AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 22 FEBRUARY 2023



Ashleigh Sherry
Manager Business System and Administration

northern beaches council

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 22 February 2023 via teleconference Commencing at 10:00am

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 8 FEBRUARY 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 8 February 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 Development Determination Panel Reports

ITEM 3.1	**DA2022/0593 - 3 AMBRYM AVENUE FRENCHS FOREST - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/103377**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2022/0593 for alterations and additions to a dwelling house including a swimming pool on land at Lot 5 DP 230674, 3 Ambrym Avenue FRENCHS FOREST, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0593

Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 5 DP 230674, 3 Ambrym Avenue FRENCHS FOREST NSW 2086
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Paul David Shaw Esther Ilana Shaw
Applicant:	JJ Drafting

Application Lodged:	29/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/05/2022 to 20/05/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 18.82%
Recommendation:	Approval

Estimated Cost of Works:	$ 400,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Northern Beaches Development Determination Panel (DDP) due to a variation to the Height of Buildings development standard of more than 10%. In this regard the variation is 18.82%.

Public exhibition of the development resulted in zero (0) objections to the proposal.

Critical assessment issues included bulk and scale and potential secondary dwelling.

The 4.6 request for the non-compliance with the height standard arises from the site being partially excavated underneath the existing building creating a 18.82% (1.6m) variation. Based on extrapolated natural ground levels the height would only be measured at a maximum of 8.4m. The remainder of the building is under the 8.5m height

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling house.

The works proposed are as follows:

- Top floor addition, incorporating:
  - Home office;
  - Study room;
  - Balcony;
  - Guest bedroom; and
  - Bathroom.
- First floor plan exension to allow for two walk-in robes, ensuite and balcony;
- Ground floor extension to allow for new living room;
- Lower floor extension;
- Internal alterations;
- Swimming pool and associated decking;
- Landscaping; and
- Demolition works.

AMENDED PLANS

On 19 September 2022, Council wrote to the applicant outlining a number of issues that would not allow Council to support the application. The issues raised included building height, privacy and potential secondary dwelling. The applicant prepared amended plans and additional information to address the issues raised. Council agreed to accept the amendments, and amended plans were submitted by the applicant on 11 October 2022.

The amended plans incorporated the following change:

- Deletion of wet bar from top floor plan.
- Additional information: Clause 4.6 request (Building Height).

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space than the original proposal. Therefore, re-notification was not required in accordance with Northern Beaches 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 - B9 Rear Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 5 DP 230674 , 3 Ambrym Avenue FRENCHS FOREST NSW 2086
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Ambrym Avenue, Frenchs Forest. The site is irregular in shape with a frontage of 19.5m along Ambrym Avenue and an average depth of 28.5m. The site has a surveyed area of 702.2m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. The site falls from the front West boundary towards the East rear boundary approximately 7m. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development.

Map:



SITE HISTORY

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

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

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 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)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow

Section 4.15 Matters for Consideration	Comments
	Council to request additional information. Additional information was requested in relation to building height and potential secondary dwelling. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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 06/05/2022 to 20/05/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application seeks consent for alterations and additions to a dwelling house including a swimming pool. 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): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E6 Retaining Unique Environmental Features The Arborist's Report prepared by Ezi Grow is noted. The report indicates removal of 7 trees to accommodate the proposed works. Of these, only 2 are non-exempt species. The non-exempt species are rated Low landscape significance. All other trees on the site are to be retained. No objections are raised to the proposed tree removals. An existing rock outcrop on the southern side of the site is indicated for retention, which is supported. No objections are raised with regard to landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	The application seeks approval for alterations and additions to an existing dwelling, including construction of a swimming pool. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including: **Biodiversity Conservation Act 2016 (BC Act)** **Warringah Development Control Plan (WDCP)** • Clause E2 Prescribed Vegetation • Clause E6 Retaining unique environmental features

Internal Referral Body	Comments
	The submitted Arboricultural Impact Appraisal and Method Statement states seven (7) trees are required for removal, including: • T5 *Cotoneaster sp.* (exempt by species), • T6 *Cyathea cooperi* • T7 *Pinus radiata* (exempt by species), • T10 *Shinus molle* • T14 *Viburnum oderatissimum* (exempt by height), • T23 *Achontophoenix alexandrae* (exempt by species), • T24 *Acer palmatum* (exempt by height). No objection is raised to the removal of T10 due to its habit as an environmental weed. Subject to the replacement of T6 *Cyathea cooperi* with a locally-native tree, no objection is raised. Subject to conditions, the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental 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. A449138 dated 5 April 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 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	6.1m - 10.1m	18.82%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No

Clause	Compliance with Requirements
	(see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.9 Dwelling house or secondary dwelling affected by natural disaster	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:	10.1m
Percentage variation to requirement:	18.82%

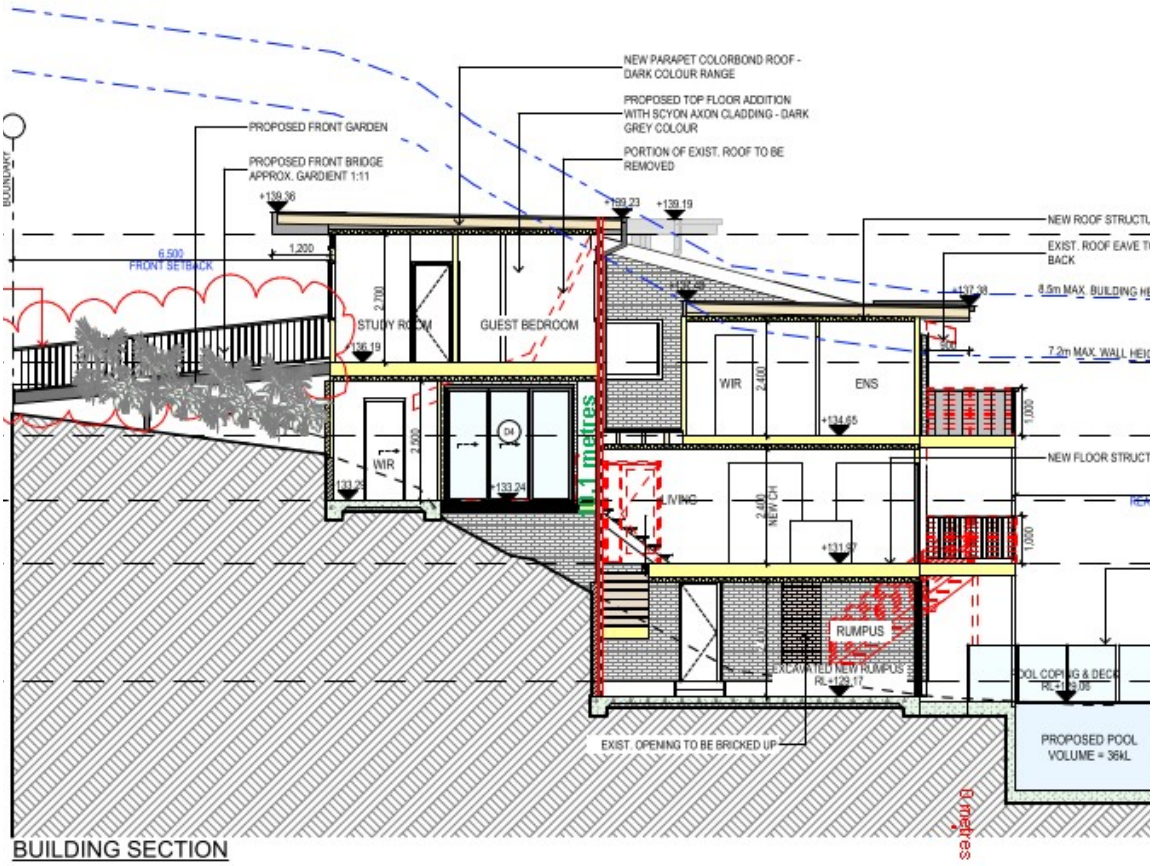


Image 1 - Building Height variation

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 that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v

Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

"The 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 flat roof to the rear) which is taken from the existing excavated lower ground floor level of the workshop. 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".

Planner's Comment:

- The development promotes the orderly and economic use and development of the land, in so far as the proposed replacement of ageing elements and access of a aging building is an orderly response to the development of the site;

- The development promotes good design and amenity of the built environment, noting that the dwelling will not contribute to any unreasonable impact on amenity considerations (i.e solar access, privacy and view loss) to neighbouring properties.

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 whne viewed from the front elevation (Ambrym Avenue) is consistent with neighbouring one and two storey development. The dwelling when viewed from the street will

present as a compliant two storey development.

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

Comment:

The proposed design complies with the relevant controls for sunlight under the WDCP 2011 and involves a design with sufficient physical separation from neighbouring properties to sufficiently minimise privacy loss. The proposed development will not compromise views to and from the subject site and adjoining properties.

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

Comment:

The proposed extension provides a two storey presentation in the streetscape and allows for soft landscaping to the front of the building. This provides a situation in which the scenic quality of the area will be suitably maintained and enhanced.

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

Comment:

The extension will not hot have an unreasonable visual impact when viewed from Ambrym Avenue.

Zone objectives

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

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

  Comment:

  The proposed development retains the residential use of the site.

  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 is for alterations and additions to an existing dwelling house.

  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:

The development is consistent with the desired landscape setting, retaining landscaping to the front and rear of the dwelling.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent 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	8.2m	13.8%	No
B3 Side Boundary Envelope	4m	Within envelope	-	Yes
	4m	Within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m	South- 2.9m	-	Yes
	0.9m	North - 4.05m	-	Yes
B7 Front Boundary Setbacks	6.5m	6.5m	-	Yes
B9 Rear Boundary Setbacks	6m	Swimming pool - 3.4m Dwelling - 6.5m	43%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	41.50% (291.45sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	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	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The maximum wall height of the dwelling has been increased to 8.2m, non-compliant with the 7.2m numeric control. This represents a 13.8% variation to the numeric control.

Merit consideration:

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

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

  Comment:

  The proposed development integrates staggered wall planes and a suitable front setback to reduce apparent building mass. The development responds appropriately to the constraints of the site, and is satisfactory minimised as viewed from public open space and adjoining properties.

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

  Comment:

  There are no significant native trees located on the subject site or on adjoining properties, that will be impacted by the proposal.

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

  Comment:

  The proposed development will not give rise to unreasonable view loss from adjoining properties and public open space.

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

  Comment:

  Amenity aspects of this development including solar access, privacy and views loss of this development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

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

  Comment:

  Reasonable levels of excavation are proposed to ensure the natural landform is kept.

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

  Comment:

  The proposed roof pitch and design is compatible with the variety of room forms within the locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of 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.

B9 Rear Boundary Setbacks

Description of non-compliance

This control requires development to be setback at least 6m from the rear boundary.

The proposed dwelling is setback 6.5m from the front boundary, complying with his control. However, the proposed inground swimming pool is setback 3.4m from the rear boundary, representing a 43% variation to the control.

An exception for a variation to the control is provided within the Clause as follows:

On land zoned R2 Low Density Residential, and land zoned RU4 Rural Small Holdings that has frontage to "The Greenway", Duffy's Forest, where the minimum rear building setback is 6 metres, exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area, provided that the objectives of this provision are met.

The proposal is located within an R2 Low Density Residential zone, and the proposed pool occupies 14.87% of the rear setback area, which meets the requirements for this exception to be applied, provided that the objectives as assessed below are met.

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 opportunities for deep soil landscape areas are maintained.*

  Comment:

  The site retains several garden areas that are capable of accommodating deep soil plantings both to the front and rear of the house.

- *To create a sense of openness in rear yards.*

  Comment:

  The swimming pool is generally inground and will contribute to creating a sense of openness within the rear of the site.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

  Comment:

  The proposed swimming pool complies with the side setback controls and is not expected to have an unreasonable impact on the privacy enjoyed by the occupants and surrounding dwellings. Side boundary fencing would be maintained and areas of landscaping are proposed between the side and rear boundaries which would provide opportunities for screen planting to

mitigate privacy impacts.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

  Comment:

  The pool will not result in an adverse impact upon the visual pattern of development, with the deck not visible from surrounding properties. The dwelling itself is compliant with the rear setback control.

- *To provide opportunities to maintain privacy between dwellings.*

  Comment:

  Acceptable levels of privacy between dwellings is considered to be maintained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) 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 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 $4,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $400,000.

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 DA2022/0593 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 5 DP 230674, 3 Ambrym Avenue, FRENCHS FOREST, 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.02/ Revision F	31 January 2023	JJ Drafting
DA.08/ Revision F	31 January 2023	JJ Drafting
DA.09/ Revision F	31 January 2023	JJ Drafting
DA.10/ Revision F	31 January 2023	JJ Drafting
DA.11/ Revision F	31 January 2023	JJ Drafting
DA.12/ Revision F	31 January 2023	JJ Drafting
DA.13/ Revision F	31 January 2023	JJ Drafting
DA.14/ Revision F	31 January 2023	JJ Drafting
DA.15/ Revision F	31 January 2023	JJ Drafting
DA.16/ Revision F	31 January 2023	JJ Drafting
DA.17/ Revision F	31 January 2023	JJ Drafting
DA.18/ Revision F	31 January 2023	JJ Drafting
DA.19/ Revision F	31 January 2023	JJ Drafting
DA.20/ Revision F	31 January 2023	JJ Drafting
DA.21/ Revision F	31 January 2023	JJ Drafting
OS 1 of 1	31 January 2023	JJ Drafting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Impact Appraisal and Method Statement	25 February 2022	EZIgrow
Geotechnical Assessment	15 February 2022	Ascent Geotechnical Consulting
BASIX Certficiate No. A449138	5 April 2022	JJ Drafting

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**
DA.17/ Revision D	28 September 2022	JJ Drafting

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	17 Feburary 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	N/A

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

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

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

updated information.

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

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **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.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of 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

6. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $4,000.00 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 $400,000.00.

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 $5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

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 Certifying Authority prior to the issue of a Construction Certificate.

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

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

Reason: To ensure satisfactory management of stormwater.

9. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans..

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.

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 Certifying Authority prior to the issue of the Construction Certificate.

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

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

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- 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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Protection of Landscape Features and Sites of Significance**
a) All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

b) Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

c) Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

13. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected including:
   i) all trees and vegetation within the site not indicated for removal in the Arboricultural Impact Assessment dated 25 Feb 2022 prepared by Ezi Grow, 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 the Arboricultural Impact Assessment dated 25 Feb 2022 prepared by Ezi Grow and 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), vi) and vii) 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.

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.

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.

14. **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.

15. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

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

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

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

16. **Landscape Completion**
a) Landscaping is to be implemented in accordance with the approved Landscape Plan.

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

Reason: Environmental amenity.

17. **Replacement of Canopy Trees**
At least 1 locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Gardening Guide.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

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 Certifying Authority prior to issue of any Occupation Certificate.

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

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 Certifying Authority prior to the issue of an Occupation Certificate, and;

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

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

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

Reason: To ensure satisfactory management of stormwater.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

Reason: To protect wildlife habitat.

22. **Replacement of Canopy Trees**
Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

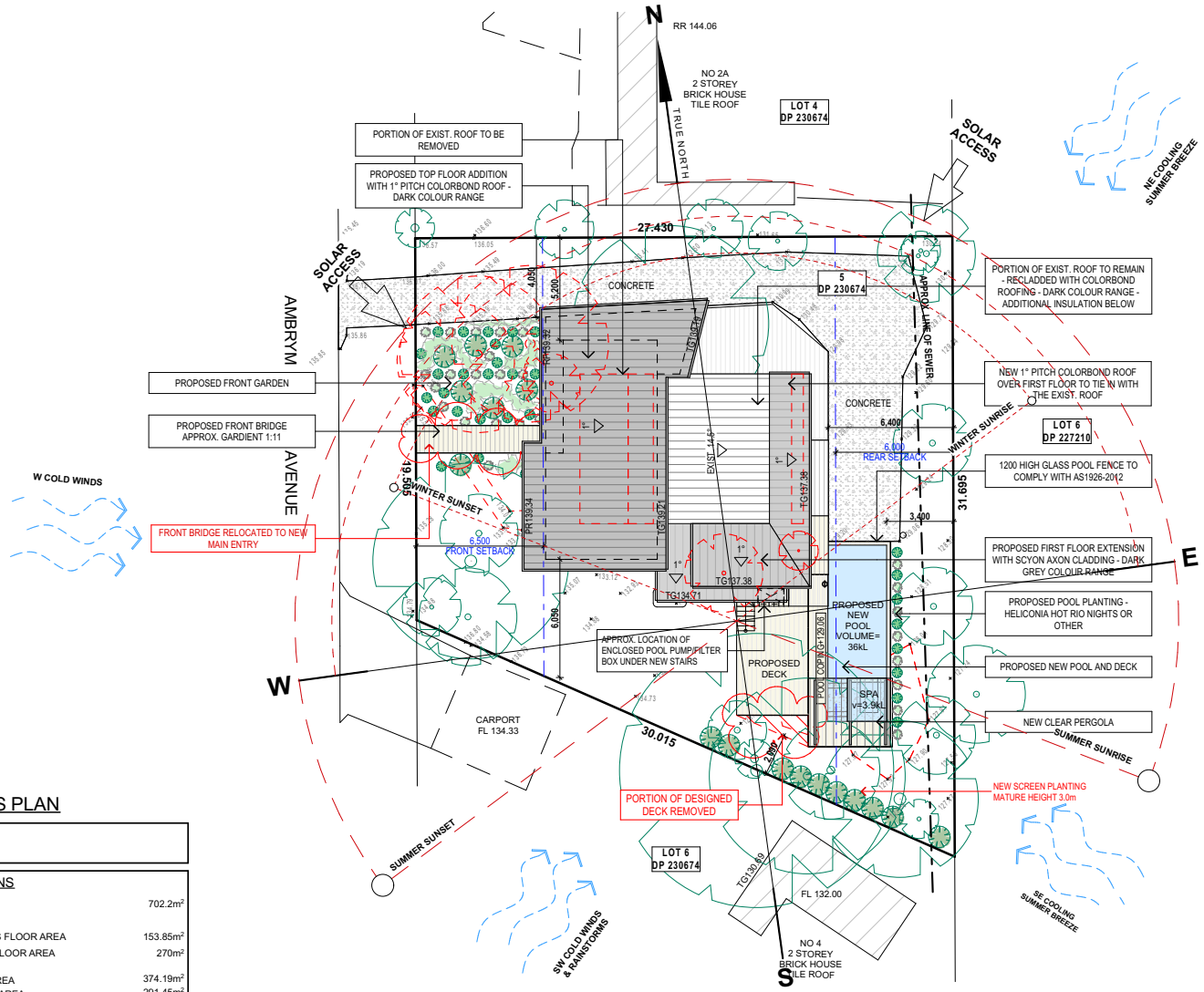
Reason: To replace locally native trees.

23. **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 me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

24. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



SITE ANALYSIS PLAN

LOT	**5**
DP	**230674**

AREA CALCULATIONS

SITE AREA	702.2m²
APPROX. EXISTING GROSS FLOOR AREA	153.85m²
PROPOSED NEW GROSS FLOOR AREA	270m²
EXISTING LANDSCAPED AREA	374.19m²
TOTAL NEW LANDSCAPED AREA	291.45m²

TRUE NORTH:

NOTES (E & OE)
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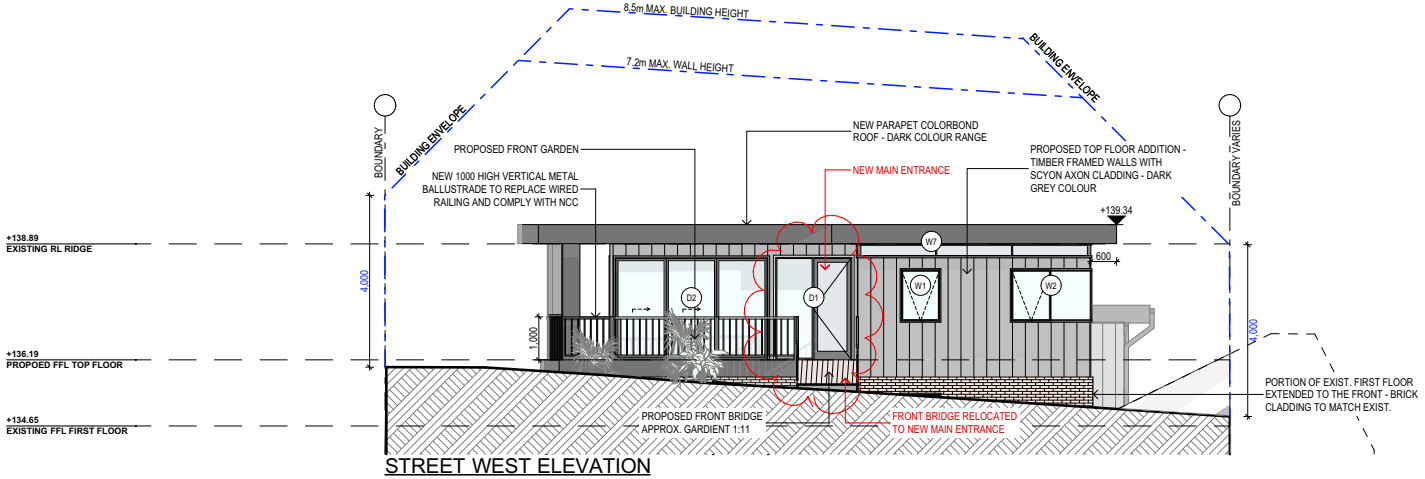
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REV:	DATE:	DESCRIPTION:
A	28.01.2022	AMENDMENTS TO PRELIM DRAWINGS
B	07.02.2022	AMENDMENTS TO PRELIM DRAWINGS
C	17.02.2022	DA DRAWINGS ISSUED
D	28.09.2022	DA DRAWINGS AMENDED
E	05.10.2022	DA DRAWINGS AMENDED
F	31.01.2023	BUILDING SECTION BB

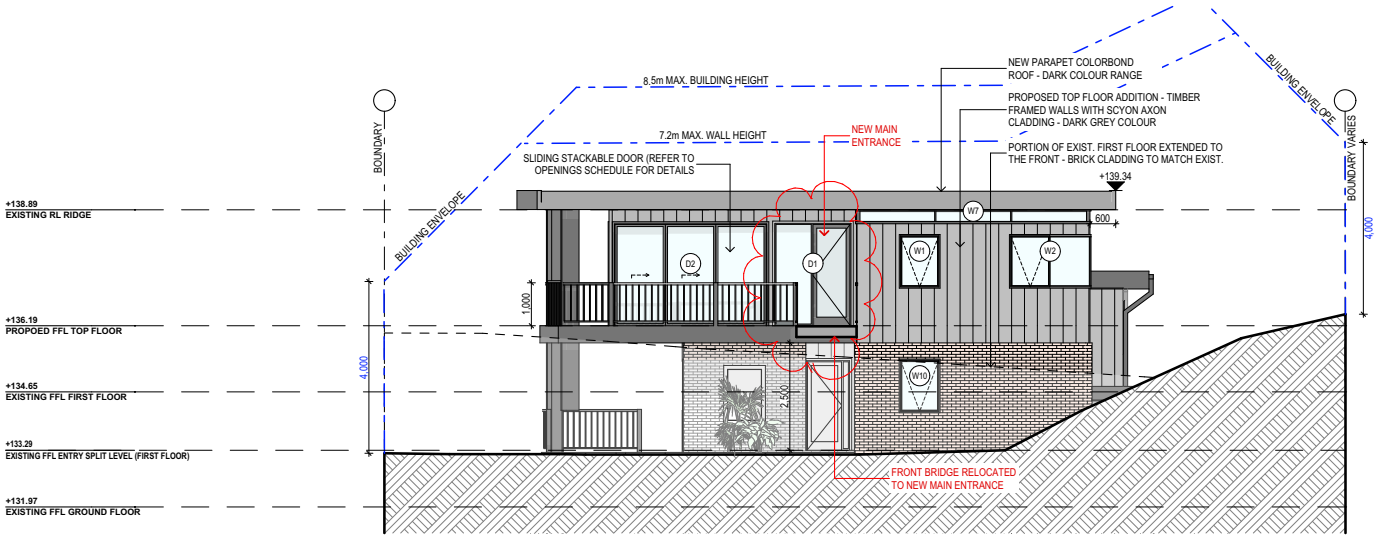
PROPOSED ALTERATIONS AND ADDITIONS
3 AMBRYM AVE, FRENCHS FOREST
CLIENT:
ILANA & PAUL SHAW

DRAWING TITLE:
SITE ANALYSIS PLAN

DATE:	DRAWN BY:	SCALE:
JAN/22	CA	1:200 @ A3
JOB No:	**CHECKED BY:**	**DRAWING No:**
979/22	JJ	**DA.02**



STREET WEST ELEVATION



WEST ELEVATION

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
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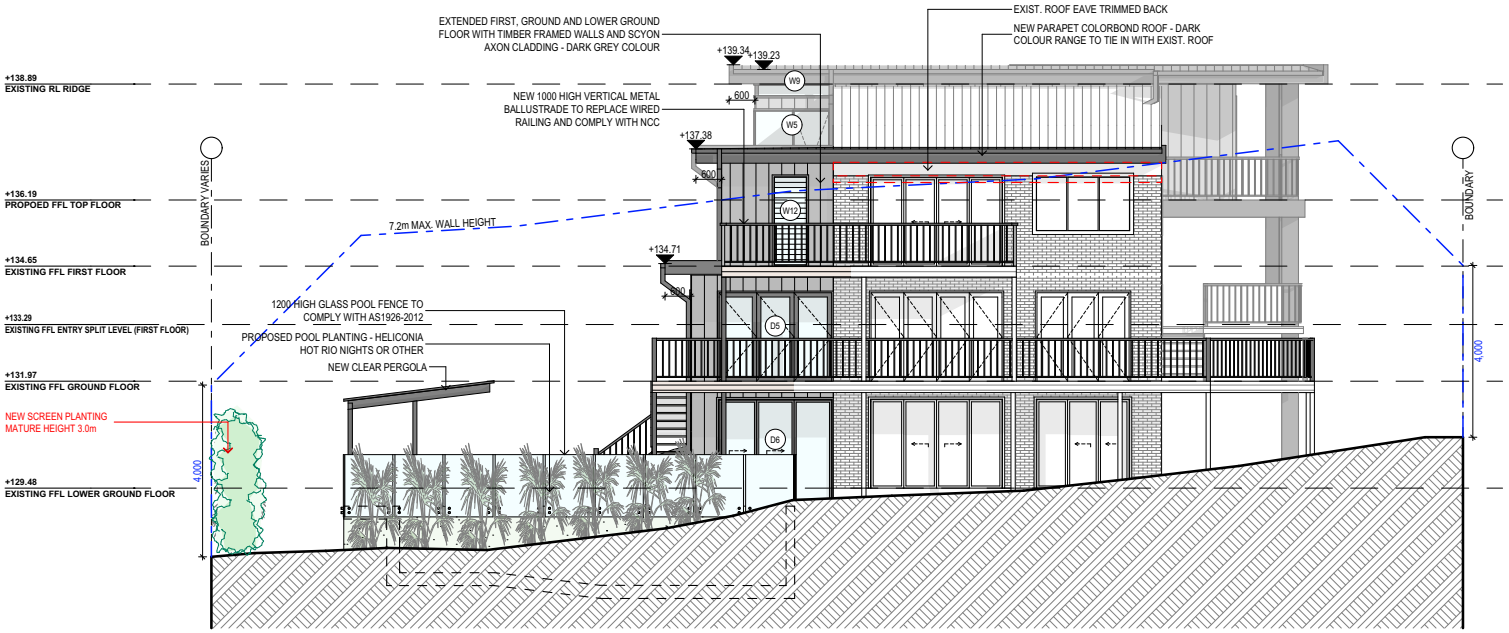
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PROPOSED ALTERATIONS AND ADDITIONS
3 AMBRYM AVE, FRENCHS FOREST
CLIENT:
ILANA & PAUL SHAW

DRAWING TITLE:
PROPOSED WEST ELEVATIONS

DATE:	DRAWN BY:	SCALE:
JAN/22	CA	1:100 @ A3
JOB No: 979/22	CHECKED BY: JJ	DRAWING No: **DA.12**



EAST ELEVATION



ARTIST IMPRESSION FROM PROPOSED NEW SWIMMING POOL AND DECK AREA

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
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- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
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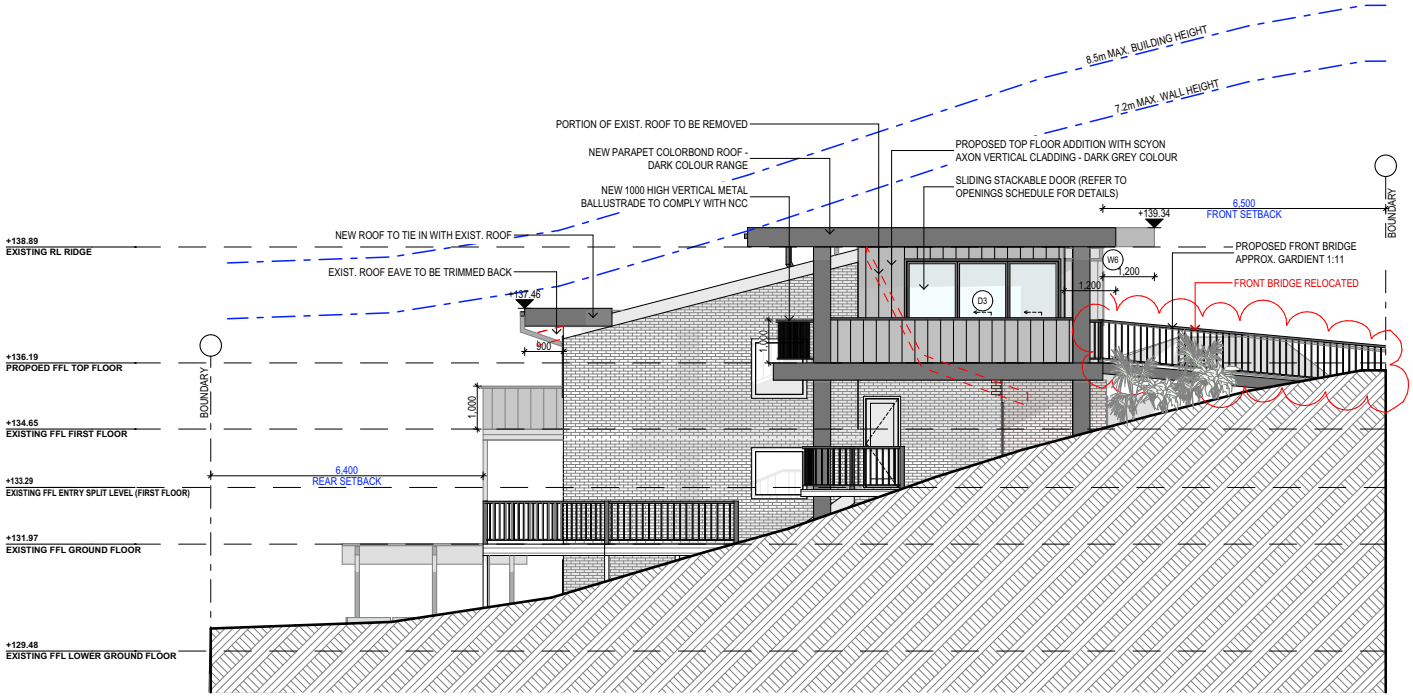
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PROPOSED ALTERATIONS AND ADDITIONS
3 AMBRYM AVE, FRENCHS FOREST
CLIENT:
ILANA & PAUL SHAW

DRAWING TITLE:
PROPOSED EAST ELEVATION

DATE:	DRAWN BY:	SCALE:
JAN/22	CA	1:100 @ A3
JOB No: 979/22	CHECKED BY: JJ	DRAWING No: **DA.13**



NORTH ELEVATION

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
- New materials are to be used throughout unless otherwise noted.
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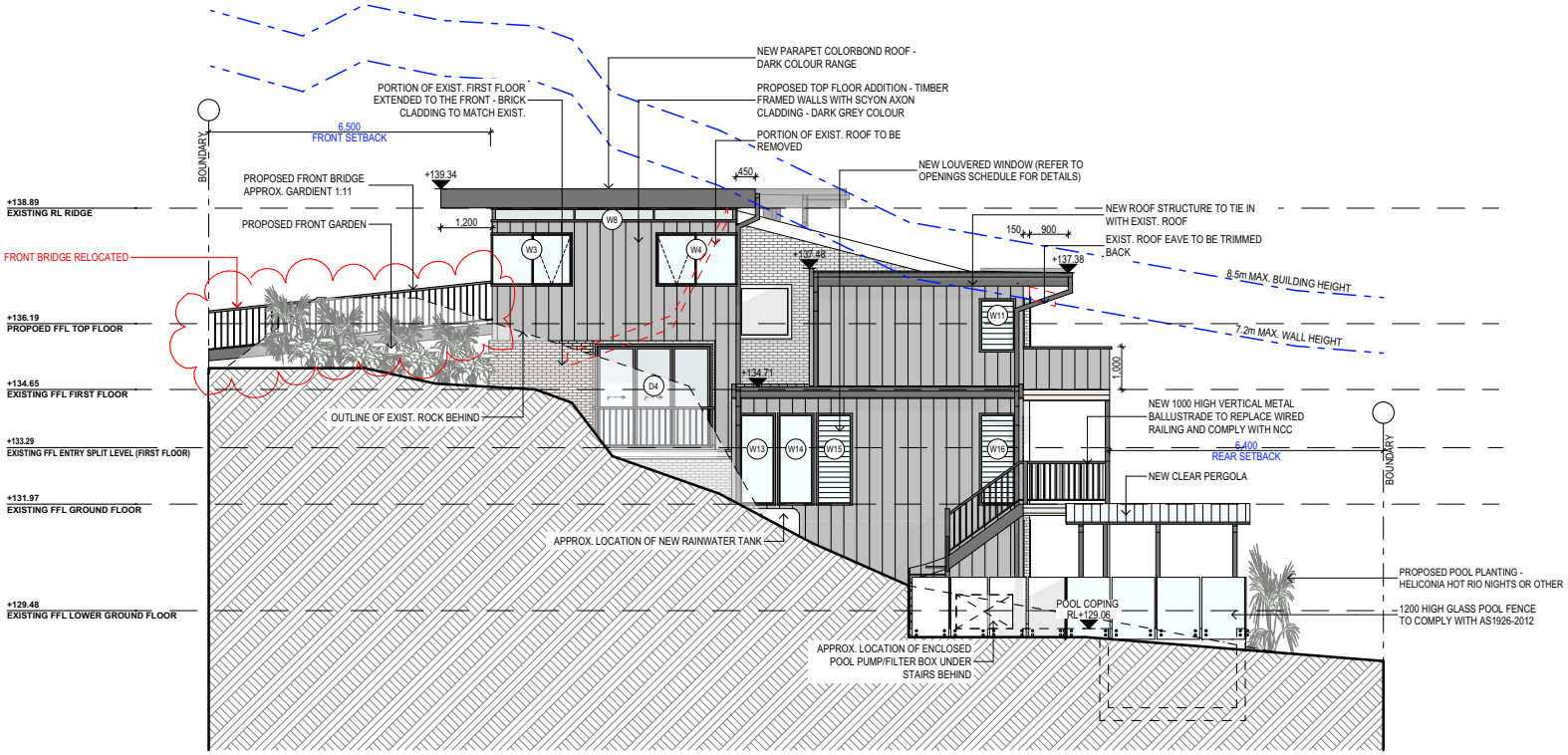
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PROPOSED ALTERATIONS AND ADDITIONS
3 AMBRYM AVE, FRENCHS FOREST
CLIENT:
ILANA & PAUL SHAW

DRAWING TITLE:
PROPOSED NORTH ELEVATION

DATE:	DRAWN BY:	SCALE:
JAN/22	CA	1:100 @ A3
JOB No: 979/22	CHECKED BY: JJ	DRAWING No: **DA.14**



SOUTH ELEVATION

NOTES (E & OE)
- All structures including stormwater & drainage to engineer's details.
- Do not obtain dimensions by scaling drawings.
- All dimensions are to be checked on site prior to starting work.
- These drawings are to be read in conjunction with all other consultant's drawings and specifications.
- All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.
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PROPOSED ALTERATIONS AND ADDITIONS
3 AMBRYM AVE, FRENCHS FOREST
CLIENT:
ILANA & PAUL SHAW

DRAWING TITLE:
PROPOSED SOUTH ELEVATION

DATE:	DRAWN BY:	SCALE:
JAN/22	CA	1:100 @ A3
JOB No: 979/22	CHECKED BY: JJ	DRAWING No: **DA.15**

Dear Chief Executive Officer and planner 11th October 2022

PREMISES AT 3 Ambrym Ave Frenchs Forest
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.

Portion of the building height to the existing building varies from 8.5m to 9.36m depending on the slope of the site.

A small portion of the proposed new flat roof to the new first floor addition contravenes the 8.5m building height control by a maximum of 1.2m. The proposed new flat roof sits directly above the existing ridge level

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 flat 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 unnessary 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 flat 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 small portion 4m in lenght to the rear. Given the changes in height control, the building height is taken from the existing excavated site. The existing 2- 3 level building contravens the current building height. In an effort to keep the building height at an acceptable height and without affecting adjoining properties, the design follows the existing topograpghy of the site and the proposed addition does not contravene the required maximum 2 storey level. The proposed development has been stepped to follow the topography of the land. The proposed flat roof has been designed so that it sits above the existing ridge line. The proposed addition does create a 3 storey dwelling as the existing house consist of a split level design.

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 of the workshop the height of the existing building exceeds the 8.5m by 860mm. It is requested this slight non-compliance be considered, as this small portion of he flat roof eave will not affect adjoning neighbours in view loss, privacy loss or solar loss.

Due to the topography of the land, and with the site falling towards the rear of the site, it is difficult to adhere strictly to the required building height.



ADJONING DWELLING TO THE LEFT, SUBJECT SITE TO THE RIGHT, BLACK LINE INDICATING BUILDING HEIGHT COMPARED TO THE ADJONING DWELLING WHICH SITS MUCH HIGHER TO THE STREETSCAPE

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 flat roof above the first floor addition will not affect or disrupt any views from adjoning 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 overshadwoing 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 over 41% of the site remaining as landscaped. New vegetations are proposed to replace any impacted trees as included in the arborist's report.

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 flat roof structure which will not provide any bulk to the streetscape. The proposal sits lower than other existing dwellings in the streetscape.

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, all assist in ensuring that a casual observer would have some difficulty in reading a small part of the additional height of the flat roof to the propsoed 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 flat roof to the rear) which is taken from the exisitng excavated lower ground floor level of the workshop. 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 emenity 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 consitute good environmental planning grounds to justify contravening the development standard.

6. CONCLUSION

The proposed flat roof to the addition which contravens the building height has been designed so that it does not impact the streetscape and to reduce any bulk to building. The new ridge height is 450mm above the existing ridge level, it will not affect adjoining properties.

Amenity to adjoning 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 demostrating that compliance with the development standard is unreasonable or unnecessary in the circumstances and the 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/- JJDRAFTING AUST.P/L

ITEM 3.2	**MOD2022/0703 - 64 BALGOWLAH ROAD BALGOWLAH - MODIFICATION OF DEVELOPMENT CONSENT DA2020/0774 GRANTED FOR ALTERATIONS AND ADDITIONS TO A RESTAURANT/CAFE AND SIGNAGE**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/101389**
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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to Mod2022/0703 for Modification of Development Consent DA2020/0774 granted for alterations and additions to a restaurant/cafe and signage on land at Lot 17 DP 975160, 64 Balgowlah Road BALGOWLAH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0703

Responsible Officer:	Tony Collier
Land to be developed (Address):	Lot 17 DP 975160, 64 Balgowlah Road BALGOWLAH NSW 2093
Proposed Development:	Modification of Development Consent DA2020/0774 granted for alterations and additions to a restaurant/cafe and signage
Zoning:	Manly LEP2013 - Land zoned B6 Enterprise Corridor
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stephen Hayes Pty Ltd
Applicant:	Raymond Gennaro

Application Lodged:	22/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	09/01/2023 to 25/01/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This proposal, for the modification of Development Consent DA2020/0774 granted for alterations and additions to a restaurant/cafe and signage, has been referred to the Development Determination Panel (DDP) due to the receipt of five (5) objections to the proposal.

Specifically, the application seeks to modify Condition 14 to increase the house of operation. No change is proposed to the patron numbers approved under Condition 17.

The concerns raised in the objections have been considered, addressed and resolved by the imposition of conditions which require the restriction to extended hours within the premises only, and not on the outdoor terrace/verandah. Furthermore, Council's Environmental Health department has imposed

conditions which establish specific criteria for the operation of the use which includes patron numbers, the closure of doors, and noise limits.

The critical assessment issues relate to the proximity of the use (which is situated on the southern periphery of the B6 Enterprise Corridor zone) to the a R1 General Residential zone which is located directly across Balgowlah Road. The conditions imposed have taken into the account the issues raised in the submissions and are considered to achieve a balance between commercial development within the B6 Enterprise Corridor zone and residential amenity.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent to modify development consent DA2020/0774 by amending the approved hours of operation.

The hours of operation approved under DA2020/0774 are contained under Condition 14 which reads:

14. Hours of Operation
The hours of operation are to be restricted to:

- *Monday to Friday – 7am to 10pm.*
- *Saturday, Sunday and Public Holidays – 8am to 10pm.*

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 15 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

The applicant seeks to amend Condition in the following manner (the change to times are emphasized in bold):

14. Hours of Operation
The hours of operation are to be restricted to:

- *Monday to Friday – 7am to **12am**.*
- *Saturday – 8am to **12am**.*
- *Sunday and Public Holidays – 8am to 10pm.*

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 15 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

No physical works are proposed by this application nor any further changes to DA2020/0774.

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

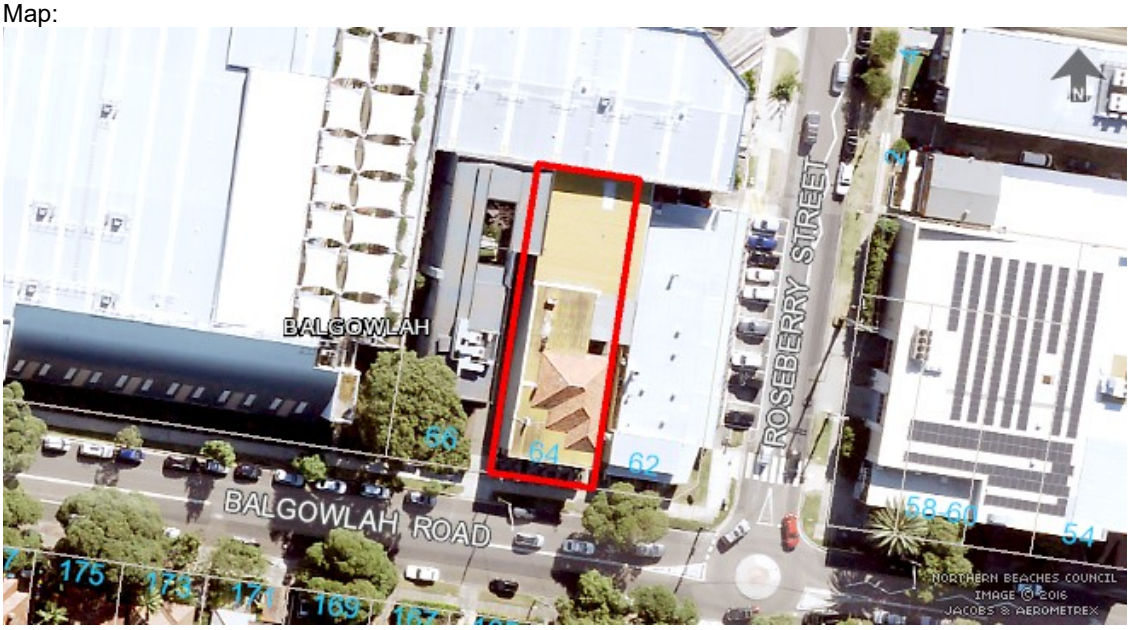
There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 17 DP 975160 , 64 Balgowlah Road BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Balgowlah Road. The site is regular in shape with a frontage of 15.24m along Balgowlah Road and a depth of 46.33m. The site has a surveyed area of 706m². The site is located within the B6 Enterprise Corridor zone and accommodates part two/part three storey building. The site has vehicular access to Balgowlah Road. The site is gradually slopes from the front of the site to the rear with existing stormwater connected to the street gutter. The site is currently occupied by a two-three storey building. The site has no landscape features. **Detailed Description of Adjoining/Surrounding Development** The locality has a variety of property types and sizes. The site is located on the fringe of the B6 Enterprise Corridor zone adjoining the R1 General Residential zone to the south. The existing surrounding development comprises a

	mix including: • Neighbourhood shops to the east (including a hairdresser, butcher, café and bakery). • Commercial Offices to the west. • Bunnings store and warehouse to the west and north. • Manly Freezers (Shop and Warehouse). • Residential Dwellings 28m to the south (including a mix of single detached dwellings, semi-detached dwellings and residential flat buildings).

Map:



SITE HISTORY

DA89/98 Change of Use to a Cafe/Takeaway approved 13 May 1998 (former Manly Council).

Section 96 Modification to DA No. 89/98 (1st Modification)
Section 96 (2) of DA No. 89/98 was approved 13th July 2000.

The Section 96 Modified the original plans approved in 1998 and also amended Condition 4 Hours of Operation as follows:

- 7am to 10pm Monday to Friday.
- 9am to 10pm Saturday.
- 9am to 7pm Sunday.

Section 96 Modification to DA No. 89/98 (2nd Modification)
Section 96 (1a) of DA No. 89/98 was approved 24th June 2003. The Section 96 Modified Condition 2 to increase seats/patrons to 70.

DA2020/0774 for alterations and additions to a restaurant/cafe and signage was approved on

26/08/2020. This is the consent that is proposed to be modified by the current modification application.

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 DA2020/0774, 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	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 Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 where His Honour states: "*[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.* *[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.*

Section 4.55 (2) - Other Modifications	Comments
	[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)." The applicant has provided the following justification to support their argument that the modification is substantially the same: • *This application for modification of a development consent does not alter the external appearance or built form of the subject premises.* • *The amenity and streetscape outcomes of the original development consent are retained with no adverse impacts from the amendments in terms of amenity for privacy or visual impacts. The modification is supported by relevant expert consultant reports.* • The use of the land will remain for the purpose of a restaurant premises, as approved by Council. Reviewing the above comments and the court judgement by Justice Bignold established in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289* 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.
(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 DA2020/0774 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in	The application has been publicly exhibited in

Section 4.55 (2) - Other Modifications	Comments
accordance with: (i) the regulations, if the regulations so require, 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	accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(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 96 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)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.

Section 4.15 'Matters for Consideration'	Comments
	Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal and the conditions imposed by Council's Environmental Health Department. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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 09/01/2023 to 25/01/2023 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 5 submission/s from:

Name:	Address:
Withheld	BALGOWLAH NSW 2093
Mrs Melody Marjorie Plesman-Mackaness Troy Anthony Dafter	171 Balgowlah Road BALGOWLAH NSW 2093
Mr David Ian Gordon Bowan Mrs Lorraine May Bowan	169 Balgowlah Road BALGOWLAH NSW 2093
Mr Mark Lindsay Harrison Mrs Elizabeth Anne Harrison	7 / 32 - 34 Kentwell Road ALLAMBIE HEIGHTS NSW 2100
Mr Craig McGowan	167 Balgowlah Road BALGOWLAH NSW 2093

The following issue was raised in each of the submissions:

- **Noise.**

The submissions raise concern with respect to the proposed extension to the hours of operation, and in particular to the use of the verandah area between 10.00pm and midnight. Concern is with respect to the increase of hours from 10.00pm to midnight, particularly during the working week which is claimed will impact upon the amenity of the submitters.

Other related issues raised in the submissions include noise on the street from motorbikes and vehicles parking on the street outside residential properties to attend the premises, and noise from intoxicated patrons leaving the premises.

Comment
The development is on the periphery of the B6 Enterprise Corridor zone and the R1 General Residential zone. As such, incongruous development is more likely to occur which potentially results in an amenity conflict than would otherwise occur *within* a residential zone.

In order to manage acoustic conflict, the application is appropriately accompanied by an Acoustic Report and a Plan of Management.

With respect to the Acoustic Report, the following recommendations are made:

- "*Maximum number of patrons outdoors should not exceed 20 people.*

- *Maximum number of patrons indoors should not exceed 50 people.*
- *External doors and windows should be kept closed between 10:00 pm and 12:00 am.*
- *Ambient music played inside the restaurant should not exceed a maximum overall noise level of 53 dB LA10. A noise limiter is recommended to be installed as part of the audio / PA system in order to prevent noise output from audio / PA system exceeding this maximum recommended noise level.*
- *Ambient music played in the outdoor areas of the restaurant should not exceed a maximum overall noise level of 50 dB LA10 within these outdoor areas. A noise limiter is recommended to ensure this operational limit is achieved.*
- *If no music is played in the external area after 10pm, a noise limiter may not be required*".

In the above list, the "*maximum number of patrons outdoors should not exceed 20 people*" is not accepted as a restriction is considered necessary to prevent the use of the outdoor area after the approved 10.00pm.

With respect to noise generated on the street by patrons, it is noted that the Operational Plan of Management submitted with this application (and included as enforceable condition of consent) addresses this:

"*The staff and management of the premises shall consider the amenity of its residential neighbours and shall take all reasonable measures to ensure that adverse impacts to nearby residents do not occur. The operators of the premises will take all reasonable measures to ensure that the behaviour of patrons when entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. The premises shall operate in a manner so as not to significantly affect the amenity of the neighbourhood by reason of noise, odour, or waste*".

Council's Environmental Health Department has reviewed the application (including the submitted Acoustic Report and the Operational Plan of Management) and raises no objection to the proposal subject to conditions which respond to the recommendations of the Acoustic Report and the commitments of the Plan of Management.

Notwithstanding, given a review of the imposed conditions against comments received from the notification of the proposal and the NSW Police, together with consideration of the close proximity between the B6 Enterprise Corridor zone and the R1 General Residential zone, and in achieving a mutually suitable outcome to address residential amenity whilst not unreasonably limiting economic development, the condition relating to Hours of Operation is to be amended the read:

14. Hours of Operation
The hours of operation are to be restricted to:

- *Monday to Friday – 7am to 12am.*
- *Saturday – 8am to 12am.*
- *Sunday and Public Holidays – 8am to 10pm.*

The hours of operation for the outdoor area / front terrace are to be restricted to:

- *Monday to Friday – 7am to 10pm.*
- *Saturday – 8am to 10pm.*
- *Sunday and Public Holidays – 8am to 10pm.*

Reason: Amenity for surrounding residential properties.

Furthermore, Condition 11 is to be amended to require the Plan of Management to be updated to include the hours of operation as detailed in Condition 14, the operational requirements as detailed in Condition 19, and the recommendations contained in the Acoustic Report by Pulse White Noise Acoustics within the scope of Conditions 14 and 19.

Additional Condition 20 requires the updated Plan of Management to be adhered to during all operational hours for the life of the development.

Additional Condition 21 requires that all recommendations contained in the Acoustic Report by Pulse White Noise Acoustics shall be implemented and maintained during the operation of the business. Particular attention is directed to the management of closing windows and doors; minimization of music internally (non externally) ; closing time of the outdoor seating area and to ensure offensive noise is not audible at any residential premises at any time. The background music sound level is to be set (and secured) by the acoustic consultant.

The conditions imposed are enforceable. Should any noise intrusion occur beyond the scope of the conditions then the submitter may contact Council's Ranger Department and Council's Compliance Department for further investigation and action.

Subject to the use operating within the limitations of the conditions, this issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	Environmental Health has been requested to provide comment on the proposed extension to the hours of operation. The application is supported by an amended Plan of Management and Acoustic Report. Environmental Health has concerns that acoustic amenity of residential receivers may be compromised by operation of an industrial zoned premise directly adjacent to residential properties. Therefore additional operational conditions are to be incorporated into the consent to control the activity. **Recommendation** APPROVAL - subject to conditions <u>Planner Comments</u> Notwithstanding the comments provided by Council's Environmental Health Officer, a review of the imposed conditions against comments received from the notification of the proposal and the NSW Police indicates that the condition related to the Hours of Operation should be extended to limit the use of the verandah to read as follows: ***Hours of Operation*** *The hours of operation are to be restricted to:*

Internal Referral Body	Comments
	• *Monday to Friday – 7am to 12am.* • *Saturday – 8am to 12am.* • *Sunday and Public Holidays – 8am to 10pm.* *The hours of operation for the outdoor area / front terrace are to be restricted to:* • *Monday to Friday – 7am to 10pm.* • *Saturday – 8am to 10pm.* • *Sunday and Public Holidays – 8am to 10pm.* *Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 15 minutes.* *Reason: Amenity for surrounding residential properties.* The above condition is in response to the close proximity between the B6 Enterprise Corridor zone and the R1 General Residential zone, and achieving a mutually suitable outcome to address residential amenity whilst not unreasonably limiting economic development. The above amendment to Condition 14 has been discussed with Council's Environmental Health Officer who is in agreement given the proximity.

External Referral Body	Comments
NSW Police - Crime Prevention Office (Local Command matters)	The application was referred to NSW Police for review and comment. No objection was raised and the following three conditions were recommended to be imposed for the purposes of public safety: ***Hours of Operation*** *The hours of operation are to be restricted to:* • *Monday to Friday – 7am to 12am.* • *Saturday – 8am to 12am.* • *Sunday and Public Holidays – 8am to 10pm.* *The hours of operation for the outdoor area / front terrace are to be restricted to:* • *Monday to Friday – 7am to 10pm.* • *Saturday – 8am to 10pm.* • *Sunday and Public Holidays – 8am to 10pm.* *Reason: Amenity for surrounding residential properties.* ***Number of Patrons***

External Referral Body	Comments
	The restaurant is to be limited to a maximum of 70 patrons as follows: • *Maximum of 20 patrons to the front terrace.* • *Maximum of 50 patrons within the restaurant.* *Reason: Amenity for surrounding residential properties.* ***Acoustic Report*** *All recommendations contained in the acoustic report by Pulse White Noise Acoustics (13/10/2022) shall be implemented and maintained during the operation of the business. Particular attention is directed to the management of closing windows and doors; minimization of music internally (non externally) ; closing time of the outdoor seating area and to ensure offensive noise is not audible at any residential premises at any time. The background music sound level is to be set (and secured) by the acoustic consultant.* *Reason: Amenity for surrounding residential properties.* On review of the above comments and the comments made in the submission (particularly in light of the close proximity between the B6 Enterprise corridor zone and the R1 General Residential zone), the limitation on the use of the verandah as outlined in the above Hours of Operation condition is considered to be reasonable in maintaining the amenity of the area.

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)

Nil

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
The proposal is for an amendment to the hours of operation only. No physical changes are proposed which would otherwise require assessment against the Development Standards of the MLEP.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	N/A
4.6 Exceptions to development standards	N/A
6.21 Noise impacts—licensed premises	Yes

Manly Development Control Plan

Built Form Controls
The proposal is for an amendment to the hours of operation only. No physical changes are proposed which would otherwise require assessment against the built form controls of the MDCP.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.8 Waste Management	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

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 CONCLUSION

This proposal, for the modification of Development Consent DA2020/0774 granted for alterations and additions to a restaurant/cafe and signage has been referred to the Development Determination Panel (DDP) due to the receipt of five (5) objections to the proposal.

Specifically, the application seeks to modify Condition 14 to increase the house of operation. No change is proposed to the patron numbers approved under Condition 17.

The concerns raised in the objections have been considered, addressed and resolved by the imposition of conditions which require the restriction to extended hours within the premises only, and not on the outdoor terrace/verandah. Furthermore, Council's Environmental Health department has imposed conditions which establish specific criteria for the operation of the use which includes patron numbers, the closure of doors, and noise limits.

The critical assessment issues relate to the proximity of the use (which is situated on the southern periphery of the B6 Enterprise Corridor zone) to the a R1 General Residential zone which is located directly across Balgowlah Road. The conditions imposed have taken into the account the issues raised in the submissions and are considered to achieve a balance between commercial development within the B6 Enterprise Corridor zone and residential amenity.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0703

for Modification of Development Consent DA2020/0774 granted for alterations and additions to a restaurant/cafe and signage on land at Lot 17 DP 975160,64 Balgowlah Road, BALGOWLAH, subject to the conditions printed below:

A. Add Condition 1A 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) Approved Documents

Reports/Documentation - All Recommendations and Requirements Contained Within:		
Memorandum (220535-64) - Extension of Hours	13 October 2022	PWNA
Plan of Management (Revision 2)	29 November 2022	Not Provided

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 and documents.

B. Amend Condition 11 Plan of Management to read as follows:

11. Amendment to the Plan of Management

The Plan of Management referred to in Condition 1A is to be amended and kept on site (and a copy sent to Council for its records) and include, but not be limited to:

- The hours of operation as detailed under Condition 14.
- The Operational Requirements as detailed under Condition 19.
- All recommendations contained in the Acoustic Report by Pulse White Noise Acoustics (13/10/2022) within the scope of Conditions 14 and 19.
- Operational procedures of the restaurant.
- Waste management procedures including disposal of glass waste (proposed delivery and waste service hours to the premises to be 7am-5pm) Security arrangements including patrons leaving the immediate area on exit Method of recording and actioning any complaints if received directly from affected residents ensuring smoke/odours do not become a public nuisance.
- The service of alcohol.

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

Reason: This condition has been applied to maintain a reasonable level of amenity to the area.

C. Add Condition 11A Electronic Noise Limiter Certification to read as follows:

Prior to the release of the occupation certificate an electronic noise limiter is to be installed as part of the audio / PA system and be enclosed in a tamper proof enclosure with no access to the limiter

controls by staff or management of the venue. The noise limiter is to be set and certified by a suitably qualified acoustic consultant to the following requirements;

Ambient music played inside the restaurant must not exceed a maximum overall noise level of 53 dB LA10 when measured in the center of the room.
Ambient music played in the outdoor areas of the restaurant must not exceed a maximum overall noise level of 50 dB LA10 within any part the outdoor area

Details demonstrating compliance are to be provided to the satisfaction of the principle certifier.

Reason: To ensure adequate acoustic controls are installed an in place prior to operation.

C. Modify Condition 14. Hours of Operation to read as follows:

The hours of operation are to be restricted to:

- Monday to Friday – 7am to 12am.
- Saturday – 8am to 12am.
- Sunday and Public Holidays – 8am to 10pm.

The hours of operation for the outdoor area / front terrace are to be restricted to:

- Monday to Friday – 7am to 10pm.
- Saturday – 8am to 10pm.
- Sunday and Public Holidays – 8am to 10pm.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 15 minutes.

Reason: Amenity for surrounding residential properties.

D. Add Condition 19 Operational Requirements Between 10pm and 12am to read as follows:

The following operational requirements must be in place **between the operating hours from 10:00pm until 12:00am**.

a) Maximum number of patrons indoors must not exceed 50 people.
b) External doors and windows must be kept closed between 10:00 pm and 12:00 am.
c) Ambient music played inside the restaurant must not exceed a maximum overall noise level of 53 dB LA10 when measured in the center of the room.
d) No music is to be played in the outdoor areas of the restaurant.
e) A noise limiter must be to be installed and operational as part of the audio / PA system and be enclosed in a tamper proof enclosure with no access to the limiter controls by staff or management of the venue.

Reason: To protect surrounding residence from any noise generated by the operation of the development.

E. Add Condition 20 Plan of Management to read as follows:

The Plan of Management - revision 2 referenced as "64 Balgowlah Road, Balgowlah NSW 2093 Statement of Modification - Development Application DA2020/0774 Modification to Condition 14 – Hours of operation" and dated 29 November 2022 (and as required to be amended by any condition in this approval) is to be adhered to during all operational hours for the life of the development.

Reason: To ensure operational requirements are adhered to.

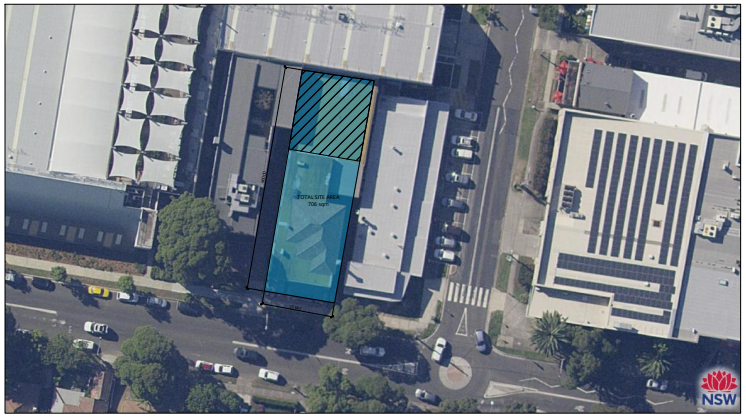
F. Add Condition 21 Acoustic Report to read as follows:

All recommendations contained in the Acoustic Report by Pulse White Noise Acoustics (13/10/2022) shall be implemented and maintained during the operation of the business. Particular attention is directed to the management of closing windows and doors; minimization of music internally (non externally) ; closing time of the outdoor seating area and to ensure offensive noise is not audible at any residential premises at any time. The background music sound level is to be set (and secured) by the acoustic consultant.

Reason: Amenity for surrounding residential properties.



1:1 LOCATION PLAN



1:2 SITE PLAN

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

DA2020/0774

JMP INTERIOR DESIGN

GENERAL NOTES:

DRAWINGS TO BE READ IN CONJUNCTION WITH INTERIOR FINISHES SCHEDULE.

DRAWINGS TO BE READ IN CONJUNCTION WITH ARCHITECTURAL OR OTHER CONSULTANTS' DRAWINGS.

CHECK ALL DIMENSIONS ON-SITE PRIOR TO CONSTRUCTION OR FABRICATION OF JOINERY OR OTHER COMPONENT OFF-SITE. DIMENSIONS ARE GENERALLY IN MILLIMETERS, UNLESS OTHERWISE SPECIFIED.

IN CASE OF DISCREPANCIES BETWEEN DOCUMENTS OR SITE CONDITIONS AGAINST GID DOCUMENTS, VERIFY WITH INTERIOR DESIGNERS PRIOR TO CONSTRUCTION.

SITE LOCATION LEGEND:

KEY:

LOCATION OF Lot 17 | Sec E | DP 975160 64 BALGOWLAH ROAD, BALGOWLAH NSW 2093

ZONE OF EXISTING CAR PARKING ON SITE PER DA1989/1998 CONDITIONS

INFORMATION SCHEDULE:

TOTAL AREA OF SITE 706 m²

DRAWING LIST

DA01	Location & Site Plan
DA02	Demolition Plan
DA03	Proposed Tenancy Floor Plan
DA04	Elevations & Schedule of Interior Finishes
DA05	Proposed Shopfront Design & Schedule of Exterior Finishes
DA06	Proposed Building Signage
DA07	Waste Management Plan

TOWN PLANNER: FOUR TOWNS PLANNING | Mathew Quattroville

SURVEYOR: BRYNE & ASSOCIATES | Paul Bryne

ACOUSTIC CONSULTANT: PULSE ACOUSTIC CONSULTANCY

CLIENT: RAY GENNARO

PROJECT: CIAO BELLI / RAY'S PIZZA
Lot 17 | Sec E | DP 975160
64 Balgowlah Road,
BALGOWLAH, NSW, 2093

DATE	AMENDMENT DESCRIPTION	ISSUE	DRAWN
08/07/20	DA APPLICATION	DA	JMP

DRAWING TITLE:
LOCATION & SITE PLAN
Lot 17 | Sec E | DP 975160

64 BALGOWLAH ROAD
BALGOWLAH, NSW 2093

STATUS: DEVELOPMENT APPLICATION

DRAWN	APPROVED	PROJ. NO.	ISSUE
JMP	RG	20.01	DA

SCALE	DATE	DRAWING
NTS	24/06/20	DA01

IMPORTANT: This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings. Verify all dimensions on-site before commencing work. Any discrepancies to be referred to Interior Designer prior to proceeding. Josephine Maruca-Parker Interior Design shall not be liable for any loss or claims, whatsoever, arising from or in respect of any errors existing or resulting from data, howsoever, transferred from the computer system of the Interior Designer to systems of the Client or other Consultants. The recipient of the data shall be responsible for checking accuracy and completeness of data received. Any use of the electronic data, in part or whole, shall be at the user's risk. The CAD files and their contents are solely representations of the Project information and cannot be relied upon beyond the representation shown on the PDF versions of the drawings, as provided by the Interior Designer. Copying or reproduction of this drawing is strictly prohibited without the consent of Josephine Maruca-Parker Interior Design.

ITEM 3.3	**MOD2023/0006 - 11 LYLY ROAD ALLAMBIE HEIGHTS - MODIFICATION OF DEVELOPMENT CONSENT DA2022/0511 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SECONDARY DWELLING AND CARPORT**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/097054**
ATTACHMENTS	**1 ⇩Assessment Report**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to Mod2023/0006 for Modification of Development Consent DA2022/0511 granted for alterations and additions to a dwelling house including a secondary dwelling and carport on land at Lot A DP 22132, 11 Lyly Road ALLAMBIE HEIGHTS, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0006

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot A DP 22132, 11 Lyly Road ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Modification of Development Consent DA2022/0511 granted for Alterations and additions to a dwelling house including a secondary dwelling and carport
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	David John Guzzo Maria Galati
Applicant:	David John Guzzo

Application Lodged:	12/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	23/01/2023 to 06/02/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent for changes to the timeframes and requirements listed in the deferred commencement Condition No. 1.

The application is referred to the Development Determination Panel (DDP) as it seeks the amendment of Condition No. 1, which was previously imposed by the DDP.

One submission was received in response to Council's notification of the application and is addressed in the report.

The proposal does not result in any material change to the overall outcome of the approved development.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks the amendment of the deferred commencement condition No. 1 included in the consent granted for DA2022/0511.

Condition No. 1 of DA2022/0511 reads as follows:

1. Deferred Commencement - Building Information Certificate, BCA Report, Stormwater and Works Carried Out

An application for a Building Information Certificate, with respect to the unauthorised works to and use of the secondary dwelling and any other unauthorised works onsite (including stormwater works), shall be lodged within 60 days from the date of the Notice of Determination. The application is to be accompanied by a Building Code of Australia (BCA) Report and an updated survey, at the time of lodgement. Any upgrading works required in relation to the BCA Report and stormwater works are to be carried out within 90 days from the date of issue of the Building Information Certificate by Council, and written confirmation that the works have been completed is to be provided by the Manager Building Assessment and submitted with the deferred commencement review form.

Reason: To regularise unauthorised development and ensure required building upgrades and stormwater management works are carried out.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within the time periods stated above, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Background and Consideration Proposed Modification

DA2022/0511 was approved as a deferred commencement consent, with the matters listed in the above condition No. 1 to be satisfied prior to the activation of the consent. The application was considered by Council's Development Determination Panel (DDP) at the meeting of 26 October 2022. However, the DDP minutes were not finalised until 9 November 2022, and the consent was not issued to the applicant until 10 November 2022.

The Notice of Determination listed both the determination date and the consent's operational date as the date of the DDP meeting, 26 October 2022. The resultant delay in the issuing of the consent to the applicant effectively reduced the 60 day timeframe for the lodgement of the required Building Information Certificate (BIC) by 15 days. This is considered to be a Council error as the operational date should have been listed as 9 November 2022, being the date that the DDP determination was finalised.

In addition to this Council error, the applicant notes that the Christmas/New Year holiday period caused difficulties in obtaining the necessary documentation to be submitted as part of the BIC application.

Accordingly, the subject modification requests the amendment of Condition No. 1 to allow a period of 120 days from the operational date of the consent for the submission of the BIC.

Further Request for Amendment

Following lodgement of the proposed modification, the applicant requested a further amendment of Condition No. 1; specifically, the deletion of the requirement that the BCA Report and updated survey be provided at the time of lodgement of the BIC Application.

Council's Building Control section advise that a survey plan is required at the time of lodgement of a BIC application, but that a BCA Report is not a lodgement requirement and may be provided through the assessment process.

Recommended Changes to Conditions

Based on the above, the consent's operational date and Condition No. 1 are recommended to be amended as follows:

DETERMINATION - APPROVED

Made on (Date):	**26 October 2022**
Consent to operate from (Date):	**9 November 2022**
Consent to lapse on (Date):	**9 November 2027**

1. Deferred Commencement - Building Information Certificate, BCA Report, Stormwater and Works Carried Out

An application for a Building Information Certificate, with respect to the unauthorised works to and use of the secondary dwelling and any other unauthorised works onsite (including stormwater works), shall be lodged within ~~60~~ 120 days from the operational date of the Notice of Determination. The application is to be accompanied by a Building Code of Australia (BCA) Report and an updated survey, with the updated survey to be provided at the time of lodgement. Any upgrading works required in relation to the BCA Report and stormwater works are to be carried out within 90 days from the date of issue of the Building Information Certificate by Council, and written confirmation that the works have been completed is to be provided by the Manager Building Assessment and submitted with the deferred commencement review form.

Reason: To regularise unauthorised development and ensure required building upgrades and stormwater management works are carried out.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within the time periods stated above, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

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

Property Description:	Lot A DP 22132 , 11 Lyly Road ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Lyly Road. The site is generally regular in shape with a frontage of 20.15m along Lyly Road and a depth of 40.235m. The site has a surveyed area of 798.1m². The site is located within the R2 Low Density Residential zone and accommodates an existing two-storey dwelling. The site slopes approximately 7.6m from south-west to north-east. The site contains no significant vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by detached dwelling houses. A drainage reserve adjoins the northern boundary of the site.

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:

DA2008/1164 - Alterations and additions to an existing dweling - Approved 5 December 2008.

DA2021/1348 - Alterations and additions to a dwelling house including a carport - Withdrawn.

DA2022/0511 - Alterations and additions to a dwelling house including a secondary dwelling and carport - Approved 26 October 2022.

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 DA2022/0511, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	**Yes** The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: The proposed modification is limited to the requirements of the previously imposed deferred commencement conditions. There are no changes to the approved dwelling form and no material impact to surrounding properties.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0511 for the following reasons: The consent as proposed to be modified is substantially the same development as that for which the consent was originally granted and retains the residential use of the lot to be developed. The proposed modification involves changes to the deferred commencement condition requirements, and remains materially the same as originally approved. As such, the modified application is “substantially the same development” as the originally approved development and therefore may be considered under Section 4.55(1A).
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, 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	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.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the	No submissions were received in relation to this application.

Section 4.55(1A) - Other Modifications	Comments
development control plan, as the case may be.	

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&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.

Section 4.15 'Matters for Consideration'	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah/Manly/Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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 23/01/2023 to 06/02/2023 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:
Withheld	ALLAMBIE HEIGHTS NSW 2100

The issues raised in the submission are addressed as follows:

- The submission raised concerns in relation to the unauthorised works previously undertaken on the site. However, the submission notes that no objection is raised to the proposed extension in time sought for the lodgement of the Building Information Certificate application.

  Comment:

  The proposed changed to Condition No. 1 are supported for the reasons outlined in this report.

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 (Housing) 2021

Part 1 – Secondary Dwellings

The proposed modification does not include any changes to the approved secondary dwelling.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards
There are no principal development standards under Part 4 of the WLEP to consider as part of this assessment.

Warringah Development Control Plan

Built Form Controls
There are no built form controls under Part B of the WDCP to consider as part of this assessment.

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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

The proposed modification is referred to the Development Determination Panel (DDP) as it seeks the amendment of Condition No. 1, which was previously imposed by the Panel.

One submission was received in response to Council's notification of the application.

The proposed modification is limited to the timeframe for lodgement of the required Building Information Certificate application, and the timing of the provision of the associated documentation.

No change is proposed to the works approved under DA2022/0511 and the modifications sought will not adversely impact surrounding properties or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0006

for Modification of Development Consent DA2022/0511 granted for Alterations and additions to a dwelling house including a secondary dwelling and carport on land at Lot A DP 22132,11 Lyly Road, ALLAMBIE HEIGHTS, subject to the conditions printed below:

A. Modify Determination - Approved to read as follows:

DETERMINATION - APPROVED

Made on (Date):	**26 October 2022**
Consent to operate from (Date):	**9 November 2022**
Consent to lapse on (Date):	**9 November 2027**

B. Modify Condition 1. Deferred Commencement - Building Information Certificate, BCA Report, Stormwater and Works Carried Out to read as follows:

1. Deferred Commencement - Building Information Certificate, BCA Report, Stormwater and Works Carried Out
An application for a Building Information Certificate, with respect to the unauthorised works to and use of the secondary dwelling and any other unauthorised works onsite (including stormwater works), shall be lodged within 120 days from the operational date of the Notice of Determination. The application is to be accompanied by a Building Code of Australia (BCA) Report and an updated survey, with the updated survey to be provided at the time of lodgement. Any upgrading works required in relation to the BCA Report and stormwater works are to be carried out within 90 days from the date of issue of the Building Information Certificate by Council, and written confirmation that the works have been completed is to be provided by the Manager Building Assessment and submitted with the deferred commencement review form.

Reason: To regularise unauthorised development and ensure required building upgrades and stormwater management works are carried out.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within the time periods stated above, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed ‘Deferred Commencement Document Review Form’ (available on Council’s website) and the application fee, as per Council’s Schedule of Fees and Charges.

ITEM 3.4	**DA2021/2661 - 33 BEATRICE STREET CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/101275**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations
	3 ⇩Clause 4.6 - BHR
	4 ⇩Clause 4.6 - FSR

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. That Council as the consent authority, 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.

C. THAT Council as the consent authority **approves** Development Consent to DA2021/2661 for alterations and additions to a dwelling house including a swimming pool on land at Lot 81 DP 9517, 33 Beatrice Street CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2661

Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 81 DP 9517, 33 Beatrice Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Desmond Wayne Silberberg
Applicant:	Castlepeake Consulting Pty Ltd

Application Lodged:	24/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/03/2022 to 21/03/2022
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 76.5% 4.4 Floor space ratio: 7.7%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,721,801.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposal seeks a variation of more than 10% to the Height of Buildings Development Standard pursuant to Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013). The development is required to provide a maximum building height of 8.5m, however, the development provides a maximum building height of 15.0m which equates to a variation of 76.5%.

The request to vary the requirement pursuant to Clause 4.6 of the MLEP 2013 arises from the unique and constraining situation whereby the site slopes significant down from the street frontage by 20.5m and

the artificially elevated existing dwelling to accommodate a stormwater pipeline which dissects the entire length of the site. The request has been considered and, given the context of the site, establishes that the application of the Standard in this particular instance is unreasonable and that sufficient environmental planning grounds have been demonstrated to justify the variation.

Objections were raised to the proposal from adjacent neighbouring properties. Principal assessment issues included views, overshadowing, landscape , front setback alignment, height. Some amendments were made during the assessment period to address a 'further information' request in relation to views and stormwater concerns regarding the Council pipeline under the house.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the following alterations and additions existing dwelling, including ancillary works:

Ground Terrace (RL 57.00)

- Levelling of the turfed outdoor cantilevered terrace.
- Construction of a new 1.0m to 1.8m high retaining wall.
- Construction of a new external stair adjacent to the northern side boundary.
- Removal of an existing external stair.
- Installation of new structural piers beneath the existing building.

Lower Level (RL 63.44)

- Retain existing retaining walls to the east.
- Demolish internal walls.
- Reconstruct and extend the building footprint towards the west new level to accommodate:
    - 3 x bedrooms (Bedrooms 2, 3 and 4).
    - Rumpus Room/Secondary Living Room.
    - 2 x bathrooms.
    - Terrace.
    - Swimming pool.

Mid Level (RL 66.25)

- Retain existing retaining walls to the east.
- Demolish internal walls.
- Reconstruct and extend the building footprint towards the west new level to accommodate:
    - Open plan Living/Dining/Kitchen.
    - Media Room.
    - Laundry.
    - Storeroom.
    - WC.
    - Terrace (west).
- Deck and garden (east).
- Bin store.

Upper Level Entry (RL 68.00 to RL 68.10)

- Entry.
- Stairs.
- Porch.
- Double garage

Upper Level (RL 69.35)

- Demolish internal walls.
  Reconstruct and extend the building footprint towards the west new level to accommodate
  - Living Room/Study.
  - Master Bedroom.
  - Ensuite.
  - WC.
- Terrace (west).

Top of Roof (RL 72.17 to RL 72.42)

- Shallow pitched roof (3º).
- 2 x skylights.
- 2 x solar panel arrays.
- 0.2m parapet.

Classification as Alterations and Additions
The proposal is consistent with being assessed as alterations and additions pursuant to the judgement of *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*.

This is based on the substantial main walls/supporting pillars being retained (structural) external side wall alignments (retained), general building footprint floor levels and parapet / front and rear setbacks (consistent with existing house). The proposal has been considered pursuant to the qualitative and quantitative considerations of the changes proposed. The new pool is a separate structure and ancillary elements of the garage, rear garden terraces are being refurbished to suit existing access configuration within the land.

The original dwelling is substantially non-compliant in height and side envelope and the alterations and additions are assessed on their merit as being appropriately in context with new works in that the non-compliance are not excessively or overly derived to contributing to unreasonable non-compliance that would otherwise not be supported as might be the case for a "new dwelling" assessment. In this regard the severe site constraints of the main water pipeline and gully formation under the house and steep slope is influential on the dwelling alterations and prohibitive in maintain compliance with a number of the planning controls.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report)

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
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 - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 81 DP 9517 , 33 Beatrice Street CLONTARF NSW 2093
Detailed Site Description:	The site is located on the lower western side of Beatrice St with views to Middle Harbour, The Spit and Sailors Bay. The subject land has an area of 695.6 square metres (sqm), with a street frontage and rear boundary of 15.24 metres (m) and side boundaries of 45.72m. The site adjoins a densely vegetated vacant parcel of land (No.1 Gordon St to the west, a 2-storey dwelling to the north and a 2-3 storey dwelling to the south. The site is burdened by Council's public stormwater main drainage line from the pit at street level and runs across and then down under the southern half of the dwelling via steep natural gully line. The pipe ends approximately 10m from the rear boundary and discharges into the natural creekline. The site is also burdened by a sewer main across the rear of the site located approximately 1.2m from the rear boundary. The site is located within the Foreshore Scenic Protection Area. The site has been identified as Class 5 on the LEP

	Acid Sulfate Soils Map but is not identified as a landslide risk. The site is not located within a Heritage Conservation Area, is not heritage listed nor is it in close proximity to heritage listed items. The site currently contains a 2-storey worn timber and face brick dwelling with tiled pitched roof. The dwelling is built significantly off the ground at the rear supported on concrete piers (up to 4m high) founded on rock. The main living, family, kitchen, dining and bathroom is located on the upper level off the entry mezzanine level. A deck directly off the living area affords views to the west. Two bedrooms, a separate smaller kitchen, dining, living and second bathroom is located on the lower level. The house is in a state of partial disrepair. The upper level currently has great views towards Middle Harbour, The Spit and Sailors Bay in the distance. The lower level has similar views but these are partially screened by the canopies of the site trees. Currently there is an attached double carport located on the front boundary adjacent the entry. Access is via a skewed driveway from Beatrice Street. Beatrice Street is characterised by single and double storey developments with houses on the lower western side, from and including the site to Gordon St having predominantly a single storey street frontage and 2-storeys at the rear which is consistent with and a reflection of the site's topography. Houses at No.9 – 31, south of the site are affected by special height provisions restricting the height of roofs to be below the level of Beatrice St to maintain public views to Middle Harbour.

Map:



SITE HISTORY

Building Application No. 380/69
The construction of a dwelling house was approved by Council in 1969. This consent permitted the construction of a dwelling over and existing stormwater line and allowed for the house to be in forward position on the site due to the steep topography. (A previous approval in 1965 for a dwelling had been partly acted on by a previous owner who, as part of Council's approval at the time required the owner to contribute to completing the construction of the concrete stormwater pipeline under the house. Backfilling over the pipeline extension was to be restricted in case of future remediation / maintenance) . An easement restriction was also placed on Title to the effect that "*the owners and their successors in title indemnity Council against any claims arising out of the existence of the drainage easement"* and that the conditions be noted on Title.

Council's Development Engineers have investigated the easement and reviewed the Title documents for the current proposal, including circumstances of the existing pipeline. The Development Engineering Referral Response recommends an appropriate condition be applied to the effect that the existing easement restrictions on Title remain valid as part of DA2021/2661, as per recommended conditions.

Development Application No. 3815/90
Associated with Building Application No.439/90 for alterations and additions was approved by Council on 30 November 1990.

Development Application No. 5038/91
Associated with Building Application no.318/91) for alterations and additions to a dwelling house for a dual occupancy was approved by Council on 1 November 1991.

APPLICATION HISTORY

The application was lodged on 24 February 2022 and notified between 7 March 2022 and 21 March 2022.

Four (4) submissions were received as a result of the notification.

A letter was sent to the applicant on 4 April 2022 which raised concerns regarding view impact resulting from building height and bulk.

Amended plans were submitted on 10 May 2022 which attempted to address the above planning issues.

Ongoing discussions regarding issues raised by Council's Development Engineer resulted in amended plans (and other related supporting information pertaining to Council's stormwater drainage infrastructure) being submitted on 10 October 2022.

An further submission was received with respect to the amended plans although this submission was from a previous submitter and therefore is included in the overall number of submissions received (i.e. 4).

The description of the development refers to the amended plans.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Plans - Master Set to better respond to building height / overshadowing, stormwater concerns, views and privacy. Subsequently, the applicant provided amended plans to address amenity concerns considered relevant to the DCP / LEP as per Council's request for further information letter (including seeking amendments). The amendments made were of a minor / routine nature in development assessment (otherwise capable of being addressed by conditions) and were made viewable online for the duration of

Section 4.15 Matters for Consideration	Comments
	the assessment period. Persons who made a submission on the original DA notification were advised and to allow for additional review of the plans as the submission issue were limited to privacy, overshadowing and view concerns. All plans were made publicly viewable online for the duration of the assessment. Limited re-notification was therefore made as per the *Community Participation Plan*. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development subject to requirements needed to be met to address Councils Stormwater Assets over the long term.
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. No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 07/03/2022 to 21/03/2022 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 4 submission/s from:

Name:	Address:
Mr Timothy Robert Fairservice	10 Curban Street BALGOWLAH HEIGHTS NSW 2093
Mr Oliver James King Mrs Louise Melanie King	1 Ernest Street BALGOWLAH HEIGHTS NSW 2093
Mrs Suzanne Margaret O'Brien	26 Beatrice Street CLONTARF NSW 2093
Mr Stephen Page	18 - 20 Beatrice Street BALGOWLAH HEIGHTS NSW 2093

The application was notified between 2 March 2022 and 21 March 2022.

The following issues were raised in the submissions:

- View loss.
- Non-compliance with the following Development Standards of the Manly Local Environmental Plan 2013:
    - Clause 4.3 - Height of Buildings.
    - Clause 4.4 - Floor Space Ratio.
- Non-compliance with the following clauses of the Manly Development Control Plan 2013:
    - Clause 3.4.1 - Sunlight Access and Overshadowing.
    - Clause 3.4.2 - Privacy.
    - Clause 4.1.2 - Height of Buildings (Wall Height).
    - Clause 4.1.4 - Setbacks (Side).
- Request to include certain conditions of consent:
    - Dilapidation Reporting.
    - Survey Certificates.
    - Construction Hours.
- Impact from solar panels.

The above issues are addressed as follows:

- **View loss.**

  The submissions raised concerns that the development would adversely impact upon views of the Spit bridge, associated water views of Middle Harbour and middle district views.

  Comment
  This matter was raised by property owners on the opposite side of Beatrice Street and has been discussed under Clause 3.4.3 ('Maintenance of Views') later in this report.

In summary, the assessment was conducted against the planning principle established by the NSW Land and Environment Court in the case *Tenacity Consulting Pty Ltd vs Warringah Council (2004) NSWLEC 140*. The assessment considered that, as the development is sited at a lower level than the properties on the opposite side of Beatrice Street, and that the development uses the existing floor levels as a foundation (largely owing to the constraints already prevalent on the site), the views from the assessed neigbouring properties will remain extensive, it is considered that the proposal has sensitively responded to view sharing and that the view impact is therefore considered acceptable reasonable.

This issue does not warrant the refusal of the application.

- **Non-compliance with the following Development Standards of the Manly Local Environmental Plan 2013:**
  - Clause 4.3 - Height of Buildings.
  - Clause 4.4 - Floor Space Ratio.

  The submissions raised concerns that the development does not comply with the key development standards of the MLEP 2013 and that the application does not sufficiently justify the departure from the standards, essentially with respect to satisfying the objectives of the standard pertaining to solar access.

  Comment
  The non-compliances have been considered against the provisions of Clause 4.6 of the MLEP 2013 later in this report.

  In summary, it was considered that the proposal did not unreasonably impact upon the amenity of the neighbouring property with respect to overshadowing and that the request to vary the Development Standards provided sufficient environmental planning grounds to demonstrate that the requirements were unreasonable in this particular instance.

  This issue does not warrant the refusal of the application.

- **Non-compliance with the following clauses of the Manly Development Control Plan 2013:**
  - Clause 3.4.1 - Sunlight Access and Overshadowing.
  - Clause 3.4.2 - Privacy.
  - Clause 4.1.2 - Height of Buildings (Wall Height).
  - Clause 4.1.4 - Setbacks (Side).

  The submissions raised concerns that the development did not achieve compliance with the above controls in the MDCP 2013, and that the non-compliances resulted in unacceptable amenity impacts such as overshadowing and privacy.

  Comment
  These issues have been discussed in the respective clauses later in this report.

  In summary, it was considered that the proposal did not unreasonably impact upon the amenity of the neighbouring property with respect to overshadowing and privacy (subject to condition).

  The non-compliances to wall height and setbacks have been considered against the objectives of each respective control and were found to achieve consistency.

This issue does not warrant the refusal of the application.

- **Request to include certain conditions of consent:**
  - Dilapidation Reporting.
  - Survey Certificates.
  - Construction Hours.

  A submission requests that certain conditions are imposed to protect the structural integrity and amenity of their property.

  Comment
  With respect to a condition to require dilapidation reports, these are only required where excavation works are proposed which would result in vibration. The development includes replacement piers but does not include any excavation works which would be extensive enough to warrant the requirements of a dilapidation report.

  With respect to Survey Certificates, particularly to certify the correct levels of the building, it is noted that the development is using the existing platform of the dwelling and therefore, does not change the levelling. Notwithstanding, a condition is included in the consent which requires the submission of a Survey Certificate to ensure that the development is being constructed within the approved parameters.

  With respect to construction hours, these are included as standard which includes:

  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.

  The request to vary the construction hours on Saturday from 1.00pm to Noon is accepted.

  This issue does not warrant the refusal of the application.

- **Impact from solar panels**

  Concerns are raised that the proposed solar panels will further impact upon view loss..

  Comment
  The proposed solar panels are to be positioned flat against the roof (as indicated on the plans) noting that the roof includes a shallow pitch of 3º to facilitate drainage. The matter of view loss has been assessed elsewhere in this report and is therefore based upon the proposed building and roof height. Any change to the approved plans would require the submission of an application to modify the consent under which the issue of view loss would again be reassessed.

  This issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported with conditions.** The development application is for alterations and additions to the existing dwelling, as described and illustrated in the reports and plans. 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): • 3.3.1 Landscaping Design. • 3.3.2 Preservation of Trees or Bushland Vegetation. • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable. • 4.1.9 Swimming Pools. Spas and Water Features. The proposed development includes external works such as new swimming pool and associated terrace, terracing and retaining, modification of the existing landscaping, and removal of existing trees. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral. The Arboricultural Impact Assessment recommends the removal of all identified trees within the property, either impacted by development works or exempt species. Existing trees numbered 12 (Native Frangipani) and 13 (QLD Fire Wheel Tree) are prescribed trees that require Council consent for removal, and based on the arboricultural assessment no objections are raised for the tree removal subject to tree replacement. Existing trees identified as Exempt Species (either dead trees, by height <5 metres, location or species type) are recommended for removal under this development application and do not require Council consent, and these include trees numbered 3 and 20 (dead trees), 4 (Tree Fern located within 2 metres of an existing approved dwelling), 10 and 11 (Oleander), 14 (Tree Tabacco <5 metres), 15 (Native Bleeding Heart <5 metres), 16, 18 and 19 (African Olive), and 21 (Privet). It is noted that tree 16 (African Olive) and tree 20 (dead Gum) are located on common boundary with adjoining property No. 35, and whilst technically both are exempt species by type and condition, written consent shall be obtained from the adjoining property owner of agreement to remove and the applicant shall obtain such written consent and provide evidence as imposed by conditions. It is noted that an adjoining property owner may either agree or refuse without Council inference for approval or otherwise. As removal or retention of these two trees does not impact the proposed development works, the condition shall be imposed for 'prior to construction certificate'.

Internal Referral Body	Comments
	Three of the Exempt Species trees (tree number 18, 19 and 21) are environmental weeds (African Olive and Privet) that are proposed for removal and this is supported by Council. These trees are not impacted by development works and removal reduces the existing canopy coverage across the property, and as such removal is subject to tree replacement with locally native species within the rear of the property to offset the canopy loss and to maintain the foreshore landscape character. Conditions shall be imposed to plant three native tree species within the rear of the property, in proximity to the existing trees to be removed, over and above the proposed replacement tree planting as shown in the Landscape Plan. The Landscape Plan submitted proposes an upgrade to the existing garden area within the front setback, and landscape works including terracing, retaining and planting to the rear area of the proposed development, and no concerns are raised subject to conditions for appropriate planting to the undercoft area. Under clause 3.3.1 Landscaping Design, sub clause c) Undercroft Areas, shall be integrated into the design of the building by use of appropriate landscaping to minimise the impact of the undercroft structures. Planting shall be able to achieve at least 3 metres in height and shall consist of the identified planting in the Landscape Plan as well as the following taller native species: Elaeocarpus reticulatus 'Prima Donna' - Blueberry Ash and Ceratopetalum gummiferum ‘Alberys Red’, or similar. The Landscape Plan notes "no planting proposed to lower portion of site" and the existing landscape areas shall be retained subject to tree replacement planting to replace the existing Exempt Species to be removed from this area. Existing natural rock outcrops shall be protected and incorporated into the landscape design. No new landscape works are permitted outside of the property boundaries without Council consent through a Minor Encroachment with a Road Reserve application submitted to the relevant Council department.
NECC (Development Engineering)	The subject site is burdened by a Council stormwater infrastructure and an easement. The pipeline has been indicatively shown on the plans and the proposed development has portions of the existing dwelling over the pipeline and a portion of the new additions over the pipeline. These encroachments are contrary to Council's Water management for Development Policy and the proposal cannot be supported. The existing driveway crossing is splayed to avoid the existing Council stormwater pit. The proposed new apron in front of the proposed garage may cause vehicles to drive over this pit when existing the garage. It is considered that this issue must be addressed by Council's Stormwater Asset Team. This application must be referred to Council's Stormwater Asset Team for their review and comment. If the Stormwater Asset Team support

Internal Referral Body	Comments
	the proposal, the application is to be re-referred to Development Engineering for assessment. Development Engineering cannot support the application due to insufficient information to address stormwater management in accordance with Clause 3.7 of the DCP. **Amended plans and additional information submitted 25/10/22** The amended plans have adequately located the existing Council stormwater infrastructure burdening the site. The CCTV of the Council stormwater line has been reviewed by Council's Stormwater Asset Engineers. Due to the condition of the pipeline and taking into consideration the extent of works proposed by the applicant, the Stormwater Asset Team have considered that the pipeline can remain in the current location through the site however, the pipeline must be relined at the applicant's cost to extend the life of the asset and reduce the need for future maintenance. A condition of consent to reflect these works has been included together with a security bond to ensure the asset is protected during the works. In terms of the existing pit adjacent to the driveway crossing, this pit is to remain and the driveway crossing reconstructed at the current alignment to be clear of the pit and provide suitable access to the proposed garage. A review of the title indicates that the easement to drain water that burdens the site has been created to include a memorandum which lists a number of conditions regarding the obligations of the proprietors with respect to the easement, pipeline and structures. An ongoing condition of consent is included to reflect the requirements of this memorandum. The submitted stormwater plan is acceptable. The proposed garage levels and driveway crossing is also acceptable. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Stormwater and Floodplain Engineering – Flood risk)	**Supported without conditions.** The proposed DA generally complies with the flood controls in the LEP and DCP. The proposed works are outside the 1% AEP and PMF extent.

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.A441623 dated 22 December 2021).

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

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

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.

Other Service Authority Providers

The proposal was not required to be referred to Transport for NSW and no further state or regional service infrastructure Authority referral issues are raised pursuant to the SEPP. *Sydney Water* infrastructure and asset requirements are administered and managed by separate processes directly with *Sydney Water.*

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	Proposed	% Variation	Complies
Height of Buildings (RL)	8.5m	3.3m to 15m Existing Ground Level (EGL)	76.5% (6.5m)	No*
Floor Space Ratio	0.4:1 (278.2m²)	0.43:1 (299.7m²)	7.7% (21.5m²)	No*

*Pursuant to the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* the existing excavated garage floor level measured to the top of the new roof height gives an overall height of 6.1m. The natural ground level has not been substantially excavated and due to the pier and suspended slab construction of the house.

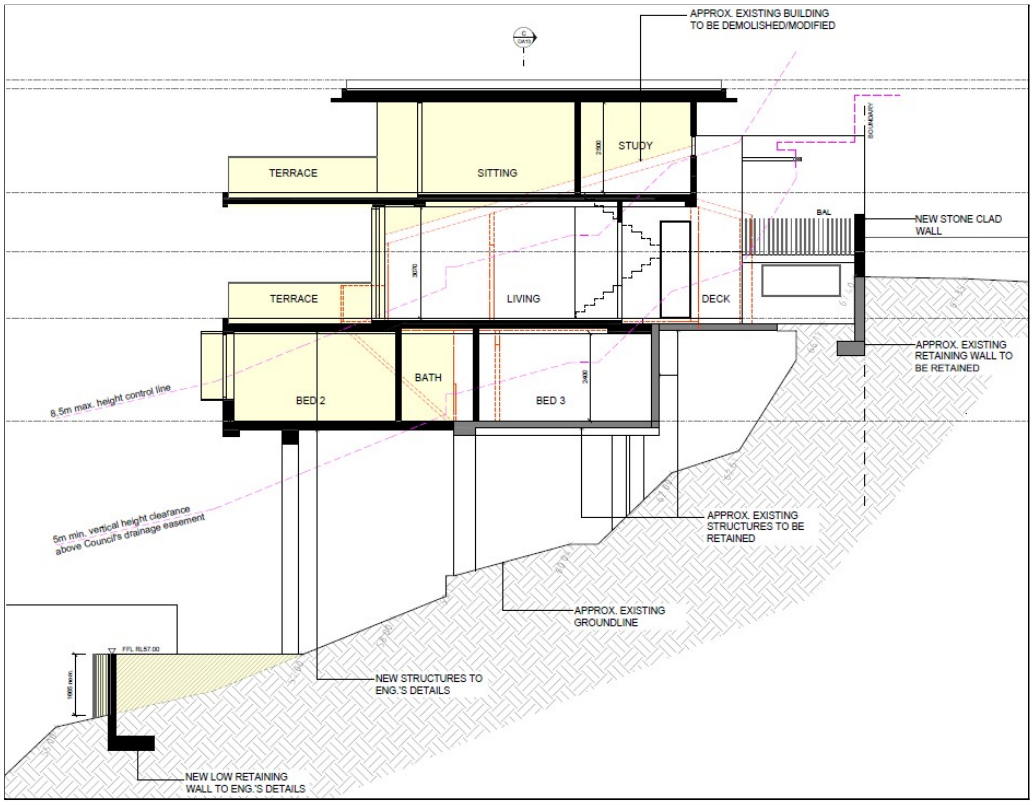


Image: Section showing 5.0m height clearance under building for existing pipeline and 8.5m height plane above EGL.
Yellow shading is new wall height (new additions) elements.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	No
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

HEIGHT OF BUILDINGS

Description of non-compliance:

Development standard:	4.3 - Height of Buildings
Requirement:	8.5m
Proposed:	15m
Percentage variation to requirement:	76.5%

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

Clause 4.6 Exceptions to development standards:

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

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

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

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

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

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

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *The development complies with the objectives of R2 Low Density Residential and the objectives of Clause 4.3 building height of the MLEP 2013.*
- *The non-compliance is the direct result of a difficult and challenging topography as well as the burden of Council's public drainage system and easement, both of which greatly impact the development potential of the site by effectively reducing the developable area.*
- *There is established precedent for contravening the development standard for height in the immediate vicinity of the subject dwelling.*
- *The upper height limit of 8.5m is inadequate in the locality of the subject site due to constraints resulting directly from a steeply sloping topography that occur on the low side of Beatrice St.*
- *There is an existing non-compliance with the building height of the existing dwelling which is a 1-2 storey structure built significantly high off the ground (up to 4m) at the rear. This open sub-floor space is counted as building height but cannot be developed where affected by Council's drainage easement (south side of site) and not feasible for development, in the north side of the site, as part of the proposed alterations and additions. Any works undertaken to improve the dwelling will occur over the maximum allowable building height, so flexibility is required to facilitate these improvements.*
- *The proposal will be of an appropriate bulk and scale and will not result in adverse visual impacts and will not detract from the continuity of the streetscape as the development retains the single storey street frontage. The bulk of the proposed alterations and additions are kept to the rear.*
- *The proposed rear façade is given greater articulation to visually reduce the scale of the building and improve its contribution to the desired future character of the area.*
- *The proposal delivers a high quality and well defined urban form – a vast improvement when viewed from the street, adjoining properties, waterways, foreshore and public reserves as a result of changes in architectural form and finishes/materials to achieve a more holistic and refreshed contemporary aesthetic.*
- *The proposed alterations and additions that exceed the 8.5m height limit have no significant impact on bulk and scale, views, privacy and overshadowing.*
- *The proposed development will not result in any adverse amenity issues to surrounding properties or the locality.*

Comment:

- The reasons set out by the applicant are generally concurred with.
- The proposal does not raise any unreasonable environmental impacts or inconsistency with achieving the environmental aims of Clause 1.3 of the Act.
- Generally the proposed design has provided an appropriate design response to the steeply sloping topography, existing drainage infrastructure constraints and the footprint of the existing dwelling in terms of building bulk, setbacks, height, privacy, overshadowing and amenity consideration for the streetscape and surrounding land.

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 MLEP 2013 are:

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

> *a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
>
> Comment:
> The alterations and additions will result in a dwelling generally consistent with the adjoining properties and a variation is appropriate on this particular instance given the steeply sloping topography, existing drainage infrastructure constraints and the footprint of the existing dwelling. The development is representative of the existing streetscape character.
>
> The DCP allows for some variation in circumstances where alterations and additions to a house are influenced by the existing elements to be retained (e.g. walls, floor level etc). In this instance, the site is heavily constrained by the drainage infrastructure which dissects the site and which limits the proximity of construction closer to the existing ground level.
>
> *b) to control the bulk and scale of buildings,*
>
> Comment:
> The building bulk associated with the 8.5m non-compliance extends, by increasing degree due to the sloping topography, to the whole of the proposed Upper Level. The development mounts the existing platform which governs the elevation and footprint of the additions to the dwelling.
>
> With respect to building bulk, the built form is highly articulated both vertically (through the visually permeable 6.5m high piers the structure is mounted upon and variable setbacks) and horizontally (through the positioning of deep balconies which form complimentary recesses to the overall footprint).
>
> The design outcome as a result of the considered approach to the bulk and scale is considered to

be appropriate to the unique constraints of the site and results a in variegated built form.

c) to minimise disruption to the following:
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment:
Submissions were received with respect to view loss and those properties have been inspected pursuant to the planning principles established by the NSW Land and Environment Court in *Tenacity Consulting v Warringah Council 2004* where it was found that the development achieved a satisfactory level of view sharing from adjacent private properties and that a more skillful design would not have been achievable given the constraints of the site.

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

Comment:
The proposal has been provided with detailed site analysis demonstrating that the height variation, due to being principally confined to the rear section of the building. The development does not create unreasonable loss of solar access to the neighbouring property to the south due to the comparatively recessed location of the dwelling which is situated within the front half of the site and the elongated building footprint of the nieghbouring property to the south which is located central to the site and extends for approximately 50% of the length of the site, and which also necessitates the locating of the neighbouring principal private open space area to the western quarter of the site.

Given the terraced design of the subject development, and the afore-mentioned recessed location, the development does not unreasonably overshadow the neighbouring dwelling or its principal private open space area.

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

Comment:
The site is not adjacent a recreation zone or environmental protection zone. Bandicoot habitat considerations in the Manly area has been addressed in the biodiversity assessment undertaken.

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 maintains consistency with this objective and increases the livability of the existing home with substantial modernization.

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

residents.

Comment:
The proposal does not propose other services or facilities for the zone and is not relevant to this clause as the site retains its single dwelling residential land use only. The non-compliance does not contradict 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, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

FLOOR SPACE RATIO

Description of non-compliance:

Development standard:	4.4 - Floor Space Ratio
Requirement:	0.4:1 (278.2m²)
Proposed:	0.43:1 (299.7m²)
Percentage variation to requirement:	7.7%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

(2) Development consent may, subject to this clause, be granted for development even though the

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.4 - Floor Space Ratio development standard is not expressly excluded from the operation of this clause.

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

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

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

(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 that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *The development complies with the objectives of R2-Low Density Residential and the objectives of Clause 4.4 floor space ratio of the MLEP 2013.*
- *The proposal does not exceed the capacity of the land on which it is located and will be of an appropriate bulk and scale that will not result in adverse visual impacts and will not detract from the continuity of the streetscape as the development retains the single storey street frontage. The bulk of the proposed alterations and additions are kept to the rear.*
- *The proposed rear façade is given greater articulation to visually reduce the scale of the building and improve its contribution to the desired future character of the area.*
- *The proposal delivers a high quality and well defined urban form – a vast improvement when viewed from the street, adjoining properties, waterways, foreshore and public reserves as a result of changes in architectural form and finishes/materials to achieve a more holistic and refreshed contemporary aesthetics.*
- *The proposed alterations and additions occur mainly above the lower level of the existing dwelling to be retained. The proposal will have negligible impacts on landscaped area, drainage and the natural topography of the site.*
- *The proposed alterations and additions have no significant impact on bulk and scale, views, privacy and overshadowing.*
- *The proposed alterations and additions will not generate additional traffic to the area.*
- *The proposed development will not result in any adverse amenity issues to surrounding properties or the locality.*

Comment

- The reasons set out by the applicant are generally concurred with.
- The proposal does not raise any unreasonable environmental impacts or inconsistency with achieving the environmental aims of Clause 1.3 of the Act.
- The increased FSR allows for improved versatility of an otherwise constrained dwelling.
- The rear of the building returns is designed sufficiently to ensure sunlight, building bulk and spatial separation at the rear does not create unreasonable amenity impacts for adjacent rear (neighbours) yards.

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 floor space ratio 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 4.4 – Floor Space Ratio of the MLEP 2013 are:

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

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

Comment:
The building bulk and scale is generally consistent with the pattern of surrounding development and does not create any unreasonable obstruction to landscape and townscape features. The design of the proposal and external appearance is consistent with the streetscape guidelines of the Manly local planning controls.

b) to control building density and bulk in relation to a site area to ensure that development does

not obscure important landscape and townscape features,

Comment:
The proposal maintains elements of landscape area around the site due to limited scope to develop at ground level. The development does not unreasonably obscure views of otherwise important landscape and townscape features.

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

Comment:
The development retains the single storey appearance when viewed from the street and extends to an elevated 3 storey structure at the rear.

As discussed earlier, the elevated aspect is driven by the utilising the existing building platform to address the location of stormwater pipeline infrastructure which runs through the full depth length of the site.

This format is not uncommon on sloping sites but is exaggerated owing to the unique constraints and, notwithstanding this, by utilising the existing building platform, the development maintains the existing character and landscape of the area.

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

Comment:
Overall the environmental impacts of the proposal are lessened due to the use of the existing building platform (i.e. minimising any impact at ground level).

Amenity impacts such as view loss, overshadowing, and privacy are also not considered to be significant owing to the offset location of the building to neigbouring dwellings and private open space areas. Privacy of the terrace to the neighbouring property at No. 31 Beatrice Street) is enhanced through the inclusion of a condition which requires the installation of planter boxes along the southern edge of the terraces at the 'mid-level' and 'upper level'.

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 not a business zone and this objective is not relevant to the house alterations and additions.

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 for modernisation of an existing family home and therefore suit the needs of the community without creating excessive impacts in terms of building bulk or adverse amenity impacts.

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

  Comment:
  The proposal does not propose other services or facilities for the zone and is not relevant to this clause as the site retains its single dwelling residential land use only. The non compliance does not contradict 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, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

6.8 Landslide risk

Merit Assessment
Clause 6.8 requires consideration of the risk of landslide:

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

Comment:

- The subject house is built in a forward location on the property with high concrete piers to remain above ground level. Access to the street is via a short driveway as the land slopes steeply away from the road. Side access is limited along the southern elevation due to rock ledges. External stair access in the outside areas requires rebuilding work.
- The proposal seeks to use the existing strong foundations and concrete piers and slab and improve access with rebuilding stairs and new works to support the additions and alterations as well as new retaining wall and ancillary reconstruction works.
- The cut and fill works are minimal with a moderate amount of fill in the rear yard below the supported pool superstructure.
- Waste water will be connected to existing infrastructure. Stormwater and drainage will require some remedial works to the pipeline under the house to ensure its longevity, durability and

security (such as junctions / sections). A Qualified engineering specialist consultant has inspected the pipe and appropriate conditions included to address this objective.
- The site has substantial geotechnical constraints in that it is part of a natural watercourse gully and therefore the proposal seeks to utilise the existing structural supports and minimise any risks by minimal interference with the pipeline. Loose surface rock / soil material is able to be stabilised as part of the site preparation works.
- A geotechnical report has been provided to ensure adequate remedial and geotechnical support is provided to meet appropriate building and engineering considerations.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MLEP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.9 Foreshore scenic protection area

Merit assessment
The requirements and objectives of clause *6.9 Foreshore scenic protection area* are addressed as follows:

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,
(b) measures to protect and improve scenic qualities of the coastline,
(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

- The site is in a position that is surrounded by low density residential dwellings, with most dwellings being substantial homes of 2 or 3 storeys. Therefore the proposed alteration and additions to the existing house do not create any unusual visual impact on the foreshore scenic protection area.
- The position of the site is within a broad hillside topopgraphy and therefore the proposal does not 'stand out' from the pattern of surrounding development when viewed from the Middle Harbour foreshore area / public waterway.
- The land has been used for residential purposes for a substantial period of time. Site constraints were overcome by engineering works to elevate the house on concrete piers with a supported slab. The lower areas of the site remain in a semi-natural state of landscaping and open drainage course beyond the existing stormwater pipe outlet.
- The site is not in a position that involves access to the waterway or foreshore that may interfere with activities along the foreshore / waterway.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MLEP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 695.6sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	1 dwelling/1,150m²	1 dwelling/695.6m²	Existing	No change
4.1.2.1 Wall Height	**North** 8.0m (Gradient >1:4)	3.0m to 8.4m	5.0% (0.4m)	**No**
	South 8.0m (gradient >1:4)	5.5m to 12.8m	60% (4.8m)	**No**
4.1.2.2 Number of Storeys	2	3	50% (1 storey)	**No**
4.1.2.3 Roof Height	2.5m	0.5m	N/A	Yes
	Max Pitch: 35 degrees	3 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line or 6.0m	Upper Level Prevailing (Nil to 4.7m) Mid-Level Prevailing (Nil to 6.7m) Lower Level Existing (4.4m to 5.5m)	N/A N/A N/A	Increase from existing Increase from existing No change
4.1.4.2 Side Setbacks	**North** 1/3 wall height (1.0m to 2.7m) **South** 1/3 wall height (1.8m to 4.3m)	**North** Lower Ground 1.1m Mid-Level 1.1m Upper Storey 0.9m to 1.1m **South** Lower Ground 0.9m to 1.2m Mid-Level 0.9m to 1.2m Upper Storey 1.8m	 Existing Existing 66.6% (1.8m) 0.9m to 1.5m 0.9m to 1.5m 1.8m	 No change No change **No** Yes Yes Yes
	Windows 3.0m	North 0.9m South 0.96m	66% 66%	**No** **No**
4.1.4.4 Rear Setbacks	8.0m	Lower Level 25.4m to 34.2m Mid-Level	N/A	Yes

		28.0m to 32.2m Upper Level 28.0m to 32.2m	N/A N/A	Yes Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Total open space 60% of site area 417.36m²	78.9% (549m²)	N/A	Yes
	Open space above ground max. 25% of Total Open Space 104m²	19% (80.8m²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of Total Open Space 166.9m²	85.5% (469.6m²)	N/A	Yes
Tree planting	3 trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18m² per dwelling	141m²	N/A	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	39.4% 6.0m 39.4% of frontage	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces per dwelling	1 space per dwelling = 2 total	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Efficient Lighting (non-residential buildings)		
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	No	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	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Merit Assessment

Clause 3.4.1 relevantly requires:

3.4.1.1 Overshadowing Adjoining Open Space

In relation to sunlight to private open space of adjacent properties:

- *New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).*

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

- *For adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June).*
- *For all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

Merit Assessment Comments:
The site is east-west orientation and therefore, only the effect of the development to the neigbouring property to the south is considered.

It is noted that the dwelling on the subject site (as altered by this proposal) is sited within the eastern third of the site whereas the neighbouring dwelling extends acoss the eastern half of the property thereby creating an offset which favours sunlight access.

A review of the solar diagrams submitted with the application reveals the following for 21 June:

9.00am
Shadows are cast across the eastern half of the neighbouring dwelling which includes a north-facing terrace (secondary) and habitable room windows at the upper level. It is noted that, due to the lower siting of the neighbouring dwelling when compared to the elevated aspect of the existing dwelling, the extent of shadows cast at this time overshadows the afore-mentioned north-facing terrace. The development extends the shadow over the north-facing habitable room windows.

Noon
Shadows recede to the east and are cast across the eastern quarter of the neighbouring dwelling which includes the north-facing terrace. As noted earlier in this report, this terrace appears to be secondary to the west-facing terrace which is directly accessed from the Living Room and Dining Room.

The north-facing habitable room windows are no longer overshadowed.

3.00pm
Shadows are cast across the eastern extreme of the neighbouring property and do not impact upon the north-facing terrace. The shadow is cast within the front yard of the neighbouring property only.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

3.4.2 Privacy and Security

Merit Assessment
Clause 3.4.2 relevantly requires:

3.4.2.1 Window Design and Orientation

- *Use narrow, translucent or obscured glass windows to maximise privacy where necessary.*
- *When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.*

3.4.2.2 Balconies and Terraces

- *Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.*
- *Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.*

The development includes two new external elevated terraces which extend towards the west of the dwelling. The terraces are situated between 1.3m and 1.5m from the southern property boundary and approximately 3.4m to 3.8m from the northern edge of the neighbouring dwelling (which contains a terrace area).

The proposal is assessed against the objectives of the clause as follows:

Merit Assessment

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

Comment

North
The development Includes an external terrace and swimming pool at the Lower Level (RL 63.42) and external stairs which drop to a landing at RL 60.18). A comparison of the proposed level of this area to the existing terrace and swimming pool area of the neigbouring dwelling to the north (RL 67.04) reveals that the neighbouring terrace and pool are elevated 3.62m above the proposed terrace and pool. therefore, overlooking from this element of the development is not considered to be an issue.

No north-facing habitable room windows face neighbouring windows or the afore-mentioned terrace.

South
The development includes two terraces at the Mid-Level and Upper Level which are situated between 1.3m and 1.5m from the southern property boundary and approximately 3.4m to 3.8m from the northern edge of the neighbouring dwelling (which contains a terrace area). The northern side wall of the neigbouring dwelling also includes windows to habitable rooms (according to physical window size and the approved plans for that property) which are situated between 4.6m and 7.3m from the western edge of both terraces.

A review of the plans against photographs taken on site indicate that overlooking opportunities exist from these two terraces towards the rear north-eastern terrace of the neighbouring property to the south. This could be mitigated by the inclusion of fixed planter boxes which align the southern edge to prevent a person standing at the edge of each terrace and looking downward onto the neigbouring terrace.

A condition is included in the consent to address this.

The development also includes windows at the Upper Level of the southern wall. Although these windows service a Living Room and Study, they are sufficient elevated and setback from the neighbouring property to the south to mitigate overlooking.

The development, as conditioned, is consistent with this objective.

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

Comment

The development is predominantly situated to the eastern half of the neigbouring dwelling to the south. Although the proposed terraces will introduce new structures immediately adjacent to the afore-mentioned north-eastern terrace of the neighbouring dwelling, the structures do not include solid walls which would obstruct sunlight filtration, particularly from 12:30pm on wards. It is also noted that this terrace is secondary to the west-facing terrace which is accessed directly from the Living Room and Dining Room.

The incorporation of planter boxes to the southern edges of each proposed terrace will not detract from the availability of solar access resulting from the development.

The development, as conditioned, is consistent with this objective.

- ***To encourage awareness of neighbourhood security.***

Comment

The proposed terraces are located at the rear of the site and, as such, will not have any effect on the awareness of neighbourhood security.

The development is consistent with this objective.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance subject to condition.

3.4.3 Maintenance of Views

Merit consideration:
Clause 3.4.3 requires:

- *The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.*
- *Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.*
- *Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates.*
- *The ultimate assessment of views and view loss in this plan must be in accordance the planning principle established by the NSW Land and Environment Court.*

The development is considered against the Objectives of the Control:

1. *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*
2. *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*
3. *To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

Submissions were received from the following properties with respect to view loss:

- 20 Beatrice Street.
- 24 Beatrice Street (not directly stated as an issue but implied).
- 26 Beatrice Street.

The submission from No. 20 Beatrice Street raised concern that the views from No. 22 Beatrice Street may also be affected although no submission has been received from that property. As no submission was received, an inspection of that property was not possible. Furthermore, a search of Council's records did not yield any plans for the property which would assist is ascertaining floor levels and room types. Therefore, no assessment of view impact to no. 22 Beatrice Street has been undertaken. Notwithstanding, given the offset of the property to the subject site and its elevated aspect relative to the subject site, it is considered that the impact would be similar to that of No. 20 and 24 Beatrice Street.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

Step 1

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

Comment

20 Beatrice Street
This property is located approximately 42m to the south-east of the subject dwelling and, as such, the views currently obtained are of the Spit Bridge (1.0km to the north-west) and the northern peninsula of Mosman (1.1km to the south-west).

Distant views of North Sydney (limited). St. Leonards, Chatswood and district are also available as are more closer views of the Middle Harbour waterway.

24 Beatrice Street
This property is located directly opposite to the subject site. Views obtained from this property are similar those described for 20 Beatrice Street although it is noted that this property is situated at a higher level due to the sloping topography of Beatrice Street and, as such, the views are more expansive.

26 Beatrice Street
This property is located diagonally opposite to the subject site (to the north-east). Views obtained from this property are similar those described for 20 and 24 Beatrice Street although the direct view to the west is partly obstructed by the development at No. 35 Beatrice Street and the dwelling at No. 37 Beatrice Street. Notwithstanding, the view of the horizon and the distant Chatswood skyline is maintained.

Step 2

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

Comment

20 Beatrice Street
A review of the plans for this property reveal that the dwelling contains two levels:

Ground Floor (FFL 74.07)
Views are obtained from a living room and two bedrooms (all of which access external terraces and a lawn area within the front setback).

A comparison of the finished floor level (FFL) to the proposed building height (RL 72.17 and RL 72.42) reveals that the ground floor of 20 Beatrice Street is situated higher that the development by between 1.65m and 1.9m.

Upper Floor (FFL 77.33)
Views are obtained from a living room and bedroom both of which have access to individual balconies.

A comparison of the finished floor level (FFL) to the proposed building height (RL 72.17 and RL 72.42) reveals that the ground floor of 20 Beatrice Street is situated higher that the development by between 4.91m and 5.16m.

In each instance, the views affected are diagonally to the north-west as opposed to directly opposite and are therefore considered to be akin to viewing over a side boundary.

24 Beatrice Street
A review of the plans for this property reveal that the dwelling contains three levels:

Pool Terrace (RL 74.00)
Views are obtained from the elevated pool terrace (situated above and behind a garage) and, because of its forward location on the property, allows for expansive views towards the east and south east.

A comparison of the finished floor level to the proposed building height (RL 72.17 and RL 72.42) reveals that the terrace of 24 Beatrice Street is situated higher that the development by between 1.58m and 1.83m.

Ground Floor (RL 78.08)
Views are obtained from a living room and kitchen (although this is partly obscured by a lift shaft).

A comparison of the finished floor level to the proposed building height (RL 72.17 and RL 72.42) reveals that the terrace of 24 Beatrice Street is situated higher that the development by between 5.66m and 5.91m.

Upper Floor (RL 81.20)
Views are obtained from a bedroom with external west-facing balcony/terrace.

A comparison of the finished floor level to the proposed building height (RL 72.17 and RL 72.42) reveals that the terrace of 24 Beatrice Street is situated higher that the development by between 8.78m and 9.03m.

26 Beatrice Street
A review of the available plans for this property reveal that the dwelling contains three levels (Note: RLs are approximate):

Garage Terrace (RL 74.00)
Views are obtained from the elevated terrace (situated above a garage) and, because of its forward location on the property, allows for expansive views towards the east and south east.

A comparison of the finished floor level to the proposed building height (RL 72.17 and RL 72.42) reveals that the terrace of 24 Beatrice Street is situated higher that the development by between 1.58m and 1.83m.

Pool Terrace (RL 74.32)
Views are obtained from the elevated pool terrace (situated above and behind a garage) and, because of its forward location on the property, allows for expansive views towards the east and south east.

A comparison of the finished floor level to the proposed building height (RL 72.17 and RL 72.42) reveals that the terrace of 24 Beatrice Street is situated higher that the development by between 1.90m and 2.15m.

Ground Floor (RL 74.32)
Views are obtained from a habitable room which accesses the pool terrace.

A comparison of the finished floor level to the proposed building height (RL 72.17 and RL 72.42) reveals that the terrace of 24 Beatrice Street is situated higher that the development by between 1.90m and 2.15m

Upper Floor (RL 78.02)
Views are obtained from a living room which accesses a west-facing balcony.

A comparison of the finished floor level to the proposed building height (RL 72.17 and RL 72.42) reveals that the terrace of 24 Beatrice Street is situated higher that the development by between 5.60m and 5.85m

Step 3

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

Comment

20 Beatrice Street
As noted earlier, the views obtained are from an elevated living room and bedrooms which are each above, and offset, to the subject development.

The views which will be retained are extensive and will continue to include views of the Spit, Middle Harbour waterway, district views of Mosman and distant views of North Sydney, St. Leonards, Chatswood, and the horizon.

24 Beatrice Street
As noted earlier, the views obtained are from an elevated terracing, living room and a bedroom all of which are above the maximum height of the subject development.

The views which will be retained remain extensive and will continue to include oblique views of the Middle Harbour waterway and Mosman as well as distant and sweeping views of North Sydney, St. Leonards, Chatswood, and the horizon.

26 Beatrice Street
As noted earlier, the views obtained are from an elevated terracing, habitable area and a living room, all of which are above the maximum height of the subject development.

The views which will be retained remain extensive and will continue to include oblique views of the Middle Harbour waterway and Mosman as well as distant and sweeping views of North Sydney, St. Leonards, Chatswood, and the horizon.

Step 4

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

reasonable".

Comment
As discussed throughout this assessment, the development is sited at a lower level than the properties on the opposite side of Beatrice Street. Because the development uses the existing floor levels as a foundation (largely owing to the constraints already prevalent on the site), the design of the proposal is sited lower than the roof-line of the neigbouring dwelling at No. 35 Beatrice Avenue by approximately 2.8m thereby providing a stepped approach to respond to the topography and slope of the street.

Given this design outcome, and that the views from the three assessed neigbouring properties will remain extensive, it is considered that the proposal has sensitively responded to view sharing aand that the view impact is therefore considered acceptable reasonable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

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

Description of Non-Compliance
Overall building height is appropriately discussed and addressed under Clause 4.3 and 4.6 of the *Manly Local Environmental Plan 2013* (MLEP 2013).

Clause 4.1.2.1 requires development to achieve a wall height of 8.0m in this particular instance. Wall height is taken from the existing ground level. The development includes an already established platform which is elevated and mounted on variable height piers. Given this, the wall height is assessed as being between 3.0m to 12.8m resulting in a maximum variation of 60% (4.8m). If the development were to measure wall height as per the actual walls of the development, then the wall heights would be between a maximum of 8.4m on the northern side and a maximum 9.1m on the southern side.

Clause 4.1.2.2 requires that development provides a maximum of 2 storeys. The development provides 3 storeys which is a result of the upper floor addition (the existing dwelling provides 2 storeys).

Merit Assessment Comments

Wall Height

The wall height non-compliance is largely generated by the requirement to mount the dwelling on the piers to avoid impacting upon Council's stormwater drainage infrastructure and to respond to the topography of the site. As noted earlier, if the dwelling was situated at ground level then the maximum wall height would be between 8.4m and 9.1m which equates to variations of 5% and 13.7%.

Notwithstanding, this assessment has found that the impacts resulting from the development are not unreasonable and that, given the constraints of the site, sensitively responds to the site and its neigbouring development in terms of the intent of the control (which is to moderate building bulk and scale and to minimise amenity impact) visual appearance, and overshadowing.

Number of Storeys

The clause provides for the following variations to the number of storeys:

1. *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*
2. *To allow an additional understorey where that storey satisfies the meaning of basements in the LEP.*

As discussed under Clause 4.6 of the MLEP 2013, the matter of overall building height was considered in context to the significant constraints which are evident on the site (namely, through-site stormwater drainage infrastructure which dissects the length of the site and steep topography). The matter was also considered against the objectives of the zone and Development Standard where it was found that the application of the control was unreasonable based upon the provision of sufficient environmental planning grounds.

The provision of the additional storey (which is contained within the supported building height) was not considered to be problematic given that the additional storey did not have any unreasonable impact upon the amenity and view sharing of neighbouring and adjacent properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the MDCP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

On existing sites in Residential LEP Zones (including C3 & C4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).

It is noted that the applicant has identified the variation sought as an FSR of 0.43:1 (7.7% variation) based on a site area of 695.6sqm. The additional floor space is derived from the 3 storey configuration and ability of the elevated position of the dwelling to create a third level from the split level design and extend out over the existing slope of the land that is more that 5m below in some sections. In summary, the FSR proposed is affected by this clause as the site is less than the minimum DCP allowance for lot area as "Area U" = 750sqm (which equates to 300sqm allowance). The proposal has 299.7sqm of floor area and therefore complies numerically with this part of the DCP. The objective considerations relating to landscaping features, views, POS, overshadowing and privacy are considered in detail under the relevant clauses within this assessment including Clause 4.6 of MLEP 2013.

The distribution of the FSR does not cause any unreasonable amenity impacts in terms building bulk, distribution of FSR and is considered in detail under the terms of the Manly LEP and Clause 4.6.

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

Clause 4.1.4.1 requires side setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

Dues to the predominating constraints on the site, the development is established on the existing building footprint which consists of a dwelling on an piered platform. The areas of non-compliance relate to the extension of side walls towards the rear (west) to expand the floor area of the dwelling, and the replacing/infilling of existing walls to account for the proposed changes to re-arrangement of the internal floor area.

Of note, the new non-compliance as a result of this development is at the northern edge of the development which, because of the slope of the site is required to have a side setback of up to 2.7m. The development proposes a side setback of 0.9m (garage) to 1.1m (Bedroom) which represents a variation of 66.6% (1.8m).

The non-compliance is assessed against the objectives of the clause as follows:

Merit Assessment Comments:

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

  Comment
  The proposal has maintained the existing streetscape by the amended design, including the desired spatial residential proportions of the street, including the street edge and the landscape character of the street.

  The development satisfies this objective.

- ***To ensure and enhance local amenity.***

  Comment
  The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like).

  Overall the building maintains suitable access to natural light, direct sunlight and air circulation for the given the internal division for the semi-detached dwellings. The non-compliance with the front setback for parking does not create any unreasonable impact on surrounding amenity including views and continuity with the streetscape in terms of roof style / pitch, setbacks and character is maintained.

  The development satisfies this objective.

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

  Comment
  The development is constrained by the requirement (due to site topography and the locating of Council's stormwater drainage infrastructure beneth the building platform) to construct upon the already established building platform that was originally designed to respond to these constraints. Therefore, the proposal cannot further flexibility in its siting than is already made available.

  The development satisfies this objective.

- **To enhance and maintain natural features.**

  Comment
  Consistency is maintained to the rear building line of neighbouring properties with natural features (trees / lawn / garden and deep soil zones). The existing pattern of deep soil

landscaped open space is retained with elements of landscaping used to provide visual interest and reasonable amenity to the private open space, rear setback area of neighbouring properties.

The development satisfies this objective.

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

  Comment
  The site is not within a bushfire protection area and therefore this objective is not relevant to the proposal.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

5.4.1 Foreshore Scenic Protection Area

Merit consideration
The requirements and objectives of clause *5.4.1 Foreshore Scenic Protection* are addressed as follows:

The Foreshore Scenic Protection Area must not detrimentally effect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place. Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.

Comment

- The proposal does not require the removal of significant trees and the landscaping works will not create an unreasonable impact on drainage lines or rock shelves within the site. The position of the house is on a broad mid-slope and buildings to the east are situated higher and form a backdrop to the position of the house that is visually similar to distant views of foreshore protection area from the Middle Harbour area.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the MDCP and the objectives specified in section 1.3(a) 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 $17,218 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,721,801.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the *Development Determination Panel* (DDP) due to seeking consent for a height variation of 76.5% (6.5m). Under the circumstances the variation is considered to be reasonable in that the non-compliance is influenced by significant constraints which include the slope of the land, and the existing Council owned stormwater pipeline structure which traverses below the building and along the length of the site.

Four (4) public submissions were received and referral responses provided raise no objection to approval subject to conditions to address engineering, landscaping, view considerations.

The critical assessment issues have been considered in detail in terms of views, impacts upon Council's stormwater pipeline, building height, building bulk, privacy, overshadowing, envelope setbacks, streetscape and carparking.

Overall, the development is considered to be of a reasonable and sensitive design that is satisfactory in terms of the LEP and DCP controls and will not result in unreasonable impacts on the amenity of adjoining or nearby properties, or the natural environment.

The proposal is therefore recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause *4.3 Height of Building* and *4.4 Floor Space Ratio* development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/2661 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 81 DP 9517, 33 Beatrice Street, CLONTARF, 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**
DA01 (Revision B) - Site Plan	7 October 2022	Castlepeake Consulting Pty Ltd
DA02 (Revision B) - Proposed Upper	7 October	Castlepeake Consulting Pty

Level Floor Plan	2022	Ltd
DA03 Revision B) - Proposed Mid-Level Floor Plan	7 October 2022	Castlepeake Consulting Pty Ltd
DA04 (Revision B) - Proposed Lower Level Floor Plan	7 October 2022	Castlepeake Consulting Pty Ltd
DA05 (Revision B) - Proposed Ground Terrace Plan	7 October 2022	Castlepeake Consulting Pty Ltd
DA06 (Revision B) - Proposed Roof Plan	25 May 2022	Castlepeake Consulting Pty Ltd
DA07 (Revision B) - Proposed Elevation - North	7 October 2022	Castlepeake Consulting Pty Ltd
DA08 (Revision B) - Proposed Elevation - South	7 October 2022	Castlepeake Consulting Pty Ltd
DA09 (Revision B) - Proposed Elevation - West	7 October 2022	Castlepeake Consulting Pty Ltd
DA10 (Revision B) - Proposed Elevation - East and Street	7 October 2022	Castlepeake Consulting Pty Ltd
DA11 (Revision B) - Proposed Section A	7 October 2022	Castlepeake Consulting Pty Ltd
DA12 (Revision B) - Proposed Section B	7 October 2022	Castlepeake Consulting Pty Ltd
DA13 (Revision B) - Proposed Section C	7 October 2022	Castlepeake Consulting Pty Ltd

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
SW01 A Stormwater Plan	29 November 2021	Hyve Designs
SW02 A Stormwater Details	29 November 2021	Hyve Designs
SE01 A Sediment and Erosion Control Plan	29 November 2021	Hyve Designs
SE02 A S & E Control Details	29 November 2021	Hyve Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Underground Pipe & Cable Inspection Report 10003650	16 September 2022	Civilscan
Underground Services Report 10003650	16 September 2022	Civilscan
Geotechnical Investigation J4015	4 February 2021	White Geotechnical Group
Basix Certificate A441623	22 December 2021	Castlepeak Consulting Pty Ltd
Arboricultural Impact Assessment	9 December 2021	Bradshaw Consulting Arborists

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**
L01 (Revision A) - Landscape Concept Plan	22 December 2021	Castlepeake Consulting Pty Ltd

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	20 December 2021	Martin Hall

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	Response Ausgrid Referral	26 April 2022

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

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

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General Requirements**

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

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 12.00pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

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

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

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $17,218.01 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of $1,721,801.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

7. **Construction, Excavation and Associated Works Bond (Drainage works)**
The applicant is to lodge a bond of $50,000 as security against any damage or failure to complete the construction of stormwater drainage works approved in the Section 68 approval as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

8. **Stormwater Disposal**
The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the existing Council drainage pit within the site.

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

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

9. **Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's Water Management for Development Policy Section 6.1.

Details and certification prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to Council for approval. Council's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

10. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

- Planter boxes are to be installed along the entire exposed/open southern edge of the western terraces at the Mid-Level and Upper-Level. The planter boxes are to be fixed and are to be of sufficient capacity to accommodate screen planting shrubs which are to have a minimum height of 1.5m (as taken from the floor level of the existing deck). The screen planting shrubs are to be of a species which have sufficient density to prevent downward viewing into the north-facing terrace and adjoining upper level windows of the neighbouring property at No. 31 Beatrice Street.

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

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

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

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

Reason: To provide public and private safety.

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

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

Reason: To facilitate suitable vehicular access to private property.

13. **Stormwater Drainage Application**
The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include Civil Engineering plans for the design of the relining of the existing Council drainage pipeline from the existing stormwater pit in the street fronting the site to the outlet within the site. The design is to be generally in accordance with Council's specification for engineering works - AUS-SPEC #1.

The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

Reason: To ensure compliance with stormwater management arising from the development.

14. **Owners Consent for tree removal of common boundary Exempt Species**
Two existing trees share common boundaries and are recommended for removal in the Arboricultural Impact Assessment. Written consent from the adjoining owner at No. 35 Beatrice Street shall be submitted to the Certifying Authority to approve or otherwise the removal of the existing trees in common ownership, identified in the Arboricultural Impact Assessment as tree 16 (African Olive) and tree 20 (dead Gum).

These trees are identified as Exempt Species and may be removed without Council consent, subject to owners consent.

15. **Pre-Construction Stormwater Assets Dilapidation Report**
The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.p

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the approval issued to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

16. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **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 number 12 (Native Frangipani) and 13 (QLD Fire Wheel Tree),
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal, and the following are identified for removal: trees numbered 3 and 20 (dead trees), 4 (Tree Fern located within 2 metres of an existing approved dwelling), 10 and 11 (Oleander), 14 (Tree Tabacco <5 metres), 15 (Native Bleeding Heart <5 metres), 16, 18 and 19 (African Olive), and 21 (Privet).

Note: trees 16 and 20 are subject to adjoining owners consent to approve removal.

Reason: To enable authorised development works.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **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 Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

19. **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,
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.

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.

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

Reason: Public safety.

21. **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.

22. **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) That the finished floor levels are in accordance with the approved levels, prior to concrete

slab or final preparation for construction being poured/flooring being laid.

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

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

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

23. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 4.5 metres wide at the kerb to 5.5 metres wide at the boundary in accordance with Northern Beaches Council Drawing Normal Profile and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

24. **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 Certifying Authority.

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

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

25. **Landscape Completion**
Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
i) the rear of the property identified on the Landscape Plan as "no planting proposed to lower portion of site" shall be maintained as existing landscaped area supporting planting and any areas not containing planting shall be planted in accordance with item v) below,
ii) three (3) native tree species within the rear of the property, in proximity to the existing trees to be removed, shall be planted consisting of locally native tree species capable of attaining at least 6 metres in height, and selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, Manly DCP Schedule 4 - Part B - Native Tree Selection, or Council's Tree Guide,
iii) all tree planting shall be a minimum planting size of 75 litre size or as otherwise scheduled if greater in size, and shall meet the requirements of Natspec - Specifying Trees, 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 5.0 metres from buildings, 3.0 metres from other trees, 2.0 metres from structures, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,

iv) proposed planting to the area below the pool terrace shall additionally include two (2) Elaeocarpus reticulatus 'Prima Donna' or similar, and three (3) Ceratopetalum gummiferum ‘Alberys Red’ or similar, planted at a minimum 300mm container pot size, and to achieve at least 3.0 metres in height at maturity,
v) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
vi) 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.

26. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

27. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

The Applicant shall submit a suitably qualified Structural Engineer’s certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council’s Water Management for Development Policy and the approved Construction Certificate plans.

The certificate is to be submitted to Council for acceptance and Council's acceptance is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Reason: Protection of Council’s Infrastructure.

28. **Certification of Council Drainage Works and Works as Executed Data**

The Applicant shall submit a suitably qualified Civil Engineer’s certification that the completed works have been constructed in accordance with this consent and the approved Section 68 approved plans. Works as Executed data (details overdrawn on a copy of the approved drainage plans) certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' within the

subject site shall be submitted to Council for approval and acceptance prior to the release of the drainage security bond.

Council's acceptance of the works is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Reason: To ensure compliance of drainage works with Council's specification for engineering works.

29. **Swimming Pool Requirements**
The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009;
(iii) Swimming Pools Regulation 2008
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

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

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

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

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

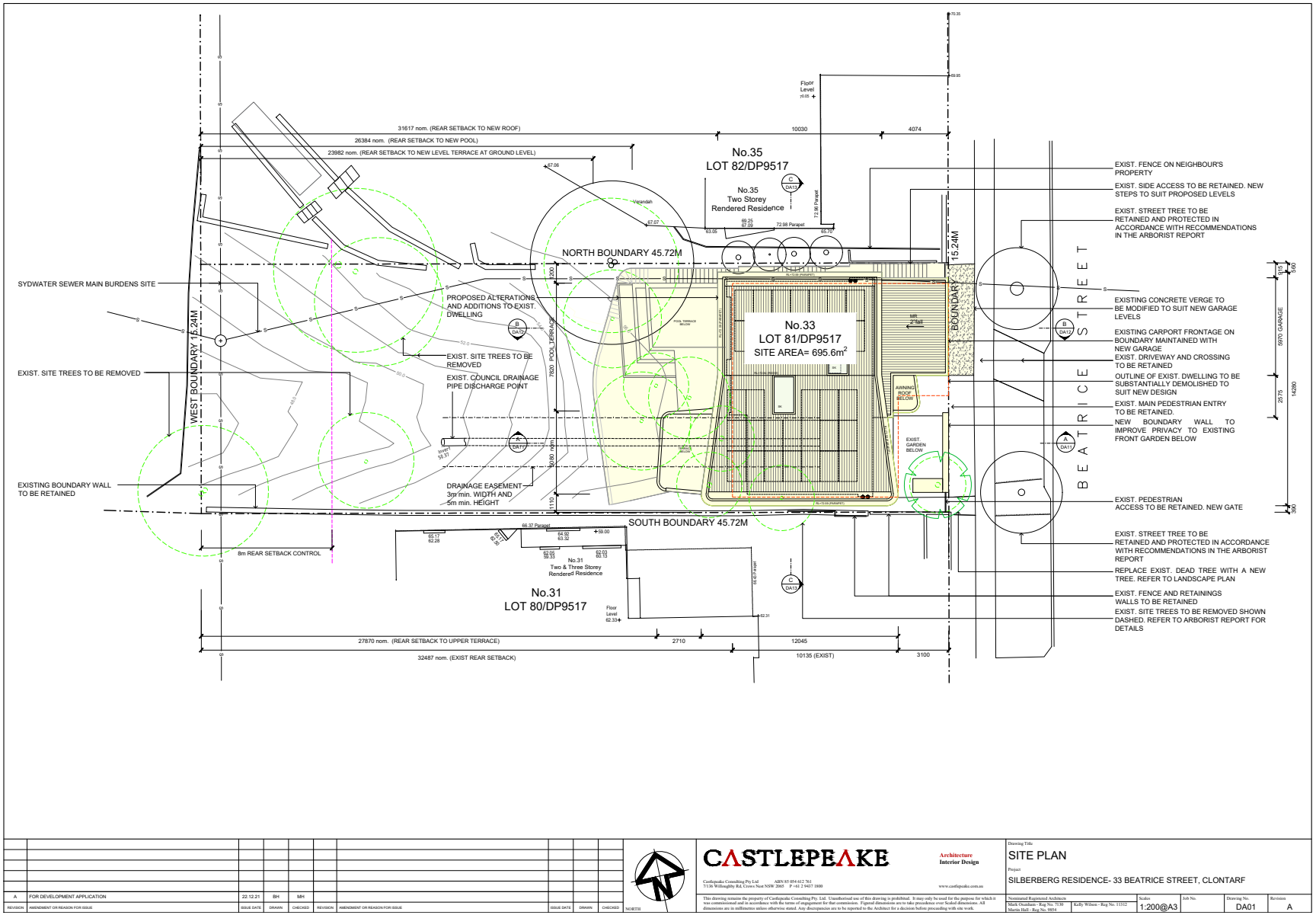
Reason: To maintain local environmental amenity.

31. **Swimming Pool/Spa/ Air conditioner Motor Noise**
The swimming pool / spa or air conditioner motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

32. **Drainage Easement Memorandum**
The conditions listed in the memorandum of transfer L730990 for the drainage easement burdening the site are to remain in perpetuity.

Reason: To ensure compliance by the proprietors of the terms of the memorandum of transfer burdening the site.



REVISION	AMENDMENT OR REASON FOR ISSUE	ISSUE DATE	DRAWN	CHECKED
A	FOR DEVELOPMENT APPLICATION	22.12.21	BH	MH

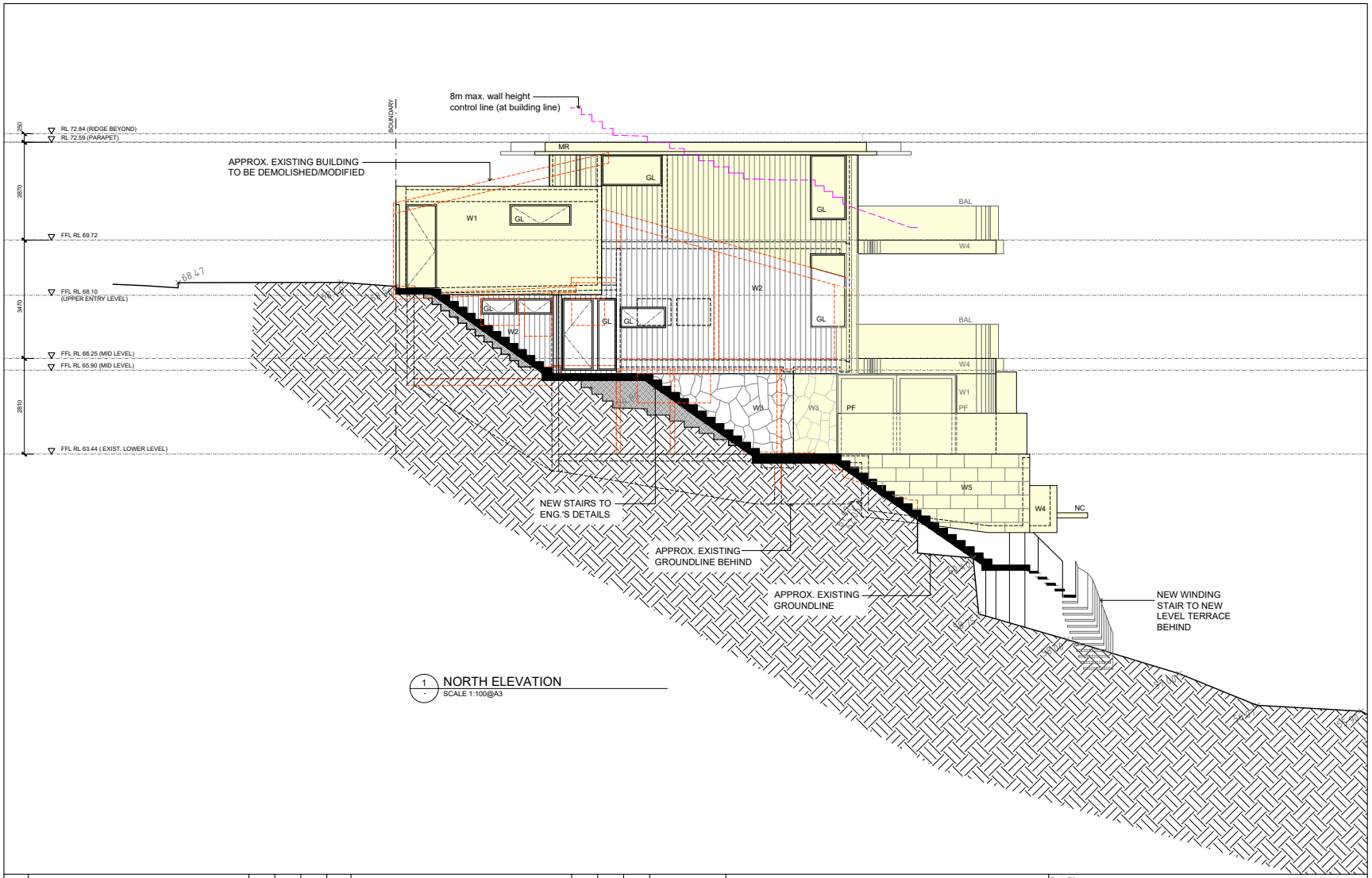
CASTLEPEAKE
Architecture
Interior Design
Castlepeake Consulting Pty Ltd ABN 85 054 612 761
7136 Willoughby Rd, Crows Nest NSW 2065 P +61 2 9437 1800
www.castlepeake.com.au

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Drawing Title: SITE PLAN
Project: SILBERBERG RESIDENCE- 33 BEATRICE STREET, CLONTARF

Nominated Registered Architects
Mitch Oxenham - Reg No. 7130
Martin Hull - Reg No. 9854
Kelly Wilson - Reg No. 11312

Scales	Job No.	Drawing No.	Revision
1:200@A3		DA01	A



REVISION	AMENDMENT OR REASON FOR ISSUE	ISSUE DATE	DRAWN	CHECKED
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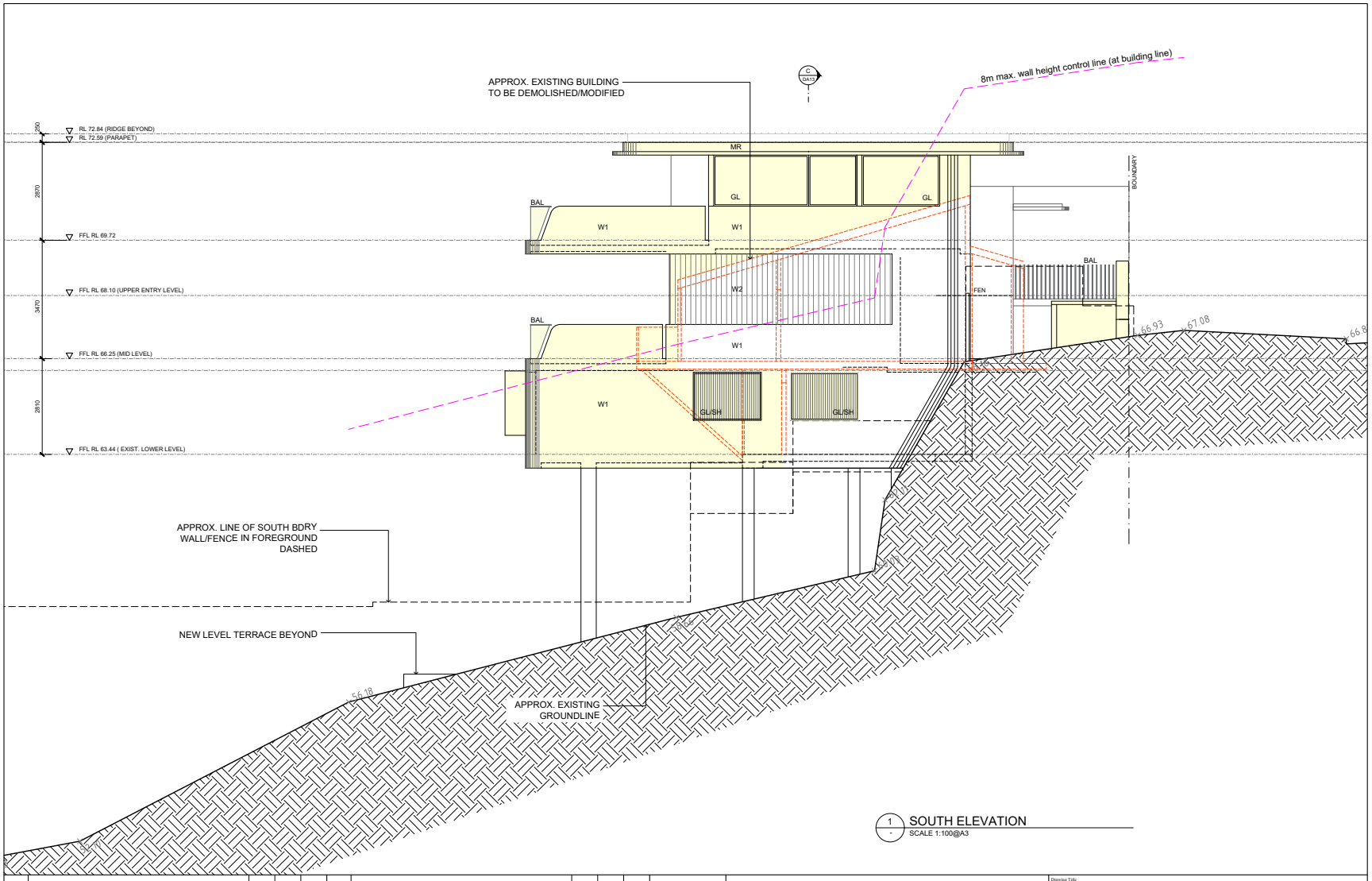
CASTLEPEAKE
Architecture Interior Design
Castlepeake Consulting Pty Ltd ABN 85 054 612 761
7136 Willoughby Rd, Crows Nest NSW 2065 P +61 2 9437 1800
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Drawing Title: PROPOSED ELEVATION - NORTH
Project: SILBERBERG RESIDENCE- 33 BEATRICE STREET, CLONTARF

Nominated Registered Architects: Mark Ovenhuis - Reg No. 7130; Kelly Wilson - Reg No. 11312; Martin Hull - Reg No. 9854

Scales	Job No.	Drawing No.	Revision
1:100@A3		DA07	A



REVISION	AMENDMENT OR REASON FOR ISSUE	ISSUE DATE	DRAWN	CHECKED
A	FOR DEVELOPMENT APPLICATION	22.12.21	BH	MH

CASTLEPEAKE
Architecture
Interior Design

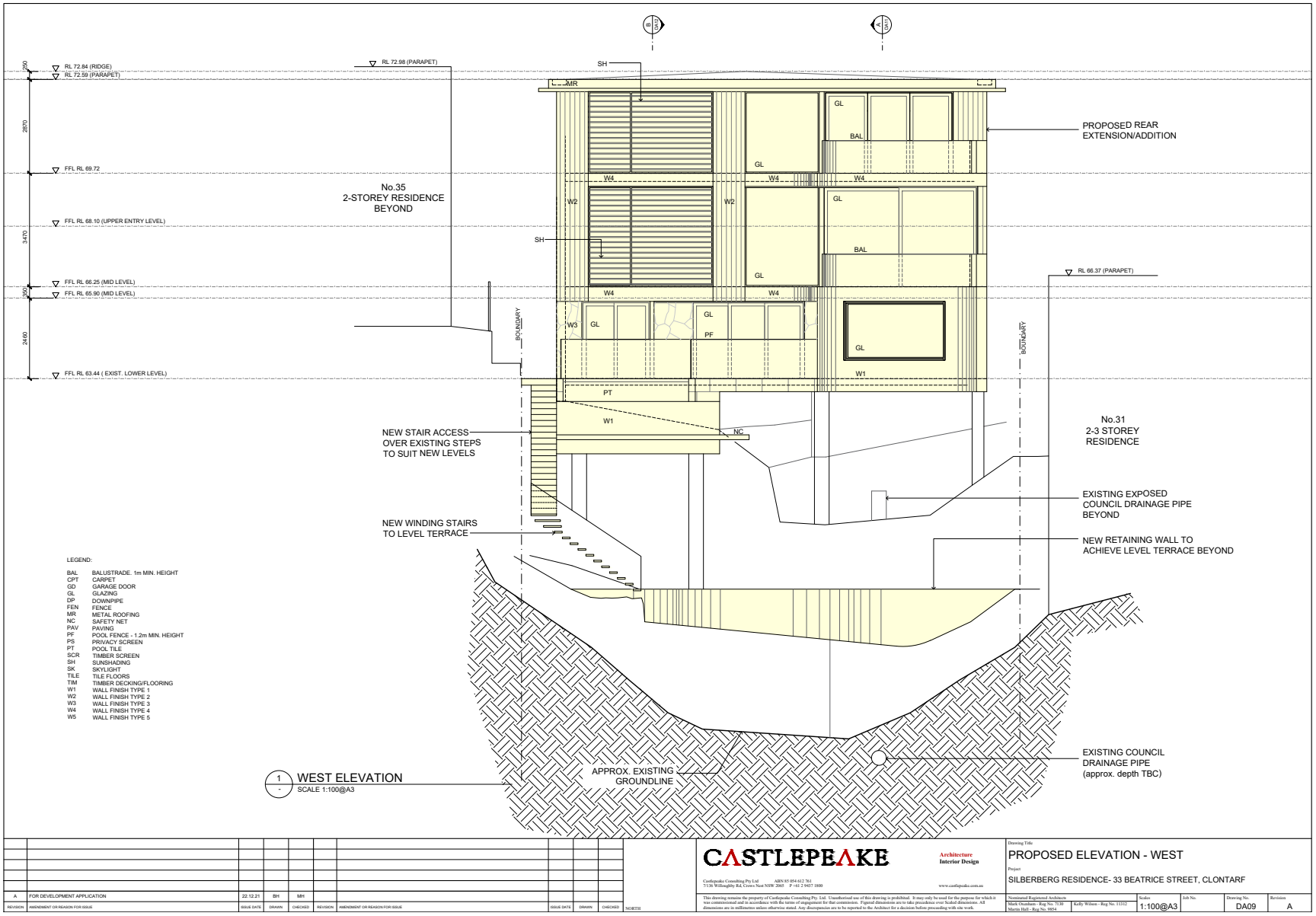
Castlepeake Consulting Pty Ltd ABN 85 054 612 761
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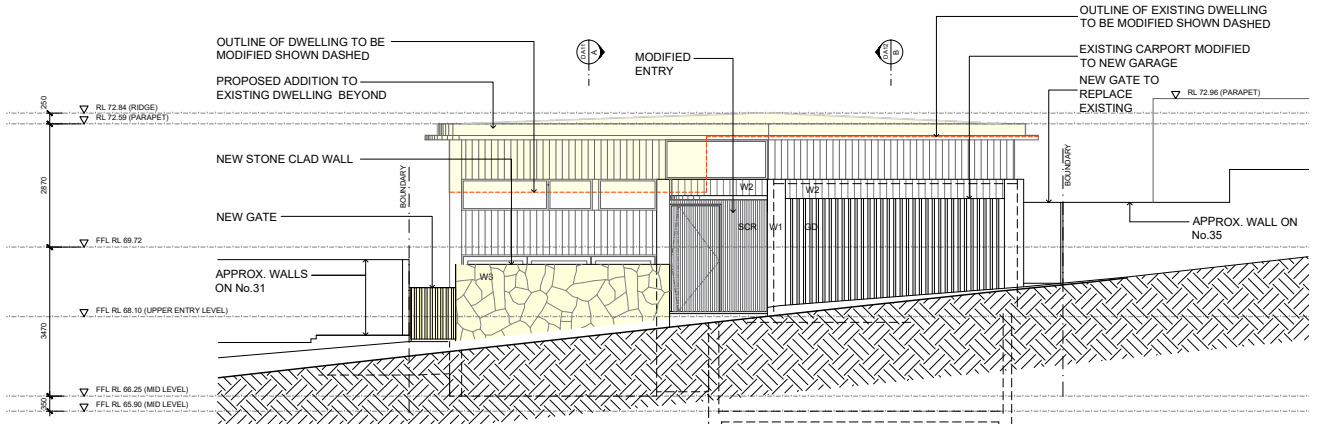
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Drawing Title: PROPOSED ELEVATION - SOUTH
Project: SILBERBERG RESIDENCE- 33 BEATRICE STREET, CLONTARF

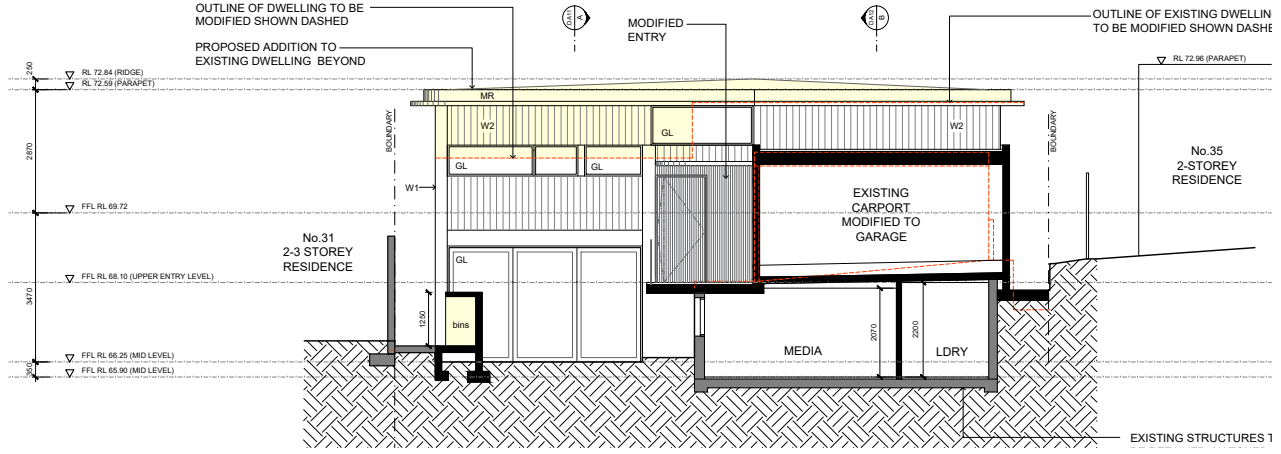
Nominated Registered Architects
Mark Oxenham - Reg No. 7130
Martin Hull - Reg No. 9854
Kelly Wilson - Reg No. 11312

Scales	Job No.	Drawing No.	Revision
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RL 72.84 (RIDGE)
RL 72.59 (PARAPET)
RL 72.98 (PARAPET)
FFL RL 69.72
FFL RL 68.10 (UPPER ENTRY LEVEL)
FFL RL 66.25 (MID LEVEL)
FFL RL 65.90 (MID LEVEL)
FFL RL 63.44 (EXIST. LOWER LEVEL)
RL 66.37 (PARAPET)
No.35
2-STOREY RESIDENCE
BEYOND
PROPOSED REAR
EXTENSION/ADDITION
No.31
2-3 STOREY
RESIDENCE
NEW STAIR ACCESS
OVER EXISTING STEPS
TO SUIT NEW LEVELS
NEW WINDING STAIRS
TO LEVEL TERRACE
EXISTING EXPOSED
COUNCIL DRAINAGE PIPE
BEYOND
NEW RETAINING WALL TO
ACHIEVE LEVEL TERRACE BEYOND
EXISTING COUNCIL
DRAINAGE PIPE
(approx. depth TBC)
APPROX. EXISTING
GROUNDLINE
BOUNDARY
LEGEND:
BAL BALLISTRADE. 1m MIN. HEIGHT
CPT CARPET
GD GARAGE DOOR
GL GLAZING
DP DOWNPIPE
FEN FENCE
MR METAL ROOFING
NC SAFETY NET
PAV PAVING
PF POOL FENCE - 1.2m MIN. HEIGHT
PS PRIVACY SCREEN
PT POOL TILE
SCR TIMBER SCREEN
SH SUNSHADING
SK SKYLIGHT
TILE TILE FLOORS
TIM TIMBER DECKING/FLOORING
W1 WALL FINISH TYPE 1
W2 WALL FINISH TYPE 2
W3 WALL FINISH TYPE 3
W4 WALL FINISH TYPE 4
W5 WALL FINISH TYPE 5
1 - WEST ELEVATION
SCALE 1:100@A3
CASTLEPEAKE
Architecture
Interior Design
Drawing Title
PROPOSED ELEVATION - WEST
Project
SILBERBERG RESIDENCE- 33 BEATRICE STREET, CLONTARF
Scales 1:100@A3
Drawing No. DA09
Revision A



1 - EAST ELEVATION (STREET ELEVATION)
SCALE 1:100@A3



2 - EAST ELEVATION
SCALE 1:100@A3

REVISION	AMENDMENT OR REASON FOR ISSUE	ISSUE DATE	DRAWN	CHECKED
A	FOR DEVELOPMENT APPLICATION	22.12.21	BH	MH

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Drawing Title
PROPOSED ELEVATION - EAST AND STREET

Project
SILBERBERG RESIDENCE- 33 BEATRICE STREET, CLONTARF

Nominated Registered Architects		Scales	Job No.	Drawing No.	Revision
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4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS:

MANLY LOCAL ENVIRONMENT PLAN 2013

Variations to Clause 4.3 Height of Buildings

FOR PROPOSED
ALTERATIONS AND ADDITIONS,
AT No.33 BEATRICE STREET,
CLONTARF
LOT 81 IN DP9517

DECEMBER 2021

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4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS FOR PROPOSED ALTERATIONS AND ADDITIONS TO EXISTING DWELLING AT No. 33 BEATRICE STREET, CLONTARF

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PURPOSE OF THIS DOCUMENT

This variation under Manly Local Environmental Plan 2013 has been prepared in relation to a development application for alterations and additions to an existing dwelling at 33 Beatrice St, Clontarf.

This objection relates to the following provisions of Manly Local Environmental Plan 2013:

a) 4.3 Height of Buildings.

In accordance with the provisions of Clause 4.6, this objection demonstrates that the 'control' is a development standard rather than a prohibition on development, outlines the underlying objects or purposes of the standard, demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and shows that the departure is well founded.

DESCRIPTION OF THE DEVELOPMENT STANDARD AND PROPOSED VARIATION

The subject site is zoned R2 - Low Density Residential (MLEP 2013 Land Zoning Map LZN_004).

The land use zone for R2 – Low Density Residential prescribes the following objectives:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents*

The development standard being varied relates to Clause 4.3 "Height of Buildings". The objectives of the development standard are prescribed the following:

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

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

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

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Clause 4.3(2) of MLEP 2013 is a development standard relating to the maximum height of the building and ensures that *height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The subject site is zoned 'I' on the MLEP 2013 Height of Buildings Map *(Map – HOB_004)* which prescribes a maximum height of 8.5m.

The building height of the existing dwelling is approximately 11m and currently exceeds the permissible building height of 8.5m identified in MLEP 2013.

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The proposed development proposes a building height of 15.5m, which further exceeds the permissible building height of 8.5m.

ANALYSIS OF THE PROPOSED VARIATION

Clause 4.6 "Exceptions to Development Standards" facilitates the variation of a development standard under the Standard Instrument LEP. An application to vary a development standard can be made under Clause 4.6. It aims to provide flexibility in applying certain development standard to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 "Exceptions to Development Standards" of MLEP 2013 is a local policy mechanism available to applicants to seek variation of development standards contained within in an environmental planning instrument.

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

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

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

(a) the consent authority is satisfied that—

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

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

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

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

It is appropriate to assess the variation of the proposed building height against the aims and objectives outlined in Clause 4.6 of MLEP 2013. The following demonstrate how the underlying objectives are satisfied:

1(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

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

In this case, strict numeric compliance is considered unreasonable and unnecessary as the subject site is impacted by challenging topography (steeply sloping) and burdened by Council's public drainage system and associated easement, as outlined in Council's *Water Management for Development Policy – Part 6.1 Public Drainage Systems*, with dimensional restrictions of 3m minimum horizontal clearances and 5m minimum vertical clearances.

The combined impact of a steeply sloping site and Council's drainage easement effectively reduces the developable area and restricts the bulk of the development to the northern half of the site not affected by the drainage easement. This reduction in development area greatly impact the development feasibility and restrict the development options on the subject site. As a result of this limitation, additional building height is sought. The proposed development seeks to provide a maximum building height of approximately 15.5m (RL72.84), which exceeds the permitted building height applicable to the site by approximately 7m.

It is important to note that as a result of a steeply sloping site, the existing 1-2 storey dwelling is built significantly high off the ground (up to 4m towards the rear of the dwelling), supported on concrete piers, to achieve appropriate accessible entry at street level and provide suitable access to the bottom of the site from the lowest level. Consequently, the existing dwelling currently exceed the maximum permitted building height by approximately 2.5m with up to 4m of the 'building height' being subfloor space ie between the underside of the dwelling and natural ground level. Any works undertaken to improve the dwelling will exacerbate the existing numeric non-compliance so flexibility is required to facilitate these improvements.

Despite the numeric non-compliance, the proposed development can achieve the underlying objective and purpose of the building control.

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

This sub-clause is not applicable as the development standard for height 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

In Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe), five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary was established. The number of tests to be satisfied is further detailed in Initial Action where Preston CJ states at [22]:

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

The proposal meets 2 of these five Wehbe tests and therefore compliance with the standard is unreasonable in this instance. Demonstration of meeting these 2 tests is as below:

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard

(a) *to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,*

The proposed development seeks to provide a maximum building height of approximately 15.5m (RL72.84), which represents a departure of approximately 7m from the permissible building height control. The proposed non-compliance will enable an additional storey to improve the current accommodation, living and outdoor entertainment areas and general amenity without the impacts on the neighbouring properties.

The proposed maximum building height (RL72.84) only exceed the maximum building height of the existing dwelling (RL72.29) by 550mm at the street frontage. The existing single storey street frontage, including the double carport located at the boundary is retained with alterations and additions proposed to achieve a more holistic contemporary architectural character and aesthetics that will positively contribute to the streetscape.

To minimise the impact on the streetscape, the bulk of the proposed alterations and additions are kept to the rear. As noted above, the existing dwelling is built significantly high off the ground (up to 4m towards the rear of the dwelling) as a result of the steeply sloping site and the effect of Council's drainage easement. The height, scale and bulk of the proposed development is consistent with the height, scale and bulk of the existing dwelling on the adjoining property at No.35 and surrounding buildings on the lower side of Beatrice St with similar topography that are not affected by 'Special Height Provisions' restrictions.

It is noted that the adjoining property to the south at No.31 to No.11 Beatrice Street are identified in the LEP Height Map as an area affected by 'Special Height Provisions' with strict height restrictions to maintain water views from Beatrice St. The change in height, scale and bulk between No.33 (site) and No.31 is consistent with the development standards and planning controls and objectives of the MLEP and DCP, and a reflection of the desired character of the streetscape. In addition, as a result of the 'Special Height Provisions' restrictions, affected dwellings including the dwelling on No.31, result in more of the bulk located below street level and closer to the rear boundary, altering the rear building setback line.

Properties located directly in front of the site on the east side of Beatrice St are generally on higher ground at approximately 3m above street level and significantly setback from the street boundary to be visible from Beatrice St.

When viewed from the water, the prevailing scale of development in the vicinity of the subject site is large, with dwellings typically consisting of at least 3 levels to take advantage of the views towards middle harbour. The area is densely landscaped with trees with large canopies that predominantly screen these buildings, including the proposed development from the foreshore.

The proposed development as a whole is in *harmony with the bulk and scale of surrounding buildings and the streetscape.*

(b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

Views

Properties located on the east side of Beatrice Street, directly in front of the site, are generally on higher ground at approximately 3m above street level. View loss impacts to these properties as a result of the proposed development are not anticipated.

Based on floor plans of the dwelling at No.35 Beatrice St found on Domain.com.au, there appears to be no windows facing the site, and the pool terrace is one storey higher than the proposed pool terrace on site. In addition, the proposed alterations and additions are approximately 3.5m further forward (east) than the dwelling on No.35. Views to middle harbour from No.35 are predominantly from the pool terrace and rear facing windows. No view loss impacts are anticipated as a result of the proposed development.

As mentioned above, No.31 is affected by 'Special Height Provisions' with strict height restrictions to maintain water views from Beatrice St. As a result, the dwelling is positioned much lower, however, views to middle harbour from No.31 are predominantly from the pool terrace at the rear. The proposed development is significantly setback from the rear boundary (approximately 30.5m) compared to the rear setback of the dwelling at No.31 (approximately 12m) to have any view loss impacts.

Overall, the proposed alterations and additions that exceed the maximum building height have no significant or direct impact on views from adjoining properties and properties located on the higher side of Beatrice St.

Privacy

For reasons mentioned above, the dwelling at No.31-No.11 are lower than the dwelling on the subject site. Windows proposed on the southern façade on the upper level are well above the dwelling at No.31 and pose no privacy impacts. Windows on the lower level (bedroom and bathroom) overlook the neighbouring driveway. External vertical privacy screens are proposed to maintain privacy for both. The mid and upper level balconies are overlooking the roof of the dwelling and will have no impact on privacy. The proposed development is significantly setback from the rear boundary (approximately 30.5m to the rear building line) compared to the rear setback of the dwelling at No.31 (approximately 12m) to have any impacts on privacy.

Based on floor plans of the dwelling at No.35 Beatrice St found on Domain.com.au, there appears to be no windows facing the site. Windows proposed on the northern façade will have nil impact on privacy.

The proposed pool terrace at the rear is well below the pool terrace of the adjoining property at No.35 and overlooks the open under-croft space. The pool terrace level has great views of middle harbour and will have negligible impacts on privacy to adjoining properties.

Overall, the proposed alterations and additions that exceed the maximum building height have no significant impact on views from adjoining properties and properties located on the higher side of Beatrice St.

Overshadowing

Existing site constraints and orientation (north-south) determined, for the most part, the orientation of the proposed additions and new windows. In addition, significant views to the west and south-west have influenced the layout and location of living areas and its connection to outdoor entertaining areas to maximise views and solar access.

As a result of the site orientation, the only property impacted by the proposed development is the adjoining property to the south at No.31 Beatrice St. Shadow analysis for the Winter Solstice at 9am, 12noon and 3pm indicate the following:

- The north facing windows of the dwelling at No.31 are currently overshadowed by the dwelling at No.35, located on the higher end of Beatrice St, at 9am during the Winter Solstice. The proposed alterations and additions do not exacerbate this existing overshadowing condition.
- These same north facing windows will continue to receive sunlight from 12-3pm.
- The proposed development partially overshadow the driveway of the property at No.31 at 3pm.

The overall impact as a result of the proposed development is considered reasonable given the site constraints and orientation.

Overall, the proposed alterations and additions that exceed the maximum building height have no significant additional adverse overshadowing impacts on the adjoining dwellings during the Winter Solstice.

Refer to drawing *SD01 - SD03 – Shadow Diagrams* for details.

Visual Intrusion

As described above, the single storey street frontage is retained and is therefore consistent with the streetscape character of properties on the lower side of Beatrice St not affected by the 'Special Height Provisions' restrictions. The proposed development is significantly setback from the rear boundary (approximately 30.5m to the rear building line) in relation to the adjoining dwellings at No.31 (approximately 12m) and No.35 (approximately 22m) to be have any significant impacts.

Overall, the proposed development is not visually intrusive within the streetscape or when viewed from the water, foreshore or public reserves.

(c) *to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,*

As described above, the existing single storey street frontage, including the double carport located at the boundary is retained with alterations and additions proposed to achieve a more holistic contemporary architectural character and aesthetics, a vast improvement on the existing worn appearance that will positively contribute to the streetscape.

To minimise impact on the streetscape, the bulk of the proposed alterations and additions are kept to the rear. The proposed rear façade is given greater articulation to visually reduce the scale of the building and improve its contribution to the desired future character of the area.

Overall, the visual quality of the proposed development is greatly improved when viewed from the street, adjoining properties, waterways, foreshore and public reserves as a result of changes in architectural form and finishes/materials to achieve a more holistic and refreshed contemporary aesthetics.

(d) to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,

The site is located on the lower west side of Beatrice St with significant views of middle harbour to the west. There are currently no public view corridors from Beatrice St through/across the site. However, it is noted that the adjoining property to the south at No.31 to No.11 Beatrice Street are identified in the LEP Height Map as an area affected by 'Special Height Provisions' with strict height restrictions to maintain water views from Beatrice St.

The proposed alterations and additions that exceed the maximum building height have nil impact on public views.

(e) *to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,*

The upper height limit of 8.5m is inadequate in the locality of the subject site which is greatly affected by steeply sloping topography and burdened by Council's public drainage system and easement as described in 1(a) and 1(b) above.

Furthermore, as a result of the steeply sloping site, most properties including the subject site have dwellings that consists of vertically stacked floor plates which is generally a more feasible and practical approach to achieving accessible entry at streetscape level as well as reasonable access to the lower section of the site. However, this approach generally results in dwellings built significantly high off the ground, as is the case for the existing dwelling on the subject site which is built up to 4m off the ground towards the rear of the dwelling. This open subfloor space is counted as building height but cannot be developed where affected by Council's drainage easement (south side of site) and not feasible for development, in the north side of the site, as part of the proposed alterations and additions.

The combined impact of a steeply sloping site and Council's drainage easement effectively greatly reduces the development potential of the subject. This reduction in development area greatly impact the development feasibility and restrict the development options on the subject site. As a result of this limitation, additional building height is sought.

The proposed FSR of 0.43:1 slightly exceeds the permitted FSR of 0.4:1 under the provisions of the LEP. However, under the *Manly DCP 2013 - Clause 4.1.3.1 – Exceptions to FSR for Undersized Lots*, applicable to the site, the maximum permitted FSR is to be calculated based on a site area of 750m^2. The maximum permitted GFA is 300m^2. The proposed total GFA of 299.7m^2 complies with the numeric provisions of Clause 4.1.3.1 of the DCP. The proposal satisfies the underlying objectives of both the LEP and DCP.

Refer to Clause 4.6 – Exceptions to Development Standards - Floor Space Ratio submitted as part of the application.

The proposal complies with the landscape requirements of the MDCP 2013.

(f) *to use maximum height limits to assist in responding to the current and desired future character of the locality,*

As noted in (e) above, the height limit of 8.5m is inadequate in the locality of the subject site which is greatly affected by steeply sloping topography, and even more inadequate for the subject site which is also burdened by Council's public drainage system and easement as described in 1(a) and 1(b) above.

It is noted that several dwellings on the low side of Beatrice St currently exceed the 8.5m height limit, including the adjoining properties at No.31 and No.35. These existing non-compliances with height is a localised occurrence due to the topography of the site which greatly reduces the development potential of the properties in general. These existing non-compliances are reflections of the scale of dwellings that are more suitable and practical responses to the topographical constraints of the area.

(g) *to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*

N/A

(h) *to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.*

N/A

Test 2 - the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

This test is not applicable to the proposal.

The underlying objective of the standard is to control the scale of development and minimise amenity impacts. This is seen as relevant to the proposal and it is noted that the proposal complies with these objectives as demonstrated under 'Test 1'.

Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

This test is not applicable to the proposal.

Test 4 - the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Several dwellings on the low side of Beatrice St currently exceed the 8.5m height limit, including the adjoining property at No.35. These existing non-compliances establish precedent for sites greatly impacted by constraints directly resulting from difficult and challenging topography.

Test 5- the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

This test is not applicable to the proposal.

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

The proposed development is able to demonstrate sufficient environmental planning grounds for contravening the development standard:

- The development complies with the objectives of R2-Low Density Residential and the objectives of Clause 4.3 building height of the MLEP 2013.

- The non-compliance is the direct result of a difficult and challenging topography as well as the burden of Council's public drainage system and easement, both of which greatly impact the development potential of the site by effectively reducing the developable area.
- There is established precedent for contravening the development standard for height in the immediate vicinity of the subject dwelling.
- The upper height limit of 8.5m is inadequate in the locality of the subject site due to constraints resulting directly from a steeply sloping topography that occur on the low side of Beatrice St.
- There is an existing non-compliance with the building height of the existing dwelling which is a 1-2 storey structure built significantly high off the ground (up to 4m) at the rear. This open subfloor space is counted as building height but cannot be developed where affected by Council's drainage easement (south side of site) and not feasible for development, in the north side of the site, as part of the proposed alterations and additions. Any works undertaken to improve the dwelling will occur over the maximum allowable building height, so flexibility is required to facilitate these improvements.
- The proposal will be of an appropriate bulk and scale and will not result in adverse visual impacts and will not detract from the continuity of the streetscape as the development retains the single storey street frontage. The bulk of the proposed alterations and additions are kept to the rear.
- The proposed rear façade is given greater articulation to visually reduce the scale of the building and improve its contribution to the desired future character of the area.
- The proposal delivers a high quality and well defined urban form – a vast improvement when viewed from the street, adjoining properties, waterways, foreshore and public reserves as a result of changes in architectural form and finishes/materials to achieve a more holistic and refreshed contemporary aesthetic.
- The proposed alterations and additions that exceed the 8.5m height limit have no significant impact on bulk and scale, views, privacy and overshadowing.
- The proposed development will not result in any adverse amenity issues to surrounding properties or the locality

CONCLUSION

In our opinion the variations to the standard prescribed by Clause 4.3(2) of MLEP 2013 have shown to:

a) be consistent with the underlying objectives of the standards;

b) contribute positively to the future character of the area;

c) have no demonstrable negative impact on the amenity of adjoining properties and the immediate area beyond a fully compliant development;

d) consistent with the objectives of R2 – Low Density Residential; and

e) show no public benefit in maintaining strict compliance with the standard.

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As such strict adherence to the standard is unreasonable and unnecessary in the site specific circumstances of the case. In our opinion this Clause 4.6 submission has demonstrated that the variation is well founded and should be supported and the development granted consent on its merits.

Yours Sincerely,



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4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS:

MANLY LOCAL ENVIRONMENT PLAN 2013

Variations to Clause 4.4 Floor Space Ratio

FOR PROPOSED
ALTERATIONS AND ADDITIONS,
AT No.33 BEATRICE STREET,
CLONTARF
LOT 81 IN DP9517

DECEMBER 2021

CASTLEPEAKE

4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS FOR PROPOSED ALTERATIONS AND ADDITIONS TO EXISTING DWELLING AT No. 33 BEATRICE STREET, CLONTARF

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PURPOSE OF THIS DOCUMENT

This variation under *Manly Local Environmental Plan 2013* has been prepared in relation to a development application for alterations and additions to an existing dwelling at 33 Beatrice St, Clontarf.

This objection relates to the following provisions of *Manly Local Environmental Plan 2013*:

a) 4.4 Floor Space Ratio

In accordance with the provisions of *Clause 4.6*, this objection demonstrates that the 'control' is a development standard rather than a prohibition on development, outlines the underlying objects or purposes of the standard, demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and shows that the departure is well founded.

DESCRIPTION OF THE DEVELOPMENT STANDARD AND PROPOSED VARIATION

The subject site is zoned *R2 - Low Density Residential (MLEP 2013 Land Zoning Map LZN_004).*

The land use zone for *R2 – Low Density Residential* prescribes the following objectives:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents*

The development standard being varied relates to *Clause 4.4 "Floor Space ratio*". The objectives of the development standard are prescribed the following:

(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,
(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain

Clause 4.4 of MLEP 2013 is a development standard relating to the floor space ratio of the building and ensures that *the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The subject site is within the area marked 'B' on the *MLEP 2013 Floor Space ratio Map (Map –FSR_004)* which prescribes a maximum floor space ratio of 0.4:1.

Based on the calculations set out below, the proposed FSR is 0.43:1 (299.7m^2) which exceeds the permissble FSR of 0.4:1 under the LEP provisions.

Maximum Allowable Floor Area	
Site Area	= 695.6m² (as surveyed)
Maximum floor space ratio	= 0.4 x 695.6m²
Total	= 278.24m²

Existing Floor Area	
Upper Level (Entry Level)	= 4m²
Mid Level	= 102.8m²
Lower Level	= 72.3m²
Total	= 179.1m² or 0.26:1
Proposed Floor Area	
Upper Level (Entry Level)	= 80m²
Mid Level	= 116.6m²
Lower Level	= 103.1m²
Total	= 299.7m² or 0.43:1 (21.46m^2 above max. permissible)

It is noted that under the *Manly DCP 2013 - Clause 4.1.3.1 – Exceptions to FSR for Undersized Lots*,

"On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied".

"The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots".

The subject site is identified as Area 'U' on the *LEP Lot Size Map (Map- LSZ_004)* with a prescribed minimum lot size of 1150m^2. The subject site with a site area of 695.6m^2 as surveyed is less than the prescribed minimum lot size and is considered an '*undersized lot*'. *Clause 4.1.3.1 – Exceptions to FSR for Undersized Lots in Manly DCP 2013* is applicable to the site, and in accordance with *Figure 30 - Extent of FSR Variation for Undersized Lots*, the maximum permissible FSR is to be calculated based on a site area of 750m^2. The maximum permissible gross floor area is therefore 300m^2.

Under the provisions of *Clause 4.1.3.1 – Exceptions to FSR for Undersized Lots and Figure 30 - Extent of FSR Variation for Undersized Lots* of the *Manly DCP 2013,* the proposed total gross floor area of 299.7m^2 achieves an FSR of 0.4:1 and therefore complies with the numeric requirements of the LEP.

The analysis below will demonstrate that the underlying objectives of both the LEP and DCP can be satisfied.

ANALYSIS OF THE PROPOSED VARIATION

Clause 4.6 "Exceptions to Development Standards" facilitates the variation of a development standard under the Standard Instrument LEP. An application to vary a development standard can be made under Clause 4.6. It aims to provide flexibility in applying certain development standard to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 "Exceptions to Development Standards" of MLEP 2013 is a local policy mechanism available to applicants to seek variation of development standards contained within in an environmental planning instrument.

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

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

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

(a) the consent authority is satisfied that—

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

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

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

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

It is appropriate to assess the variation of the proposed floor space ratio against the aims and objectives outlined in Clause 4.6 of MLEP 2013. The following demonstrate how the underlying objectives are satisfied:

1(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

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

In this case, strict numeric compliance with the development standard is considered unreasonable and unnecessary as the proposed development numerically complies with the maximum permissible FSR under the provisions of *Clause 4.1.3.1 – Exceptions to FSR for Undersized Lots and Figure 30 - Extent of FSR Variation for Undersized Lots* of the *Manly DCP 2013*.

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

This sub-clause is not applicable as the development standard for floor space ratio 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

In Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe), five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary was established. The number of tests to be satisfied is further detailed in Initial Action where Preston CJ states at [22]:

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

The proposal meets 1 of these five Wehbe tests and therefore compliance with the standard is unreasonable in this instance. Demonstration of meeting these 1 tests is as below:

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard

(a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land

The subject property is zoned R2 – Low Density Residential. The proposal retains the existing single storey street frontage, including the double carport located at the boundary with alterations and additions proposed to achieve a more holistic contemporary architectural character and aesthetics that will positively contribute to the streetscape.

To minimise the impact on the streetscape, the bulk of the proposed alterations and additions are kept to the rear. The scale and bulk of the proposed development is consistent with the scale and bulk of existing dwellings on adjoining properties on the lower side of Beatrice St.

The existing dwelling is built up to 4m off the ground and with the existing lower floor slabs retained, the proposed alterations and additions occur mainly above this lower level where hard terrace spaces are located. The proposal will have negligible impacts on landscaped area, drainage and the natural topography of the site.

Overall, the proposal does not exceed the capacity of the land on which it is located and as a whole is in harmony with the bulk and scale of surrounding buildings and the streetscape.

(b) to limit traffic generation as a result of that development

The proposed increase in floor space has no impact on the amount of traffic entering and exiting the site. The existing dwelling includes a double attached carport that provides two off-street parking spaces. The proposed alterations and additions involve modification of the carport into a garage. No additional parking is proposed. No additional traffic is generated.

(c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

Views

Properties located on the east side of Beatrice Street, directly in front of the site, are generally on higher ground at approximately 3m above street level. View loss impacts to these properties as a result of the proposed development are not anticipated.

Based on floor plans of the dwelling at No.35 Beatrice St found on Domain.com.au, there appears to be no windows facing the site, and the pool terrace is one storey higher than the proposed pool terrace on site. In addition, the proposed alterations and additions are approximately 3.5m further forward (east) than the dwelling on No.35. Views to middle harbour from No.35 are predominantly from the pool terrace and rear facing windows. No view loss impacts are anticipated as a result of the proposed development.

As mentioned above, No.31 is affected by 'Special Height Provisions' with strict height restrictions to maintain water views from Beatrice St. As a result, the dwelling is positioned much lower, however, views to middle harbour from No.31 are predominantly from the pool terrace at the rear. The proposed development is significantly setback from the rear boundary (approximately 30.5m) compared to the rear setback of the dwelling at No.31 (approximately 12m) to have any view loss impacts.

Overall, the proposed alterations and additions have no significant or direct impact on views from adjoining properties and properties located on the higher side of Beatrice St.

Privacy

For reasons mentioned above, the dwelling at No.31-No.11 are lower than the dwelling on the subject site. Windows proposed on the southern façade on the upper level are well above the dwelling at No.31 and pose no privacy impacts. Windows on the lower level (bedroom and bathroom) overlook the neighbouring driveway. External vertical privacy screens are proposed to maintain privacy for both. The mid and upper level balconies are overlooking the roof of the dwelling and will have no impact on privacy. The proposed development is significantly setback from the rear boundary (approximately 30.5m to the rear building line) compared to the rear setback of the dwelling at No.31 (approximately 12m) to have any impacts on privacy.

Based on floor plans of the dwelling at No.35 Beatrice St found on Domain.com.au, there appears to be no windows facing the site. Windows proposed on the northern façade will have nil impact on privacy.

The proposed pool terrace at the rear is well below the pool terrace of the adjoining property at No.35 and overlooks the open under-croft space. The pool terrace level has great views of middle harbour and will have negligible impacts on privacy to adjoining properties.

Overall, the proposed alterations and additions have no significant impact on views from adjoining properties and properties located on the higher side of Beatrice St.

Overshadowing

Existing site constraints and orientation (north-south) determined, for the most part, the orientation of the proposed additions and new windows. In addition, significant views to the west and south-west have influenced the layout and location of living areas and its connection to outdoor entertaining areas to maximise views and solar access.

As a result of the site orientation, the only property impacted by the proposed development is the adjoining property to the south at No.31 Beatrice St. Shadow analysis for the Winter Solstice at 9am, 12noon and 3pm indicate the following:

- The north facing windows of the dwelling at No.31 are currently overshadowed by the dwelling at No.35, located on the higher end of Beatrice St, at 9am during the Winter Solstice. The proposed alterations and additions do not exacerbate this existing overshadowing condition.
- These same north facing windows will continue to receive sunlight from 12-3pm.
- The proposed development partially overshadow the driveway of the property at No.31 at 3pm.

Overall, the proposed alterations and additions have no significant additional adverse overshadowing impacts on the adjoining dwellings during the Winter Solstice.

Refer to drawing *SD01 - SD03 – Shadow Diagrams* for details.

Visual Intrusion

As described above, the single storey street frontage is retained and is therefore consistent with the streetscape character of properties on the lower side of Beatrice St not affected by the 'Special Height Provisions' restrictions. The proposed development is significantly setback from the rear boundary (approximately 30.5m to the rear building line) in relation to the adjoining dwellings at No.31 (approximately 12m) and No.35 (approximately 22m) to be have any significant impacts.

Overall, the proposed development is not visually intrusive within the streetscape or when viewed from the water, foreshore or public reserves.

(d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone

Refer to (a) above which provides a discussion of bulk and scale.

(e) to permit higher density development at transport nodal points

N/A

(f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood

N/A

(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood

N/A

(h) *to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood*

N/A

(h) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas

N/A

(i) to encourage the consolidation of certain land for redevelopment

N/A

(j) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses

N/A

Test 2 - the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

This test is not applicable to the proposal.

The underlying objective of the standard is to control the scale of development and minimise amenity impacts. This is seen as relevant to the proposal and it is noted that the proposal complies with these objectives as demonstrated under 'Test 1'.

Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

This test is not applicable to the proposal.

Test 4 - the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

This test is not applicable to the proposal.

Test 5- the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

This test is not applicable to the proposal.

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

The proposed development is able to demonstrate sufficient environmental planning grounds for contravening the development standard:

- The development complies with the objectives of R2-Low Density Residential and the objectives of Clause 4.4 floor space ratio of the MLEP 2013.
- The proposal does not exceed the capacity of the land on which it is located and will be of an appropriate bulk and scale that will not result in adverse visual impacts and will not detract from the continuity of the streetscape as the development retains the single storey street frontage. The bulk of the proposed alterations and additions are kept to the rear.
- The proposed rear façade is given greater articulation to visually reduce the scale of the building and improve its contribution to the desired future character of the area.
- The proposal delivers a high quality and well defined urban form – a vast improvement when viewed from the street, adjoining properties, waterways, foreshore and public reserves as a result of changes in architectural form and finishes/materials to achieve a more holistic and refreshed contemporary aesthetics.
- The proposed alterations and additions occur mainly above the lower level of the existing dwelling to be retained. The proposal will have negligible impacts on landscaped area, drainage and the natural topography of the site.
- The proposed alterations and additions have no significant impact on bulk and scale, views, privacy and overshadowing.
- The proposed alterations and additions will not generate additional traffic to the area.
- The proposed development will not result in any adverse amenity issues to surrounding properties or the locality

CONCLUSION

In our opinion the variations to the standard prescribed by Clause 4.4 of MLEP 2013 have shown to:

a) be consistent with the underlying objectives of the standards;

b) contribute positively to the future character of the area;

c) have no demonstrable negative impact on the amenity of adjoining properties and the immediate area beyond a fully compliant development;

d) consistent with the objectives of R2 – Low Density Residential; and

e) show no public benefit in maintaining strict compliance with the standard.

As such strict adherence to the standard is unreasonable and unnecessary in the circumstances of the case. In our opinion this Clause 4.6 submission has demonstrated that the variation is well founded and should be supported and the development granted consent on its merits.

Yours Sincerely,



Martin Hall
NSW Architect Registration Number 9854
Castlepeake Consulting Pty Ltd

ITEM 3.5	**MOD2022/0637 - 3 SUWARROW STREET FAIRLIGHT - MODIFICATION OF DEVELOPMENT CONSENT DA2022/0221 GRANTED FOR DEMOLITION WORKS, TORRENS TITLE SUBDIVISION OF ONE LOT INTO TWO AND CONSTRUCTION OF TWO SEMI-DETACHED DWELLINGS INCLUDING TWO SWIMMING POOLS**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/101443**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations
	3 ⇩Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Minimum Lot Size Development Standard of Clause 4.1 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 Mod2022/0637 for Modification of Development Consent DA2022/0221 granted for demolition works, Torrens Title subdivision of one lot into two and construction of two semi-detached dwellings including two swimming pools on land at Lot 28 DP 10399, 3 Suwarrow Street FAIRLIGHT, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0637

Responsible Officer:	Tony Collier
Land to be developed (Address):	Lot 28 DP 10399, 3 Suwarrow Street FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2022/0221 granted for Demolition works, Torrens Title subdivision of one lot into two and construction of two semi-detached dwellings including two swimming pools
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	AJ Developments 22 Pty Limited
Applicant:	AJ Developments 22 Pty Limited

Application Lodged:	23/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	09/01/2023 to 25/01/2023
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.4 Floor space ratio: 8.1%
Recommendation:	Approval

EXECUTIVE SUMMARY

This development application seeks approval to modify DA2022/0221 which was approved by the Northern Beaches Local Planning Panel (NBLPP) on 21 September 2022 for demolition works, Torrens Title subdivision of one lot into two and construction of two semi-detached dwellings including two swimming pools.

At that meeting, the NBLPP imposed Condition 12 which requires privacy treatments to be installed to windows along the southern elevation of the first floor level to the dwelling on Lot A. The proposal to modify DA2022/0221 does not alter the amendment to Condition 12 as imposed by the Northern Beaches Local Planning Panel nor meet the referral requirements of Points 1 - 4 of the reporting criteria

for modifications to the NBLPP.

The only critical assessment issue resulting from the modification includes a breach to the floor space ratio under Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013) which constitutes a 8.1% variation.

The non-compliance with Floor Space Ratio (FSR) standard arises from a 12.2m² increase in floorspace. Clause 4.4 permits a FSR of 0.6:1 which translates to 149.85m² per lot (being Lots A and B). The two dwellings approved under DA2022/0221 each had a FSR of 0.589:1 (being 147.1m² each) which complied with the requirement. However, this modification seeks to increase the FSR of each dwelling to 0.64:1 (being 162.0m²) which represents a variation of 8.1% (12.2m²).

Following advice received from the Department of Planning, Industry & Environment in there letter dated 2 November 2021, applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation less than 10% to floor space ratio under the MLEP 2013 may be determined by Council staff under delegation in accordance with Council procedures.

Therefore the proposal is required to be referred to the Development Determination Panel (DDP) for consideration and determination.

The application was notified twice, owing to amended plans received on 29 December 2022. During the first notification (24 November 2022 to 14 December 2022) five (5) submissions were received. During the second notification (30 December 2022 to 25 January 2023) 5 submissions were received.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval to modify DA2022/0221 in the following manner:

Lot A (Southern Lot)

- Enclosure of the ground floor rear terrace to extend the living room.
- Inclusion of a study at the ground floor.
- Reduction to the area of the rear balcony.

Lot B (Northern Lot)

- Enclosure of the ground floor rear terrace to extend the living room.
- Inclusion of a study at the ground floor.
- Reduction to the area of the rear balcony.

The applicant also seeks to delete Condition 16 which was imposed by Council's Heritage department which reads:

16. Details of External Materials and Colours
Heritage requires a recessive and more sympathetic colour scheme that is complementary and respectful to the colour scheme of the adjoining dwellings.

Details of the external materials and colours are to be provided to the satisfaction of Council's Heritage

Officer prior to the issue of the Construction Certificate.

Reason: To preserve the heritage character of the existing semi-detached dwelling and the streetscape.

In requesting the deletion of Condition 16, the applicant argues:

- *"The site is not listed as a heritage item, nor is it located within a heritage conservation area.*
- *The adjoining properties are not listed as heritage items. Therefore, the reasoning is purely based on sites that could be demolished with no need for retention of the colours or materials.*
- *The proposed colours and materials are consistent with approvals granted in the area, most notably the assessment officers report from DA2022/0386 at 19 Edwin Street.*
- *It is noted that exempt development or complying development could easily be applied, which therefore makes the reasoning null and void and totally unfair to my clients to implement as a condition of consent".*

DA2022/0221
On 18 February 2022 DA2022/0221 was lodged for demolition works, Torrens Title subdivision of one lot into two and construction of two semi-detached dwellings including two swimming pools.

The application proposed a minor breach of 0.1% to the Minimum Lot Size Development Standard under the Manly Local Environmental Plan 2013 but was referred to the Northern Beaches Local Planning Panel because of receipt of 10 unique submissions against the proposal.

At the meeting of 21 September 2022, the Northern Beaches Local Planning Panel determined to approve the application as recommended but with amendment to Condition 12 which reads as follows:

12. Amendments to the approved plans.

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

Along the southern elevation of the first floor level to the dwelling on Lot A, each proposed ensuite or bathroom window shall be treated with an obscured glazing, and each proposed window of the bedrooms shall be treated with an obscured glazing up to a height of 1.5 metres from floor level.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

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

The reporting criteria for modifications to the Northern Beaches Local Planning Panel is as follows:

"*Modification applications under section 4.55(2) of the Environmental Planning and Assessment Act 1979 for the modification of development consents granted by the Panel that:*

- *propose amendments to a condition of development consent recommended in the council assessment report but which was amended by the Panel, or*
- *propose amendments to a condition of development consent that was not included in the council assessment report but which was added by the Panel, or*
- *meet the criteria for development applications with a conflict of interest, contentious development or departure from development standards as detailed in points 1 - 4 above*."

The proposal to modify DA2022/0221 does not alter the amendment to Condition 12 as imposed by the Northern Beaches Local Planning Panel no meet the referral requirements of Points 1 - 4.

However, following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021)(Opens in a new window) applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to floor space ratio under the Manly Local Environment Plan 2013 may be determined by Council staff (i.e. the Development Determination Panel) under delegation in accordance with Council procedures.

Therefore the proposal is required to be referred to the Development Determination Panel (DDP) for consideration and determination.

Conditions Imposed by Referral Departments

The original Development Application (DA2022/0221) was referred to the following Council departments for consideration:

- Water Management - Conditions imposed.
- Development Engineering - Conditions imposed.
- Natural Environment (Flood) - No conditions imposed.
- Landscape - Conditions imposed.
- Heritage - Conditions imposed.

Apart from the rear extension, the proposed modification retains the same floor levels, building heights, setbacks, and exterior design. The remainder of the building footprint is also largely the same as that approved under DA2022/0221. The modification was therefore not required to be referred back to each department.

With exception to the afore-mentioned Condition 16, as imposed by Heritage, conditions already imposed by each department are unaffected by the modification and will remain as imposed under DA2022/0221.

Notification of Amended Plans

Amended plans were received on 29 December 2022. The application was therefore re-notified between 30 December 2022 and 25 January 2023.

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 - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

SITE DESCRIPTION

Property Description:	Lot 28 DP 10399 , 3 Suwarrow Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Suwarrow Street. The site is regular in shape with a frontage of 13.705m along Suwarrow Street and a depth of 36.52m. The site has a surveyed area of 499.5m². The site is located within the R1 General Residential zone and accommodates a two (2) storey single residential dwelling house, with a swimming pool located in the rear north-western corner of the site, and within a landscaped setting. The site has an easterly orientation and is generally flat. The site is not known to have any significant vegetation on site, or topographical features. The rear yard has a small area of lawn adjacent to the swimming pool. Vegetation of a variety of sizes and species and a small Frangipani tree are located along a portion of the southern boundary and for the entire western boundary. A large tree is located centrally along the front boundary line. **Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by single residential dwellings, semi-detached dwellings and Residential Flat Buildings.

Map:



SITE HISTORY

The site was the subject of the following relevant applications:

DA162/03
A Development Application (DA162/03) was submitted to Council seeking consent for alterations and additions to a residential dwelling, comprising a first floor addition. This application was refused on 29 October 2003 for multiple reasons.

A review application was subsequently submitted to Council under Section 82A of the Environmental Planning and Assessment Act 1979, which was deferred, on 16 August 2004.

Consent to the development after the review, was ultimately granted on 17 December 2004.

DA2022/0221
On 18 February 2022 DA2022/0221 was lodged for demolition works, Torrens Title subdivision of one lot into two and construction of two semi-detached dwellings including two swimming pools.

At the meeting of 21 September 2022, the Northern Beaches Local Planning Panel determined to approve the application as recommended but with amendment to Condition 12 which reads as follows:

12. Amendments to the approved plans.

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

- *Along the southern elevation of the first floor level to the dwelling on Lot A, each proposed ensuite or bathroom window shall be treated with an obscured glazing, and each proposed window of the bedrooms shall be treated with an obscured glazing up to a height of 1.5 metres from floor level.*

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

construction certificate.

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

LETTER TO THE APPLICANT (MOD2022/0637)

A letter was sent to the applicant on 8 December 2022 which stated:

"***Manly Local Environmental Plan 2013***

Clause 4.4 – Floor Space Ratio
Clause 4.4 permits development to achieve a maximum floor space ratio (FSR) of 0.6:1 which equates to 149.85m² per approved lot (being Lots A and B) respectively).

The development includes modifications which introduce an additional 17.8m² of floor area per dwelling resulting in a gross floor area of 164.7m² per dwelling and a non-compliant FSR of 0.66:1, respectively. The proposed FSR now breaches the Development Standard by 12.1% per lot.

Notwithstanding, the element of the development which most notably breaches the FSR (i.e., the rear ground floor extension) adversely impacts upon other features of the development which, when considered together, indicate that the proposal constitutes an overdevelopment of the site (see additional comments under the Manly development Control Plan 2013 below).

In this regard, the proposed FSR cannot be supported.

Manly Development Control Plan 2013

Clause 4.1.4.4 – Rear Setbacks
Clause 4.1.4.4 requires development to provide a minimum rear setback of 8.0m. The proposal reduces the approved and compliant rear setback from 8.4m to 5.9m which is a result of the rear deck being relocated to accommodate the proposed Living Room enclosure.

Clause 4.1.5.1 - Minimum Residential Total Open Space Requirements
Clause 4.1.4.4 requires development to achieve a minimum total open space area of 55% of the site area. The development is therefore required to provide 137.4m² per lot.

Noting that the development under DA2022/0221 was approved with a total open space of 30.6% (76.6m²) per lot, the proposed modification now seeks to reduce this even further to provide a total open space of 27.5% (68.8m²) per lot.

The reduction to total open space is not acceptable, particularly given that the non-compliance now equates to half of that required.

Clause 4.1.5.1 – Landscaped Area
Clause 4.1.5.1 requires development to achieve a minimum landscaped area of 35% of the total open space area. The development is therefore required to provide 48.1m² per lot.

Noting that the development under DA2022/0221 was approved with a landscape area of 35.2% (48.4m²) per lot, the proposed modification now seeks to reduce this even further to provide a landscaped area of 28.8% (39.7m²).

As per the reduction to total open space, the further reduction to landscaped area is not acceptable.

As pointed out under Clause 4.4 of the MLEP 2013, the increase to the FSR (namely through the enclosing of the rear terrace) generates other issues which unreasonably exacerbate the level of non-compliance on both lots.

Conclusion
Consideration may be given to an increase in FSR provided that it does not cause further non-compliance to the already non-compliant features identified above.

You are therefore strongly encouraged to amend your application to reinstate the rear setback, total open space, and landscaped area to that already approved under DA2022/0221.

Public Exhibition
Please be aware that the application is subject to public exhibition until 15 December 2022.

Although no submissions have been received to date, any issues raised in any forthcoming submissions will be taken into consideration as part of this assessment.

Options available to the applicant

Council is providing you with three options to progress the handling of your application:

1. *Prepare and submit further supporting information/amendments to the assessing officer directly addressing the issues by **22 December 2022** (14 days). If the amended information is deemed acceptable and satisfactorily addresses all the issues raised, you must then upload all documentation via the NSW planning portal; or*
2. *Request that the current proposal proceed to determination in its current form, which may result in refusal of the application; or*
3. *Withdraw the application from Council, which may include the refund of a portion of the application fees. Please note, that should this be your preferred option, Council will require additional information and will request this under separate cover.*

Should you choose to amend your application, we ask that you contact the assessment officer to discuss resolution of the above issues and submission requirements. This is to ensure any amendments satisfactorily address the assessment issues, prior to further expenses and resources being spent on the application.

To ensure the timely and efficient processing of your application, it is recommended that a genuine attempt is made to address these issues in their entirety as only one opportunity for amendments will be provided.

As per the requirements of section 36 of the Environmental Planning and Assessment Regulation 2021 you are advised that this application was accepted on 23 November 2022 and 15 days in the assessment period has now elapsed.

*Please advise of your selected option by responding to this letter by **22 December 2022** at council@northernbeaches.nsw.gov.au and marked to the attention of the assessment officer. Should Council not receive your response and selected option by this date, Council will assume that you are not withdrawing this application and it will be determined in its current form".*

RESPONSE TO COUNCIL LETTER AND AMENDED PLANS

In response to Council's letter amended plans were received on 15 December 2022. The amended

plans include the following key numeric changes (Note: both lots are the same so only a single numeric is listed):

Item	Approved (DA2022/0221)	Submitted Modification	Amended Plans
Floor Space Ratio Required: 0.6:1 (149.85m²)	0.589:1 (147.1m²)	0.66:1 (164.7m²)	0.64:1 (162.0m²)
Rear Setback Required: 8.0m	Ground Level Terrace: 8.4m Dwelling: 11.5m Upper Level Terrace: 8.4m Dwelling: 10.1m	Ground Level Terrace: 5.9m Dwelling: 8.4m Upper Level Terrace: 8.6m Dwelling: 10.1m	Ground Level Terrace: 8.0m Dwelling: 9.7m Upper Level Terrace: 9.0m Dwelling: 10.5m
Total Open Space (TOS) Required: 55% (137.4m²)	30.6% (76.6m²)	27.5% (68.8m²)	30.6% (76.6m²)
Landscaped Area Required: 35% TOS (48.1m²)	35.2% (48.4m²)	28.8% (39.7m²)	37.5% (51.6m²)

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 DA2022/0221, 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	

Section 4.55 (2) - Other Modifications	Comments
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	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0221 for the following reasons: • The proposal (as amended) involves minor quantitative and qualitative changes to the exterior than what was approved under DA2022/0221. 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 Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 where His Honour states: "*[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.* *[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.* *[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)*." The applicant has provided the following justification to support their argument that the modifications are substantially the same: • *This application for modification of a development consent does not significantly alter the external appearance or built form of*

Section 4.55 (2) - Other Modifications	Comments
	the subject premises to any degree that it would represent a building of a different urban design to the approved development. • *The built form outcome is indistinguishable in terms of overall bulk, scale and appearance of the development that has been previously approved.* • *The amenity and streetscape outcomes of the original development consent are retained with no adverse impacts from the amendments in terms of amenity for privacy or visual impacts. In fact, its our professional opinion that this design has a better outcome for adjoining properties.* • *The use of the land will remain for the purpose of a semi-detached dwelling as approved by Council.* It is noted that, with respect to the second bullet point, the bulk of the building will increase marginally at the rear as a result of the rear extension however, this increased footprint (as amended) has been designed to minimise impact to neighbouring properties. On reviewing the above comments and the court judgement by Justice Bignold established in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289* 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.
(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 DA2022/0221 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, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.

Section 4.55 (2) - Other Modifications	Comments
(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 96 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)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application.This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested on 8 December 2022 in relation to floor space ratio, rear setbacks, total open space, and

Section 4.15 'Matters for Consideration'	Comments
	landscaped area. Amended plans and supporting documentation were received on 29 December 2022. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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 09/01/2023 to 25/01/2023 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 7 submission/s from:

Name:	Address:
Mr Stuart Alexander McInnis Mrs Julie McInnis	1 Suwarrow Street FAIRLIGHT NSW 2094
Mrs Megan Amelia Rohleder	7 Jamieson Avenue FAIRLIGHT NSW 2094
Mr Steven James Davies	23 Edwin Street FAIRLIGHT NSW 2094
Mr Dara Sean Herlihy	1 Jamieson Avenue FAIRLIGHT NSW 2094
Mr David Gerard Mehanna Mrs Wendy Jane Mehanna	5 Jamieson Avenue FAIRLIGHT NSW 2094
Mrs Karina Peta Davies	23 Edwin Street FAIRLIGHT NSW 2094
Mrs Jeanine Herlihy	1 / 236 Sydney Road FAIRLIGHT NSW 2094

The submissions raise the following issues:

- **Modification returns to the original pre-approval design for DA2022/0221.**
- **Continued non-compliance to floor space ratio and total open space.**
- **Reduction to the overall amenity of the area.**
- **Inaccuracies in the Statement of Environmental Effects.**
- **Inadequate stormwater disposal.**
- **Boundary alignment.**
- **Overlooking from bedrooms, bathroom, and study.**

The above issues are addressed as follows:

- **Modification returns to the original pre-approval design for DA2022/0221.**

  The submissions raise concern that the proposed modification returns the design of the development to that originally submitted (but not approved) under DA2022/0221.

  Comment
  A comparison of the plans reveal that the only similarity between the two designs rests in the overall building footprint, noting that the rear setback of the modification increases the rear setback by 0.4m and that the rear 3.1m of the open plan Living/Dining/Kitchen is once again enclosed.

  Amended plans received on 29 December 2022 have reduced the overall length of the building to align with the rear of the neighbouring dwelling to the south and, although not the same as the approved version, is considered to achieve a balanced outcome in terms of moderating bulk, scale and amenity impact.

  This matter does not warrant the refusal of the application.

- **Continued non-compliance to floor space ratio and total open space.**

  The submissions raise concern that the modified development increases non-compliances to floor space ratio, total open space and landscaped area from that approved under DA2022/0221.

  Comment
  This matter was identified in the assessment of the proposal and issues identifying non-compliances pertaining to floor space ratio, total open space and landscaped area were conveyed to the applicant in Council's letter dated 8 December 2022. Amended plans were received on 29 December 2022 which address these issues (namely by amending the building footprint to increase the rear setback to achieve compliance, increase the provision of total open space to above that already approved, and to increase the provision of landscaped area to comply with the relevant control).

  The floor space ratio remains a non-compliant matter which has been discussed in this report under Clause 4.4 of the Manly Local Environmental Plan 2013. In summary, and largely due to the non-compliant area being contained within the previously uncounted garage space and that it did not unreasonably increase the bulk and scale of the building, the non-compliance is supported in this particular instance.

  This matter does not warrant the refusal of the application.

- **Reduction to the overall amenity of the area.**

  The submissions raise concern that the development would diminish amenity of the local area in terms of impacts upon airflow, open space (outlook).

  Comment
  The development (as modified by amended plans received on 29 December 2022) increases the provision of airflow and open space because the area of the upper level (which is the most visually noticeable to neighbouring properties) has been reduced in its entirety than that already approved under DA2022/0221. Most notably, the setting back of the rear of the upper level has increased from 8.4m (terrace) to 9.0m and 10.1m (dwelling) to 10.5m. Although minor increases, the development, at the very least at this level, will be similar to that already which was already considered and approved by the Northern Beaches Local Planning Panel at its meeting on 21 September 2022.

  This matter does not warrant the refusal of the application.

- **Inaccuracies in the Statement of Environmental Effects.**

  The submissions raise concern that the Statement of Environmental Effects (SEE) misrepresents the views of neighbours in the area as expressed in the submissions received against the original DA2022/0221, that it inaccurately claims that the FSR for the proposal is consistent with other development in the area, and that the SEE includes an inaccurate description of the proposed building footprint/open space.

  Comment
  The SEE forms one part of the application and can often be found to include inaccuracies. The SEE is an informative document only, serving to accompany an application with the purpose of describing the proposal against current condition and legislation.

It is the function of Council's planning team to assess applications against the applicable development standards, controls and consideration against submissions received, and not against what is contained in an SEE.

This matter does not warrant the refusal of the application.

- **Inadequate stormwater disposal.**

The submission raise concern that the stormwater design is not adequate and cites inundation during heavy rainfall from the subject property. The submissions also notes that the stormwater plans do not include drainage pits or retention tanks.

Comment
A comparison of the Stormwater Plan for DA2022/0221 and MOD2022/0637 (the subject application) reveals that the two sets of plans are identical and include three drainage pits connected by a 150mm diameter pipe along the northern side of the site which, in turn, connects to Council's stormwater drainage infrastructure.

Notwithstanding, the stormwater element of the proposal was considered by Council's Development Engineer during the assessment of DA2022/0221. In that approval, two specific conditions were imposed which require the following:

Stormwater Disposal
The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the kerb in Suwarrow Street.

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

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

Stormwater Disposal
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

The above conditions will remain imposed in the consent under DA2022/0221.

This matter does not warrant the refusal of the application.

- **Boundary alignment.**

The submission raise concern that the proposed boundary cuts into the neighbouring carport to

the north.

Comment
An examination of the Boundary Identification Survey (as prepared by C&A Surveyors and dated 19 November 2021) submitted with DA2022/0221 indicates that there is no encroachment of either the boundary into the neighbouring garage or vice versa.

An inspection of plan DA 002 submitted with DA2022/0221 indicates a low wall/fence protrusion into the north-eastern corner of the subject site, however this is a protrusion from the neighbouring property as opposed to a protrusion from the subject property. The Boundary Identification Survey includes this feature but also indicates that the actual carport wall of the neighbouring property is 0.1m clear of the boundary. Therefore, there is no evidence to suggest that the proposed boundary cuts into the neighbouring carport to the north.

This matter does not warrant the refusal of the application.

- **Overlooking from bedrooms, bathroom, and study.**

The submission raise concern that the modified design would have an adverse impact on visual privacy.

Comment
This issue has been discussed in detail in this report under Clause 3.4.2 of the Manly Development Control Plan 2013. In summary, it was considered that the development, as modified would not cause unreasonable impact to visual privacy.

It should be noted that the Study is located at ground level and includes a window with a sill height of 1.3m. An assessment of this window indicates that a person standing in the Study would be able to overlook the top of the side boundary fence although downward viewing would be limited by the 0.9m setback and fence height. Furthermore, the location of the Study window is directly opposite the side wall of the neighbouring fibro carport/garage as evidenced by the Site Analysis Plan and the site inspection.

This matter does not warrant the refusal of the application.

Amended Plans

Amended plans were received on 29 December 2022 and re-notified between 30 December 2022 and 25 January 2023. As a result of the re-notification, five (5) submissions were received which raised the following **additional** planning issues have been raised:

- **Council's acceptance of non-compliant applications.**

The submissions raise concern regarding Council allowing applicant's to lodge non-compliant applications.

Comment
Council is required to accept applications for development if lodged, regardless of the level of non-compliances evident. It is the role of Council to notify, assess, and determine such applications as required by the applicable provisions of the applicable legislation, controls and processes.

This matter does not warrant the refusal of the application.

REFERRALS

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>
HERITAGE COMMENTS
Discussion of reason for referral

The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage item:

Item I48 - Street trees - Edwin Street

Details of heritage items affected

Item I48 - Street trees
Statement of significance
Listed for its aesthetic importance to the streetscape.
Physical description
Brush Box c.1920's to north side of street only, planted in carriageway.

Other relevant heritage listings
<table>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>No</td><td></td></tr>
</table>
Consideration of Application
The proposal seeks consent for modifications to the consent - DA2022/0221, including a ground floor extension to the rear of the site and modifications to the front landscaping. Given the modifications are mainly confined to the rear and internal layouts, the additional impact of the proposal upon the significance of the heritage item in the vicinity and the existing streetscape is considered manageable, subject to all terms and conditions of the consent of the approved DA2022/0221, including:

• Photographic Archival Recording,
• Details of External Materials and Colours - Colour schedule must be recessive with pastel colours rather than all white,
</td></tr>
</table>

Internal Referral Body	Comments
	• Protection of Existing Street Trees **Revised Comments - 11 January 2023** Amended drawings received on 15 December 2022 provided additional details on the proposed external materials and colours, which is considered to be appropriate for the existing streetscape and satisfies the related condition of consent. Therefore, no objections are raised on heritage grounds subject to conditions of the consent of the approved DA2022/0221 in relation to the "Photographic Archival Recording and Protection of Existing Street Trees". Consider against the provisions of CL5.10 of Manly LEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No Further Comments <u>Planner Comments</u> Given the above comments, Condition 16 may be deleted.

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 (Multi-Dwelling) has been submitted with the application (see Certificate No. 1274726M-04 dated 14 November 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 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.

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
Minimum Subdivision Lot Size	250m²	Lot A: 249.75m² Lot B: 249.75m²	No change No change	0.1% 0.1%	As approved

					As approved
Height of Buildings	8.5m	Lot A: 7.84m Lot B: 7.84m	No change No change	N/A N/A	Yes Yes
Floor Space Ratio (Site Area: 249.75m² per lot)	Lot A: 0.6:1 (149.85²) Lot B: 0.6:1 (149.85²)	Lot A: 0.589:1 (147.1m²) Lot B: 0.589:1 (147.1m²)	Lot A: 0.64:1 (162.0m²) Lot B: 0.64:1 (162.0m²)	8.1% (+12.2m²) 8.1% (+12.2m²)	**No** **No**

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	N/A
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

The application includes a breach to Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 (MLEP 2013) which constitutes a 8.1% variation.

The non-compliance arises from a 12.2m² increase in floorspace. Clause 4.4 permits a FSR of 0.6:1 which translates to 149.85m² per lot (being Lots A and B). The two dwellings approved under DA2022/0221 each had a FSR of 0.589:1 (being 147.1m² each) which complied with the requirement. However, this modification seeks to increase the FSR of each dwelling to 0.64:1 (being 162.0m²) which represents a variation of 8.1%.

Merit Assessment

Whilst this Section 4.55(2) Modification will result in a building height that exceeds the maximum permitted by Clause 4.4 of the Manly Local Environmental Plan 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 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 (i.e. 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. This notion was outlined in the NSW Land and Environment Court Case of *Gann v Sutherland Shire Council [2008]*

NSWLEC 157.

Notwithstanding that Clause 4.6 does not apply to modification applications, Council must still be satisfied that the modified proposal satisfies the objectives of Clause 4.4 - Floor Space Ratio (FSR) and the objectives of the R1 General Residential zone.

The underlying objectives of the Development Standard pursuant to Clause 4.4 - Floor Space Ratio

- ***To ensure the bulk and scale of development is consistent with the existing and desired streetscape character.***

The bulk and scale of the development, as viewed from the street, remains the same as that approved under DA2022/0221. The increase to the FSR is concentrated within the new Study room which occupies the rear of the approved garage, and at the rear which includes an extension to the ground floor.

The development satisfies this objective.

- ***To control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features.***

The development increases the length of the two dwellings at the rear of the ground level only by 1.7m. The upper level is reduced in length by 0.4m from the approved development.

The effect with respect to building density and bulk is therefore concentrated at the ground floor only and, subsequently, has minimal visual impact being largely obscured by the side boundary fence.

The development does not obscure any important landscape and townscape features given the comparatively higher density of the R1 General Residential zone (compared to the R2 Low Density Residential zone) and that the site is devoid of any significant trees and vegetation.

The development satisfies this objective.

- ***To maintain an appropriate visual relationship between new development and the existing character and landscape of the area.***

The non-compliance to the FSR does not exacerbate the visual appearance of the approved development such that it results in the development conflicting with the existing character and landscape of the area.

The development satisfies this objective.

- ***To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.***

The extension to the rear occurs primarily at the ground floor level. The upper floor level has been set back behind the building line of the neighbouring dwelling to the south to respond to concerns related to building bulk, visual impact and solar access, As such, the development achieves compliance with the

relevant controls and/or returns the development to the levels of approval already granted under DA2022/0221.

The development satisfies this objective.

- ***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.***

The development, as modified, continues the approved provision of two dwellings which will contribute towards the ongoing viability of business zones and contribute to the economic growth, retention of local services and employment opportunities in local centres.

The development satisfies this objective.

The underlying objectives of the R1 General Residential zone

- ***To provide for the housing needs of the community.***

The development, as modified, will continue to provide for the housing needs of the community.

The development satisfies this objective.

- ***To provide for a variety of housing types and densities.***

The development, as modified, does not change the housing type and density from that which was approved under DA2022/0221. Therefore, the development, as modified, will continue to provide for a variety of housing types and densities.

The development satisfies this objective.

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

The development, as modified, continues the approved provision of two dwellings which will contribute towards the enabling other land uses that provide facilities or services to meet the day to day needs of residents.

The development satisfies this objective.

Conclusion

Given the consistency of the variation to the objectives of the zone, and the objectives of Clause 4.4 of Manly Local Environmental Plan 2013, the proposed variation to the Floor Space Ratio Development Standard is considered to be acceptable in the circumstances.

Manly Development Control Plan

Built Form Controls

Built Form Controls (Site Area: 249.75m² per approved Torrens lot)	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1 dwelling per lot	No change	As approved
	Dwelling Size: 90m²	Lot A:149.7m² Lot B:149.7m²	161.6m² 161.6m²	Yes Yes
4.1.2.1 Wall Height	6.8m (based on gradient 1:20)	5.8m to 6.2m	No change	As approved
4.1.2.3 Roof Height	Height: 2.5m	1.5m	No change	As approved
	Pitch: Maximum 35 degrees	29 degrees	No change	As approved
4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	6.01m	No change	As approved
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.26m (based on wall height)	Lot A (North) Ground Floor: 0.9m Upper Floor: 1.7m Lot A (South) Ground Floor: Nil Upper Floor: Nil Lot B (North) Ground Floor: Nil Upper Floor: Nil Lot B (South) Ground Floor: 0.9m Upper Floor: 1.7m	No change	As approved
	Windows: 3.0m	<3.0m	No change	As approved
4.1.4.4 Rear Setbacks	8.0m	Ground Level Terrace: 8.4m Dwelling: 11.5m Upper Level Terrace: 8.4m Dwelling: 10.1m	 8.0m 9.7m 9.0m 10.5m	 Yes Yes Yes Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space (TOS) 55% Site Area (55% = 137.4m² per lot)	Lot A: 30.6% (76.6m²) Lot B: 30.6% (76.6m²)	31.0% (77.5m²) 31.0% (77.5m²)	Greater than approved Greater than approved

	Above ground OS Max. 25% of TOS (25% of TOS = 45.4m² per lot)	Lot A: 5.5% (7.6m²) Lot B: 5.5% (7.6m²)	4.6% (6.3m²) 4.6% (6.3m²)	Yes Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of TOS (35% of TOS = 48.1m² per lot)	Lot A: 35.2% (48.4m²) Lot B: 35.2% (48.4m²)	37.5% (51.6m²) 37.5% (51.6m²)	Greater than approved Greater than approved
4.1.5.3 Private Open Space	18m² per dwelling	Lot A 74m² Lot B 74m²	55.3m² 55.3m²	Yes 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	62% 4.3m	No change	As approved
4.1.9 Swimming Pools, Spas and Water Features	1m curtilage/1.5m water side/rear setback	South Curtilage: 4.2m Water: 4.29m Rear Curtilage: 1.97m Water: 2.07m	No change	As approved
Schedule 3 Parking and Access	2 spaces per dwelling	2 spaces per dwelling	No change	As approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	N/A	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	N/A	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)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The application (as amended) includes updated shadow diagrams (including Views from the Sun diagrams) which indicate hourly shadows cast between 9.00am and 3.00pm on 21 June.

Because of the east-west orientation of the site (and the neighbouring property to the south), shadows cast over the neighbouring property at No. 1 Suwarrow Street are unavoidable. However, the amended design has increased the setback of the rear of the building from that originally proposed to better respond to the impact of the development upon the neighbouring property.

This review therefore only considers the impact of the amended design and solar access upon the neighbouring property to the south.

9.00am
Shadows cast at 9.00am predominantly fall to the south-west and within the rear yard of the neighbouring property which forms the principal private open space of that property. The shadow cast over the rear principal private open space is 59.8%.

The remainder of shadows cast occurs along the full extent of the northern elevation of the neighbouring dwelling.

As the morning progresses, the shadows move to give relief to the principal private open space area and to the windows along the northern elevation.

Noon
Shadows cast at Noon predominantly fall along the lower half of the northern elevation, (i.e. below the windows). Shadows cast into the principal private open space area derive from the boundary fence only.

3.00pm
Shadows cast at 3.00pm predominantly fall to the south-east and across the front setback of the neighbouring property. Shadows cast along the northern elevation remain below the window sill height until 2.30pm. At 3.00pm, the north-facing windows at the eastern two-thirds are in shade.

Impact on Windows
As noted above, the impact of shadows on the north-facing windows varies throughout the day. Clause 3.4.1 requires that, for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June).

An examination of the View from the Sun diagrams, it is noted that the development permits full sunlight access to the north-facing windows of the neighbouring property for a period of 2 hours (being Noon to 2.00pm).

3.4.2 Privacy and Security

The amended design includes two joined balconies at the rear (to both units).

The balconies are off Bedroom 1, has a depth of 1.4m and is setback 2.0m from the northern and southern side boundaries. This is a similar design outcome as that approved under DA2022/0221 except the amended design increases the side setback by 0.3m (from 1.7m to 2.0m) and reduces the overall reach into the rear yard due to the increased rear setback of the upper level.

The northern and southern edges of the two balconies include 1.8m high privacy screens which will prevent overlooking into the private open space and windows of neighbouring properties.

At its meeting on 21 September 2022, the Northern Beaches Local Planning Panel amended the then recommended Condition 12 to read as follows:

12. Amendments to the approved plans

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

- *Along the southern elevation of the first floor level to the dwelling on Lot A, each proposed ensuite or bathroom window shall be treated with an obscured glazing, and each proposed window of the bedrooms shall be treated with an obscured glazing up to a height of 1.5 metres from floor level.*

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

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

The proposed modification does not change this requirement.

The amended design includes changes to windows along both side elevations. Most notably, the side windows to Bedroom 1 have been relocated further to the east (i.e. the back wall of the bedroom as opposed to the front wall). The central stairwell has been relocated which, in turn, required the relocating of Bedroom 3 and its window further east.

As detailed in the NSW Land and Environment Court case *Meriton v Sydney City Council [2004] NSWLEC 313*, Senior Commissioner Roseth established (as a planning principle) that (at Para 46):

"The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time".

Therefore, although the relocating of the afore-mentioned bedroom windows is proposed, the impact derived from their relocation is minimal owing to the function of the rooms they service.

4.1.3 Floor Space Ratio (FSR)

The site is located within Area 'C' on the Manly Local Environment Plan Lot Size Map. Clause 4.1.3 permits the maximum variation for floor space ratio (FSR) on lots smaller than 250m² to therefore be based upon 250m² site area which may result in a FSR bonus. As each site has a lot size of 249.75m² the calculation for a FSR bonus would be negligible, for example:

Lot & Size	Required FSR (LEP)	Permitted FSR (DCP)	Variation
Lot A: 249.75m²	0.6:1 (149.85m²)	0.6:1 (150.00m²)	+0.15m²
Lot B: 249.75m²	0.6:1 (149.85m²)	0.6:1 (150.00m²)	+0.15m²

The proposed FSR has been discussed under Clause 4.4 of the Manly Local Environmental Plan 2013.

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 CONCLUSION

This proposal for the modification of DA2022/0221, which was approved for demolition works, Torrens Title subdivision of one lot into two and construction of two semi-detached dwellings including two swimming pools, has been referred to the Development Determination Panel (DDP) due to a non-compliance to Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013.

The application was notified on two separate occasions due to the receipt of amended plans. The concerns raised in the first notification were considered and included as part of Council's initial assessment to the applicant via letter on 8 December 2022. The amended plans received on 15 December 2022 attempted to resolve the issues raised in Council's letter and, in consideration of those amended plans against the applicable controls, were regarded as being satisfactory.

The critical assessment issues to this application include a breach to Clause 4.4 (Floor Space Ratio) of the Manly Local Environmental Plan 2013 (MLEP 2013) which constitutes a 8.1% variation. The breach has been considered against the objectives of the zone, of the development standard, and the resultant impact to neigbouring properties and the local area and was considered, on balance, to achieve a satisfactory outcome.

Overall the development, as modified, maintains the design and scale of the development approved under DA2022/0221 and notably continues to comply with the remaining Development Standards and maintain (or improve upon) the previous level of compliance against the controls as approved under DA2022/0221.

This assessment concludes that the development will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0637 for Modification of Development Consent DA2022/0221 granted for Demolition works, Torrens Title subdivision of one lot into two and construction of two semi-detached dwellings including two swimming pools on land at Lot 28 DP 10399,3 Suwarrow Street, FAIRLIGHT, 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**
MOD 100 (Issue C) - Ground Floor Plan	15 December 2022	AJ Developments 22 Pty Ltd
MOD 101 (Issue C) - First Floor Plan	15 December 2022	AJ Developments 22 Pty Ltd
MOD 102 (Issue C) - Roof Plan	15 December 2022	AJ Developments 22 Pty Ltd
MOD 200 (Issue C) - Elevations 1	15 December 2022	AJ Developments 22 Pty Ltd
MOD 201 (Issue C) - Elevations 2	15 December 2022	AJ Developments 22 Pty Ltd
MOD 202 (Issue C) - Elevations 3	15 December 2022	AJ Developments 22 Pty Ltd
MOD 203 (Issue A) - Finishes Schedule	10 November 2022	AJ Developments 22 Pty Ltd
MOD 300 (Issue B) - Sections 1	15 December 2022	AJ Developments 22 Pty Ltd
MOD 301 (Issue B) - Sections 2	15 December 2022	AJ Developments 22 Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (1274726M-04)	14 November 2022	Integreco Consulting Pty Ltd

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 2 to read as follows:

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:

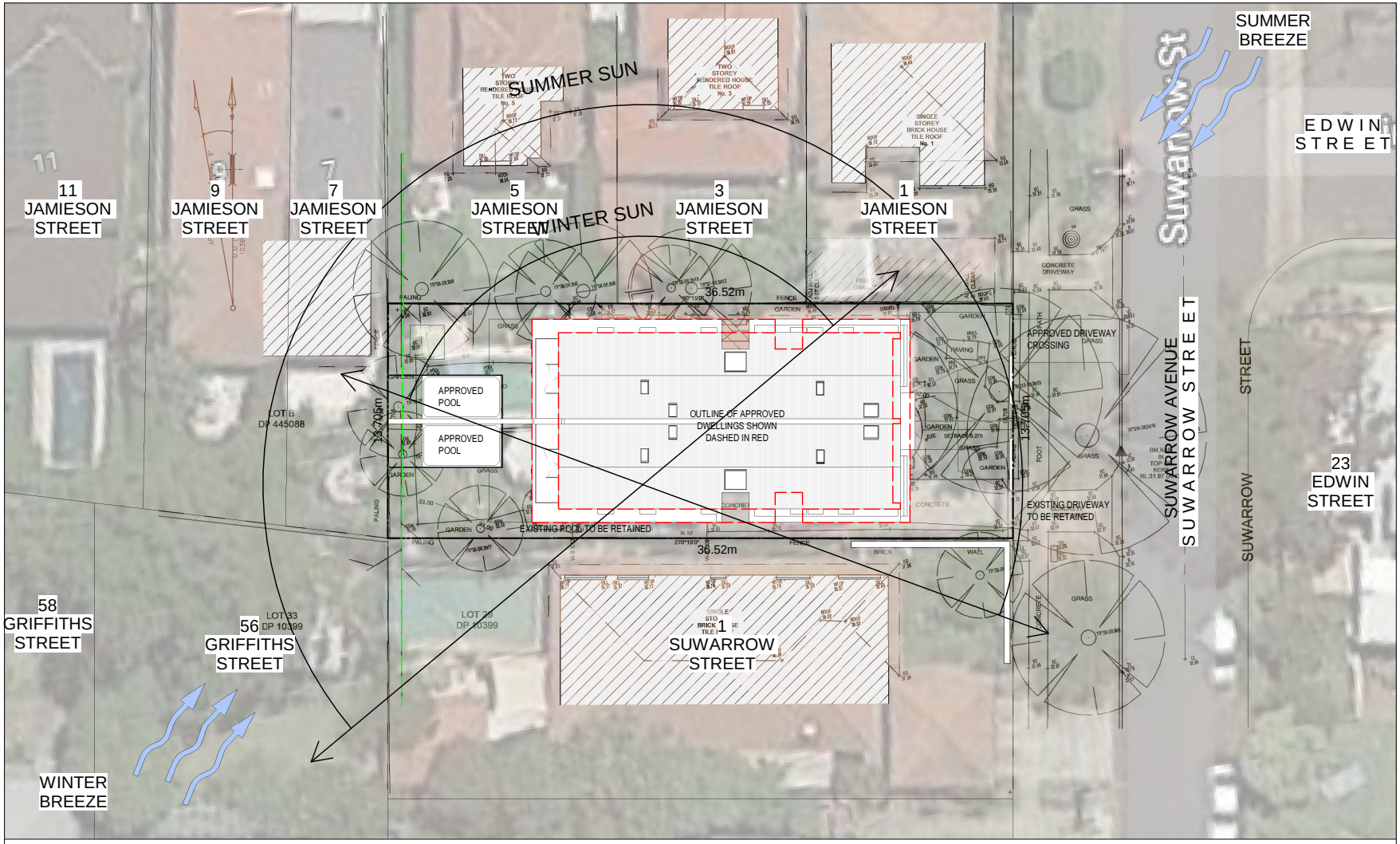
Other Department, Authority or Service	**EDMS Reference**	**Dated**
Ausgrid	Ausgrid Referral Response	29 November 2022

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

website www.northernbeaches.nsw.gov.au)

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

C. Delete Condition 16 - Details of External Materials and Colours.



A 10.11.22 PRELIMINARY
issue date revision

Notes

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This drawing is to be read in conjunction with all relevant consultant documentation, schedules and specifications.

BASIX

Hot water: Gas instantaneous 6*
Toilets: 4*, Kitchen/bathroom taps 6*, showerheads <6L/min
Pool - 18kL maxidwelling, with cover + pump timer + solar
Plants - locally indigenous or 1-drop = 42sqm
1-phase AC - EER >4.0
Kitchen, bath, l'dry exhaust - fan to facade
Lighting: Min. 80% fluro or LED lights
Electric cooktop, electric oven
Vented fridge space, external + internal clothes line

R2.5 insulation to external framed walls.
R2.5 insulation to external cavity brick with stone cladding
R2.5 insulation to framed floor with garage under
R2.5 insulation to external floor
R4.5 ins. & R1.5 foiled backed ins. to roof
Roof to be light colour.
Alum. framed sliders to be min. U-value 4.8, SHGC 0.49
Alum. framed bifolds & winows min. U-value 5.4, SHGC 0.4
Skylight to be min. U-value 4, SHGC 0.4
Weather stripping to all external doors and windows.

AJ DEVELOPMENTS 22 PTY LTD

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ABN: 78 653 524 764

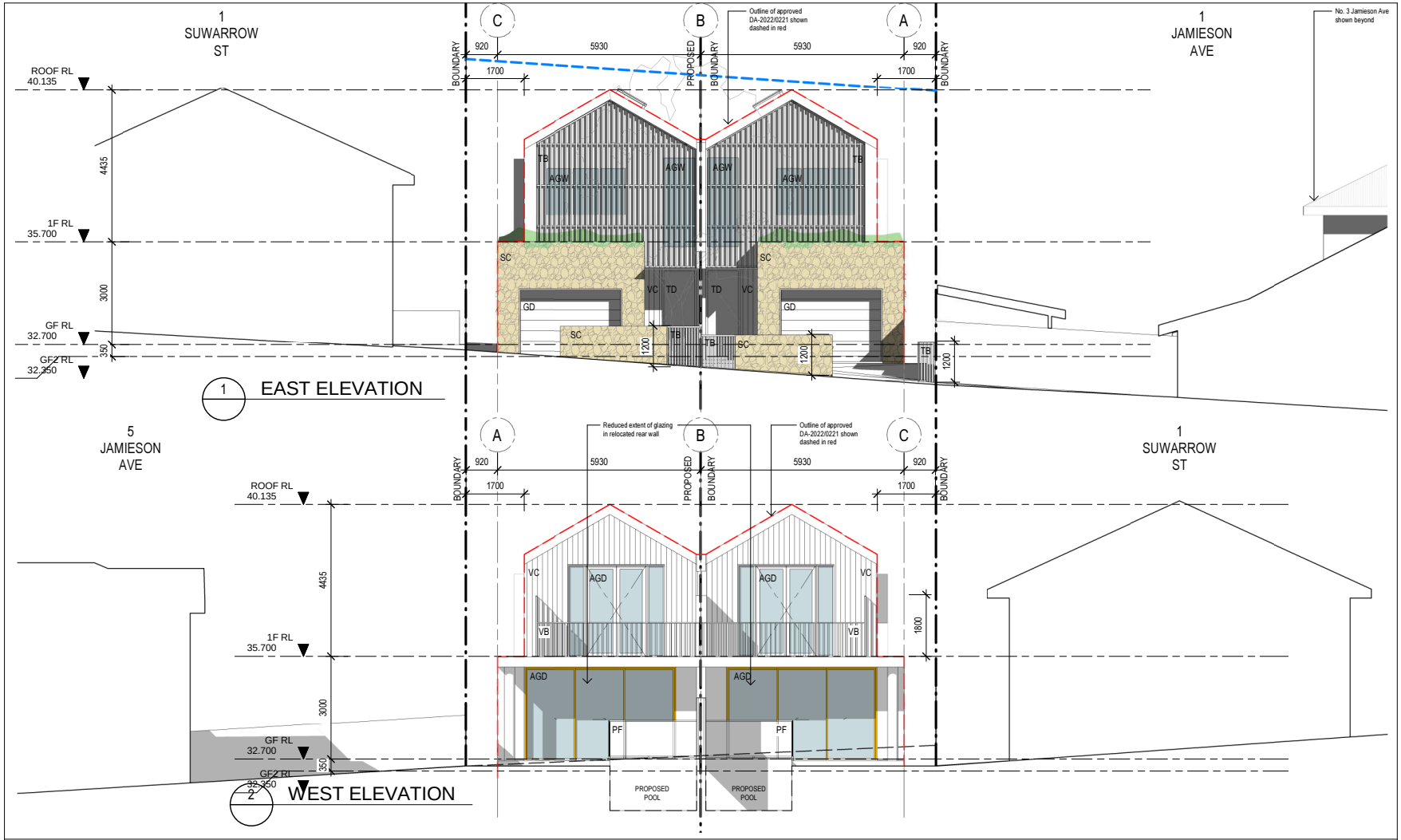
PROJECT
NEW RESIDENTIAL DEVELOPMENT
3 SUWARROW STREET, FAIRLIGHT NSW 2094

CLIENT
AJ DEVELOPMENTS 22 PTY LTD

DRAWING
SITE ANALYSIS PLAN

project 21022
scale 1 : 200@ A3
drawn AB
date 10.11.22

drawing no. MOD 001
issue / A



issue	date	revision
C	15.12.22	FOR COUNCIL
B	13.12.22	FOR DISCUSSION
A	10.11.22	PRELIMINARY

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KEY (SEE SCHEDULES FOR DETAILS)

AGD - ALUM. FRAMED GLAZED DOOR
AGL - ALUM. FRAMED GLAZED LOUVRES
AGW - ALUM. FRAMED GLAZED WINDOW
GD - GARAGE DOOR
MR - METAL ROOFING
PF - POOL FENCE
SC - SANDSTONE CLADDING
TB - TIMBER BATTENS
TD - TIMBER DOOR
TF - TIMBER FENCE
VB - VERTICAL BALUSTRADE
VC - VERTICAL CLADDING
VS - VERTICAL SCREEN
WH- WINDOW HOODS

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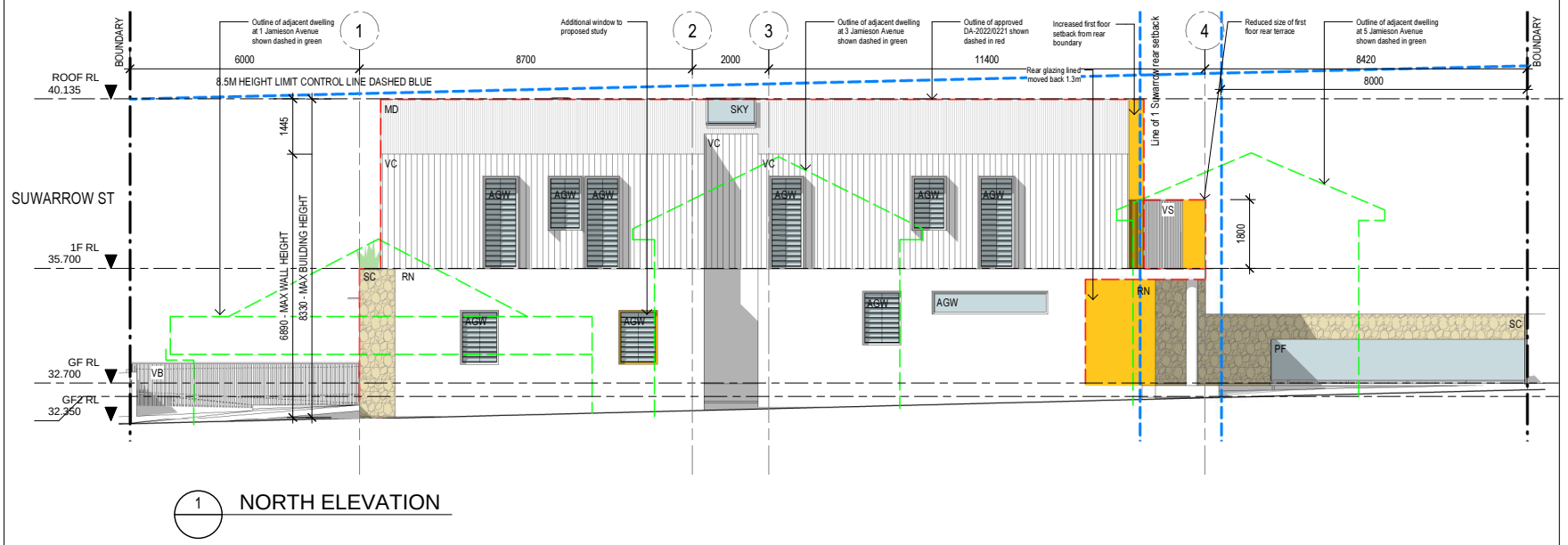
PROJECT
NEW RESIDENTIAL DEVELOPMENT
3 SUWARROW STREET, FAIRLIGHT NSW 2094

CLIENT
AJ DEVELOPMENTS 22 PTY LTD

DRAWING
ELEVATIONS 1

project 21022
scale 1 : 100@ A3
drawn AB
date 15.12.22

drawing no.
MOD 200 / C
issue



1 NORTH ELEVATION

issue	date	revision
C	15.12.22	FOR COUNCIL
B	13.12.22	FOR DISCUSSION
A	10.11.22	PRELIMINARY

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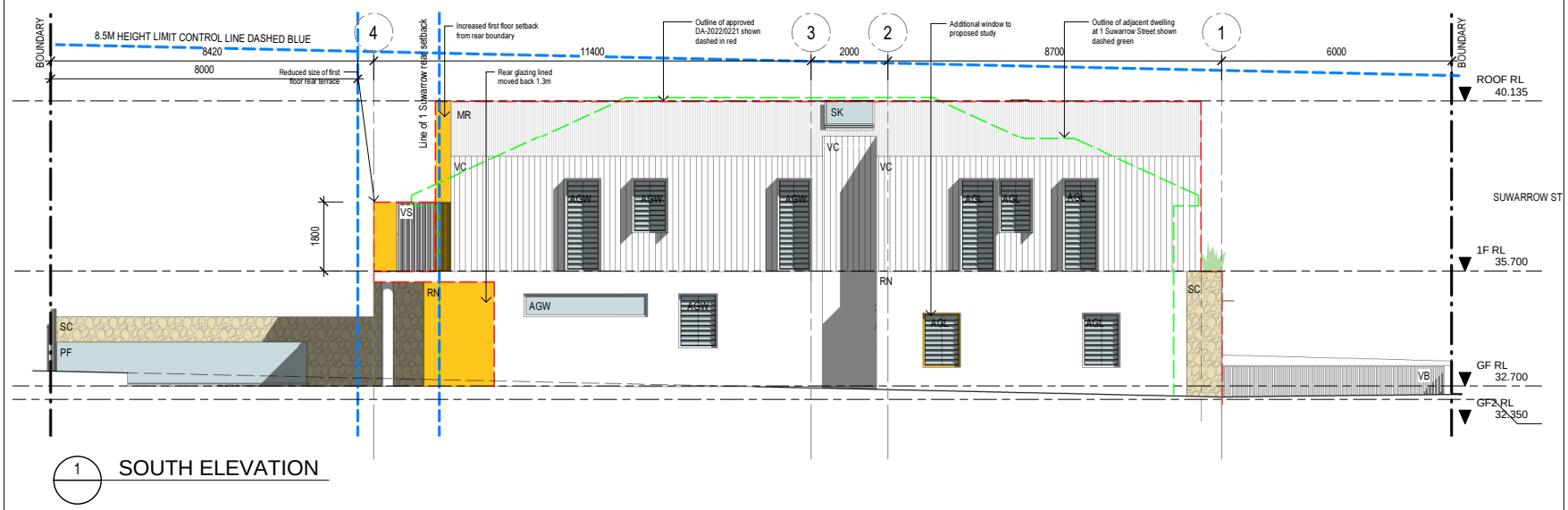
PROJECT
NEW RESIDENTIAL DEVELOPMENT
3 SUWARROW STREET, FAIRLIGHT NSW 2094

CLIENT
AJ DEVELOPMENTS 22 PTY LTD

DRAWING
ELEVATIONS 2

project	21022
scale	1 : 100@ A3
drawn	AB
date	15.12.22

drawing no. MOD 201
issue / C



1 SOUTH ELEVATION

issue	date	revision
C	15.12.22	FOR COUNCIL
B	13.12.22	FOR DISCUSSION
A	10.11.22	PRELIMINARY

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KEY (SEE SCHEDULES FOR DETAILS)

AGD - ALUM. FRAMED GLAZED DOOR
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AJ DEVELOPMENTS 22 PTY LTD
M: 0409 954 675
ABN: 78 653 524 764

PROJECT
NEW RESIDENTIAL DEVELOPMENT
3 SUWARROW STREET, FAIRLIGHT NSW 2094

CLIENT
AJ DEVELOPMENTS 22 PTY LTD

DRAWING
ELEVATIONS 3

project 21022
scale 1 : 100@ A3
drawn Author
date 15.12.22

drawing no. MOD 202
issue / C

APPENDIX B – Clause 4.6 Variation Request: Minimum Subdivision Lot Size

1. Site and Proposal

Address - 3 Suwarrow Street, Fairlight. D.P. 28, Lot 10399.

Proposal - Demolition of an existing dwelling house and construction of an attached dual occupancy and subdivision into two allotments.

Site description - The site is roughly rectilinear with a depth of approximately 36.52m and a width of 13.705m running from east (Suwarrow Street) to west (rear boundary). The total site area is 499.5m^2 per DP and 500.5m^2 by calculation.

The site falls to from the south-west corner to the north-east corner on Suwarrow Street by around 1.51m, with stormwater connected to the street gutter.

The site currently accommodates a two-storey detached dwelling of brick construction with a tiled roof, enclosed subfloor area and hardstand parking to the south-eastern part of the street frontage.

Context – lots on Suwarrow Street and surrounds are predominantly one and two-storey, attached and detached dwellings, intermixed with some three and four-storey residential flat buildings.

Assessment – the proposal has been assessed against the provisions of the Manly LEP 2013 and Manly DCP 2013 in the Statement of Environmental Effects.

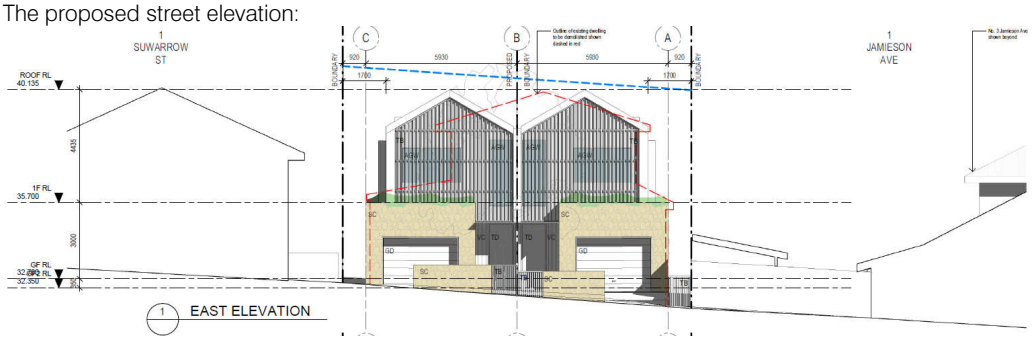
The minimum subdivision lot size is outlined by MLEP clause 4.1, with the objectives outlined below. The minimum lot size for the subject site is 250 m^2. The proposal seeks a subdivision of the 499.5 m^2 parent lot into two Torrens Title allotments, resulting in a lot size of 249.75 m^2. This is below the minimum size and results in a non-compliance of 0.25 m^2 or 0.001%.

If the survey calculation figures of the existing lot size were able to be used, the proposed subdivision would be compliant with the MLEP minimum subdivision lot size.



The subject site shown in red (source: Google Maps)

The proposed street elevation:



2. Requirement of a clause 4.6 variation request

Clause 4.6(1) of MLEP states:
(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.

In *Initial Action v Woollahra Municipal Council* [2018] NSWLEC 118 at [90]:

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

As such, clause 4.6(1) is not an operational provision, so the remaining clauses of clause 4.6 outline the operational provisions.

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

Clause 4.1, the minimum subdivision lot size development standard, is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP states:
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development does not comply with the minimum subdivision lot size development standard of clause 4.1 of MLEP. The standard outlines a minimum subdivision lot size of 250sqm, however as will be discussed in detail below, strict compliance is considered to be unreasonable or unnecessary in the proposal and it will be demonstrated there are sufficient environmental planning grounds to justify the non-compliance with the development standard.

Clause 4.6(4) of MLEP states:
(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.

The proposed development results in a shortfall of 0.25sqm or 0.001% per allotment, of the minimum subdivision lot size control of clause 4.1 of MLEP, for each of the new allotments proposed to be created.

As such, a clause 4.6 variation statement is required to justify the non-compliance with the development standard.

The requirements of subclauses 3 and 4 of clause 4.6 of the MLEP 2013 are addressed in the following sections of this report.

3. The Nature and Extent of the Variation

Clause 4.1 requires a minimum subdivision lot size of 250sqm. The existing site is 499.5sqm and the proposed Torrens Title subdivision will create two allotments, each with a lot size of 249.75m2. The non-compliance equates to 0.25m2 for each allotment, which is a variation of 0.001%.

4. Zone R1 – General Residential

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R1 – General Residential and the Land Use Table in Part 2 of MLEP specifies the following objectives for the R1 zone:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development is for the purpose of a dual occupancy (attached) which is a permissible use in the R1 zone. The proposal provides for an additional dwelling in a desirable locality nearby public transport and other amenities, whilst maintaining an appropriate density to meet the day to day needs of residents.

It is considered the proposal satisfies the objectives of clause 2.2.

5. Manly Local Environmental Plan 2013 – Clause 4.1 Minimum Subdivision Lot Size

Clause 4.1 of MLEP outlines the minimum subdivision lot size development standard as follows:

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

> *(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*
>
> *(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
>
> *(c) …*
>
> *(d) …*

The Lot Size Map specifies a minimum subdivision lot size for the land is 250 m2.

The proposal satisfies the relevant objectives of clause 4.1 as outlined below:

Objective (a)

The two new lots created by the proposed Torrens title subdivision will retain the existing pattern along Suwarrow Street, Jamieson Avenue and Griffiths Street. The pattern is for lots of about 500sqm mixed with smaller allotments of 250-300sqm. Lots with comparable areas with the locality of the subject site (yellow) are shown on figure 1. The red marked lots are a mixture of original semi-detached dwellings on individual lots, as well as more recent Torrens Title subdivisions. The blue marked lots include development currently under assessment in the area.

The proposed two new allotments are regular rectangular lots with equal street frontage, which maintains the existing predominant subdivision pattern in the area. Thus, the minor non-compliance with the numerical standard does not result in an inconsistency with objective (a).

The proposed subdivision with 0.5sqm shortfall from the minimum subdivision lot size requirements for each new allotment, would not reduce the residential density that could be achieved for each new site. The design plans and accompanying Statement of Environmental Effects clearly shows how the area of each new lot on its own is sufficient to provide a useable area of building and landscaping, including adequate open space, and results in an efficient building in line with Council requirements for the future residents.

Objective (b)

(b) Further to above, the locality of the subject site includes low to medium density residential buildings between one to four storeys high. The Torrens title subdivision of the subject site does not affect the established character of the area and local streetscape as demonstrated in the submitted plans and discussed in detail in the Statement of Environmental Effects. The extremely minor 0.5sqm (0.001%) numerical non-compliance with the minimum subdivision lot size control does not preclude compliance with the objectives of clause 4.1

As shown in Figure 1, there are many existing smaller allotments within the vicinity of the subject site. Included are some more recent subdivisions, such as 44, 44A, 94 and 94A Griffiths Street, and 11 and 11A Daintrey Street. Further examples of approved Torrens Title subdivision for lots that are non-compliant with the minimum subdivision lot size can been seen at 107 Griffiths Street, Balgowlah and 22 Wattle Avenue, Fairlight.

It is considered the proposal satisfies the objectives of clause 4.1.

6. Is compliance with clause 4.1 unreasonable or unnecessary?

This variation request relies on the statement by Presont CJ in *Wehbe*, paragraph 17:

the *first and most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary, because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

The objectives of the minimum subdivision lot size standard and why they are considered to have been met are outlined below and in section 5 of this report:

(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,

The two new lots created by the proposed Torrens Title subdivision are consistent with the predominantly rectangular shaped nearby lots. The area is characterised by a mixture of lots ranging between 250-500sqm, with many examples of recent subdivisions or similar lot sizes as proposed shown on the below map. Of note are:

- 7, 9, 13, 15, 16, 18, 19 and 21 Jamieson Avenue
- 30, 32, 31, 33, 44, 44A, 37, 39, 45, 47, 94 and 94A Griffiths Street (62 Griffith Street currently under assessment by Council)
- 1, 3, 9, 11 Wattle Avenue
- - 7, 9, 11, 11A Daintrey Street
- 36, 38, 40 and 42 Bellevue Street



Figure 1 - Nearby sites shown in red with a similar allotment subdivision pattern as the proposal. The site shown in blue is currently under assessment by Council (source: Sixmaps)

(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,

The proposal complements and enhances the character of the locality and streetscape. The local streetscape is made up a variety of housing types including dwelling houses, dual occupancies, terraces, and residential flat buildings

The two-storey scale of development is consistent with neighbouring and nearby development and sits comfortable in the local context. This is particularly relevant regarding the prevailing subdivision pattern, which provides for many examples of similar allotment sizes.

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

The assessment of the proposal outlined in detail in this clause 4.6 variation request and in detail in the Statement of Environmental Effects, clearly demonstrates sufficient environmental planning ground to justify the contravention of the development standard. In addition, the stated non-compliance of 0.001% is extremely minor.

8. Is the proposed development in the public interest because it is consistent with the objectives of clause 4.1 and the objectives of the R1 General Residential zone?

The assessment of the proposal against the objectives of clause 4.1 of MLEP and the objectives of the R1 zone in which the site is located, demonstrates that the proposal is in public interest. The public interest is addressed as the proposal would have minimal adverse environmental impacts on its locality whilst also meeting the objectives outlined above and creating a contemporary, high-quality residential development to enhance the streetscape of the locality. Furthermore, the proposal would provide excellent internal amenity for the occupants, whilst the efficient use of the site allows for additional inhabitants to the local area, which brings economic benefits for local shops, services and the like.

ITEM 3.6	**DA2022/1528 - 92 LAUDERDALE AVENUE FAIRLIGHT - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/101262**
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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/1528 for demolition works and construction of a dwelling house including swimming pool on land at Lot 11 DP 6817, 92 Lauderdale Avenue FAIRLIGHT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1528

Responsible Officer:	Tony Collier
Land to be developed (Address):	Lot 11 DP 6817, 92 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Edwina Clair Cobon
Applicant:	Edwina Clair Cobon

Application Lodged:	21/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	06/10/2022 to 20/10/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 3,091,000.00

EXECUTIVE SUMMARY

This development application seeks consent for demolish the existing dwelling house and associated structures on the site and to construct a new part two/part three storey dwelling house which includes basement car parking, swimming pool and associated landscape and drainage works.

The application was exhibited between 6 October 2022 and 20 October 2022. A total of 7 submissions were received, one of which was in support.

The application is referred to the Development Determination Panel (DDP) due to the number of submissions received.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent to demolish the existing dwelling house and associated structures on the site and to construct a new part two/part three storey dwelling house which includes basement car parking, swimming pool and associated landscape and drainage works.

In detail, the development includes:

Dwelling

Basement (FFL 19.130)

- Double width garage access via a double width crossover (to be widened from the original single width).
- Access hallway to a lift.
- Storage.
- Stairwell.

Lower Ground Floor (FFL 21.700)

- Entrance.
- Rumpus Room.
- Study.
- Bathroom.
- Hallway to lift.
- Stairwells.

Ground Floor (FFL 24.700)

- Living Room/Rumpus.
- 1 x Bedroom at the rear.
- 3 x Bedrooms (including the Master Bedroom) accessing to a combined street-facing (i.e. south) balcony.
- 2 x Bathrooms.
- Ensuite.
- Walk-in Robe and storage.
- Stairwell.
- Terrace at the rear (i.e. north).
- Lift.

Level 1 (FFL 27.700)

- Open plan Living/Dining and Kitchen accessing to front (i.e. south) and rear (i.e. north) balconies.
- WC.
- Study nook.
- Lift.

External Works

Front (South)

- Retention of the existing sandstone wall facing the street.
- Lawn and landscape treatments.

Rear (North)

- Carparking hardstand (single space) accessed via an existing curved driveway from Willyama Avenue.
- Part below/part above-ground swimming pool.
- Terraced landscaping and landscape treatments.

Sides (East & west)

- Lawn with paved stepping stones.

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 Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle

Facilities)
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 11 DP 6817 , 92 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one (1) allotment which has a dual frontage to Lauderdale Street (to the south) and Willyama Avenue (to the north). The frontage to Willyama Street is secondary. The site is regular in shape with a frontage of 18.095m along Lauderdale Street and an average depth of 45.12m. The site has a surveyed area of 824.9m². The site is located within the R1 General Residential zone and accommodates a two storey dwelling, garage, carport and swimming pool. The site is stepped up at the front (southern) boundary by a 2.75m high sandstone wall to accommodate the existing garage then slopes upward towards the rear (northern) boundary by 9.8m, flattening off within the rear yard to accommodate the existing swimming pool and adjacent lawn. The site contains a mix of native and exotic vegetation species including a Liquidambar located within the north-western corner (recorded as tree T2 which is scheduled for removal). **Detailed Description of Adjoining/Surrounding Development** Comensurate with the zone, adjoining and surrounding development is characterised by a mix of detached dwelling houses and flat buildings of varying size and age. The pedestrian entrance to Esplanade Park is situated on the opposite side of Lauderdale Street resulting a comparatively open section of the street to long views towards Wellings Reserve on the southern side of North Harbour.

Map:



SITE HISTORY

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

The land has been used for residential purposes since the subdivision of the Look Out Estate in 1912. The existing dwelling has been in situ since at least 1920.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.

Section 4.15 Matters for Consideration	Comments
	Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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 06/10/2022 to 20/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Robert James Marshall	16 B Willyama Avenue FAIRLIGHT NSW 2094
Stuart Nigel Codling Angela Codling	1 / 94 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Geoffrey John Leonard Perks Mrs Patricia Anne Perks	3 / 94 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Kenneth Charles Johnson Mrs Wendy Anna Johnson	4 / 94 Lauderdale Avenue FAIRLIGHT NSW 2094
Mrs Karin Jennifer Trope Mr Jonathan Ian Trope	1 / 90 Lauderdale Avenue FAIRLIGHT NSW 2094
Ms Joanne Susan Ampherlaw Nigel Ampherlaw	3 / 90 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Bruce Andrew Mansfield Mrs Marianne Mansfield	2 / 90 Lauderdale Avenue FAIRLIGHT NSW 2094

Of the 7 submissions received, 6 were in objection and 1 was in support.

The following issues were raised in the submissions:

- **View loss.**
- **Bulk and scale.**
- **Inconsistent with the aims of the LEP.**
- **Inconsistent with the objectives of the zone.**
- **Non-compliance with DCP controls:**
    - **Wall height.**
    - **Number of storeys.**
    - **Side setbacks (building separation).**
- **Visual privacy.**
- **Overshadowing.**
- **Excessive excavation.**
- **Stormwater.**
- **Insufficient information:**
    - **View impact analysis**
    - **Privacy impact analysis**

- **Solar access diagrams**
- **Visual bulk analysis.**
- **Geotechnical considerations.**

- **Loss of on-street parking.**

The above issues are addressed as follows:

- **View loss**

  Concern is raised that the development would create unreasonable view loss.

  Comment
  This issue has been addressed elsewhere in this report (refer to Clause 3.4.3 'Maintenance of Views' under the Manly Development Control Plan 2013). In summary, it was considered that the the impact on views is minor, that there would be a measurable improvement to outlook, and that a more skillful design would not improve view sharing. Therefore, the view impact is considered to be acceptable and the view sharing reasonable.

  Given this design outcome, and that the views from the three assessed neigbouring properties will remain extensive, it is considered that the proposal has sensitively responded to view sharing and that the view impact is therefore considered acceptable reasonable.

  This issue does not warrant the refusal of the application.

- **Bulk and scale**

  Concern is raised that the bulk and scale of the development is excessive, particularly along the side elevations.

  Comment
  The plan view of the development reveals a high level of articulation along both side elevations to incorporate 'ear' windows. These features break up the flat surface area of side walls and provide architectural interest (as well as providing for a high level of protection for visual privacy to neigbouring dwellings).

  The development is also terraced at the front to respond to the sloping topography of the site and to compliment the terraced designs of the neighbouring flat buildings which also face Lauderdale Avenue.

  In this respect, the bulk and scale of the development is not considered to be excessive, particularly given the afore-mentioned context.

  This issue does not warrant the refusal of the application.

- **Inconsistent with the aims of the LEP**

  Concern is raised that the proposal is not consistent with the aims of the LEP by virtue of the listed issues.

  Comment
  The aims of the Manly Local environmental Plan 2013 are contained under Clause 1.2(2)(a) & (b) which respectively state:

Clause 1.2(2)(a)
- To promote a high standard of urban design that responds to the existing or desired future character of areas, and
- To foster economic, environmental and social welfare so that Manly continues to develop as an accessible, sustainable, prosperous, and safe place to live, work or visit, and
- To ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increase in demand, and
- To ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity or heritage of Manly or its existing permanent residential population.

The development has been considered against the above aims and is assessed as being consistent.

Clause 1.2(2)(b)
- To provide and maintain a diverse range of housing opportunities and choices that encourages affordable housing to cater for an ageing population, changing demographics and all socio-economic groups, and
- To ensure high quality landscaped areas in the residential environment, and
- To encourage higher density residential development to be located close to major transport nodes, services and employment opportunities, and
- To maintain active retail, business and other non-residential uses at street level while allowing for shop top housing in centres and offices at upper floors in local centres.

The development has been considered against the above aims and is assessed as being consistent.

This issue does not warrant the refusal of the application.

- **Inconsistent with the objectives of the zone**

  Concern is raised that the proposal is not consistent with the objectives of the zone by virtue of the listed issues.

  Comment
  The objectives of the R1 General Residential zone state:

  - To provide for the housing needs of the community.
  - To provide for a variety of housing types and densities.
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents.

  The development has been considered against the above objectives and is assessed as being consistent.

  This issue does not warrant the refusal of the application.

- **Non-compliance with DCP controls:**
  - **Wall height**
  - **Number of storeys**
  - **Side setbacks (building separation)**

Concern is raised with respect to the development not complying with the above-listed controls.

Comment
The issues of wall height and the number of storeys have been discussed elsewhere in this report (refer to Clause 4.1.2 'Height of Buildings' under the Manly Development Control Plan 2013). In summary, it was found that the development achieved consistency with the objectives of the clause and that the extent of non-compliance did not result in an unreasonable impact to adjacent private or public domains.

Side setbacks were found to comply with the requirements of Clause 4.1.4.2 of the Manly Development Control Plan 2013.

This issue does not warrant the refusal of the application.

- **Visual privacy**

Concern is raised that the development would have unreasonable impact upon privacy.

Comment
This issue has been addressed elsewhere in this report (refer to Clause 3.4.2 'Privacy and Security' under the Manly Development Control Plan 2013). In summary, areas were identified in the development which would result in overlooking. These areas have been considered and addressed by the imposition of conditions which require the installation of privacy screens, screen planting or both.

This issue does not warrant the refusal of the application subject to condition.

- **Overshadowing**

Concern is raised that the development would result in unreasonable overshadowing.

Comment
This issue has been addressed elsewhere in this report (refer to Clause 3.4.1 'Sunlight Access and Overshadowing' under the Manly Development Control Plan 2013). In summary, it was considered that the development would not result in an unreasonable level of overshadowing given the topography and north-south orientation of the site.

A condition is imposed which requires that the front privacy screen attached to the western edge of the upper floor balcony (adjacent to the living room) should be amended to include a lighter and more permeable screen which would allow ambient light and early morning sunlight to filter down into the side facing courtyard at No. 94 Lauderdale Avenue.

This issue does not warrant the refusal of the application subject to condition.

- **Excessive excavation**

Concern is raised with respect to the excavation proposed and that the excavation may result in damage to neighbouring properties.

Comment
The excavation is concentrated to thein the front section of the site to accommodate the double garage and the access tunnel/storage, and lift shaft.

The extent of excavation has been kept to a minimum with the tunnel and lift shaft being predominantly concentrated to within the south-western part of the site.

The application is accompanied by a Geotechnical Report which has assessed the site as suitable for the development and includes appropriate recommendations which include a requirement for dilapidation reports to be completed. The recommendations of the Report and a requirement for the preparation of dilapidation reports are included as a condition.

This issue does not warrant the refusal of the application subject to condition.

- **Stormwater**

  Concern is raised

  Comment
  The stormwater design was considered by Council's Development Engineer who advised that the submitted stormwater management plan including OSD is acceptable. Therefore, Council's Development Engineering support the proposal, subject to conditions.

  This issue does not warrant the refusal of the application subject to condition.

- **Insufficient information:**
  - **View impact analysis**
  - **Privacy impact analysis**
  - **Solar access diagrams**
  - **Visual bulk analysis**
  - **Geotechnical considerations**

Concern is raised that the application does not provide sufficient information to be able to consider the proposal.

Comment

View impact analysis

A View Impact Analysis is provided on Pages 37 to 46 of the Statement of Environmental Effects in addition to the plans included with the plan set (refer to Plans A521, A522, and A523).

Privacy impact analysis

A Privacy Impact Analysis is provided on Pages 35 to 36 of the Statement of Environmental Effects.

Solar access diagrams

Solar Access diagrams are provided on Pages 33 to 34 of the Statement of Environmental Effects in addition to the plans included with the plan set (refer to Plans A511, A512, and A513).

Visual bulk analysis

A Visual Bulk Analysis is provided on Page 32 of the Statement of Environmental Effects.

Geotechnical considerations

A Geotechnical Report (refer to the 'Report on Geotechnical Site Investigation' dated 19 August 2022 as prepared by Crozier Geotechnical Consultants) was submitted with the application.

Al the above documentation was exhibited on Council's website from the time of lodgment.

- **Loss of on-street parking**

  Concern is raised that the development will result in a loss of on-street car parking due to the inclusion of a double garage on Lauderdale Avenue (which replaces an existing single garage).

  Comment
  This issue has been addressed elsewhere in this report (refer to Clause 4.1.6 'Parking, Vehicular Access and Loading' under the Manly Development Control Plan 2013). In summary, it was noted that the additional width of the crossover into the double garage will reduce the availability of on-street parking by one vehicle. However, as this was the primary parking area available to the dwelling (notwithstanding the less accessible rear parking space off Willyama Avenue) it was acknowledged that it is likely that the occupant of the property would park their second vehicle on Lauderdale Avenue thereby taking up an otherwise available on-street parking space anyway. Therefore, it is not considered to be a considerable impact to the provision of on-street parking to design and include that second space within the site.

  This issue does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for the demolition of the existing structures on the site and construction of a new dwelling house, including basement parking, new swimming pool to the rear, stormwater works and 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. 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): • 3.3.1 Landscaping Design. • 3.3.2 Preservation of Trees or Bushland Vegetation. • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable. Landscape works are proposed across the site as illustrated in the Landscape Plans and no concerns are raised, except for the selection of tree species (Tuckeroo) which is an environmental weed and this

Internal Referral Body	Comments
	shall be substituted for a locally native tree species as imposed by conditions. Three locally native trees are required to satisfy 4.1.5.2 (c). The tree replacement planting shall be located in similar locations along the side boundaries that replace existing trees required to be removed. All landscape works upon structure (garage and OSD) shall provide adequate planters as imposed by conditions. Existing trees proposed to be removed are generally located along the side boundaries and these are trees of considerable height including: along the west boundary T1 - 6.5m high; T2 - 15.0m high; and T11-T14 - 4.0m to 7.0m high, and along the east boundary T3 - 9.0m high. The replacement tree planting is not proposed to achieve heights greater than the trees to be removed. The submitted Arboricultural Impact Assessment report recommends the removal of the following trees: • within the property: T1 - Lillypilly, T2 - Liquidambar, T3 - Willow Mrytle, T5 - Camellia, T11 and T14 - Lillypilly, T12 - Weeping Bottlebrush, and T13 - Lemon Scented TeaTree. • within the public road reserve: T6 - Canary Island Palm. Based on the findings of the Arboricultural Impact Assessment, no concerns are raised for the removal of existing trees within the property impacted by the proposed development works including T1, T3, T5, and T11 to T14. Existing tree T2 is an exempt species and does not require Council consent for management or removal. Replacement planting is required for the following: T1 and T3, as to be achieved under control 4.1.5.2 (c). Council does not support the removal of T6 as their is no arboricultural reason to remove this tree and this shall be retained and protected along with all other street trees on public land. Subject to conditions of consent, Landscape Referral do not raise objections to the landscape component of the development proposal.
NECC (Development Engineering)	The submitted stormwater management plan including OSD is acceptable. The proposed driveway crossing widening and garage off Lauderdale Ave is acceptable subject to conditions to limit the width of the crossing to maximise the on-street parking availability. The existing driveway crossing to the rear is to remain which is acceptable. Development Engineering support the proposal, subject to conditions as recommended.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as it is within the

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
vicinity of two heritage items:

Item I1 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour

Item I49 - Esplanade Park and Fairlight Pool - Fairlight Foreshore, North Harbour

Details of heritage items affected

Item I1 - Harbour foreshores
Statement of significance:
Natural landscape type - Aesthetic.
Physical description:
Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.

Item I49 - Esplanade Park and Fairlight Pool
Statement of significance:
Part of driveway setting leading up to 'Fairlight House' in the 1850's. Part of Manly's foreshore open space system. Aesthetic.

Other relevant heritage listings
<table>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>No</td><td></td></tr>
</table>
Consideration of Application

The proposal seeks consent for the demolition of the existing site structures and the construction of a new
dwelling house, swimming pool and landscaping, including an extension to the existing single garage to accommodate double parking spaces, which involves the demolition of a portion of the existing sandstone wall at the street boundary.

The existing property is an intact example of an Inter-War building, which dates back to c1919 (Statement of Heritage Impact by John Oultram Heritage & Design), and despite the later modifications it still retains its original features including majority of its internal
</td></tr>
</table>

Internal Referral Body	Comments
	fabric and built form. The "Assessment of Significance" acknowledges that the dwelling is an interesting example of the Arts and Craft style and retains much of its original layout. However it concludes that the property would not meet any of the Heritage Manual criteria for identification as a place of local significance without demonstrating each criterion. Although, this conclusion is not completely agreed with, Heritage considers that the proposal will have a manageable impact upon the significance of the listed heritage items within the vicinity. Therefore, no objections are raised on heritage grounds, subject to one condition. Consider against the provisions of CL5.10 of Manly LEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes Further Comments

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. 1327007S dated 2 September 2022). The BASIX Certificate is supported by an NatHERS Certificate (see Certificate No.

NKQXWP8W5X dated 2 September 2022) which indicates that the dwelling will achieve a energy efficiency rating of 5.9 stars (average).

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment
The proposal was referred to Ausgrid 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.

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
Height of Buildings	8.5m	3.6m to 8.3m
Floor Space Ratio*	0.5:1 (412.45m²)	0.47:1 (390.1m²)

***Note:** The GFA Diagrams (Plan A501) nominate a car parking space as GFA. This is to be excluded

from the calculation as per the LEP definition.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	N/A
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 824.9m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/300m²	1/824.9m²	N/A	Yes
	Dwelling Size (Minimum): 90m²	390.1m² (GFA)	N/A	Yes
4.1.2.1 Wall Height (Gradient 1:4.6)	East: 5.2m	6.0m to 7.9m	52%	**No**
	West: 8.0m	5.9m to 8.0m	N/A	Yes
4.1.2.2 Number of Storeys	2	Part 2/Part 3	100%	**No**
4.1.2.3 Roof Height	Height: 2.5m	1.7m	N/A	Yes
	Parapet Height: 0.6m	0.3m	N/A	Yes
	Pitch: Maximum 35 degrees	7 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line or 6.0m	**Basement** Nil **Lower Ground** 6.5m **Ground** 6.3m **Level 1** 7.6m	N/A N/A N/A N/A	Yes Yes Yes Yes
4.1.4.2 Side Setbacks	East: 2.0m to 2.6m West:2.0m to 2.7m	2.2m to 2.8m 2.6m to 3.2m	N/A N/A	Yes Yes
	Windows: 3.0m	East: >3.0m West: >3.0m	N/A N/A	Yes Yes

4.1.4.4 Rear Setbacks	8.0m	**Ground** Terrace: 16.9m Dwelling: 21.1m **Level 1** Waste Area: Nil Car Space: 1.3m Pool: 4.2m Balcony: 18.3m Dwelling: 21.6m	 N/A N/A N/A N/A N/A N/A N/A	 Yes Yes Yes Yes Yes Yes Yes
4.1.5.1 Minimum Residential Total Open Space (TOS) Residential Open Space Area: OS3	TOS: 55% (453.7m²)	58.2% (480.3m²)	N/A	Yes
	Above Ground: 25% Max TOS (113.4m²)	75.5%	N/A	Yes
4.1.5.2 Landscaped Area	35% TOS (158.8m²)	91.2% (414m²)	N/A	Yes
	4 native trees	4 trees	N/A	Condition
4.1.5.3 Private Open Space	18m²	>18m²	N/A	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	37% 6.7m	8.1% (+0.5m)	**No**
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.6m	60%	**No**
	1m curtilage/1.5m water side/rear setback	Side: 3.7m Rear: 4.2m	N/A N/A	Yes Yes
Schedule 3 Parking and Access	2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	N/A	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	N/A	Yes
3.5.1 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	N/A	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	N/A	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	N/A	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Clause 3.4.1 requires:

3.4.1.1 Overshadowing Adjoining Open Space

In relation to sunlight to private open space of adjacent properties:

- *New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or*
- *Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.*

and

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

- *for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);*
- *for all adjacent buildings, no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.*

Comment

94 Lauderdale Avenue

Unit 1/94 Lauderdale Avenue
The north-south orientation of the site facilitates a high level of compliance with respect to sunlight access and overshadowing. The neighbouring properties to the east and west comprise multi-level residential flat buildings and it is noted that a submission received from the lower floor unit (Unit 1) at No. 94 Lauderdale Avenue raises concerns regarding overshadowing.

An inspection of that unit (as a consequence of a view loss issue) identified that the concerns are related to the sunlight filtration (through boundary trees) into the side courtyard and windows at 9.00am (the inspection of that unit occurred at around 9.30am on 25 January 2023). The inspection found that sunlight did filter through the boundary trees into the side-facing courtyard and, to a limited extent, into the side facing bedroom window which is located towards the rear of the unit. Sunlight into the courtyard was directly filtered and ambient due to the part overhang of the roof over the courtyard.

With respect to the function of the side-facing courtyard, it was noted that the feature largely performed as a an access to the main terrace which is located to the south (front) of the unit although it was also noted that the courtyard functioned as a partially shaded outdoor private open space area which offered ready access from the living room.

In terms of the degree of overshadowing resulting from the development, the following is noted for Unit 1/94 Lauderdale Avenue:

Time (21 June)	Existing Shadow	Proposed Shadow
9.00am	100%	100% (new shadow over upper floor balcony)
Noon	Self shadow	Self shadow (no additional impact)
3.00pm	Self Shadow	Self shadow (no additional impact)

The above indicates that Unit 1 would not experience addition shadow on 21 June although the shadow diagrams indicate that the development would cast a new shadow on the eastern side of the sloping balcony edge to the balcony to Unit 3 above. This additional shadow is derived from the proposed skillion roof form.

Although the above notes three distinct hours, the transit of the sun between 9.00am and Noon would allow for sunlight to filter into the side facing courtyard between 10.00am and 11.00am (approx.) as the sun would be diagonally over the side setback area between the two buildings.

Notwithstanding, it is considered that the front privacy screen attached to the western edge of the upper floor balcony (adjacent to the living room) should be amended to include a lighter and more permeable screen which would allow ambient light and early morning sunlight to filter down into the side facing courtyard. This has been addressed by condition.

90 Lauderdale Avenue

Unit 1 (RL 22.75)
Unit 1 is located above the ground floor carpark and is the bottom level unit in the block.

The plans for the property reveal that the living room is located at the western side of the floor and three bedrooms located at the eastern side of the floor. The living room and Bedroom 1 access onto a south-facing terrace. Other rooms (dining room, bedrooms and study are located within the rear part of the unit which is partially excavated into the site. The rear rooms are therefore partially below the sloping ground level with the study and the dining room accessing a smaller terrace situated in the north-western corner of the site.

An examination of the shadow diagrams indicate the following (the western elevation is considered only):

Time (21 June)	Existing Shadow	Proposed Shadow
9.00am	Self shadow	No additional impact
Noon	Limited sunlight to rear facing windows	No additional impact
3.00pm	Overshadowing from existing dwelling	Partial shadow over dining room window

The above table indicates that the development would not create any unreasonable shadow. The only discernable additional shadow could be cast over the north-facing dining room window which is partly sunken into the site and shaded by the retaining wall and plantings. This window will continue to receive the same level of sunlight access between Noon and 2.00pm.

Unit 2 (RL 25.75)
Unit 2 is located mid-level in the block and has a southern orientation as Unit 3 above wraps around the rear to form a two storey north-facing element. Therefore, no direct northern sunlight access is available to Unit 2.

Like Unit 1, the plans for the property reveal that the living room is located at the western side of the floor and three bedrooms are located at the eastern side of the floor. Both rooms access onto a south-facing terrace. Other rooms (dining room and study) are located within the western side of the unit which is sited at ground level. A wrap-around terrace is situated at the western side and front of the unit commencing from the dining room.

An examination of the shadow diagrams indicate the following (the western elevation is considered only):

Time (21 June)	Existing Shadow	Proposed Shadow
9.00am	Self shadow	No additional impact
Noon	Sunlight to rear facing windows	No additional impact
3.00pm	Overshadowing from existing	Partial shadow over dining room

	dwelling	window

The above table indicates that the development would not create any unreasonable shadow. Like Unit 1, the only discernable additional shadow could be cast over the north-facing dining room window which is sited at ground level. This window will continue to receive the same level of sunlight access between Noon and 2.00pm.

Unit 3 (RL 28.75)

Unit 3 is located at the top floor in the block and wraps around the rear to form a two storey north-facing element.

The plans for the property reveal that the living room is located at the southern side of the floor and a family room, three bedrooms and a rumpus room are located at the northern side of the dwelling. The north-facing rooms access onto a ground floor terrace within the rear yard.

An examination of the shadow diagrams indicate the following (the western elevation is considered only):

Time (21 June)	Existing Shadow	Proposed Shadow
9.00am	Self shadow	No additional impact
Noon	Full sunlight access to the rear	No additional impact
3.00pm	Full sunlight access to the rear	No additional impact

The above table indicates that the development would not create any additional and unreasonable shadow to Unit 3.

Conclusion

The above assessment considers that the shadow impact to neighbouring properties to be negligible to minor.

With respect to 94 Lauderdale Avenue, Unit 1 will not experience any additional shadow between the nominated hours of 9.00am to 3.00pm on 21 June due to the shadows cast by the existing dwelling on the subject site and the self-shadowing caused by the flat building at No. 94 Lauderdale Avenue.

Notwithstanding, it is considered that the front privacy screen attached to the western edge of the upper floor balcony (adjacent to the living room) should be amended to include a lighter and more permeable screen which would allow ambient light and early morning sunlight to filter down into the side facing courtyard. This has been addressed by condition.

With respect to 90 Lauderdale Avenue, Units 1 and 2 will experience transient shadow over the rear facing dining room windows (located at the north-western corner of each unit) however, this is caused by the roof of the terrace to the proposed dwelling. The sides of the terrace are open and it is estimated that this will enable sunlight to continue to filter through and onto the dining room windows between 2.00pm and 3.00pm.

Unit 3 is elevated and will not experience any adverse shadow impact.

3.4.2 Privacy and Security

Balcony (Level 1)

The proposed dwelling has been designed to respond to its medium to high density context by orienting side windows towards the south (front). This design effectively directs viewing away from the windows and outdoor areas of neighbouring dwellings without employing the need to additional privacy screens.

It is noted that the rear (north-facing) balcony at Level 1 does not include any privacy treatments at either side and, because of its elevated nature and proximity to side boundaries (between 2.7m and 3.0m) it is considered that privacy screens should be incorporated into the design to prevent any overlooking opportunity. In order to enable sunlight penetration, the screens are to be of a lightweight and permeable design such as obscure glazing.

This has been conditioned accordingly.

Pool Terrace
The development includes an elevated pool terrace and walkway adjacent to the western boundary. The pool terrace and walkway are sited at Level 1.

These features have the ability to create an overlooking opportunity into habitable rooms of the neighbouring property to the west. As such, it is considered reasonable to include a condition requiring the installation of a privacy screen along the full length of the elevated walkway.

Furthermore, due to the terracing within the rear yard and the potential to overlook (and be overlooked), it is considered appropriate to include a condition which requires the installation of screen planting along the eastern and western sides of the property adjacent to both boundaries.

This has been conditioned accordingly.

3.4.3 Maintenance of Views

Merit consideration
Clause 3.4.3 requires:

- *The design of any development, including the footprint and form of the roof is to minimise the loss of views from neighbouring and nearby dwellings and from public spaces.*
- *Views between and over buildings are to be maximised and exceptions to side boundary setbacks, including zero setback will not be considered if they contribute to loss of primary views from living areas.*
- *Templates may be required to indicate the height, bulk and positioning of the proposed development and to assist Council in determining that view sharing is maximised and loss of views is minimised. The templates are to remain in place until the application is determined. A registered surveyor will certify the height and positioning of the templates.*
- *The ultimate assessment of views and view loss in this plan must be in accordance the planning principle established by the NSW Land and Environment Court.*

The development is considered against the Objectives of the Control:

1. *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*
2. *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*

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

Submissions were received from the following properties with respect to view loss:

- 1/94 Lauderdale Avenue (First Floor - Occupies the eastern half of the level).
- 3/94 Lauderdale Avenue (Second (middle) Floor - Occupies the entire level)
- 4/94 Lauderdale Avenue (Third (top) Floor - Occupies the entire level).

No submission was received from 2/94 Lauderdale Avenue which occupies the western half of the first floor.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

Step 1
"The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (for example of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, for example a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment

Each apartment enjoys immediate water views of North Harbour and distant views of the ocean. Both views are whole views and include water and land interface with Balgowlah Heights to the south and the Sydney Harbour National Park to the south-east.

As the building height increases, the views become more expansive from Units 3 and 4 to include distant views of North Head to the south-east.

Step 2
"The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

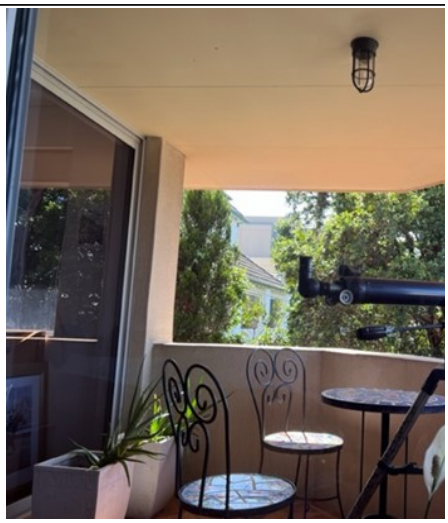
Comment

<u>1/94 Lauderdale Avenue</u>
Views are obtained from the Living Room and terrace. A view is also obtained from a corner balcony to the master bedroom which is located on the upper level of the unit.

The view obtained from the living room is more restricted than the view obtained from the terrace due to its recessing back into the property and the deep extent of the terrace and solid balustrade. Furthermore, views are limited by the prevalence of trees which are located along the eastern edge of the neighbouring property boundary and within the front setback. This limits views to within a cone to the south-east and to the south and south-west (district views).

Sitting views are limited due to the afore-mentioned shallow angle. Standing views do increase the downward view into North Harbour but the expansiveness of views remain restricted by the afore-mentioned trees.

The view from the corner balcony (to the bedroom) is more extensive due to its elevated aspect relative to the downstairs living room, however, these views are limited to the south and south-east due to the afore-mentioned vegetation on the boundary. Views from a sitting or standing position are similar due to the shallower depth of the balcony.

	
View south from Living Room	**Upstairs balcony (view to the**

3/94 Lauderdale Avenue
Views are obtained from the open plan living room and dining room, and from the terrace. Outlook is obtained from the kitchen which includes a view of Balgowlah Heights.

The living room is recessed back from the southern edge of the terrace by approximately 6.0m resulting in a shallow view angle in both a standing and sitting position. In a standing position, downward water views are available of the North Harbour. This outlook diminishes to a view of Balgowlah Heights and a shallower angle of view of North Harbour.

The view from the terrace is more extensive due to its forward location, particularly from a standing position.

A limited side view is obtained from the two east-facing living room windows although this view is over a side boundary which is filtered and restricted by the existing dwelling on the subject site and vegetation.

A narrow view is obtained from a dining nook within a bay window which is located adjacent to the kitchen. Due to the angle and location of the bay window, and the proximity of vegetation, the view is directed to the south over the side boundary and provides a filtered view of North Harbour.



View south-east from Living Room terrace



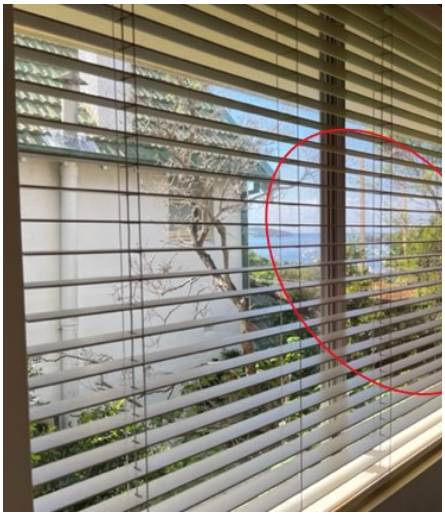
View south from Living Roor



View south from Living Room (Sitting)



View to south-east through side wind

	
View south from side bay window (height poles circled)	**View south-east from side window**

4/94 Lauderdale Avenue
Views are obtained from the open plan living room and dining room, and from the terrace. Outlook is obtained from the kitchen which includes a view of Balgowlah Heights.

The living room is recessed back from the southern edge of the terrace by approximately 10.0m resulting in a shallow view angle in both a standing and sitting position. In a standing position, downward water views are available of the North Harbour. This outlook diminishes to a view of Balgowlah Heights and a shallower angle of view of North Harbour.

The view from the terrace is more extensive due to its forward location, and from both a siting and standing position.

A limited side view is obtained from the two east-facing living room windows although this view is over a side boundary which is filtered and restricted by the the pitched roof of the existing dwelling on the subject site and the tops of vegetation.

View south-east from terrace	View south from terrace (height
	
View south-east from side window of Living Room (roof line indicated)	**View south from Living Roo**

Step 3
"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment

1/94 Lauderdale Avenue
The lower ground floor and ground floor levels of the development are situated adjacent to Unit 1.

The development extends the building line forward by 3.6m (ground floor) to 5.1m (lower ground floor) which generally aligns with the front of the living room and upper floor bedroom to Unit 1. The terrace and upper floor balcony of Unit 1 extend forward of the proposed building line.

The view to the south from the living room, terrace and upper floor balcony will remain unobstructed. The eastern view over the side boundary will be obstructed from the lower level side facing windows (which are currently obstructed by an existing boundary fence and vegetation) although the diagonal view to the south-east will open up due to the removal of vegetation.

3/94 Lauderdale Avenue
Level 1 of the development is situated adjacent to Unit 3.

The development extends the building line forward by 2.1m (Level 1) and includes side walls and a louvered privacy screen to the proposed terrace which extend the wall structure to 5.3m from the existing building line. This generally aligns to a mid-point in the terrace to Unit 3 and forward of the living room by 4.2m.

The view to the south from the living room and terrace will remain unobstructed. The view to the south-east from the terrace will be partly obstructed although this view will remain available from the southern half of the terrace.. The eastern view over the side boundary from the side facing windows and the breakfast nook will be obstructed as a result of the development.

4/94 Lauderdale Avenue
The proposed skillion roof is situated adjacent to Unit 4.

The skillion roof has its highest point to the rear of the proposed dwelling which is located adjacent to the front building alignment of Unit 4. The roof then angles down to the flat roof of Level 1.

The view to the south from the living room and terrace will remain unobstructed. The downward view to the south-east from the side-facing living will be partly obstructed although the horizontal and distant views to the south-east will become more available due to the removal of the existing pitched roof (which currently obstructs a large proportion of that view).

Step 4

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

Comment

1/94 Lauderdale Avenue
Views obtained from Unit 1 are currently restricted to the south and (to a more limited extent) to the east due to boundary fencing and vegetation. Although the proposed building alignment is located forward of the existing building alignment, the impacted views are limited and the development would not unreasonably diminish this, particularly given that these limited views are across a side boundary. Unit 1 will continue to obtain water and district views to the south and south-east from the living room, terrace, bedroom and balcony.

In this respect, it is considered that the impact on views is minor and that a more skillful design would not improve view sharing. Therefore, the view impact is considered to be acceptable and the view sharing reasonable.

3/94 Lauderdale Avenue
The development will impact on views to the east from Unit 3 although this view is across a side boundary and from side-facing windows which are secondary to the main window and view which is to the south and south-east. Unit 3 will continue to obtain water, headland, and district views to the south and south-east from the living room and terrace.

In this respect, it is considered that the impact on views is minor and that a more skillful design would not improve view sharing. Therefore, the view impact is considered to be acceptable and the view sharing reasonable.

4/94 Lauderdale Avenue
The development will impact upon views to the south-east although this view is across a side boundary

and from side-facing windows which are socondary to the main window and view which is to the south and south-east. Unit 4 will continue to obtain water, headland, and district views to the south and south-east from the living room and terrace and, through the removal of the pitched roof on the subject site, obtain an improved outlook to the east and south-east.

n this respect, it is considered that the impact on views is minor, that there would be a measurable improvement to outlook, and that a more skillful design would not improve view sharing. Therefore, the view impact is considered to be acceptable and the view sharing reasonable.

Given this design outcome, and that the views from the three assessed neigbouring properties will remain extensive, it is considered that the proposal has sensitively responded to view sharing and that the view impact is therefore considered acceptable reasonable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

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

Description of Non-Compliance

Clause 4.1.2.1 requires that development achieves a wall height of 5.2m along the eastern elevation. The development proposes a wall height of between 6.0m and 7.9m along the eastern elevation.

Clause 4.1.2.2 requires development to provide a maximum of 2 storeys.

The *Manly Local Environmental Plan 2013* defines a storey as meaning:

"*A space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:*

(a) a space that contains only a lift shaft, stairway or meter room, or
(b) a mezzanine, or
(c) an attic".

The development includes a vertical section approximately 1.5m wide at the front of the dwelling which includes part of the rear garage, the ground floor level and Level 01 all of which amounts to 3 storeys.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of Clause 4.3 of the MLEP 2013 (as directed by Clause 4.1.2) as follows:

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

Comment
The development includes an overall height of between 3.6m and 8.3m which is compliant with the permitted building height in the area (being 8.5m). Additionally, the development includes a skillion roof form which angles down towards the front parapet of the dwelling.

Both features are consistent with other development in the area which addresses the topographic landscape, prevailing building height and desired future streetscape character in the locality.

The development is considered to be consistent with this objective.

- ***To control the bulk and scale of buildings.***

Comment
The dwelling is stepped back per level such that a reasonable degree of vertical articulation is provided at the front of the dwelling. This approach is consistent with other development in the area and appropriately responds to the topography of the site as it approaches the street edge. Furthermore, the development includes a high level of articulation along both side elevations to incorporate 'ear' windows. These features break up the flat surface area of side walls and provide architectural interest (as well as providing for a high level of protection for visual privacy to neigbouring dwellings).

The 3rd storey component is a relatively minor breach given its 1.5m wide depth and, because of the stepped design which diminishes the visual appearance of the the non-compliance, does not unreasonably add to the bulk and scale of the building.

The development is considered to be consistent with this objective.

- ***To minimise disruption to the following:***
  - ***Views to nearby residential development from public spaces (including the harbour and foreshores).***
  - ***Views from nearby residential development to public spaces (including the harbour and foreshores).***
  - ***Views between public spaces (including the harbour and foreshores).***

Comment
This has been addressed in detail under Clause 3.4.3 of the MDCP 2013 where it was considered that the development would not unreasonably impact upon the sharing of views from neigbouring properties.

The proposed breach to the wall height has been assessed with respect to an overall impact upon views where it was found that the wall height did not unreasonably impact upon view sharing.

The 3rd storey component occurs at the front of the dwelling but this does not represent an unreasonable impact to view sharing from the two neighbouring flat buildings to the east and west. It is noted that the development removes the existing steep 40º roof pitch which opens up views from properties to the rear which overlook the site. The proposed skillion roof and the 3rd storey component will not diminish this new viewing opportunity.

The development is considered to be consistent with this objective.

- ***To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.***

Comment
This has been addressed in detail under Clause 3.4.1 of the MDCP 2013 where it was considered that the development would not unreasonably impact upon the sharing of views from neigbouring properties.

The proposed breach to the wall height has been assessed with respect to overshadowing where it was found that the wall height did not unreasonably impact upon sunlight access.

The 3rd storey component is situated at the front of the dwelling and, given the north-south orientation in conjunction with the sun angles between 9.00am and 3.00pm on 21 June, will not generate any unreasonable overshadowing of habitable and/or principle private open space areas of neighbouring properties.

The development is considered to be consistent with this objective.

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

Comment
The site is not located within a recreation or environmental protection zone.

This objective is not relevant to the proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 and MDCP 2013 and the objectives specified in section 1.3 (a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

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

Description of Non-Compliance

The site currently accommodates a single garage which is excavated into the front setback beneath an elevated front lawn and terrace area.

The development includes a new double garage which is to be excavated in the same area as the existing garage. This will increase the width of the garage and crossover at the street from 3.2m to 6.7m. The 0.5m additional width is in breach of the requirement of the control which stipulates a maximum width of 6.2m. This equates to a variation of 8.1%.

Merit Consideration

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

- ***To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees)***

  Comment
  The development introduces an additional on-site parking space which complies with the parking requirements for a dwelling house under Schedule 3 of the Manly Development Control Plan 2013. Although it is noted that a third parking space is located at the rear (off Willyama Avenue) this is a less accessible parking space due to the sloping topography of the existing driveway into that space.

  The double garage at the front of the site includes an access tunnel to a lift which accesses the

dwelling above.

The development is considered to be consistent with this objective.

- ***To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances***

  Comment
  The additional width of the crossover into the double garage will reduce the availability of on-street parking by one vehicle.

  Council's Development Engineer has imposed a condition which requires the width of the driveway crossover to be reduced to 4.5m to maximise the provision of on-street parking.

  The development is considered to be consistent with this objective subject to condition.

- ***To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape***

  Comment
  The double garage is designed to maintain the streetwall appearance which is currently evident. The double garage allows for a more effective access/egress than is currently available, including more room to maneuver.

  The development is considered to be consistent with this objective.

- ***To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows***

  Comment
  The development requires further excavation to accommodate the additional width of the double garage although this is limited to within the south-western third of the site. However, this does not interfere with ground water or the flow of ground water due to the elevation of the site.

  The development is considered to be consistent with this objective.

- ***To ensure the width and number of footpath crossings is minimised***

  Comment
  The development increases the width of the footpath crossing from 3.2m to 6.7m (i.e. an additional 0.5m). The development maintains the provision of a single crossover.

  The development is considered to be consistent with this objective.

- ***To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment***

  Comment
  The landscaped area is elevated above the carparking area to form a terrace. This is representative of the current arrangement and the development will not conflict with the

requirements of this objective.

The development is considered to be consistent with this objective.

- ***To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air***

  Comment
  The site is not located within a centre.

  This objective is not relevant to the proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 and MDCP 2013 and the objectives specified in section 1.3 (a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

4.1.9 Swimming Pools, Spas and Water Features

Description of Non-Compliance

Clause 4.1.9 requires swimming pools to be elevated not more than 1.0m above natural ground level. The southern edge of the proposed swimming pool is elevated approximately 1.6m above ground level (natural ground level cannot be ascertained due to the site being developed over time and the ground levels being altered).

The northern edge of the pool is sited at or just below ground level.

Merit Consideration

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

- ***To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.***

  Comment
  The pool area is elevated in a terraced format such that it will be possible to view into the rear of Unit 3 at No. 90 Lauderdale Avenue. In this respect, a condition is included to require screen planting to be installed along the eastern edge of the property (between the pool and side boundary) to address this issue.

  The development will satisfy this objective subject to condition.

- ***To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.***

  Comment
  The swimming pool is located at the rear of the site and away from Lauderdale Avenue. The swimming pool is below the street level of the Willyama Avenue which is located to the north

and will not be visible from that street such that it will not adversely impact on the streetscape or the established character of the locality.

The development will satisfy this objective.

- ***To integrate landscaping.***

  Comment
  The development includes a considered and integrated landscape theme which involves the terracing the rear yard to respond to the topography of the site. The swimming pool is integrated into this terracing.

  The development will satisfy this objective.

- ***To become an emergency water resource in bush fire prone areas.***

  Comment
  The site is not located within a bush fire prone area.

  This objective is not relevant to the proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 and the objectives specified in section 1.3(a) 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 $30,910 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $3,091,000.

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;
- 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 CONCLUSION

This proposal, for the demolition of the existing dwelling house and associated structures on the site and the construction a new part two/part three storey dwelling house which includes basement car parking, swimming pool and associated landscape and drainage works, has been referred to the Development Determination Panel (DDP) due to the number of submissions being received.

Seven (7) public submissions were received.

Referral responses provided raise no objection to the approval of the development subject to conditions.

The critical assessment issues have been considered in detail in terms of views, building bulk, privacy, overshadowing, and carparking.

Overall, the development is considered to be of a reasonable and sensitive design that is satisfactory in terms of the LEP and DCP controls and will not result in unreasonable impacts on the amenity of adjoining or nearby properties, or the natural environment.

The proposal is therefore recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/1528 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 11 DP 6817, 92 Lauderdale Avenue, FAIRLIGHT, 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**
A030 (Revision DA01) - Demolition Plan	31 August 2022	Archer Office Pty Ltd
A050 (Revision DA01) - Site Plan	31 August 2022	Archer Office Pty Ltd
A101 (Revision DA01) - Basement Floor Plan	31 August 2022	Archer Office Pty Ltd
A102 (Revision DA01) - Lower Ground Floor Plan	31 August 2022	Archer Office Pty Ltd
A103 (Revision DA01) - Ground Floor Plan	31 August 2022	Archer Office Pty Ltd
A104 (Revision DA01) - Level 1 Plan	31 August 2022	Archer Office Pty Ltd
A105 (Revision DA01) - Roof Plan	31 August 2022	Archer Office Pty Ltd
A201 (Revision DA01) - South & East Elevation	31 August 2022	Archer Office Pty Ltd
A202 (Revision DA01) - North & West Elevation	31 August 2022	Archer Office Pty Ltd
A301 (Revision DA01) - Section A	31 August 2022	Archer Office Pty Ltd
A302 (Revision DA01) - Section B	31 August 2022	Archer Office Pty Ltd
A601 (Revision DA01) - Material Schedule	31 August 2022	Archer Office Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Report on Geotechnical Site Investigation (No. 2022-176)	19 August 2022	Crozier
Arboricultural Assessment Report (No. 22-052)	2 September 2022	Earthscape Horticultural Services
BASIX Certificate No. 1327007S	2 September 2022	Ella Fairbairn

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**
L-DA-01 (Revision D) - Landscape Schedule & Notes	1 September 2022	360º
L-DA-04 (Revision D) - Landscape Plan - Lower Ground	1 September 2022	360º
L-DA-05 (Revision D) - Landscape Plan -	1 September 2022	360º

Ground & Level 1		
L-DA-06 (Revision D) - Landscape Section	1 September 2022	360º

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	2 September 2022	Edwina Cobon

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	30 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)

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 (Demolition):**
(a) 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 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
(ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

4. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in

progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. **General requirements (Demolition):**
(a) Unless authorised by Council:
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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council’s property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council’s footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling

centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) 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.

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

6. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa

area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

7. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $30,910.00 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 $3,091,000.00.

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.

8. **Security Bond**

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

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

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

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

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

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

9. **Amended Landscape Plans**
Amended Landscape Plans, based on Landscape Plans prepared by 360 degrees, shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:
i) removal of Cupaniopsis anacardiodes (Tuckeroo) from the landscape design plans and schedules,
ii) a total of at least three (3) locally native tree species to achieve at least 6 metres in height at maturity, and no higher than the building, shall be planted within the property, selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, Manly DCP Schedule 4 - Part B - Native Tree Selection, or Council's Tree Guide, and to be located in the vicinity of existing removed trees,
iii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
iii) on structure planters shall be a minimum of 600mm depth and a width as shown on the Landscape Plans.

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

Reason: Landscape amenity.

10. **On Slab Landscape Works**
Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall also be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depth is required to support landscaping as proposed: 600mm minimum. Design certification shall be submitted to the Certifier by a qualified Structural Engineer that the planters are designed structurally to support the ‘wet’ weight of landscaping (soil, materials and established planting).

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Traffic Management and Control**
The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

13. **Photographic Archival Record**
A photographic archival record of the site is to made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the NSW Heritage Division of the Department of Planning and Environment.

This record must be submitted and approved by the Council's Heritage Advisor prior to the issue of the Construction Certificate and commencement of any demolition or works on-site.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs of the interior, exterior, and streetscape view of the building, which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Details, demonstrating compliance with this condition, are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

14. **Amendments to the approved plans**
The following amendments are to be made to the approved plans:

Privacy Screens
Privacy screens are to be installed at the following locations:

- Along the entire length of the eastern edge of the rear balcony at Level 1.
- Along the entire length of the western edge of the rear balcony at level 1.
- Along the entire length of the western edge of the walkway adjacent to the western boundary at Level 1.

The screens are to be fixed, have a height of 1.6m above the finished floor level of each location and may consist of louvred panels and/or obscured glazing. If louvred panels are selected, the

louvres are to be spaced and positioned in a fixed manner to divert direct viewing away from neighbouring habitable room windows and private open space areas.

Screen Planting
Screen planting is to be installed along the eastern and western boundaries.

The planting along the eastern boundary is to extend from the northern extreme of the swimming pool terrace to align with the northern face of the living/dining room. Screen planting is to also be installed between the proposed side footpath and the boundary and between the northern side of the proposed stairwell to the southern edge of the terrace to the living/dining room (as indicated on level 1).

The planting along the western boundary is to extend continuously from the southern side of the waste storage area to the southern edge of the terrace to the living/dining room (as indicated on Level 1).

The plantings are to include species such as Lilly Pillys and shrubs. Bamboo is not permitted.

Replacement of Privacy Screen
The privacy screen located at the western edge of the street-facing balcony at Level 1 (notated on the plan as adjacent to a BBQ) is to be replaced with a lightweight privacy screen which will enable morning sunlight to filter down into the front courtyard of the neighbouring ground floor apartment.

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.

15. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

16. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Partridge Hydraulic Services, drawing number 2022H0046 SWDA 1.1, SWDA 1.2, SWDA 1.3, SWDA 1.4, SWDA 1.5, SWDA 1.6 and SWDA 1.7 Revision 2, dated 01.09.2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The overflow pipe from the OSD tank is to be located within the property boundary.
2. A secondary access grate within the OSD tank in the diagonally opposite corner to improve future maintenance.

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

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

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

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

Reason: To provide public and private safety.

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

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

Reason: To facilitate suitable vehicular access to private property.

19. **Compliance with standards (Demolition):**
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 Council prior to the commencement of demolition works.

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

20. **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.

21. **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 Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- 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

22. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) only within the property (as recommended in the Arboricultural Impact Assessment):
i) T1 - Lillypilly, T3 - Willow Mrytle, T5 - Camellia, T11 and T14 - Lillypilly, T12 - Weeping Bottlebrush, and T13 - Lemon Scented TeaTree.
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: T2 - Liquidambar.

Reason: To enable authorised development works.

23. **Pre-Construction Dilapidation Report**
Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier 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.

Property / Properties
- 90 Lauderdale Avenue, Fairlight.
- 94 Lauderdale Avenue, Fairlight.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier 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 Certifier 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 Certifier 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

24. **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 trees 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.

25. **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 Principal Certifier,
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 Principal Certifier must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint 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.

Reason: Tree and vegetation protection.

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

Reason: Public safety.

27. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

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

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

28. **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.

29. **Demolition Works - Asbestos**
Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

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

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

32. **Traffic Control During Road Works**

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

Reason: Public Safety.

33. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 4.5 metres wide at the kerb to 6 metres wide at the boundary in accordance with Northern Beaches Council Drawing Normal Profile and the Engineering concept drawings by Partridge Hydraulic Services, drawing number 2022H0046 CDA 1.1, CDA 1.2, CDA1.3 and CDA 1.4 Revision 1 dated 19.08.2022 and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

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

34. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Amended Landscape Plans.

Prior to the issue of any Occupation Certificate details (from a landscape architect or landscape designer) shall be submitted to the Principal Certifier certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

35. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained within the property and within the road reserve, including the following information:
i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

36. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a

copy of the approved drainage plan), and Civil Engineers' certification.

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 disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user 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 the on-site stormwater disposal system is maintained to an appropriate operational standard.

37. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

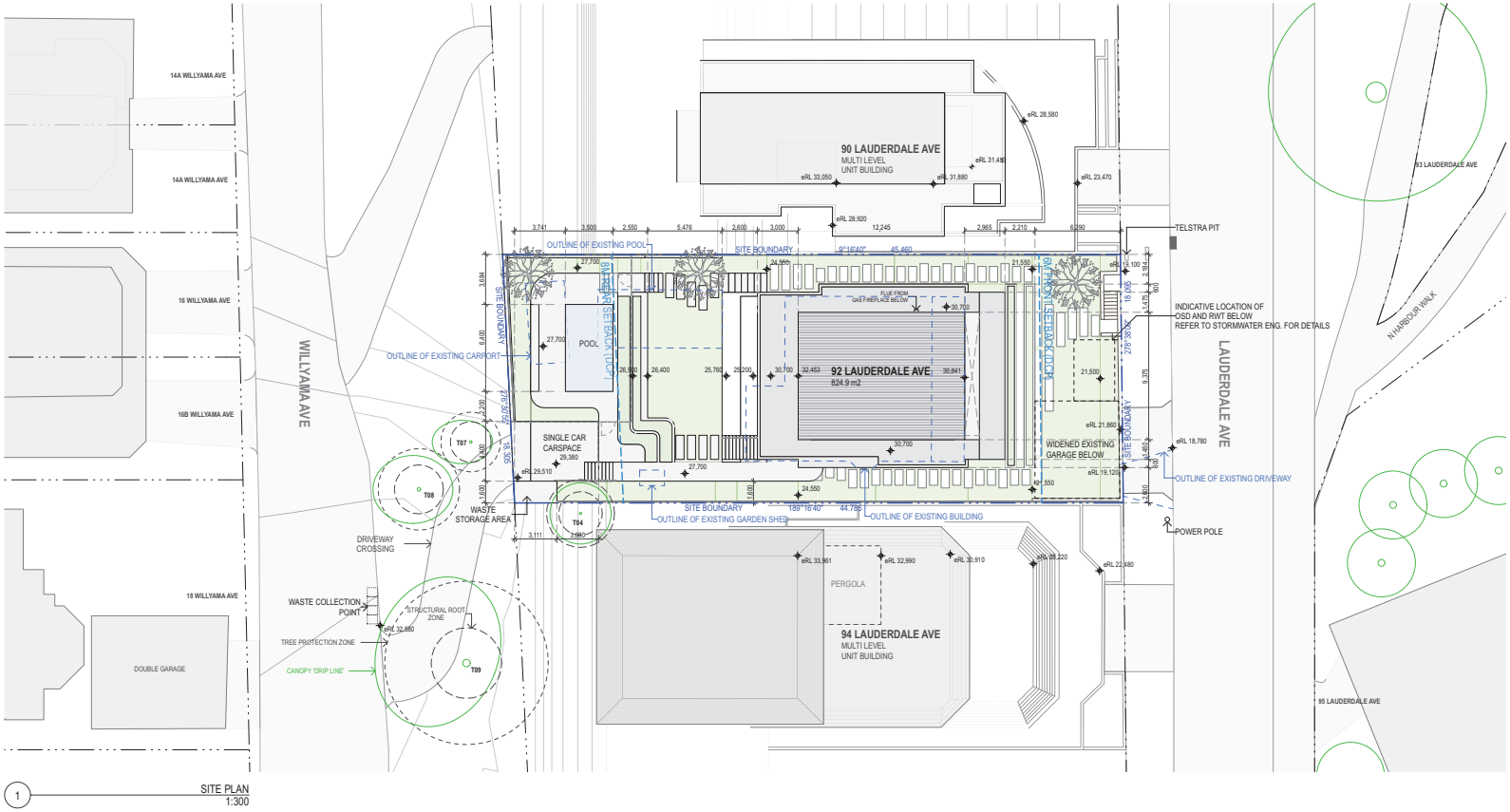
38. **Landscape Maintenance**
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time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

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

39. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



1 SITE PLAN
1:300

REV	DATE	DESCRIPTION
DA01	31.08.2022	DEVELOPMENT APPLICATION

NOTES

SCALE BAR
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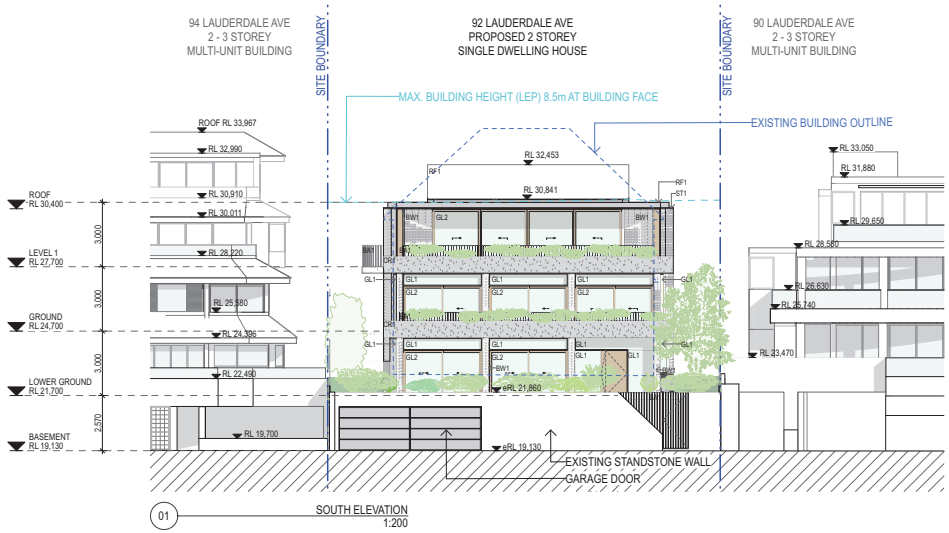
CONSULTANTS
ARBORIST - EARTHSCAPE
BASIX - ELLA FAIRBAIRN
CIVIL ENG. - PARTRIDGE
GEOTECH - CROZIER GEOTECH
HERITAGE - JOHN OULTRAM
LANDSCAPE ARCHITECT- 360
PLANNER - GYDE
STORMWATER ENG. - PARTRIDGE

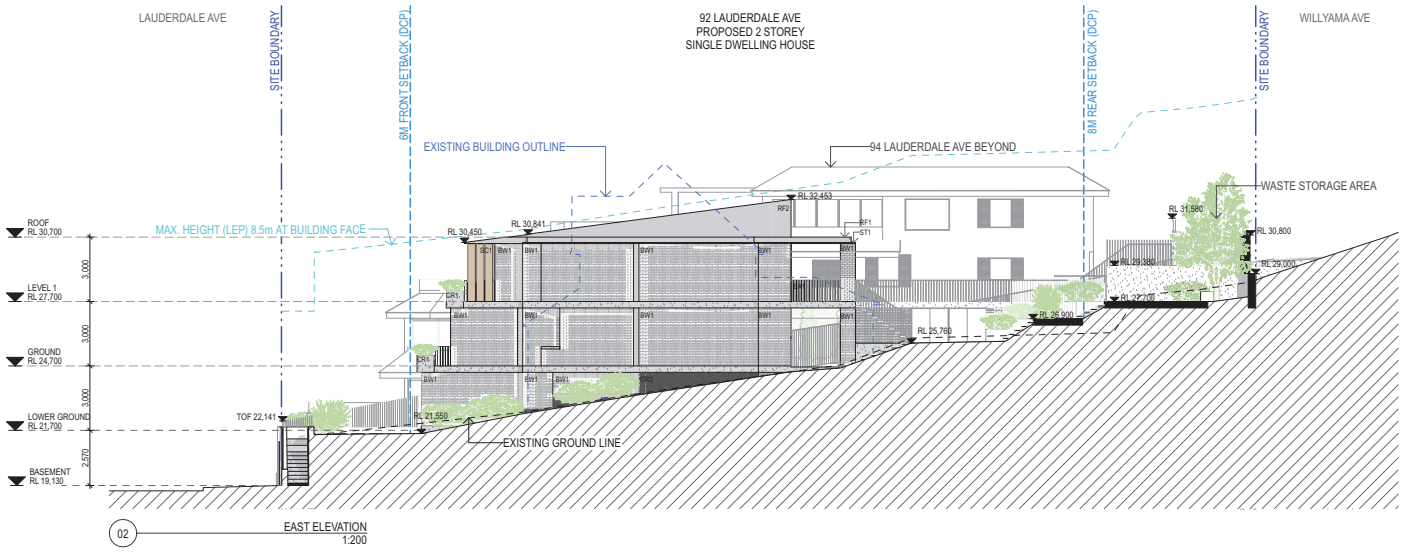
CLIENT
EDWINA & LACHLAN COBON
92 LAUDERDALE AVENUE
FAIRLIGHT
NSW 2094

ARCHITECT
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PROJECT
92 LAUDERDALE AVENUE
PROJECT NUMBER 2105 | DRAWN NK | CHECKED TA | SHEET SCALE 1:300 | SHEET SIZE A3

DRAWING TITLE
SITE PLAN
DOCUMENTATION STAGE DA | SHEET NUMBER A050 | REVISION DA01 31 AUGUST 2022









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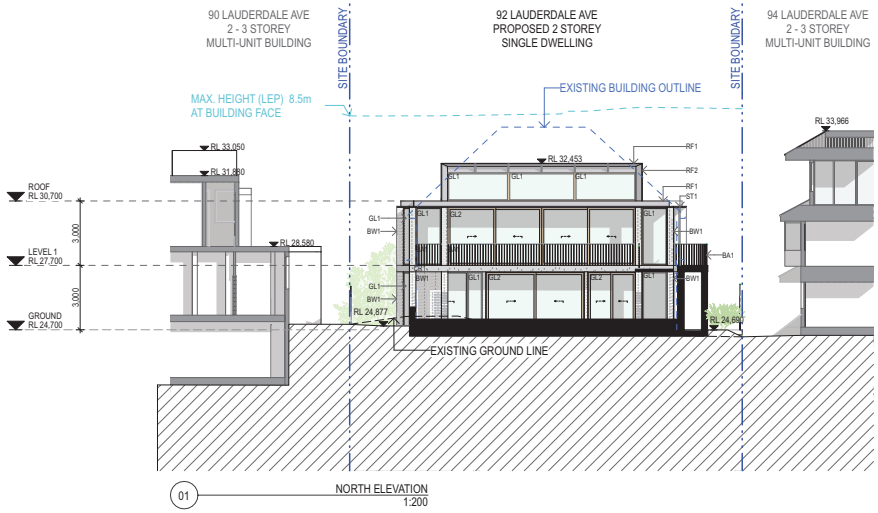
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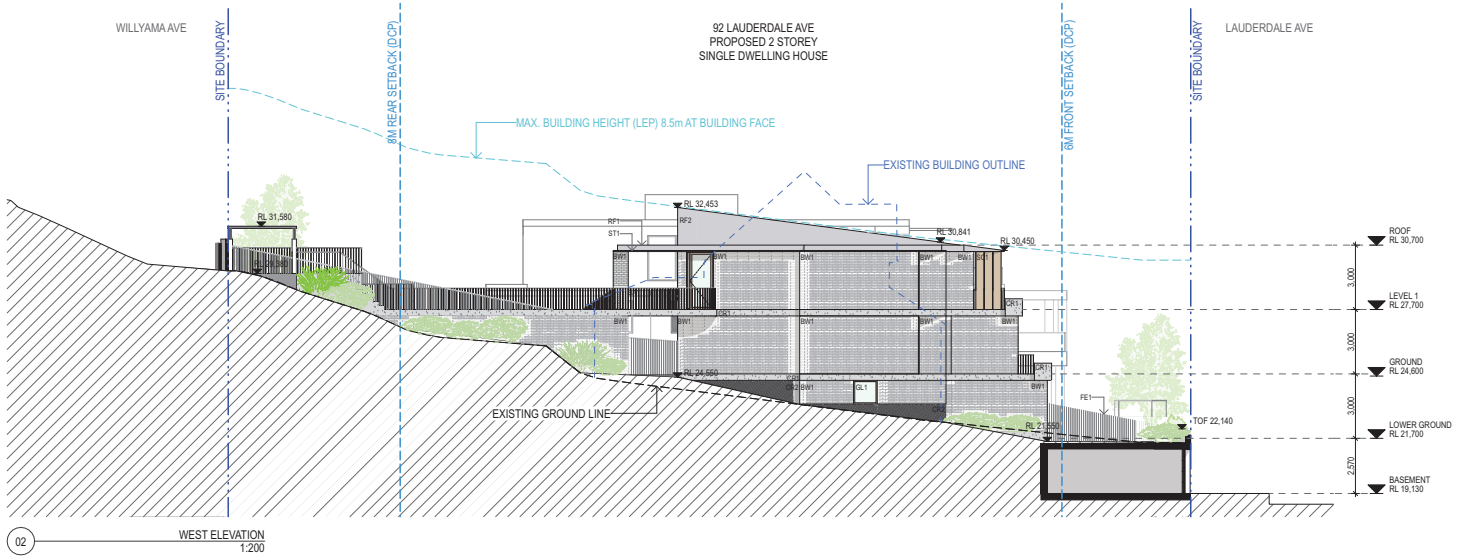
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FAIRLIGHT
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ARCHITECT
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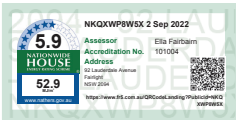
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92 LAUDERDALE AVENUE
PROJECT NUMBER 2105
DRAWN NK
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SHEET SCALE 1:200
SHEET SIZE A3

DRAWING TITLE
SOUTH & EAST ELEVATION
DOCUMENTATION STAGE DA
SHEET NUMBER A201
REVISION DA01
ISSUE DATE 31 AUGUST 2022









REV	DATE	DESCRIPTION
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NOTES

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STORMWATER ENG. - PARTRIDGE

CLIENT
EDWINA & LACHLAN COBON
92 LAUDERDALE AVENUE
FAIRLIGHT
NSW 2094

ARCHITECT
ARCHER OFFICE
ARCHER OFFICE PTY LTD
LEVEL 5, RECORDS BUILDING
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PROJECT
92 LAUDERDALE AVENUE
PROJECT NUMBER 2105
DRAWN NK
CHECKED TA
SHEET SCALE 1:200
SHEET SIZE A3

DRAWING TITLE
NORTH & WEST ELEVATION
DOCUMENTATION STAGE DA
SHEET NUMBER A202
REVISION DA01
ISSUED DATE 31 AUGUST 2022

ITEM 3.7	**DA2022/0869 - 1 / 43 - 45 NORTH STEYNE MANLY - CHANGE OF USE TO A FOOD AND DRINK PREMISES (RESTAURANT), NEW INTERIOR FITOUT, MECHANICAL VENTILATION EXHAUST AND HOURS OF OPERATION**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/096939**
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.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/0869 for change of use to a food and drink premises (restaurant), new interior fitout, mechanical ventilation exhaust and hours of operation on land at Lot 1 SP 69948, 1 / 43 - 45 North Steyne MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0869

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 SP 69948, 1 / 43 - 45 North Steyne MANLY NSW 2095
Proposed Development:	Change of use to a food and drink premises (restaurant), new interior fitout, mechanical ventilation exhaust and hours of operation
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	C.G.M.B. Co Pty Ltd
Applicant:	Dingo Partners Pty Ltd

Application Lodged:	02/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	13/06/2022 to 27/06/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 523,930.00

EXECUTIVE SUMMARY

This development application seeks consent for change of use to a food and drink premises, operating as a restaurant, new interior fit-out, mechanical ventilation exhaust and new hours of operation.

The application is referred to the Development Determination Panel (DDP) due to the receipt of more than five (5) unique submissions.

Concerns raised in the objections predominantly relate to the lodgement of inaccurate technical reports, ambiguity regarding the mechanical ventilation exhaust outlets on the roof and the acoustic impact of the proposed mechanical ventilation.

Critical assessment issues included consideration of the acoustic impacts of the mechanical ventilation to nearby dwellings and the visual and view impacts of the proposed exhaust flues when viewed from dwellings to the west of the site. These matter have been addressed in the amended plans and additional information submitted by the applicant.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the change of use of Shop 1 at the ground floor of the existing mixed-use building from a "shop" to a "food and drinks premises" and internal fit-out, including upgraded disability access, a new kitchen, mechanical ventilation, food storage areas, dining area and sanitary facilities.

The proposal seeks to operate the food and drinks premises on Monday to Sunday from 7am to 10pm with a maximum capacity for 70 patrons.

While the submitted documentation refers to the proposed change of use to a "food and drinks premises", the proposed use is consistent with the definition of a "restaurant or cafe" in the Manly LEP 2013. As such, this assessment is based on the change of use from a "shop" to a "restaurant or cafe".

AMENDED PLANS

During assessment, Council requested the applicant provide amended plans to make clear the specific rooftop exhaust flues that consent is sought and to exclude the display any other structure on the roof that does not relate to this particular development proposal.

The applicant submitted amended plans to make clear the only proposed rooftop exhaust flues are for the kitchen mechanical ventilation and the grease trap aeration flue.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain.

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.

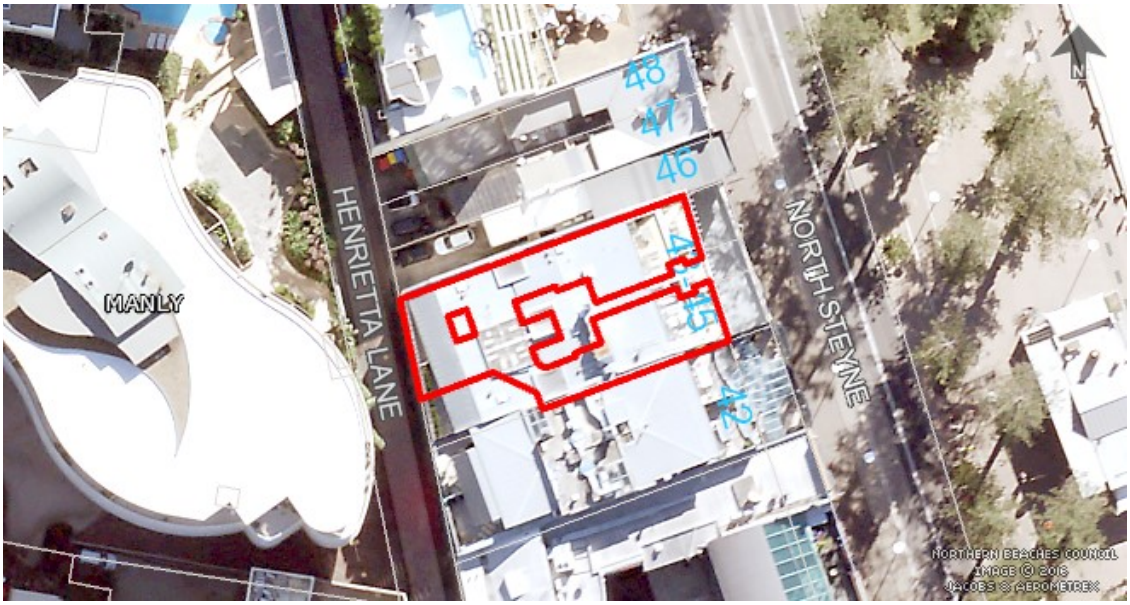
SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
Manly Development Control Plan - 4.2.5.4 Car Parking and Access

SITE DESCRIPTION

Property Description:	Lot 1 SP 69948 , 1 / 43 - 45 North Steyne MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) strata allotment located at the northern side of the ground floor within SP 69948 on the western side of North Steyne. The site is irregular in shape with a frontage of 6.7m along North Steyne and a depth of 31.5m. The site has a surveyed area of 164m². The site is located within the B2 Local Centre zone and accommodates a shop-top housing building with commercial tenancies at the ground floor with three storeys of residential units above and two basement levels below. The site is generally flat and is completely built upon. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by mixed-use residential and commercial buildings. Manly Beach and promenade is located opposite the site.

Map:



SITE HISTORY

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

Application **DA0025/2000** for demolition of existing building and construction of a retail/residential development containing two restaurants and eleven residential units in a five storey building with two basement carpark levels was approved on 01/06/2000.

Application **DA0168/2003** for a seafood cafe at Shop 1 was approved on 17/06/2003.

Application **DA0200/2006** for change of use to convenience store was approved on 05/07/2006.

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. The NSW employment zones reforms have been made and will come into force on 26 April 2023. These reforms will result in this property changing from a B2 zone to an E1 zone. The proposed use will remain permissible in the new zone.
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	Manly Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
development control plan	
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)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. / This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to in relation to documentation relating to the subject tenancy. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 13/06/2022 to 27/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Steven Cooper	
Mrs Samantha Barbara Stow	505 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Gregory Ernest Brown	8 Macquarie Road PYMBLE NSW 2073
Mr Ray Caryl Stone	704 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Faustino Miguel Martinez De Morentin	508 / 9 - 15 Central Avenue MANLY NSW 2095
Mr David Edward Glading	507 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Peter Eugene Dybac	509 / 9 - 15 Central Avenue MANLY NSW 2095

The following issues were raised in the submissions:

- Inaccurate technical reports
- Roof plant equipment
- Acoustic impacts
- Inconsistency regarding DA applicant

The above issues are addressed as follows:

- **Inaccurate technical reports**

  The submissions raised concerns that some of the application's supporting technical reports do not relate to the subject site.

  Comment:

  Council requested the applicant submit revised technical report relating to the proposed development at Shop 1 which was received during the assessment of the application.

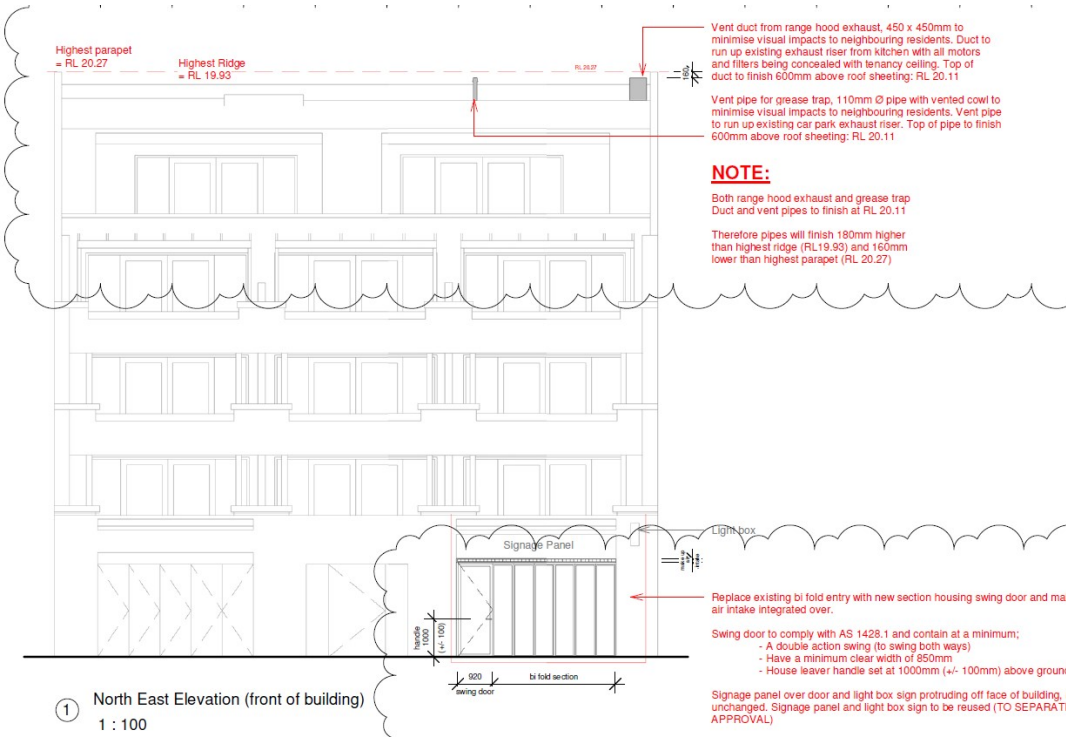
- **Roof plant equipment**

  The submissions raised concerns that the proposed roof plan includes significant mechanical ventilation plant equipment that will unreasonably impact upon the amenity of nearby residents.

  Comment:

  Council sought clarification from the applicant regarding the proposed roof ventilation flues. The applicant submitted amended plans indicating two small flues are to be installed of the roof, one for the kitchen ventilation and the other for the grease trap aeration.

  The height of the flues are indicated to be RL 20.11, which is approx. 180mm higher than the highest part of the roof ridge and 160mm below the height of the northern side boundary parapet. The maximum width of the kitchen exhaust flue is 450mm and 110mm for the grease trap flue.



  Mechanical plant equipment is not proposed to be installed on the roof.

The proposed rooftop flues are small in size and are not expected to unreasonably impact the visual and acoustic amenity of nearby residents.

- **Acoustic impacts**

  The submissions raised concerns that the submitted acoustic report does not relate to the proposal and that the development may unreasonably impact upon the acoustic amenity of surrounding residents.

  Comment:

  Council requested the applicant submit an acoustic report specific to the proposed development. This report has been submitted and reviewed by Council's Environmental Health team who raise no objection to the proposal, subject to the compliance with the recommendations of the acoustic report and consent conditions.

- **Inconsistency regarding DA applicant**

  The submissions raised concerns that the submitted documentation contains inconsistencies identifying the applicant of the development application.

  Comment:

  The applicant of the development application is the person or company who lodges the application through the NSW Planning Portal. In this case, Dingo Partners Pty Ltd is the applicant for the DA who has lodged it on behalf of the property owner.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	**General Comments** UPDATED REFERRAL RESPONSE The applicant has clarified a number of matters and submitted amended plans. Environmental Health supports the proposal subject to conditions.
Environmental Health (Food	General Comments

Internal Referral Body	Comments
Premises, Skin Pen.)	Environmental Health has reviewed the development application which proposes a restaurant , associated internal fit-out, new mechanical ventilation and hours of operation from 7am – 10pm, Monday to Sunday. The current proposal has a potentially confusing history with Shop 1 often being confused with Shop 2 (DA 48/09) information. These comments relate to the food premises referral ONLY. Industrial considerations are addressed separately. 1. Ventilation This will be addressed in the Industrial referral as there are concerns for compliance. 2. Grease Arrestor It is not clear from the plans where the grease arrestor is located and how it will be emptied without entering the kitchen and food storage areas . Access to a grease arrestor in a commercial kitchen has a high likelihood of contamination of food sources and food contact surfaces. Therefore it must be located outside of all food kitchen and storage areas.eg The bin storage room The applicant needs to address this issue. 3. Waste oil Based on the proposed operations, including frying, the premises will produce waste oil. There are no details on where waste oil will be stored. Waste oil storage must be provided with a hose tap connected to a water supply, paved with impervious material, graded and either drained to the grease arrestor or provided with a bund that is 110% the capacity of the waste oil tank. Depending of the bin room capacity it may be stored there. The applicant needs to address this issue. 4. Toilets/Sanitary accommodation The proposal provides seating for a maximum number of 70 patrons. The BCA requires two female toilets and one male toilet and a urinal for a food premises with 70 patrons. The recent amended plans depict the provision of two unisex toilets which is permitted to address compliance numbers however a male urinal is still required. The applicant needs to address this issue. Environmental Health does not support the proposal at this time. UPDATED RESPONSE 6 December 2022 Additional information received from the applicant clarifying matters raised by EH Environmental Health supports the proposal subject to conditions.
NECC (Coast and Catchments)	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.10 & 2.12); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental

Internal Referral Body	Comments
	Planning Instruments and policies.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The development proposes to change the existing shop to a new interior fitout, mechanical ventilation exhaust. The proposed changes is within the building and there is no change out side of the building other than changing the entry door. The proposed development generally complies with the flood controls in the DCP and LEP.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject site is within the vicinity of three heritage items and **Manly Town Centre Conservation Area**, listed in Schedule 5 of Manly Local Environmental Plan 2013: **I111 - Hotel Steyne** - 75 The Corso **Item I74 – Beach Reserve**—Merrett Park North Steyne and South Steyne **Item I68 – Ocean foreshores** - Manly municipal area, boundary adjacent to the ocean Details of heritage items affected Details of the heritage items as contained within the Manly Heritage inventory are as follows: **C2 - Town Centre Conservation Area** Statement of Significance: The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings. The beautiful natural setting of the TCCA has provided a solid foundation for its picturesque qualities. **Item I111 - Hotel Steyne** Statement of significance: This building is a fine example of Inter-War Art Deco style Hotel. Landmark building on the corner of The Corso and South Steyne. Physical description: Original Hotel built 1862 and rebuilt in 1936 in Inter-war Art Deco

Internal Referral Body	Comments
	Style of polychrome brickwork with heavy brick modelling along parapet and corrugated asbestos roof. Significant elements include: fan shaped lintels to windows; tile and brick detailing beneath windows; original tiling to ground floor, octagonal corner 'tower'. **Item I174 - Beach Reserve** Statement of significance: High significance as natural sand beach and cultural backdrop of paved promenade and first coastal plantings of Norfolk Island Pines. Physical description: Beachfront, promonade, sandstone retaining wall, paved, grassed And/or planting beds and remnant plantings of Norfolk Island Pines planted from the 1850's to the 1880's.

Other relevant heritage listings		
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	
NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No	
Other	No	

Consideration of Application

The proposal seeks consent for a change of use of an existing shop to a food and drink premises, associated internal fit-out, new mechanical ventilation unit on the rooftop. The subject property is not a heritage item, however, it is in the vicinity of a number of heritage items and a conservation area.

Given that the proposed works are mainly confined to the interior and the physical separation between the proposed works and the heritage items and the conservation area, the impact of the proposal upon the heritage items and the conservation area is considered manageable.

Therefore, no objections are raised on heritage grounds and no conditions required.

Consider against the provisions of CL5.10 of Manly LEP 2013.
Is a Conservation Management Plan (CMP) Required? No
Has a CMP been provided? No
Is a Heritage Impact Statement required? Yes
Has a Heritage Impact Statement been provided? Yes

Internal Referral Body	Comments
	Further Comments COMPLETED BY: Oya Guner, Heritage Advisor DATE: 30 June 2022

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 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

(i) the erection of a new building,
(ii) the substantial redevelopment or the substantial refurbishment of an existing building,
(iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
(c) the building concerned contains at least 4 or more dwellings.

The proposed development is for the change of use and fit-out of a commercial tenancy within an existing five-storey shop top housing development. The proposal does not alter the existing built form of the building or results in a change of building classification. As such, the proposal is not considered to be a substantial redevelopment or refurbishment of the existing building.

As per the definition of shop top housing and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

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 expected to cause adverse impact to the coastal environment area.

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:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

a) has considered whether the proposed development is likely to cause an adverse impact on the following:

i) existing, safe access to and along the foreshore, beach, headland or rock
ii) platform for members of the public, including persons with a disability,
iii) overshadowing, wind funnelling and the loss of views from public places to
iv) foreshores,
v) the visual amenity and scenic qualities of the coast, including coastal headlands,
Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and

b) is satisfied that:

i) the development is designed, sited and will be managed to avoid an adverse
ii) impact referred to in paragraph (a), or
iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
if that impact cannot be minimised—the development will be managed to mitigate that impact, and

c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment:

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

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	Front portion - 10m	All unaltered Internal fitout only Exhaust flues not counted toward building height	N/A	Yes
	Rear portion - 12m		N/A	Yes

Floor Space Ratio:	Front portion - 2.5:1		N/A	Yes
	Rear portion - 3:1		N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.21 Flood planning	Yes
6.2 Earthworks	N/A
6.4 Stormwater management	N/A
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

This application relates to the internal fit-out of an existing shop. No change to the existing built form of the building is proposed. As such, the MDCP built form controls do not apply in this case.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	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	N/A	N/A
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	No	Yes
4.2.5.6 Late Night Venues	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.3 Signage	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.
Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).
Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

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

Comment:

View that are most likely to be impacted by the proposed development are from the windows of apartments in the Pacific Waves building west of the site towards Manly Beach to the east. The apartments most impacted are those on the level that is closest to and in line with the roof ridge of the subject building.

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

Comment:

Most views from the affected apartments are obtained from the primary internal living areas. The view corridor is obtained across a rear boundary towards the east.

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

Comment:

Despite the iconic nature of the view corridor, the extent of the impact of the proposal is considered to be negligible. The proposal does not alter the fundamental built form of the existing building and the proposed exhaust flues are minor in bulk and scale. The largest flue has dimensions of 450mm by 450mm and rises 180mm above the roof ridge level.

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

Comment:

Overall, the proposed development generally complies with the built form development controls and is not expected to cause unreasonable view loss to adjacent dwellings. It is considered to be acceptable in the context of the site and locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 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.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including

B6 Enterprise Corridor

Refer to Part 4.2.5.4 for detailed assessment regarding onsite parking.

4.2.5.4 Car Parking and Access

Description of non-compliance

The minimum off-street parking requirements for food and drink premises' are as follows:

- 1 parking space for every 40m^2 of gross floor area of serviced area.

The tenancy has 97.3m^2 of gross floor area of serviced area. Therefore, a minimum of three off-street parking spaces is required for the proposed development.

One off-street parking space is associated with the subject tenancy, however the proposal does not provide any additional off-street parking.

Merit consideration

When considering the proposal on merit, it is important to note that the provision of additional off-street parking in this case is unfeasible due to the need to significant alter of the existing building to facilitate a compliant amount of parking. Furthermore, the proposed change of use to a restaurant will lessen the required parking rate compared to that of the existing shop use (defined as commercial premises in MDCP), from 4 spaces to 3 spaces.

The control includes a provision where only 50% of the required parking rate is to be provided within the Manly Town Centre with the other 50% offset by a monetary contribution under the Manly Section 94 Contributions Plan. As this plan has been repealed and no longer applies to the subject site, this provision does not strictly apply. However, its intent reduces the required number of parking spaces from 3 spaces to 2 spaces. This results in the proposal only being deficient by 1 parking space.

Overall, the proposed change of use is not considered to result in any significant traffic or parking generation. While a restaurant is likely to attract more patrons simultaneously compared to a shop, the site, being located in the Manly Town Centre, is well serviced by public parking facilities and public transport services. In this regard, Council can be satisfied that the proposed restaurant will not result in adverse traffic generation or parking demand.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $5,239 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $523,930.

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 CONCLUSION

This application is referred to the Development Determination Panel (DDP) due to the receipt of more than five (5) unique submissions.

The concerns raised in the objections have been addressed in the assessment report and have been resolved through the submission of amended plans and additional information and imposition of conditions.

The critical assessment issues include acoustic impacts of the mechanical ventilation to nearby dwellings and the visual and view impacts of the proposed exhaust flues when viewed from dwellings to the west of the site. These matter have been addressed in the additional information submitted by the applicant.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/0869 for Change of use to a food and drink premises (restaurant), new interior fitout, mechanical ventilation exhaust and hours of operation on land at Lot 1 SP 69948, 1 / 43 - 45 North Steyne, 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**
B-2.1	16/06/2022	Nexfit
B-2.2	16/06/2022	Nexfit
B-2.3	08/09/2021	Nexfit
B-2.4	09/09/2021	Nexfit
B-2.5	16/06/2022	Nexfit
B-3.1	16/06/2022	Nexfit
B-4.1	18/10/2022	Nexfit
C-1.1	18/10/2022	Nexfit
C-1.2	16/06/2022	Nexfit
C-2.1	18/10/2022	Nexfit

Engineering Plans		
Drawing No/Title.	**Dated**	**Prepared By**
H-01 Issue E	25/10/2022	Russell Druce

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Access Report (Ref: 4401-Rev 3)	06/05/2022	AED Group
Acoustical Report	30/09/2022	Koikas Acoustics
Fire Engineering Report (Ref: F2122 PBDB Rev 02)	06/05/2022	AED Group

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	04/05/2022	Dingo Partners

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. **Approved Land Use**
Nothing in this consent shall authorise the use of the tenancy as detailed on the approved plans for any land use beyond the definition of a *restaurant or cafe*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013.

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

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

3. **No Approval for any Signage**
No approval is granted under this Development Consent for signs (as defined under Manly Local Environment Plan 2013 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

4. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried

out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork

NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $5,239.30 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 $523,930.00.

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).

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

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

8. **Building Code of Australia Upgrade requirements and Fire Safety Upgrade**
The Building Code of Australia works and fire upgrading measures to upgrade the building as detailed and recommended in the Building Code of Australia Performance Based Design Brief prepared by AED Group, dated 6/5/2022, Report Ref No. F2022PBDB Rev 2,are to be considered as part of the assessment of the Construction Certificate.

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

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

9. **Building Code of Australia Access Upgrade requirements**
The Building Code of Australia works and access upgrading measures to upgrade the building as detailed and recommended in the Access Report prepared by AED Group, dated 6/5/2022, Report Ref No. 4401-Rev 3are to be considered as part of the assessment of the Construction Certificate.

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

Reason: To ensure adequate provision is made for Access for building occupant safety.

10. **Adequacy of Sanitary Facilities**

Provision of adequate sanitary facilities (including a male urinal) being incorporated into the design to comply with BCA requirements for the proposed number of patrons and staff.

Reason: To ensure compliance with BCA Sanitary Facilities requirements.

11. **Noise - Design and Location of Mechanical Plant**
Prior to the issue of a Construction Certificate, the design, specifications and location of noise generating mechanical plant including air conditioning units are to be provided to the Principal Certifier. An acoustic assessment is to be undertaken by a suitably qualified professional such as an acoustic engineer to determine acoustic treatments to control noise emissions from all mechanical plant noise in accordance with the recommendations within the Acoustical Report prepared by Koikas Acoustics dated 30 September 2022 (Project No. 5503 Version 1).

Any design recommendations made by the consultant must be implemented into the plans prior to issuing the Construction Certificate in order to achieve compliance with noted conditions of this consent.

Reason: To maintain acoustic amenity to building occupants and protect surrounding residence from any noise generated by the operation of the development.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all mechanical exhaust on the roof are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Certifier when the external structure of the building is complete.

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

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

15. **Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

16. **Kitchen Design, construction and fit out of food premises certification**
Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a suitably qualified person, that the design, construction and fit out of food premises kitchen and storeroom is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

Reason: To ensure that the kitchen complies with the design requirements.

17. **Mechanical Ventilation certification**
Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system, including smoke and odour control equipment, is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements.

18. **Acoustic Report Certification**
Prior to any occupation certificate being issued, a further acoustic assessment (including vibration) is to be undertaken by a qualified and experienced person(s) to confirm compliance with the recommendations within the Acoustical Report prepared by Koikas Acoustics dated 30 September 2022 (Project No. 5503 Version 1).

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate, in order to achieve compliance with noted conditions of this consent.

Reason: To maintain acoustic amenity to building occupants and protect surrounding residence from any noise generated by the operation of the development.

19. **Fire Safety Matters**
At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement of the Environmental Planning and Assessment Regulation 2021.

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

20. **No Outdoor Dining**
No outdoor dining is approved in this consent. Any proposed outdoor dining must be consistent with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Any outdoor dining that is consistent with the SEPP shall be the subject of a separate Outdoor Dining Application to Council's Property team.

Reason: To ensure that outdoor dining is assessed and approved under the appropriate regulatory framework and legislation.

21. **Operational Noise Controls**
Operational ongoing noise generating plant ,equipment and use of premises shall be managed in accordance with recommendations contained within the report prepared by Koikas Acoustics Pty Ltd, dated 30 September 2022.

Reason: To maintain acoustic amenity to building occupants and protect surrounding residence from any noise generated by the operation of the development.

22. **Smoke and Odour Control**
a) A smoke and odour verification assessment is to be conducted within 30 days of the restaurant opening to confirm the operation of the kitchen extraction and smoke and odour control system. The odour assessment should be performed a suitably qualified and experienced air quality consultant, and is to provide confirmation that the smoke odour control measures are adequate to prevent any nuisance, offensive odour or visible discharge. The cooking equipment and foods being cooked is to be documented.

b) Any changes to cooking intensity or type of cooking or cooking equipment likely to increase smoke or odour, not included in the initial assessment, will require an immediate reassessment and if necessary action taken to ensure no nuisance is created.

c) Smoke and odour control equipment is to be maintained and serviced at all times as recommended by the manufacturer and air quality consultant. A certificate of service is to be maintained on site.

d) Cooking of smoke generating foods in the kitchen shall immediately cease should smoke and odour control equipment fail to operate correctly for any reason.

e) Any changes or modifications to smoke and odour control equipment or ducting shall be assessed by an acoustic engineer to ensure a noise or vibration nuisance is not created.

Reason: To ensure smoke and offensive odour is not discharged from the business and to comply with AS1668.2. and air pollution legislation.

23. **Hours of Operation**
The hours of operation are to be restricted to 7:00am to 10:00pm everyday (including public holidays).

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

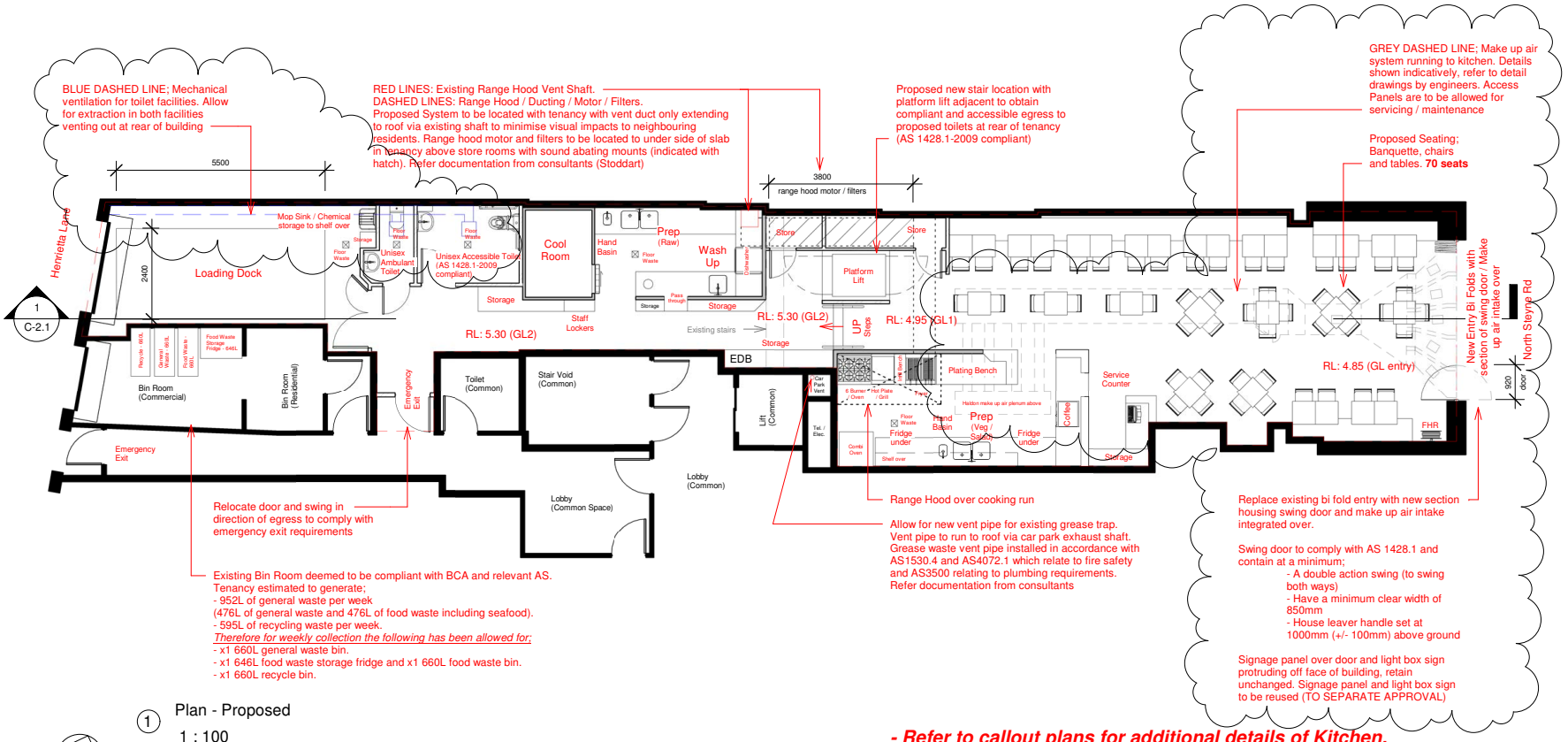
24. **Commercial Waste Collection and Deliveries**
Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Deliveries to the premises must not occur between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

25. **Patron Capacity**
The maximum patron capacity for the tenancy at any one time is limited to 70 patrons.

Reason: To maintain acceptable levels of amenity and facilities.



(1) Plan - Proposed
1 : 100

- Refer to callout plans for additional details of Kitchen, Stair / Lift Egress, Wash Up / Preparation / Toilet areas

- All existing walls are masonry. Builder to confirm (*NOTE; Solid walls required in all Kitchens or Food Prep Areas*)
- Rubbish / Recycle / Food Waste bins located with cooking / prep / wash up areas
- All Kitchens or Food Prep Areas to comply with AS 4674-2004

GL entry (Ground Level entry)	RL 4.85
GL1 (Ground Level 1)	RL 4.95
GL2 (Ground Level 2)	RL 5.30
CH entry (CH entry)	RL 7.45
CH	RL 7.40

- CONFIRM ALL DIMENSIONS ONSITE
- CONFIRM POSTS AND LOCATIONS ONSITE
- CONFIRM CEILING ONSITE
- CONFIRM LIGHTING AND LOCATIONS ONSITE

Plan - Proposed

All Drawings to be read in conjunction with Legend

Client: CGMB CO PTY LTD
Project: New Fitout
Address: Shop 1, 43-45 North Steyne, Manly NSW 2095 Lot 1, SP 69948

Drawn by: JT
Designed by: JK
Scale: 1 : 100

Issue: DA
Date: 16-06-22
Sheet: A3

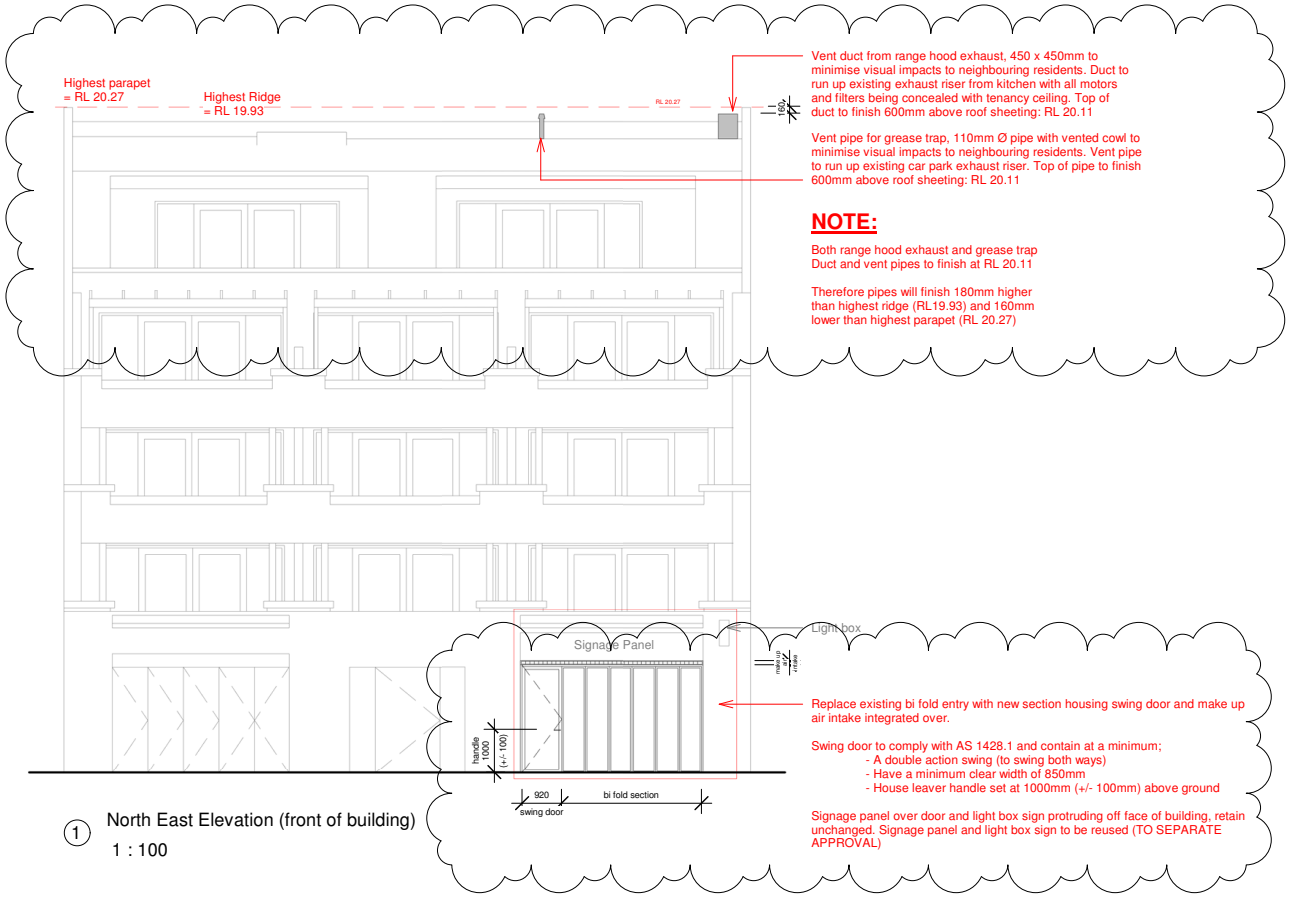
Note: All measurements are to be confirmed on site before fabrication or construction works commence & any discrepancies reported back to the designers for clarification. The drawings referred to in this document have been produced to illustrate design intent. All shop drawings to be submitted to the designers for approval prior to manufacture or construction.
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NEXFIT fitout x install

mobile: 0456 NEXFIT (0456 639 348)
email: jd@nexfit.com.au
web: www.nexfit.com.au

Dwg no:

B-2.1



1 North East Elevation (front of building)
1 : 100

- CONFIRM ALL DIMENSIONS ONSITE
- CONFIRM POSTS AND LOCATIONS ONSITE
- CONFIRM CEILING ONSITE
- CONFIRM LIGHTING AND LOCATIONS ONSITE

North East Elevation (front of building)

All Drawings to be read in conjunction with Legend

Client: CGMB CO PTY LTD
Project: New Fitout
Address: Shop 1, 43-45 North Steyne, Manly NSW 2095 Lot 1, SP 69948

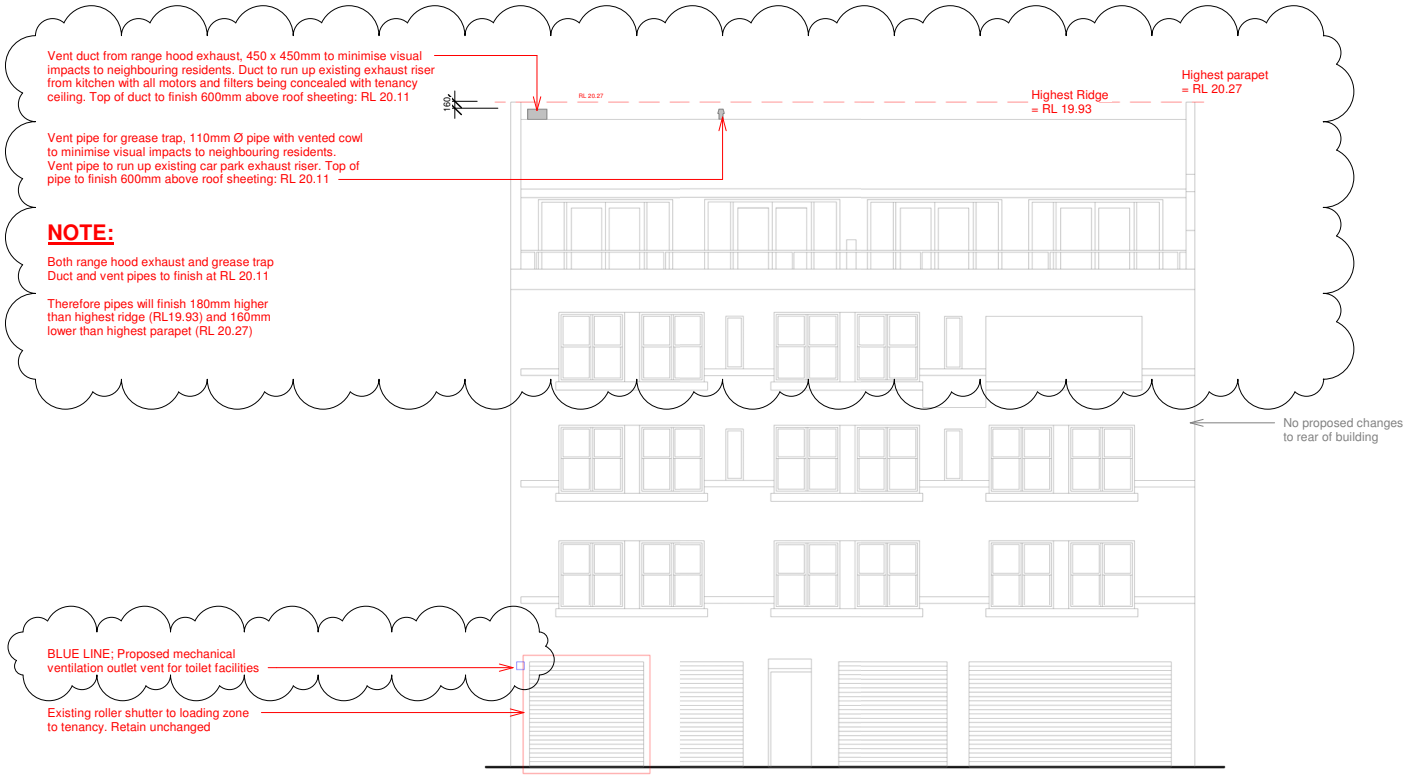
Drawn by: JT
Designed by: JK
Scale: 1 : 100

Issue: DA
Date: 18-10-22
Sheet: A3

Note: All measurements are to be confirmed on site before fabrication or construction works commence & any discrepancies reported back to the designers for clarification. The drawings referred to in this document have been produced to illustrate design intent. All shop drawings to be submitted to the designers for approval prior to manufacture or construction.
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web: www.nexfit.com.au

Dwg no:
C-1.1



1 South West Elevation (rear of building)
1 : 100

- CONFIRM ALL DIMENSIONS ONSITE
- CONFIRM POSTS AND LOCATIONS ONSITE
- CONFIRM CEILING ONSITE
- CONFIRM LIGHTING AND LOCATIONS ONSITE

South West Elevation (rear of building)

All Drawings to be read in conjunction with Legend

Client: CGMB CO PTY LTD
Project: New Fitout
Address: Shop 1, 43-45 North Steyne, Manly NSW 2095 Lot 1, SP 69948

Drawn by: JT
Designed by: JK
Scale: 1 : 100

Issue: DA
Date: 16-06-22
Sheet: A3

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Dwg no:

C-1.2