

# AGENDA

## NORTHERN BEACHES LOCAL PLANNING PANEL

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

**WEDNESDAY 1 MARCH 2023**

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



**Peter Robinson**  
**Executive Manager Development Assessment**

**Quorum**

A quorum is three Panel members

**Conflict of Interest**

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

## Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 1 March 2023

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
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<b>3.0</b>	<b>CATEGORY 3 APPLICATIONS</b>	
<b>4.0</b>	<b>PUBLIC MEETING ITEMS.....</b>	<b>5</b>
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<b>5.0</b>	<b>NON PUBLIC MEETING ITEMS.....</b>	<b>56</b>
	A statutory Direction by the Minister of Planning and Public Spaces states the panel is only required to hold a public meeting where the development application has attracted 10 or more unique submissions by way of objection. These applications do not satisfy that criterion.	
5.1	Mod2022/0630 - 42 North Steyne, Manly - Modification of Development Consent DA2021/2257, approved by the Land and Environment Court for alterations and additions to an existing building to comprise shop top housing and strata-subdivision.....	56
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## **ACKNOWLEDGEMENT OF COUNTRY**

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

### **1.0 APOLOGIES & DECLARATIONS OF INTEREST**

Nil

### **2.0 MINUTES OF PREVIOUS MEETING**

#### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 15 FEBRUARY 2023**

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#### **RECOMMENDATION**

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 15 February 2023 were adopted by the Chairperson and have been posted on Council's website.

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## 4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2022/1048 - 15 STURDEE LANE, ELVINA BAY - CONSTRUCTION OF AN INCLINE LIFT.
AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2023/112843
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan & Elevations 3 <a href="#">↓</a> Clause 4.6

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2022/1048 for the Construction of an incline lift on land at Lot 8 DP 8013, 15 Sturdee Lane, ELVINA BAY, Lot LIC 593927, 15 Sturdee Lane, ELVINA BAY, for the reasons for refusal set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/1048
<b>Responsible Officer:</b>	Megan Surtees
<b>Land to be developed (Address):</b>	Lot 8 DP 8013, 15 Sturdee Lane ELVINA BAY NSW 2105 Lot LIC 593927, 15 Sturdee Lane ELVINA BAY NSW 2105
<b>Proposed Development:</b>	Construction of an incline lift
<b>Zoning:</b>	C3 Environmental Management W1 Natural Waterways
<b>Development Permissible:</b>	Yes - Zone C3 Environmental Management No - Zone W1 Natural Waterways
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Madeleine Nicholls Mark Brian Nicholls
<b>Applicant:</b>	Stephen Crosby & Associates Pty Ltd
<b>Application Lodged:</b>	13/07/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	22/07/2022 to 05/08/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	7.8 Limited development on foreshore area
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 159,441.15

### EXECUTIVE SUMMARY

This development application seeks consent for the alterations and additions to an existing dwelling house, including the installation of an incline passenger lift and excavation works to accommodate the incline passenger lift within the foreshore area.

The application proposes a variation to the non-numerical development standard contained within Clause 7.8 Limited Development on Foreshore Area of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

The primary access to the subject site is by water and the installation of the incline passenger lift linking



the existing dwelling with the water frontage will allow for the free movement of people and materials and/or goods around, and to, the subject site. Despite the benefits of the development, the application is recommended for refusal due to inadequate information, lack of owners consent for part of the works located seaward of the Mean High Water Mark and their being insufficient environmental planning grounds to justify a departure to the requirements of Clause 7.8, despite the submission of a written Clause 4.6 objection.

No submissions were received during the notification period.

This report concludes with a recommendation that the NBLPP refuse the application.

### PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for alterations and additions to a residential dwelling, pursuant to the *Pittwater Local Environmental Plan 2014* (PLEP 2014), comprising the following:

- Incline passenger lift.
- Excavation works and retaining wall with a maximum height of 3.40 metres.
- Alterations to the dwelling house to accommodate landings from the incline passenger lift.

### ASSESSMENT INTRODUCTION

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

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

### SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C3 Environmental Management  
Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils  
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards



Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area  
Pittwater 21 Development Control Plan - B3.7 Estuarine Hazard - Low density residential  
Pittwater 21 Development Control Plan - B4.19 Estuarine Habitat  
Pittwater 21 Development Control Plan - B5.13 Development on Waterfront Land  
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways  
Pittwater 21 Development Control Plan - D8.6 Side and rear building line

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 8 DP 8013 , 15 Sturdee Lane ELVINA BAY NSW 2105 Lot LIC 593927 , 15 Sturdee Lane ELVINA BAY NSW 2105
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Sturdee Lane.</p> <p>The site is irregular in shape with a frontage of 15.415 metres along Sturdee Lane and a maximum depth of 78.94 metres. The site has a surveyed area of 1189.0m<sup>2</sup>.</p> <p>The site is located within the C3 Environmental Management zone and adjoins the W1 Natural Waterway zone within the <i>Pittwater Local Environmental Plan 2014</i> (PLEP 2014) and accommodates a one and two storey residential dwelling within a densely landscaped setting. A previous development application (N0054/17) was refused, however a review application (Rev0054/17/R) granted consent for replacement of jetty, ramp and pontoon with two stabilizing piles, boatshed, decking and skid ramp. Construction has commenced on the site for in accordance with this consent.</p> <p>The site has a northerly orientation toward Sturdee Lane, and a southerly orientation toward, and with access to, Pittwater Waterway. The site is located on a slope of approximately 27.4 metres (or 34.7%), falling from the north-eastern corner of the property toward the southerly boundary at the water frontage.</p> <p>The site is not known to have any threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one (1) and two (2) storey residential dwellings with water front developments such as boat sheds, jetties and pontoons, and incline passenger lifts.</p>

Map:



## SITE HISTORY

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

- **N0054/17** sought consent for the replacement of the existing jetty, ramp and pontoon with two stabilizing piles, a boat shed, decking and a skid ramp. This application was refused on 24 March 2017. A review application (**N0054/17/R**), in accordance with Section 82A of the *Environmental Planning and Assessment Act 1979* ('the Act') was submitted to Council. The review application was approved on 18 September 2017, subject to recommended conditions. A Construction Certificate (CC2022/0620) and a Notice of Commencement (NOC2022/0633) was lodged with Council for the approved works under **N0054/17/R**.

## APPLICATION HISTORY

*19 September 2022*

A site visit was conducted at the subject site with the Applicant and Owner present.

*23 September 2022*

Following a site visit and a preliminary assessment of the proposal, a Request For Information (RFI) letter was sent to the listed Applicant, via email and the NSW Planning Portal. The RFI requested the following information:

- an Estuarine Risk Management Report ,
- query the permissibility of the proposed incline passenger lift in relation to Clause 7.8 Limited Development on Foreshore Area of the *Pittwater Local Environmental Plan 2014* (PLEP 2014),
- indication of the foreshore building line on the proposed architectural plans,
- a Clause 4.6 written request to vary a development standard (non-numerical), details of the extent of excavation and retaining walls on the proposed landing level (1.70m AHD) to be shown on amended plans.





*13 October 2022*

As no response was received to the RFI letter, a further letter was sent to the Applicant, via email. This final letter reiterated the information detailed in the RFI letter, and granted the Applicant 7 days to provide the information previously requested on 23 September 2022.

*14 October 2022*

The Applicant responded to the final 7 day letter, noting that the first RFI letter was never received. As such, the RFI letter was sent, via email, to ensure the Applicant had all necessary correspondence for their reference to address Council's concerns relating to the proposed development. The Applicant provided a Clause 4.6 via email.

*4 November 2022*

As there remained outstanding information required for the assessment of this development application, another letter was sent to the Applicant via email. The outstanding information related to:

- amended plans showing the foreshore building line and details relating to the extent of excavation and construction of retaining walls,
- the provision of an Estuarine Risk Management Report.
- Correction to the relevant land zone in the Clause 4.6.

*7 November 2022*

Additional information was provided to Council in regards to the second letter. This information included an amended Clause 4.6, an amended Coastal Engineer's Report, and an amended master set which now includes southern, eastern and western elevations to detail the extent of excavation works and retaining walls. However, the amended architectural plans do not show the Foreshore Building Line, and the Estuarine Risk Management Report remained outstanding.

*10 November 2022*

The amended Coastal Engineers Report was forwarded to Council's Coast and Catchments Officer for their review and updated comments.

*11 January 2023*

During the course of the assessment, the responsible Coast and Catchments Officer changed to a different staff member. Upon review of all the information provided, the new responsible Coast and Catchments Officer provided updated comments which supported the proposed development subject to appropriate conditions.

*17 January 2023*

A further email requesting amended plans to show the Foreshore Building Line was sent to the listed applicant. An amended site plan was provided to Council on 18 January 2023.

**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	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration	Comments
planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a) (iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 23</u> of the EP&amp;A Regulation 2021 requires that a development application may be made by the owner of the land or with the written consent of the owner. No owners consent for the works seaward of the Mean High Water Mark has been provided.</p> <p>Clause 29 of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the provision of an Estuarine Risk Management Report (in accordance with Council's Coast and Catchment Officer's comments), amended plans that show the foreshore building line and relevant elevations, a Clause 4.6 Request to Vary a Development Standard (non-numerical) to address the proposed development within the foreshore area. An Estuarine Risk Management Report was not provided, however, Council's Coast and Catchments Officer supports the proposal subject to conditions (which requires the provision of an Estuarine Risk Management Report prior to the issue of the Construction Certificate). The final set of amended plans were provided to Council on 18 January 2022. Notwithstanding the support from Council's internal referrals, and the despite the benefits the proposal affords the subject site, the proposal does not provide certainty that there will be no adverse or unreasonable impacts upon the natural environment in that there is inadequate information, lack of appropriate owners consent for part of the works being located seaward of the mean high water mark and there being insufficient environmental planning grounds to justify the departure from the requirements of Clause 7.8 of the PLEP 2014.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<p>Clauses 62 and/or 64 of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. Should this application be recommended for an approval, this matter would be addressed via a condition of consent.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). Should this application be recommended for an approval, this matter would be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. Due to inadequate information, Council cannot be certain of the potential environmental impacts arising as a result of the proposed development.</p> <p>(ii) <b>Social Impact</b> The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	Based on insufficient information, the site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received during the assessment of this application.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Pittwater Local Environmental Plan 2014 (PLEP 2014) and the Pittwater 21 Development Control Plan (P21 DCP) and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.





## BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning and Design, dated 20 June 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/07/2022 to 05/08/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
Environmental Health (unsewered lands)	<p><b>Supported.</b></p> <p>Environmental Health has been requested to provide comment on whether the proposal impacts the current on-site sewage management system.</p> <p>Council's records indicate that the property is serviced by a Septic Tank to an absorption trench. There are no records indicate the current location of the absorption trenches however the septic tank is located on the lower side of the dwelling and it is anticipated that trenching is between the tank and waterline.</p> <p>It is noted that in March 2021 the owner of the property previously sought approval to install a new wastewater system through a section 68 application under the Local Government Act. The application was refused after assessment based on the proposed land application area being mapped on the biodiversity values map and proposal included the removal of two trees to facilitate the installation of the land application area. At the time Environmental Health provided the advice to the owner that the land application area should be moved to prevent the need to remove vegetation and also provided the advice that the applicant may seek approval through a development application. Both options are still available to the owner should they wish amend their application to include this as part of this assessment.</p> <p>The approval to operate the current wastewater system has currently lapsed. Based on this and without certainty on the condition of the system or land application area Environmental Health have applied a condition that the owner obtains an approval to operate the system prior to the issue of the construction certificate.</p>

Internal Referral Body	Comments
	<p>It is noted that the land is directly adjacent to class 1 acid sulfate soils in the Pittwater. The works are above AHD and do not lower the water table but a precautionary condition has been recommended for unexpected finds.</p> <p>Existing site access should be maintained and a condition applied to the use of the inclinometer to limit hours of use for able bodied persons.</p> <p><b>Planner Comment</b></p> <p>The proposal does not involve alterations to the existing wastewater system on the subject site. As such, it would be unreasonable and onerous for the property owner to apply for an approval to operate the waste water system prior to the issue of the Construction Certificate. Should this application be approved, it should be done so without conditions which relate to the waste water system.</p>
Landscape Officer	<p><b>Supported.</b></p> <p>The development application is for an incline passenger lift to the existing dwelling.</p> <p>Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan 2014 zone C3 Environmental Management, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D8 Lower Western Foreshores and Scotland Island Locality</li> </ul> <p>The site is within zone C3 Environmental Management, and the following objectives are to be achieved and/or maintained by development: protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent; encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors; and ensure the continued viability of ecological communities and threatened species.</p> <p>There are numerous existing endemic canopy trees upon the property along the foreshore and within the rear of the property, maintaining the intent of the C3 zone. Existing trees are located in proximity to the proposed development works and a tree assessment accompanies the development application. The report recommends trunk protection fencing for all trees, along with hand excavation for incline lift piers.</p> <p>All existing trees are proposed for retention and the proposed incline passenger shall include trees sensitive construction techniques including location of pier footings. No Landscape referral concerns are raised and conditions for tree protection are recommended, should</p>

Internal Referral Body	Comments
	the development be approved.
NECC (Bushland and Biodiversity)	<p><b>Supported.</b></p> <p>There are numerous existing endemic canopy trees upon the property along the foreshore and within the rear of the property, maintaining the intent of the C3 zone. Existing trees are located in proximity to the proposed development works and a tree assessment accompanies the development application. The report recommends trunk protection fencing for all trees, along with hand excavation for incline lift piers.</p> <p>The application seeks approval for the construction of a new inclinator lift. 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) Pittwater Local Environmental Plan (PLEP)</p> <ul style="list-style-type: none"> <li>- 7.6 Biodiversity Protection</li> </ul> <p>Pittwater Development Control Plan (PDCP)</p> <ul style="list-style-type: none"> <li>- B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> </ul> <p>The site is partially located within the Department of Planning and Environment's (DPE) Biodiversity Values (BV) mapping. Any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS). The application is accompanied by an Arboricultural Impact Assessment Report that identifies that all trees can be retained, includes sensitive construction techniques, and therefore a Biodiversity Development Assessment Report (BDAR) is not required. The development is sited to avoid and minimise impacts to the environment, and is not located in an area that will not significantly impact Pittwater Spotted Gum Forest - Endangered Ecological Community.</p>
NECC (Coast and Catchments)	<p><u>Original Comment - 26 July 2022</u></p> <p><b>Not supported</b></p> <p>The subject property has been identified as being affected, among others, by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. The Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard. Controls will apply to proposed construction of a inclinator at the site.</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL2.67m AHD has been adopted by Council for this property. A reduction factor (RF) based upon the distance from the foreshore of</p>

Internal Referral Body	Comments
	<p>proposed development may also apply at a rate of 0.06m reduction to the EPL for every 5.00 metres distance from the foreshore edge up to a maximum distance of 40.00 metres. No further reduction is applicable.</p> <p>The proposal is, among others, to construct an inclinator. Base lift platform of the proposed inclinator is located at 1.70 metres AHD. This is below the adopted EPL Two options can be taken, a) relocate base lift platform at or above 2.67 metres AHD or b) submit an Estuarine Risk Management Report addressing the risk associated and measures to be taken.</p> <p>An Estuarine Risk Management Report should consider development constraints due to estuarine hazard impacts on the land, including an assessment of the degree of inundation, effects of wave action, impacts of waterborne debris, buoyancy effects, and other emergency issues during the design event (100 ARI event). The report should also contain recommendations as to any reasonable and practical measures that can be undertaken to remove foreseeable risk associated with estuarine hazards for the design life of the development.</p> <p>An estuarine risk management report must be prepared by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and with and with coastal engineering as a core competency and has an appropriate level of professional indemnity insurance.</p> <p>Based on above considerations, a further assessment of the DA would be necessary.</p> <p>The proposal is therefore unsupported.</p> <p><u>Second Comment - 11 November 2022</u></p> <p><b>Not supported</b></p> <p>In the refusal note, it was concluded that "the proposal is, among others, to construct an inclinator. Base lift platform of the proposed inclinator is located at 1.70 metres AHD. This is below the adopted EPL Two options can be taken, a) relocate base lift platform at or above 2.67 metres AHD or b) submit an Estuarine Risk Management Report addressing the risk associated and measures to be taken."</p> <p>In response, the applicant has submitted:</p> <p>a) an amended masterplan which indicates that the base lift platform of the proposed inclinator is still located at 1.70m AHD. This is below the adopted EPL No relocation to a higher ground has been proposed.</p> <p>b) Coastal Engineering Report by Cardno (NSW/ACT) Pty. Ltd. dated 5 May 2016. The report is not relevant and does not address the issue of the Incline Lift.</p>

Internal Referral Body	Comments
	<p>Based on above considerations, a further assessment of the DA still remains pending.</p> <p><b>Current Comment - 11 January 2023</b></p> <p><b>Supported, subject to conditions.</b></p> <p>The application has been assessed in consideration of the:</p> <ul style="list-style-type: none"> <li>- Coastal Management Act 2016;</li> <li>- State Environmental Planning Policy (Resilience &amp; Hazards) 2021;</li> <li>- Pittwater LEP 2014 and Pittwater 21 DCP; and</li> <li>- plans and supporting documents lodged with this DA.</li> </ul> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this DA. The proposed development is considered to be consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Hence, Clauses 2.10, 2.11 and 2.12 of SEPP (R &amp; H) apply to this DA. On internal assessment the DA generally satisfies requirements under clauses 2.10, 2.11 and 2.12 of SEPP R&amp;H. Subject to conditions, it is considered that the application can comply with the provisions of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b>Pittwater 21 DCP</b> <b>Estuarine Risk Management</b> The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>A Coastal Engineering Report dated 5 May 2016 by Cardno (NSW/Act) Pty Ltd was submitted in support of the current development proposal. The Report deals with coastal hazards for a previous DA which proposed works including construction of a new jetty and floating pontoon, construction of a new boatshed, access deck and skid ramp as well as upgrading an existing seawall. Unfortunately the Report does not consider or include reference to the proposed inclined lift.</p>

Internal Referral Body	Comments
	<p>As the inclined lift is proposed to have a lift car platform located at the foreshore below the Estuarine Planning Level (EPL) i.e. 1.70m AHD, the NECC Coast &amp; Catchments referral team sought additional information by way of an Estuarine Risk Management Report for the lift car platform from the applicant on four separate occasions.</p> <p>On each occasion a one page addendum to the Cardno Report was submitted to Council which noted that 'The lift base and track construction shall be able to withstand the wave forces in the report'. The addendum gives a structural assessment of the lift car platform and does not address the risk management aspects of the platform including risk to users of the inclined lift or recommended management actions to remove or reduce the risks.</p> <p>An Estuarine Risk Management Report (A letter report would suffice) should consider development constraints due to estuarine hazard impacts on the land, including an assessment of the degree of inundation, effects of wave action, impacts of waterborne debris, buoyancy effects, and other emergency issues during the design event (100 ARI event). The report should also contain recommendations as to any reasonable and practical measures that can be undertaken to remove foreseeable risk associated with estuarine hazards for the design life of the development.</p> <p>An estuarine risk management report must be prepared by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and with and with coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance.</p> <p>An alternative to providing the additional information is to raise the lift car platform to the EPL (2.67 metres AHD).</p> <p>A condition has been applied for the additional information to be provided prior to release of the construction certificate.</p> <p>Appropriate general conditions have also been applied to address the coastal relevant requirements of SEPP (R&amp;H) and Pittwater 21 DCP.</p> <p>No other coastal relevant planning controls were identified.</p> <p><b>Planner Comment</b></p> <p>Notwithstanding the support from Council's Coast and Catchments Officer in the most recent referral comments, the inclusion of recommended conditions to require additional information be provided prior to the issue of the Construction Certificate is not satisfactory as there remains unknown impacts of how the recommended conditions will be satisfied.</p> <p>Council, cannot be satisfied that the proposed development will not cause unreasonable impacts upon the estuarine zone to which the subject site is located due to inadequate information. Furthermore, as Council cannot be satisfied that the proposal will not have adverse</p>

Internal Referral Body	Comments
	<p>environmental impacts, Council is not satisfied the matters for consideration prescribed within Clause 2.1 Aim of Chapter, Division 3 Clause 2.10 Development on land within the coastal environment area and Division 4 Clause 2.11 Development on land within the coastal use area of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 have been met.</p> <p>This will form a reason for refusal of this application.</p>
NECC (Riparian Lands and Creeks)	<p><b>Supported.</b></p> <p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The site abuts Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater estuary, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. In the event that the development is approved and subject to Conditions, the proposal is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater estuary.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. If this application were to be approved, these recommendations would be included as a condition of consent.</p>
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should</p> <p>any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>





External Referral Body	Comments

### 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 (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:

This Clause is relevant to the subject site. As such, Council's Coast and Catchment Officer has reviewed the proposed development and, while supportive of the proposal (subject to recommended conditions), the absence of an Estuarine Risk Management Report means it is unclear how the proposed development will, if at all, impact upon the estuarine hazard applicable to the subject site.

As such, the proposed development **does not** meet the requirements of this Clause.

- 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:

This Clause is relevant to the subject site. As such, Council's Coast and Catchment Officer has reviewed the proposed development and, while supportive of the proposal (subject to recommended conditions), the absence of an Estuarine Risk Management Report means it is unclear how the proposed development will, if at all, impact upon the estuarine hazard applicable to the subject site.

As such, the proposed development **does not** meet the requirements of this Clause.

#### **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 foreshores,
  - 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 impact referred to in paragraph (a), or
  - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

This Clause is relevant to the subject site. As such, Council's Coast and Catchment Officer has reviewed the proposed development and, while supportive of the proposal (subject to recommended conditions), the absence of adequate and required information means it is unclear how the proposed development will, if at all, impact upon the coastal use of the subject site and surrounds.

As such, the proposed development **does not** meet the requirements of this Clause.

**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's Coast and Catchment Officer has reviewed the proposed development and, while supportive of the proposal (subject to recommended conditions), the absence of adequate and required information means it is unclear how the proposed development will, if at all, impact upon the coastal hazards applicable to the subject site.

As such, the proposed development **does not** meet the requirements of this Clause.

As such, it is considered that the application does not comply with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Due to the lack of required information, the inability for the proposal to achieve compliance with the above Clauses, this will form a reason for refusal of this application.

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no



risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

#### Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C3 : Yes Zone W1 : No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Zone C3 : No Zone W1 : No

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Station 3: 5.0m Station 2: 2.9m Retaining wall: 3.40m	N/A N/A N/A	Yes Yes Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	No
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

#### Detailed Assessment

#### Zone C3 Environmental Management

The proposed development is considered and assessed against the objectives of the C3 Environmental Management zone of the PLEP 2014, as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

#### Comment:

The subject site is located within the Estuarine Hazard area. In the absence of an Estuarine Risk Management Report, the assessment of this application cannot be certain that the proposed development will appropriately protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.



The proposed development does **not** meet this underlying objective.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

As detailed above, in the absence of an Estuarine Risk Management Report, the assessment of this application cannot be certain that the proposed development will not adversely impact upon the special ecological, scientific, cultural or aesthetic values applicable to the subject site.

The proposed development does **not** meet this underlying objective.

- *To provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent.*

Comment:

The proposed development will provide for residential development of a low density. The extent of excavation works required to facilitate the entry landing of the inclinators will be of a scale that appropriately integrates into the landform and landscape and is unlikely to become visually prominent when viewed from Pittwater Waterway.

The proposed development **does** meet this underlying objective.

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

Comment:

The proposed works are sited primarily within the foreshore area. As such, the proposed development is likely to remove some vegetation within the foreshore area. However, this vegetation would be considered as low-lying shrubs. No substantial vegetation or trees are required to be removed to facilitate the proposed development. The retention of existing substantial vegetation throughout the site will continue to allow for wildlife corridors.

The proposed development **does** meet this underlying objective.

- *To ensure the continued viability of ecological communities and threatened species.*

Comment:

As detailed above, in the absence of required information, the assessment of this application cannot be certain that the proposed development will not adversely impact upon the ecological communities, or threatened species, on the site.

The proposed development does **not** meet this underlying objective.

In this instance, the proposal fails to meet the underlying objectives of the C3 Environmental Management Zone of the PLEP 2014. As such, this will form a reason for refusal of this application.

### Zone W1 Natural Waterways

The proposed development is considered and assessed against the objectives of the W1 Natural Waterways zone of the PLEP 2014, as follows:



- *To protect the ecological and scenic values of natural waterways.*

Comment:

The proposal has failed to provide the appropriate owners consent to permit encroachment of the incline passenger cab seaward of the mean high water mark, as well as the required Estuarine Risk Management Report required to ascertain the extent of, if any, adverse impact upon the Estuarine Hazard to which this subject site is located. In the absence of this required information, the assessment of this application cannot be certain as to whether or not the proposal will appropriately protect the ecological and scenic values of the natural waterway.

The proposed development does **not** meet this underlying objective.

- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*

Comment:

As above, in the absence of required information, the assessment of this application cannot be certain as to the potentially adverse impacts of the proposed development on the natural values of the waterways.

The proposed development does **not** meet this underlying objective.

- *To provide for sustainable fishing industries and recreational fishing.*

Comment:

The proposed development is unlikely to impact upon the sustainable fishing industries or recreational fishing on the waterway.

The proposed development **does** meet this underlying objective.

- *To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.*

Comment:

As above, in regards to adverse impacts on the natural environment, in the absence of the required information, the assessment of this application cannot be certain as to the extent, if any, of adverse impacts upon the natural environment. Further, it is unlikely the proposed development will obstruct the navigation of the waterway.

The proposed development does **not** meet this underlying objective.

- *To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.*

Comment:

Without the provision of owners consent, the proposal fails to provide the required information to allow for an encroachment seaward of the mean high water mark. As such, the assessment cannot be certain that the proposed private access to the waterway will not cause an adverse impact upon the public access to the foreshore area.

In this instance, the proposal fails to meet the underlying objectives of the W1 Natural Waterways Zone of the PLEP 2014. As such, this will form a reason for refusal of this application.

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Clause 7.8 Limited Development on Foreshore Area (FSBL)
Requirement:	<p>The following are exempt development in the foreshore:</p> <p>(a) <i>the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,</i></p> <p><i>boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).</i></p>
Proposed:	Alterations and additions to a dwelling, including an incline passenger lift and excavation works.
Percentage variation to requirement:	Non-numerical development standard

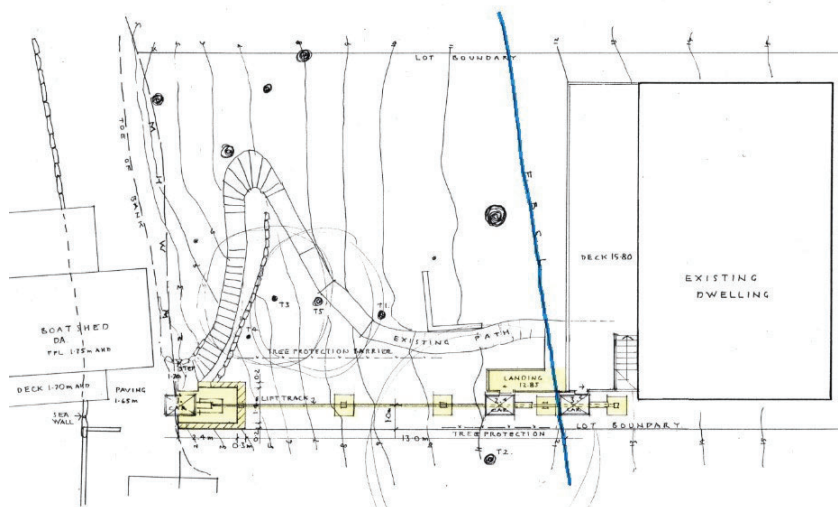


Image 1. Foreshore Building Line indicated by the blue line and the extent of proposed works are



shown in yellow.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 7.8 Limited development on foreshore area 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 7.8 Limited development on foreshore area development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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





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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- *'The base platform for the incline lift has a width of 1.8m or 15% of the width of the site at the*





*M.H.W.M.*

- *It is setback from the waterfront seawall between an existing boat shed on the neighbouring site to the east and the site's own boat shed directly to the west. These buildings largely conceal the lift base from public view when travelling through Elvina Bay.*
- *The retaining wall around the lift base shall be painted in dark earthy colours to to recede into the hillside under the tree canopy.*
- *No trees are to be removed for this lift installation.*
- *The lift track is 0.2m wide, made of galvanise steel that ages quickly in this marine environment to a dull grey, toning in with the shaded undergrowth in the vegetated foreshore area between the M.H.W.M. and the dwelling above the F.B.S.L' [sic].*
- *'The incline lift track and inground structures are entirely consistent in form and height with similar incline lift structures built over the last 40 years in Pittwater. The proposal...still results in a development which is consistent with the expectations for incline lifts in Elvina Bay, and remains consistent with the desired character of the Pittwater Waterway.*
- *The proposal will not result in any overshadowing of neighbouring properties due to the location of the track close to ground level, and the rising slope of the adjoining sites where dwellings are located.*
- *Due to the location of the incline lift track below the lowest floor levels of neighbouring dwellings, the proposed development will not result in any view impacts, allowing for reasonable sharing of views.*
- *The primary driver for this variation is the fact that the only access to the dwelling on this waterfront property involves a steep climb from the jetty where the commuter boat is moored. Vehicle access to the top of this waterfront property is not available in Elvina Bay.*
- *This dwelling...is the permanent resident of a couple entering grandparent age and access to the family house can become more difficult with time. An incline lift also provides a means of getting common household goods from the waterfront up to the dwelling.*
- *The lift design is fit for purpose with minimal impact on the natural environment.*
- *The proposal will have minimal visual impact on the development on neighbouring sites or Pittwater.*
- *The proposed siting and design of the lift track entirely above the M.H.W.M. will not affect public access along the waterfront reclamation.*
- *The proposed development is of good design that will reasonably protect and improve the amenity of the surround built environment, therefore satisfying the requirement that the proposal, and the foreshore development variation, are in the public interest.*
- *Incline lifts are a traditional form of foreshore access add character to waterways foreshores when viewed by the public using the water for recreational purposes' [sic]."*

It is considered that the sufficient environmental planning grounds advanced by the applicant within the Clause 4.6 objection to vary Clause 7.8 Limited development on the foreshore area of the Pittwater Local Environmental Plan 2014 (PLEP 2014) are inadequate. While the portion of the built form that extends beyond the Foreshore Building Line (FBL) is ancillary to the existing dwelling and will improve the amenity of the existing residents, there remains insufficient information for Council to be certain the proposal will not have any adverse or unreasonable impacts upon the natural environment, specifically the estuarine hazard to which the subject site is located.

In this instance, Council cannot be certain of the the Applicant's claim that the proposed inclinor will have minimal impact on the natural environment. Further, the architectural plans clearly show the incline cab extends beyond the mean high water mark, contrary to the statement in the Clause 4.6 objection and the appropriate owners consent has not been provided to allow for this seaward encroachment to the mean high water mark.

As such, the Applicant's request to vary Clause 7.8 is not well-founded, and cannot be supported, in



this instance.

In this regard, the applicant's written request has not 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 not satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Clause 7.8 Limited development on foreshore area development standard and the objectives of the C3 Environmental Living zone. An assessment against these objectives is provided below.

**Objectives of development standard**

- *To ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area*

Comment:

The proposed development is sited within proximity to the existing seawall, and requires a degree of excavation works to facilitate the landing platform and inclinorail (excavation of the existing sea wall is not proposed, nor will consent be granted for such works under this application). Further, the base of the incline passenger lift is located within an estuarine hazard. While the proposed incline passenger lift is a consistent development type for waterfront properties that rely entirely on boat access to and from the property, insufficient information has been provided to ensure the proposal will not have an adverse or unreasonable impact upon the natural foreshore processes of the area.

The proposed development **cannot** achieve this underlying objective.

- *To ensure continuous public access along the foreshore area and to the waterway*

Comment:

The proposed architectural plans appears to indicate that half of the incline passenger cab is sited seaward of the mean high water mark. Therefore, potentially impacting upon the continuous public access along the foreshore area.



The proposed development **cannot** achieve this underlying objective.

### Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The subject site is located within the Estuarine Hazard area. In the absence of an Estuarine Risk Management Report, the assessment of this application cannot be certain that the proposed development will appropriately protect, manage, and restore areas with special ecological, scientific, cultural or aesthetic values.

The proposed development does **not** meet this underlying objective.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

As detailed above, in the absence of an Estuarine Risk Management Report, the assessment of this application cannot be certain that the proposed development will not adversely impact upon the special ecological, scientific, cultural or aesthetic values applicable to the subject site.

The proposed development does **not** meet this underlying objective.

- *To provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent.*

Comment:

The proposed development will provide for residential development of a low density. The extent of excavation works required to facilitate the entry landing of the incline passenger lift will be of a scale that appropriately integrates into the landform and landscape and is unlikely to be come visually prominent when viewed from Pittwater Waterway.

The proposed development **can** meet this underlying objective.

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

Comment:

The proposed works are sited primarily within the foreshore area. As such, the proposed development is likely to remove some vegetation within the foreshore area. However, this vegetation would be considered as low-lying shrubs. No substantial vegetation or trees are required to be removed to facilitate the proposed development. The retention of existing substantial vegetation throughout the site will continue to allow for wildlife corridors.



The proposed development **can** meet this underlying objective.

- *To ensure the continued viability of ecological communities and threatened species.*

Comment:

As detailed above, in the absence of required information, the assessment of this application cannot be certain that the proposed development will not adversely impact upon the ecological communities, or threatened species, on the site.

The proposed development does **not** meet this underlying objective.

#### Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the C3 Environmental Management zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to Clause 7.8 Limited development on foreshore area non-numerical Development Standard can not be assumed.

#### **7.1 Acid sulfate soils**

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

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

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The development proposes to excavate a small area of the site below the natural ground level, which is above AHD, not below it.

In this instance, an Acid Sulfate Soils report is not required and the development is considered to be consistent with the considerations of Clause 7.12(2) of the PLEP 2014.

#### **7.2 Earthworks**



The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

Comment:

A Geotechnical Assessment Report (prepared by Ascent Geo, dated April 2022) has been provided with this application. Should this application be recommended for approval, appropriate conditions would be included within the report to ensure compliance with the recommendations made within the Geotechnical Assessment Report. In this instance, the proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

The proposal **can achieve** this underlying objective.

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

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land as the proposal is sited to along the eastern boundary of the property, therefore allowing ample opportunity for appropriate redevelopment of the land in the future.

The proposal **can achieve** this underlying objective.

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. Should this application be recommended for approval, an appropriate condition shall be recommended to ensure that any waste (such as, but not limited to, excavation material) generated as a result of the works would be disposed of appropriately, or reused on site where necessary.

The proposal **can achieve** this underlying objective.

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

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Should this application be recommended for approval, an appropriate condition would be recommended to limit any potential impacts during excavation and/or construction.

The proposed development **can achieve** this underlying objective.

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. Should this application be recommended for approval, an appropriate condition shall be recommended to ensure that any waste (such as, but not limited to, excavation material) generated as



a result of the works would be disposed of appropriately, or reused on site where necessary.

The proposal **can achieve** this underlying objective.

*(f) the likelihood of disturbing relics*

Comment:

The development was referred to the Aboriginal Heritage Office who provided comments and recommended conditions that have been included in the consent, should this application be recommended for approval, to ensure any relics of Indigenous significance are protected if discovered during construction works.

The proposal **can achieve** this underlying objective.

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

Comment:

The subject site is located adjacent to Pittwater Waterway, and sited within the Estuarine Hazard mapping, thus requiring compliance with estuarine planning levels. In the absence of an Estuarine Risk Management Report, Council cannot be certain as to the potential impact and environmental harm of the proposed development against the estuarine hazard and subsequent environmentally sensitive area.

The proposal **cannot achieve** this underlying objective.

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

Comment:

The absence of information in relation to an Estuarine Risk Management Report is such that there are unknown and potential adverse impacts arising from this development which cannot be appropriately mitigated and managed. As a consequence of this, it is considered that the development has not adequately avoided, minimised or mitigated the impacts of the development.

The proposal **cannot achieve** this underlying objective.

*(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

Comment:

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

The proposal **can achieve** this underlying objective.

As demonstrated above, the proposal is considered unacceptable with the matters for consideration prescribed by Clause 7.2.

## 7.6 Biodiversity protection

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





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

Comment:

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

The proposed development **can achieve** this underlying objective.

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

Comment:

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

The proposed development **can achieve** this underlying objective.

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

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

Comment:

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

The proposed development **can achieve** this underlying objective.

## 7.7 Geotechnical hazards

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



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

Comment:

The proposed development is supported by a Geotechnical Risk Assessment and architectural plans that demonstrate all geotechnical risks have been taken into account.

The proposed development **can achieve** these underlying objectives.

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

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

Comment:

The proposed development is supported by a Geotechnical Risk Assessment that demonstrate waste water, stormwater and drainage are suitably managed on site.

The proposed development **can achieve** this underlying objective.

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

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

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

The proposed development **can achieve** this underlying objective.

## 7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming*





*pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development is for construction of an incline passenger lift, excavation works and minor alterations to the existing dwelling to facilitate multiple landings from the incline passenger lift. As the proposal is not a listed a type of development permitted within the foreshore area, a Clause 4.6 objection has been made by the Applicant and an assessment has been undertaken in this report. This assessment has found that the Applicant's request to vary Clause 7.8 is not well founded and, as such, strict compliance with the requirements of Clause 7.8 is considered necessary.

Clause 7.8 provides:

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
  - i *pollution or siltation of the waterway, or*
  - i *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
  - i *an adverse effect on drainage patterns, or*
  - i *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is inconsistent with the objectives of the C3 Environmental Management zone. Notwithstanding, the appearance of the proposed development is generally compatible with the surrounding area and, due to the presence of other built structures on site and adjoining sites, could integrate into the natural environment.

The absence of a detailed Estuarine Risk Management Report it is considered such that there is a potential cause of unacceptable environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation and estuarine areas.

Furthermore, the proposed development is likely to result in adverse impacts to the natural and aesthetic significance of the land.



Council cannot be satisfied that the proposal can meet the above-listed requirements, and the proposal **cannot** achieve the requirements of this Clause.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether, and to what extent, the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

As the works are not of type that may occur within the foreshore area, the requirements of the above are irrelevant considerations.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Rear building line	6.5m	N/A FBL Applies	N/A	No
Side building line	<b>Western Boundary</b> 2.5m	Landing (RL12.85): 12.65m	N/A	Yes
		Incline rail track: 13.9m - 14.0m	N/A	Yes
		Retaining wall: 13.2m	N/A	Yes
	<b>Eastern Boundary</b> 1m	Landing (RL12.85): 1.5m Incline rail track: 1.0m Retaining wall: Nil Incline passenger cart: 0.6m	N/A N/A 100% 40%	Yes Yes No No
Building envelope	<b>Western Elevation</b> 3.5m	Within envelope	N/A	Yes
	<b>Eastern Elevation</b> 3.5m	Within envelope	N/A	Yes
Landscaped area	60% (713m <sup>2</sup> )	79.1% (941.0m <sup>2</sup> )	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	No	No
B5.13 Development on Waterfront Land	No	No
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	No
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.6 Side and rear building line	Yes	Yes
D8.15 Site disturbance	Yes	Yes

#### Detailed Assessment

#### **B3.7 Estuarine Hazard - Low density residential**

##### Detailed description of non-compliance

The subject site is located within Estuarine Hazard mapping. Council's Coast and Catchments Officer has reviewed the proposed development and initially raised concern with the proposal, yet subsequently supporting the proposal subject to conditions.

The primary concern was that there is insufficient information (in that an Estuarine Risk Management Report has not been provided) which means a comprehensive assessment cannot be undertaken regarding the proposal's impact upon the Estuarine Hazard area to which the subject site is located. Notwithstanding the support from Council's Coast and Catchments Officer, the inclusion of recommended conditions to require additional information be provided prior to the issue of the Construction Certificate is not satisfactory as there remains unknown, and potentially environmentally harmful, impacts of how the recommended conditions will be satisfied in accordance with Council's requirements.

##### Merit Consideration

- *Protection of people. (S)*
- *Protection of the natural environment. (En)*



- *Protection of private and public infrastructure and assets. (S)*

Comment:

In the absence of an Estuarine Risk Management Report, there is no basis in which to complete a detailed assessment to determine the acceptability of the proposal with regard to Control B3.7 of the DCP.

#### **B4.19 Estuarine Habitat**

Detailed description of non-compliance

The subject site is located within Estuarine Hazard mapping. Council's Coast and Catchments Officer has reviewed the proposed development and initially raised concern with the proposal, yet subsequently supporting the proposal subject to conditions.

The primary concern was that there is insufficient information (in that an Estuarine Risk Management Report has not been provided) which means a comprehensive assessment cannot be undertaken regarding the proposal's impact upon the Estuarine Hazard area to which the subject site is located. Notwithstanding the support from Council's Coast and Catchments Officer, the inclusion of recommended conditions to require additional information be provided prior to the issue of the Construction Certificate is not satisfactory as there remains unknown, and potentially environmentally harmful, impacts of how the recommended conditions will be satisfied in accordance with Council's requirements.

Merit consideration

- *To protect and enhance the mangroves, saltmarsh, seagrasses, intertidal sand/mud flats and other foreshore habitats that comprise the estuarine habitat of Pittwater. (En)*
- *Development in the catchment of estuarine habitat is to result in estuarine habitat being retained or enhanced with respect to that development. (En)*
- *The physical, chemical and biological processes of estuarine habitats in Pittwater are improved, maintained or restored. (En)*
- *The social and cultural values of estuarine habitats are conserved and enhanced. (S)*
- *Biodiversity, ecological processes and other estuarine habitat values are conserved. (En)*

Comment:

In the absence of an Estuarine Risk Management Report, there is no basis in which to complete a detailed assessment to determine the acceptability of the proposal with regard to Control B4.19 of the DCP.

#### **B5.13 Development on Waterfront Land**

Detailed description of non-compliance

The subject site is considered 'waterfront land' in accordance with the definition prescribed within the Dictionary of the *Water Management Act 2000*, therefore, consideration of this control applies to the assessment of this application. Additionally, the subject site is also located within Estuarine Hazard mapping. Council's Coast and Catchments Officer has reviewed the proposed development and initially raised concern with the proposal, yet subsequently supporting the proposal subject to conditions.

The primary concern was that there is insufficient information (in that an Estuarine Risk Management



Report has not been provided) which means a comprehensive assessment cannot be undertaken regarding the proposal's impact upon the Estuarine Hazard area to which the subject site is located. Notwithstanding the support from Council's Coast and Catchments Officer, the inclusion of recommended conditions to require additional information be provided prior to the issue of the Construction Certificate is not satisfactory as there remains unknown, and potentially environmentally harmful, impacts of how the recommended conditions will be satisfied in accordance with Council's requirements.

#### Merit consideration

- *Protection of waterways and improved riparian health (En)*
- *Stormwater and creek flows are safely managed. (S)*
- *Appropriate setback between waterways and development (En)*

#### Comment:

In the absence of an Estuarine Risk Management Report, there is no basis in which to complete a detailed assessment to determine the acceptability of the proposal with regard to Control B5.13 of the DCP.

### **C1.19 Incline Passenger Lifts and Stairways**

#### Merit consideration

- *Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours. (En, S)*

#### Comment:

This control requires the follow for the construction of an incline passenger lift:

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

#### Comment:

The proposed development requires a degree of excavation to facilitate the landing and rail at 1.70m AHD. In the absence of required information, Council cannot be certain as to how the proposed excavation will impact upon the estuarine hazard applicable to the subject site. No trees are required for removal to facilitate the inclinator rail.

Notwithstanding the steep rise in the inclinator rail from 1.70m AHD upwards toward the existing



dwelling and at 'Station 3', which both exceed 1.0 metres above the existing ground level, the remainder of the inclinator is sited as near as possible to the existing ground level with no requirement for high piers. However, a retaining wall is proposed on the 1.70m AHD level to support the excavated ground. As detailed in the Clause 4.6, this retaining wall is proposed to be painted in a dark and earthy colour to seamlessly integrate into the natural landform. Should this application be recommended for approval, a condition would be recommended that ensures the proposed colours and materials are complied with, with respect to the retaining wall and cab of the incline passenger lift. As detailed elsewhere in this report, the proposed development does not require the removal of any substantial trees on the site. Therefore, the vegetation will be retained to provide an appropriate landscape screen.

An Acoustic Report has not been provided with this application. However, should this application be recommended for approval, a condition would be recommended to ensure the motor, when in use, does not exceed 60dBA. Further, the proposed incline passenger lift is sited along the eastern side boundary and the dwelling on the property to the east, being 13 Sturdee Lane, is sited further north on the site. In this instance, the incline passenger lift is sited lower than the lowest level of the dwelling on 13 Sturdee Lane and, when the inclinator is in use, it will not unreasonably overlook adjoining properties. Further, Council's Environmental Health Officer has reviewed the proposal and is supportive, subject to recommended conditions, one of which being operation times for the use of the incline passenger cab. Should this application be approved, compliance with this condition would ensure minimal adverse acoustic impacts upon adjoining properties.

The proposed eastern side setback distance to the rail is 1.0 metre and is 0.6metres to the carriage. In this instance, the proposal does not achieve compliance with the 2.0 metre setback between the outer carriage and side boundary. Notwithstanding this, the proposed track has been sited so as to align with the existing dwelling, and for the reasons detailed above, and elsewhere in this report, the proposed side setback to the eastern boundary is considered acceptable and is unlikely to create adverse or unreasonable amenity impacts upon the occupants of the dwelling at 13 Sturdee Lane.

The proposed retaining wall and lift track is sited entirely within the private property boundaries. However, as detailed on the Site Plan (DA01 Revision C, dated 18 January 2022), the proposed carriage extends beyond the Mean High Water Mark (MHW), and appropriate owners consent has been provided to address this encroachment beyond the private property boundaries. In this regard, the proposal is unacceptable and cannot achieve all requirements of this control.

The proposed carriage is not located within 4.5 metres of the adjoining dwelling. As such, a privacy screen is not required to be included on the carriage of the incline passenger lift.

Notwithstanding the general compliance with the requirements of this control, the absence of appropriate owners consent to address the encroachment of the cab seaward of the mean high water mark results in the proposal being unacceptable, in this instance.

#### **D8.6 Side and rear building line**

The numeric non-compliance to the side setback control for an incline passenger lift is addressed under control C1.19 Incline Passenger Lifts and Stairways. The development is considered to achieve the underlying objectives of this control, notwithstanding the numeric non-compliance.

With regards to the rear setback requirement, the foreshore building line applies. A detailed assessment of the proposal against the objectives of Clause 7.8 Limited Development on Foreshore Area has been addressed within this report.

#### **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 \$ 797 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 159,441.

### CONCLUSION

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

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

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

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the *Pittwater Local Environmental Plan 2014* seeking to justify a contravention of Clause 7.8 Limited Development on Foreshore Area has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of





the standard and the objectives for development within the zone in which the development is proposed to be carried out.

### Planning Conclusion

The proposed works comprise a limited range of development that specifically seeks to improve the amenity and access to the dwelling house for the existing residents in direct response to unique environmental constraints.

Due to the location of the existing dwelling, the application relies upon a Clause 4.6 request to vary the non-numerical development standard of Clause 7.8 Limited Development on Foreshore Area, which requires the application to be determined by the Northern Beaches Local Planning Panel.

The assessment of the proposed development against the planning controls under the PLEP 2014 and P21 DCP reveals that the proposed development, notwithstanding the variations to controls and clauses within PLEP 2014 and P21 DCP, will result in alterations and additions of a reasonable size, scale and density that is commensurate with the surrounding development and Lower Western Foreshore locality.

The proposed works aim to improve the dwelling's relationship with the topography of the site, particularly addressing the steep slope and constrained access arrangements currently present. The proposed works to the dwelling are primarily to accommodate a connection to the proposed incline passenger lift, allowing those using the inclinor to safely and conveniently access the existing dwelling. The existing tree canopy will not be adversely impacted, with significant trees being retained. Notwithstanding the extent of excavation to accommodate the base level of the incline passenger lift, the majority of the proposed works have been sited and designed to minimise site disturbance. The proposed incline passenger lift will be elevated (ranging between heights of 0.14 metres and 3.4 metres), thus allowing for continued water infiltration into soft surface areas, and not obstructing the flow of stormwater runoff.

However, despite the benefits of the proposal, the application is recommended for refusal due to inadequate information, lack of appropriate owners consent for part of the works being located seaward of the mean high water mark and there being insufficient environmental planning grounds to justify the departure from the requirements of Clause 7.8 of the PLEP 2014.

No submissions were received in response to the public exhibition period of the proposed development.

Based on the above, this report concludes with a recommendation that the NBLPP refuse the application.

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

### RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/1048 for the Construction of an incline lift on land at Lot 8 DP 8013, 15 Sturdee Lane, ELVINA BAY, Lot LIC 593927, 15 Sturdee Lane, ELVINA BAY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to enable the assessment of the

**application.**Particulars:

i) No land owners consent for the works that are shown seaward of the mean high water mark on the architectural plans has been provided. The application has not been correctly made in accordance with the requirements Clause 23(1)(b) of the *Environmental Planning and Assessment Regulation 2021*.

ii) An Estuarine Risk Management Report has not been provided. The consequence of the absence of this information is such that a detailed assessment of this application cannot be completed as there is no ability to be certain of the environmental impacts arising as a result of the proposed development.

2. **Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* the proposed development is not within the public's interest.**

Particulars:

i) The lack of information, land owners consent and ability to satisfy the requirements of State Environmental Planning Policy (Resilience and Hazards) 2021 and Pittwater Local Environmental Plan 2014 are such that approval of the development is not within the public's interest.

3. **Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021.**

Particulars:

i) In the absence of an Estuarine Risk Management Report, the assessment of this application cannot be completed against the relevant matters prescribed within Clauses 2.10, 2.11 and 2.12 of the State Environmental Planning Policy (Resilience and Hazards) 2021. It is considered that the proposed development does not comply with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

4. **Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 1.2 Aims of the Plan, Clause Zone C3 Environmental Management and Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014; and Control B3.7 Estuarine Hazard – Low density residential, Control B4.19 Estuarine Habitat, B5.13 Development on Waterfront Land, and C1.19 Incline Passenger Lifts and Stairways of the Pittwater 21 Development Control Plan.**

Particulars:

i) In the absence of required information, the assessment of this application cannot be certain that Clause 1.2, Zone C3 Environmental Management objectives, and Clause 7.2 of the Pittwater Local Environmental Plan 2014 can be met. Additionally, the assessment of this



application cannot be certain as to the extent of adverse impacts upon the surrounding natural environment, as considered under controls B3.7, B4.19, B5.13 and C1.19 of the Pittwater 21 Development Control Plan.

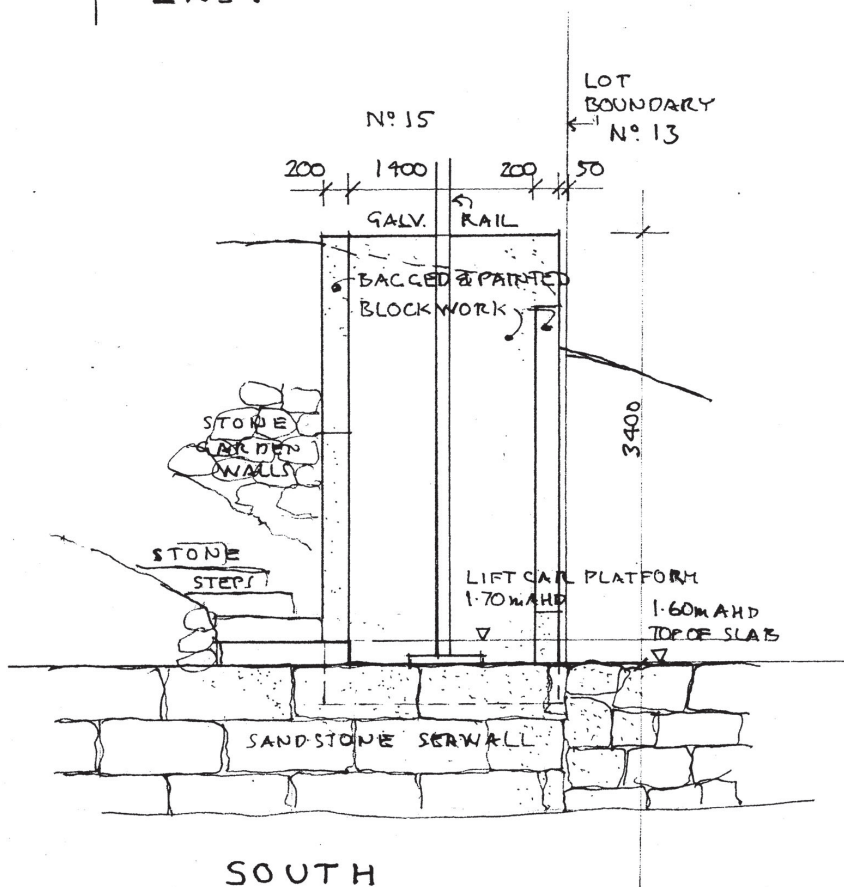
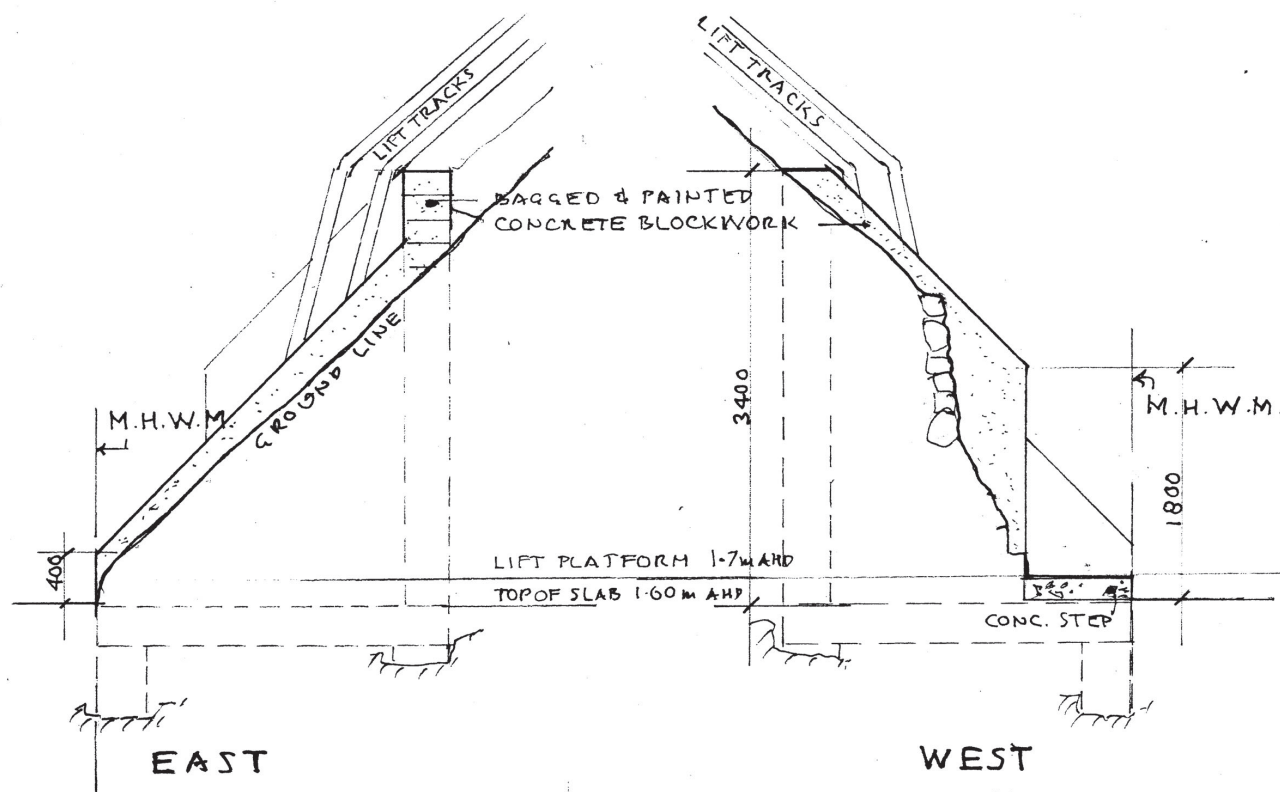
5. **Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014.**

Particulars:

i) The sufficient environmental planning grounds advanced within the written Clause 4.6 request that seek to justify variation of Clause 7.8 'Limited development on foreshore area' of the Pittwater Local Environmental Plan 2014 are inadequate.

ii) The sufficient environmental planning grounds advanced state that there are minimal environmental impacts as a consequence of the proposal. There is no basis to this claim due to the absence of an Estuarine Risk Management Report. In addition, the written Clause 4.6 provides that the structure is above the mean high water mark. This is contrary to the detail shown on the architectural plans. The Applicant's written request to vary Clause 7.8 is not well-founded, and cannot be supported.





Revised: Date:  
**Stephen Crosby & Assoc.  
Pty. Ltd.**

SCOTLAND ISLAND  
PO Box 204 Church Pt. NSW 2105  
M: 0409 047 513 E: scrosby@intemode.on.net  
Job:

## INCLINE LIFT

**15 STURDEE LANE  
ELVINA BAY**  
Lot 8 DP 8013

For **M. & M. NICHOLLS**  
Drawing

## ELEVATIONS

Scale **1:50 AT A4**  
Date **NOVEMBER 2021**  
Drawn **S.C.**  
Drawing Number

**2101 - DA 03**

## **Clause 4.6 Variation Request Clause 7.8(2) Development within the foreshore area**

**15 STURDEE LANE, ELVINA BAY, 2105  
Lot 8 DP 8013**

**DA2022/1048**

**Date:** 14<sup>th</sup> October 2022

**Prepared By:** Stephen Crosby & Associates Pty. Ltd.  
PO Box 204, Church Point, NSW 2105

**For:** M. & M. Nicholls

## Introduction

Concurrent with the above Development Application we submit this letter addressing the provisions of Pittwater Council **LEP 2014**, specifically **cl. 7.8(2b)– Limited development on foreshore area** regarding development that is not specifically listed as approved development under the provisions of **LEP 2014 cl.4.6 Exceptions to development standards**.

This document shall demonstrate compliance with the outcomes of **LEP control 7.8 Limited development on foreshore area** with regard to the proposed incline lift to supplement access from the water to the existing water access only family dwelling.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though the incline lift contravenes a development standard. The clause aims to provide flexibility in applying certain development standards to achieve better outcomes for and from the development.

This clause 4.6 variation request demonstrates that compliance with the foreshore development standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that the proposed development:

- Satisfies the objectives for development standard clause 7.8 PLEP 2014 Limited development on foreshore area,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Is consistent with applicable state and regional planning policies,
- Provides for a better planning outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

The DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 7.8 of the Pittwater LEP 2014.

### VARIATION TO CLAUSE 7.8 LIMITED DEVELOPMENT ON FORESHORE AREA

The base platform for the incline lift has a width of 1.8m or 15% of the width of the site at the M.H.W.M. It is set back from the waterfront seawall between an existing boat shed on the neighbouring site to the east and the site's own boat shed directly to the west. These buildings largely conceal the lift base from public view when travelling through Elvina bay.

The retaining wall around the lift base shall be painted in dark earthy colours to recede into



the hillside under the tree canopy. No trees are to be removed for this lift installation.

The lift track is 0.2m wide, made of galvanise steel that ages quickly in this marine environment to a dull grey, toning in with the shaded undergrowth in the vegetated foreshore area between the M.H.W.M. and the dwelling above the F.B.S.L.

#### JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

**Clause 4.6(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant 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) there are sufficient environmental planning grounds to justify contravening the development standard.

**Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:**

- (a) the consent authority is satisfied that:
  - (i) the applicants 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(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The objectives of the standard are achieved notwithstanding non-compliance with the standard. The objectives of the standard are:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

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

The incline lift track and inground structures are entirely consistent in form and height with similar incline lift structures built over that last 40 years in Pittwater.

As such, the proposal, whilst seeking a variation to the Limited development on the foreshore area, still results in a development which is consistent with the expectations for incline lifts in Elvina Bay, and remains consistent with the desired character of the Pittwater waterway.

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

Many of the incline lifts in McCarrs Creek, Elvina and Lovett Bays, as well as on Scotland Island, are similar in form scale, with tracks running from the M.H.W.M. up to dwellings above the F.B.S.L.

**Objective (c) to minimise any overshadowing of neighbouring properties.**

The proposal will not result in any overshadowing of neighbouring properties due to the location of the track close to ground level, and the rising slope of the adjoining sites where dwellings are located.

Therefore, the variation to the limited allowable development does not result in any overshadowing on neighbouring properties.

**Objective (d) to allow for the reasonable sharing of views.**

Due to the location of the incline lift track being below the lowest floor levels of neighbouring dwellings, the proposed development will not result in any view impacts, allowing for the reasonable sharing of views.

The proposal does not interrupt or obstruct any significant views to or from the site or Pittwater, making the proposed development consistent with this objective.

**Objective (e) to encourage buildings that are designed to respond sensitively to the natural topography.**

The proposed lift has been designed to respond sensitively to the natural topography which slopes up steeply from a level area seaward of the Mean High Water Mark by incorporating a curved track

The lift track sits lightly on the existing terrain.

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

There are no heritage items affected by the proposal, and the lift track will have a similar visual impact on the existing environment being entirely consistent with waterfront incline lifts in this area of Pittwater.

**Pittwater LEP 2014 cl. 4.6 Exceptions to development standards** sets out the parameters for varying a development standard such as cl. 7.8 Limited development on foreshore area described above. Compliance with the relevant provisions of cl 4.6 is achieved as follows:

- (3) (a) as demonstrated above compliance with the development standard cl.7.8 is unreasonable or unnecessary in this case, and,  
(b) there are sufficient environmental planning grounds to justify contravening the development standard in this instance.
- (4) (a) (i) the proposed lift development is modest in scale and typical of incline lifts for water access only properties in Pittwater.

CLAUSE 4.6(4)(a)(ii) IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD.

**Consistency with the objectives of the development standard.**

The proposed development is consistent with the objectives of the development in the foreshore area standard in clause 7.8, for the reasons discussed previously in CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.

**Consistency with the objectives of the zone.**

The proposed development is consistent with the underlying objectives of the C3 zone. The primary driver for this variation is the fact that the only access to the dwelling

on this waterfront property involves a steep climb from the jetty where the commuter boat is moored. Vehicle access to the top of this waterfront property is not available in Elvina Bay.

This dwelling, like many waterfront dwellings in the area is the permanent residence of a couple entering the grandparent age and access to the family house can become more difficult with time. The residence accommodates family members from the very young to elderly folks in their eighties for whom a steep stepped climb is not an option. An incline lift also provides a means of getting common household goods from the waterfront up to the dwelling.

The lift design is fit for purpose with minimal impact on the natural environment. The proposal will have minimal visual impact on the development on neighbouring sites or Pittwater.

The proposed siting and design of the lift track entirely above the M.H.W.M. will not affect public access along the waterfront reclamation.

The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying the requirement that the proposal, and the foreshore development variation, are in the public interest.

#### **Overall public interest.**

The proposed development is considered to be in the public interest for the following reasons:

- Incline lifts are a beneficial use of the site for many older residents and consistent with the character of the Pittwater locality.
- Incline lifts are a traditional form of foreshore access add character to waterways foreshores when viewed by the public using the waterway for recreational purposes.

On the basis of the above, we believe that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard for foreshore development contained in clause 7.8 of the PLEP 2014, and with the objectives of the C3 zone under the PLEP 2014.

#### **CONCLUSION**

The assessment above demonstrates that compliance with the Limited development on the foreshore area standard in Clause 7.8 of the PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that the justification is well founded. It is considered that the variation allows an orderly and economic use and development of the land, and that the structure is of good design that will reasonably protect and improve access for the residents and the amenity of the surrounding built environment.

This clause 4.6 variation demonstrates that, notwithstanding the variation to the foreshore development standard, the proposed development:

- Satisfies the objectives of the development standard for development in the foreshore area cl.7.8 of PLEP 2014,
- Satisfies the objectives of the C3 zone under PLEP 2014,
- Provides for a better outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2014.

**STEPHEN CROSBY**

## 5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	MOD2022/0630 - 42 NORTH STEYNE, MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA2021/2257, APPROVED BY THE LAND AND ENVIRONMENT COURT FOR ALTERATIONS AND ADDITIONS TO AN EXISTING BUILDING TO COMPRISE SHOP TOP HOUSING AND STRATA- SUBDIVISION.
AUTHORISING MANAGER	Rod Piggott
TRIM FILE REF	2023/112865
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Elevations

### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Modification Application No. Mod2022/0630 for Modification Development Consent DA2021/2257, approved by the Land and Environment Court for alterations and additions to an existing building to comprise shop top housing and strata-subdivision. on land at Lot 100 DP 1069144,75 The Corso, MANLY, Lot 101 DP 1069144,75 The Corso, MANLY, Lot 102 DP 1069144,75 The Corso, MANLY, Lot 1 DP 1034722,42 North Steyne, MANLY subject to the conditions set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0630
<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 100 DP 1069144, 75 The Corso MANLY NSW 2095 Lot 101 DP 1069144, 75 The Corso MANLY NSW 2095 Lot 102 DP 1069144, 75 The Corso MANLY NSW 2095 Lot 1 DP 1034722, 42 North Steyne MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA2021/2257, approved by the Land and Environment Court for alterations and additions to an existing building to comprise shop top housing and strata-subdivision.
<b>Zoning:</b>	Manly LEP2013 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Steyne Hotel Operations Pty Ltd ATF Steyne Hotel Operations Trust Barecall Pty Ltd Steyne Hotel Freehold Pty Ltd
<b>Applicant:</b>	The Trustee For Steyne Hotel Operations Trust
<b>Application Lodged:</b>	25/11/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	02/12/2022 to 16/12/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: This clause do not apply to a modification application, but proposal does exceed control by 31.66%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The application seek approval for a modification of the consent of DA2021/2257, specifically the construction of a new swimming pool to the fourth floor of the approved shop top housing development.



The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to the Height of Buildings development standard of more than 10%. In this regard the variation is 31.66% (3.8m).

A total of two objections were received as part of the exhibition of the application. Issues raised include noise and compliance with the existing conditions of consent. The issues raised in objection have been reviewed and they do not warrant the refusal of the application.

This report concludes with a recommendation that the NBLPP should grant approval to the application, subject to the conditions attached to this report.

### **PROPOSED DEVELOPMENT IN DETAIL**

This modification application lodged pursuant to Section 4.56 of the EP&A Act seeks to modify the built form approved under development consent DA2021/2257.

The modifications proposed include:

- Construction of a swimming pool and spa to the approved fourth level terrace along the Market Lane frontage.
- Associated landscaping.

### **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.

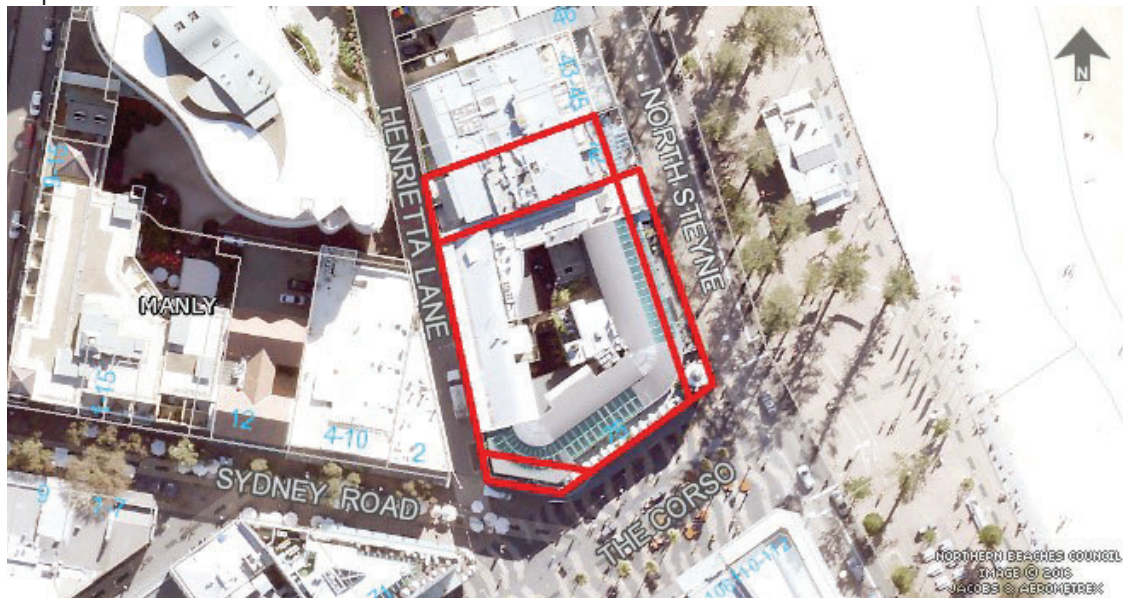
### **SUMMARY OF ASSESSMENT ISSUES**

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment  
Manly Local Environmental Plan 2013 - 4.3 Height of buildings  
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 100 DP 1069144 , 75 The Corso MANLY NSW 2095          Lot 101 DP 1069144 , 75 The Corso MANLY NSW 2095          Lot 102 DP 1069144 , 75 The Corso MANLY NSW 2095          Lot 1 DP 1034722 , 42 North Steyne MANLY NSW 2095</p>
<b>Detailed Site Description:</b>	<p>The subject sites are commonly known as 75 The Corso, Manly and 42 The Corso, Manly (Lot 1, DP 1034722 and Lot 100, DP 1069144).</p> <p>The site is irregular in shape with a primary frontage of 34.075m along The Corso and secondary frontages of 53.525m along North Steyne, 13.665m along Sydney Road and 56m along Henrietta Avenue. The land has total area of 2216m<sup>2</sup>.</p> <p>The site is situated in the B2 Local Centre zone under the Manly Local Environmental Plan 2013 (MLEP 2013).</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by multi-level commercial, residential, and mixed-use developments. Manly Beach is located directly opposite the property to the east</p>

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:

**DA2021/2257** - Alterations and additions to an existing building to comprise of shop top housing and strata subdivision.

Approved by the Land and Environment Court on 20 September 2022, by way of consent orders.

### 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, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2021/2257, for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modified development remains consistent with the original approval in terms of use and density of development.</li> <li>• The proposed is maintained within the footprint of the original consent.</li> <li>• The bulk and scale of the development remain largely the same and the visually is not significantly altered from the original approval when viewed from the street and adjoining properties.</li> </ul>

Section 4.56- Other Modifications	Comments
	<ul style="list-style-type: none"> <li>The swimming pool is a ancillary structure to the approved residential dwelling (unit 401).</li> </ul>
<p>(b) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>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.</p>
<p>(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and</p>	<p>Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2021/2257.</p>
<p>(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.</p>	<p>See discussion on "Notification &amp; Submissions Received" in this report.</p>

#### Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.56 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 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	Part 4, Division 2 of the EP&A Regulation 2021

Section 4.15 'Matters for Consideration'	Comments
Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 29 of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p>Clauses 36 and 94 of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to BCA compliance.</p> <p>Clause 61 of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent..</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/12/2022 to 16/12/2022 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 3 submission/s from:

Name:	Address:
Iris Capital	Suite 404 203-233 New South Head Road EDGECLIFF NSW 2027
Mr Gavin John Stow Mrs Samantha Barbara Stow	505 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Ray Caryl Stone Mrs Robin Jennifer Stone	704 / 9 - 15 Central Avenue MANLY NSW 2095

The following issues were raised in the submissions:

- **Use of 'catchment trough'**
- **Boundary wall height**
- **Compliance with previous consent (planting)**
- **Noise**
- **Lighting**

The above issues are addressed as follows:

- **Use of 'catchment trough'**

The submissions raised concerns about the proposed catchment trough and potential use as a recreational area.

Comment:

This area in itself will not be trafficable, noting that the area is a trough for the overflow of water. Notwithstanding this, to ensure certainty a condition of consent has been imposed to ensure that access to the area is only allowed for maintenance reasons.

- **Boundary wall height**

The submissions raised concern about the boundary wall height.

Comment:

No increase of height to the market lane wall is proposed.

- **Compliance with previous consent (planting and lighting)**



Concern has been raised in regards to ongoing compliance with the lighting and planting conditions imposed under the original consent.

Comment:

The relevant conditions *No. 59 Landscape Completion* and *No. 98 Outdoor Lighting*, are not proposed to be altered or deleted, therefore the condition is to be complied with for the life of the development.

- **Noise**

Concern was raised about noise impacts from the proposed swimming pool.

Comment:

The proposal has been assessed against the relevant swimming pool and privacy provisions under Clause 4.1.9 of the Manly DCP in this report. In summary, the proposal complies with the underlying objectives under Clause 4.1.9 of the Manly DCP, a condition has been imposed to ensure swimming pool/spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

## REFERRALS

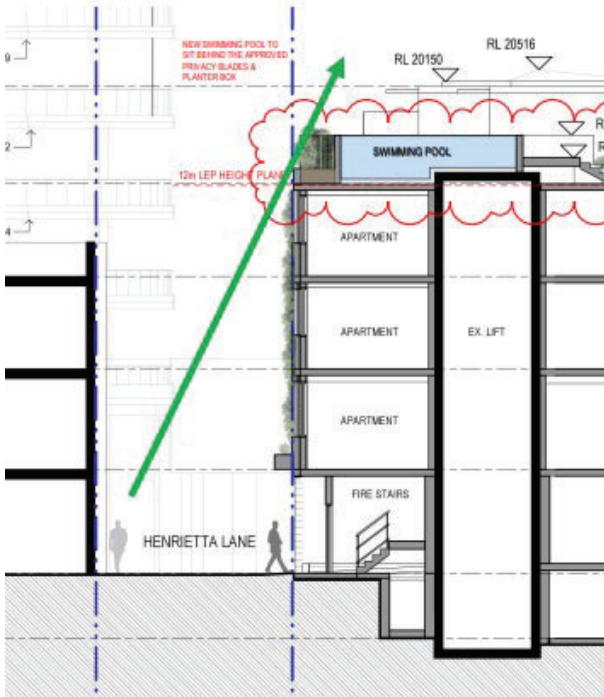
Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported, subject to conditions</b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Environmental Health (Industrial)	<p><b>Supported, subject to conditions</b></p> <p>The proposed modification includes the installation of a pool and spa on the approved terrace of the level 4 apartment at 42 North Steyne, Manly.</p> <p>The acoustic assessment finds- With respect to use of the pool: Like any pool (or any private open space) in residential development, anti-social or unreasonable behaviour can create a noise impact. Like with any other residential development, it is not possible to design to prevent this. Unreasonable behaviour would be</p>



Internal Referral Body	Comments
	<p>subject to complaint to police or similar.</p> <p>However in this case, the pool location (away from residential boundaries, and in a high ambient noise area) means that the typical pool activity would have less impact compared to what could readily occur in a pool in a more suburban setting.</p> <p>and recommends -</p> <p>In order to mitigate structure borne noise to apartment apartments in the development from people jumping into the pool/swimming or from the operation of plant and equipment, vibration isolation of the pool shell and plant and equipment will be implemented:</p> <p>The pool shell will be vibration isolated from the structure using 50mm rubber bearings.</p> <p>Pool plant will be isolated using Embelton NRD vibration isolation mounts or equal.</p> <p>Environmental Health note:</p> <p>Noise control legislation requires-</p> <p>Power tools and equipment (e.g. powered garden tools such as lawn mowers and leaf blowers, electric or pneumatic tools, chainsaws, circular saws, gas or air compressors and <b>swimming pool or spa pumps</b>) are not to be heard within adjoining residences habitable rooms before 8 am and after 8 pm on Saturdays, Sundays and public holidays Before 7 am and after 8 pm on any other day.</p> <p>Swimming pool related noise is a major source of complaints to Council.</p> <p>While Council can control the nuisance noise from equipment the actual use is most difficult to control in a residential situation. Where any rental or short accommodation stay occurs the owner will need to take precautions for inappropriate use/noise.</p> <p>Vibration (especially in regard to the spa and any air blowers ) will be a challenge for the builders.</p> <p>However,</p> <p>Environmental Health will support the proposal subject to conditions.</p>
Landscape Officer	<p><b>Supported, no conditions</b></p> <p>The proposal to modify development consent DA2021/2257 as approved under the Land and Environmental Court Appeal No. 2022/00032828 is for installation of a pool, spa and associated works on the approved terraces of level 4.</p> <p>Landscape Plans submitted have been reviewed and these indicated planters and planting. Landscape Referral raise no objections to the proposal subject to adherence with Condition 59 of the development consent approval, that plant species within the planters shall not achieve a mature height of greater than 1.5m above finished floor level. The floor level on level 4 is RL17.45 such that any planter and associated planting shall be restricted to no more than RL18.95, or 450mm above the proposed pool level.</p> <p>Condition 59 of the development consent approval remains.</p>

Internal Referral Body	Comments
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p><b>Supported, no conditions</b></p> <p>The proposed modification involves installation of a pool and spa on a terrace on Level 4.</p> <p>This is well above the Flood Planning Level.</p> <p>There are no applicable flood related development controls.</p>
NECC (Water Management)	<p><b>Supported, no conditions</b></p> <p>NECC water has no objection to the proposed modification</p>
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	Discussion of reason for referral
	<p><b>Supported, subject to conditions</b></p> <p>The proposal has been referred to Heritage as the subject site is located adjacent to a heritage item, being <b>Item I111 - Hotel Steyne</b> - 75 The Corso and <b>C2 - Manly Town Centre Conservation Area</b>. It is also in the vicinity of a number of heritage items:</p> <p><b>Item I168 - Ocean foreshores</b> - Manly municipal area, boundary adjacent to the ocean</p> <p><b>Item I174 - Beach Reserve—Merrett Park North Steyne and South Steyne</b> - Oceanside of North and South Steyne</p>
	Details of heritage items affected
	<p><b>Item I111 - Hotel Steyne</b></p> <p><u>Statement of significance</u></p> <p>This building is a fine example of Inter-War Art Deco style Hotel. Landmark building on the corner of The Corso and South Steyne.</p> <p><u>Physical description</u></p> <p>Original Hotel built 1862 and rebuilt in 1936 in Inter-war Art Deco 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'.</p> <p><b>Manly Town Centre Conservation Area</b></p> <p><u>Statement of significance</u></p> <p>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.</p> <p><b>Item I174 - Beach Reserve</b></p> <p><u>Statement of significance</u></p> <p>High significance as natural sand beach and cultural backdrop of paved promenade and first coastal plantings of Norfolk Island Pines.</p> <p><u>Physical description</u></p> <p>Beachfront, promenade, sandstone retaining wall, paved, grassed</p>

Internal Referral Body	Comments		
	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 the modification to the consent - LEC approved DA 2021/2257, including the construction of a pool and spa on level 4 of the approved shop top housing development. The pool is proposed to be located to the rear of the development, facing Henrietta Lane, within the private open space of the top floor unit. Given the minor scale of the proposed works and being located at the rear of the development with no additional visual impact from the public domain of North Steyne and the Beach Reserve the additional impact of the proposal is considered manageable from a heritage perspective.		
	Therefore, no objections are raised to this modification application on heritage grounds subject to two conditions.		
	<u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u>		
	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			
Planner Comment:			
The conditions recommended are as follows:			
<b>Finishes and colour scheme</b>			
Details of the finishes and colours are to be submitted to the Council's Heritage Advisor prior to the issue of the Construction Certificate.			
Reason: To ensure that the finishes and colour scheme are			

Internal Referral Body	Comments
	<p><i>appropriate for the heritage context.</i></p> <p><b>Increased setback</b>  <i>The setback to the pool from the south and west boundaries should be minimum 2m to minimise the visibility. Details demonstrating compliance are to be submitted to the Council's Heritage Advisor for approval prior to the issue of the Construction Certificate.</i></p> <p><i>Reason: To minimise the visibility and preserve the significance of the heritage item and the conservation area.</i></p> <p>The condition relating to the additional setback of the swimming pool has not been imposed as part of the final recommendation. The proposed swimming pool will not be visible from the public domain (see image below). The landscaping proposed and height of the approved boundary wall/fencing along Market Lane will ensure that the swimming pool will not be readily visible from Market Lane and The Corso. Further, introducing an additional setback restrict access across the terrace at fourth floor level.</p> <p>Upon further discussions with Council's Heritage advisor, it was agreed to remove the setback condition.</p>  <p><i>Image 1- View from Henrietta Lane (Secondary frontage).</i></p>
Strategic and Place Planning	<b>Supported, no conditions</b>

Internal Referral Body	Comments
(Urban Design)	<p>A BCA report which seeks to address safety issues for the swimming pool and surrounds has been submitted.</p> <p><b>Planner Comment:</b> The application is now supported based on information provided within the BCA report.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported, no conditions</b> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p> <p><i>Planner Comment: Recommended condition already imposed under the original consent.</i></p>

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

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

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

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

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

##### SEPP 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 modification application is for a swimming pool to the approved level 4 terrace. The proposal does not increase the building footprint nor does it increase the density of the building. As such, the proposal is not considered to be a substantial redevelopment or refurbishment of the existing building. The proposal does not involve the erection of a new building and it is not a conversion of an existing building. Therefore the proposal does not meet any of the provisions under Part 4(1A) of the SEPP, and this policy does not apply.

### **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 (Biodiversity and Conservation) 2021**

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this Chapter apply to this development.

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of this Chapter. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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

#### Chapter 2 – Coastal Management

The site is 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 modifications are generally relatively minor compared to the previous approval, and will not significantly alter any impacts to the above matters for consideration.

- 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:

No significant impacts will be caused by the proposed modifications.

### **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:

The proposal will remain consistent with the aims and considerations for the coastal environment of Manly along North Steyne.

**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:

No significant impacts will be caused by the proposed modifications.

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

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

Comment:

The proposed modifications are generally relatively minor, and will not cause any increased risk of coastal hazards.

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 and

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 and 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	Approved	Proposed	% Variation	Complies
Height of Buildings:	12m	Natural ground level - 15m Excavated Ground level - 17.5m	Natural ground level - 13.5m Excavated Ground level - 15.8m	31.66%	No

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
5.8 Conversion of fire alarms	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
Schedule 5 Environmental heritage	Yes

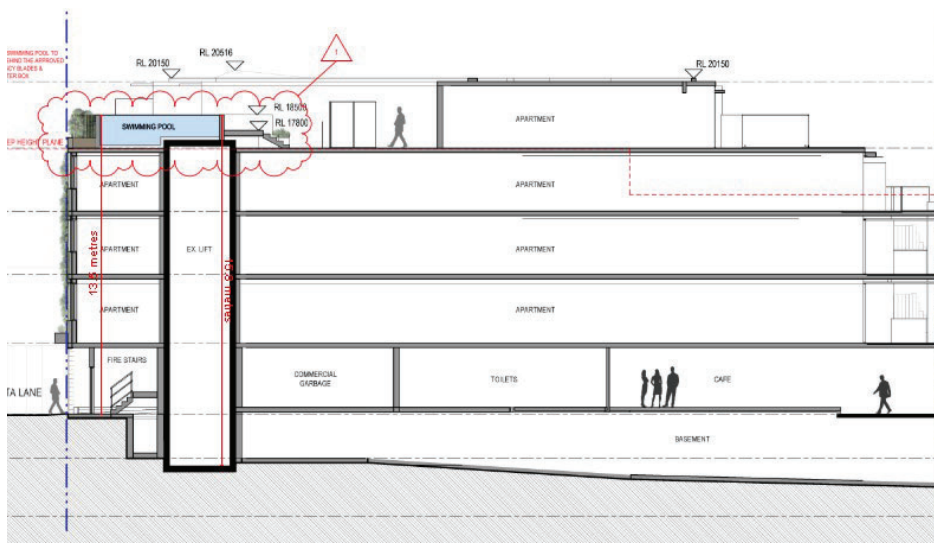
### Detailed Assessment

#### 4.3 Height of buildings

##### Description of non-compliance:

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Development standard:	Height of buildings
Requirement:	12m
Proposed:	Natural ground level - 13.5m Excavated Ground level - 15.8m
Percentage variation to requirement:	31.66%



Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.56 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.56 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.56 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.56 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the B2 Local Centre zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

**Compliance with the development standard is unreasonable or unnecessary in the**

**circumstances of the case,**Comment:

The objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard (As detailed below). Demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

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

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

4.3 Height of buildings

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

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

Comment:

The height of building non-compliance under this application is in reference to the proposed swimming pool to the top of the approved building. The approved height of the approved shop top housing development is not altered.

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

Comment:

The works will allow for an appropriate relationship and spatial separation with surrounding development. The visual bulk of the swimming pool as viewed from public open space (Manly Beach) is not adverse nor unreasonable.

*c) to minimise disruption to the following—*

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

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

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

Comment:

The proposed development will not result in unreasonable view loss to and from private and public open spaces.

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

Comment:

The solar impacts of this aspect of the development are minor and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

*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 located in recreation or protection zone.

Zone objectives

The underlying objectives of the B2 Local Centre zone

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposed development retains the use of the site as shop top housing, so includes retail premises at ground level. This supports the needs of the people who live in, work in, and visit the local area.

- *To encourage employment opportunities in accessible locations.*

Comment:

As above, the proposed development retains retail premises at ground level, which will provide employment opportunities. The subject site is accessible in that it is located within short walking distance of regular bus, ferry services and courtesy bus services.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment:

The subject site is located within short walking distance of bus and ferry services, as well as walking and cycling paths.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

Not applicable. The subject site does not adjoin any other residential zone.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

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

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

Comment:

The subject application is made under Section 4.56 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

**Manly Development Control Plan**

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
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
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
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.5 Road Widening and Realignment	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

#### Detailed Assessment

#### **4.1.9 Swimming Pools, Spas and Water Features**

##### Description of Non-compliance

This clause applies to development proposed within LEP Zones R1, R2, R3, C3 and C4 and as such does not technically apply to this development. However, given there is no swimming pool controls in the B2 Local Centre zone and the proximity of the site to residential development an assessment of the suitability of the swimming pool against this objectives of this clause is relevant.

Clause 4.1.9.1 Height above ground stipulates that swimming pools should not be elevated more than 1m above natural ground level

Consideration of any exception to exceed the height above ground must demonstrate that the swimming pool/ spa pool and their curtilage and/or concourse more than 1m above natural ground level:

- i) would not detract from the amenity or character of the neighbourhood; and*
- ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.*

The proposed swimming pool is approximately 15.8m above excavated ground level or 13.5m about natural ground level.

##### Merit Consideration

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

- **Objective 1) 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 proposed swimming pool and spa is within the footprint of the existing building and will not be readily visible from surrounding properties due to the approved boundary wall that surrounds the terrace. As such the proposal, is not anticipated to result in any adverse amenity impacts to adjoining neighbours in regards to solar access, view sharing, or privacy. To ensure suitable acoustic privacy a condition has been included with this consent limiting the noise of sound producing plant to no more than 5dB(A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

- **Objective 2) 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 on the fourth floor, behind the approved penthouse (unit 401).



The proposal will not be visible from the street and will maintain the established character of the locality.

- **Objective 3) To integrate landscaping; and**

Comment:

The proposed pool is located on the fourth floor roof terrace and will be screened from view by the existing parapet wall when viewed from the North Steyne and Market Lane. Landscaping proposed within the planter boxes will offset the visual bulk of elements of the swimming pool proposed above the approved finished floor level (FFL RI 17.600).

- **Objective 4) To become an emergency water resource in bush fire prone areas.**

Comment:

The site is not located within a bushfire prone area, therefore this objective is not deemed relevant.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / 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**

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 modification of DA2021/2257 has been referred to the Northern Beaches Local Planning Panel (NBLPP) / Development Determination Panel (DDP) due to the variation to the Height of Building development standard.

The concerns raised in the objections have been addressed and resolved by way of condition, the conditions will ensure reasonable levels of amenity will be retained to neighbouring residential properties.

The critical assessment issues include noise and BCA compliance.

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 Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2022/0630 for Modification of Development Consent DA2021/2257, approved by the Land and Environment Court for alterations and additions to an existing building to comprise shop top housing and strata-subdivision. on land at Lot 100 DP 1069144,75 The Corso, MANLY, Lot 101 DP 1069144,75 The Corso, MANLY, Lot 102 DP 1069144,75 The Corso, MANLY, Lot 1 DP 1034722,42 North Steyne, MANLY, 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
DA-104/ Issue G	17 January 2023	Squillace
DA-201/ Issue E	17 January 2023	Squillace
DA-202/ Issue F	17 January 2023	Squillace
DA-401/ Issue E	17 January 2023	Squillace
DA-403/ Issue B	17 January 2023	Squillace
DA-1003/ Issue A	20 December 2022	Squillace

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Acoustic Report	31 October 2022	Renzo Tonin and Associates
BCA Assessment Report	20 January 2023	AE&D

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

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

f) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
1 of 1 / Issue C	17 October 2022	Paul Scrivener

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

**B. Add Condition 98A - Swimming Pool/Spa Motor Noise - to read as follows:**

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.

**C. Add Condition 36A - Swimming Pool water - to read as follows:**

The backwash of Swimming Pool water must be discharged to Sydney Waters' sewer in accordance with Australian/New Zealand Standard AS/NZS 3500. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate. The drawings must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with Australian/New Zealand Standard AS/NZS 3500.

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

**D. Add Condition 36B - Acoustic Report Implementation - to read as follows:**

Prior to issue of a construction certificate the recommendations contained within the Acoustic Advise by Renzo Tonnin and Associates (31/10/22) shall be implemented in regards to design and equipment/plant selection.

Reason: To meet acoustic requirements

**E. Add Condition 86A - Acoustic Certificaton - to read as follows:**

Prior to issue of an Occupation Certificate an acoustic review by a suitably qualified person is to be carried to ensure the recommendations contained within the Acoustic Advise by Renzo Tonnin and Associates (31/10/22) have been satisfied in regard to noise and vibration, including the spa use.

Reason: To ensure acoustic compliance with design, construction and installation of the swimming pool spa and plant and equipment.

**F. Add Condition 36B - Finishes and colour scheme - to read as follows:**

Details of the finishes and colours are to be submitted to the Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason: To ensure that the finishes and colour scheme are appropriate for the heritage context.

On the 15th January 2023, the Council received a request from the applicant for a Development Consent Order (DCO) for the proposed development. The Council has considered the request and has resolved to grant the DCO, subject to the following conditions:

The applicant must ensure that the development is in accordance with the provisions of the Development Consent Order. The applicant must ensure that the development is in accordance with the provisions of the Development Consent Order. The applicant must ensure that the development is in accordance with the provisions of the Development Consent Order.



STATUS

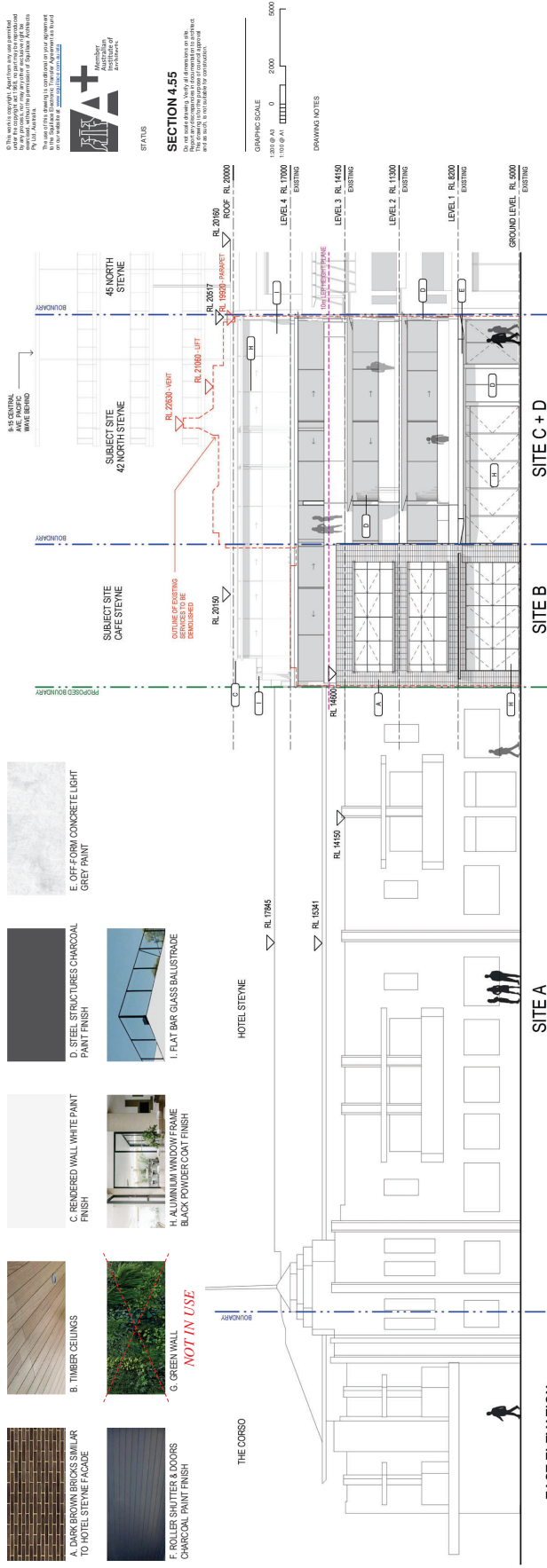
#### SECTION 4.55

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DRAWING NOTES



1 EAST ELEVATION  
1:100 @ A1

DATE  
PURPOSE OF ISSUE

CLIENT  
IRIS

## squillace

ARCHITECTURE /  
INTERIORS

WWW.SQUILLACE.COM.AU

SYDNEY

100 Ashby Street, Sydney NSW 2010

PH 02 9550 1234

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MANLY APARTMENTS

45 NORTH STEYNE MANLY

LOT 105/108 RDP 1009144

DATE 17/03/2023

SCALE 1:100 @ A1

DRAWN BY NO

DATE 17/03/2023

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DRAWN BY NO



**ITEM 5.2**

**MOD2022/0565 - 8 DELECTA AVENUE, CLAREVILLE -  
MODIFICATION OF DEVELOPMENT CONSENT DA2021/1032  
GRANTED FOR ALTERATIONS AND ADDITIONS TO A  
DWELLING HOUSE.**

**AUTHORISING MANAGER** Steve Findlay  
**TRIM FILE REF** 2023/112880  
**ATTACHMENTS** 1 [↓ Assessment Report](#)  
2 [↓ Site Plan & Elevations](#)

**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as it is a modification of a determination or decision made by a local planning panel.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Modification Application No. Mod2022/0565 for Modification of Development Consent DA2021/1032 granted for Alterations and additions to a dwelling house on land at Lot 20 DP 13291,8 Delecta Avenue, CLAREVILLE, subject to the conditions set out in the Assessment Report.



## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0565
<b>Responsible Officer:</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 20 DP 13291, 8 Delecta Avenue CLAREVILLE NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent DA2021/1032 granted for Alterations and additions to a dwelling house
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Ewa Investments Pty Limited
<b>Applicant:</b>	Thomas Martin
<b>Application Lodged:</b>	17/10/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	24/10/2022 to 07/11/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This application proposes to modify Development Consent No. DA2021/1032 granted for "demolition works with alterations and additions to the existing dwelling including a new module to the front of the site."

The application is referred to the Northern Beaches Local Planning Panel as the proposal is for a Section 4.55(2) modification application that proposes to modify a Panel imposed condition (Condition 19).

The application proposes an alternative response to the reasons why Condition 19 was imposed, involving additional floor space in the form of a powder room and laundry, along with a total increase of landscaped area through the removal of hard surface area at the rear of the site.

Specifically, it is noted that the reason for imposing the condition was as follows:

*"Reason: To increase Landscaped area, screen the length and bulk of the dwelling from adjoining property and remove built form from near Tree 5."*

It is considered that the alternative proposal achieves the intention of the previously imposed condition.

The 3 submissions received in response to the public exhibition of the application raised issues with regard to landscaped area, bulk and scale, and impact of the additional built form on neighbouring amenity.

Conditions have been imposed that address some assessment issues, including; to ensure the landscaped area at the rear remains soft landscaping, and to ensure that the addition of further elements such as air conditioners and clothesline are compliant with the requirements of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Accordingly, the application is referred to the Panel with a recommendation for approval subject to modified conditions.

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

The modified proposal involves the following

- Replacement of hard surface area at the rear of the dwelling with soft landscaping
- A new powder room and laundry to the southern side of the connecting hallway
- Reduction in the height of the planter by 700mm
- Additional planting to the south-western side of the hallway

#### **ASSESSMENT INTRODUCTION**

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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 20 DP 13291 , 8 Delecta Avenue CLAREVILLE NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of an allotment located on the northern side of Delecta Avenue.</p> <p>The site is irregular in shape with a frontage of 15.24m along Delecta Avenue and a depth of 43.28m-50.04m. The site has a surveyed area of 632.3m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a dwelling house on the site.</p> <p>The site is currently being constructed.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential development of varying age, scale and design.</p> <p><b>Site Inspection</b></p> <p>The site was inspected on 6 February 2023.</p>

Map:



## SITE HISTORY

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

A search of Council's records has revealed the following relevant history (along with the DA that is the subject of this modification).:

- **CDC2021/0424** - for internal and external alterations to the rear existing building. It is noted that this CDC makes no change to the existing footprint of the building.

#### 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 DA2021/1032, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>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 DA2021/1032 for the following reasons:</p> <p>The proposal maintains the use of a dwelling house, provides minor ground level additions, and provides a slight increase to landscaped area on site. As such, the proposed development is substantially the same as the originally</p>

Section 4.55 (2) - Other Modifications	Comments
	granted consent.
(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 DA2021/1032 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  (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 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.	No submissions were received in relation to this application.

#### 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	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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.

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

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/10/2022 to 07/11/2022 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 3 submission/s from:

Name:	Address:
Mr Gregory Ian Coops Mr Sheonagh Jane Coops	1 Delecta Avenue CLAREVILLE NSW 2107
Mr Richard Scott Barker	10 Delecta Avenue CLAREVILLE NSW 2107
Mr Bruce Peter Mackay	PO Box 289 AVALON BEACH NSW 2107



Name:	Address:
Mrs Judith Ada Mackay	

The above issues are addressed as follows:

- **Location of laundry and powder room**

The submissions suggest that laundry and powder room could easily located elsewhere.

Impact of bulk and on privacy. Impact on neighbouring entry area

Comment:

The laundry and powder room are proposed for a location that is compliant with the planning controls for both building envelope and side setback. The extensions are also single storey, well separated from neighbouring living areas (being at least 4m), and provide relatively small lengths of wall.

For the reasons above, the proposed location of the laundry and powder room is reasonable with regard to impacts. In so, the relocation of the proposed rooms to another area of the site is not relevant.

- **Landscaped area**

The submissions raised concerns with regard to lack of landscaped area and building coverage.

Concern is raised that removal of paving at the rear will not be permanent.

Comment:

The proposal involves a situation in which the total landscaped area on site is increased. This is a positive outcome for the site.

A condition is imposed to ensure that the landscaped area at the rear remains permanent.

- **Concern with any Air conditioning units and Clothesline**

The submissions raised concerns that units and a clothesline will have unreasonable amenity impact. A request is made for air-conditioners to be enclosed in sound proof box.

Comment:

Air conditioning units and a clothesline are not proposed under this application. As such, any air-conditioners or clothesline installed on site must be exempt from approval under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

A condition is imposed to ensure this.

- **Request for privacy screen to balcony of existing building**



Comment:

The applicant has been notified of this request. However, the proposed development under this modification does not relate to this balcony. As such, there is no recommended requirement for screening under this consent.

- **Request for panel to visit property**

Comment:

This request is noted and has been forwarded to the panel coordinator for consideration.

- **Concerns with originally granted consent and panel decision**

Comment:

Concerns with the originally granted consent by the panel are noted. However, the determination made in the Northern Beaches Local Planning Panel Minutes on Wednesday 15 December 2021 cannot be reconsidered under this modification application. The matters relevant for consideration are the proposed modifications to the consent and the resultant development of the modified consent.

- **Concern with change to previous panel decision including panel condition to remove floor space**

Comment:

The previous panel decision involved a determination that provided the insertion of the following condition:

***"19. Deletion of Powder room, boat store and laundry***

*The powder room, water craft storage, and laundry (off the hallway) and the storage (off the garage) are to be deleted from the plans and replaced with landscaped area with planting to screen the hallway.*

*These areas may be incorporated in to the remaining floor space of the proposed dwelling.*

*Details are to be provided prior to the issue of a Construction Certificate.*

*Reason: To increase Landscaped area, screen the length and bulk of the dwelling from adjoining property and remove built form from near Tree 5."*

This proposal seeks to reinstate some of the floor space excluded above. It is considered that the proposal to reinstate some of the originally proposed floor space, along with providing additional total landscaped area will result in an outcome that is consistent with the intention of the originally imposed panel condition. In particular, the total amount of Landscaped area will be increased, the length and bulk the rooms is sufficient through minimisation of wall length (reduced from the originally proposed), and Council's Landscape officer is satisfied built form is sufficiently separated from Tree 5 to ensure its retention.

- **Impact on tree**

Comment:

Council's Landscape officer is satisfied that the proposal will not have any unreasonable impact on the tree adjacent to the proposed works, subject to conditions.

- **Numerous concerns with regard to complying with Notice of Determination**

Comment:

These matters have been forwarded to Council's Building Compliance team for investigation.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent DA2021/1032, as as described includes: removal of hard surface area on the ground floor at the rear of the dwelling and replacement with soft landscaping; proposed new powder room &amp; laundry on the southern side of the hallway; reduction to the height of the approved roof top planter by 700mm to a depth of 300mm; and additional planting on the south-western side of the hallway to screen the building as seen from the neighbouring property.</p> <p>The Landscape Plan proposals under the modification proposal is noted and no concerns are raised. The landscape outcome remains consistent with the landscape outcome of the development consent and no concerns are raised. Existing tree protection measures under the development consent remain.</p> <p>Landscape Referral conditions 8, 28, and 36 shall be amended to reflect the proposed modifications. Landscape Referral conditions 14, 20, 23, 24 and 29 shall remain unaltered.</p>
NECC (Bushland and Biodiversity)	<p>The comments to the proposed modifications in this proposal have been assessed against the following provisions:</p> <ul style="list-style-type: none"> <li>• Pittwater LEP cl. 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP cl. 4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> <li>• SEPP (Resilience and Hazards) Development on land within the coastal environment area</li> </ul> <p>The proposed modifications are unlikely to result in additional impacts to flora and fauna compared to the existing LEC-approved consent. The submitted master plans indicate an increase in the number of plants. In addition, the proposed amendments will reduce the likelihood of impacts to the Tree Protection Zone of Tree 5 (<i>Melaleuca quinquenervia</i>).</p>
NECC (Coast and Catchments)	<p>Supported without conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021 (sections 2.10, 2.11 &amp; 2.12); and</li> </ul>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>• Relevant LEP and DCP clauses.</li> </ul> <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p>
NECC (Development Engineering)	<p><b>05/12/2022:</b></p> <p>The application is for modification to development consent DA2021/1032, as as described includes: removal of hard surface area on the ground floor at the rear of the dwelling and replacement with soft landscaping; proposed new powder room &amp; laundry on the southern side of the hallway; reduction to the height of the approved roof top planter by 700mm to a depth of 300mm; and additional planting on the south-western side of the hallway to screen the building as seen from the neighbouring property. And deletion of Condition 19.</p> <p>No objections are raised to the proposed modifications. No modifications to Development Engineering conditions required. Existing Development Engineering conditions for DA2021/1032 are considered to still be relevant and adequate.</p>
NECC (Riparian Lands and Creeks)	<p>Supported.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Coastal Management Act 2016;</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021;</li> </ul> <ul style="list-style-type: none"> <li>• Relevant LEP and DCP clauses; and</li> <li>• Northern Beaches Water Management for Development Policy</li> </ul> <p>The proposal abuts Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the estuary, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p>On assessment the application on assessment meets the requirements of the relevant Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed modification involves a new powder room and laundry on the southern side of the hallway.</p> <p>The proposed works generally comply with the flood controls in the LEP and DCP and are outside the Flood Planning Area.</p>
Parks, reserves, beaches, foreshore	<p>No Parks Reserves and Foreshores Referral concerns are raised against the proposed modification to the development consent DA2021/1032.</p>

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

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

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

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

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

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

A BASIX certificate has been submitted with the application (see Certificate No. A414415).

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

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

#### **Chapter 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 1 Coastal Wetlands and littoral rainforest area**

##### **2.7 Development on certain land within coastal wetlands and littoral rainforests area**

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
  - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
  - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
  - c) the carrying out of any of the following:
    - i) earthworks (including the depositing of material on land),
    - ii) constructing a levee,
    - iii) draining the land,
    - iv) environmental protection works,
  - d) any other development

##### **2.8 Development on land in proximity to coastal wetlands or littoral rainforest**

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

- a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
- b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The alterations involve extensions toward the middle of the site, away from the waterfront. The proposal also involves removal of paving and replacement with landscaped area at the waterfront. This would not have an unreasonable impact on coastal wetlands or rainforest.

**Division 2 Coastal Vulnerability Area**

**2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
  - i) is not likely to alter coastal processes to the detriment of the natural environment or
  - ii) other land, and
  - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The proposal will not have a detrimental impact on the above and is not likely to alter coastal processes. This is a result of the reasonable bulk proposed and the physical separation of the site from the coastal area.

**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 proposal will not have an adverse impact on the above as the proposed works do not involve excavation, substantial addition of bulk, or any other change to the natural environment which could cause an unreasonable impact on 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:

The proposal will not have an adverse impact on the above as the proposed works do not involve excavation, substantial addition of bulk, or any other change to the natural environment which could cause an unreasonable impact on the coastal environment area.

**Division 4 Coastal use area**

**2.11 Development on land within the coastal use area**

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

Comment:

The proposal will not have an adverse impact on the above as the proposed works do not involve excavation, substantial addition of bulk, or any other change to the natural environment which could cause an unreasonable impact on the coastal environment area.

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

#### **Chapter 4 – Remediation of Land**

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

#### **Pittwater Local Environmental Plan 2014**

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

#### **Principal Development Standards**

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.5m	7.5m (Unaltered)	N/A	Yes

#### **Compliance Assessment**

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

#### **Pittwater 21 Development Control Plan**

#### **Built Form Controls**

Built Form Control	Requirement	Approved	Proposed	Complies



Front building line	6.5m	Garage & Terrace: 8.4m to 12.9m	unaltered	Yes
Rear building line	6.5m	14m	14m	Yes
Side building line	2.5m (N)	Addition (Ground): 2.5m to 8.8m Addition (Upper): 2.5m	unaltered	Yes
	1m (S)	Addition: 1.8m to 3.7m	Addition: 1.8m to 3.7m Elements subject of this modification: 2.2m -2.8m	Yes
Building envelope	3.5m (N)	Within envelope	Within	Yes
	3.5m (S)	Within envelope	Within	Yes
Landscaped area	60% (379.4sqm)	With condition imposed to delete floor space: 58% (366.9sqm)	59.8% 378sqm	<b>No</b> (however increase on approved) - See comments

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.15 Fences - General	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.15 Waterfront development	Yes	Yes

#### Detailed Assessment

#### **D1.14 Landscaped Area - Environmentally Sensitive Land**

##### Description of Non-compliance

Clause D.1.14 requires that development provides 60% (i.e. 379.4m<sup>2</sup>) of the site as landscaped area. The original consent (with condition to remove floor space) provided a landscaped area of 58% (366.9sqm).

This modification proposes an increase to the approved landscaped area. This is achieved by providing a greater quantum of landscaped area at the rear of the dwelling than the proposed additional floor area, resulting in a nett increase of 11.1sqm. This increases the landscaped area for the development to 378sqm (59.8%).

It is noted that the proposal involves a roof top garden which is not included in the numerical calculation of landscaped area.

Along with the increase to total landscaped area, the merit assessment made under the original application remains relevant, and follows:

#### Merit Consideration

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

- ***To achieve the desired future character of the Locality.***

#### Comment:

The proposal involves demolition of an existing garage at the front of the site, and the addition of an extension including a garage to the front of the existing dwelling. This extension to the front of the site involves setbacks in excess of the numerical control for side building line. This provides an opportunity for larger landscaped strips to the sides of the site, including adjacent to the proposed extensions.

Along with the landscaped area in the compliant front setback, this area provides opportunity for substantial planting and natural features to surround the dwelling. As such, the two storey extensions are able to be sufficiently integrated with natural features to maintain an appropriate landscaped setting and built form to achieve the desired future character.

As such, the proposal will meet the desired character of the locality.

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

#### Comment:

The proposed development is sufficiently articulated and the two storey form is well setback from the street which, together with the aforementioned landscape treatments, reduces the bulk and scale of the proposal.

The proposal also involves a courtyard area toward the middle of the site, and stepping-in of the building to correspond with the narrowing of the allotment along the western boundary. These features provide articulation and modulation of the built form so as to minimise the presentation of built form on the site.

This provides a situation in which the bulk and scale of the built form is minimised.

- ***A reasonable level of amenity and solar access is provided and maintained***

#### Comment:

The proposed extensions are sufficiently separated from neighbouring living spaces and living areas.

Furthermore, the compliant front and side setback ensures that a sufficient open corridor is provided for sunlight access. The proposal also complies with all requirements under the clause for Solar Access under the DCP.

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

Comment:

The proposal maintains vegetation in the surrounds of the dwelling to visually reduce the presentation of the built form. In particular, areas of vegetation are maintained along the side boundaries and toward the front of the site.

- ***Conservation of natural vegetation and biodiversity.***

Comment:

The landscaping which surrounds the site provides sufficient opportunity for the provision of natural vegetation. Conditions are imposed to ensure protection of trees, and for completion of landscaping in accordance with the submitted Landscape Plan.

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

Comment:

The proposed planting and permeable surfaces on the site are suitable for the site and will sufficiently prevent soil erosion and minimise stormwater runoff.

Council's Development Engineer has also reviewed the application and provided conditions to ensure an appropriate outcome for stormwater runoff.

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

Comment:

Council's Landscape Officer has confirmed that the proposed development retains suitable numbers of native trees onsite to ensure the densely vegetated character of the area is retained.

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

Comment:

The proposed alterations and additions are surrounded by soft surface to maximise the opportunity for water infiltration and to minimise stormwater runoff. Further, Council's Engineer has imposed conditions to minimise stormwater impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCA 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

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

### **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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

### **Conclusion**

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 and 4.55 of the EP&A Act, 1979, the provisions of relevant EPIs, the relevant codes and policies of Council, the relevant provisions of the Pittwater 21 DCP.

The proposal involves some minor additions to the floor area of the approved dwelling. The proposal does not give rise to any unreasonable environmental impacts, subject to conditions.

The public exhibition of the application resulted in 3 submissions which are addressed in this report and these submissions do not warrant the refusal of the application.

It is recommended that the Northern Beaches Local Planning Panel approve the application.  
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 Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2022/0565 for Modification of Development Consent DA2021/1032 granted for Alterations and additions to a dwelling house on land at Lot 20 DP 13291,8 Delecta Avenue, CLAREVILLE, 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
DA01 -Site Plan - Rev 01/ S.455	19.08.22	rama
DA100 - Ground Floor General Arrangement Floor Plan Rev 01/ S.455	19.08.22	rama
D101 - First Floor General Arrangement Floor Plan Rev 01/ S.455	19.08.22	rama
DA-300 - Elevations Sheet 01	19.08.22	rama
DA-301 - Elevations Sheet 02	19.08.22	rama
DA-400 - Section Sheet 01	19.08.22	rama

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
DA500 - Landscape Plan	19.08.22	rama

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

### B. Amend Condition 8 - On Slab Landscape Works, to read as follows:

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

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



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

- i) 300mm over the hallway green roof planter to contain groundcovers and accents.

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

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

**C. Amend Condition 28 - Landscape Completion, to read as follows:**

Landscaping is to be implemented in accordance with the approved Landscape Plan DA-500, inclusive of the following:

- i) all tree planting shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees.
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn.
- iii) mass planting shall be installed at minimum 1 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 and accents 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.

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.

**D. Amend Condition 36 - Landscape Maintenance, to read as follows:**

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.

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

**E. Add Condition 38 - Air conditioning units and any clothesline, to read as follows:**

Any air conditioner or clothesline is to be compliant with the requirements of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* and other relevant legislation.

Reason: To ensure any air-conditioner and clothesline meets the requirements of exempt development and other relevant legislation.

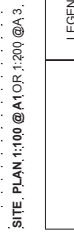
**F. Add Condition 39 - Landscaped area at rear, to read as follows:**

The landscaped area at the rear of the site is to remain as soft landscaping for the life of the development.

This is with the exception of spaced single pavers or steps to allow a transition between internal areas and the landscaped area.

Reason: To ensure compliance with the consent.

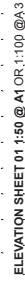
**G. Delete Condition 19 - Deletion of Powder room, boat store and laundry.**



NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION. FOR DA APPROVAL ONLY.  
NOTE: DO NOT SCALE OFF THIS DRAWING  
NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C.  
NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE RELEVANT AUSTRALIAN STANDARDS  
NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE BASIC REQUIREMENTS

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	<div>LEGEND:</div> <div><div><div><div></div><div>DENOTES EXISTING SPOT LEVEL</div></div><div><div>&gt;0.3</div><div>DENOTES PROPOSED WALLS TO BE DEMOLISHED</div></div><div><div><div>RL 7.10</div><div>DENOTES OUTLINE OF EXISTING LANDSCAPING</div></div><div><div></div><div>DENOTES AREA OF PROPOSED ADDITIONS TO APPROVAL</div></div><div><div></div><div>DENOTES PROPOSED ADDITIONS TO APPROVAL</div></div><div><div></div><div>DENOTES PROPOSED ALTERATIONS TO APPROVAL</div></div></div><div><div>NOTE: THESE DRAWINGS ARE NOT FOR CONSTRUCTION. FOR CLARIFICATION ONLY.</div><div>NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE B.C. BUILDING ACT AND CURRENT AUSTRALIAN STANDARDS.</div><div>NOTE: ALL WORKS TO BE IN ACCORDANCE WITH THE EMBR REQUIREMENTS.</div><div>ALL ALTERATIONS TO APPROVAL</div></div></div></div>	<div>KEY:</div> <div><div>DENOTES PROPOSED WALLS TO BE DEMOLISHED</div><div>DENOTES OUTLINE OF EXISTING LANDSCAPING</div><div>DENOTES AREA OF PROPOSED ADDITIONS TO APPROVAL</div><div>DENOTES PROPOSED ADDITIONS TO APPROVAL</div><div>DENOTES PROPOSED ALTERATIONS TO APPROVAL</div></div>	<div>PROJECT: PROPOSED ALTERNATIVE ADDITIONS TO EXISTING DWELLING</div> <div>CUSTOMER: DAVID MATTHEW &amp; KATE NORTON</div> <div>LOCATION: 8 CLAREVILLE 2107 NSW</div>	<div>PROJECT STAGE: SECTION 4.55 MODIFICATION</div> <div>DRAWING TITLE: ELEVATION SHEET 02</div> <div>SCALE: 1:100 @ A3</div>	<div>DATE OF ISSUE: 19.08.22</div> <div>DRAWING NO. DA-301</div> <div>REVISION: 01</div>	<div>r a m a</div> <div><div>design developed by r a m a</div><div>drawn by r a m a</div><div>checked by r a m a</div><div>approved by r a m a</div><div>all rights reserved</div><div>ALL RIGHTS RESERVED</div><div>© 2022 RAMA DESIGN PTY LTD</div><div>RAMA DESIGN PTY LTD ABN 61 616 616 616 110 QUEEN STREET, SUITE 101 SYDNEY NSW 2000 PH: 02 9231 1010 WWW.RAMADESIGN.COM.AU</div></div>
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**ITEM 5.3**

**DA2022/0696 - 2 PACIFIC PARADE, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF TWO SEMI-DETACHED DWELLINGS, SWIMMING POOLS AND SUBDIVISION OF 1 LOT INTO 2.**

**AUTHORISING MANAGER** Rod Piggott

**TRIM FILE REF** 2023/113042

**ATTACHMENTS**

- 1 [↓ Assessment Report](#)
- 2 [↓ Site Plan & Elevations](#)
- 3 [↓ Clause 4.6 - Floor Space Ratio](#)
- 4 [↓ Clause 4.6 - Minimum Lot Size](#)

**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 and 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/0696 for Demolition works and construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2 on land at Lot 40 DP 4603, 2 Pacific Parade, MANLY subject to the conditions set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0696
<b>Responsible Officer:</b>	Thomas Prosser
<b>Land to be developed (Address):</b>	Lot 40 DP 4603, 2 Pacific Parade MANLY NSW 2095
<b>Proposed Development:</b>	Demolition works and construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Melissa Sue Tudhope
<b>Applicant:</b>	Eugene Du Plessis
<b>Application Lodged:</b>	11/05/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	19/05/2022 to 02/06/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.1 Minimum subdivision lot size: 10.8% 4.4 Floor space ratio: 9.4%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 3,787,149.00

### EXECUTIVE SUMMARY

This development application seeks consent for demolition work and construction of two semi-detached dwellings with Torrens Title subdivision. The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal seeks a variation of more than 10% to the minimum subdivision standard of 250sqm. The proposed site area for the two lots is 222.8sqm which is a variation of 10.8% or 27.2sqm. There are a number of similar sized lots with semi-detached dwellings in the vicinity of the site. The variation to the minimum lot size is supported.

Amended plans were provided on 28 October 2022, and again on 13 February 2023. Overall, these plans involved reduction in total FSR, reduction in the basement area (to provide for greater deep soil area), greater setbacks and articulation at side boundaries, and an increase to the front setback.



The 4.6 request for the non-compliance with FSR standard arises from an 8.65sqm exceedance with the standard for each site, being 9.4%. The request is well founded and supported.

The 4.6 request for the non-compliance with Minimum lot size standard arises from a 27.2sqm deficit to the requirement for site area for each site, being 10.8%. The lots area and configuration are consistent with nearby and surrounding lots. The request is well founded and supported.

No objections were raised to the proposal from any internal or external referrals and one submission was received from the public. Assessment issues included the subdivision area proposed, Floor Space ratio, building bulk, setbacks, landscape considerations, streetscape and basement parking access.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks consent for demolition work and the construction of 2 x semi-detached dwellings, basement car parking and 2 x swimming pools with a Torrens Title subdivision of the land to create two new Lots. The proposal includes the following details:

### **Demolition Works**

- Demolition of the principal dwelling house on the land
- Demolition of associated structures with site preparation works.

### **Semi-Detached Dwellings**

Basement RL3.90 (Same for both proposed 2A and 2B)

- Four car basement garage with turntable, Internal stair access, storage and services space

Ground Floor RL6.70 (Same for both proposed 2A and 2B)

- Entry area, verandah, outdoor living terrace, kitchen / living / dining area, stair access, Laundry, bathroom (2), bedroom.

First Floor RL9.80 (Same for both proposed 2A and 2B)

- Bedrooms (3), bathrooms (2) and balcony.

### **Proposed Floor Areas**

2A Pacific Parade –142.3sqm

2B Pacific Parade – 142.3sqm

### **Swimming Pools** (Same for both proposed 2A and 2B)

Two in-ground swimming pools RL6.30

### **Ancillary works and landscaping**

New landscaping, site preparation, in-ground OSD tanks, drainage, excavation and fencing.

### **Torrens Title Subdivision**

Proposed Lot 1 - 222.8 sqm

Proposed Lot 2 - 222.8 sqm

## **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size

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

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 40 DP 4603 , 2 Pacific Parade MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Pacific Parade.</p> <p>The site is regular in shape with a frontage of 12.19 metres (m) and a depth of 36.57m. The site has a surveyed area of 445.6square metres (sqm). The land contains part 2 storey brick dwelling. The land is generally flat with a minor fall toward Pacific Parade. The surrounding area is a low lying part of Manly and subject to minor drainage issues in some places. The proposed ground floor level is above the 1% annual exceedance probability zone.</p> <p>The site contains lawn areas, garden beds and trees. The site is adjacent / near local heritage items in the street (sandstone kerb and street trees).</p> <p>The streetscape is characterised by its tree lined kerb-side and the historic architecture of many dwellings ranging from federation period to post war and some new houses. Many properties have been substantially renovated and open carports, in the front setback area, are a common feature of the street.</p>

Map:



## SITE HISTORY

**Pre-lodgement Meeting No.PLM2021/0188** for subdivision and construction of 2 x semi-detached dwellings was held with Council on 12 August 2021. The concluding advice summary included that:

*"The proposal is not supported by Council, specifically the variation to the minimum allotment size, is not supported. This is a result of the proposed development consisting of a number of non-compliances relating to:*

- *Floor Space Ratio development standard;*
- *Front setback;*
- *Side Setbacks on upper level and basement; and*
- *Driveway access ramp not complying with standards for grades.*

*The development will have an adverse visual impact when viewed from Pacific Parade and will be visually prominent when viewed from the adjoining properties at Collingwood Street. A re-design is required to reduce the visual bulk of the building – ensuring the development does not exceed the floor space ratio is critical on allotments that under the minimum allotment size."*

The subsequent DA was submitted to Council with minimal changes to the plans and a request for changes to the plans was made pursuant to the issues raised in the PLM notes. The applicant provided amended plans dated 26.9.2022 seeking to address the concerns raised at the PLM and preliminary DA assessment phase.

**Development Application No.2019/0471** for alterations and additions to a dwelling house was approved by Council on 20 August 2019. The consent was not progressed to a construction certificate.

The original dwelling house on the site is to be completely demolished and conditions are recommended to ensure the safe handling and appropriate management / disposal, as per Australian standards / WorkCover, for any asbestos / lead paint materials if present in the building structure during demolition works.

## 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	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested on 16.6.2022 in relation to streetscape, subdivision, landscaping, building bulk, floor space, basement access and overshadowing. A range of minor amendments were made to reduce non-compliance and building bulk, pursuant to the DCP. Subsequently, the applicant provided amended plans on 28.10.2022.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of</p>

Section 4.15 Matters for Consideration	Comments
	consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the <i>Manly Development Control Plan</i> section in this report. The streetscape is characterised by its tree lined kerb site and the historic architecture of many dwellings ranging from federation period to post war and some new houses. Many properties in Pacific Parade have carports and have been substantially renovated.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development and is situated in a precinct that (within the visual catchment of the surrounding streetscape) is dominated by 1 and 2 storey houses, including semi-detached dwellings.
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, subject to conditions.

## 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 19/05/2022 to 02/06/2022 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 1 submission/s from:

Name:	Address:
Withheld	MANLY NSW 2095

The above issues are addressed as follows:

- *Concern regarding survey levels.*

Comment:

This issue is addressed by conditions to ensure building height, slab and frame are checked to be at the correct levels during construction. In addition the proposal provides a 0.9m setback to the boundaries for excavated structures and therefore allows for general continuity of ground levels along the boundary areas for normal garden areas, pathway levels, landscaping and drainage. Any changes to dividing fences with regard standard fencing work is subject to the *NSW Dividing Fences Act*, administered through the local Court system.

This submission issue is considered to be resolved in that confirmation was received that a survey was conducted and no other specific issues such as privacy, overshadowing, views, setbacks or the like were raised. This issue is therefore addressed by conditions and in the general assessment of the proposal pursuant to the Manly LEP / DCP and does not warrant refusal of the application.

- *Incorrect reference to neighbouring addresses in some of the documentation submitted by applicant.*

Comment:

These errors are noted and understood. This does not warrant refusal of the application.

- *Swimming Pool/Spa Motor/ Air conditioner Noise*

Comment:

A condition has been imposed to require noise levels shall not exceed 5dBA above the background noise when measured from the nearest property boundary.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Landscape Officer	<p>The development application is for demolition works and the construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2, as described and illustrated in the reports and plans.</p> <p>Council's Landscape Referral section have considered the application against the Manly</p>



Internal Referral Body	Comments
	<p>Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings</li> </ul> <p>An Arboricultural Impact Assessment (AIA) and Landscape Plan is included in the application and will be assessed as part of the Landscape Referral. It is noted one tree (t 2) is proposed to be removed to facilitate the works, however this tree is exempt and does not require consent for removal as it is located within 2 metres of the existing dwelling. All other trees are to be retained, and the recommendations for tree protection in the AIA are supported, subject to the imposed conditions. A Project Arborist shall be engaged to supervise all works within the tree protection zone of trees to be retained, subject to the imposed conditions. To offset any canopy loss and to help satisfy the Manly DCP control: one replacement tree will be installed in the rear setback of dwelling 2, which is supported subject to the imposed conditions.</p> <p>Screen planting is shown on the Landscape Plan along the northern boundary, which is supported, and if the existing conifer screen planting is removed during the works it shall be replaced, subject to the imposed conditions. All on slab landscaping shall have appropriate soil depths to ensure sustained plant growth is achieved, as outlined in the conditions of consent.</p>
NECC (Development Engineering)	<p>The application proposed to subdivide the existing lot and erect two dwellings with a basement parking.</p> <p>Development Engineering assessed the proposed stormwater management plan. The proposed OSD systems are acceptable. However, the subsoil drainage from the proposed basement shall not be discharged into the street kerb. A condition has been placed to address the subsoil drainage.</p> <p>And the internal parking and driveway have been assessed and commented by Council's Traffic section.</p> <p>As such, Development Engineering has no objection to the application subject to the following conditions of consent.</p> <p>If the driveway and internal parking needs to be amended, please refer the application to Development Engineering for assess and comment.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed DA generally complies with the flood controls in the LEP and DCP. The site is outside the 1% and PMF extent.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	<p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as it is within proximity to two heritage listed items:</p>



Internal Referral Body	Comments		
	<b>Item I191 - Street trees - Pacific Parade</b>		
	<b>Item I2 - All stone kerbs</b>		
	Details of heritage items affected		
	Details of the item as contained within the Manly heritage inventory is as follows:		
	<b>Item I191 - Street trees</b>		
	<u>Statement of significance:</u> Listed for its aesthetic importance to the streetscape.		
	<u>Physical description:</u> Avenue planting of mixed tree species planted in carriageway. Species include Port Jackson Fig, Brush Box and Camphor Laurel.		
	<b>Item I2 - All stone kerbs</b>		
	<u>Statement of significance:</u> Stone kerbs are heritage listed.		
	<u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern and Fairlight.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No		
NSW State Heritage Register	No		
National Trust of Aust (NSW) Register	No		
RAIA Register of 20th Century Buildings of Significance	No		
Other	N/A		
Consideration of Application			
The proposal seeks consent for the demolition of the existing dwelling on the subject sit and a Torrens Title subdivision of 1 lot into two and the construction of two semi-detach three storey - including a basement parking via a single driveway access point- dwelling with two inground pools and associated landscaping. The site is in a highly distinctive area with predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation such as the heritage listed street trees that contributes the character of the local area.			
The heritage listed street tree located in the road reserve outside the subject property has been retained and the proposal does not involve any changes to the existing driveway			

Internal Referral Body	Comments
	<p>crossover, therefore the proposed works are considered to not impact upon the heritage items or their significance and the form and scale is considered to be consistent with the character of the existing streetscape.</p> <p>Therefore, no objections are raised on heritage grounds, subject to two conditions.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013.</u>  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</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor</p> <p>DATE: 19 May 2022</p>
Traffic Engineer	<p>The proposal provides sufficient numbers of offstreet parking to meet DCP requirements and there is no objection to the use of a turntable given the site constraints. The driveway is categorised as a domestic driveway for the purposes of assessment under AS2890.1 and the maximum gradient on the driveway is therefore permitted to be 1 in 4 as proposed by applicant (clause 2.6 of AS2890.1). The gradient of the driveway for the first 6m inside the property is however in excess of the maximum 1 in 20 gradient permitted by clauses 2.6.3.3(a) of AS2890.1). The 1 in 8 gradient as shown on the submitted plans is too steep. As the driveway is on an upgrade for traffic leaving the property the exception listed in clause 3.3(a.i) of AS2890.1 does not apply and the plans will require amendment prior to further consideration</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to Ausgrid who provided a response on 17.6.2022 stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards, powerline clearances and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

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

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

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

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

application hereunder.

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

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

A BASIX certificate has been submitted with the application (see Certificate No.1283040S\_02 and 1283042S\_02, dated 18 October 2022).

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

##### Dwelling 1

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	58

##### Dwelling 2

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	58

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 Infrastructure Authorities

The proposal was not required to be referred to *Transport for NSW* and no other service infrastructure authority issues are raised pursuant to the SEPP. *Sydney Water* asset requirements are addressed by

separate processes administered directly through *Sydney Water*.

### 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
<b>Height of Buildings:</b>	8.5 metres (m)	8.0m	N/A	Yes
<b>Floor Space Ratio:</b> (Semi-detached dwellings) Site area: 445.6 sqm	FSR: 0.6:1 267.3sqm (133.65sqm per lot)	FSR:0.6:1 2A - 142.3sqm 2B - 142.3sqm (0.638:1)	9.4% 9.4%	No (see comments) No (see comments)
<b>Subdivision:</b>	250sqm	222.8 sqm Lot 1 222.8 sqm Lot 2	10.8% 10.8%	No (see comments) No (see comments)

### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	No
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	No
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

### Detailed Assessment

#### 4.6 Exceptions to development standards

#### MINIMUM SUBDIVISION LOT SIZE

#### Description of non-compliance:

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Development standard:	Minimum Subdivision Lot Size
Requirement:	250sqm
Proposed:	222.8sqm
Percentage variation to requirement:	10.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size 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 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

assessment.

The applicants written request argues, in part:

The proposed lot is consistent in size and shape as the predominant form in the near vicinity. The proposal also provides additional housing to meet the needs of the locality.

It is agreed that the lot is consistent in size and shape as the predominant form of lots in the near vicinity. It is also agreed the proposal will provide additional housing.

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 Minimum subdivision lot size development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the MLEP 2013 are:

(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.*

Comment:

The proposed lot sizes and shapes are consistent with the predominant form of lots in the immediate vicinity along Pacific Parade. The lot size and shape also provides suitable dimensions to allow for semi detached dwellings with a usable area for a dwelling, and with



suitable landscaped area given the context of the area.

*(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns.*

Comment:

The proposed lots complement the existing subdivision pattern by providing lot width and size that is generally consistent with the predominant form in the vicinity.

*(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential.*

Comment:

The subject site does not have any exceptional environmental characteristics such as significant vegetation, topography, public views or natural features. As such, as is the case for surrounding lots, limitation on lot size due to environmental characteristics of the land is not required.

*(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

Comment:

The subject site is within close proximity to an area of Pittwater Road that contains suitable infrastructure, public transport and pedestrian access to local facilities and services.

## Zone objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment:

The proposal contributes two semi-detached dwellings to the community. This provides for housing needs.

It is considered that the development satisfies this objective.

- *To provide for a variety of housing types and densities.*

Comment:

The proposal for two semi-detached dwellings contributes to the variety of housing in the area.

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 proposal provides for a residential land use. This is suitable for the zone.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General 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, the concurrence of the Secretary for the variation to the Minimum subdivision lot size Development Standard is assumed by the Local Planning Panel.

**FLOOR SPACE RATIO**

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1
Proposed:	0.638:1 (each lot)
Percentage variation to requirement:	9.4% (each lot)

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 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 compatible with surrounding development with regard to bulk and scale. It is noted that dwelling adjoining and opposite have similar gross floor area.
- The proposal will be consistent with the character of the area and will not cause additional impact as a result of the exceedance to FSR.
- The proposal provides additional housing.

It is agreed that that the proposal will be compatible with surrounding development and will complement existing character.

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 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 proposal involves two well articulated semi-detached dwellings that are consistent with the predominant style of housing in the area. The proposal also responds well to the built form controls under the Manly DCP, and this assists in ensuring consistency with desired streetscape character.

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

Comment:

The building bulk and scale is consistent with the pattern of surrounding development and does not create any unreasonable obstruction to landscape and townscape features.

The proposal maintains elements of landscape area in the front and rear setback and does not obscure views of important local features (such as the coastline, St. Patricks Estate or Manly Wharf).

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

Comment:

The proposed semi detached dwelling complement the style of housing in the area. Further, the proposal provides front and rear setbacks that correspond well to surrounding development and allow for suitable open space and landscaping.

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

Comment:

The proposed FSR does not create unreasonable privacy or unreasonable view impacts. The

dwelling is well articulated, has living spaces that are well separated from adjoining living spaces, and is consistent with the numerical requirements for solar access under the Manly DCP.

*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 R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment:

The proposal contributes two semi-detached dwellings to the community. This provides for housing needs.

It is considered that the development satisfies this objective.

- *To provide for a variety of housing types and densities.*

Comment:

The proposal for two semi-detached dwellings contributes to the variety of housing in the area.

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 proposal provides for a residential land use. This is suitable for the zone.

It is considered that the development satisfies this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General 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, the concurrence of the Secretary for the variation to the Minimum subdivision lot size Development Standard is assumed by the Local

Planning Panel.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area:	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	<b>Density:</b> 1 dwelling per 250sqm (3 bed 3 bath)	R1 Residential Area Dwelling 1 - proposed Lot 1: 222sqm	8.4%	No (see comments)
		Dwelling 2 - proposed Lot 2: 222 sqm	8.4%	No (see comments)
	<b>Dwelling Size:</b> Minimum 90sqm (3 bed 3 bath)	Dwelling 1 - 142.3sqm	N/A	Yes
		Dwelling 2 - 142.3sqm	N/A	Yes
4.1.2.1 Wall Height	North Elevation: 6.5m (based on site gradient 1:20)	4.8m	N/A	Yes
	South Elevation: 6.5m (based on site gradient 1:20)	6.4m	N/A	Yes
	East Elevation: 6.8m (based on site gradient 1:20)	6.3m	N/A	Yes
	West Elevation: 6.8m (based site gradient 1:20)	6.3m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.0m	N/A	Yes
	Parapet Height: 0.6m	0.0m	N/A	Yes
	Pitch: maximum 35 degrees	25 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing	N/A	Yes



	(Pacific Parade)	setback 6.3m to 7.2m		
4.1.4.2 Side Setbacks and Secondary Street Frontages	East (upper storey): 2.1m West (upper storey):2.1m  Windows: 3.0m	<b>East</b> 0.9m to 1.5m Ground	N/A	Yes
		1.5m to 2.9m Upper storey	3%	No (see comments)
		1.5m to solid wall plane	50%	No (see comments)
		<b>West</b> 0.9m to 1.5m Ground	N/A	Yes
		1.5m to 2.9m upper storey	3%	No (see comments)
	Minimum frontage <50% for garage structures	1.5m to solid wall plane	50%	No (see comments)
				No (see comments)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (Total site area 222.8sqm per Lot) 122.5 sqm	Consistent with prevailing setback	N/A	Yes
		Basement parking (entry 3.0m)	N/A	Yes
	Open space above ground <40% of total open space  (Balcony and elevated veranda)	Lot 1 122sqm 55%	N/A	Yes
		Lot 2 122sqm 55%	N/A	Yes
		Lot 1 10.0sqm 15.4%	N/A	Yes
		Lot 2 10.0sqm 15.4%	N/A	Yes

4.1.5.2 Landscaped Area	Landscaped area 35% of open space	Lot 1 125.8sqm	N/A	Yes
		Lot 2 125.8sqm	N/A	Yes
	3 native trees	4 trees	N/A	Yes
4.1.5.3 Private Open Space	18 sqm per dwelling	53 sqm Dwelling 1	N/A	Yes
		53 sqm Dwelling 2	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	Basement access 3.0m driveway <50%	N/A	Yes
Schedule 3 Parking and Access	2 spaces per dwelling	Dwelling 1 2	N/A	Yes
		Dwelling 2 2	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)	No	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 Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.1.2 Residential Land Subdivision	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
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes

#### Detailed Assessment

##### **3.1.1 Streetscape (Residential areas)**

#### Merit consideration

Streetscape represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognize predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.

The DCP defines streetscape as "*spatial arrangement and appearance of built and natural elements (in the private and public domain) within a street, which create the character of that street. Such elements include the appearance of positively contributing building forms and styles, vistas, road, driveway and footpath surfaces, street trees, other vegetation, fences, walls, street furniture, utility services and traffic devices*"

#### Comment

- The proposal has a "Hamptons" styling which is stepped in along the side boundaries with a pitched roof and window fenestration with open style balcony elements. The appearance includes open style fencing with landscaping elements and narrow pedestrian and garage entry points. The streetscape is characterised by its tree lined kerb site and the historic architecture of

many dwellings ranging from federation period to post war and some new houses. The use of a basement garage allows landscaping either side of the driveway and conceals the cars or garage from being readily visible.

- The main features and detailing of the house with landscaping, and architectural details of the house break up the building bulk. Open style carports are a feature of the street, with some enclosed garages much less prevalent. The use of turntable inside the basement allows cars to enter and leave in a forward direction using the narrow driveway opening. The built form of the house with a hipped and gable roof, verandah entry, window fenestration and material cladding / details with and landscaping are suitable for the streetscape.



Image: Photomontage of dwelling in the streetscape.

- The colours and materials (external cladding) is suitable for the streetscape and the use of a hipped roof form is suitable with articulation used along the front and side setbacks.

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.

#### **4.1.1.1 Residential Density and Dwelling Size**

##### **Description of non-compliance**

The proposal would result in two dwellings on two new lots, each being 222.8sqm. As such, each dwelling will not comply with the numerical requirement to have 250sqm of site area per dwelling.

##### **Merit consideration:**

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

*Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.*

Comment:

The proposal would result in two lots with two semi-attached dwellings. The lot sizes and shapes are consistent with the existing subdivision pattern. Further and lack of amenity caused by this proposal, the new dwelling type and allotment sizes ensure an appropriate contribution to the residential environment.

*Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.*

Comment:

The proposal provided compliant open space in accordance with the Manly DCP as well as adequate setbacks to limit impact on existing vegetation, waterways, riparian land and the topography. Subject to conditions, Council's Development Engineer and Landscape officer provide no objection to development.

*Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.*

Comment:

The proposal is compliant with the control for minimum internal areas under Clause 4.1.1.1d). This ensures there would be an acceptable level of amenity.

*Objective 4) To maintain the character of the locality and streetscape.*

Comment:

The proposed subdivision pattern and setback to development is complementary with the streetscape. This includes a similar subdivision pattern and house type to the predominant typology in the area.

*Objective 5) To maximise the use of existing infrastructure.*

Comment:

The proposal will maintain the use of existing infrastructure where appropriate, subject to conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / 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.

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

##### **Description of non-compliance**

The proposal involves varying setbacks, being from 0.9m-2.9m at the eastern and western boundary, and 0m at middle boundary (for the semi-detached dwellings).

**Merit consideration:**

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

*Objective 1) To 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 involves a compliant front setback with landscaping and articulation of the built form at the front of the site. This sufficiently minimises presentation of bulk and scale so as to maintain and enhance the desirable qualities of the streetscape.

*Objective 2) To ensure and enhance local amenity by:*

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

Comment:

The proposal involves sufficient physical separation provided between proposed living spaces and neighbouring living spaces. As such, acoustic and visual privacy will be maintained to a reasonable extent. Furthermore, the new windows are also small in scale and are also well positioned to minimise potential for overlooking.

The proposed works provide a compliant height and a compliant front setback. This provides a situation in which sunlight access and air movement to neighbouring properties will be adequately maintained. The proposal also complies with the requirements for Sunlight Access under the Manly DCP.

The proposal would also have no unreasonable impact on views, traffic or streetscape character.

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

Comment:

The proposal provides a semi-detached dwelling that is well separated from neighbouring properties due to stepping and articulation. Further, the development style is consistent with the predominant form in the area. As such, flexibility in the siting of the building is warranted in this circumstance.

*Objective 4) To enhance and maintain natural features by:*

- accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- ensuring the nature of development does not unduly detract from the context of the site and particularly*

*in relation to the nature of any adjoining Open Space lands and National Parks; and  
-ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal provides landscaping to the front and rear of the dwellings and the proposal complies with the landscaped area control under the Manly DCP 2013. As a result, the proposal appropriately provides for natural features.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / 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 \$37,871 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,787,149.

#### **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 4.1 Minimum Subdivision Lot Size 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 the construction of two (2) semi-detached dwelling with subdivision has been referred to the *Development Determination Panel* (DDP) due to seeking consent for a lot size variation of 10.8% less than the minimum 250sqm subdivision standard. Under the circumstances the variation is reasonable and consistent with other semi-detached housing on their on lots in the vicinity (along Pacific Parade / Alexander Street).

One public submission was received which has been addressed by way of conditions. The DA referral responses provided raise no objection to approval subject to conditions to address development engineering, landscaping, and heritage considerations

The critical assessment issues have been considered in detail in terms of floor space ratio, privacy, stormwater / flooding, overshadowing, setbacks, streetscape, heritage, carparking and the proposed subdivision.

Overall, the development is a reasonable 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 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 Northern Beaches Council as the consent authority vary *Clause 4.1 Minimum Subdivision Lot Size* and *Clause 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/0696 for Demolition works and construction of two semi-detached dwellings, swimming pools and subdivision of 1 lot into 2 on land at Lot 40 DP 4603, 2 Pacific Parade, MANLY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.01 G Site Plan - Issue G	26.9.2022	Du Plessis Ar
DA.02 G Demolition Plan - Issue G	26.9.2022	Du Plessis Ar
DA.03 G Basement Sub-floor Parking Plan - Issue G	26.9.2022	Du Plessis Ar
DA.04 G Ground Floor Plan - Issue G	26.9.2022	Du Plessis Ar
DA.05 G First Floor Plan - Issue G	26.9.2022	Du Plessis Ar
DA.06 G Roof Plan - Issue G	26.9.2022	Du Plessis Ar
DA.07 G Section X-X Section Y-Y - Issue G	26.9.2022	Du Plessis Ar
DA.09 G North Elevation & West elevation - Issue G	26.9.2022	Du Plessis Ar
DA.08 G South Elevation & East Elevation - Issue G	26.9.2022	Du Plessis Ar
A.101 G NBC Area Calculation Plans - Issue G	26.9.2022	Du Plessis A

Engineering Plans		
Drawing No.	Dated	Prepared By
D2 Stormwater Management Basement Plan	4.3.2022	NY Civil Engineering
D3 Stormwater Management Ground Floor plan	4.3.2022	NY Civil Engineering
D4 Stormwater Management First Floor/Roof Plan	4.3.2022	NY Civil Engineering
D5 Stormwater Details	4.3.2022	NY Civil Engineering
D6 OSD Details	4.3.2022	NY Civil Engineering

D8 Sediment Control Plan	4.3.2022	NY Civil Engineering
D9 Sediment Control Details	4.3.2022	NY Civil Engineering

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate Unit 1	31.3.2022	Certified Energy 1
BASIX Certificate Unit 2	31.3.2022	Certified Energy 1
Geotechnical Report	25.2.2022	White Geotechnical 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:

Landscape Plans		
Drawing No.	Dated	Prepared By
L-01 Rev B Landscape Plan	2.3.2022	SPACE Landscape Designs
L-02 Rev A Details & Specifications	16.3.2022	SPACE Landscape Designs

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
DA Construction & Waste Management Plan	14.4.2022	DU Plessis Architects

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	17.6.2022

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

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

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the

Building Code of Australia (BCA).

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

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

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

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

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

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

Reason: Legislative requirement.

#### 4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in 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 \$37,871.49 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 \$3,787,149.00.

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](http://www.northernbeaches.nsw.gov.au)).

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE****7. On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over



slab, over which soil and planting is being provided.

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

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

- i) 300mm for lawn, native grasses, and groundcovers,
- ii) 600mm for shrubs.

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

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

#### 8. **Amendments to the approved plans**

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

- o The "services" room in the basement for both dwellings shall have a maximum finished floor to ceiling height of 2.1m to be maintained as a non-habitable space.
- o The pool pump / filter equipment for each proposed swimming pool shall be located within the "services" basement room for the associated dwelling.

Details demonstrating compliance are to be shown on the plan and section drawings to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure development minimised impacts on adjacent land and consistency with Manly Local Environmental Plan and associated development controls.

#### 9. **Building Classification**

The new buildings that are proposed to be constructed will result in a classification of a Class 2 building and are required to comply with Parts C, D, E & F of the Building Code of Australia.

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 fire safety and for building occupant safety.

#### 10. **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, and generally in accordance with the concept drainage plans prepared by NY Civil Engineering, job Number E220054, drawing number D1- D8, dated 4/3/2022.

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

- i. any subsoil drainage shall not be discharged to the street kerb

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying

Authority for approval prior to the issue of the Construction Certificate.

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

11. **Tanking of Basement Level**

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

12. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

13. **Protection of heritage listed street tree**

The heritage listed mature tree located in the road reserve in front of the property is to be protected at all times during the demolition and construction works.

Reason: To protect the heritage listed tree from damage, during the demolition and construction works.

14. **Protection of heritage listed stone kerb**

The existing sandstone kerb is to be protected from damage during the demolition and construction works.

Reason: Protection and preservation of cultural resources within the Manly municipal area.

15. **Compliance with Standards**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifier 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

16. **Project Arborist**

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

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

- i) tree protection measures under section 12 Recommendations, section 13 Arboricultural Work Method Statement and Tree Protection Requirements, and Appendix 1B Tree Protection Plan,
- ii) works under section 14 Hold Points,
- iii) additionally, the Project Arborist shall be in attendance and supervise any landscaping works within the TPZ of all existing trees to be retained.

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

All tree protection measures specified must:

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

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

Note:

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

Reason: Tree protection.

17. **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:

- o No.4 Pacific Parade, Manly
- o No.15 Alexander Street, Manly
- o No.17 Alexander Street, Manly
- o No.15 Collingwood Street, Manly

- No.17 Collingwood Street, Manly
- No.19 Collingwood Street, Manly
- Any other adjacent private or public assets that may be at risk of damage during site works.

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 arising 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.

18. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

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

19. **Protection of Existing Street Trees**

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

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

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

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

Reason: Street tree protection.

20. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

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

The Certifying Authority must ensure that:

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

Reason: Tree and vegetation protection.

21. **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.

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

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

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

23. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

24. **Survey Certificate**

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

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

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

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

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

25. **Required Screen Planting**

Should the existing conifer screen planting along the northern boundary be removed during works replacement screen planting shall be installed. Furthermore, if the existing conifer screen planting is removed during works the proposed Cupressocyparis 'Leighton Green' shall be replaced with a suitable alternative and installed in accordance with the following:

- i) create a continuous screen adjacent to the pool's along the northern boundary, from the eastern boundary junction to the western boundary junction,
- ii) be a suitable pot size so that plant height is at least 1.5 metres at installation,
- iii) selected planting shall comply with the requirement of Australian Standard AS 1926.1 for a Non Climbable Zone.

The selected planting is to comprise of species capable of attaining a height of 2.4 metres at maturity.

Plants are to be installed at intervals, appropriate to the selected species, so that individual plants knit together to form a continuous screen. Plants are to be installed in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Reason: To maintain environmental amenity.

26. **Landscape Completion**

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

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

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

Reason: Environmental amenity.

27. **Condition of Retained Vegetation - Project Arborist**

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

- i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

28. **Stormwater Disposal**



The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

29. **Post-Construction Dilapidation Report**

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

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

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

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

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

30. **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

31. **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.

32. **Swimming Pool/Spa Motor/ Air conditioner Noise**

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

Mechanical pool plant should also be centrally located on site.

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

33. **Pool Outbuilding**

The pool outbuilding associated with each semi-detached dwelling must not be used for habitable / occupancy purposes as a separate dwelling.

Reason: Regulatory.

#### CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

34. **Positive Covenant for On-site Stormwater Detention**

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant. Details demonstrating compliance are to be submitted to the Principal Certifying

Authority prior to the issue of the Subdivision Certificate

Reason: To ensure ongoing maintenance of the on-site detention system.

35. **Right of Carriageway**

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

36. **Restriction as to User (On-site Stormwater Detention)**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

37. **Certification of On-site Detention System (New Subdivision)**

A Certificate is to be submitted by a qualified experienced practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Principal Certifying Authority that the on-site stormwater detention has been constructed in accordance with the plans nominated on the Development Consent and relevant conditions of Development Consent. The Subdivision Certificate will not be released until this certification has been submitted and the Principal Certifying Authority has confirmed that this condition has been satisfied.

Reason: To ensure the On-site Detention System has been built to the appropriate standard

38. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

39. **Easement for Services**

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

40. **Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

41. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

42. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.



[illegible]







**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM  
FLOOR SPACE RATIO AS DETAILED IN CLAUSE 4.4 OF THE MANLY  
LOCAL ENVIRONMENTAL PLAN 2013**

**For:** Torrens Title Subdivision & Two Semi-Detached Dwellings  
**At:** 2 Pacific Parade, Manly  
**Applicant:** Du Plessis & Du Plessis Architects

The subject development application relates to the Torrens Title subdivision of one lot into two followed by the construction of two semi-detached dwellings upon land at No. 2 Pacific Parade, Manly (**Site**).

The proposal results in the following floor space ratio:

Lot 1: 145m<sup>2</sup> or 0.65:1  
Lot 2: 145m<sup>2</sup> or 0.65:1

Therefore, the proposal seeks approval for a variation to the **Floor Space Ratio** development standard in clause 4.4 of the Manly Local Environmental Plan 2013.

**4.4 Floor Space Ratio**

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

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

- (2) 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.*
- (2A) Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.*

The Floor Space Ratio Map indicates that the floor space ratio that applies to the Site is 0.6:1. The proposal represents a non-compliance of 11.32m<sup>2</sup> or a 8.4% variation.

The following clause 4.6 written request has been prepared having regard to clauses 4.4 and 4.6 of the Manly Local Environmental Plan 2013 and recent judgments of the Land & Environment Court. It is submitted that the variation is well founded and is worthy of the support of the Council.

### **1. Objectives of Clause 4.6**

The objectives of Clause 4.6 of the LEP are:

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

### **2. The standard to be varied is a Development Standard to which Clause 4.6 applies**

Clause 4.4 of the Manly Local Environmental Plan 2013 is contained within Part 4 which is titled Development Standards to be complied with. It is also considered that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

It is also noted that clause 4.4 does not contain a provision which specifically excludes the application of clause 4.6 and vice a versa.

On this basis it is considered that clause 4.4 is a development standard for which clause 4.6 applies.

### **3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case**

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 Manly Local Environmental Plan 2013):

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

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

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

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The objectives of the Floor Space Ratio standard are set out in clause 4.4(1) of Manly Local Environmental Plan 2013 and 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,*
- (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.*

Compliance with the Floor Space Ratio standard is unreasonable or unnecessary in the circumstances because the objectives of the standard are achieved notwithstanding the non-compliance, in light of the following:

- a. The proposed amendments, whilst providing for increased floor area, as defined, provides for increased setbacks to the side boundary from the upper level. The upper level is well articulated, particularly on the side elevations, and the proposed amendments reduced bulk and scale.
- b. The proposal provides for a bulk and scale that is compatible to the site area and does not obscure important landscape or townscape features. The proposal does not require the removal of any significant vegetation and retains the existing heritage tree in Council's road reserve. The site is relatively level and there are no significant features.
- c. The proposal provides for a development that provides an appropriate visual relationship with the existing character and landscape of the area. The proposal provides for external finishes, comprising weatherboard cladding and a metal pitched roof, which are compatible with the character of the existing locality. The dwelling is designed with good articulation with varied setbacks

and of a form that is complementary to the locality. The proposal is enhanced by the proposed landscaping and improved the landscaped character.

- d. The proposal and in particular the non-compliance with the Floor Space Ratio control, does not have any adverse impacts on the enjoyment of the adjoining land. The proposal maintains appropriate solar access, amenity and privacy to the adjoining properties as discussed in detail in the Statement of Environmental Effects. The proposal does not have any adverse impacts on the use or enjoyment of the public domain. The proposal provides for an appropriate presentation to the street frontage.
- e. This objective does not apply.

#### **4. There are sufficient environmental planning grounds to justify contravening the development standard**

The proposed development promotes the objectives identified in the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the “promote the orderly and economic use of the land” and “good design and amenity of the built environment”. In this regard the proposed attached dwellings are compatible with the predominant form of development in this locality. The majority of properties including No. 4 – 20 Pacific Parade (inclusive) provide for semi detached dwellings, with the majority of allotments similar in size to that proposed and supporting semi-detached housing.

Accordingly, the proposal promotes the objectives of the Environmental Planning and Assessment Act 1979 and there are also sufficient environmental planning grounds to justify the contravention of the Floor Space Ratio standard, which include:

- The proposal provides for additional housing to meet the needs of the locality.
- The proposal, noting the area of non-compliance, is compatible with the existing surrounding development particularly in relation to bulk and scale. It is noted that the property immediately opposite the subject site, No. 3 Pacific Parade comprises an attached dual occupancy which a floor space of 200.334m<sup>2</sup> or 0.64:1 (DA0167/2016 as amended). Similarly, the adjoining property at No. 4 Pacific Parade which is part of a semi attached dwelling and adjoins the subject site, has a floor space of 150.4m<sup>2</sup> or 0.67:1 (DA 2018/1187).
- The proposal and the non-compliance will provide for a development that is compatible with the existing surrounding development, particularly those developments immediately to the west and opposite the subject site. The site and its surrounds are not additionally impact by the exceedance of the floor space ratio. The proposal is in keeping within the existing character of the locality. The FSR variation has negligible impact in terms of overshadowing, bulk and given the limited extent of exceedance. The proposal has been designed to address the streetscape and relevant objectives of both the floor space controls and the zone.

In this case, strict compliance with the floor space ratio development standard of the Manly LEP is unnecessary and unreasonable and there are sufficient environmental planning grounds to justify the contravention.

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

The proposed development is consistent with the objectives of the Floor Space Ratio development standard, which is demonstrated in the analysis above.

The proposed development is also consistent with the R1 General Residential objectives in Manly Local Environmental Plan 2013.

The objectives for the R1 General Residential zone are:

- *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.*

In relation to the above objectives for the R1 General Residential zone the proposal is consistent with those objectives given that:

1. The proposal provides an additional dwelling to assist in meeting the housing needs of the community.
2. The proposal provides for two semi-detached houses.
3. Objective 3 does not apply.

As the proposal is consistent with the objectives of the Floor Space Ratio development standard and the objectives of the R1 General Residential Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

**6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.**

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice. One circumstance where the Planning Secretary's concurrence cannot be assumed is where the development contravenes a numerical standard by greater than 10% and such applications are required to be deferred to the Local Planning Panel.

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

## **7. Conclusion**

This written request justifies the proposed variation to the Floor Space Ratio development standard in the terms required under clause 4.6 of Manly Local Environmental Plan 2013. In summary, the proposed variation in relation to the non-compliant floor space ratio is justified for the following reasons:

- The non-compliance will not result in any adverse streetscape impacts.
- The non-compliance will not result in any impacts upon existing trees and vegetation and will not result in any tree loss.
- The non-compliance will not result in any additional overshadowing of adjoining properties.
- The non-compliance will not result in any visual or acoustic impacts upon adjoining properties.
- The non-compliance will not result in any loss of outlook for any adjoining properties.
- The development will provide for a built form which is compatible with the surrounding locality.

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November 2022

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MINIMUM  
SUBDIVISION LOT SIZE AS DETAILED IN CLAUSE 4.1 OF THE MANLY  
LOCAL ENVIRONMENTAL PLAN 2013**

**For:** Torrens Title Subdivision & Two Semi-Detached Dwellings  
**At:** 2 Pacific Parade, Manly  
**Applicant:** Du Plessis & Du Plessis Architects

The subject development application relates to the Torrens Title subdivision of one lot into two followed by the construction of two semi-detached dwellings upon land at No. 2 Pacific Parade, Manly (**Site**).

The proposal results in the following allotments:

Lot 1: 222.8m<sup>2</sup>  
Lot 2: 222.8m<sup>2</sup>

Therefore, the proposal seeks approval for a variation to the **Minimum Subdivision Lot Size** development standard in clause 4.1 of the Manly Local Environmental Plan 2013.

**4.1 Minimum Subdivision Lot Size**

*(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) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- (d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

*(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*

*(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

The Lot Size Map indicates that the minimum lot size that applies to the Site is 250m<sup>2</sup>. The proposal represents a non-compliance of 27.2m<sup>2</sup> or a 10.8% variation.

The following clause 4.6 written request has been prepared having regard to clauses 4.1 and 4.6 of the Manly Local Environmental Plan 2013 and recent judgments of the



Land & Environment Court. It is submitted that the variation is well founded and is worthy of the support of the Council.

### **1. Objectives of Clause 4.6**

The objectives of Clause 4.6 of the LEP are:

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

### **2. The standard to be varied is a Development Standard to which Clause 4.6 applies**

Clause 4.1 of the Manly Local Environmental Plan 2013 is contained within Part 4 which is titled Development Standards to be complied with. It is also considered that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

It is also noted that clause 4.1 does not contain a provision which specifically excludes the application of clause 4.6 and vice a versa.

On this basis it is considered that clause 4.1 is a development standard for which clause 4.6 applies.

### **3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case**

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 Manly Local Environmental Plan 2013):

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

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

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

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The objectives of the Minimum Subdivision Lot Size standard are set out in clause 4.1(1) of Manly Local Environmental Plan 2013 and 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) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- (d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

Compliance with the Minimum Subdivision Lot Size standard is unreasonable or unnecessary in the circumstances because the objectives of the standard are achieved notwithstanding the non-compliance, in light of the following:

- a. The proposed subdivision provides for allotments that are consistent in size and shape with the predominant subdivision pattern in this locality. The majority of allotments in this locality, have areas of approximately 222sqm. The applications includes construction of a semi-detached dwelling on each allotment that complies with the floor space and height controls of Council's LEP which demonstrates that the proposed allotments are sufficient to provide a useable area for building and landscaping.
  - b. The proposal provides for two semi-detached dwellings that are compatible with the existing surrounding development and subdivision pattern in this portion of Pacific Parade. This area is characterised by predominantly semi-detached housing on allotments similar in size to that proposed.
  - c. The proposal does not require the removal of any significant vegetation and retains the existing heritage tree in Council's road reserve. The site is relatively level and there are no significant features.
  - d. The site is well serviced in terms of local infrastructure, public transport and pedestrian access.
- 4. There are sufficient environmental planning grounds to justify contravening the development standard**

The proposed development promotes the objectives identified in the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the “promote the orderly and economic use of the land” and “good design and amenity of the built environment”. In this regard the proposed subdivision is compatible with the existing subdivision pattern, with the majority of allotments similar in size to that proposed and supporting semi-detached housing.

Accordingly, the proposal promotes the objectives of the Environmental Planning and Assessment Act 1979 and there are also sufficient environmental planning grounds to justify the contravention of the Minimum Subdivision Lot Size standard, which include:

- The proposal provides for additional housing to meet the needs of the locality.
- The proposal is compatible with the existing surrounding development and the established subdivision pattern.

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

The proposed development is consistent with the objectives of the Minimum Subdivision Lot Size development standard, which is demonstrated in the analysis above.

The proposed development is also consistent with the R1 General Residential objectives in Manly Local Environmental Plan 2013.

The objectives for the R1 General Residential zone are:

- *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.*

In relation to the above objectives for the R1 General Residential zone the proposal is consistent with those objectives given that:

1. The proposal provides an additional dwelling to assist in meeting the housing needs of the community.
2. The proposal provides for two semi-detached houses.
3. Objective 3 does not apply.

As the proposal is consistent with the objectives of the Minimum Subdivision Lot Size development standard and the objectives of the R1 General Residential Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

## **6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.**

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice. One circumstance where the Planning Secretary's concurrence cannot be assumed is where the development contravenes a numerical standard by greater than 10% and such applications are required to be deferred to the Local Planning Panel.

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

## **7. Conclusion**

This written request justifies the proposed variation to the Minimum Subdivision Lot Size development standard in the terms required under clause 4.6 of Manly Local Environmental Plan 2013. In summary, the proposed variation in relation to the non-compliant lot size is justified for the following reasons:

- The proposal will not result in any adverse streetscape impacts.
- The proposal will not result in any impacts upon existing trees and vegetation and will not result in any tree loss.
- The proposal will not result in any additional overshadowing of adjoining properties.
- The proposal will not result in any visual or acoustic impacts upon adjoining properties.
- The proposal will not result in any loss of outlook for any adjoining properties.
- The proposal will continue to provide for a built form which is compatible with the surrounding locality.

Natalie Nolan  
Graduate Diploma (Urban & Regional Planning)  
Ba App Sci (Env Health & Bldg).

**ITEM 5.4****DA2022/1565 - 11/29-31 RICHMOND AVENUE, DEE WHY -  
ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT  
BUILDING.****AUTHORISING MANAGER Adam Richardson****TRIM FILE REF 2023/113056****ATTACHMENTS**  
**1** [↓ Assessment Report](#)  
**2** [↓ Site Plan & Elevations](#)  
**3** [↓ Clause 4.6](#)**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1565 for Alterations and additions to a residential flat building on land at Lot 11 SP 78035, 11 / 29 - 31 Richmond Avenue, DEE WHY subject to the conditions set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/1565
<b>Responsible Officer:</b>	Dean Pattalis
<b>Land to be developed (Address):</b>	Lot 11 SP 78035, 11 / 29 - 31 Richmond Avenue DEE WHY NSW 2099
<b>Proposed Development:</b>	Alterations and additions to a residential flat building
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Desiree Said Hawa Stephen George Hawa
<b>Applicant:</b>	Manfredini Mccrae Architects Pty Ltd
<b>Application Lodged:</b>	30/09/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	11/10/2022 to 25/10/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 30.36%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 81,400.00

### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing residential flat building, being a open pergola on a roof top terrace.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to variation to height of buildings development standard of greater than 10%. The proposed vergola results in an overall height of 14.34m which is a variation of 30.36% from the numerical requirement of 11 metres.

No objections were received during the community consultation period.

The written Clause 4.6 objection for the non-compliance with height standard arises from the existing building being non-compliant with the height standard. The proposed works are located below the maximum height of the existing building, despite the breach of the building height standard.

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

## **PROPOSED DEVELOPMENT IN DETAIL**

The application proposes alterations and additions to an existing residential flat building (Unit 11), which is the top level at the rear of the building. The proposed works include:

- Construction of a 3.5 metres x 5.5 metres colorbond pergola frame with operable blade roof

The proposal also originally included the infill to half the primary balcony through the addition of two sets of sliding glass-doors and window. However, these works have been deleted from the plans at Council's request following a detailed assessment of the application.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Local Environmental Plan 2011 - Zone R3 Medium Density Residential

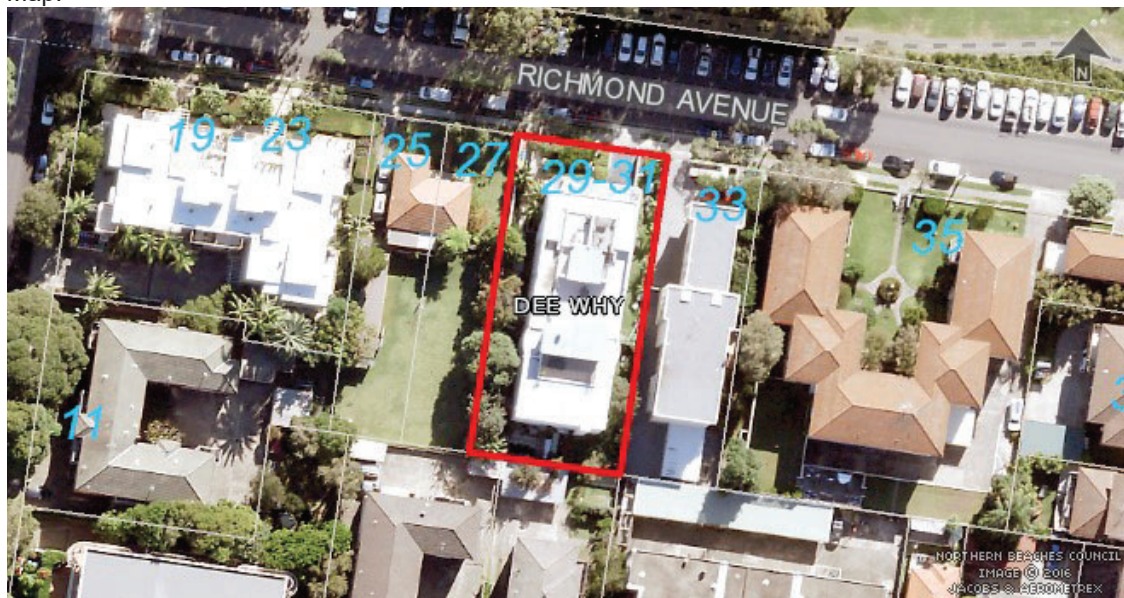
## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 11 SP 78035 , 11 / 29 - 31 Richmond Avenue DEE WHY NSW 2099
<b>Detailed Site Description:</b>	The site is legally referred to as Lot CP in SP 78035 and has a total area of approximately 1,161m <sup>2</sup> and a street front of



	<p>approximately 23 metres.</p> <p>The site is zoned R3 – Medium Density Residential pursuant to the Warringah Local Environmental Plan 2011.</p> <p>The site currently accommodates an existing residential flat building.</p> <p>The site is generally flat.</p> <p>Surrounding development consists of a mixture of low to medium density residential allotments of varying architectural styles.</p>
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Map:



## SITE HISTORY

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

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

In regards to the subject application currently under assessment, the following dates are relevant:

### Application History:

- The community consultation period commenced on 11 October 2022 for a period of 14 days, with no submissions received.
- Request for Further Information letters were sent to the applicant on 23 November 2022 and on 24 January 2023.
- In response to Council's requests for information, amended plans were formally accepted by Council on 6 February 2023.

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application, as the extent of works as amended do not trigger the requirements of State Environmental Planning Policy No. 65 (design quality of residential flat development).</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the provision of a bushfire report as well as in relation to referral comments provided by Council's Urban Design Officer. Amended plans were accepted by Council on 6 February 2023 which reduce the environmental impact of the application and therefore do not require additional community exhibition.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent</p>

Section 4.15 Matters for Consideration	Comments
	<p>authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 69 of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Services, dated 24 November 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/10/2022 to 25/10/2022 in

accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b><i>Supported, subject to Conditions</i></b></p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p>
NECC (Bushland and Biodiversity)	<p><b><i>Supported, no Conditions required</i></b></p> <p>The proposed development has been assessed against the provisions of SEPP (Resilience and Hazards) and relevant natural environment controls of the Warringah DCP. The proposed alterations and additions are within the existing development footprint and will not impact upon native vegetation or wildlife habitat.</p>
Strategic and Place Planning (Urban Design)	<p><b><i>Not Supported</i></b></p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent for alterations and additions to the following areas of an existing apartment building:</p> <p>Second floor</p> <ul style="list-style-type: none"> <li>• Removal of floor finish on existing balcony; new level and finish to match existing unit.</li> <li>• Removal of doors/windows to existing balcony.</li> <li>• Infill to half the balcony through the addition of two sets of sliding glass-doors and window.</li> </ul> <p>Third Floor</p> <ul style="list-style-type: none"> <li>• Construction of a 3.5m x 5.5m steel vergola frame with operable blades and supported by steel beams and columns.</li> </ul> <p>Urban Design cannot support the proposed modifications for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The resultant space left at the primary balcony (second floor) will be compromised as a usable seating area as the area has been reduced</li> </ol>

Internal Referral Body	Comments
	<p>drastically. The Apartment Design Guide requires 10 sqm minimum and 2m minimum depth for balcony of two bedroom apartment. Balcony depth of less than 1m cannot be counted as contributing to the balcony area.</p> <p>2. The proposed vergola frame structure on the roof of the building will breach the 11m height control by up to 3.34m. There is also a concern that the new permanent structure will be converted into a habitable space in the future. There should not be any additional permanent roof structure on the roof terrace other than the existing lift overrun and stairs access area.</p> <p><b>Additional comments:</b> The applicant has responded to the Urban Design comments above by quoting SEPP65 - design quality principles and objectives, and Apartment Design Guide - Part 4 Designing the Building. There are no changes to the proposed alterations and additions submitted previously.</p> <p>After considering the applicant's response, Urban Design cannot support the proposed modifications as the following issues remain:</p> <p>1. The existing apartment is a two bedroom apartment of 85sqm (approximately) with a balcony area of 10sqm (approximately). The current living and dining area is adequate for an apartment of that size. There is no necessity to increase the overall apartment size by reducing the balcony area to create a bigger living/ dining area.</p> <p>2. The primary balcony to the apartment should be usable and easily accessed which the existing balcony complies. The proposal will make the modified balcony less usable with the reduced size. Moreover, the roof terrace is one floor up and will not be as accessible especially for an elderly or disabled person as the current existing balcony.</p> <p>3. The vergola frame structure proposed on the roof terrace is not a "transparent" structure as described by the applicant. It is a permanent structure with a metal louvred roof that will be visible when viewed from the surrounding developments.</p> <p><b>Additional comments (7/02/2023):</b> The applicant has submitted amended drawings on 24 Jan 2023 deleting the balcony alterations but maintaining the vergola frame structure on the roof terrace.</p> <p>After considering the amended proposal, Urban Design cannot support the proposed modifications as the following issues remain:</p> <p>1. The proposed vergola frame structure on the roof of the building will breach the 11m height control by up to 3.34m. There is also a concern that the new permanent structure will be converted into a habitable space in the future. There should not be any additional permanent</p>

Internal Referral Body	Comments
	<p>roof structure on the roof terrace other than the existing lift overrun and stairs access area.</p> <p>2. The vergola frame structure proposed on the roof terrace is not a "transparent" structure as described by the applicant. It is a permanent structure with a metal louvred roof that will be visible when viewed from the surrounding developments.</p> <p><b>Please note:</b> Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Councils Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Councils Landscape Officers.</p> <p><b>Planner Comments:</b> It is noted that the Urban Design referral is unsupportive of the proposed rooftop vergola frame for the reasons outlined above. Notwithstanding the referral comments, the proposal is considered to be consistent with the objectives of Clause 4.6 as discussed in the relevant section within this report and therefore acceptable on merit. It is also relevant to note that concerns about future use or works to the structure are not valid considerations in the assessment of this application.</p>

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

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

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

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

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

##### SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

(i) the erection of a new building,



- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development is for the erection of a rooftop vergola frame only, with the originally proposed infill works to the unit balcony being deleted from the plans.

As per the definition of a residential flat building and the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application, given it does not consist of the substantial redevelopment or the substantial refurbishment of an existing building,

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

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

Schedule 7 Environmental Planning and Assessment Regulation 2021 states:

*BASIX excluded development means the following development—*

- (a) development for the purposes of a garage, storeroom, carport, gazebo, verandah or awning,
- (b) development that involves the alteration of a building listed on the State Heritage Register under the [Heritage Act 1977](#),
- (c) development that involves the alteration of a building resulting in a space that cannot be fully enclosed, other than a space that can be fully enclosed but for a vent needed for the safe operation of a gas appliance,

*Example—*

*A verandah that is open or enclosed by a screen, mesh or other material that permits the free and uncontrolled flow of air.*

- (d) development that involves the alteration of a building declared by the Planning Secretary, by order published in the Gazette, to be BASIX excluded development.

Comment: The application proposes a rooftop vergola frame only and is therefore considered BASIX excluded development in accordance with the above.

#### **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 1 Coastal Wetlands and littoral rainforest area**



## 2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
  - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
  - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

### Comment:

The proposed development is not considered to significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland. Council's Bushland and Biodiversity Officer has also reviewed the application and raised no objections to approval.

## Division 3 Coastal environment area

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

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

### Comment:

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

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

impact.

Comment:

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

**Division 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:

The proposed development is not considered likely to cause an adverse impact on safe access to and along the foreshore, overshadowing, wind funnelling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, including coastal headlands, or cultural and built environment heritage.

**Division 5 General**

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

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

Comment:

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

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

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

Comment:

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

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

**Chapter 4 – Remediation of Land**

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

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	14.34m (vergola)	30.36%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes

Detailed Assessment

**Zone R3 Medium Density Residential**

**Zone objectives**

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The proposed rooftop works result in an improved amenity outcome for the occupants of the subject property without compromising the needs of the surrounding community

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

Comment:

The existing housing character of the site and surrounds is not impacted by the development.

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

Comment:

The proposal is considered to contribute to facilities or services that meet the day to day needs of residents.

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

Comment:

The landscaped setting of the site and surrounds is unimpacted by the proposed development.

*To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

The proposal, as amended, provides a high visual quality in its presentation to public streets and spaces in that its visual prominence shall remain minimal.

Conclusion:

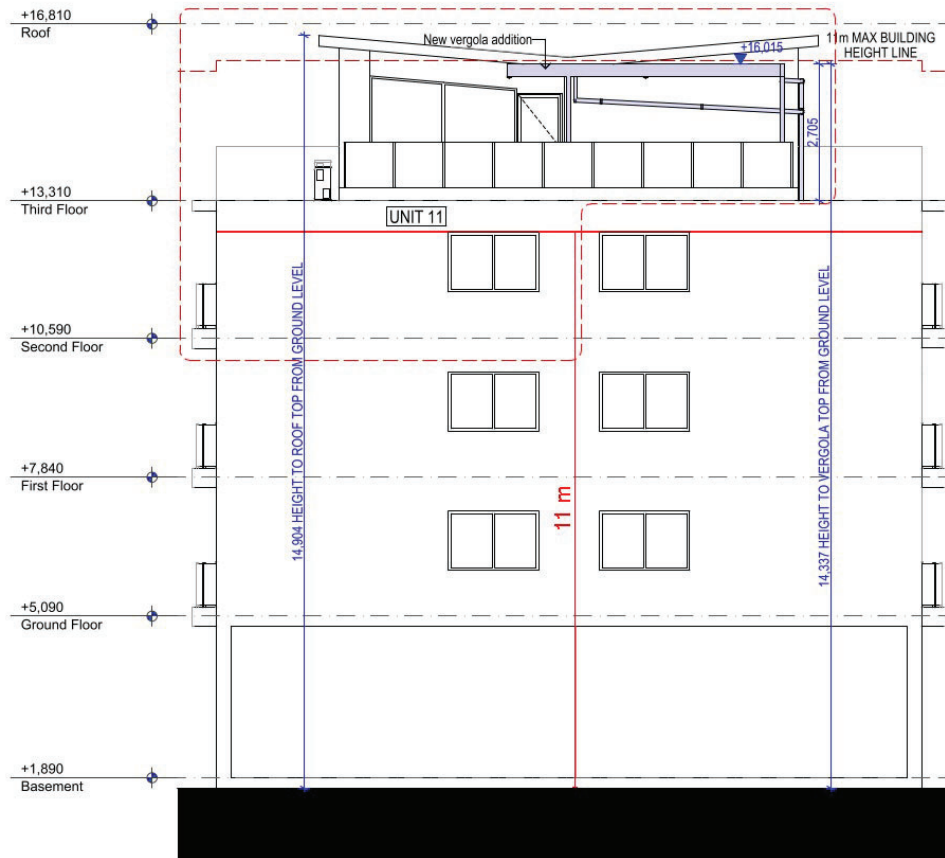
For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

#### 4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	14.34m
Percentage variation to requirement:	30.36%

**Figure 1: Encroachment of vergola above height standard**



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- *The proposed vergola is located below the maximum ridge level of the existing building.*
- *The vergola is an open structure located at the rear of the site therefore limiting its visual prominence.*
- *The structure is well set back from the edges of the built form below and will not cause any overlooking or overshadowing issues.*
- *The materials and colours will be consistent with the style of the building and will not appear as an addition.*
- *No views will be lost to neighbours as a result of the additional height of the open structure at this location.*
- *The proposal will increase the amenity of the roof top terrace for the owners.*

It is agreed the prominence of the proposed rooftop structure is reduced by the fact it is an open structure and also located below the ridge line of the existing building. The impact upon neighbouring private open space or principal living areas shall therefore be minimal, whilst the structure will not be readily visible from the streetscape as a result of being located at the rear of the building. An improved amenity outcome will therefore be provided to the occupants of the unit without compromising the character of the site and surrounds.

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 R3 Medium 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 vergola is an open, lightweight structure located below the ridge line of the existing building and is therefore consistent with the existing character of surrounding development.

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

Comment:

As described above, the rooftop works shall result in a minimal visual and amenity impact. The existing rooftop terrace is a trafficable space and the proposed vergola works are not considered to result in any additional privacy impacts in comparison to the existing arrangement,

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

Comment:

The development is not considered to adversely impact on the scenic quality of Warringah's coastal and bush environments,

*d) to manage the visual impact of development when viewed from public places such as parks*

*and reserves, roads and community facilities,*

Comment:

As discussed above, the development shall have a minimal impact when viewed from public places such as parks and reserves, roads and community facilities,

**Zone objectives**

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The proposed rooftop works result in an improved amenity outcome for the occupants of the subject property without compromising the needs of the surrounding community

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

Comment:

The existing housing character of the site and surrounds is not impacted by the development.

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

Comment:

The proposal is considered to contribute to facilities or services that meet the day to day needs of residents.

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

Comment:

The landscaped setting of the site and surrounds is unimpacted by the proposed development.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

The proposal, as amended, provides a high visual quality in its presentation to public streets and spaces in that its visual prominence shall remain minimal.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium 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 & 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, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

#### Warringah Development Control Plan

##### Built Form Controls

The proposed works are entirely located within the footprint and envelope of the existing building. Therefore there is no change to the existing built form controls.

##### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C3 Parking Facilities	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	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
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

#### THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

#### CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

## POLICY CONTROLS

### Northern Beaches Section 7.12 Contributions Plan 2022

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

## CONCLUSION

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

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

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

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

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

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1565 for Alterations and additions to a residential flat building on land at Lot 11 SP 78035, 11 / 29 - 31 Richmond Avenue, DEE WHY, 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
DA02 (A)	24 January 2023	MMJ Architects
DA04 (B)	24 January 2023	MMJ Architects
DA06 (D)	24 January 2023	MMJ Architects
DA07 (C)	24 January 2023	MMJ Architects
DA09 (B)	24 January 2023	MMJ Architects
DA10 (B)	24 January 2023	MMJ Architects
DA11 (A)	24 January 2023	MMJ Architects
DA12 (A)	24 January 2023	MMJ Architects
DA13 (B)	24 January 2023	MMJ Architects
DA14 (D)	24 January 2023	MMJ Architects
DA15 (D)	24 January 2023	MMJ Architects
DA16 (D)	24 January 2023	MMJ Architects
DA17 (C)	24 January 2023	MMJ Architects
Schedule of exterior finishes and colours	17 August 2023	MMJ Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Risk Assessment	24 November 2022	Bushfire Planning Services

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	16 August 2022	David McCrae

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

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

## 2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal 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.

### 3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Security Bond

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

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

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

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

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

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

### 5. Stormwater Drainage Disposal

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

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater

drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

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

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

Reason: To ensure satisfactory management of stormwater.

**6. 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.

**7. External Finishes to Vergola**

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

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

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

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

**8. Survey Certificate**

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

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

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

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

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

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

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE  
OCCUPATION CERTIFICATE****9. Stormwater Drainage Disposal Certification**

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

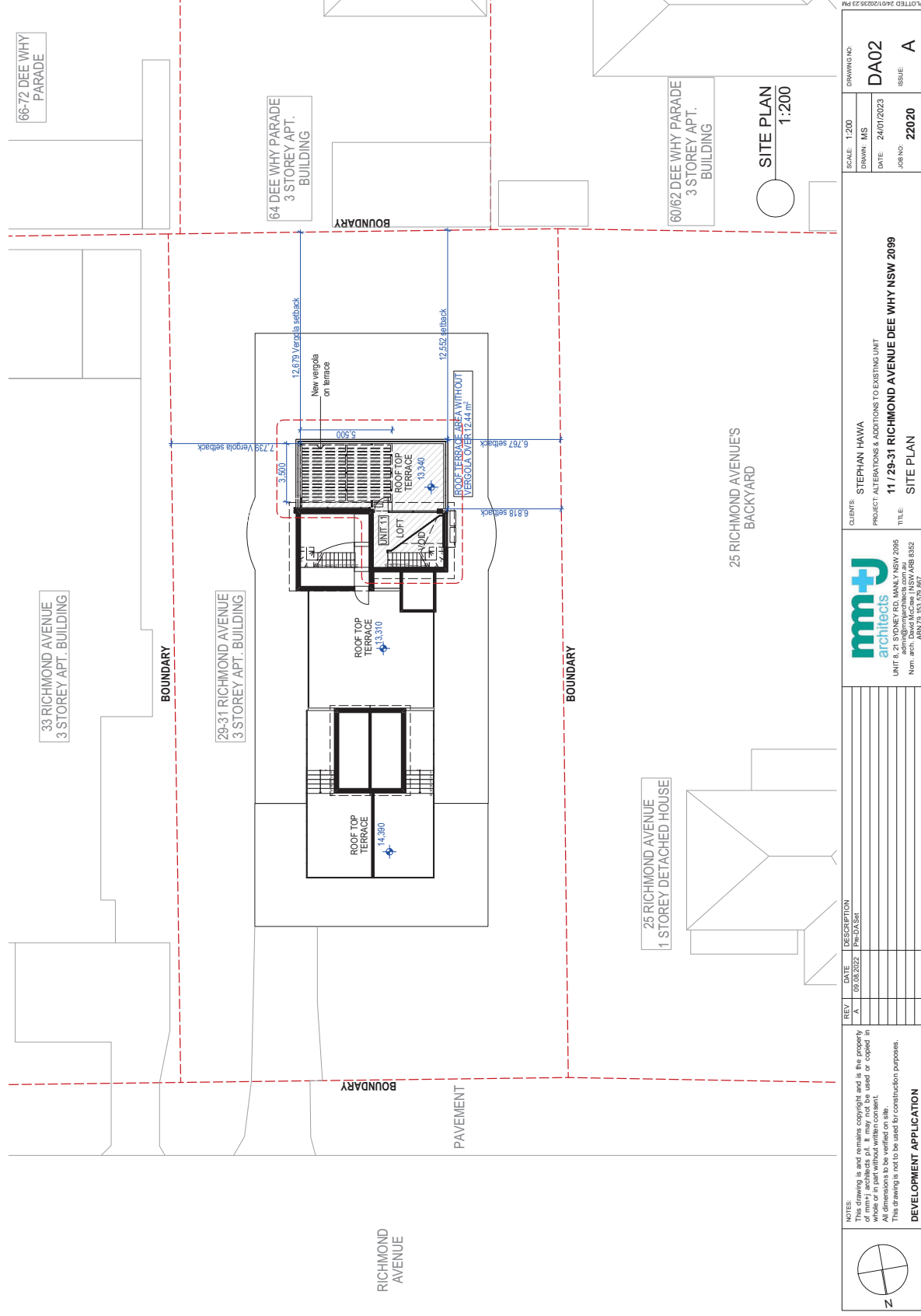
If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

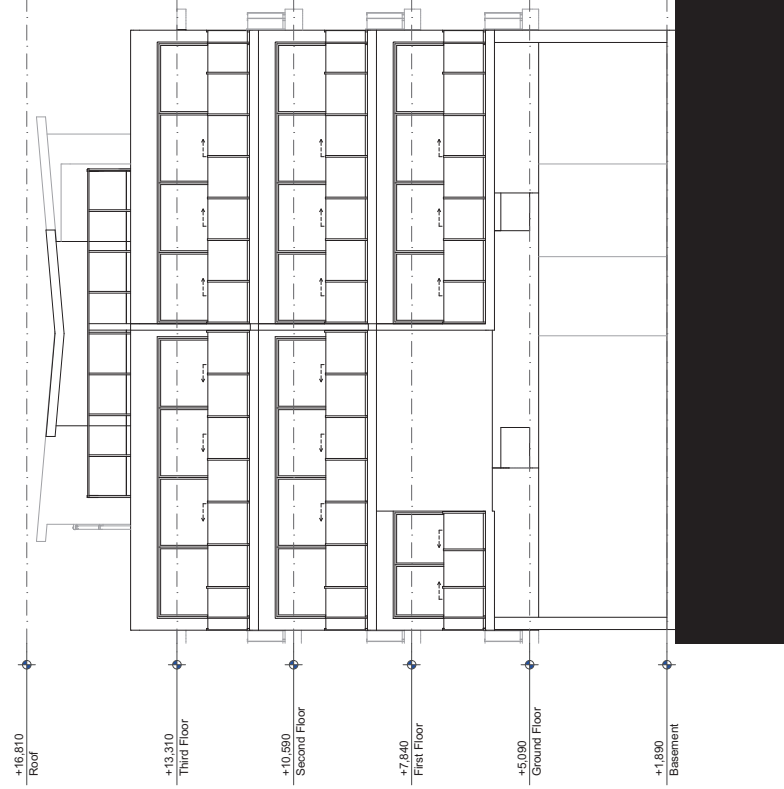
The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document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

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

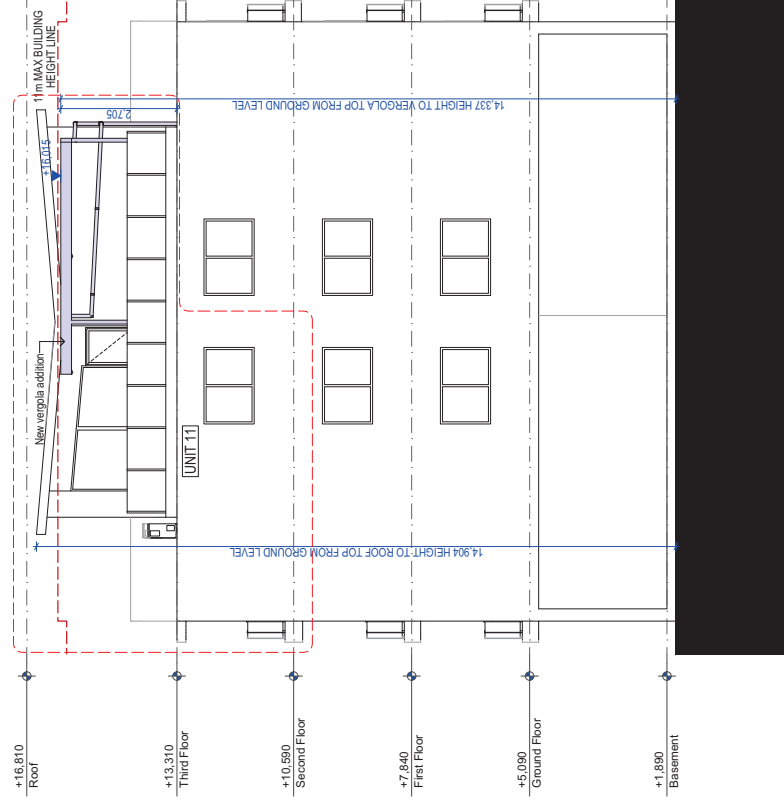
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.






NORTH ELEVATION  
1:100



SOUTH ELEVATION  
1:100

NOTES:	REV	DATE	DESCRIPTION
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DEVELOPMENT APPLICATION			



UNITE 1, 21 SYDNEY RD, MANNINGHAM VIC 3085  
 admin@mm+architects.com.au  
 Nomin arch. David McCall NSW ARB 8352

CLIENT: STEPHAN HAWA

PROJECT: ALTERATIONS & ADDITIONS TO EXISTING UNIT

TITLE: 11 / 29-31 RICHMOND AVENUE DEE WHY NSW 2099

BUILDING ELEVATIONS 01

SCALE: 1:100

DRAWN: MS

DATE: 24/01/2023

JOB NO: 22020

DRAWING NO: DA11

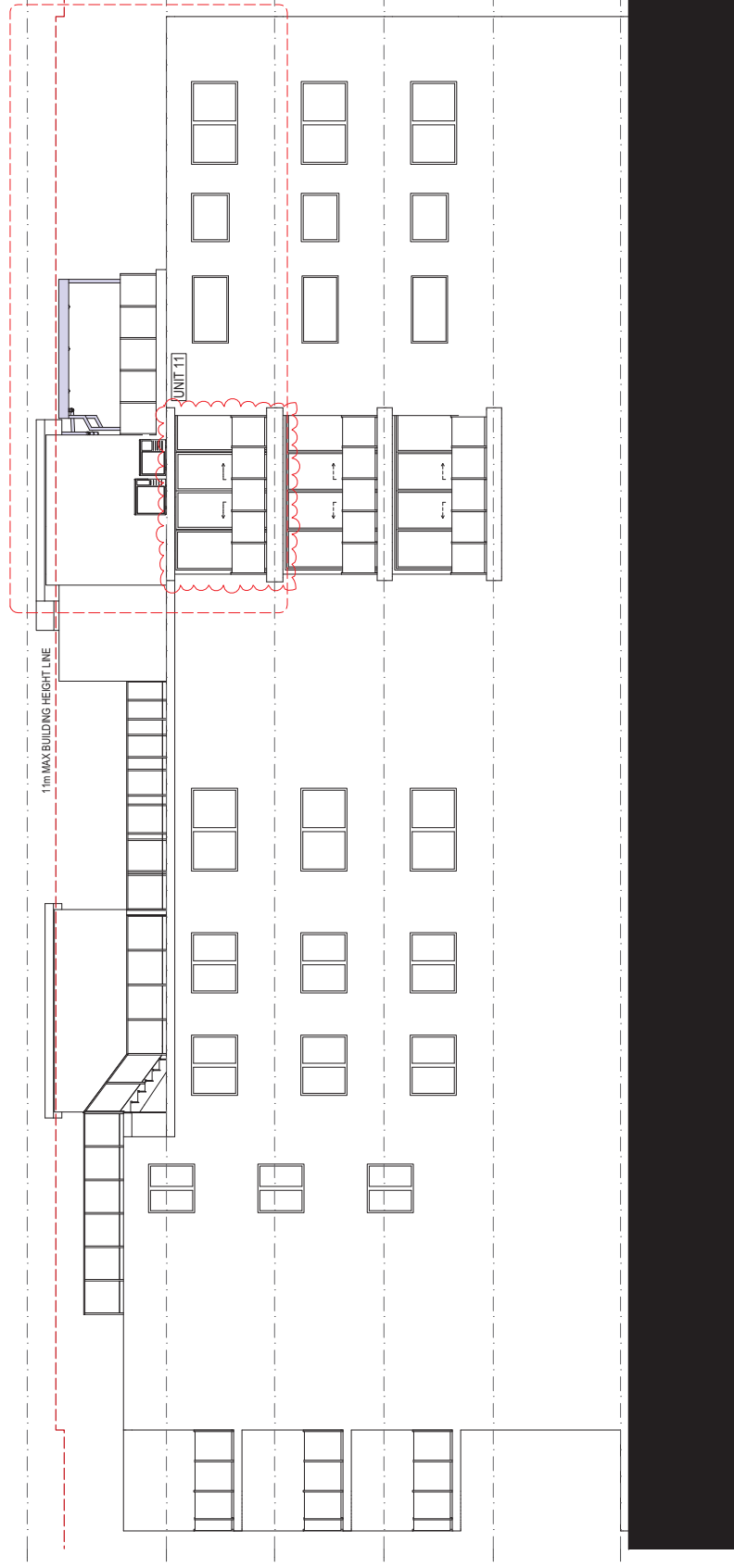
ISSUE: A



E1  
EAST ELEVATION  
1:100

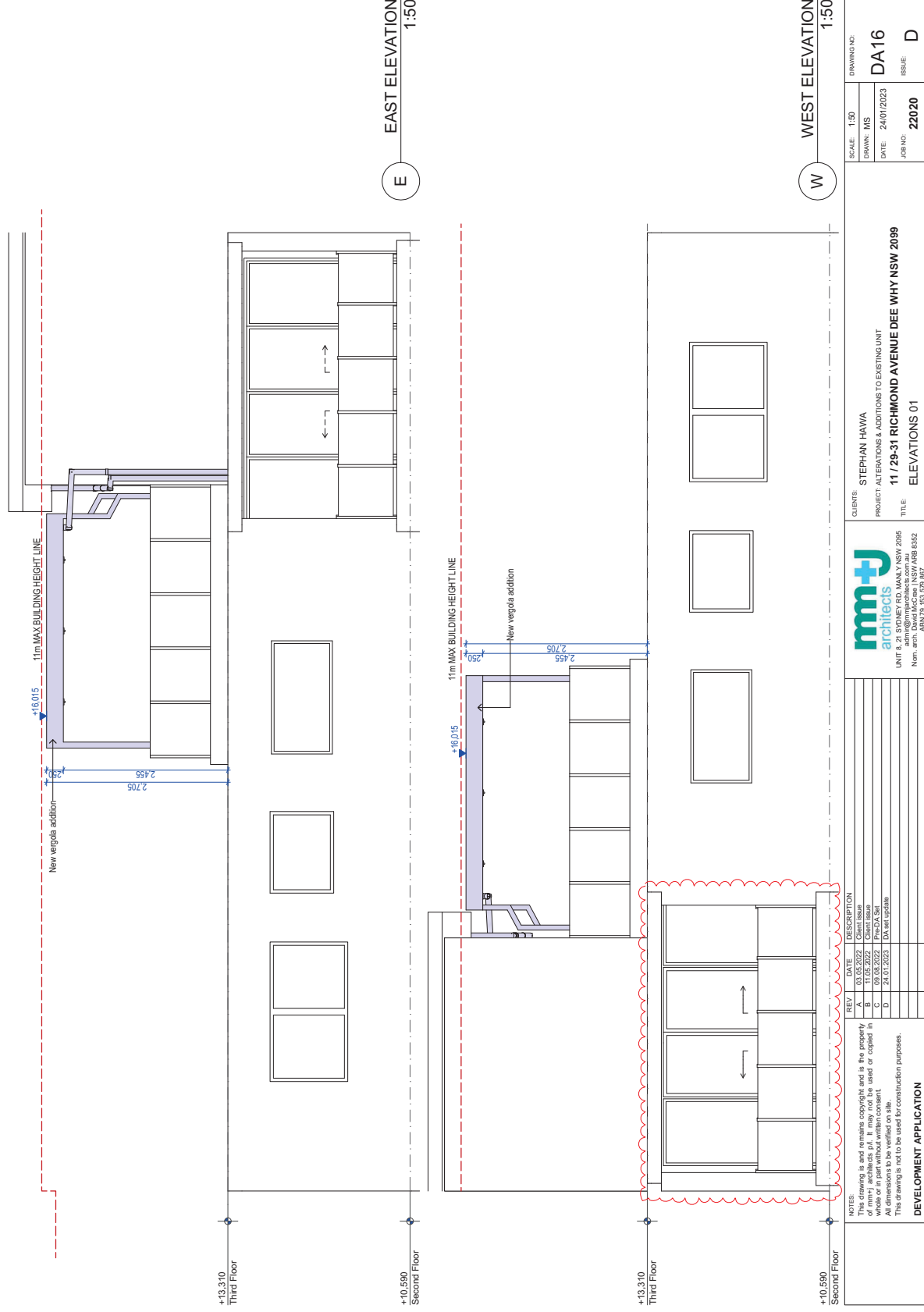
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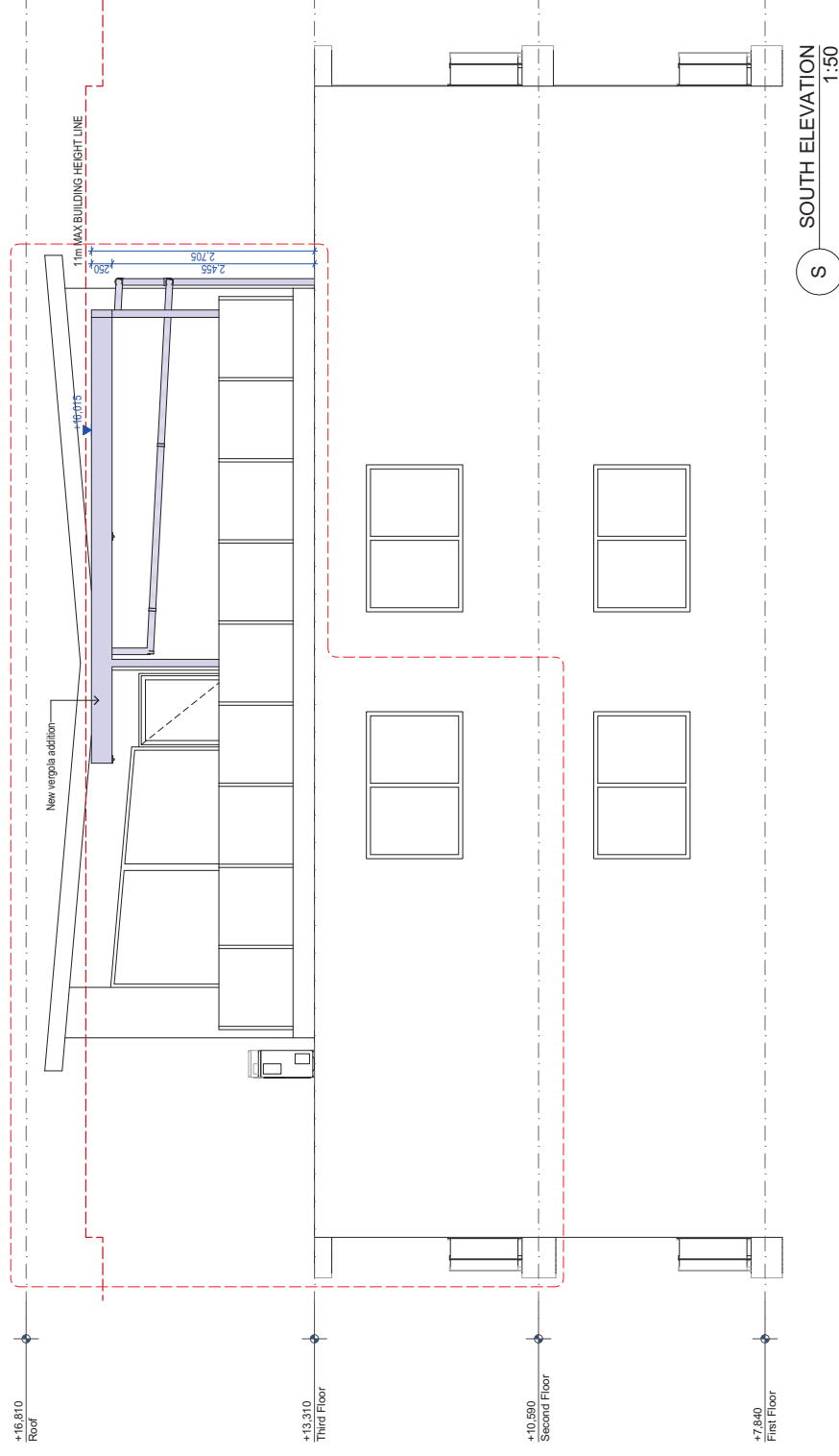




W1  
WEST ELEVATION  
1:100

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	A	09.08.2022	Final Set
DEVELOPMENT APPLICATION	B	24.01.2023	DA set update
CLIENTS STEPHAN HAWA PROJECT: ALTERATIONS & ADDITIONS TO EXISTING UNIT 11 / 29-31 RICHMOND AVENUE DEE WHY NSW 2099 TITLE: BUILDING ELEVATIONS 03			
SCALE: 1:100 DRAWN: MS DATE: 24/01/2023 JOB NO: 22020 ISSUE: B			
mm+ architects UNIT 8, 21 SYDNEY RD, MANLY NSW 2095 mm+architects.com.au Ph: 02 9439 6332 Fax: 02 9439 6332 ABN 79 453 578 867			
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	A	03.05.2022	Client issue
	B	15.05.2022	Issue for tender
	C	09.09.2022	Final Set
DEVELOPMENT APPLICATION			

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CLIENTS:  
STEPHAN HAWA  
PROJECT ALTERATIONS & ADDITIONS TO EXISTING UNIT  
11 / 29-31 RICHMOND AVENUE DEE WHY NSW 2099  
TITLE:  
ELEVATIONS 02

SCALE: 1:50  
DRAWN: MS  
DATE: 24/01/2023  
JOB NO: 22020

DRAWING NO: DA17  
ISSUE: C



Dean Pattalis  
Northern Beaches Council  
Dee Why  
NSW 2099

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15 November 2022

Dear Dean

Re: Unit 11 29-31 Richmond Avenue Dee Why

## THE CLAUSE 4.6 VARIATION – BUILDING HEIGHT

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### GENERAL

Clause 4.3 of WLEP 2011 provides for the maximum height of a building on this land to be 8.5 metres.

Our existing 5-storey residential flat building is substantially higher, with a height of nearly 14.92 metres to the top of lift overrun. Our proposed window modifications involve works up to a height of approximately 11.42 metres above existing ground level. Our pergola works involves works up to a height of 14.51 metres above the existing ground level.

Clause 4.6 of WLEP 2011 provides for exceptions to development standards including building height if a written request is received from the Applicant justifying contravention of the development standard.

### REQUIREMENT

Objectives of Clause 4.6 of WLEP 2011 (4.6(1)) are:

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

Our proposal is consistent with these objectives. Flexibility is sought to allow modifications to the existing windows situated within a non-compliant building. These works will provide a better outcome for all residents without any negative impacts to other residents near the site or any public views.

Clause 4.6(3) provides:

*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.*

We believe that compliance with the current development standard is unreasonable as, it requires the existing building's demolition, thus reducing local housing stock. This option is contrary to the principles of environmentally sustainable development as resources would be needlessly consumed in the demolition and rebuilding of the current structure.

The grounds that we believe will justify contravening the current development standard are improved residential amenity for the current and future residents of the dwelling which will enhance local housing stock with no negative impacts.

Clause 4.6(4) of WLEP 2011 provides:

*(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*  
*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 Director-General has been obtained.*

Matters in subclause (3) are addressed

above. The objectives of the building

height control are:

- a. *To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- b. *To control the bulk and scale of buildings,*
- c. *To minimise disruption to the following:*
- i. *views to nearby residential development from public spaces (including the harbour and foreshores),*
- ii. *views from nearby residential development to public spaces (including the harbour and foreshores),*
- iii. *views between public spaces (including the harbour and foreshores),*
- d. *To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- e. *To ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

The proposal satisfies all of the above objectives as our building envelope does not change, there will be no change to overall building height, roof form, the bulk or the scale of the building. There are also no impacts to current views or solar access and there is no impact on the existing surrounding vegetation.

We understood that Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.



By summary, this proposal satisfies all the requirements of clause 4.6 of WLEP 2011 and the exception to the development standard is thus reasonable and appropriate for the circumstances of this proposed work.

Regards,

David McCrae  
Principal