

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

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

**WEDNESDAY 23 NOVEMBER 2022**



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



**Agenda for a Meeting of the Development Determination Panel  
to be held on Wednesday 23 November 2022  
via teleconference  
Commencing at 10:00am**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 9 November 2022	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>5</b>
3.1	DA2022/0033 - 30A Addison Road MANLY - Demolition of a dwelling and detached garage, construction of a new two and part three storey dwelling and associated landscaping.....	5
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3.3	Mod2022/0383 - 30 Macmillan Street SEAFORTH - Modification of Development Consent DA2020/1784 granted for Demolition works and construction of a dwelling house including a swimming pool.....	83
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## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 9 NOVEMBER 2022**

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#### **RECOMMENDATION**

That the Panel note that the minutes of the Development Determination Panel held 9 November 2022 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 Development Determination Panel Reports

ITEM 3.1	DA2022/0033 - 30A ADDISON ROAD MANLY - DEMOLITION OF A DWELLING AND DETACHED GARAGE, CONSTRUCTION OF A NEW TWO AND PART THREE STOREY DWELLING AND ASSOCIATED LANDSCAPING.
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2022/725638
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Supplementary Memo 3 <a href="#">↓</a> Site Plan and Elevations

#### PURPOSE

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

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#### RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

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

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

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

### EXECUTIVE SUMMARY

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

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

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



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

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

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

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

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

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

## PROPOSED DEVELOPMENT IN DETAIL

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

The proposed works take the following form:

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

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

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



- Raise top of lower wall for OSD basin

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 – Clause 4.3 Height of buildings

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

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

Manly Development Control Plan 2013 – 3.4.3 Maintenance of Views

Manly Development Control Plan 2013 – 4.1.4.2 Side setbacks

Manly Development Control Plan 2013 – 4.1.5 Open Space and Landscaping

## **SITE DESCRIPTION**

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

Map:



## SITE HISTORY

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

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

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

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2021, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was requested on 06 June 2022 with regard to Clause 3.4.3 Maintenance of Views, Biodiversity, Riparian, and Landscape. Details of these are discussed later within the report and all can be resolved through the information provided to council and/or conditions of consent.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

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



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

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

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



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

## REFERRALS

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



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

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

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

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

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

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

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



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



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

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

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

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

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

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

#### **STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)**

##### **SEPP (Building Sustainability Index: BASIX) 2004**

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



### SEPP (Resilience and Hazards) 2021

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

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

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

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

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

#### Comment:

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

### MANLY LOCAL ENVIRONMENTAL PLAN 2013

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of buildings	8.5m	Bettar: 9.2m	8.23%	No - See variation
		Merman: 10.6m	24.7%	

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

#### Compliance Assessment

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

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

#### Detailed Assessment

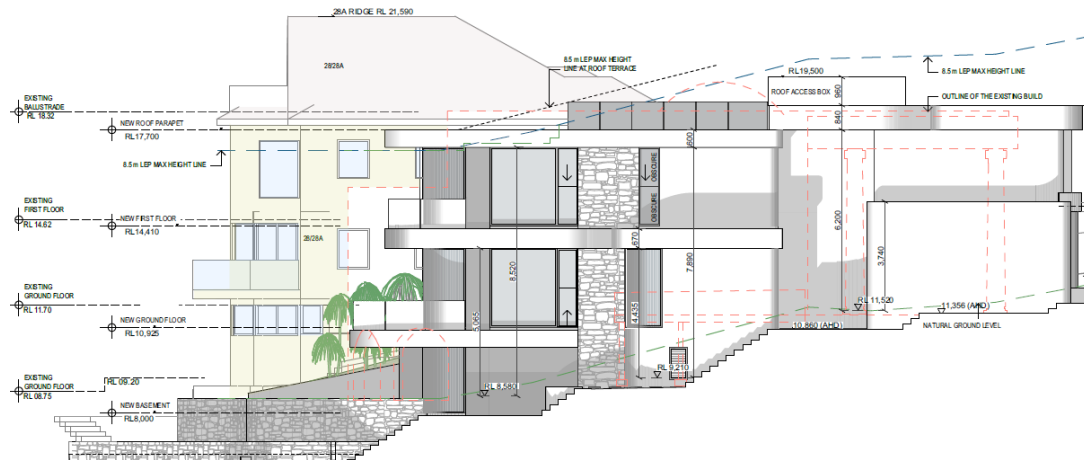
#### **4.6 Exceptions to development standards**

Description of non-compliance:

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

A recent judgement of the NSW Land and Environment Court has provided clarification for the calculation of building height (*Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582 'Merman Case'*). In that matter, the Court found that for brownfield sites the existing ground level should be taken from an excavated level below the natural ground level of a site. It is noted that the existing lower ground floor has been excavated below the natural contours of the site, creating an artificial ground level. When taking the ground below the existing lower floor slab as 'existing ground level', the maximum building height of the proposed development measures at 10.6 metres, thereby non-compliant with the height standard. The figure below depicts the extent of the non-compliance.

#### East Elevation



**Assessment of request to vary a development standard:**

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

**Clause 4.6 Exceptions to development standards:**

- (1) The objectives of this clause are as follows—
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

**Comment:**

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

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
  - (a) the consent authority is satisfied that—
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Planning Secretary has been obtained.

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



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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:



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

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

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

In particular, it is noted that when adopting the extrapolation method for calculating building height, as per the NSW Land and Environment Court Case of *Bettar v Council of City of Sydney [2014] NSWLEC 1070*, the maximum building height of the proposed development is 9.2 metres, which would not comply with the 8.5 metre exception provision permitted by Clause 4.3 of Manly LEP 2013. Hence, the proposal would need a Clause 4.6 variation request which has been provided. The main non-compliance is derived from an artificial ground level that has been created by previous excavation below the natural contours of the site and the proposal will present with a reasonable non-compliance in building height when taking the natural contours around the perimeter of the building footprint. It is considered that enforcing strict compliance with the Merman approach for calculating building height would preclude orderly and economic use and development of the land, which is contrary to the objects of the Environment Planning and Assessment Act 1979 (EPA Act 1979).

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

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

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

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

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

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





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

Comment:

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

**Objectives of development standard**

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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

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

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

## Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

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

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

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

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

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

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

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



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

The building height has no impact upon these criteria.

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

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

Conclusion:

For the reasons detailed above, the height variation is found to be consistent with the objectives of the C4 Environmental Living zone.

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

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

Planning Circular PS 20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Development Determination Panel.

## MANLY DEVELOPMENT CONTROL PLAN 2013

### Built Form Controls

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

Compliance Assessment

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



#### Detailed Assessment

#### **3.4.3 Maintenance of Views**

The views under consideration include the following:

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

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

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

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

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

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

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

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

- #30 – partial views to North Head



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



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



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



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

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

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

#### **4.1.4.2 Side setbacks**

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

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

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

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





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

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

*See also objectives at paragraph 3.4 Amenity.*

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

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

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

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

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

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

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

Response: The site is not in a bushfire zone.

#### **4.1.5 Open Space and Landscaping**

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

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

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

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

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

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





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

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

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

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

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

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

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

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

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

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

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan 2013;
- Manly Development Control Plan 2013; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is found to be acceptable and is recommended for approval.

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



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

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

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

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

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

## **RECOMMENDATION**

That Northern Beaches Council as the consent authority vary clause 4.3 Height of buildings development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

### **DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**

#### **1. Approved Plans and Supporting Documentation**

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

##### **a) Approved Plans**

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

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

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

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

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

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

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

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

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

## 2. Prescribed Conditions

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

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

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

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

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



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

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

### 3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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



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

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

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

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

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

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

#### FEES / CHARGES / CONTRIBUTIONS

#### 4. Policy Controls





#### Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$44,810.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2022. The monetary contribution is based on a development cost of \$4,481,000.00.

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

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

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

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

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

#### 5. **Security Bond**

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

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

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

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

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

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

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

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



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

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

**7. Engagement of Project Ecologist**

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

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

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

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

Reason: To protect native vegetation and wildlife.

**8. Erosion and Sediment Control Plan**

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

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

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

Reason: Protection of the receiving environment.

**9. Water Quality Management**

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

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

Reason: Protection of the receiving environment.

**10. Construction Environment Management Plan**

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



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

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

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

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

**13. Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

**14. Waste Management Plan**

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

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

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

**15. Compliance with Standards**

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

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

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

**16. External Finishes to Roof**

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

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

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

**17. Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

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

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

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

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

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

Reason: To enable authorised development works.



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

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

Reason: Wildlife protection

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

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

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

21. **Pre-Construction Dilapidation Report**

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

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

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

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

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

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

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

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

22. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

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



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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

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

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





24. **Construction Environmental Management Plan**

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

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

Reason: To protect native vegetation, wildlife and habitats.

25. **Wildlife Protection**

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

Reason: To protect native wildlife.

26. **Water Quality**

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

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

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

27. **Protection of Natural Features**

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

Reason: To protect wildlife habitat.

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

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

29. **Geotechnical Requirements**

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.



30. **Survey Certificate**

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

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

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

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

31. **Traffic Control During Road Works**

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

Reason: Public Safety.

32. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

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

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

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

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

34. **Landscape Completion**

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

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



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

Reason: Environmental amenity.

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

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

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

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

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

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



**39. Post-Construction Dilapidation Report**

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

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

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

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

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

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

**40. Landscape Maintenance**

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

Reason: To maintain local environmental amenity.

**41. Compliance with Ecologist's Recommendations – Ongoing**

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

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

**42. General Foreshore Matters**

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

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

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

**43. Tree Retention**

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



Reason: To provide privacy for adjoining properties.



## Memo

Department

**To:** Development Determination Panel  
**Cc:** Rodney Piggott  
**From:** Luke Zajac (Consultant Planner - Mecone)  
**Date:** 4 November 2022  
**Subject:** Supplementary Assessment Report  
**Record Number:** DA2022/0033

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Dear Development Determination Panel,

### SUPPLEMENTARY ASSESSMENT REPORT

#### EXECUTIVE SUMMARY

DA2022/0033 was considered by Council's Development Determination Panel (DDP) on 12 October 2022. The Panel deferred determination of the DA for the following reasons:

1. *Providing the applicant an opportunity to provide information in support of their application with regard to the considerations prompted by Clause 6.10 of the Manly LEP 2013. This supporting information may include a legal opinion as to the power available to the Consent Authority under Clause 6.10 when considering a new building. The applicant is provided 14 days from the date of publish of these minutes to submit information in support of Clause 6.10; and*

The applicant provided additional information in relation to Clause 6.10 of Manly Local Environmental Plan 2013.

2. *Defer the application for further assessment and preparation of a supplementary assessment report pending the applicant's response to (a) above; and*

Further assessment is undertaken in the Supplementary Assessment Report below.

3. *The supplementary assessment report is to re-evaluate the application against the relevant considerations of Section 4.15 of the Environmental Planning and Assessment Act 1979 and ensure that the re-assessment is accurate and complete; and*



The Supplementary Assessment Report has re-evaluated the application against the relevant considerations of Section 4.15 of the Environmental Planning and Assessment Act 1979 as detailed below.

4. *At such time that the supplementary assessment report is complete, it be publicly exhibited for a period of 7 days and then brought back before the DDP for a further public meeting where it may be publicly addressed on any new matter or issue arising from the supplementary assessment report, not already covered in the original assessment report.*

The Supplementary Assessment Report is published in the Development Determination Panel Agenda on Council's website 7 days prior to the Development Determination Panel Meeting and all objectors are notified of the Development Determination Panel Agenda.

## MANLY LOCAL ENVIRONMENTAL PLAN 2013

### 6.10 Limited development in the foreshore area

#### Description of non-compliance:

Clause 6.10(2) of the MLEP 2013 limits development within the foreshore area. The development proposes a range of works forward of the foreshore building line including:

- Construction of a three storey dwelling partly within the foreshore area,
- New retaining wall and resurfacing of existing retaining walls
- Resurfacing of existing waterway access stairs,
- Stormwater infrastructure, and
- Upgraded swimming pool fencing and gates.

Notwithstanding, Clause 6.10(2)(b) of the MLEP 2013 expresses that:

- 2) *Development consent must not be granted to 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,*
  - (b) *the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,***
  - (c) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The proposed development qualifies for the expressed variation under clause 6.10(2)(b) as the site features significant level change (7m) forward of the foreshore building line. The portion of the site up-slope of the level change contains the existing dwelling and will be where the proposed dwelling is to be located. The level change is negotiated by retaining walls and natural rock features and includes a path and staircase to provide access between the upper and lower portions of the site. The lower portion, which immediately fronts the foreshore (Little Manly Cove), contains a pool, access stairs and tiled area around the pool.

For the purposes of the clause, this level change is considered an exceptional site feature that would make development within the foreshore area appropriate to do so.

The upper portion of the site is physically and visually separated from the foreshore area, particularly its functions and aesthetic qualities.

**Clause 6.10 Limited development in the foreshore area**

An assessment of the development against the standards of Clause 6.10(3) are provided below.

*(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*

Comment:

An assessment of the development against the C4 Environmental Living zone objectives has been undertaken below and found to be acceptable.

*(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*

Comment:

The siting of the dwelling forward of the foreshore building line is consistent with the development patterns of lots on the eastern side of Addison Road, which provide rear building lines parallel to the rear boundary of the lot, despite the 45 degree foreshore building line that bisects the sites. These sites are developed for a range of purposes including 2-3 storey dwelling houses and 3-4 storey residential flat buildings.

The visual impact of the dwelling is mitigated by its setback from the mean high-water mark, and natural rock outcrop forward of the building line that accommodates the change in levels of the site. The proposed 2-3 storey dwelling house is consistent with existing development patterns within the foreshore area along Addison Road. The works are therefore not expected to cause adverse visual impacts to the foreshore or immediate locality.

The refurbishment works to the existing retaining walls and access stairs will improve the visual presentation of the site through the use of natural materials immediately visible from the foreshore.

The existing walls and stairs are not considered commensurate with the aesthetic values of the foreshore area, with their refurbishment considered an appropriate response to the existing development, levels and topography of the site.

The proposed stormwater works are required to be downslope of the dwelling per Council's engineering requirements and are not objected to in this instance.

*(c) the development will not cause environmental harm such as—*

*(i) pollution or siltation of the waterway, or*

*(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*

*(iii) an adverse effect on drainage patterns, and*

Comment:

The application, including proposed stormwater treatment, has been assessed by Council's Riparian Lands and Creeks officer, Coast and Catchments Officer and Development Engineering Officer, who all found the proposal acceptable, subject to conditions.

*(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*

Comment:

The development does not change existing waterway access arrangements or on-site population. No congestion or conflict between people using open space areas or the waterway are expected.

*(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*

Comment:

The ability to provide continuous public access along the foreshore has been compromised by existing development in the locality. Notwithstanding, no major changes to the existing development immediate to the foreshore (pool and landscaped area) are proposed.

*(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*

Comment:

The application was referred to the Aboriginal Heritage Office who did not raise objection to development of the site. The development was also referred to Council's heritage officer, who also did not raise objections to the proposal. As discussed throughout the report, the proposed development is consistent with existing development patterns in the foreshore area of the locality, and the landscaping works will likely improve its presentation to the foreshore and surrounding locality.

The proposal therefore is not expected to affect any historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land.

*(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*

The development is not defined as alteration or rebuilding of the existing dwelling, as the existing dwelling is to be completely demolished and a new dwelling constructed.

Notwithstanding, as discussed throughout the report, the proposed development is consistent with existing development patterns in the locality, and the landscaping works will likely improve its presentation to the foreshore and surrounding locality.

Comment:

*(h) sea level rise or change of flooding patterns as a result of climate change has been considered.*

Comment:

The application, including proposed stormwater treatment, has been assessed by Council's Riparian Lands and Creeks officer, Coast and Catchments Officer and Development Engineering Officer, who all found the proposal acceptable, subject to conditions.

An assessment of the development against the standards of Clause 6.10(4) are provided below.

*(4) In satisfying itself about a matter mentioned in subclause (3) (e), the consent authority must give consideration to the following—*  
*(a) continuous public access to and along the foreshore through or adjacent to the proposed development,*

Comment:

As discussed above, the ability to provide continuous public access along the foreshore has been compromised by existing development in the locality. Notwithstanding, no major changes to the existing development immediate to the foreshore (pool and landscaped area) are proposed.

*(b) public access to link with existing or proposed open space,*

Comment:

No existing or proposed open space is located immediately adjacent to the site.

*(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*

Comment:

N/A. No public access arrangements are considered necessary in this instance.

*(d) public access to be located above mean high water mark,*

Comment:

N/A. No public access arrangements are required or proposed in this instance.

*(e) reinforcing the foreshore character and respect for existing environmental conditions.*

Comment:

As detailed throughout this assessment report, the proposed works will likely improve the site's visual presentation to the foreshore and surrounding locality.

The siting of the proposed works forward foreshore area is considered appropriate in this instance given the existing site features, topography and development forward of the foreshore line.

## MANLY DEVELOPMENT CONTROL PLAN 2013

### Built Form Controls

Built Form Controls - Site Area: 699m <sup>2</sup>	Requirement	Proposed	% Variation*	Comply
4.1.2.1 Wall Height	N: 6.8 metres (based on gradient 1:20)	6.5m	N/A	Yes
	S: 6.5 metres (based on gradient 0)	5.8m	N/A	Yes
	E: 7.6 metres (based on gradient 1:5.5)	7.0m	N/A	Yes
	W: 7.2 metres (based on gradient 1:9)	6.5m	N/A	Yes
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.8m	N/A	Yes
	Pitch: maximum 35 degrees	8 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.2m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 1.9m to 3m (based on wall height of 5.9m to 8.5m)	LGF: 2.8m GF: 1.4m, 2.4m & 3.3m FF: 2m, 2.6m & 3.3m	20% - 26%  13.3%	No No No
	W: 1.6m – 2.4m (based on wall height of 5m to 7.2m)	LGF: 3.7m GF: 1.2m, 2.1m  FF: 2.1m	N/A 14% - 25%  14%	Yes No No
	Windows: 3m	1.2m	60%	No
4.1.4.4 Rear Setbacks	8m	8.2m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (384.45m <sup>2</sup> )	52.48% (358.39 m <sup>2</sup> )	6.77% 26.06m <sup>2</sup>	No
	Open space above ground 25% of total open space (89.5m <sup>2</sup> )	18.44% (66.1m <sup>2</sup> )	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (125m <sup>2</sup> )	44.6% (167.5 m <sup>2</sup> )	N/A	Yes
	2 native trees	2 trees	N/A	Yes
4.1.5.3 Private Open Space	18m <sup>2</sup> per dwelling	>18m <sup>2</sup>	N/A	Yes

### Detailed Assessment

#### 4.1.2.2 Number of Storeys

### Description of non-compliance

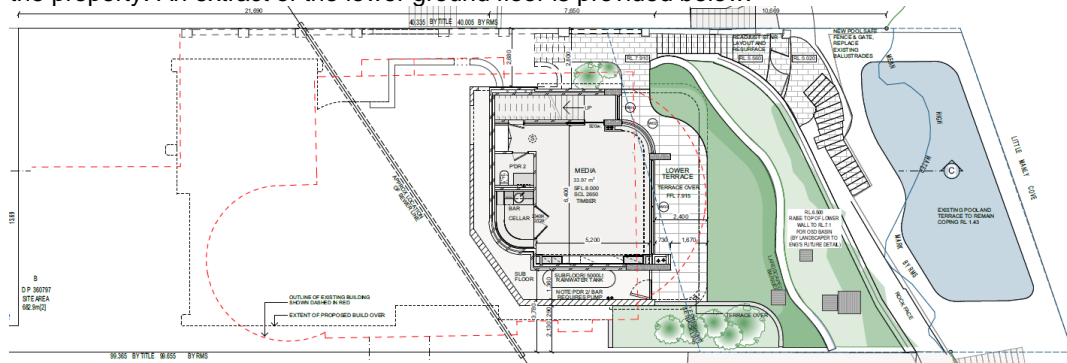
Clause 4.1.2.2 of the MDCP requires that buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan. The site is not located in areas 'L' or 'N1' of the LEP.

The control expressly permits variations for the number of storeys in the following instances:

- c) *Variation to the maximum number of storeys may be considered:*  
i) *where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and*

The proposal is located on a sloping site that features an existing cut, which is considered sufficient grounds to warrant an exemption to the requirement. The proposal however does not comply with all other numeric height controls or development standards; however, this is considered acceptable in this instance.

The proposal provides a part 2, part 3 storey dwelling. The third-storey element occurs as the first floor extends over a partial basement/lower ground floor towards the rear of the property. An extract of the lower ground floor is provided below.



Extract of lower ground floor plan

### Detailed Assessment:

It is noted that no objectives are provided for the clause, but rather reference to the objectives of Clause 4.3 Height of Building of the Manly DCP is made. An assessment against these objectives is provided below:

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

### Response:

The third storey element is a result of the slope of the site and existing cut present. The existing cut to the eastern portion of the site is suited for a lower ground/partial basement level and represents an appropriate design outcome that responds to the topography of



the site. Whilst the third storey element results in a breaching height limit, the breach is limited to non-habitable building elements including the pitched roof structure, an awning over a balcony and rooftop terrace and associated balustrades. As demonstrated by the applicant in their Clause 4.6 request, the breach does not result in any adverse impacts and is a result of the sloping nature of the site.

The immediate locality dominated by a range of large 2-3 storey dwelling houses and 3-4 storey residential flat buildings. The proposal provides for a mostly 2 storey dwelling with a flat roof, with a significantly lower building height than adjoining development to the east and west along the Little Manly Cove foreshore.

Stepping of the built form to strictly provide a two storey dwelling on the sloping site with existing cut, in context of the built form in the locality, is considered unreasonable and unnecessary in this instance. The proposed dwelling, despite the non-compliance, responds to the topography of the site, is below the prevailing building height of adjoining development and is consistent with the desired future character of the locality.

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

Response:

As discussed throughout this report, the proposed dwelling represents an appropriate bulk and scale in consideration of the locality.

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

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

Response:

As demonstrated throughout this report, the development is not expected to adversely affect view corridors from adjoining residential development or public spaces.

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

Response:

As demonstrated in this report, the proposal will not have any adverse overshadowing impacts on adjoining dwellings.

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

Response:

The proposal directly responds to the existing slope and cut on the brownfield site and provides a development consistent with the built and natural environment of Addison Road. Unlike most C4 zoned localities, Addison Road features extensive development down to the waterfront with minimal vegetation or bushland qualities. In complying with the landscaped area requirement of the MDCP, the development will contribute a level of landscaping appropriate for the locality.

The proposed height and bulk of the dwelling house is compatible with the surrounding locality and is not expected to conflict with any environmental purposes, given the highly developed nature of the locality.

#### 4.1.4.2 Side setbacks

##### Description of non-compliance

The proposal provides a range of staggered setbacks to the eastern and western side elevations respectively:

##### Eastern:

- LG: 2.8m
- GF: 1.4m, 2.4m & 3.3m
- FF: 2m, 2.6m & 3.3m

##### Western:

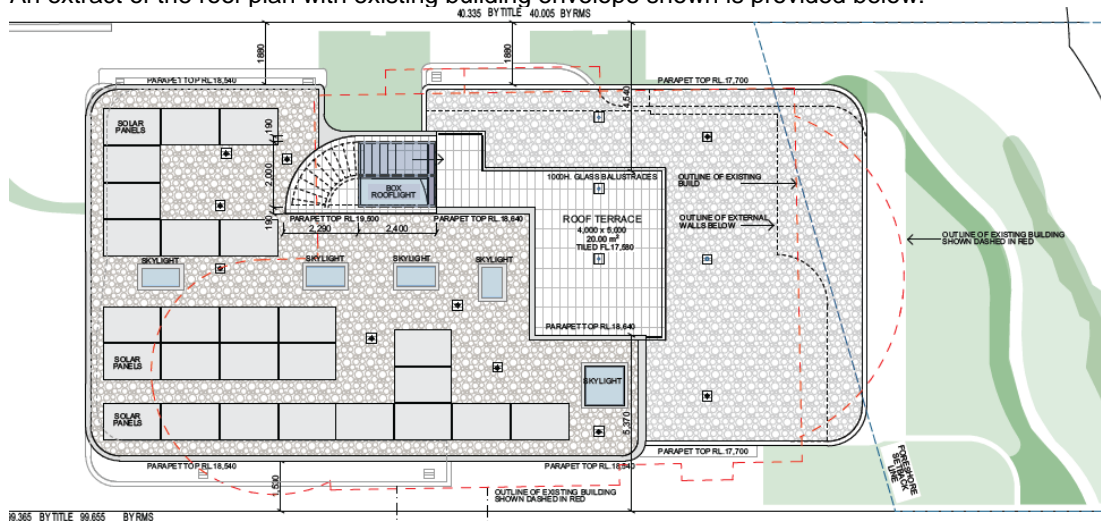
- LG: 3.7m
- GF: 1.4m, 2.4m & 3.3m
- FF: 2m, 2.6m & 3.3m

Due to the slope of the site, a range of wall heights are proposed along each elevation. The following side setback range therefore applies to the respective setbacks:

- Eastern: 1.9m to 3m (based on wall height of 5.9m to 8.5m).
- Western: 1.6m – 2.4m (based on wall height of 5m to 7.2m metres).

It should be noted that the proposal will increase the side setbacks compared to the existing development on the site, including an increase from 0.6m to 1.2m on the western boundary, and 2m to 2.8m on the eastern boundary.

An extract of the roof plan with existing building envelope shown is provided below:



Extract of roof plan with existing building envelope overlain.

### Detailed Assessment

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

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

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

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

- *providing privacy;*
  - *providing equitable access to light, sunshine and air movement; and*
  - *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
  - *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
  - *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*
- See also objectives at paragraph 3.4 Amenity.*

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

The staggered side setbacks to the western elevation provide for an articulated built form that provides usable private open space in the side setback. The elements setback beyond the specified wall height calculation offset the breaching elements, providing relief and visual interest to the adjoining site.

The building envelope resolves the minimal setback issues present between the site to the east, almost doubling the setback on the first floor.

The proposed setback variations are therefore considered acceptable in this instance.

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

Response: The site is subject to a number of side setback requirements due to the steep slope of the land, which increases wall heights as the building navigates the slope. The dwelling house as proposed provides a balanced response to the tricky site topography and side setback requirements, as well as providing a functional dwelling for future residents.

Further, the eastern elevation provides a number of stepped elements beyond the required side setbacks, somewhat offsetting the breaching elements.

The proposal represents an improved presentation to the adjoining western development, and as discussed throughout this report, is considered acceptable in this instance.

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

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

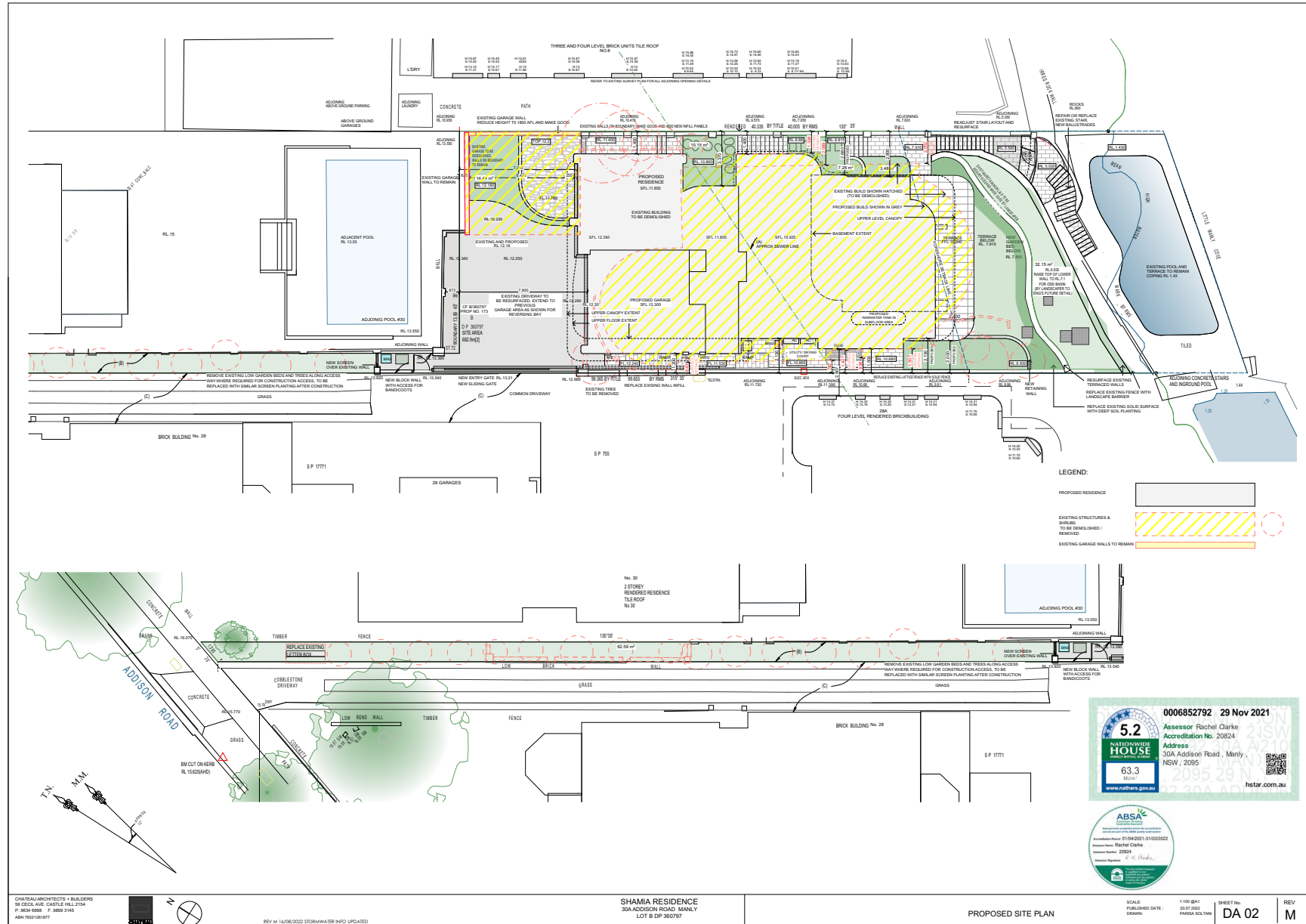
Response: The side setbacks allow for planting along the side setbacks. The landscape plans detail the location of the planting areas.

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

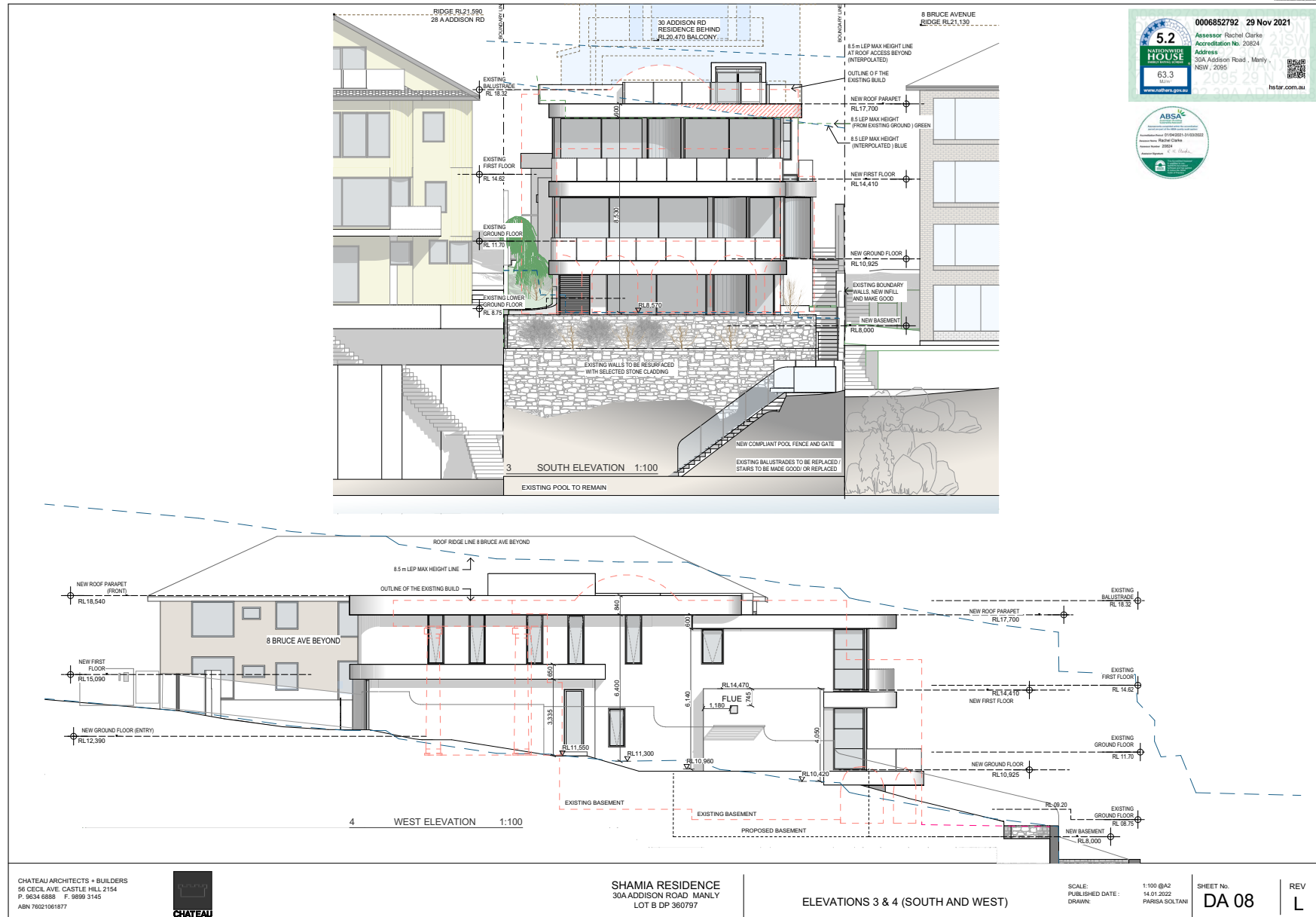
Response: The site is not in a bushfire zone.

**Recommendation:**

The applicant has adequately addressed the DDP resolution, and accordingly the original recommendation for approval and associated proposed conditions of consent is maintained.









**ITEM 3.2**

**REV2022/0019 - 9 VINES AVENUE FORESTVILLE - REVIEW OF DETERMINATION OF MOD2022/0326 FOR MODIFICATION OF DEVELOPMENT CONSENT DA2019/1536 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE.**

**REPORTING MANAGER**

**Adam Richardson**

**TRIM FILE REF**

**2022/725386**

**ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site Plan and Elevations**

**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approves** Development Consent to REV2022/0019 for Review of Determination of MOD2022/0326 for Modification of Development Consent DA2019/1536 granted for alterations and additions to a dwelling house on land at Lot 11 DP 28512, 9 Vines Avenue FORESTVILLE, subject to the conditions set out in the Assessment Report.

## REVIEW OF DETERMINATION ASSESSMENT REPORT

<b>Application Number:</b>	REV2022/0019
<b>Responsible Officer:</b>	Olivia Ramage
<b>Land to be developed (Address):</b>	Lot 11 DP 28512, 9 Vines Avenue FORESTVILLE NSW 2087
<b>Proposed Development:</b>	Review of Determination of MOD2022/0326 for Modification of Development Consent DA2019/1536 granted for Alterations and additions to a dwelling house.
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Tracy Helen Wallace Hart
<b>Applicant:</b>	Tracy Helen Wallace Hart
<b>Application Lodged:</b>	15/09/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	29/09/2022 to 13/10/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 30,000.00

### EXECUTIVE SUMMARY

This application seeks a review of the determination of Mod2022/0326 which approved modifications to Development Consent DA2019/1536, that granted approval for alterations and additions to a dwelling house.

Specifically, the application seeks to review the modified conditions of consent that were provided for with the Mod2022/0326, namely to remove Condition 7A - External Finishes to Roof.

This application is referred to the Development Determination Panel (DDP) as any Review of

Determination under Section 8.2 is to be determined by the DDP. The determination of the review is referred to the DDP with sufficient time for it to be completed within the 6 month time period imposed under Section 8.3(2) of the EPA Act, 1979.

The review of determination seeks to remove Condition 7A as it requires the external finish of the roof to have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Despite the condition and absent any information provided for assessment with the Modification Application, the awning is permitted to be constructed in the colour 'Surfmist Matt'. This is due to the roof finish being considered acceptable as the already built dwelling house roof and its finish accorded with a lawful direction from the Certifier, with the roof being constructed in accordance with that direction. Pursuant of Clause 161 of the Environmental Planning and Assessment Regulation 2000 (that applied at the time), Certifiers can exercise their right to be satisfied on a matter that relates to the external finish of a building. As such, the roof finish is considered acceptable to them and construction of the roof occurred subject of a direction from the Certifier that well pre-dates the modification application, the imposition of Condition 7A had no basis and its power cannot retrospectively apply. As such upon review and with regard to the power of the Certifier, its deletion is recommended.

Therefore, this report concludes with a recommendation that the DDP grant approval to the review and delete Condition 7A.

#### **PROPOSED DEVELOPMENT IN DETAIL**

This application seeks to review Condition 7A of Mod2022/0326.

Specifically, this review seeks to remove the following condition:

##### **Condition 7A - External Finishes to Roof**

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

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

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

This application does not propose any changes to the built form of the development, only the removal of the above condition.

#### **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## **SUMMARY OF ASSESSMENT ISSUES**

There are no assessment issues.

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 11 DP 28512 , 9 Vines Avenue FORESTVILLE NSW 2087
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Vines Avenue. The site is regular in shape with a frontage of 18.7 metres and a depth of 37.2 metres. The site has an area of 697m<sup>2</sup>.</p> <p>The site slopes from the southern front boundary down towards the northern rear boundary.</p> <p>The site is currently occupied by a dwelling house, carport and swimming pool. The site contains lawn area, garden beds, shrubs and trees. There are no details of any threatened species on the subject site.</p> <p>The surrounding development is characterised by one and two storey dwelling houses of varying styles.</p>

Map:



## SITE HISTORY

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

- **DA2017/0693** - Development Application for Alterations and Additions to an existing dwelling house. Approved on 19 September 2017.
- **DA2019/1536** - Development Application for Alterations and additions to a dwelling house. Approved on 11 March 2020.
- **Mod2020/0154** - Modification of Development Consent DA2019/1536 granted for alterations and additions to a dwelling house. Approved on 21 May 2020.
- **CC2020/0772** - Construction Certificate for Alterations and additions to a dwelling house. Approved on 5 August 2020 by External Private Certifying Authority.
- **NOC2020/0876** - Notice of Commencement for Alterations and additions to a dwelling house. Dated 10 August 2020.
- **DA2021/0214** - Development Application for Construction of a boundary retaining wall. Approved on 26 April 2021.
- **Mod2022/0326** - Modification of Development Consent DA2019/1536 granted for alterations and additions to a dwelling house. Approved 28 July 2022.

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

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

In accordance with Section 8.3 of the Act, an applicant may request Council as the consent authority to review of determination made by Council.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 28 July 2022 and the notice of determination was issued on 28 July 2022. The review

was lodged on 23 August 2022 and is to be considered by the Development Determination Panel prior to 28 January 2023, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if 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 as the development described in the original application. This review application does not include any amendments to the development described in the original application, rather it seeks a review of determination based on information that was not available to Council in its role of consent authority when it determined the Modification Application.

### History and Basis of Review

On 11 March 2020, Council granted consent for alterations and additions to a dwelling house in approving DA2019/1536. CC2020/0772 - Construction Certificate for alterations and additions to a dwelling house was issued on 5 August 2020. The stamped plans for DA2019/1536 included the materials and finishes schedule outlining the roof colour as 'Jasper Matt' on drawing A-13. It was decided that the roof colour needed to change from 'Jasper Matt' to 'Surfmist Matt' to achieve the 'Hamptons style' that was desired by the owners desired. The owner subsequently wrote to the Certifier on 19 October 2020 asking if a Section 4.55 would be required to change the roof colour or if they were able to sign off on the roof colour change. The Certifier replied on 22 October 2020, advising that as there was no specific condition imposed on DA2019/1536 specifying or restricting the colours and finishes schedule to be used in the development, that his powers as Certifier allowed the substitution of colours and finishes within the lodgement of a Section 4.55. This is clarified within extracts from the email correspondence in Figure 1 below.

RE: 9 Vines Avenue - Roof/Fascia Colour Amendment with 455 Modification

 Chris Dan <chris@cdcert.com.au>  
To: tracyhart75@outlook.com

Hi Tracy,  
I have reviewed the conditions of consent and stamped approved plans. On the basis that there is no colour schedule condition on the consent, I am happy to accept the colour changes noted in your email without the lodgement of a Section 4.55 ap  
If you have any questions let me know.

Regards,

**Chris Dan**  
Director  
Building Certifier Grade A1  
CD Certification Pty Ltd  
M: 0439 517 745  
O: 02 4332 6888  
E: [chris@cdcert.com.au](mailto:chris@cdcert.com.au)  
W: [www.cdcertification.com.au](http://www.cdcertification.com.au)



From: Tracy Hart <[tracyhart75@outlook.com](mailto:tracyhart75@outlook.com)>  
Sent: Monday, 19 October 2020 8:34 PM  
To: Chris Dan <[chris@cdcert.com.au](mailto:chris@cdcert.com.au)>  
Subject: Fwd: 9 Vines Avenue - Roof/Fascia Colour Amendment with 455 Modification

Hi Chris

Please see below message from my architect. Lashta Haidari at Northern Beaches Council pretty much said the same thing, that is, 'that I should speak to my certifier about this'.  
Can you please confirm that you can sign off on the roof colour change so I don't have to spend thousands of dollars doing a 455?

I don't want to do anything against the law but I certainly don't want to spend money where I don't have to (3 hungry children don't come cheap 😊).

Thanks

Tracy

Sent from my iPhone

**Figure 1 - Extracts from email correspondence between owner of 9 Vines Avenue and the Certifier**

Pursuant of Clause 161 of the Environmental Planning and Assessment Regulations 2000 (which were applicable at the time) Certifiers have the discretion to exercise their right to be satisfied on a matter that relates to the external finish of a building. As such, the roof finish is considered acceptable and the subsequent construction of the roof occurred subject of a lawful direction from them.

Mod2022/0326 - Modification of Development Consent DA2019/1536 was then lodged proposing the addition of an awning above the rear northern deck. This modification was approved on 28 July 2022 with condition 7A added requiring external finishes to the roof to have a medium to dark colour range. This condition was imposed to ensure that excessive glare or reflectivity nuisance does not occur as a



result of the development. The submitted plans and subsequent stamped plans for Mod2022/0326 included the awning material and colour to be 'Jasper Matt' on drawing A-09. At this time, Council was unaware of the change in roof colour to 'Surfmist Matt' following the direction of the Certifier.

Subsequently, the imposition of Condition 7A contradicts the direction of the Certifier which permitted the use of a light coloured roof 'Surfmist Matt'. As the decision of the Certifier is both lawful and pre-dates the modification application, the imposition of Condition 7A had no basis and its power cannot retrospectively apply. As such, upon review and with regard to the power of the Certifier, its deletion is recommended.

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 29/09/2022 to 13/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

#### **REFERRALS**

No referrals were sent in relation to this application

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

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

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

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

##### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A365047\_04 dated 9 June 2022).

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



## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

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

## Warringah Local Environmental Plan 2011

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

### Principal Development Standards

This review application does not alter the previously approved development standards.

## Warringah Development Control Plan

### Built Form Controls

This review application does not alter the previously approved built form.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

## POLICY CONTROLS

### Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

## CONCLUSION

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

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

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

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

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

This review of determination of Mod2022/0326 for Modification of Development Consent DA2019/1536 granted for alterations and additions to a dwelling house is referred to the DDP as any Review of Determination under Section 8.2 is to be determined by the DDP.

The review of determination seeks to remove Condition 7A as it requires the external finish of the roof to have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Despite the condition and absent any information provided for assessment with the Modification Application, the awning roof is permitted to be constructed in the colour 'Surfmist Matt'. This is due to the roof finish being considered acceptable as the already built roof and its finish accorded with a lawful direction from the Certifier, with the roof being constructed in accordance with that direction. Pursuant of Clause 161 of the Environmental Planning and Assessment Regulation 2000 (which was in force at the time), Certifiers have the ability to exercise their right to be satisfied on a matter that relates to the external finish of a building. As such, the roof finish is considered acceptable to them and construction of the roof occurred subject of a direction from the Certifier that well pre-dates the modification application, the imposition of Condition 7A had no basis and its power cannot retrospectively apply. As such upon review and with regard to the power of the Certifier, its deletion is recommended.

Therefore, this report concludes with a recommendation that the DDP grant approval to the review and delete Condition 7A.

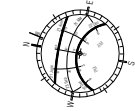
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2022/0019 for Review of Determination of MOD2022/0326 for Modification of Development Consent DA2019/1536 granted for Alterations and additions to a dwelling house. on land at Lot 11 DP 28512, 9 Vines Avenue, FORESTVILLE, subject to the conditions printed below:

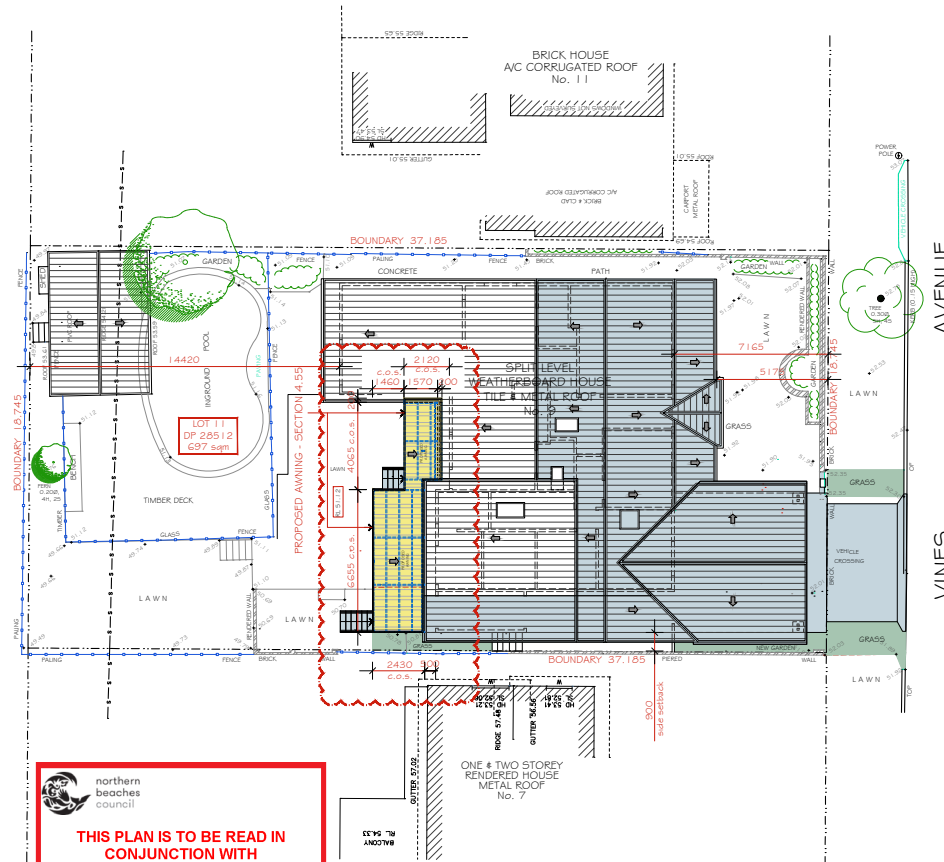
**A. Delete Condition 7A - External Finishes to Roof**

\*Do not scale off drawings.  
\*All dimensions, levels & existing site conditions shall be checked & verified by the contractor's prior to the commencement of works.



NOT TO BE CHANGED

APPROVED SITE CALCULATION:	
TOTAL SITE AREA TOTAL:	697.0 sqm
GROUND FLOOR:	172.60 sqm
APPROVED EXTENSION:	8.10 sqm
APPROVED EXTENSION:	7.35 sqm
TOTAL GROSS FLOOR AREA:	188.05 sqm
CARPORT	39.00 sqm
APPROVED FSR:	0.27:1
PROPOSED DECKING:	28.70 sqm
APPROVED DEEP SOIL AREA - LANDSCAPE	
FRONTYARD:	60.80 sqm
BACKYARD:	148.70 sqm
TOTAL	209.50 sqm
	30.0%



**THIS PLAN IS TO BE READ IN  
CONJUNCTION WITH  
THE CONDITIONS OF DEVELOPMENT  
CONSENT  
MOD2022/0326**

**PROPOSED SITE & ROOF PLAN**  
1:200



3	Issue for Section 4.55	IQH	30.05.22
2	Issue for Section 4.55	IQH	15.04.20
1	Issue for Client	IQH	29.11.19
	Description	By	Date

Drawn By  
Architectural Design and Drafting  
**IQ HOMES**  
PH: 9553 4049 Mob: 0415 417 137  
mirella@iqhomes.net.au



Drawing Title:  
**PROPOSED SITE & ROOF PLAN**

Property/Owners:  
Mr. & Mrs. Hart  
9 Vines Ave  
Forresterville

Title  
**PROPOSED AWNING - SECTION 4.55**

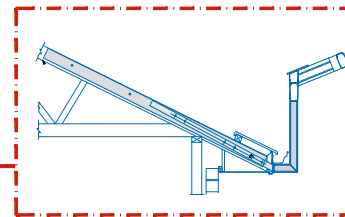
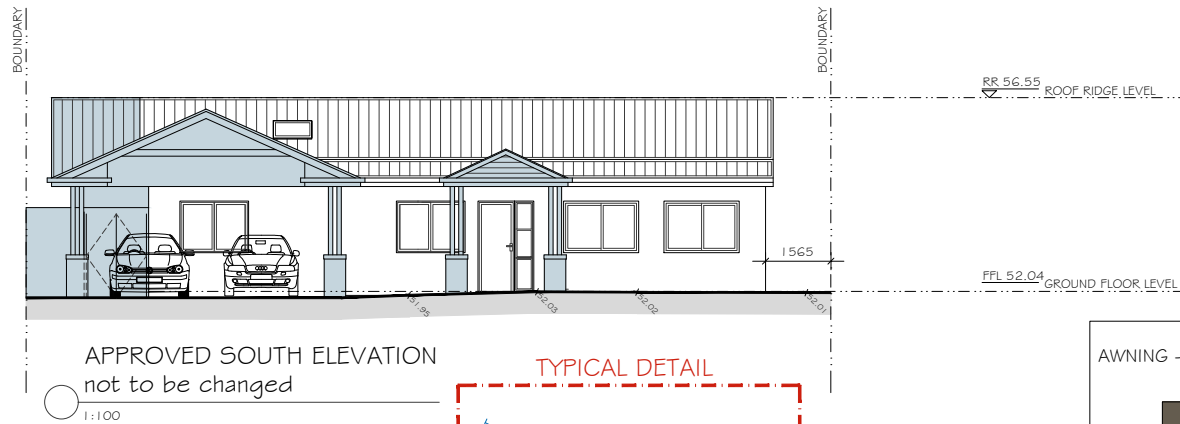
DATE 30.05.2022  
DRAWN IQ HOMES  
CDD N/A  
SCALE 1:200 (B/A3)

PROJECT NUMBER 2249  
DRAWING NUMBER A - OG

03

\*Do not scale off drawings.  
\*All dimensions, levels & existing site conditions shall be checked & verified by the contractor prior to the commencement of works

**THIS PLAN IS TO BE READ IN  
CONJUNCTION WITH  
THE CONDITIONS OF DEVELOPMENT  
CONSENT**  
  
**MOD2022/0326**



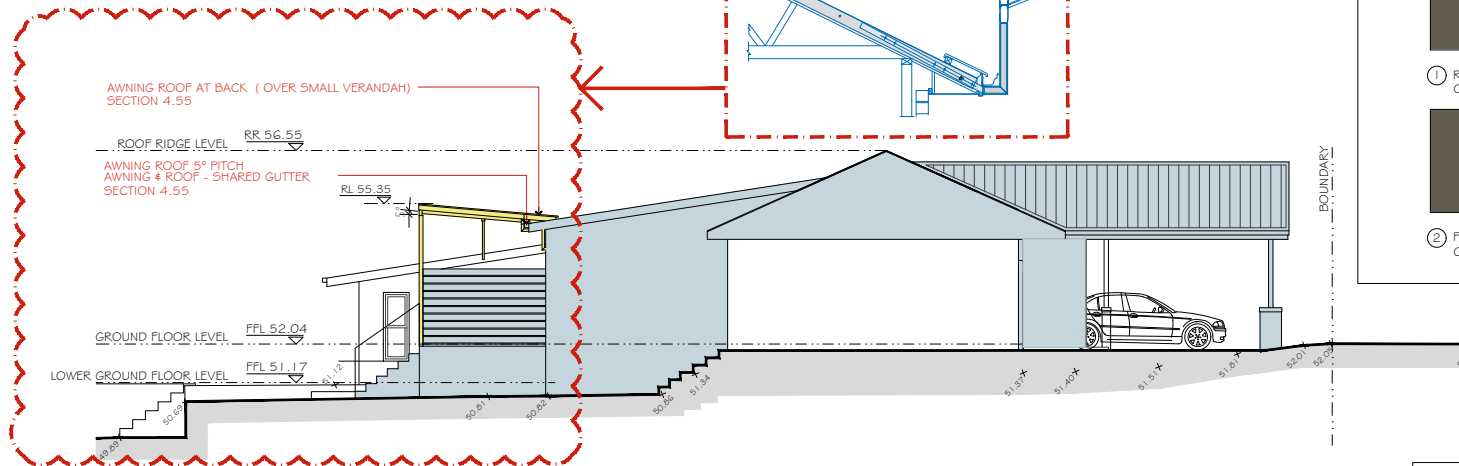
AWNING - MATERIAL AND COLOUR



① ROOF  
COLORBOND JASPER - MATT

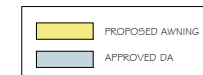


② FASCIA  
COLORBOND JASPER - HIGH GLOSS



**PROPOSED WEST ELEVATION**

1:100



3	Issue for Section 4.55	IQH	30.05.22
2	Issue for Section 4.55	IQH	15.04.20
1	Issue for Client	IQH	29.11.19
	Description	By	Date

Drawn By  
Architectural Design and Drafting  
**IQ HOMES**  
PH: 9553 4049 Mob: 0415 417 137  
mirella@iqhomes.net.au



Drawing Title:  
  
APPROVED SOUTH ELEVATION  
PROPOSED WEST ELEVATION

Property/Owners:  
  
Mr. & Mrs. Hart  
9 Vines Ave  
Forresterville

Title  
**PROPOSED AWNING - SECTION 4.55**

DATE 30.05.2022  
DRAWN IQ HOMES  
CDD MA  
SCALE 1:100 @A3

PROJECT NUMBER 2249  
DRAWING NUMBER A - 08

03

\*Do not scale off drawings.  
\*All dimensions, levels & existing site conditions shall be checked & verified by the contractor prior to the commencement of works.



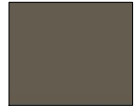
**THIS PLAN IS TO BE READ IN  
CONJUNCTION WITH  
THE CONDITIONS OF DEVELOPMENT  
CONSENT**

**MOD2022/0326**

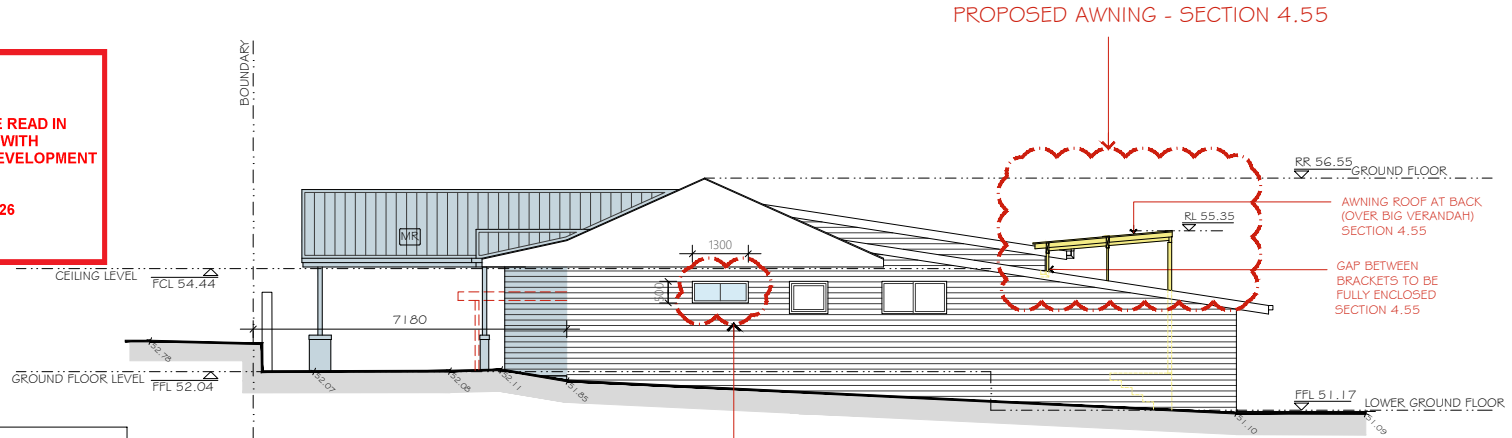
**AWNING - MATERIAL AND COLOUR**



① ROOF  
COLORBOND JASPER - MATT



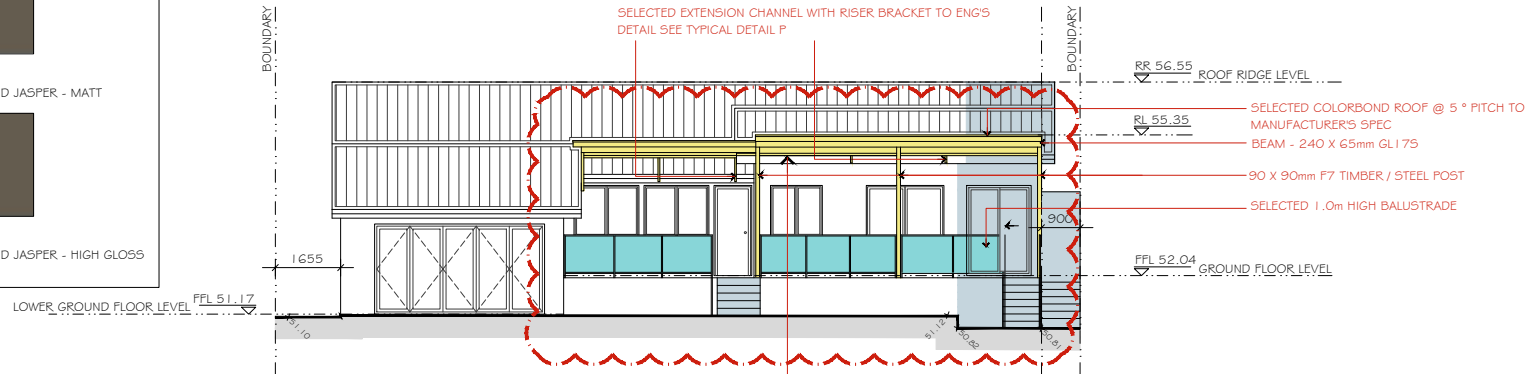
② FASCIA  
COLORBOND JASPER - HIGH GLOSS



**PROPOSED EAST ELEVATION**

1:100

**PROPOSED WINDOW - SECTION 4.55**



**PROPOSED NORTH ELEVATION**

1:100

**PROPOSED AWNING - SECTION 4.55**

	PROPOSED BALUSTRADE
	PROPOSED AWNING
	APPROVED DA



Issue	Description	By	Date
3	Issue for Section 4.55	IQH	30.05.22
2	Issue for Section 4.55	IQH	15.04.20
1	Issue for Client	IQH	29.11.19

Drawn By  
**Architectural Design and Drafting**  
**IQ HOMES**  
PH: 9553 4049 Mob: 0415 417 137  
mirella@iqhomes.net.au



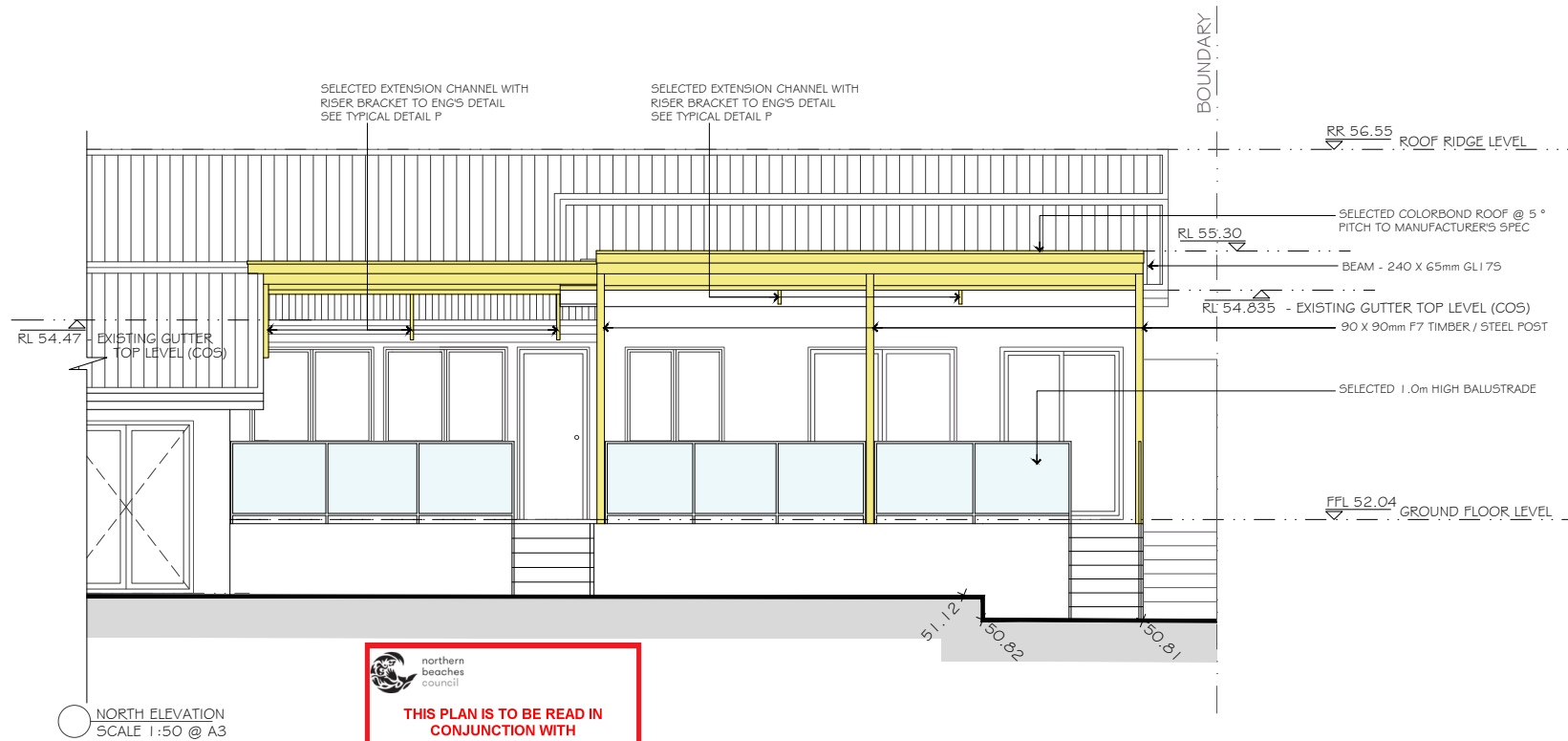
Drawing Title:  
**PROPOSED NORTH ELEVATION  
PROPOSED EAST ELEVATION**

Property/Owners:  
**Mr. & Mrs. Hart  
9 Vines Ave  
Forrestville**

Title  
**PROPOSED AWNING - SECTION 4.55**

DATE	30.05.2022	PROJECT NUMBER	2249
DRAWN	IQ HOMES	DRAWING NUMBER	A - 09
CAD	NA		
SCALE	1:100 (BAS)		

\*Do not scale off drawings.  
\*All dimensions, levels & existing site conditions shall be checked & verified by the contractor prior to the commencement of works.



**THIS PLAN IS TO BE READ IN  
CONJUNCTION WITH  
THE CONDITIONS OF DEVELOPMENT  
CONSENT  
MOD2022/0326**

**PROPOSED AWNING**

3	Issue for Section 4.55	IQH	30.05.22
2	Issue for Section 4.55	IQH	15.04.20
1	Issue for Client	IQH	29.11.19
	Description	By	Date

Drawn By  
Architectural Design and Drafting  
**IQ HOMES**  
PH: 9553 4049 Mob: 0415 417 137  
mirella@iqhomes.net.au

**iq homes**

Drawing Title:  
**PROPOSED NORTH ELEVATION**

Property/Owners:  
Mr. & Mrs. Hart  
9 Vines Ave  
Forrestville

Title  
**PROPOSED AWNING - SECTION 4.55**

DATE	30.05.2022	PROJECT NUMBER	2249
DRAWN	IQ HOMES	DRAWING NUMBER	A - 12
CAD	N/A		
SCALE	1:50 @ A3		

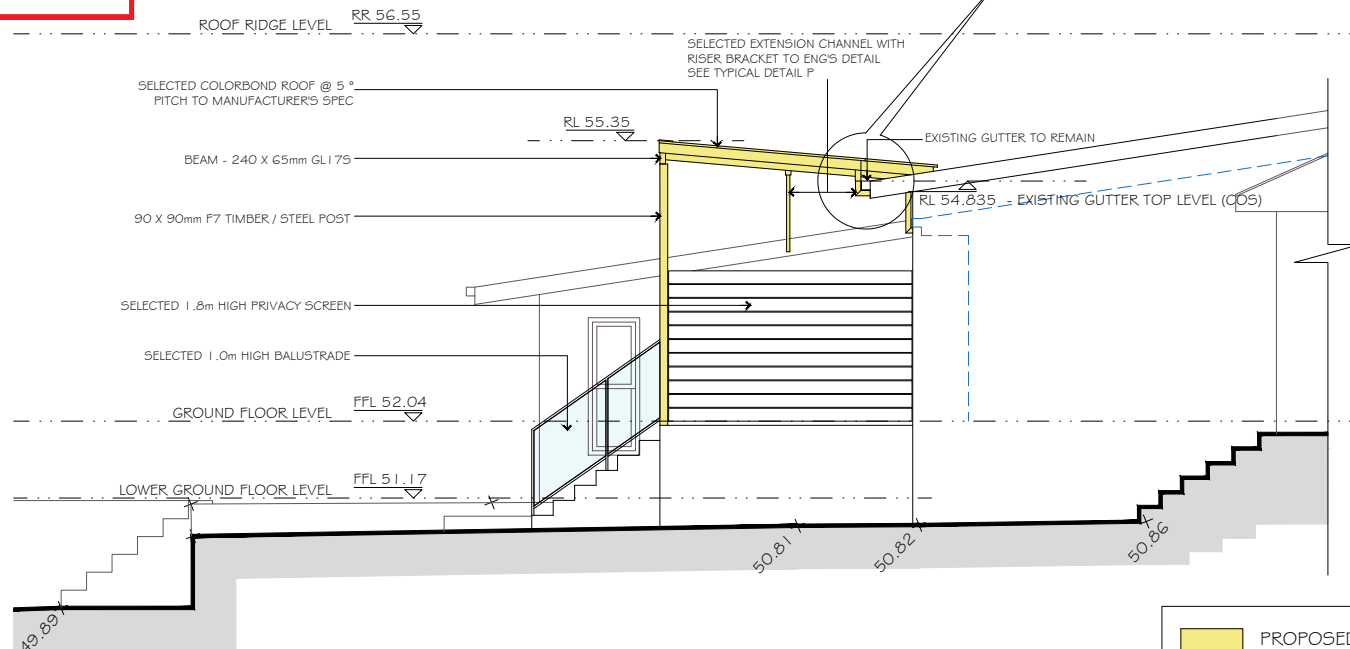
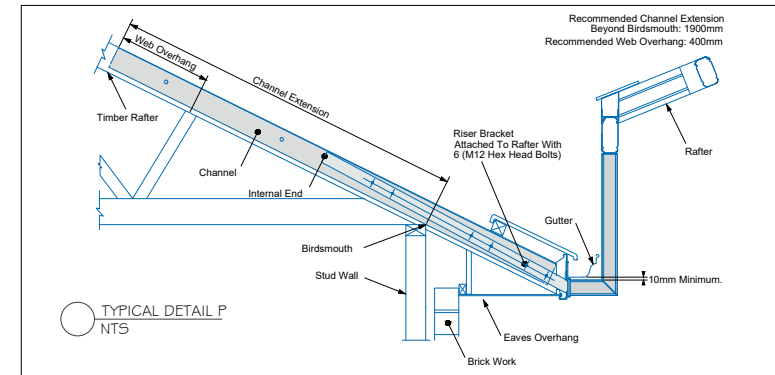
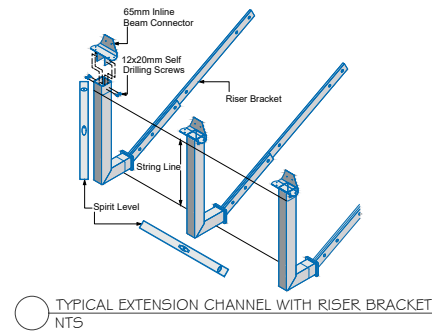
**03**



\*Do not scale off drawings.  
\*All dimensions, levels & existing site conditions shall be checked & verified by the contractor prior to the commencement of works

**THIS PLAN IS TO BE READ IN  
CONJUNCTION WITH  
THE CONDITIONS OF DEVELOPMENT  
CONSENT**

**MOD2022/0326**



**WEST ELEVATION  
1:50 @ A3**

3	Issue for Section 4.55	IQH	30.05.22
2	Issue for Section 4.55	IQH	15.04.20
1	Issue for Client	IQH	29.11.19
	Description	By	Date

Drawn By  
Architectural Design and Drafting  
**IQ HOMES**  
PH: 9553 4049 Mob: 0415 417 137  
mirella@iqhomes.net.au



Drawing Title:  
**PROPOSED WEST ELEVATION**

Property/Owners:  
Mr. & Mrs. Hart  
9 Vines Ave  
Forresterville

Title  
**PROPOSED AWNING - SECTION 4.55**

DATE 30.05.2022  
DRAWN IQ HOMES  
CDD NA  
SCALE 1:50 @A3

PROJECT NUMBER  
2249  
DRAWING NUMBER  
A - 13

03

**ITEM 3.3**

**MOD2022/0383 - 30 MACMILLAN STREET SEAFORTH -  
MODIFICATION OF DEVELOPMENT CONSENT DA2020/1784  
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION  
OF A DWELLING HOUSE INCLUDING A SWIMMING POOL**

**REPORTING MANAGER**

**Adam Richardson**

**TRIM FILE REF**

**2022/725472**

**ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Site Plan and Elevations**

**PURPOSE**

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

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**RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to Mod2022/0383 for Modification of Development Consent DA2020/1784 granted for demolition works and construction of a dwelling house including a swimming pool on land at Lot 1 DP 90944, 30 Macmillan Street SEAFORTH, subject to the conditions set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0383
<b>Responsible Officer:</b>	Brittany Harrison
<b>Land to be developed (Address):</b>	Lot 1 DP 90944, 30 Macmillan Street SEAFORTH NSW 2092
<b>Proposed Development:</b>	Modification of Development Consent DA2020/1784 granted for Demolition works and construction of a dwelling house including a swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Shae Alyce Robbins
<b>Applicant:</b>	Carla Middleton
<b>Application Lodged:</b>	20/07/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	02/08/2022 to 16/08/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 23.8%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This Section 4.55 (2) modification application seeks to amend the previously approved development application DA2020/1784. The proposed modified works relate to the excavation below the approved garage so as to accommodate a habitable area which is to be used as a study room and the addition of a store room to the lower ground floor of the approved dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the modifications to the development resulting in a variation of more than 10% to *Clause 4.4 Floor space ratio* (FSR) of the *Manly Local Environmental Plan 2013*. The maximum permitted FSR for the site is 0.45:1 (202.14m<sup>2</sup>), and the proposed FSR is 0.557:1 (250.3m<sup>2</sup>), resulting in a variation of 23.8% (48.16m<sup>2</sup>). It is noted that

an FSR of 0.487:1 (218.6m<sup>2</sup>) was previously approved under DA2020/1784.

The proposed development was notified in accordance with Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, with one (1) submission received. The submission raised concern with the proposed FSR, visual privacy and the street frontage.

During the assessment of the application, an updated Geotechnical Report to assess the risk of slope instability and impact of the proposed modified development as the works consist of excavation of more than 2.0 metres below natural ground level and is located within the Geotechnical Area 'G4'. In addition it was requested that the excavation for the works be located 0.9m from the eastern adjoining boundary line. As the amended plans did not generate additional environmental impacts, re-notification was not considered necessary in line with the CPP.

All matters raised in the submission are detailed within this report, in summary it is found that the visual privacy impact as a result of the previously approved swimming pool and both street frontages to Macmillan Street and Frenchs Forest Road will remain the same as what was previously approved under DA2020/1784. The floor space ratio variation of 23.8% is considered acceptable due to the additional gross floor area being located underneath the approved garage and remained inside the previously approved building footprint.

The proposal exhibits variations to the wall-height, setbacks to the secondary street frontage and side boundaries and to the open space area requirement which were approved under DA202/1784. The proposed modified works do not alter the variations to the above listed non-compliant built form controls.

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

Accordingly, it is recommended that the application be approved subject to the conditions of consent as detailed in the recommendations of this report.

## **PROPOSED DEVELOPMENT IN DETAIL**

This Section 4.55 (2) modification application seeks to amend the previously approved development application DA2020/1784 as follows:

- Excavation beneath the approved raised garage to accommodate a habitable area to be used as a study area; and
- Extension of the lower ground floor so as to provide for storage area to a height of 1360mm.

## **ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

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

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

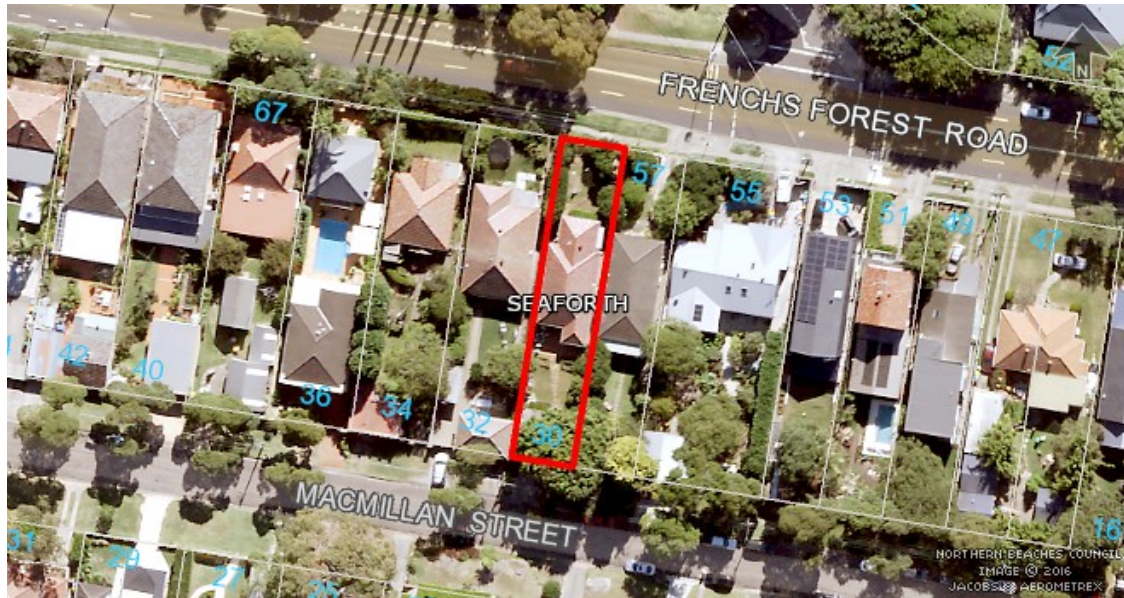
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 90944 , 30 Macmillan Street SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Macmillan Street and southern side of Frenchs Forest Road.</p> <p>The subject site is legally identified as Lot 1 in Deposited Plan 90944, No. 30 Macmillan Street, Seaforth.</p> <p>The site is rectangular in shape with a frontage of 9.34 metres along Macmillan Street and a depth of 48.16 metres. The site has a surveyed area of 449.2m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone under Manly Local Environmental Plan 2013 and accommodates a dwelling house and carport.</p> <p>The site slopes from the southern portion of the property to the north by approximately 4 metres. The site consists of well-maintained lawn areas and garden beds.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by both one (1) and two (2) storey residential development of various architectural designs.</p>

Map:



## SITE HISTORY

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

### DA2020/1784

Development Application for the demolition works and construction of a dwelling house including a swimming pool.

Determined on 2 July 2021 by delegated authority.

### Application History

Following the preliminary assessment of the application, Council requested an updated Geotechnical Report to assess the risk of slope instability and impact of the proposed development as the works consist of excavation of more than 2.0m below natural ground level and is located within the Geotechnical Area 'G4'. In addition it was requested that the excavation for the works be located 0.9m from the eastern adjoining boundary line.

The amended documentation did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

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

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the



- development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for **DA2020/1784**, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 where His Honour states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <ul style="list-style-type: none"> <li><i>The proposed modifications do not alter the</i></li> </ul>



Section 4.55 (2) - Other Modifications	Comments
	<p><i>approved use, that being for a dwelling.</i></p> <ul style="list-style-type: none"> <li><i>The proposed modifications are within the approved building envelope. The proposed modifications will not increase the height or alter the setbacks of the approved dwelling.</i></li> <li><i>The proposed modifications result in an increase of FSR from the approved 0.487:1 to 0.55:1. However, it is reiterated that the proposed additional floor space is located within the approved building envelope.</i></li> <li><i>The proposed modifications will not alter the approved open space area, landscaped area or private open space area.</i></li> <li><i>The proposed modifications do not generate any adverse or unreasonable streetscape, visual bulk or amenity impacts. There will be no additional adverse external amenity impacts associated with the modifications, including no adverse overshadowing, visual or acoustic privacy, visual bulk or view loss, above and beyond that already approved.</i></li> <li><i>There will be no additional traffic impacts generated by the proposal.</i></li> </ul> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is substantially the same as the development for which the consent was originally granted and can be considered under Section 4.55 of the Act.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application <b>DA2020/1784</b> did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55 (2) - Other Modifications	Comments
or	
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

#### Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.1.4.2 Side setbacks and secondary street frontages and the Geotechnical Report.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 61 of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via an existing condition of consent.</p> <p>Clauses 62 and/or 64 of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via an existing condition of consent.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via an existing condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/08/2022 to 16/08/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Phillip Boris Shovk	57 Frenchs Forest Road SEAFORTH NSW 2092

The following issues were raised in the submissions:

- **Loss of Privacy in relation to swimming pool.**
- **Non-compliant Gross Floor Area**
- **Street Frontage**

The above issues are addressed as follows:

- **Loss of Privacy in relation to swimming pool.**

### Comment

The swimming pool does not form part of this modification application, and was approved under the original development consent (DA2020/1784). The swimming pool approved under DA2020/1784 was assessed against the privacy provisions under Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013 (MDCP 2013). It was found to be acceptable as the proposal complied with the relevant provisions and underlying objectives of the clause, subject to Conditions of Consent.

- **Non-compliant Gross Floor Area**

### Comment

Concern was raised in relation to the proposed study resulting in a non-compliant floor space ratio. The non-compliant floor space ratio is addressed in further detail elsewhere in this report (refer to *Clause 4.4 Floor Space Ratio*), where it is found to be acceptable, given the extent of modification and area of the building to which it relates.

- **Street Frontage**

### Comment

It was determined under DA2020/1784 that the primary street frontage of the site is No. 30 Macmillan Street, as it provides for carparking and safe direct access into the site, with Frenchs Forest Road considered the secondary street frontage. The application was assessed under the relevant clauses of the MDCP 2013, in particular Clause 3.1 Streetscapes and Townscapes and Clause 4.1.4 Setbacks (front, side and rear) and Building Separation. It was found that the design was consistent with the underlying objectives of the clause and provided a level of landscaped open space similar to that of surrounding dwellings that front Frenchs Forest Road.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b><i>Supported without the need for additional or modified conditions.</i></b></p> <p>The proposed modification does not affect landscape outcomes as approved in the original DA.</p> <p>Whilst there may be planning issues raised by the modification, no objections are raised with regard to landscape issues.</p> <p>Existing conditions are considered still relevant and adequate.</p>
NECC (Development Engineering)	<p><b><i>Supported, subject to modified conditions</i></b></p> <p>No objections to the proposed modified subject to the inclusion of modified conditions.</p>
Road Reserve	<p><b><i>Supported, without conditions</i></b></p> <p>Proposal does not impact on existing road assets. Any excavation on the road frontage to be contained wholly within the property boundary.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

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

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

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

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1150017S\_02 dated 26

June 2022).

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

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

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

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

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

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

#### Comment

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

### SEPP (Resilience and Hazards) 2021

#### Chapter 4 – Remediation of Land

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

### Manly Local Environmental Plan 2013

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

#### Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	No Change	-	Yes
Floor Space Ratio:	FSR:0.45:1 (202.14m <sup>2</sup> )	FSR: 0.487:1 (218.6m <sup>2</sup> )	FSR: 0.557:1 (250.3m <sup>2</sup> )	23.8% (48.16m <sup>2</sup> )	<b>No</b>

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

#### Detailed Assessment

##### 4.4 Floor space ratio

##### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45 to 1 (202.14m <sup>2</sup> )
Proposed:	0.557 to 1 (250.3m <sup>2</sup> )
Percentage variation to requirement:	23.8% (48.16m <sup>2</sup> )

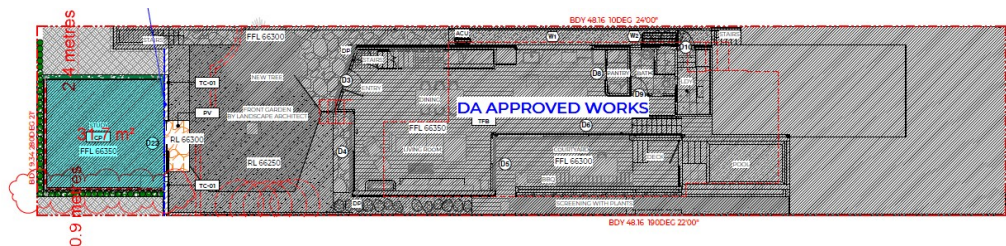
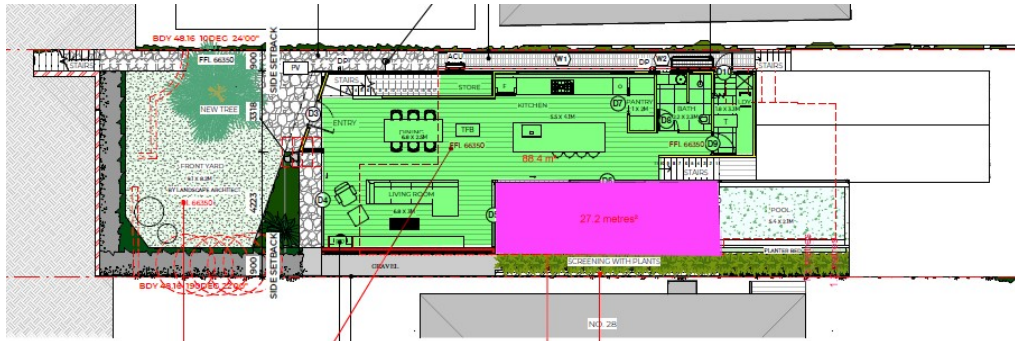
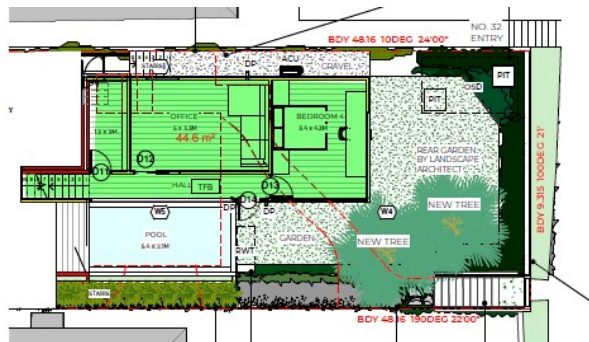


Figure 1: Proposed additional floor area shown in blue.

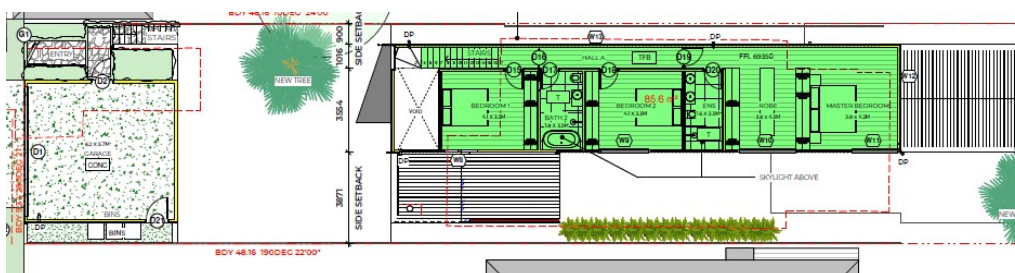




**Figure 2: Previously approved gross floor area under DA2020/1784 shown in green - ground floor.**



**Figure 3: Previously approved gross floor area under DA2020/1784 shown in green - lower ground floor.**



**Figure 4: Previously approved gross floor area under DA2020/1784 shown in green - first floor.**

Assessment of request to vary a development standard:

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15

matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the floor space ratio development standard and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

**Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**

Comment

It is considered that compliance with the development standard is unreasonable or necessary in the circumstances of the case as the proposed works which consist of additional floor area will be located wholly within the footprint of the previously approved development and will be situated underneath the garage. There is no significant bulk and scale that will be added to the façade of the dwelling house, with the proposed works not being easily viewed from the public domain or private properties.

**There are sufficient environmental planning grounds to justify contravening the development standard,**

Comment

The applicants written request argues the following:

- *The proposed additional FSR will not alter the approved open space area, landscaped area or private open space area, ensuring that the approved landscape amenity will not be impacted by the additional floor area.*
- *The proposed additional FSR does not generate any unreasonable privacy impacts. The proposed modifications have been designed to ensure adequate visual and acoustic privacy between the subject development and the adjoining properties. The proposal has considered the location of the development on the site, the internal layout and the building materials used.*
- *The proposed modifications will not alter the approved setbacks thereby ensuring adequate separation from the adjoining properties. The proposed study and store room are located on the Ground Floor and Lower Ground Floor, respectively, and will not overlook the adjoining properties.*
- *The proposed additional FSR does not generate any additional overshadowing impacts beyond that approved, noting that the proposal does not increase the building envelope of the approved development.*
- *Notwithstanding the numeric departure, the lack of external impacts, consistency with the scale of the built form in the surrounding area and that the proposal will not alter the approved building envelope of the dwelling, confirms that the intensity of development is appropriate for the site.*

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore

satisfying cls 1.3 (c) and (g) of the EPA Act.

**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.**

#### 4.4 Floor space ratio

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

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

##### Comment

As the modified works involve excavation and is located underneath the approved garage and not within easy viewing of adjoining properties or the street, bulk and scale will be minimised and shall remain similar to that of the approved development under DA2020/1784.

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

##### Comment

As detailed above, the modified works do not give rise to any unacceptable density and bulk over the subject site. The height of the building is to remain compliant with the building standard, with the additional floor area under the garage, which will not obscure any important landscape features. The modified works will not be easily viewed from any street frontage, therefore maintaining the existing townscape features.

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

##### Comment

As the additional floor space is located underneath the garage, the overall design of the development will remain consistent with the previously approved development under DA2020/1784, with no significant changes to the external façade being present. As such, the modified works will maintain an acceptable visual relationship between new development, the existing character and landscape of the surrounding area.

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

##### Comment

The proposed modified works are not likely to result in adverse environmental impacts on the use or enjoyment of adjoining land, including the public domain. The application has been accompanied by a relevant Geotechnical Assessment Report prepared by a suitable accredited person.

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

##### Comment

The subject site is surrounded by residential zones, and will therefore not impact on any business

zones.

#### Zone objectives

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

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

#### Comment

The proposal provides for the housing needs of the community by maintaining a low density residential design within the surrounding built environment.

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

#### Comment

The proposal retains the residential use of the site and therefore this objective is not relevant

#### Conclusion

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

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

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

#### Comment

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

#### **Mainly Development Control Plan**

##### Built Form Controls

<b>Built Form Controls - Site Area: 449.2m<sup>2</sup></b>	<b>Requirement</b>	<b>Approved</b>	<b>Proposed</b>	<b>Complies</b>
4.1.2.1 Wall Height	West: 7m (based on gradient 1:12)	7.15m	No Change	No (As previously approved)
	East: 7m (based on gradient 1:12)	7.15m	No Change	No (As previously approved)
4.1.2.2 Number of Storeys	2	3	No Change	No (As previously approved)
4.1.2.3 Roof Height	Height: 2.5m	1.35m	No Change	Yes
	Pitch: maximum 35 degrees	33.5 degrees	No Change	Yes

4.1.4.1 Street Front Setbacks	Primary (Macmillan) - 6m or consistent with the prevailing setback.	0m, consistent with prevailing	No Change	Yes
	Secondary (Frenchs Forest) - 6m	5.867m	No Change	No (As previously approved)
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.38m (based on first floor Western wall height)	0.9m	No Change	No (As previously approved)
	2.38m (based on first floor Eastern wall height)	0.9m - 4m	No Change	Yes
	Windows: 3m	0.9m - 4m	No Change	No (As previously approved)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (247.06m <sup>2</sup> ) of site area	42.1% 189.2m <sup>2</sup>	No Change	No (As previously approved)
	Open space above ground 25% (47.3m <sup>2</sup> ) of total open space	14.3% (27.2m <sup>2</sup> ) (courtyard)	No Change	No (As previously approved)
4.1.5.2 Landscaped Area	Landscaped area 35% (66.22sqm) of open space	64.5% (122.2sqm)	No Change	Yes
	2 native trees	2 trees	No Change	Yes
4.1.5.3 Private Open Space	18m <sup>2</sup> per dwelling	>18m <sup>2</sup>	No Change	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	64% (6m)	No Change	No (As previously approved)
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.8m	No Change	Yes
	1m curtilage/1.5m water side/rear setback	1.2m, 1.5m	No Change	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	No Change	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

##### **4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)**

The proposed modification works do not alter the previously approved number of storeys or non-compliant wall height of 7.15m under DA2020/1784. The outcomes of the original development consent are maintained and a detailed merit assessment is not required in this instance.

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

The proposed modification does not comply with the maximum floor space ratio (see Clause 4.4 Floor Space Ratio of Manly Local Environmental Plan 2013 for further discussion).

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



The proposed modification works do not alter the previously approved numerically non-compliant secondary front setback, side setbacks, and window setbacks under DA2020/1784. The outcomes of the original development consent are maintained and a detailed merit assessment is not required in this instance.

#### **4.1.5 Open Space and Landscaping**

The modified development does not reduce the existing non-compliant total open space, which represents to 42.1% of the site area, approved under DA2020/1784. The clause requires at least 55% of the site area to consist of total open space. Given there is no reduction, the existing non-compliance is supported on merit. No further consideration of this control is required for the purpose of this assessment.

#### **4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)**

The control limits the width of garages to 50% of the street frontage. The previously approved carport under DA2020/1784 exhibits a width of 64%, which exceeds the numerical requirement. Given there is no amendment to the carport dimensions, the existing non-compliance is supported on merit. No further consideration of this control is required for the purpose of this assessment.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

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

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

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



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

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

## PLANNING CONCLUSIONS

The assessment of the proposed modified works to DA2020/1784 has identified the non-compliance to the requirements of *Clause 4.4 Floor Space Ratio* under the *Manly Local Environmental Plan 2013*.

It is determined that the non-compliance however met the relevant objectives and would not result in an unacceptable amenity impact to surrounding properties or detrimentally impact the existing streetscape character by virtue of its architectural style and scale.

A total of one (1) submission was received in response to the notification of the original development application. The issues raised in these submissions have been addressed in the "Public Notification Section" of this report. Amended plans and a Geotechnical Report was requested by Council. It is considered that the applicant responded to the planning issues identified in the initial assessment with the second set of amended plans which are the basis of this report.

On balance, and considering the preceding detailed assessment of the application, addressing the concerns raised by a resident objector, including a detailed analysis of the floor space ratio variation, it is considered that the 'second amended' proposal, subject to recommended conditions will result in a development that is acceptable in design and scale and is sufficiently compatible with the existing dwelling houses on adjoining properties and in the surrounding area.

Accordingly, the application is referred to the Development Determination Panel with a recommendation for approval.

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0383 for Modification of Development Consent DA2020/1784 granted for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 1 DP 90944,30 Macmillan Street, SEAFORTH, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S4-55-100, Demolition + Site Analysis Plan, Revision 2	13 October 2022	Carla Middleton Architecture
S4-55-101, Lower + Ground Floor Plan, Revision 2	13 October 2022	Carla Middleton Architecture
S4-55-200, Elevations, Revision 2	13 October 2022	Carla Middleton Architecture
S44-55-300, Sections, Revision 2	13 October 2022	Carla Middleton Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (No.1150017S_02)	26 June 2022	BASIX Certificate Centre
Geotechnical Investigation Report (G22091SEA-R01F)	14 October 2022	Geo-Environmental Engineering

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

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

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

**B. Modify Condition No. 2 - Compliance with Other Department, Authority or Service Requirements to read as follows:**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	N/A
Ausgrid	Ausgrid Referral Response	9 August 2022

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

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

**C. Add Condition No. 14A - Shoring of Council's Road Reserve (Temporary road anchors) to read as follows:**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall

provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.





ITEM 3.4	DA2022/0914 - 5 NENAGH STREET NORTH MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2022/725309
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevations 3 <a href="#">↓</a> Clause 4.6

## PURPOSE

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

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## RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approve** Development Consent to DA2022/0914 for alterations and additions to a dwelling house on land at Lot 40 DP 20771, 5 Nenagh Street NORTH MANLY, subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0914
<b>Responsible Officer:</b>	Dean Pattalis
<b>Land to be developed (Address):</b>	Lot 40 DP 20771, 5 Nenagh Street NORTH MANLY NSW 2100
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Poh Kee Heng Thomas Ah Lye Ng
<b>Applicant:</b>	JJ Drafting
<b>Application Lodged:</b>	12/08/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	25/08/2022 to 08/09/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 14.71%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 650,000.00

### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing dwelling house including a new first floor addition.

The application is referred to the Development Determination Panel (DDP) due to a variation to the Height of Buildings development standard of greater than 10%.

Associated minor non-compliances are proposed in relation to wall height and building envelope, however are considered acceptable on merit, due mainly as they are point encroachments associated with the irregular allotment shape and steep topography.



The application was publicly exhibited for 14 days and two (2) submissions were received. Site visits to the respective properties of the objectors were conducted and the concerns identified are addressed within the submission section of this report.

The application was referred to Council's Landscape Officer and Bushland and Biodiversity Officer who raised no objections to approval, subject to recommended conditions.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The application proposes alterations and additions to an existing dwelling, including:

### Ground floor alterations

- New internal staircase located in the dining area
- New external staircase on northern elevation with storage below
- Minor internal reconfiguration of existing kitchen

### First floor addition

- New first floor addition consisting of 3 bedrooms, 2 bathrooms, a rumpus room with a wet bar and colorbond skillion roof with raked ceiling

Additional information was requested in relation to the provision of a Clause 4.6 Report addressing the building height non-compliance as well as to increase the proposed secondary front setback in order to comply with the numerical control. The amended information was formally received by Council on 24 October 2022. As the amended information resulted in a reduced environmental impact, no further community consultation is required in accordance with Council's Community Participation Plan.

## **ASSESSMENT INTRODUCTION**

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

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

proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - B1 Wall Heights  
Warringah Development Control Plan - B3 Side Boundary Envelope  
Warringah Development Control Plan - D8 Privacy

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 40 DP 20771 , 5 Nenagh Street NORTH MANLY NSW 2100
<b>Detailed Site Description:</b>	<p>The subject allotment is described as 5 Nenagh street, within Deposited Plan 20771 and lot 40. It is located in R2 Low-Density Residential</p> <p>The site is rectangular in shape with an area of approximately 724.2m<sup>2</sup>. The property addresses Nenagh Street to the north-west.</p> <p>The site is currently developed with a two-storey, brick and weatherboard dwelling with a rear tiled patio and a large rock at the rear of the property. The driveway access is provided via an existing driveway off Nenagh Street to a double garage below the house</p> <p>The site descends from the rear of the boundary towards the front boundary by approximately 3.2 metres.</p> <p>Areas of existing vegetation and lawn areas are located to the front and rear of the property. Vegetation is primarily native to the front of the property however it also consists of mixed endemic and introduced species primarily to the rear. Exposed natural rock is featured at the rear of the site.</p>

Map:



#### SITE HISTORY

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

Application **DA2018/1928** for Alterations and additions to a dwelling house including a first floor extension was approved by Council on 15/04/2019.

Application **DA2001/0496** for Alterations and Additions Including a Granny Flat (Approved 23 May 2001)

*Despite the consent description including a granny flat, the approved plans do not illustrate or make reference to a granny flat. The approved works consist of internal improvements to the ground floor as well as new terrace areas on the ground floor and first floor.*

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the provision of a Clause 4.6 Report addressing the building height non-compliance. In addition, amended plans were also received which increased the setback to the secondary street in order to comply with the numerical control. As the amended information resulted in a reduced environmental impact, no further community consultation is required in accordance with Council's Community Participation Plan.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/08/2022 to 08/09/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Ms Sarah Lisa O'Brien Mr David Ronald Cansdell	3 Waiwera Avenue NORTH MANLY NSW 2100
Withheld	MANLY VALE NSW 2093

Two total submissions were received during the community consultation period.

- **Sense of openness and view loss**

#### Comment:

The submissions raised issues with the development where it is claimed that the development will result in sense of openness experienced from their property looking towards the proposed development. The submission also raised view loss as a concern. A subsequent inspection was undertaken to assist in the assessment of impact in the case of lost views. The views experienced towards the subject property do not consist of any ocean or views which would be considered iconic and are considered to be district views only, including that of aspects over vegetation and therefore do not require a full assessment against the principles of *Tenacity Consulting v Waringah [2004] NSWLEC 140*. The submission also raised concern regarding perceived impacts to neighbourhood harmony and acoustic privacy. The proposed development is substantially separated from the private open space of the objector's property and is not considered to result in any amenity or acoustic impacts that would not otherwise be expected.

in a low density residential area.

- **Building Bulk**
- **Visual Privacy**
- **View Loss**
- **Overshadowing**
- **Roof materials**

Comment:

A submission raised concern regarding building bulk in relation to floor space ratio. It is noted the site is not subject to a floor space ratio control. As discussed throughout this report, a portion of the proposed upper floor contains minor building height, wall height and building envelope non-compliances, however due to the spatial separation and screening to the streetscape, compliance with setback and landscaped open space controls, as well as compliant visual privacy and overshadowing impacts, the bulk and scale of the proposal is considered reasonable in this circumstance.

Conditions of consent have been recommended to amend W2 and D1 on the eastern elevation so as to ensure and to protect the visual privacy of the adjoining property owners. In accordance with the submitted shadow diagrams, the proposal is numerically compliant with Part D6 Access to Sunlight WDCP 2011. Furthermore, conditions of consent have also been recommended for non-reflective materials to be used for the proposed roof.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The development application is for alterations and additions to the existing dwelling, and associated works, as described and illustrated in the reports and plans.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• D1 Landscaped Open Space and Bushland Setting</li> <li>• E1 Preservation of Trees or Bushland Vegetation</li> </ul> <p>No trees are proposed to be removed; however, no prescribed trees exist within the property boundary. The proposed works will add to the bulk and scale of the dwelling, therefore should the development application be approved, one locally native tree shall be installed within the front setback to help satisfy Warringah DCP control D1, subject to recommended conditions. All other existing trees and vegetation shown to be retained shall be protected as per the recommended conditions of consent. All natural rock outcrops outside of the approved works shall be protected, subject to the recommended conditions.</p>
NECC (Bushland and Biodiversity)	<p>The proposed development will not impact upon prescribed native vegetation or wildlife habitat. In addition, conditions recommended by the Landscape referrals team will serve to improve consistency with</p>



Internal Referral Body	Comments
	relevant natural environment controls.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

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

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

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

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A453713 dated 26 May 2022).

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

#### SEPP (Transport and Infrastructure) 2021

##### Ausgrid

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

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

Comment:



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

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

### **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 3 Coastal environment area**

##### **2.10 Development on land within the coastal environment area**

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

#### **Comment:**

The proposed development is not considered likely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, coastal environmental values and natural coastal processes, the water quality of the marine estate, native vegetation and fauna and their habitats, public open space or aboriginal cultural heritage.

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

#### **Comment:**

The development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

## Division 5 General

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

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

Comment:

The proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

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

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

Comment:

The relevant provisions of any certified coastal management program that applies to the land have been considered.

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

## Chapter 4 – Remediation of Land

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

## Warringah Local Environmental Plan 2011

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

## Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.75m	14.71%	No

#### Compliance Assessment

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

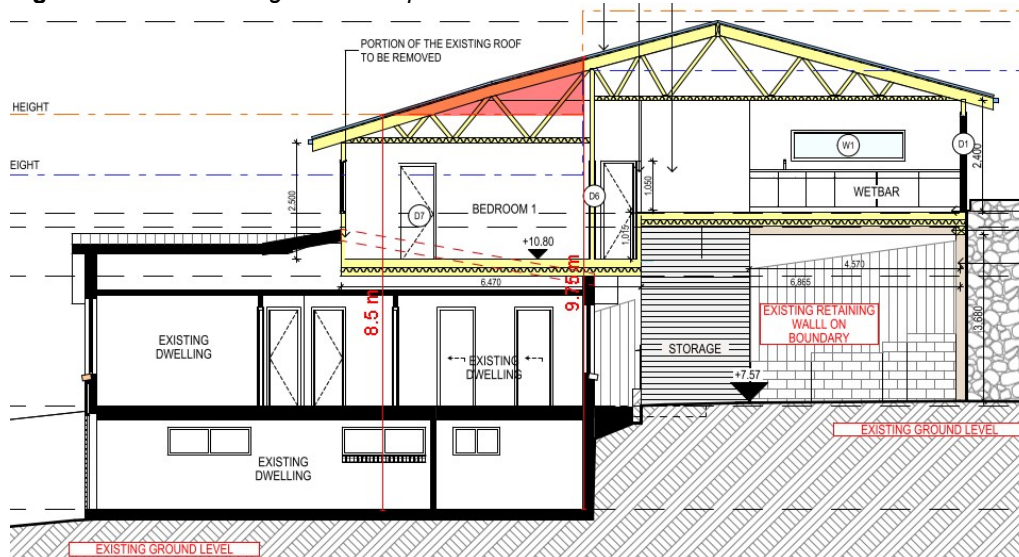
#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.75m
Percentage variation to requirement:	14.71%

**Figure 2: Portion of height non-compliance**



##### Assessment of request to vary a development standard:

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

##### Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- There is no demonstrable public benefit in maintaining the development standard, and to do so would not result in any material public benefit in this situation.
- Only a small portion of the new roof contravenes the development standard which is taken from the existing excavated lower ground floor level of the garage and rumpus area. When viewed externally the new addition is not visually prominent.
- The proposed development will result in an improved outcome for the occupants and for the wider community in that there are likely to be no significant amenity impacts for residents and neighbours.
- The proposed development is unlikely to increase the demand on local infrastructure and service and is entirely consistent with such of the zone objectives as are of relevance.
- The residential environment will remain characterised by a diverse range of low density dwelling styles, whilst not detracting from the consistent natural landscape setting.

It is agreed that only a small portion of the development is non-compliant with the development standard, and this portion is not considered to result in any unreasonable environmental or amenity impacts, nor detract from the natural landscaped setting. It is also agreed that the proposal results in an improved living environment that meets the needs of the occupants and strict compliance with the control would detract from this outcome whilst creating no demonstrable public benefit. Furthermore, due to the significant step in the middle of the site, a compliant design would not result in a better built outcome and the proposal is considered to represent a skillful design which compliments the streetscape.

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

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

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

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

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

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

Comment:

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

**Objectives of development standard**

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

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

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

Comment:

The proposed development results in a part 2-3 storey dwelling. Due to the topography of the land, the western portion presents as a three storey dwelling when it is viewed in the streetscape. However, this portion of the dwelling has a generous setback of 14 metres from the primary frontage and is screened to the secondary frontage by the densely vegetated road reserve. It is

therefore considered the dwelling has been designed to be commensurate in scale, height and character to existing and the desired future development in the area consisting of low to medium residential development. The proposed additions will not become visually overbearing upon the streetscape.

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

Comment:

The height of the proposed works will not disrupt view lines and is sufficiently articulated to reduce building mass through use of varied roof lines and wall planes. The proposal also steps down and responds appropriately to the sloping topography of the land whilst incorporating minimal floor to ceiling heights for the proposed upper floor. The shadow diagrams accompanying the application also demonstrate that no adverse overshadowing will result from the proposal. The proposal is sited to not directly overlook the side boundaries or directly into the windows or private open space of adjoining dwellings, subject to recommended conditions of consent.

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

Comment:

The proposed development shall not result in adverse impacts to the scenic quality of any nearby coastal or bush environments.

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

Comment:

The proposed development has been designed to maximise spatial separation between the areas of non-compliance and the primary frontage facing Nenagh Street, whilst also being numerically compliant with all relevant setback controls. In addition, a vegetated road reserve also separates and screens the development to the secondary frontage at Waiwera Avenue. Therefore, there is considered to be minimal visual impact resulting from the proposed works on the public domain.

## Zone objectives

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

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

Comment:

The alterations and additions provide additional living space to cater for changing family needs without compromising the surrounding low density environment.

It is considered that the development satisfies this objective.

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

Comment:



The proposed development will not detract from the enabling of other land uses on this site, or other nearby sites, from providing facilities or services to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

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

Comment:

No substantial site works or changes are proposed to the existing landscaped setting of the site or its immediate surrounds. In this regard, existing on-site vegetation will be generally maintained to provide visual screening and retain the landscaped setting for the existing dwelling and surrounding properties.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

**Warringah Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.18m (Existing Lower Floor FFL 4.82 to Proposed Ceiling Height RL13)	13.61%	No
B3 Side Boundary Envelope	4m (south)	Outside envelope (0.87m max.)	12.29%	No
	4m (east)	Within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (south)	Existing (ground floor)	-	Yes
		3.08m (first floor)	-	Yes

	0.9m (east)	10.71m (ground floor) 6.04m (first floor)	- -	Yes Yes
B7 Front Boundary Setbacks	6.5m	Existing (ground floor) 14.38m (first floor)	- -	Yes Yes
	3.5m (secondary frontage)	3.5m (ground floor) 3.5m (first floor)	- -	Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	41.71% (302.09m <sup>2</sup> )	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

#### Detailed Assessment

#### **B1 Wall Heights**

##### Description of non-compliance

The control limits the external height of walls to 7.2 metres above the existing ground level. The ceiling height of the western portion of the proposed upper floor addition (comprising of Bedroom 1,2 and 3) is located at RL13 AHD, located above the existing ground level of the lower ground floor which ranges between RL 4.82 and RL5.18 AHD. Therefore, the maximum proposed wall height is 8.18 metres, which is a variation of 13.61% from the numerical control.

The eastern portion of the first floor (comprising a rumpus/family room) is located further upslope and complies with the numerical control.

The wall height non-compliance has a generous spatial separation to the primary frontage and is also screened to the secondary frontage by the vegetated road reserve.

##### Merit consideration:

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

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

##### Comment:

The upper floor addition has a generous setback of 14m from the front boundary and complies with the side setback controls, to ensure it will not be visually imposing within the streetscape. The wall height non-compliance is exacerbated by the excavated western portion of the existing lower ground floor, whilst the majority of the dwelling complies with the control. Minimal floor to ceiling heights are also proposed for the first floor. Overall, the proposal is considered to achieve this objective.

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

##### Comment:

The development is sited generally below larger canopy trees within the locality.

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

Comment:

Overall, the application is not considered to result in an unacceptable loss of views.

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

Comment:

As discussed throughout this report, the wall height numeric non-compliance does not have a detrimental impact upon the amenity of nearby residential and public properties, specifically with regard to views, solar access, privacy and visual bulk.

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

Comment:

As noted above, the wall height non-compliance is exacerbated due to the topography of the land whilst the proposal generally has a stepped down presentation in accordance with the natural topography. The proposal retains the environmental value of the site and does not necessitate excessive excavation.

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

Comment:

The upper floor addition involves a gently pitched roof which is necessary to reduce the overall height of the development.

Conclusion

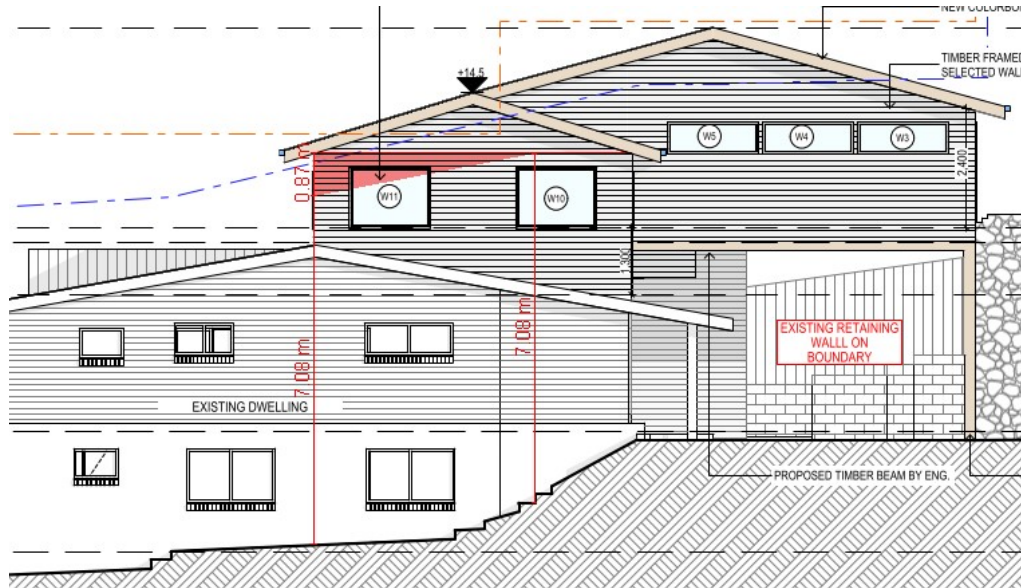
Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

### **B3 Side Boundary Envelope**

Description of non-compliance

The proposed upper floor extension encroaches the building envelope control by 0.87 metres (max.) on the southern side elevation. This represents a variation from the numerical control of 12.29%. The eastern elevation complies with the envelope control.

**Figure 3:** *Southern envelope non-compliance*



#### Merit consideration

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

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

#### Comment:

The proposal complies with the envelope control on the northern side and also complies with all relevant numerical setback and landscaping controls to ensure a compatible visual presentation.

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

#### Comment:

The design, location and orientation of the extensions do not result in adverse solar access or privacy impacts, as demonstrated in the submitted shadow diagrams and architectural plans.

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

#### Comment:

The proposal generally steps down with the topography of the land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **D8 Privacy**

##### Merit consideration

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

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

##### Comment:

The control requires windows of one dwelling to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings. The proposed east-facing window (W2) and door (D1) accessing the stone lookout, both adjoining the upper floor rumpus/family room are located approximately 8.5 metres from the windows to the principal living area of the adjoining property (No.3 Waiwera Avenue). It is noted that the window/door adjoins a trafficable area.

As a result, conditions of consent have been recommended for window W2 to incorporate a raised sill height or obscure glazing up to 1.6 metres above FFL, whilst D1 must also use obscure glazing material.

The remaining windows on the upper floor either have substantial spatial separation to adjoining private open space or adjoin low-trafficable rooms such as a bedroom, and therefore do not require any design amendments.

Overall, the proposal as conditioned will ensure that the siting and design of the proposed dwelling provides a high level of visual and acoustic privacy for occupants and neighbours.

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

##### Comment:

As above, the proposal's design as conditioned demonstrates an innovation solution to improve the urban environment.

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

##### Comment:

The proposal will not impact upon the site's ability to provide personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$6,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$650,000.

### **CONCLUSION**

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

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

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

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

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

Council is satisfied that:

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

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

2) The proposed development will be in the public interest because it is consistent with the objectives of



the standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

## RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2022/0914 for Alterations and additions to a dwelling house on land at Lot 40 DP 20771, 5 Nenagh Street, NORTH MANLY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.01-F	21 October 2022	JJ Drafting
DA.04-F	21 October 2022	JJ Drafting
DA.05-F	21 October 2022	JJ Drafting
DA.06-F	21 October 2022	JJ Drafting
DA.07-F	21 October 2022	JJ Drafting
DA.08-F	21 October 2022	JJ Drafting
DA.10-F	21 October 2022	JJ Drafting

Engineering Plans		
Drawing No.	Dated	Prepared By
DA.12-F (Stormwater Concept Plan)		

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (A453713)	26 May 2022	JJ Drafting
Preliminary Geotechnical Assessment	11 May 2022	White Geotechnical

(J4240)	Group
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	20 April 2022	JJ Drafting

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	1 September 2022

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

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

## 3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work

relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - A. the name and licence number of the principal contractor, and
  - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

#### 4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether

the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

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

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall

notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

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

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

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

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

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

#### 5. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

### FEES / CHARGES / CONTRIBUTIONS

#### 6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$650,000.00.

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

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

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

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

#### 7. **Security Bond**

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

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

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

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

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

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

#### 8. **Stormwater Drainage Disposal**

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

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

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the

proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

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

Reason: To ensure satisfactory management of stormwater.

9. **Amendments to the approved plans**

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

- The sill height of W2 shall be amended to a minimum sill height or alternatively obscure glazing of up to 1.6m when measured from the finished floor level of the first floor level.
- The materials of D1 are to be changed from clear to an obscured (frosted) material.

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

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

10. **Compliance with Standards**

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

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

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

11. **External Finishes to Roof**

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

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

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

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

12. **Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.



Reason: Preservation of significant environmental features.

13. **Protection of Existing Street Trees**

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

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

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

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

Reason: Street tree protection.

14. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

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

Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

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

Reason: Tree and vegetation protection.

15. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

16. **Survey Certificate**

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

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

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

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

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

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

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

17. **Required Tree Planting**

One (1) locally native canopy tree shall be planted within the front setback to achieve at least 6 metres height at maturity, and shall be selected from Northern Beaches Council's Native Plant Species Guide - Curl Curl Ward, or Council's Tree Guide, and in accordance with the following:

i) tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,

ii) planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings and other trees, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,

iii) tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: To maintain environmental amenity.

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

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

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

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

19. **Stormwater Drainage Disposal Certification**

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

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

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation

Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

21. **Landscape Maintenance**

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

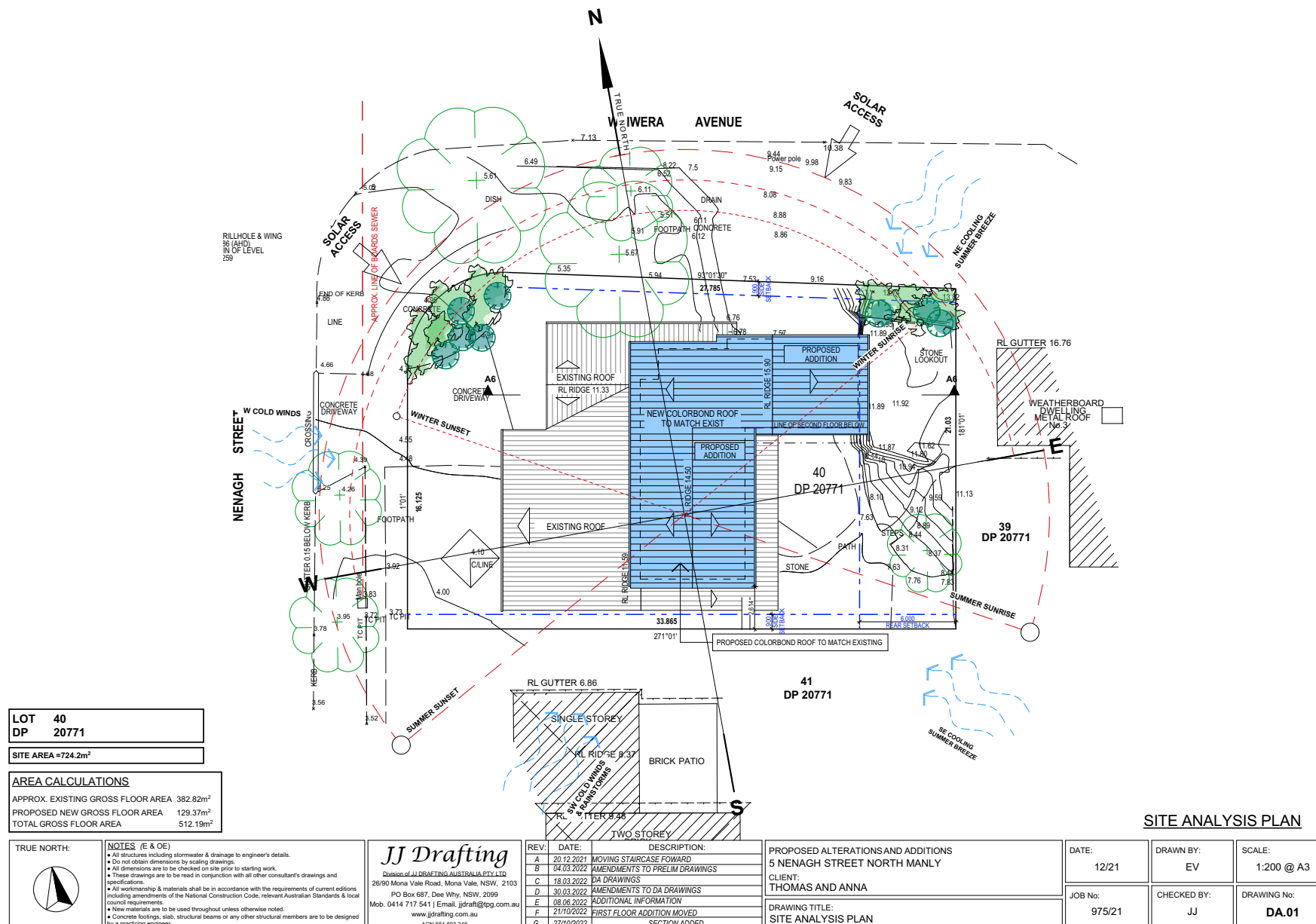
If any tree required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with any conditions of consent.

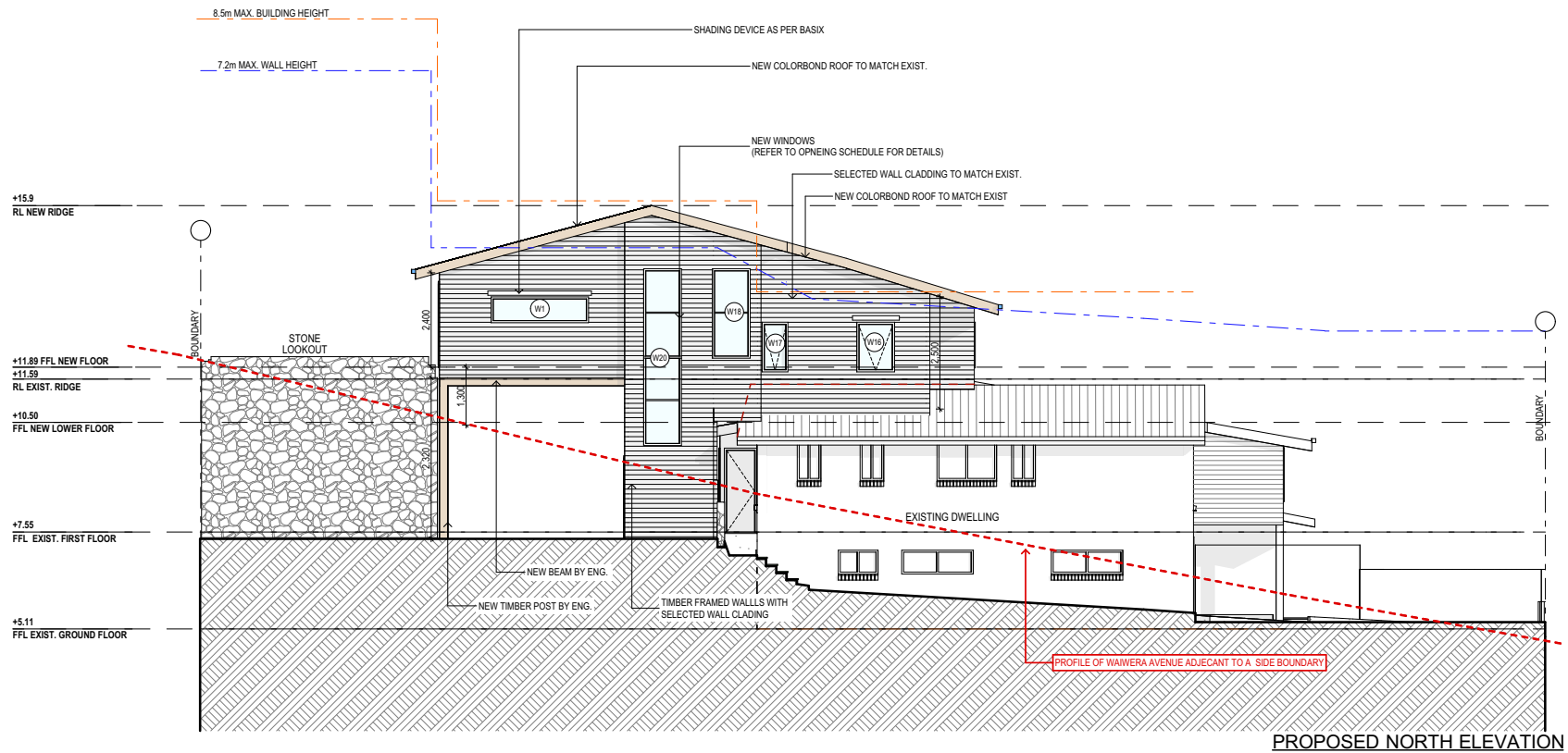
Reason: To maintain local environmental amenity.

22. **Geotechnical Recommendations**

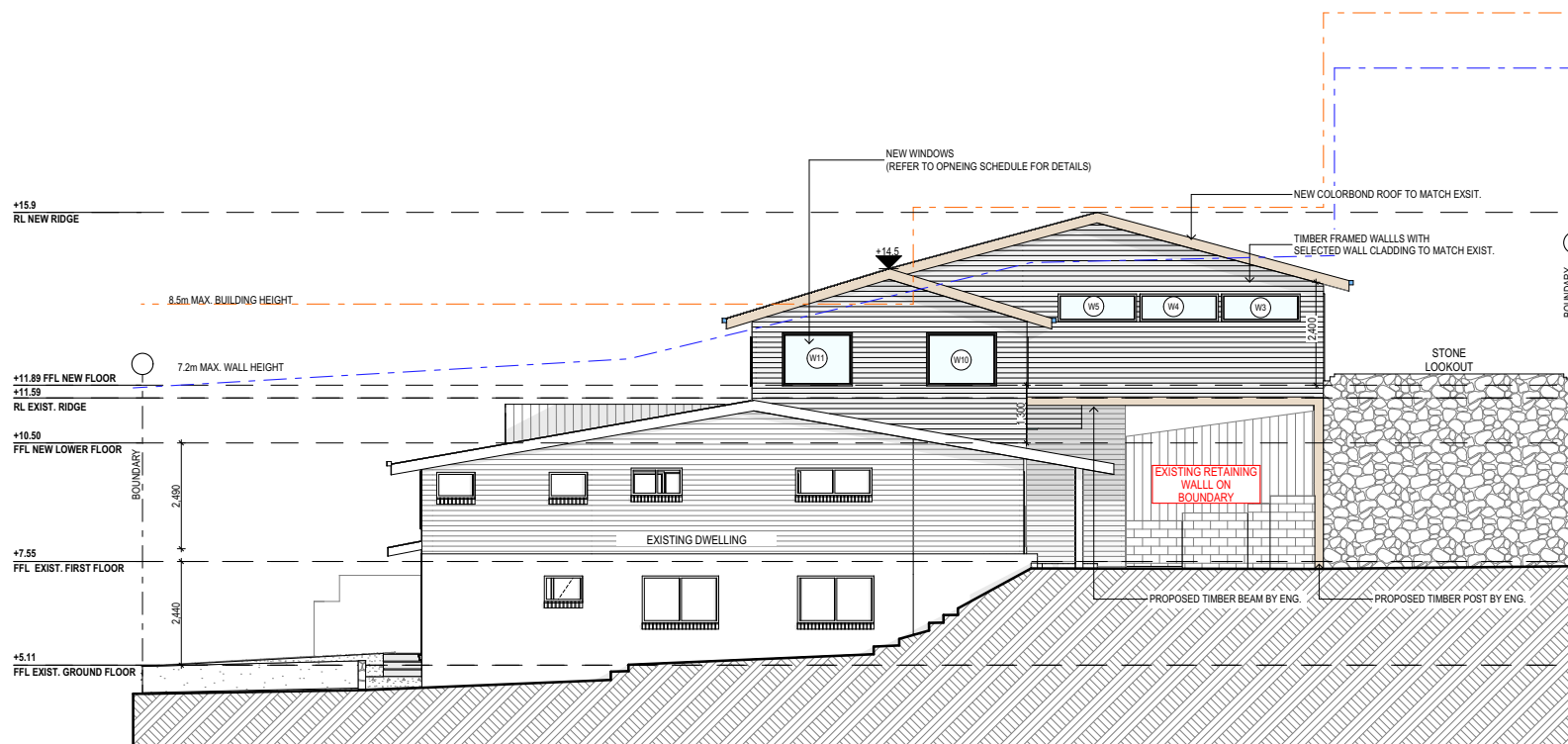
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.





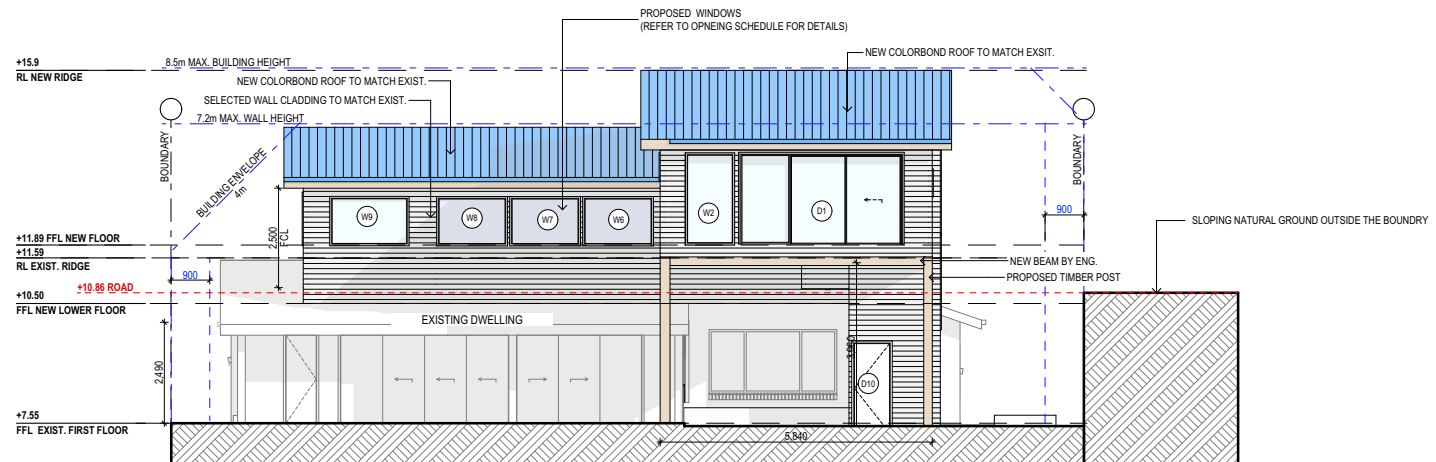
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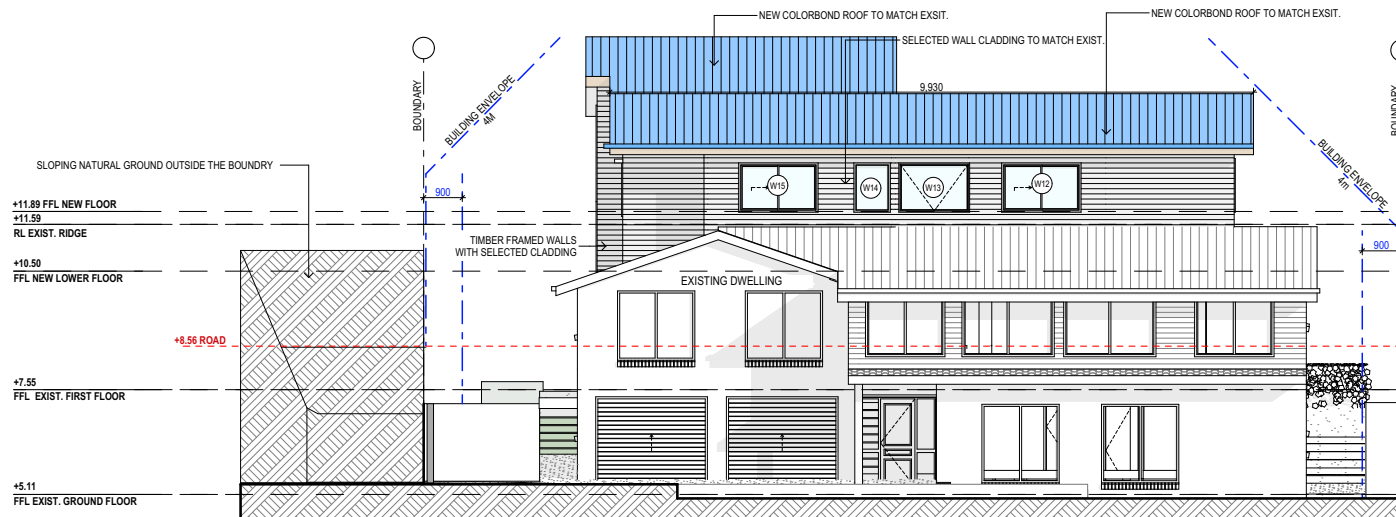
**PROPOSED SOUTH ELEVATION**

<div>NOTES (E &amp; OE)</div> <ul style="list-style-type: none"><li>• All structures including stormwater &amp; drainage to engineer's details.</li><li>• Do not obtain dimensions by scaling drawings.</li><li>• All dimensions are to be checked on site prior to starting work.</li><li>• These drawings are to be read in conjunction with all other consultant's drawings and specifications.</li><li>• All workmanship &amp; materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards &amp; local council requirements.</li><li>• New materials are to be used throughout unless otherwise noted.</li><li>• Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.</li></ul>	<div>JJ Drafting</div> <div>Division of JLDRAFTING AUSTRALIA PTY LTD</div> <div>26/90 Mona Vale Road, Mona Vale, NSW, 2103</div> <div>PO Box 687, Dee Why, NSW, 2099</div> <div>Mob. 0414 717 541   Email: <a href="mailto:jjdraft@tpg.com.au">jjdraft@tpg.com.au</a></div> <div><a href="http://www.jjdrafting.com.au">www.jjdrafting.com.au</a></div> <div>ACN 651 693 346</div>	<div>REV: DATE: DESCRIPTION:</div> <div><div>A20.12.2021MOVING STAIRCASE FORWARD</div><div>B04.03.2022AMENDMENTS TO PRELIM DRAWINGS</div><div>C18.03.2022DA DRAWINGS</div><div>D30.03.2022AMENDMENTS TO DA DRAWINGS</div><div>E08.06.2022ADDITIONAL INFORMATION</div><div>F21/10/2022FIRST FLOOR ADDITION MOVED</div><div>G27/10/2022SECTION ADDED</div></div>	<div>PROPOSED ALTERATIONS AND ADDITIONS</div> <div>5 NENAGH STREET NORTH MANLY</div> <div>CLIENT:</div> <div>THOMAS AND ANNA</div> <div>DRAWING TITLE:</div> <div>ELEVATIONS SHEET 2</div>	<div>DATE:</div> <div>12/21</div> <div>JOB No:</div> <div>975/21</div>	<div>DRAWN BY:</div> <div>EV</div> <div>CHECKED BY:</div> <div>JJ</div>	<div>SCALE:</div> <div>1:100 @ A3</div> <div>DRAWING No:</div> <div>DA.07</div>
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**PROPOSED EAST ELEVATION**



**PROPOSED WEST ELEVATION**

<div>TRUE NORTH:</div> <div></div>	<div>NOTES (E &amp; OE)</div> <ul style="list-style-type: none"><li>• All structures including stormwater &amp; drainage to engineer's details.</li><li>• Do not obtain dimensions by scaling drawings.</li><li>• All dimensions are to be checked on site prior to starting work.</li><li>• These drawings are to be read in conjunction with all other consultant's drawings and specifications.</li><li>• All workmanship &amp; materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards &amp; local council requirements.</li><li>• New materials are to be used throughout unless otherwise noted.</li><li>• Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.</li></ul>	<div><div>JJ Drafting</div><div>Division of JJ DRAFTING AUSTRALIA PTY LTD</div><div>2690 Mona Vale Road, Mona Vale, NSW, 2103</div><div>PO Box 687, Dee Why, NSW, 2099</div><div>Mob. 0414 717 541   Email: jjdraft@tbg.com.au</div><div>www.jjdrafting.com.au</div><div>ACN 651 693 346</div></div>	<div>REV: A</div> <div>DATE: 20.12.2021</div> <div>DESCRIPTION: MOVING STAIRCASE FORWARD</div>	<div>PROPOSED ALTERATIONS AND ADDITIONS</div> <div>5 NENAGH STREET NORTH MANLY</div> <div>CLIENT: THOMAS AND ANNA</div> <div>DRAWING TITLE: ELEVATION SHEET 3</div>	<div>DATE: 12/21</div> <div>DRAWN BY: EV</div> <div>SCALE: 1:100 @ A3</div>
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			<div>G</div> <div>27/10/2022</div> <div>SECTION ADDED</div>		

Dear Chief Executive Officer and planner

21st October 2022

**PREMISES AT 5 Nenagh St North Manly**  
**PROPOSED ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING.**

**CLAUSE 4.6 REQUEST -EXCEPTION TO THE DEVELOPMENT STANDARD (HEIGHT OF BUILDINGS) -WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

This present document is a written variation request submitted under clause 4.6 of Warringah Local Environmental Plan 2011 in connection with a development application seeking consent for alterations and additions to an existing 2 storey dwelling.

**1. INTRODUCTION**

Clause 4.3 of the WLEP controls the height of building. Relevantly, clause 4.3 (2) of WLEP provides that the height of a building on any land is not to exceed the maximum height shown for the land on the height of buildings map, WHICH IS 8.5M.

The site consist of an existing 1 and 2 storey dwelling. The site falls from the rear down to the front of the boundary. Rear of the site the dwelling is single storey, whilst to the front of the property it is 2 storeys in height. The ground floor area has been excavated into site. Back of the ground floor level is 2.73m below the rear of the natural ground level.

An addition has been provided to the top rear of the dwelling and portion of the new roof contravenes the 8.5m building height control. The height above the 8.5m varies between 800mm – 1.2m.

A variation has been requested.

**2. REQUEST TO VARY A DEVELOPMENT STANDARD**

It is requested that a variations be sought for the max height (clause 4.3) for the proposed gable roof above the proposed first floor addition.

The request is submitted to council in connection with and in support of the development application and is to be read in conjunction with the statement of environmental effects and submitted to council in support of and to inform the development application.

The SOEE deals with the impacts of the development proposal in detail and provides details and compliance with the relevant planning controls and objectives.

Clause 4.6 of the WLEP allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 of the WLEP requires that a consent authority be satisfied and consider a written request that seeks to justify the contravention of the development standard by demonstrating -

\* that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

\* That there are sufficient environmental planning grounds to justify contravening the development standard.

\*The applicant's written request has adequately addressed the matters required to be demonstrated to the above.

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

The consent authority's satisfaction as to those matters, must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

### 3. DEVELOPMENT STANDARD TO BE VARIED

The site is Zoned R2 under the WLEP.

This written request is to justify the contravention of the standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development will be in the public interest as it is consistent with the objectives of the standards and are of relevance to the subject matter of the development application and the objectives for the development within the R2 zone under WLEP in which the development is proposed to be carried out.

Portion of the proposed gable roof to the new first floor addition exceeds the 8.5m building height to the rear of the dwelling (max 1.2m). Due to the natural slope of the site the building generally complies except for the ridge of the new roof. Given the changes in height control, the building height is taken from the existing excavated site. In an effort to keep the building height at an acceptable height and without affecting adjoining properties, the design follows the existing topography of the site and the proposed addition does not contravene the required maximum 2 storey level above the natural ground level. The proposed development has been stepped to follow the topography of the land. The proposed gable roof has been designed so that it follows the existing established gable roof to the existing dwelling. The proposed addition will not create a 3 storey dwelling when view from any public place.

When viewed from the north and south side, the proposal is well below the 8.5m building height and does not dominate the streetscape. Due to the existing excavated area below the upper level, the height of the proposed addition will slightly exceed the 8.5m building height – varies between 800mm – 1.2m. It is requested this slight non-compliance be considered, as this portion of the gable roof will not affect adjoining neighbours in view loss, privacy loss or solar loss.

Due to the topography of the land, the existing excavated area below the house and with the site falling towards the front of the site, it is difficult to adhere strictly to the required building height.

### 4. THE OBJECTIVES OF THE STANDARDS

Clause 4.3 (1) of the WLEP and the objectives of this clause are as follows:

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

The proposed first floor addition to the existing dwelling is consistent with the low density character of the area.

The scale of the proposed development is consistent with the adjoining residential lots. The proposed development does not result in any privacy issues or impacts to nearby neighbours, which have been addressed in the statement of environmental effects.

The proposal satisfies this objective.

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

The proposed gable roof above the first floor addition will not affect or disrupt any views from adjoining properties, there will be no loss of privacy and no loss of solar access to adjoining properties due to the proposal.

There will be no effect upon adjoining properties in overshadowing from this proposed addition.

Neighbouring properties are situated on a much higher level in comparison to the subject property/site.

The proposal satisfies this objective

**c) to minimise any adverse impact of development on the scenic quality of Warringahs coastal and bush environments.**

The landscaping complies with the control with 41% of the site remaining as landscaped.

The proposal will not affect the scenic quality of Warringahs coastal and bush environments.

The proposal satisfies this objective.

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

The proposal will not interrupt view corridors of its neighbours to any significant or material extent.

The proposal will not visually impact the streetscape or when viewed from the a public place such as the road, parks, reserve and or a community facility. The proposal has been designed with a gable roof structure to follow the design of the existing dwelling.

The objective satisfies this objective.

**Conclusion to this**

In respect of the height standard which is of a minimal significance with respect to the objectives of the relevant applicable height of building development standard. The gradient of the land and the height of the existing building, and the excavated site below the building which is not visible from the streetscape all assist in ensuring that a casual observer would have some difficulty in reading a small part of the additional height of the roof to the proposed first floor addition.

It is concluded that the development will be consistent and will still satisfy relevant height objectives, notwithstanding the numerical departure from the standard contained in clause 4.3 of WLEP.

The development is consistent with all of the abovementioned objectives of the standard.

The proposed development is consistent with such of the aims of the WLEP as are relevance to the development.

**5. ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT CLAUSE 4.6 (3)(b)**

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposal is consistent with the aims of the WLEP as it constitutes a good environmental planning ground justifying a contravention of the maximum height of buildings development standard contained in clause 4.3 of the WLEP.

Another good environmental planning ground justifying a contravention of the development standard in this instance is that there is no demonstrable public benefit in maintaining the development standard, clause 4.6 (5)(b) in this instance for to do would not result in any material public benefit in this situation.

The maximum height that is achieved in this case is 9.7m(only a small portion of the new roof to the rear ) which is taken from the existing excavated lower ground floor level of the garage and rumpus area. When viewed externally the new addition is not prominent in the excess building height.

The proposed development will result in an improved outcome for the occupants and for the wider community in that there are likely to be no significant amenity impacts for residents and neighbours.

The proposed development is unlikely to increase the demand on local infrastructure and service and is entirely consistent with such of the zone objectives as are of relevance. The residential environment will remain characterised by a diverse range of low density dwelling styles, whilst not detracting from the consistent natural landscape setting.

This is a written request that the development will achieve the relevant zone objectives notwithstanding the numerical non-compliance with the height standard contained in clause 4.3 of the WLEP.

The above constitute good environmental planning grounds to justify contravening the development standard.

#### 6. CONCLUSION

The proposed roof to the addition which contravenes the building height has been designed so that it does not impact the streetscape and to reduce any bulk to building. it will not affect adjoining properties.

Amenity to adjoining properties is maintained and no view loss will be experienced by the proposal.

The proposal will not have an adverse effect on any special ecological, scientific or aesthetic values.

It is requested that this non compliance be supported as there would be no practical utility in enforcing strict compliance with the relevantly applicable height of buildings development standard. All of the above constitutes good environmental planning grounds to justify contravening the development standard in this particular instance.

The variation from the development standard will not contravene any overarching State or regional objectives or standards, it will have no effect outside the site's immediate area and rises no issue of significance for State and or regional environmental planning.

Maintaining strict numerical with the 8.5m height of buildings development standard would not result in any public benefit in this instance. To maintain, to strictly enforce and apply the development standard in this instance would prevent the carrying out of an otherwise well designed residential development which is suited to the site.

#### IN SUMMARY

It is requested that this development justifies the contravention of the height of buildings development standard contained in clause 4.3 of the WLEP by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development shows it will be in the public interest as it is consistent with such of the objectives of the standard as are of relevance to the subject matter of the development application and the objectives for the development within the R2 zoning.

It is sought that this development application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the WLEP.

Yours Sincerely

Jitka Jankovec c/- JJ DRAFTING AUST.P/L