing directly south. The distance between window DW06 and the rear of the objector's dwelling is approximately 13.0m and this is considered sufficient in softening the visual privacy impact. Therefore it was decided to not modify window DW06 or impose conditions regarding this window.

Ultimately, it is upon the adjoining neighbours to consider what measures should mutually be agreed on to maintain visual privacy as the nature of the applicant and objector's site is vastly open.

The assessment officer's comments regarding visual privacy are supported. It is considered that there is adequate distance separation and difference in height to maintain a reasonable level of visual privacy between the properties. The primary view obtained from the window will be in an easterly direction towards the coast/ocean, not towards the south to the objector's ground floor bedroom windows. In light of the assessment above, the objectors request for the installation of a privacy screen or obscure glass on DW06 is not considered to be required in this instance.

D12.8 Building envelope

The application results in a minor breach of the prescribed building envelope along the southern elevation of the upper floor terrace pergola. The control permits a variation for eaves or shading devices that provide shade in summer to extend outside of the building envelope.

The pergola does not detract from the character of the locality nor significantly contribute to the over bulk and scale of the development. In addition, the area of non-compliance will not detrimentally impact upon the amenity, privacy or solar access of surrounding properties. In this regard, the application of the variation as listed in the control is therefore supported.

9. INTERNAL REFERRALS

Development Engineering

Council's Development Engineer provided the following comments:

No further comments from Development Engineering. All original comments and conditions are still applicable.

Transfer the conditions over from the original DA.

The proposed development is supported on Development engineering ground and the conditions have been updated to reflect the submissions received.

Referral recommendation: Supported subject to conditions

Phillip Devon: 26/06/2017

Natural Environment

Council's Natural Environment officer provided the following comments:

No further comments from Natural Environment. All original comments and conditions are still applicable.

Referral recommendation: Supported subject to conditions

Jodi Harvey: 14/06/2017

Flooding

Council's Specialist Floodplain Engineer provided the following comments:

The proposal is not considered to increase flood risk.

Referral recommendation: Supported

Valerie Tulk: 19/07/2017

10. CONSIDERATION OF S.82A

The applicant has made an application for review within the timeframe permitted under s.97 of the Act. Council has considered the request for a review in accordance with the requirements of s.82A of the Act, as follows;

(a) it has notified the request for review in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations, and

The s.82A review application was notified in the same manner as the original application in accordance with the regulations and Council's Notification Policy.

(b) it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan, as the case may be, and

Submissions received in regards to the amended proposal have addressed in accordance with the relevant control within PLEP 2014 and P21 DCP.

(c) in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same development as the development described in the original application.

The applicant has made minor amendments to the proposal to address the reasons for refusal issued by Council and concerns of adjoining property owners. Whilst the proposal has been altered, the changes were not so different as to result in a development that would not be seen to be substantially the same as the development described in the original application.

The proposed development is considered to meet the provisions of s.82A of the Act.

11. CONCLUSION

The Development Application has been assessed in accordance with the provisions of Sections 79C and 82A of the Environmental Planning and Assessment Act 1979, PLEP 2014, P21 DCP and other relevant Council policies.

The proposal has been found to be consistent with the outcomes of the relevant controls of P21 DCP and PLEP 2014. The proposal is considered to be consistent with the existing and desired future character of the Palm Beach locality. As a result of these considerations, the proposal is recommended for approval.

RECOMMENDATION OF PLANNER

That Development Application N0565/16 for S.82A review of determination of refused alterations and additions to an existing dwelling at 7 Pacific Road, Palm

Beach be approved subject to the conditions of consent contained in the attached draft development consent.

Report prepared by

Heath Dennerley

PLANNER

CONSENT NO: N0565/16/R
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)
NOTICE TO APPLICANT OF DETERMINATION
OF A DEVELOPMENT APPLICATION

Applicant's Name and Address:
HOUSED PTY LTD
PO BOX 275
AVALON BEACH NSW 2107

Being the applicant in respect of Development Application No N0565/16/R

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Northern Beaches Council, as the consent authority, of Development Application No **N0565/16/R** for:

Section 82A Review of Determination of refused alterations and additions to dwelling.

At: 7 PACIFIC ROAD, PALM BEACH NSW 2108 (Lot 401 DP 19651)

Decision:

The Development Application has been determined by the granting of consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with

- **Architectural Drawings: Site Plan, Existing Plans, Existing Elevations, Proposed Plan GF, Proposed Plan LGF, Proposed Elevation East, Proposed Elevation North, Proposed Elevation South, Landscape Concept Plan, Storm water Management Plan, Construction Management Plan, prepared by Housed by Nanna Lesiuk, all dated April 2017 82A Review;**
- **Geotechnical Investigation- Alterations and additions at 7 pacific Road, Palm Beach, prepared by White Geotechnical Group, dated 01/12/2016; and**
- **BASIX Certificate, A266256, dated 07/12/2017.**

as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent _____

Mark Ferguson
INTERIM GENERAL MANAGER
Per:

Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. A sign must be erected in a prominent position onsite only showing:
 - a) the name, address and telephone number of the Principal Certifying Authority for the work, and
 - b) the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - c) that unauthorised entry to the work site is prohibited.

The sign must 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.
4. 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:
 - a) in the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor, and
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
 - b) in the case of work to be done by an owner-builder:
 - i) The name of the owner-builder, and
 - ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
 - c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above 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

B. Matters to be incorporated into the development and maintained over the life of the development:

1. The commitments identified in the BASIX Certificate and on the plans or specifications are to be fulfilled and maintained for the life of the development.
2. The commitments identified in the BASIX Certificate and on the plans or specifications are to be fulfilled and maintained for the life of the development.
3. Construction materials, equipment and waste are not to be stored on adjoining neighbouring lots. Access to construction sites are not to be accessed through 5 Pacific Road, Palm Beach.
4. The recommendation of the risk assessment required to manage the hazards as identified in Geotechnical Report prepared by White Geotechnical Group dated 1 December 2016.
5. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds for noxious/environmental weed lists.
6. No environmental weeds are to be planted on the site. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds for environmental weed lists.
7. Domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
8. Any vegetation planted onsite outside approved landscape zones is to be consistent with locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden available on the Council website http://www.pittwater.nsw.gov.au/environment/species_lists
9. The Stormwater Harvesting and Reuse Scheme shall be installed and operated in accordance with the accepted design, Manufacturer's Specifications and associated operational guidelines.
10. As part of the integrated stormwater management plan, suitably positioned stormwater quality improvement devices shall be installed and operated in accordance with Manufacturer's Specifications and associated operational guidelines.
11. The stormwater quality improvement devices shall be maintained and emptied of spoil materials at regular intervals. Spoil materials removed from the stormwater quality improvement devices shall be disposed of as dry household mixed waste.
12. As part of an integrated on-site stormwater management system, stormwater overflow from the rainwater tank is to discharge to the public drainage system or via an interallotment drainage easement within adjacent private property, in accordance with stormwater management plan provided by Nanna Lesiuk, dated November 2016.

13. All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.
14. In accordance with Pittwater 21 DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
15. The finished surface materials, including colours and texture of any building, shall match the detail and materials of the existing building.

C. Matters to be satisfied prior to the issue of the Construction Certificate:

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
2. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.
3. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
 - a) after excavation for, and prior to the placement of, any footings, and
 - b) prior to pouring any in-situ reinforced concrete building element, and
 - c) prior to covering of the framework for any floor, wall, roof or other building element, and
 - d) prior to covering waterproofing in any wet areas, and
 - e) prior to covering any stormwater drainage connections, and
 - f) after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

4. Construction works approved by this consent must not commence until:
 - a) Construction Certificate has been issued by a Principal Certifying Authority
 - b) a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
 - c) at least 2 days notice, in writing has been given to Council of the intention to commence work.

5. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.
 6. Structural Engineering details relating to the development are to be submitted to the Accredited Certifier or Council prior to release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practising Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
 7. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate plans and specifications are fulfilled.
 8. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate or complying development plans and specifications are fulfilled.
 9. 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.
 10. Engineering details showing the Stormwater Harvesting and Reuse Scheme are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Such details are to be accompanied by a certification by a qualified practicing Water/Environmental/Civil Engineer with corporate membership of the Institution of Engineers Australia (MIE Aust), or who is eligible to become a corporate member and has appropriate experience and competence in the related field, confirming that the plans/details comply with Pittwater 21 DCP.
 11. Drainage plans including specifications and details showing the site stormwater management are to be submitted to the Accredited Certifier with the Construction Certificate application. Such details are to be accompanied by a certificate from (as appropriate) either a Licensed plumber or qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the stormwater management system complies with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage. The details shall include disposal of site stormwater (if the site is in a known slip area the stormwater disposal system must comply with the recommendations of a Geotechnical Engineers Report).
- Note: Where Council is the Principal Certifying Authority 3 sets of plans/specifications are to be submitted.
12. A certificate is to be provided to the Principal Certifying Authority with the Construction Certificate application that the existing stormwater system performs satisfactorily and is capable of serving the proposed additions in accordance with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2 - Stormwater Drainage

13. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
14. The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

D. Matters to be satisfied prior to the commencement of works and maintained during the works:

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

Note: This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

- a) Protection of site workers and the general public.
- b) Erection of hoardings where appropriate.
- c) Asbestos handling and disposal where applicable.
- d) Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

3. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
4. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.
5. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

6. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
7. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
8. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
9. The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations
10. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
11. Waste materials generated through demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.

All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.

The ongoing operation of Recycling and Waste Management Services is to be undertaken in accordance with the Waste Management Plan.

12. The site must be fully fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
13. No works are to be carried out in Council's Road Reserve without the written approval of the Council.
Note: Separate approval is required for access driveways, paths, connections to underground services (stormwater, gas, sewer, electricity, etc.), and landscaping works within Council's Road Reserve.
14. A Road Opening Permit, issued by Council, must be obtained for any road openings, or excavation within Council's Road Reserve associated with the development on the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
15. No skip bins or materials are to be stored on Council's Road Reserve.
16. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
 - a) The builder's name, builder's telephone contact number both during work hours and after hours.
 - b) That no works are to be carried out in Council's Road Reserve without prior application

and approval of a Road Opening Permit from Council.

- c) That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
 - d) That no skip bins or materials are to be stored on Council's Road Reserve.
 - e) That the contact number for Northern Beaches Council for permits is 9970 1111.
17. A satisfactory construction traffic management plan (CTMP) prepared by a suitably qualified traffic consultant is required to be submitted to the Private Certifying Authority prior to the commencement of any site works. The plan is to detail:
- a) Quantity of material to be transported
 - b) Proposed truck movements per day
 - c) Proposed hours of operation
 - d) Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the former Pittwater Council Local Government Area
 - e) Location of on/off site parking for construction workers during the construction period.
18. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas.
- Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.
19. The developer or contractor will take all measures to prevent damage to trees and root systems during site works and construction activities including provision of water, sewerage and stormwater drainage services. In particular, works, erection of structures, excavation or changes to soil levels within 5 metres of the trunks of trees to be retained are not permitted, and the storage of spoil, building materials, soils or the driving or parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained, is not permitted.

NOTE: Trees that are part of an Endangered Ecological Community or are habitat for threatened species and endangered populations must comply with the requirements of the Threatened Species Conservation Act, 1995. Failure to do so may result in a penalty up to a maximum of \$250,000.00 and jail sentences.

Failure to comply with the requirements of the Pittwater 21 DCP Control B4.22 Preservation of Trees of Bushland Vegetation may result in a penalty up to a maximum of \$20,000.00.

E. Matters to be satisfied prior to the issue of Occupation Certificate:

Note: Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. All existing and /or proposed dwellings/sole occupancy units are to have approved hard-wired smoke alarms installed and maintained over the life of the development. All hard-wired smoke alarms are to be Australian Standard compliant and must be installed and certified by any appropriately qualified electrician prior to the issue of any Occupation Certificate.
3. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.
4. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.
5. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.
6. Certification is to be provided to a Principal Certifying Authority by an experienced Water/Environmental/Civil Engineer who is NPER accredited by the Institution of Engineers, Australia that the stormwater harvesting and reuse scheme has been completed in accordance with the engineering plans and specifications required under this consent.
7. The stormwater drainage system must be constructed and completed in accordance with the approved design and relevant Australian Standards.

A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.

8. The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

9. Prior to issue of an Occupation Certificate photographic evidence of the condition of the street trees and road reserve and area adjoining the site after the completion of all construction, must be submitted to the Principal Certifying Authority showing that no damage has been done and if damage has been done that it has been fully remediated. The photographs shall be accompanied by a statement that no damage has been done (or where damage has been remediated that Council has approved that work). In this regard Council's written agreement that all restorations have been completed satisfactorily must be obtained prior to the issue of any Occupation Certificate.
10. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority with the Occupation Certificate application.

G. Advice:

1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or www.1100.com.au
3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at www.sydneywater.com.au then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.

9. This approval does not prejudice any action in respect of upgrading the building pursuant to the provisions of the Section 121B of the *Environmental Planning and Assessment (Amendment) Act, 1997*.

LEGEND

ROOF:
MR COLOURBOND METAL ROOF
G SHEETING/CAPINGS
DP SELECT COLOURBOND GUTTERS
SK SELECT COLOURBOND DOWNPIPES
SK SKYLIGHT

EXTERNAL:
DW MASONRY (CONC. BLOCK/BRICK)
DW RENDERED MASONRY
DW DOORS + WINDOWS - PAINTED TIMBER
PR PLASTERBOARD ON TIMBER STUD FRAME

FLOORS:
TF TIMBER FLOOR
TD TIMBER DECKING
TSF TILE/STONE FLOOR
PC POLISHED CONCRETE

CEILING:
PB SET PLASTERBOARD

NEW TIMBER STUD WALLS/STRUCTURE

NEW WORKS

METAL

EXISTING WALLS/WINDOWS TO BE REMOVED - SHOWN AS DOTTED

DA 624 REVIEW
APRIL 2017
DEVELOPMENT APPLICATION
NOVEMBER 2016
DATE



DRAWING:

DWG. NO: DA 655/16 - 82A REVIEW

DATE: APRIL 2017

SCALE:

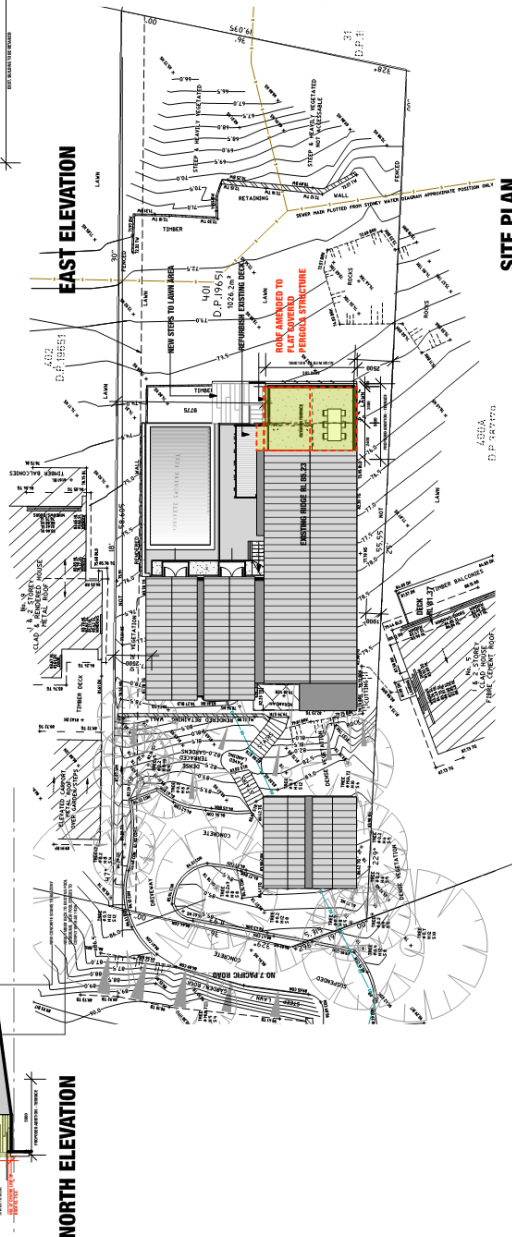
PROJECT:

BEARD FAMILY
7 PACIFIC ROAD PALM BEACH
LOT 401 DP: 19651

HOUSED
BY HANNA LESIUK
m040125189@housedit.com.au

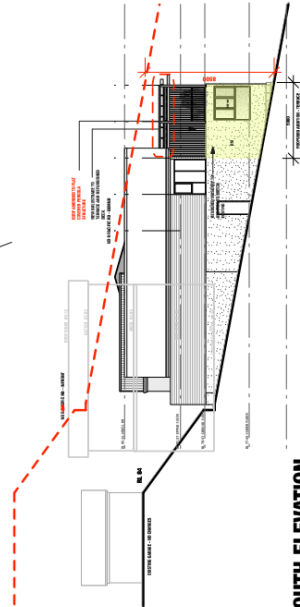


NORTH ELEVATION



EAST ELEVATION

SITE PLAN



SOUTH ELEVATION

ROOF AMENDED TO FLAT
COVERED PERGOLA STRUCTURE
NEIGHBOUR NOTIFICATION

ITEM 3.5 **39 FLORENCE TERRACE, SCOTLAND ISLAND NSW 2105**
SECTION 82A REVIEW OF DETERMINATION OF N0061/17 FOR
THE CONSTRUCTION OF A BOAT SHED AND DECKING

REPORTING OFFICER **Thomas Howell**

TRIM FILE REF **2017/281011**

ATTACHMENTS 1 [↓](#) **Assessment Report**
 2 [↓](#) **Consent**
 3 [↓](#) **Site Plan**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application N0061/16/R for Section 82 review of determination of refused construction of a boat shed and decking at 39 Florence Terrace, Scotland Island be approved subject to the conditions outlined in the report.

SUBJECT: N0061/17/R - 39 FLORENCE TERRACE, SCOTLAND ISLAND NSW 2105 Section 82A Review of Determination of N0061/17 for the construction of a boat shed and decking

Determination Level: Development Determination Panel

SUMMARY OF RECOMMENDATION: **CONSENT WITH CONDITIONS**

REPORT PREPARED BY:	Thomas Howell
APPLICATION SUBMITTED ON:	1 June 2017
APPLICATION SUBMITTED BY:	KATHLEEN JOHNSON 39 FLORENCE TERRACE SCOTLAND ISLAND NSW 2105
OWNER(S):	MRS KATHLEEN JOHNSON MR MICHAEL JOHN JOHNSON

1.0 SITE DETAILS

The site is known as 39 Florence Terrace, Scotland Island and has a legal description of Lot 94 in Deposited Plan 12749. The site is regular in shape, and is located on the eastern side of Scotland Island. The total area of the site is 744m², with a primary frontage to Florence Terrace. The site contains a detached single storey residential dwelling located centrally on the site, an existing deck and small shed towards the rear. The site also gains water access via an existing jetty, ramp and pontoon serviced at the east of the site. Adjoining the site are similar low density residential dwellings with similar waterfront facilities.

2.0 PROPOSAL IN DETAIL

The application seeks a Section 82A Review of Determination of N0061/17 for the construction of a boat shed and decking which was refused under Council delegation.

3.0 STATUTORY AND POLICY CONSIDERATIONS

The site is zoned E3 Environmental Management under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, boat sheds are permissible with consent.

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71)
- 10/50 Vegetation Clearing Code of Practice
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Area 5
 - Biodiversity Map
 - Foreshore Building Line Map
 - Geotechnical Hazard Map
 - Height of Buildings Map - I ~ 8.5m
 - Lot Size Map - X1 ~ 5800sqm
- Pittwater 21 Development Control Plan (P21 DCP)
 - Lower Western Foreshores and Scotland Island Locality
 - Geotechnical Risk Management Policy for Pittwater
 - Estuarine Risk Management Policy for Development in Pittwater
 - Landscaped Area Map - Area 1
 - Land Containing or Adjoining Pittwater Spotted Gum Forest
 - Land Containing areas of Saltmarsh Endangered Ecological Community
 - Land adjacent to estuarine wetlands
 - Land within 40m of a river, stream or foreshore

Variation to development standards:

The application of Clause 4.6 is not required.

4.0 BACKGROUND

N0061/17/R was lodged at Council on 1 June 2017 and referred to Council's Development Engineer and Natural Environment Officer.

A search of Council's records revealed the following:

30 March 2017

Development Application N0061/17 for a boat shed and decking was refused under Council delegation.

25 May 2007

Building Certificate BC0088/07 for an elevated timber walkway was issued under Council delegation.

22 November 2002

Development Application N0963/02 for the construction of a boat shed and seawall was refused under Council delegation.

5.0 NOTIFICATION

N0061/17/R was notified from 8 June 2017 to 22 June 2017 to adjoining property owners in accordance with Council's notification policy. The placement of the notification sign was confirmed via email (15 June 2017). During the notification period, zero (0) submissions were received.

6.0 ISSUES

- 7.8 Limited development on foreshore area
- B3.9 Estuarine Hazard - Business, Light Industrial and Other Development
- B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

7.0 COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E3 Environmental Management			Y	Y	Y
4.3 Height of buildings			Y	Y	Y
5.5 Development within the coastal zone			Y	Y	Y
5.7 Development below mean high water mark		All proposed works are maintained landward of the MHWM.	-	-	-
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils		Class 5.	Y	Y	Y
7.2 Earthworks		Council's Development Engineer provided the following comments: <i>Minor cut and fill required on site. to be carried out as per the geotechnical engineers recommendations.</i>	Y	Y	Y
7.7 Geotechnical hazards		Council's Development Engineer provided the following comments: <i>The proposal has been assessed against the geotechnical criteria under the planning requirements and has found to be acceptable.</i>	Y	Y	Y
7.8 Limited development on foreshore area		For comment see discussion further below.	N	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y

Control	Standard	Proposal	T	O	N
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.6 State Environment Planning Policies (SEPPs) and Sydney Regional Environmental Policies (SREPs)		SEPP 71 - Coastal Protection	Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.8 Lower Western Foreshores and Scotland Island Locality			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance		No apparent issues.	Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.2 Bushfire Hazard		<p>The application is supported by a Bushfire Risk Assessment Report and the applicant has submitted a Bushfire Risk Assessment Certificate.</p> <p>The report and certificate both identify that the subject site has a BAL rating of BAL-Low. Referral to the NSW RFS is not required.</p> <p>Conditions requiring compliance with the recommendations from the Bushfire Assessment Report will be imposed.</p>	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development		For comment see discussion below.	Y	Y	Y
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community		For comment see discussion below.	Y	Y	Y
B4.16 Seagrass Conservation		See B4.7	Y	Y	Y
B4.19 Estuarine Habitat		See B4.7	Y	Y	Y
B4.20 Protection of Estuarine Water Quality		See B4.7	Y	Y	Y
B5.11 Stormwater Discharge into Waterways and Coastal Areas			Y	Y	Y
B5.13 Development on Waterfront Land		The proposal is in line with the functions, and character of the adjoining development types	Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y

Control	Standard	Proposal	T	O	N
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C1.1 Landscaping		See B4.7	Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing			Y	Y	Y
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy			Y	Y	Y
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.14 Separately Accessible Structures		Technically the proposed boat shed could be considered as a separately accessible structure. If the application is granted approval, it is recommended that a condition of consent be included so that the provision of cooking facilities within the structure is prohibited.	Y	Y	Y
D8.1 Character as viewed from a public place			Y	Y	Y
D8.3 Building colours and materials			Y	Y	Y
D8.5 Front building line	Minimum required front setback = 6.5m.		Y	Y	Y
D8.6 Side and rear building line	Minimum required side setbacks = 2.5m to at least one side; 1.0m to the other. The rear setback is not applicable as the foreshore building line intersects the site.	The proposed side setbacks = 1.7m to the north, 6.5m to the south.	Y	Y	Y
D8.9 Landscaped Area	Maximum area not provided as landscaped area = 215.76m ² or 29% of the total site area. I.e. Minimum required landscaped area = 528.24m ² or 71% of the total site area.	Proposed hard surface = 227.6m ² or 30.6% of the total site area. Proposed soft landscaped area = 516.4m ² or 69.4% of the total site area. With permitted variations = 561m ² or 75.4% of the total site area.	Y	Y	Y
D8.10 Fences		None proposed.	Y	Y	Y
D8.11 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y

Control	Standard	Proposal	T	O	N
D8.13 Stormwater overflow			Y	Y	Y
D8.14 Parking management			Y	Y	Y
D8.15 Site disturbance			Y	Y	Y
D8.16 Scenic Protection Category One Areas			Y	Y	Y
D15.11 Waterfront lighting			Y	Y	Y
D15.12 Development seaward of mean high water mark		All proposed works are sited landward of the MHWM.	Y	Y	Y
D15.13 Lateral limits to development seaward of mean high water mark			-	-	-
D15.14 Minimum frontage for waterfront development			Y	Y	Y
D15.15 Waterfront development			Y	Y	Y
D15.18 Seawalls		The site contains an existing seawall at the east of the site, the development does not propose any changes to this. The proposed boat shed and decking are to be constructed partially forward of this seawall.	Y	Y	Y
D15.19 Dredging			Y	Y	Y
State Environmental Planning Policies and other					
SEPP No 71 - Coastal Protection		Clause 8 of SEPP 71 - Coastal Protection has been considered through the assessment of this application. The proposed development is thought to satisfy the relevant outcomes.	Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

8.0 DISCUSSION OF ISSUES

- 7.8 Limited development on foreshore area**

Decking is not listed as being a permissible development within the foreshore area under Clause 7.8(2)(b). Clause 7.8(2)(a) of PLEP 2014, however, permits development consent for the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so. Clause 7.8(2)(b) considers the construction of boat sheds within the foreshore area as permissible development.

The eastern side of the site falls 9.82m from the rear of the existing dwelling down toward the shores of Pittwater, with a slope of approximately 43.6%. The character of the foreshore is predominantly utilised by waterfront recreation facilities, boat sheds and decking. The proposed works for the construction of a boat shed and associated decking are therefore not considered out of character for the area, and will not have any adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed extension of the existing decking allows a reasonable amount of flat surface for the proposed boat shed to sit without the need for excavation. The proposed decking is to provide pedestrian access to the boat shed, whilst allowing continuous public access along the foreshore. As such, it is considered the decking to be ancillary to the proposed boat shed and therefore permissible under Clause 7.8(2)(b).

- **B3.9 Estuarine Hazard - Business, Light Industrial and Other Development**

Council's Coast and Estuary Engineer has provided the following comments:

Subject to the specific requirements of the Department of Primary Industries and the Crown Lands Division, the following comments regarding the abovementioned development application are offered.

The property at 39 Florence Terrace, Scotland Island, has been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.

*Based upon the Detail and Level Survey prepared by Adam Clerke Surveyors Pty Ltd (dated 29/10/2015) submitted in support of application N0061/17, the foreshore edge treatment type appears to be a vertical stone seawall with a crest height at or about RL 1.1m AHD. As such, in accordance with Council's Estuarine Hazard Mapping for Pittwater (2015), an **estuarine planning level (EPL) of RL 2.63m AHD** applies at the subject site. As there is no landward setback from the proposed foreshore edge treatment, no reduction factor (RF) to the EPL will apply.*

As a significant portion of the proposed boatshed development is seaward of the foreshore edge treatment, Council will rely upon the advice contained in the Cardno (NSW/ACT) Pty Ltd Coastal Engineering Report 59917126/L001, dated 5 May 2017, as the basis for ensuring that the coastal risk management aspects of the proposal have been adequately addressed to achieve an acceptable risk level for the life of the structure, taken to be 100 years unless otherwise specified and justified. As the boatshed is also proposed to be constructed below the EPL seaward of the foreshore edge treatment and will be subject to wave impact forces, the following conditions should apply if consent is granted:

B. Matters to be incorporated into the development and maintained over the life of the development:

- The development is to comply with all the requirements and recommendations of the Coastal Engineering Report 59917125/L001, dated 5 May 2017, prepared by Cardno (NSW/ACT) Pty Ltd.
- The applicable Estuarine Planning Level (EPL) adopted by Council is RL 2.63m AHD and in this regard:
 - a) All structural elements below the EPL shall be of flood compatible materials;*
 - b) All structures must be designed and constructed to achieve a low risk of damage and instability due to estuarine inundation, wave impact and foreshore erosion hazards;*
 - c) All electrical equipment, wiring, fuel lines, service pipes and connections must be located either above the EPL or waterproofed to the EPL;*
 - d) The storage of toxic or potentially polluting goods, chemicals or materials is not permitted below the EPL; and*
 - e) All boatshed windows and glazed panels in doors that are located seaward of the foreshore edge treatment shall utilise laminated safety glass and have a sill height at or above the EPL.*
- *At no time shall the boatshed be utilised or converted to provide for residential habitation. The boatshed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.*

- Interior power supply fittings must be located at least 1.0m above the finished floor level of the boatshed. Exterior electrical fittings should be located at least 1.5m above the floor level to avoid contact with splashing waves.

C. Matters to be satisfied prior to the issues of a Construction Certificate:

- The proposed boatshed shall be designed to withstand the likely forces of wave action estimated by the Coastal Engineering Report 59917125/L001, dated 5 May 2017, prepared by Cardno (NSW/ACT) Pty Ltd.
- Structural Engineering details and specifications for the boatshed and associated works, which address the likely forces from wave action as outlined in the Coastal Engineering Report, shall be prepared by, and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) and submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.
- A certificate is also to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate, that has been prepared and signed by a civil or structural engineer who is a registered professional engineer with chartered professional status (CP Eng), certifying that the boatshed will withstand the likely forces from wave action and as outlined in the Coastal Engineering Report 59917125/L001, dated 5 May 2017, prepared by Cardno (NSW/ACT) Pty Ltd.

Relevant matters in SEPP 71 – Coastal Protection will also need to be considered in the assessment of this DA.

- **B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community**

Council's Natural Environment Officer provided the following comments:

The Section 82A Review of Determination has been submitted with no changes to the original proposal. The following comments from the original proposal are still applicable. The property contains a modified landscape with numerous native canopy trees which slopes down from the road to the Pittwater waterway. The proposed works include construction of a boat shed and decking. An arborist report has been submitted (Syncarpia Vegetation Management, Dec/Jan 2016/7) which found no trees within 5 metres of the proposed works. A recommendation was made for no storage of materials or disposal of excavated soil, or building waste within 5 metres of existing trees. Mangrove trees are present alongside the existing jetty within 2 metres of the proposed new decking. The proposed sediment fence should be moved closer to the MHW (maximum of 500mm from MHW) to allow adequate space between it and the existing Mangrove trees. The sediment fence is to act as a protective barrier between the proposed works and the Mangroves. In addition all works within 3 metres of the Mangrove trees are to be done by hand to minimise damage and disturbance to the existing Mangrove trees.

9.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

The proposal has been found to be consistent with the outcomes of the relevant controls of P21 DCP. The proposal is considered to be consistent with the existing character of Florence Terrace and the desired future character of the Lower Western Foreshores and Scotland Island Locality. As a result of these considerations the proposal is recommended for approval.

RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER

Development Application N0061/17 for Section 82A Review of Determination of refused boat shed at 39 Florence Terrace, Scotland Island be approved subject to the conditions contained in the attached draft development consent.

Report prepared by

Thomas Howell
PLANNER

Date: 3 August 2017

CONSENT NO: N0061/17/R
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)
NOTICE TO APPLICANT OF DETERMINATION
OF A DEVELOPMENT APPLICATION

Applicant's Name and Address:
KATHLEEN JOHNSON
39 FLORENCE TERRACE
SCOTLAND ISLAND NSW 2105

Being the applicant in respect of Development Application No N0061/17/R

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Northern Beaches Council, as the consent authority, of Development Application No **N0061/17/R** for:

Section 82A Review of Determination of N0061/17 for the construction of a boat shed and decking

At: 39 FLORENCE TERRACE, SCOTLAND ISLAND NSW 2105 (Lot 95 DP 12749)

Decision:

The Development Application has been determined by the granting of consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with

- **Architectural Drawings, prepared by Stephen Crosby & Assoc. Pty. Ltd.:**
 - **Site Plan & Floor Plan, Dwg. No. 2145 - DA01, dated November 2016;**
 - **Sections & Elevations, Dwg. No. 2145 - DA02, dated November 2016;**
- **Bushfire Risk Assessment Report 1138, prepared by Planning For Bushfire Protection, dated 26 November 2016;**
- **Coastal Engineering Report 59917125/L001, prepared by Cardno (NSW/ACT) Pty Ltd, dated 5 May 2016;**
- **Geotechnical Risk Management Report MR30950, prepared by Jack Hodgson Consultants Pty Limited, dated 3 February 2017.**

as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent 16-Aug-2017

Mark Ferguson
INTERIM GENERAL MANAGER
Per:

Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. A sign must be erected in a prominent position onsite only showing:
 - a) the name, address and telephone number of the Principal Certifying Authority for the work, and
 - b) the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - c) that unauthorised entry to the work site is prohibited.

The sign must 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.
4. 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:
 - a) in the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor, and
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
 - b) in the case of work to be done by an owner-builder:
 - i) The name of the owner-builder, and
 - ii) If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
 - c) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above 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

5. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
6. Any building work in relation to the development consent is to be carried out in accordance with the requirements of the Building Code of Australia.

B. Matters to be incorporated into the development and maintained over the life of the development:

1. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
2. The recommendation of the risk assessment required to manage the hazards as identified in Geotechnical Report prepared by Jack Hodgson Consultants Pty Ltd dated 3rd February 2017 are to be incorporated into the construction plans.
3. The development is to comply with all the requirements and recommendations of the Coastal Engineering Report 59917125/L001, dated 5 May 2017, prepared by Cardno (NSW/ACT) Pty Ltd.
4. The applicable Estuarine Planning Level (EPL) adopted by Council is RL 2.63m AHD and in this regard:
 - a) All structural elements below the EPL shall be of flood compatible materials;
 - b) All structures must be designed and constructed to achieve a low risk of damage and instability due to estuarine inundation, wave impact and foreshore erosion hazards;
 - c) All electrical equipment, wiring, fuel lines, service pipes and connections must be located either above the EPL or waterproofed to the EPL;
 - d) The storage of toxic or potentially polluting goods, chemicals or materials is not permitted below the EPL; and
 - e) All boatshed windows and glazed panels in doors that are located seaward of the foreshore edge treatment shall utilise laminated safety glass and have a sill height at or above the EPL.
5. At no time shall the boatshed be utilised or converted to provide for residential habitation. The boatshed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.
6. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds for noxious/environmental weed lists.
7. No environmental weeds are to be planted on the site. Refer to Council website www.pittwater.nsw.gov.au/environment/noxious_weeds for environmental weed lists.
8. Domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.

9. Any vegetation planted onsite outside approved landscape zones is to be consistent with:
 - a) Species listed in the Ecological Sustainability Plan or Bushland Management Plan (if applicable)
 - b) Species listed from the Endangered Ecological Community
 - c) Locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden available on the Council website
http://www.pittwater.nsw.gov.au/environment/species_lists
10. No building materials or other materials are to be placed on Bushland vegetation. Sediment is not to leave the site or enter areas of Bushland vegetation, and the appropriate sediment fencing is to be installed.
11. There shall be no damage to intertidal habitats including rocky shores, seagrass beds, salt marshes or mangroves.
12. No building materials or other materials are to be placed on foreshore / Seagrass or other native vegetation. Sediment is not to leave the site or enter areas of Seagrass or its habitat.
13. Interior power supply fittings must be located at least 1.0m above the finished floor level of the boatshed. Exterior electrical fittings should be located at least 1.5m above the floor level to avoid contact with splashing waves.
14. As part of an integrated on-site stormwater management system, stormwater overflow from the development is to be discharged into the adjacent waterway with erosion minimisation facilities installed.
15. In accordance with Pittwater 21 DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.

C. Matters to be satisfied prior to the issue of the Construction Certificate:

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
2. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.
3. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
 - a) after excavation for, and prior to the placement of, any footings, and

- b) prior to pouring any in-situ reinforced concrete building element, and
- c) prior to covering of the framework for any floor, wall, roof or other building element, and
- d) prior to covering waterproofing in any wet areas, and
- e) prior to covering any stormwater drainage connections, and
- f) after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

4. Construction works approved by this consent must not commence until:
 - a) Construction Certificate has been issued by a Principal Certifying Authority
 - b) a Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
 - c) at least 2 days notice, in writing has been given to Council of the intention to commence work.
5. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.
6. Structural Engineering details relating to the development are to be submitted to the Accredited Certifier or Council prior to release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practising Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a corporate member and has appropriate experience and competence in the related field.
7. 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.
8. The proposed boatshed shall be designed to withstand the likely forces of wave action estimated by the Coastal Engineering Report 59917125/L001, dated 5 May 2017, prepared by Cardno (NSW/ACT) Pty Ltd.
9. Structural Engineering details and specifications for the boatshed and associated works, which address the likely forces from wave action as outlined in the Coastal Engineering Report, shall be prepared by, and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) and submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.

10. A certificate is also to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate, that has been prepared and signed by a civil or structural engineer who is a registered professional engineer with chartered professional status (CP Eng), certifying that the boatshed will withstand the likely forces from wave action and as outlined in the Coastal Engineering Report 59917125/L001, dated 5 May 2017, prepared by Cardno (NSW/ACT) Pty Ltd.
11. Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.

D. Matters to be satisfied prior to the commencement of works and maintained during the works:

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

Note: This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

- a) Protection of site workers and the general public.
- b) Erection of hoardings where appropriate.
- c) Asbestos handling and disposal where applicable.
- d) Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

3. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
4. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must give the owner of the adjoining property at least seven (7) days written notice of their intention to excavate below the level of the base of the footing and furnish the adjoining property owner with particulars of the proposed work.

5. Sediment fencing is to be installed at a maximum distance of 500mm from the MHW (edge of proposed works) and is to act as a protective barrier for the existing Mangroves. All works within 3 metres of the existing mangroves is to be done by hand. Protection measures must be of appropriate quality and appropriately placed to ensure all areas to be protected are protected and that sediment does not enter protected areas. Protection measures are to be maintained for the duration of works.
6. Environmental safeguards (silt curtains, booms etc.) are to be used during construction to ensure that there is no escape of turbid plumes into the aquatic environment. Turbid plumes have the potential to smother aquatic vegetation and have a deleterious effect on benthic organisms.
7. Where site fill material is necessary, fill materials must:
 - a) be Virgin Excavated Natural Material (VENM) only, as approved under the Department of Climate Change "General Resource Recovery Exemption
 - b) be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
8. No fill is to be introduced in the area of native vegetation or habitat remaining on the site.
9. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
10. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
11. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
12. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
13. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to prevent site material entering the water way..
14. The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations
15. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
16. Waste materials generated through demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.

All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.

The ongoing operation of Recycling and Waste Management Services is to be undertaken in accordance with the Waste Management Plan.

17. The site must be fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
18. Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council
19. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
 - a) The builder's name, builder's telephone contact number both during work hours and after hours.
 - b) That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
 - c) That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
 - d) That no skip bins or materials are to be stored on Council's Road Reserve.
 - e) That the contact number for Northern Beaches Council for permits is 9970 1111.
20. As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied arborist report by Syncarpia Vegetation Management, dated Dec/Jan 2016/17 are required to be complied with before and throughout the development period, particularly with regard to the following:
 - a) Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
 - b) Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
 - c) All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
 - d) Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.

- e) Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.

- 21. No storage of building materials or building waste, excavated fill or topsoil storage is to occur within the dripline of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas.

Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.

E. Matters to be satisfied prior to the issue of Occupation Certificate:

Note: Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

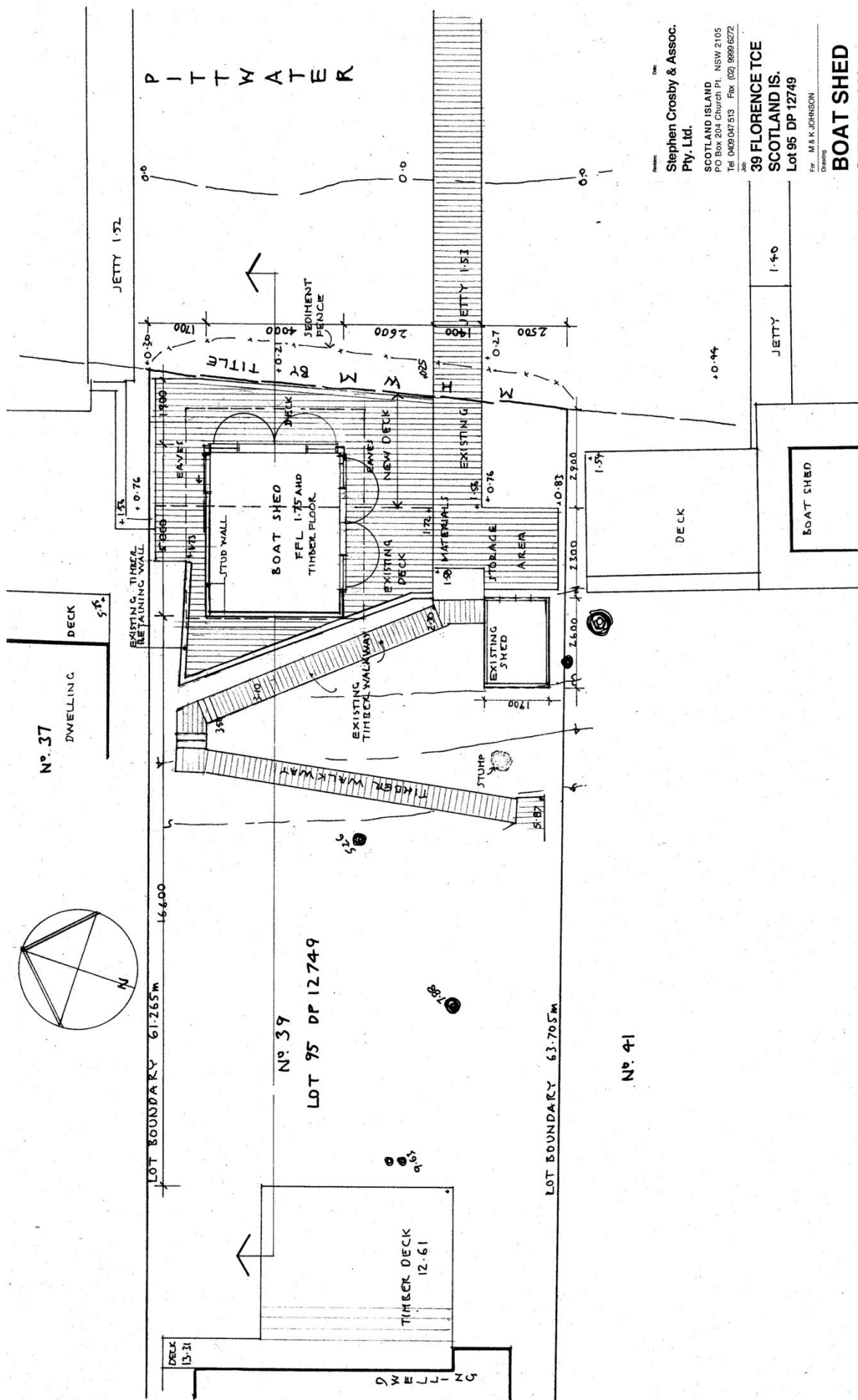
Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

- 1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
- 2. Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

G. Advice:

- 1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
- 2. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or www.1100.com.au
- 3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.

4. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
5. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
6. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
7. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
8. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at www.sydneywater.com.au then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.



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39 FLORENCE TCE
SCOTLAND IS.
Lot 95 DP 12749

For M & K JOHNSON

**BOAT SHED
SITE PLAN
FLOOR PLAN**

Scale 1:100
Date NOVEMBER 2015
Drawn S.C.
Drawing Number

2145 - DA 01

ITEM 3.6

**210 MCCARRS CREEK ROAD, CHURCH POINT - SECTION 82A
REVIEW OF REFUSAL TO N0465/16/R FOR PARTIAL
DEMOLITION OF THE EXISTING DWELLING HOUSE AND THE
CONSTRUCTION OF A NEW MULTI-DWELLING HOUSE**

REPORTING OFFICER

Heath Dennerley

TRIM FILE REF**2017/275386****ATTACHMENTS**

- 1 [↓](#) **Assesment Report**
- 2 [↓](#) **Site and Elevation Plans**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Development Application N0465/16/R for Section 82 A review of determination of refused partial demolition of the existing house and the construction of a new multi-level dwelling house at 210 McCarrs Road, Church Point be refused as outlined in the report.

Development Determination Panel Report

**SUBJECT: N0465/16 - 210 MCCARRS CREEK ROAD, CHURCH POINT NSW
2105 - New Dwelling**

Determination Level:	Manager - Development Assessment
SUMMARY OF RECOMMENDATION:	REFUSAL
REPORT PREPARED BY:	Heath Dennerley
APPLICATION SUBMITTED ON:	27 April 2017
APPLICATION SUBMITTED BY:	GELDER ARCHITECTS LEVEL 2 19-23 BRIDGE STREET PYMBLE NSW 2073
OWNER(S):	MRS JANE ELIZABETH WILKINS MR LLOYD PETER WILKINS

1. INTRODUCTION

This assessment has been undertaken following the request for a review of the determination made in respect of Development Application N0465/16 and should be read in conjunction with the assessment report prepared for N0465/16. This request has been made pursuant to s.82A of the *Environmental Planning and Assessment Act 1979*. N0465/15 sought consent for the partial demolition of the existing dwelling house and the construction of a new multi-level dwelling house at 210 McCarrs Creek Road, Church Point and was refused by Council on 27/02/2017 for the following reasons;

- The proposal is unable to satisfy the technical requirements and objectives of PLEP 2014 Clause 4.3 Height of Buildings development standard and the request to vary this clause through the submitted Clause 4.6 statement is not well-founded;
- The proposal is unable to satisfy the technical requirements and objectives of multiple built form clauses of P21 DCP including D4.1 Character as viewed from a Public Place, D4.5 Front Building Line, D4.6 Side and Rear Building Line, D4.8 Building Envelope, D4.10 Landscaped Area and D4.14 Scenic Protection Category One Areas; and
- The proposal is unable to satisfy the technical requirements and objectives of residential amenity clause C1.3 View Sharing of P21 DCP. Although the level of view loss is not considered detrimental, the multiple built form non-compliances directly contribute to the potential loss of views to the adjoining southern neighbour.

Amended plans have since been received which primarily incorporate a reduction in in floor to ceiling height on the lower ground and ground floor levels and a reduction in the roof pitch over the ground floor living area.

2. SITE DETAILS

The site is known as 210 McCarrs Creek Road, Church Point and has a legal description of Lot 17 in Deposited Plan 711420. The site is irregular in shape and has a total area of 795.8m². Vehicular and pedestrian access is gained via the splayed 24.25m wide frontage of McCarrs Creek Road. The site is located on the north

western side of McCarrs Creek Road. The site falls approximately 15.5m from the McCarrs Creek Road frontage down towards the waterfront, with a slope of approximately 25%. The site is currently occupied by a one and two storey dwelling, double carport, driveway, timber jetty, pontoon, boat ramp, and associated retaining walls. The property adjoins residential dwellings to the north and south of two storeys and of varying architectural design.

3. PROPOSED DEVELOPMENT

The application seeks consent for the construction of a new multi-level dwelling house comprising:

Ground Floor

- New entrance foyer and associated landscaping;
- Living/dining room, kitchen, study, storage room, guest bathroom, terrace and balconies, and;
- Formalisation of parking space in public road reserve.

Lower Ground Floor 1

- Widen existing driveway and new vehicle turntable;
- Three (3) car garage;
- Three bedrooms with balconies, ensuite bathroom and main bathroom, and;
- Internal lift and stairs.

Lower Ground Floor 2

- Bedroom with ensuite and balcony, living area with balcony and wetbar, deck, laundry, separate bathroom and cellar.

The submitted site plan also includes a 'boat storage shed' forward of the Foreshore Building Line. Insufficient information has been provided to enable assessment of the proposed boat storage shed, particularly noting the absence of elevational and section plans. As such, the boat storage shed has not been assessed as a component of this application. There is no boatshed currently on the property.

4. STATUTORY AND POLICY CONSIDERATIONS

The site is zoned E4 Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, dwellings are permissible with consent. The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71)

Pittwater Local Environmental Plan 2014 (PLEP 2014)

- Acid Sulphate Soils Map - Area 5
- Biodiversity Map
- Foreshore Building Line Map
- Geotechnical Hazard Map
- Height of Buildings Map - I ~ 8.5m
- Lot Size Map - Q ~ 700sqm

Pittwater 21 Development Control Plan (P21 DCP)

- Church Point Locality
- Estuarine Risk Management Policy for Development in Pittwater

Land affectations

- Bushfire prone land
- Wave action and tidal inundation
- Scenic Streets register
- Land containing areas of Saltmarsh
- Land adjacent to Estuarine wetland
- Land within 40m of a river or stream

Variation to development standards:

The application of Clause 4.6 is required as the development proposes to vary Clause 4.3 Height of Buildings. See CI 4.6 under the discussion of issues section listed further within this report.

5. BACKGROUND

Application History

12/10/2016

N0465/16 was lodged at Council and referred to Council's Development Engineer, Natural Environment officer and NSW RFS.

During the notification period, one (1) submission was received from the adjoining property owner to the south at 212 McCarrs Creek Road. The submission raised the following issues:

- Overshadowing;
- View loss to northern outlook;
- Loss of visual privacy to lounge/dining area;
- Property de-valuation;
- Bulk and scale of three storey development, and;
- Inadequate stepping.

27/02/2017

The assessment of Development Application N0465/16 was finalised on 27/02/2016 and the application was subsequently refused under the delegation of the Manager-Planning and Assessment, for the reasons identified in the introduction above.

27/04/2017

The subject reconsideration application was lodged at Council on 27/04/2017 and was subsequently referred to Council's Natural Environment officer, Development Engineer, Catchment Management officer and RFS for comment/recommendations.

28/07/2017

The applicant was requested to withdraw the development application on 28/07/2017.

6. NOTIFICATION

The reconsideration application was notified to adjoining property owners for fourteen (14) days from 05/05/2017 through to 19/05/2017 in accordance with Council's Notification Policy. During this time, one (1) submission was received from the adjoining property owner to the south at 212 McCarrs Creek Road. The submission raised the following issues:

- Overshadowing;
- View loss to northern outlook;
- Loss of visual privacy to lounge/dining area;
- Height, bulk and scale of three storey development;
- Useability and safety of proposed car-parking spaces within council road reserve;
- Loss of north-easterly breezes;
- Inconsistent with character of the locality.

7. COMPLIANCE TABLE

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

The following table was produced as part of the assessment report associated with Development Application N0465/16. Comments in **bold text** relate to the changes proposed as part of the s82A Review of Determination.

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
2.7 Demolition requires development consent			Y	Y	Y
Zone E4 Environmental Living		The proposed 3 storey dwelling is inconsistent with the objectives of the E4 zone for residential development of a low density and scale that is integrated with the landform and landscape. Refer to Clause A4.4 Church Point Locality and Clause D4.1 Character as Viewed from a Public Place for further discussion.	Y	N	Y
4.3 Height of buildings		See discussion.	N	N	N
5.5 Development within the coastal zone			Y	Y	Y

Control	Standard	Proposal	T	O	N
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils			Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.6 Biodiversity protection			Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y
7.8 Limited development on foreshore area			Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
A1.7 Considerations before consent is granted		Submission received from 212 McCarrs Creek Road raising concern with regard to loss of north-easterly breezes. This has not been considered as a valid planning consideration and cannot be assessed against Council's planning controls.	Y	Y	N
A4.4 Church Point and Bayview Locality		The application remains inconsistent with the desired future character of the Church Point and Bayview Locality. See N0465/16 assessment report for further discussion.	N	N	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y

Control	Standard	Proposal	T	O	N
B3.2 Bushfire Hazard		The application was referred to NSW RFS for comment. A response letter was received on 08/03/2017 indicating support for the application subject to General Terms of Approval.	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B3.7 Estuarine Hazard - Low density residential			Y	Y	Y
B4.15 Saltmarsh Endangered Ecological Community			Y	Y	Y
B4.16 Seagrass Conservation			Y	Y	Y
B4.19 Estuarine Habitat			Y	Y	Y
B4.20 Protection of Estuarine Water Quality			Y	Y	Y
B5.4 Stormwater Harvesting			Y	Y	Y
B5.8 Stormwater Management - Water Quality - Low Density Residential			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B5.11 Stormwater Discharge into Waterways and Coastal Areas			Y	Y	Y
B6.1 Access driveways and Works on the Public Road Reserve			Y	Y	Y
B6.2 Internal Driveways			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements			Y	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C1.1 Landscaping			Y	Y	Y

Control	Standard	Proposal	T	O	N
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing		Supplementary submission received from 212 McCarrs Creek Road raising concern with regard to loss of northerly outlook. Refer to discussion.	Y	Y	N
C1.4 Solar Access			Y	Y	N
		Supplementary submission received from 212 McCarrs Creek Road raising concern with regard to loss of solar access. See discussion.	Y	Y	N
C1.5 Visual Privacy		Supplementary submission received from 212 McCarrs Creek Road raising concern with regard to visual privacy. See discussion.	N	N	N
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.14 Separately Accessible Structures			Y	Y	Y
C1.23 Eaves		No changes proposed to eaves. See N0465/16 discussion.	N	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure		Submission received from 212 McCarrs Creek Road raising concern with regard to safety and useability of proposed car parking spaces within council's road reserve. See discussion.	Y	Y	N
C1.25 Plant, Equipment Boxes and Lift Over-Run			Y	Y	Y

Control	Standard	Proposal	T	O	N
D4.1 Character as viewed from a public place		Supplementary submission received from 212 McCarrs Creek Road raising concern that the proposal is inconsistent with the character of the locality. No substantial changes proposed. Refer to N0465/16 assessment report for further discussion.	N	N	N
D4.3 Building colours and materials			Y	Y	Y
D4.5 Front building line			N	Y	Y
D4.6 Side and rear building line			N	Y	Y
D4.8 Building envelope		See discussion.	N	N	Y
D4.10 Landscaped Area - Environmentally Sensitive Land			N	N	Y
D4.13 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D4.14 Scenic Protection Category One Areas			N	N	Y
State Environmental Planning Policies and other					
SEPP (Building Sustainability Index: BASIX) 2004			Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

Issues marked with a (-) are not applicable to this Application.

Issues marked with a (Y/N) are discussed in more detail in the discussion section of the report.

8. DISCUSSION

4.3 Height of buildings

The maximum building height for the subject site is 8.5m. Based on the amended plans the maximum building height of the development is 9.1m, resulting in a height non-compliance of 600mm.

The area of height breach relates to the cantilevered terrace awning and dining/living area roof. A revised written statement has been submitted in this regard.

4.6 Exceptions to development standards

The applicant seeks to vary a development standard which requires the application of Clause 4.6 Exceptions to development standards. Clause 4.6 (3) states:

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

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

The applicant has submitted a revised written statement which outlines why compliance with the development standard is unreasonable and unnecessary, and provides justification to allow the development standard to be varied in the circumstances of this case. Clause 4.6 (4) states:

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.*

Council's assessment of the applicant's Clause 4.6 variation request is as follows:

Development Standard to be Varied

Pittwater Local Environmental Plan 2014 Clause 4.3 Height of Buildings. Clause 4.3 states:

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

The maximum building height for the subject site is 8.5m. The proposed development reaches a maximum height of 9.1m when measured from the lowest floor of the existing building (being RL 7.82). As such, quantitatively, the application seeks to vary the development standard by approximately 7.06%.

Objectives of the Development Standard

The objectives of Clause 4.3 have been addressed by the applicant as follows:

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

The applicant argues that the maximum two storey reference in the desired future character statement for the Church Point and Bayview locality is not carried over into any PLEP or P21 DCP controls and, therefore, the 8.5m height standard generally reflects the desired future building height in the locality. The two storey maximum has been abandoned particularly on sloping sites and that the majority of properties located on the low side of McCarrs Creek Road are three storeys in height. In addition, the applicant notes the following;

- *The proposed development requires minimal excavation and to that extent integrates with the landform and landscape;*
- *The significant tree at the rear of the site is retained with the building sitting below the surrounding tree canopy level;*
- *The proposed development displays a highly articulated and modulated building façade with the upper level stepped back and away from McCarrs Creek to provide a stepped building form with recessive upper level;*
- *An awning has been provided on the upper level to afford sun and weather protection as anticipated/encouraged in the locality;*
- *The building materials and colours will ensure that the building will blend into the vegetated escarpment which forms the backdrop to the site.*
- *The building clearly steps down the site in response to topography and is two storeys as defined at its western façade alignment.*
- *The areas of non-compliance are limited to a maximum 200mm breach in the north-western corner of the cantilevered ground floor terrace awning and a breach of between 200mm and 600mm by the ground floor dining room and kitchen roof element. This represents a maximum building height non-compliance of 600mm or 7%.*

Comment: The desired future character of the Church Point locality is prescribed by Clause A4.4 of P21 DCP which states:

"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 and development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance."

More specifically, clause D4.1 of P21 DCP identifies the desired character of the development as viewed from a public place, which prescribes the need to minimise the bulk and scale of new buildings, and for development to present to the public domain, whilst also being appropriately screened/softened by landscaping.

Generally speaking, the proposal is not considered to achieve consistency with these requirements on the following grounds:

- The development shall be a maximum of three (3) storeys when viewed from the waterway, McCarrs Creek Reserve and adjoining properties;
- The three storey element of the dwelling is continuous with no setback variation on any level and does not incorporate adequate stepping in the design to integrate with the landform and landscape;
- There is concern that the built form of the development as viewed from the waterway cannot be effectively screened by vegetation as the site is deficient in significant canopy trees and areas for additional plantings are restricted, and;

- With regard to the applicants comment that the two storey maximum reference in the desired future character statement for the Church Point and Bayview locality is not carried over into any PLEP or P21 DCP control, it should be noted that the two storey reference is specifically listed as an outcome under P21 DCP control D4.1 Character as viewed from a public place. In addition, consistency with the desired future character of the locality is also listed as an outcome under control D4.5 Front Building Line, D4.6 Side and rear building line, D4.8 Building envelope, D4.10 Landscaped area, D4.14 Scenic protection category one, and as an objective under PLEP 2014 4.3 Height of buildings control.

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

The applicant outlines that the issue of compatibility was dealt with by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 and quotes paragraphs 22 and 27 which state:

22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

27 Buildings do not have to be the same height to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.

In this regard, the applicant considers the proposed building height to be consistent with that established by the two immediately adjoining properties and development generally within the sites visual catchment. The applicant goes on to state that *the minor areas of building height non-compliance, to which this clause 4.6 variation request relate, have no impact on the streetscape and do not give rise to any adverse residential amenity impacts in terms of views, solar access or privacy. Accordingly, we have formed the considered opinion that the buildings height and scale are compatible with that of adjoining development, and development generally within the sites visual catchment, with development able to co-exist in harmony.*

Comment: The immediately adjoining properties contain dwellings of two storeys. In terms of overall height and proposed ridge levels, the development is considered to be generally consistent with that of the adjoining dwellings. However, in terms of bulk, the overall design of the third storey element and lack of setback variation is not considered to be compatible with that of the surrounding development.

That being said, when considered in isolation, the area of non-compliance with the height limit associated with the cantilevered terrace awning and dining/living area roof is not considered to negate from consistency with this outcome.

c) to minimise any overshadowing of neighbouring properties,

Comment: The proposal complies with the clause C1.4 Solar Access of P21 DCP.

d) to allow for the reasonable sharing of views,

Comment: The areas of building height non-compliance do not contribute to view loss.

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

The applicant states that *the existing building footprint is generally maintained negating the need for any significant site excavation and changes to established landform as viewed from outside the site. The integrated site landscape regime proposed will soften and screen the building when viewed from the public domain and neighbouring residential properties.*

We note that the slope of the land across the building footprint is approximately 25% and accordingly the proposal does not qualify for an assessment against clause 4.3(2D) 10m height concession considerations. That said, a 25% slope across the building platform is still considerable with strict compliance with the 8.5m height standard significantly harder to achieve than on a flat site where strict compliance could be reasonably expected.

Comment: Whilst it is acknowledged that the slope of the land across the building footprint is approximately 25%, the three storey element of the dwelling is continuous with no setback variation on any level and does not incorporate adequate stepping in the design to integrate with the landform and landscape.

That being said, when considered in isolation, the area of non-compliance with the height limit associated with the cantilevered terrace awning and dining/living area roof is not considered to negate from consistency with this outcome.

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

The applicant contends that *there are no adverse heritage streetscape or foreshore visual amenity consequences as previously detailed. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, in particular the minor areas of building height non-compliance, offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from foreshore areas, the public domain and surrounding residential properties.*

Comment:

Whilst the area of height non-compliance is not considered to result in an adverse visual impact on the natural environment, the cumulative impact of the non-compliances with PLEP 2014 and P21 DCP outlined below result in a building of excessive built form and an unacceptable visual impact as viewed from the waterway, McCarrs Creek Reserve and adjoining properties.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case

The Clause 4.6 statement submitted by the applicant states that compliance with the development standard under the circumstances of this case is unreasonable or unnecessary for the reasons outlined above.

Is there sufficient environmental planning grounds to justify contravening the development standard

When considered in isolation, the area of height non-compliance is not considered to significantly contribute to the overall bulk and scale of the building. However, consideration of building envelope as a separate issue, the majority of the third storey of the dwelling breaches the prescribed building envelope on both the southern and northern elevations.

The proposed three storey development is inconsistent with the desired future character of the Church Point locality and the extensive building envelope non-compliance shall result in excessive bulk and scale.

Whilst it is recognised that three storey dwellings do exist within the Church Point locality, the extent of the building envelope non-compliance is a direct result of the proposed third storey and variations for building envelope on significant slope (being over 30%) are not applicable to the subject site.

Further to the building envelope breach, the proposal results in a number of additional non-compliances with PLEP 2014 and P21 DCP including:

- Inconsistencies with the objectives of Clause 4.3 and the E4 Environmental Living zone;
- Inconsistencies with the technical requirements and objectives of P21 DCP controls for built form including D4.1, D4.5, D4.6, D4.8, and D4.10.

For these reasons, it is not considered that there are sufficient environmental planning grounds to justify contravening the development standard.

Is the proposed development in the public interest

The development is not considered to be in the public interest as the objectives of the development standard and zoning cannot be achieved. As demonstrated above, the development is inconsistent with the objectives of clause 4.3 Height of buildings and the E4 Environmental Living zone.

Therefore, the application is not considered to be in the public interest.

Is contravention of the development standard justified

Clause 4.6(1) outlines the objectives of the clause:

- (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.*

The assessment above provides justification for Council not to support the variation of maximum building height by demonstrating that in this instance, compliance with

the development standard is necessary and warranted. As previously stated, the area of height non-compliance in itself is not considered to contribute to the overall bulk and scale of the building. However, the cumulative impact of the non-compliances with PLEP 2014 and P21 DCP outlined above result in a building of excessive built form and an unacceptable visual impact as viewed from the waterway, McCarrs Creek Reserve and adjoining properties.

For this reason, the Clause 4.6 statement submitted is not considered to be well-founded. It is thought that compliance with the numerical requirements of the development standard and built form controls would result in an improved outcome on the subject site, surrounding dwellings and the Church Point Locality.

C1.3 View Sharing

Supplementary submission received from 212 McCarrs Creek Road raising concern with regard to loss of northerly outlook. No substantial changes proposed with regard to view sharing. The view loss assessment undertaken as a component of N0465/16 assessment report remains valid as follows:

Step one is to assess the reasonableness of the view loss concern in order to determine the views which are to be affected.

The occupants of this property currently enjoy whole and partial, land and water views of McCarrs Creek and McCarrs Creek Reserve looking from north to southwest. A moderate portion of the view is unobstructed, although existing vegetation and development obscures a slight portion of the view. The northern/north western view of the waterway and McCarrs Creek Reserve are considered to be the most significant elements of the view.

These views are shown in the photos below:



Figure 1: View from the living area/dining area looking north



Figure 2: View from the living area/dining area looking north east

Step two is to determine the location from which the views are obtained

The views are obtained from the north facing living room/dining room window and west facing rear deck in both standing and sitting positions. The views impacted by the works are land and water views of McCarrs Creek and northern outlooks of vegetation as viewed from the living/dining area.

Step three is to assess the extent of the impact to the entire property, not just the view that is affected

The development is located across a side boundary and will be located within the main view corridor. The application proposes a three storey development extending approximately 1.3m in front of the existing dwelling. The living/dining area will lose a small portion of land and water views currently obtained over the open balcony of the existing dwelling of 210 McCarrs Creek Road and the land/water views eliminated as a result of the proposed 1.3m extension towards the waterway. The extent of views lost as a result of the works is best described as minor to moderate.

The final step is to determine the reasonableness of the proposal based on compliance with the relevant planning controls

Although the proposed view loss is not considered detrimental, the application currently results in multiple non-compliances with Council's built form controls. Considering that the elements of the built form which are non-compliant with Council's controls directly contribute to the potential loss of views to the neighbouring property, the development is considered unreasonable on view loss grounds. It is considered a more sensitive design which complies with Council's built form controls would be more appropriate on the site.

C1.4 Solar Access

A supplementary submission was received from 212 McCarrs Creek Road raising concern with regard to overshadowing of the proposed dwelling, particularly during morning hours.

Based on the amended shadow diagrams prepared by Gelder Architects, the application complies with the technical requirement of the control noting a minimum of three hours sunlight is provided to the main private open space areas at the rear of the property and primary living areas (being 50% of the window area to the north facing living/lounge room).

C1.5 Visual Privacy

A supplementary submission was received from 212 McCarrs Creek Road in relation to visual privacy impacts of the proposed dwelling. The main concerns relate to loss of privacy to the second storey lounge/dining room and rear balcony/spa room as viewed from the rear ground floor balcony, in addition to direct overlooking from the window/openings on the southern elevation of proposed lower ground 1. The submission also notes that overlooking is exacerbated due to the orientation of the building towards the south facing their property.

Based on the amended plans, window design and placement along the southern elevation is considered to be improved, however overlooking impacts remain. Potential overlooking may occur from a portion of the southern elevation third storey

deck, not fully resolving impacts on the visual privacy of the adjoining neighbour 212 McCarrs Creek Road.

As outlined in the previous assessment report, there is also concern with regard to overlooking of the northern neighbours deck as a result of the windows to the proposed ground floor study.

These concerns could be adequately addressed through the installation of privacy measures incorporated in an amended design.

C1.24 Public Road Reserve - Landscaping and Infrastructure

Submission received from the adjoining neighbours at 212 McCarrs Creek Road raising safety and useability concerns with regard to the proposed stacked parking spaces within the Council Reserve.

The proposed parking spaces were reviewed by Councils Development Engineer who provided the following comment:

The proposed parking space within the road reserve will be subject to a Section 139 consent.

The application was also referred to Roads and Maritime Services for concurrence in accordance with Section 138 of the *Roads Act, 1993*. RMS provided a number of comments for Council's considerations in the determination of the application. Of particular relevance, the following was noting regarding the proposed parking spaces:

The layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2 – 2002 for heavy vehicle usage. Parking restrictions may be required to maintain the required sight distances at the driveway.

As such, it is considered that the useability and safety of the proposed parking spaces within the Council Reserve is considered acceptable subject to conditions. However, given the recommendation is for refusal, no further action taken.

D4.8 Building Envelope, A4.4 Church Point and Bayview Locality and D4.1 Character as viewed from a Public Place

Based on the amended plans provided, the development continues to result in a severe breach of the prescribed building envelope along both the northern and southern elevations of the dwelling. The majority of the third storey (ground floor) breaches the prescribed building envelope, particularly along the northern elevation.

Whilst it is acknowledged that the slope of the site is approximately 25%, the technical requirement of the control only enables a variation to the building envelope control to be considered on a merits basis where the building footprint is situated on a slope over 16.7 degrees (i.e. 30%).

The proposed three storey development is inconsistent with the desired future character of the Church Point locality and the extensive building envelope non-compliance shall result in excessive bulk and scale and an unacceptable visual impact as viewed from the waterway, McCarrs Creek Reserve and adjoining properties. A submission has been received from the adjoining residence at 212 McCarrs Creek Road in this regard.

The third storey of the dwelling is continuous with no setback variation on any level. The lack of significant canopy trees on site, landscaped area non-compliance and restricted area for plantings creates further concerns with the inability to effectively soften the built form as viewed from the waterway and adjoining reserve.

As such, the proposal is not considered to be an appropriate design response in consideration of the constraints of the site and therefore cannot be supported. A more sympathetic design incorporating further stepping and/or the removal of level three would be more appropriate on the site as the development in its current form does not satisfy the outcomes of the control.

D4.10 Landscaped Area - Environmentally Sensitive Land

No changes proposed in the request for review of determination with regard to landscaped area. The technical requirement of the control requires a total landscaped area of 60% of the site area and the application proposes the following:

- Existing: 415sqm (52.14% excluding variations) of the total site area
- Proposed: 310.7sqm (39.04%) of the total site area
w/ variations: 446.1sqm (56.05%) of the total site area

The application will be unable to comply with the technical requirement of the control even with the control applied variations included within the calculation. Furthermore, the control states that the variations can only be applied when the outcomes of the control are achieved. In this regard, the proposal is not considered to achieve the following outcomes of the Landscaped Area control:

Achieve the desired future character of the Locality. (S)
The bulk and scale of the built form is minimised. (En, S)
Vegetation is retained and enhanced to visually reduce the built form. (En)

As outlined above, there is concern that the three storey built form of the development as viewed from the waterway cannot be effectively screened by vegetation as the site is deficient in significant canopy trees and areas for additional plantings are restricted. Therefore, variations to this control are not supported as the outcomes of the control are not satisfied.

9. INTERNAL REFERRALS

Development Engineering

Council's Development Engineer provided the following comments:

The proposed development is supported on engineering grounds subject to the conditions provided. The original application was previously refused on built form controls and the amended proposal meets the requirements of the relevant engineering controls. The excavation and building works will need to

be carried out in line with the recommendations of the Geotechnical hazard assessment report provided by Jack Hodgson Consultants Pty Ltd.

Referral recommendation: Supported subject to conditions

Phillip Devon: 25/05/2017

Natural Environment

Council's Natural Environment officer provided the following comments:

A Section 82A review of determination has been submitted. The original arborist report and landscape plan have been submitted with no changes. Therefore the same comments and conditions apply. No other changes appear to have been made to the landscaped area and trees being retained. Original comments and conditions are found in the original DA in ICON.

Referral recommendation: Supported subject to conditions

Jodi Harvey: 24/05/2017

Flooding

Council's Floodplain Management – Principal officer provided the following comments:

Property not impacted by overland flow or mainstream flooding - unable to comment on estuarine inundation

Referral recommendation: No recommendation provided.

Mel Schwecke: 15/06/2017

10. CONSIDERATION OF S.82A

The applicant has made an application for review within the timeframe permitted under s.97 of the Act. Council has considered the request for a review in accordance with the requirements of s.82A of the Act, as follows;

- (a) it has notified the request for review in accordance with:*
- (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations, and*

The s.82A review application was notified in the same manner as the original application in accordance with the regulations and Council's Notification Policy.

- (b) it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan, as the case may be, and*

Submissions received in regards to the amended proposal have addressed in accordance with the relevant control within PLEP 2014 and P21 DCP.

(c) in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same development as the development described in the original application.

The applicant has made minor amendments to the proposal in an attempt to address the reasons for refusal issued by Council and concerns of adjoining property owners. Whilst the proposal has been altered, the changes were not so different as to result in a development that would not be seen to be substantially the same as the development described in the original application.

The proposed development is considered to meet the provisions of s.82A of the Act.

11. CONCLUSION

The Development Application has been assessed in accordance with the provisions of Sections 79C and 82A of the Environmental Planning and Assessment Act 1979, PLEP 2014, P21 DCP and other relevant Council policies.

The proposal has been found to be inconsistent with the outcomes of the relevant controls of P21 DCP and PLEP 2014. The proposal is considered to be inconsistent with the existing and desired future character of the Church Point locality. As a result of these considerations, the proposal is recommended for refusal.

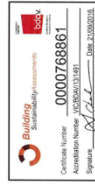
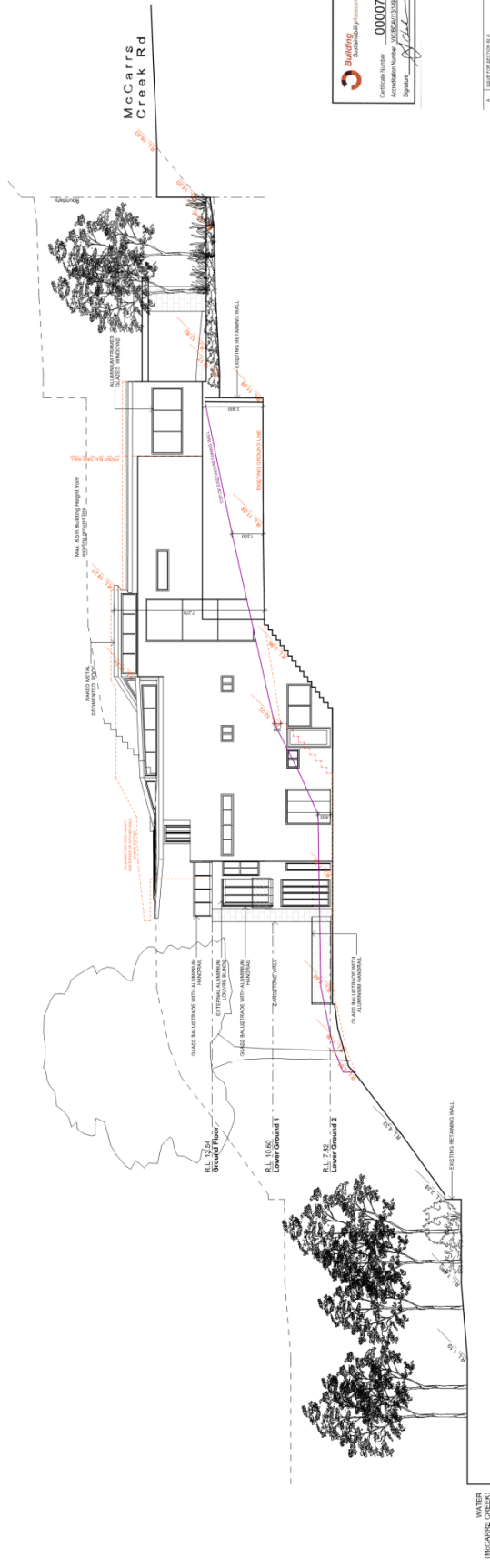
RECOMMENDATION OF PLANNER

That Development Application N0465/16 for S.82A review of determination of refused partial demolition of the existing dwelling house and the construction of a new multi-level dwelling house at 210 McCarrs Creek Road, Church Point be refused for the following reasons:

1. The proposal is unable to satisfy the technical requirements and objectives of PLEP 2014 Clause 4.3 Height of buildings development standard and the request to vary this clause through the submitted Clause 4.6 statement is not well-founded.
2. The proposal is unable to satisfy the technical requirements and objectives of multiple built form clauses of P21 DCP including D4.1 Character as viewed from a Public Place, D4.8 Building Envelope, D4.10 Landscaped Area and D4.14 Scenic Protection Category One Areas.
3. The proposal is unable to satisfy the technical requirements and objectives of residential amenity clause C1.3 View Sharing and C1.5 Visual Privacy of P21 DCP. Although the level of view loss is not considered detrimental, the multiple built form non-compliances as previously raised directly contribute to the potential loss of views to the adjoining southern neighbour.

Report prepared by
Heath Dennerley
PLANNER





A	Alterations & Additions
at	210 Mc Carrs Creek Road
for	CHURCH POINT NSW
for	Mr & Mrs Wilkins

Alterations & Additions
at
210 Mc Carrs Creek Road
CHURCH POINT NSW
for
Mr & Mrs Wilkins



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Elevations



Sheet No.	1708
Drawing No.	S8204
Date	16/08/2017
Scale	1:100

