

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 5 APRIL 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 5 April 2023

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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 MARCH 2023

RECOMMENDATION

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

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2022/1650 - 8 BAROONA ROAD, CHURCH POINT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL.
AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2023/181592
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2022/1650 for the Alterations and additions to a dwelling house including a swimming pool on land at Lot A DP 391997,8 Baroona Road, CHURCH POINT, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1650
Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot A DP 391997, 8 Baroona Road CHURCH POINT NSW 2105
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Jose Maria Eduardo Zabaleta
Applicant:	JJ Drafting
Application Lodged:	12/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/02/2023 to 20/02/2023
Advertised:	Not Advertised
Submissions Received:	15
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 975,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the development is considered contentious as the proposal is subject of 10 or more unique submissions by way of objection. A total of 15 unique submissions were received.

Concerns raised in the objections predominantly relate to View Sharing, Visual Privacy, Objectives for C4 Environmental Living Zone, Character of the Area, Solar Access, Traffic Management, Car Parking, and Biodiversity Impacts.

The assessment of the proposed development has found that the development fails the Objectives of the C4 Environmental Living Zone of Pittwater Local Environmental Plan 2014, Clause C1.3 View Sharing of Pittwater 21 Development Control Plan, Clause D4.1 Character as viewed from a public place of Pittwater 21 Development Control Plan, Clause D4.5 Front building line of Pittwater 21 Development Control Plan, and Clause D4.10 Landscaped Area – Environmentally Sensitive Land of Pittwater 21 Development Control Plan. In summary, the proposed development is considered to be an overdevelopment of the site that results in an unacceptable built form and impact upon adjoining properties.

This report concludes with a recommendation that the NBLPP refuse the development application, for the reasons outlined at the end of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

Garage Floor Plan

- Construction of a double garage including entry foyer and internal vertical lift;
- Addition of bin store;

Pool Terrace Floor Plan

- Addition of green roof and terraced gardens above garage structure;
- Construction of a swimming pool;
- Addition of terrace, BBQ area, and WC;

Ground Floor Plan

- Extension of existing deck;
- Addition of walk-in-pantry;
- Addition of residential compact lift;

First Floor Plan

- Addition of internal staircase to second floor;
- Addition of WIR, and two ensuites;
- Addition of residential compact lift;
- Internal room changes including existing bathroom converted to laundry;

Second Floor Plan

- Addition of internal staircase to third floor;
- Addition of 3 bedrooms each with WIR, and an ensuite;
- Addition of north-west facing deck;

Third Floor Plan

- Addition of bedroom, ensuite, and store room; and
- Addition of south-east facing deck.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 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 21 Development Control Plan - A4.4 Church Point and Bayview Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D4.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D4.5 Front building line
Pittwater 21 Development Control Plan - D4.6 Side and rear building line
Pittwater 21 Development Control Plan - D4.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot A DP 391997 , 8 Baroona Road CHURCH POINT NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-western side of Baroona Road.</p> <p>The site is regular in shape with a frontage of 20.09 metres along Baroona Road and a depth of 66.575 metres. The site</p>

has a surveyed area of 1157m².

The site is located within the C4 Environmental Living zone from PLEP 2014 and accommodates a dwelling house, detached garage, and detached carport currently on the site.

The site slopes from the front south-eastern boundary upwards to the rear north-western boundary over approximately 20 metres.

The site contains lawn areas, garden beds, hedges, and a dense tree canopy at the rear of the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design.

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:

P0478/98

Development Application for Erection of Additions.
Approved on 12 November 1998.

BC0166/09

Building Certificate for A one and two storey sole occupancy clad dwelling with a metal roof together

with a detached timber garage.
Approved on 12 February 2010.

CDC0147/11

Complying Development Certificate for Alterations & additions to an existing dwelling including new vergola.
Approved on 5 December 2016.

Occupation Certificate for Alterations & additions to an existing dwelling including new vergola.
Approved on 28 May 2014.

N0218/12

Development Application for Demolition of the existing garage, construction of a new garage and driveway.
Approved on 22 January 2013.

APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested that the applicant submit further information in relation to the following:

- Objectives of Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014;
- Clause 4.3 Height of Buildings of Pittwater Local Environmental Plan 2014;
- Clause B5 Water Management of Pittwater 21 Development Control Plan;
- Clause B6 Access and Parking of Pittwater 21 Development Control Plan;
- Clause C1.3 View Sharing of Pittwater 21 Development Control Plan;
- Clause D4.1 Character as viewed from a public place of Pittwater 21 Development Control Plan;
- Clause D4.5 Front building line of Pittwater 21 Development Control Plan;
- Clause D4.8 Building envelope of Pittwater 21 Development Control Plan; and
- Clause D4.10 Landscaped Area – Environmentally Sensitive Land of Pittwater 21 Development Control Plan.

The applicant provided amended documentation including a Response to Additional Information Request, View Loss Analysis, amended BASIX Certificate, amended Master Plans, and amended Landscape Plans.

The amended plans included the following changes:

- *Reduce the height of the rear addition, lowering the overall height from the previously proposed RL 50.99 to RL 49.37 (-1.62 metres);*
- *Change the previously proposed pitched roof to a flat roof and altering the wall heights to reduce bulk;*
- *Lower the height of the garage (and terrace above) by removing the previously proposed high windows;*
- *Remove the pool room and change room below the deck and provide a small WC only;*
- *Remove the terrace above the garage and provide a green roof and gardens; and*
- *New landscaping.*

The amended documentation was formally re-notified for a 14 day period from 6 February 2023 to 20 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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. This matter may be addressed through a condition of consent, if the development were to be approved.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Objectives of Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014, Clause 4.3 Height of Buildings of Pittwater Local Environmental Plan 2014, Clause B5 Water Management of Pittwater 21 Development Control Plan, Clause B6 Access and Parking of Pittwater 21 Development Control Plan, Clause C1.3 View Sharing of Pittwater 21 Development Control Plan, Clause D4.1 Character as viewed from a public place of Pittwater 21 Development Control Plan, Clause D4.5 Front building line of Pittwater 21 Development Control Plan, Clause D4.8 Building envelope of Pittwater 21 Development Control Plan, and Clause D4.10 Landscaped Area – Environmentally Sensitive Land of Pittwater 21 Development Control Plan.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed through a condition of consent, if the development were to be approved.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed through a condition of consent, if the development were to be approved.</p> <p>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 may be addressed through a condition of consent, if the development were to be approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> <p>(iv) Built Impact The proposed development is considered to have an advise impact on the surrounding built environment.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	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	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Objectives of Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014, Clause A4.4 Church Point and Bayview Locality of Pittwater 21 Development Control Plan (P21 DCP), Clause C1.3 View Sharing of P21 DCP, Clause D4.1 Character as viewed from a public place of P21 DCP, Clause D4.5 Front building line of P21 DCP, Clause D4.6 Side and rear building line of P21 DCP, Clause D4.10 Landscaped Area – Environmentally Sensitive Land of 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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/02/2023 to 20/02/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 15 submission/s from:

Name:	Address:
Mrs Justine Veronica Bennett	14 Baroona Road CHURCH POINT NSW 2105
Campbell Ker Letchford Tomasy Planning Pty Ltd	10 Baroona Road CHURCH POINT NSW 2105
Mr Robert Cadden	21 Baroona Road CHURCH POINT NSW 2105
Ms Fiona Marrie Kalazich	4 Baroona Road CHURCH POINT NSW 2105
Pari Caracatsanis	15 Baroona Road CHURCH POINT NSW 2105
Mr Michael John Darchy	22 Eastview Road CHURCH POINT NSW 2105
Mr Bradley Austen Glanville	17 Baroona Road CHURCH POINT NSW 2105
Mr Michael Dixon	5 Corniche Road CHURCH POINT NSW 2105
Mr Peter Nico Altona	1 Baroona Road CHURCH POINT NSW 2105
Withheld Withheld	CHURCH POINT NSW 2105
Mr Michael Ian Holmes	11 Baroona Street CHURCH POINT NSW 2105
Ms Vicki Manaveris	9 Baroona Road CHURCH POINT NSW 2105
Mrs Emma Victoria Capell Kenneth Kearns	25 Baroona Road CHURCH POINT NSW 2105
Mr John Edward Berton	13 Baroona Road CHURCH POINT NSW 2105
Mr Raymond William Duncan Ms Jennifer Merle Garcia	2 Baroona Road CHURCH POINT NSW 2105

The following issues were raised in the submissions:

- **View Sharing**
- **Visual Privacy**
- **Solar Access**
- **Objectives for C4 Environmental Living Zone**
- **Character of the Area**
- **Biodiversity Impacts**
- **Cost of Works**
- **Traffic Management**
- **Damage to Road**
- **Geotechnical Risk**
- **Car Parking**

- **Soft Landscaping**
- **Use of Dwelling House**
- **Side Building Line**
- **Front Building Line**
- **Water Runoff**
- **Height of Buildings**

The above issues are addressed as follows:

- **View Sharing**

The submissions raised concerns that the proposed development will impact on the expansive views enjoyed by No.10 Baroona Road.

Comment:

A detailed view impact assessment has been conducted under Clause C1.3 View Sharing of Pittwater 21 Development Control Plan contained within this report. In summary, the proposed development is considered to result in severe view loss and is therefore an unacceptable form of development.

The view loss impact will form a reason for **refusal** of this application.

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- **Visual Privacy**

The submissions raised concerns that the proposal will present visual privacy impacts to No.10 Baroona Road as a result of the proposed deck located on the third floor.

Comment:

A detailed assessment has been conducted under Clause C1.5 Visual Privacy of Pittwater 21 Development Control Plan contained within this report. In summary, the proposal presents unacceptable visual privacy impact as a result of the proposed deck on the third floor.

The visual privacy impact will form a reason for **refusal** of this application.

- **Solar Access**

The submissions raised concerns that the proposal will present overshadowing to No.10 Baroona Road.

Comment:

A detailed assessment has been conducted under Clause C1.4 Solar Access of Pittwater 21 Development Control Plan contained within this report. In summary, the proposal presents unacceptable impact to solar access to the private open space that comprises of a terrace to No.10 Baroona Road.

The solar access impact will form a reason for **refusal** of this application.

- **Objectives for C4 Environmental Living Zone**

The submissions raised concerns that the proposed development is inconsistent with the objectives for C4 Environmental Living Zone of Pittwater Local Environmental Plan 2014.

Comment:

A detailed assessment has been conducted under Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014 contained within this report. In summary, the proposal does not satisfy the objectives of the C4 Environmental Living Zone. Specifically, the proposed development is not considered to provide low-impact residential development, and is not of a low density and scale that successfully integrates with the landform and landscape.

The inconsistencies of the development with the Objectives for C4 Environmental Living Zone will form a reason for **refusal** of this application.

- **Character of the Area**

The submissions raised concerns that the proposed development is inconsistent with the character of the area.

Comment:

A detailed assessment has been conducted under Clause A4.4 Church Point and Bayview Locality of Pittwater 21 Development Control Plan contained within this report. In summary, it is concluded that the proposed development is overall inconsistent with the intent of the Church Point and Bayview Desired Future Character Statement and that the development will adversely impact the visual relationship with the surrounding environment.

The inconsistencies with the intent of the Church Point and Bayview Desired Future Character Statement will form a reason for **refusal** of this application.

- **Biodiversity Impacts**

The submissions raised concerns that the proposed development will result in biodiversity impacts to the flora and fauna including wildlife, and Pittwater Spotted Gums.

Comment:

Council's Bushland and Biodiversity Officer has reviewed the proposed development, and the referral comments are contained within the Internal Referrals section of this report. In summary, the proposed works are located outside of the Biodiversity Values map, and as such a Biodiversity Development Assessment Report (BDAR) is not required. Council's Bushland and Biodiversity Officer concludes there will be no adverse biodiversity impacts and is supportable of the proposal, subject to recommended conditions.

The biodiversity impacts do not warrant a reason for refusal of this application.

- **Cost of Works**

The submissions raised concerns that the proposed development cost of works may be inaccurate.

Comment:

The proposed cost of works has been reviewed by Council and is considered accurate. As such, the proposal's estimated cost of works fulfils the requirements of the *Environmental Planning and Assessment Regulation 2021*.

The proposed cost of works do not warrant a reason for refusal of this application.

- **Traffic Management**

The submissions raised concerns that the proposed development will result in significant traffic disruption to Barooka Road for vehicles, and for rubbish collection.

Comment:

Council's Development Engineer has reviewed the proposed development, and recommended two conditions if the application were to be approved. The first condition is for Traffic Management and Control that requires the applicant to submit a Traffic Management Plan prior to the issuance of a Construction Certificate. The second condition is for Traffic Control During Road Works that requires lighting, fencing, traffic control and advanced warning signs to be provided for the protection of the works and for the safety and convenience of the public and others in accordance with TfNSW Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Furthermore, traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works. Therefore, the proposed conditions will ensure appropriate traffic management during construction if the application were to be approved.

The concerns surrounding traffic management do not warrant a reason for refusal of this application.

- **Damage to Road**

The submissions raised concerns that the proposed construction works may result in damage to the road.

Comment:

if there application were to be approved, a condition requiring a Security Bond would be included. The condition for a Security Bond ensures 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 is the responsibility of the applicant.

The concerns surrounding damage to road do not warrant a reason for refusal of this application.

- **Geotechnical Risk**

The submissions raised concerns that the the site is steeply sloping and poses a geotechnical risk.

Comment:

The proposal is accompanied by a Geotechnical Report (prepared by AscentGeo Consulting Engineers, dated 29 August 2022). The report recommendations details the following, "No significant geotechnical hazards will result from the completion of the proposed development provided the recommendations presented in Table 4 are adhered to during design and construction". Council's Development Engineer has reviewed the proposed development and is supportable of the proposal subject to conditions to ensure the recommendations of the Geotechnical Report are followed. If the application were to be approved, the recommended conditions by Council's Development Engineer would be included to ensure no unacceptable geotechnical risk.

The proposed cost of works do not warrant a reason for refusal of this application.

- **Car Parking**

The submissions raised concerns that the proposed development does not include enough parking spaces given the number of bedrooms.

Comment:

In accordance with Clause B6.3 Off-Street Vehicle Parking Requirements, the parking requirements per dwelling is 2 spaces for a dwelling with 2 bedrooms or more. As such, the proposal is compliant with the parking requirements for a dwelling house.

The proposed car parking does not warrant a reason for refusal of this application.

- **Soft Landscaping**

The submissions raised concerns that the proposed development provides minimal soft landscaping, retention of vegetation.

Comment:

A detailed assessment has been undertaken under Clause D4.10 Landscaped Area - Environmentally Sensitive Area. In summary the proposal presents a non-compliance with the Landscaped Area control, and as such is inconsistent with the outcomes of the control. The reduction in landscaped area is not supportable or acceptable in this regard.

The landscaped area non-compliance will form a **reason** for refusal of this application.

- **Use of Dwelling House**

The submissions raised concern that the size of the proposal could create separate residencies.

Comment:

The proposal is for the alterations and additions to a dwelling house, and as such has been assessed in this capacity. If there proposal were to be approved a condition would be recommended to ensure the land use of the site is for a dwelling house only and not as separate domiciles.

The proposed use of the dwelling house does not warrant a reason for refusal of this application.

- **Side Building Line**

The submissions raised concerns that the proposal does not propose setbacks from neighbouring dwellings in keeping with the area.

Comment:

The proposal presents variations to the side building line that have been assessed under Clause D4.6 Side and rear building line of Pittwater 21 Development Control Plan contained within this report. In summary, the variations to the proposed side building lines are inconsistent with the outcomes of the control, and as such the variations are not supported.

The side building line non-compliance will form a reason for **refusal** of this application.

- **Front Building Line**

The submissions raised concerns that the proposed garage is within the front building area, and will reduce the landscaped area and ability to soften the street frontage.

Comment:

The proposal presents variations to the front building line that have been assessed under Clause D4.5 Front building line of Pittwater 21 Development Control Plan contained within this report. In summary, the variation to the front building line requirement is inconsistent with the outcomes of the control, and as such the variation to the front building line is not supported. The proposed garage structure presents a unacceptable bulk and scale, that is inconsistent with the streetscape.

The front building line non-compliance will form a **reason** for refusal of this application.

- **Water Runoff**

The submissions raised concerns that the amount of hard surfaces may result in significant water runoff down the street, and the houses on the lower side of the street.

Comment:

Council's Development Engineer has reviewed the proposed development, in accordance with Council's Water Management for Development Policy. As such, Council's Development Engineer is supportable of the proposed development, subject to recommended conditions that include the requirement for an On-site Stormwater Detention to ensure appropriate water management if the application were to be approved.

The water runoff does not warrant a reason for refusal of this application.

- **Heights of Buildings**

The submissions raised concerns surrounding the height of the proposed development, and if the calculation of the height is taken from the garage level to the maximum roof ridge.

Comment:

The proposed development is compliant with the maximum height of buildings, noting that height of building is measured as follows in accordance with Pittwater Local Environmental Plan 2014:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

In the proposed development, the maximum height of building at a given point is 6.0 metres, that is compliant with the required 8.5 metres of Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014.

The proposed height of buildings is compliant and does not warrant a reason for refusal of this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Supported - subject to conditions.</i></p> <p>The proposal is supported with regard to landscape issues.</p> <p><u>Additional Information Comment 31/01/23:</u> The amended plans are noted.</p> <p>Landscape Referral has only assessed the works proposed within the property boundaries and any planting in the road reserve shall be subject to approval by the Road Reserve Referral body.</p> <p>Two trees are proposed to be removed, trees 2 and 3, of which tree 2 is exempt by height and as such can be removed without consent. Tree 3 can be supported for removal as appropriate tree replacement has been shown on the Landscape Plan. All other trees and vegetation shown to be retained shall be protected during works and a Project Arborist shall be engaged, as recommended in the Arboricultural Impact Assessment, subject to the imposed conditions.</p> <p>The amended landscape proposal is supported and all proposed planting shall be installed as per the requirements outlined in the conditions of consent. All on slab landscaping shall comply with Council's minimum soil depth requirements.</p> <p><u>Original Comment Summary:</u></p> <ul style="list-style-type: none"> An amended Landscape Plan was requested due to the significant increase of the bulk and scale of the dwelling.
NECC (Bushland and Biodiversity)	<p><i>Supported - subject to conditions.</i></p> <p>The comments on this assessment refer to the following provisions:</p> <ul style="list-style-type: none"> NSW Biodiversity Conservation Act 2016 Pittwater LEP 2014 - cl .7.6 Biodiversity Protection Pittwater 21 DCP - cl. 4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>The proposal seeks approval for alterations and additions to a dwelling including a swimming pool. Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p>

Internal Referral Body	Comments
	<p>The proposal has been submitted with an Arboricultural report which states that two exempt trees (Tree 2 - <i>Callistemon sp.</i> and Tree 3 - <i>Ceratopetalum gummifera</i>) will be removed. No objection is raised to the removal of these two trees as the location of trees 2 and 3 is outside of areas mapped within the BV Map.</p> <p>Additionally, landscape plans have been submitted without a planting schedule. Under controls set within cl. B4.7 of the Pittwater 21 DCP: "Development shall ensure that at least 80% of any new planting incorporates native vegetation (as per species found on the site or listed in Pittwater Spotted Gum Endangered Ecological Community)."</p> <p>AMENDED COMMENTS 31/01/2023</p> <p>The comments on this assessment refer to the following provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • Pittwater LEP 2014 - cl .7.6 Biodiversity Protection • Pittwater 21 DCP - cl. 4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>A planting schedule has been submitted with the application including a range of native and cultivated native species. The species selection could be improved by incorporating a larger proportion of species belonging to the Pittwater Spotted Gum Forest Endangered Ecological Community (i.e Grevillea tamboritha and Grevillea "Superb" are cultivated species). However, calculations reveal that the provided species list is compliant and at least 80% of planting incorporates native vegetation of PSGF EEC.</p>
NECC (Development Engineering)	<p>Supported - subject to conditions.</p> <p>A review of the proposed new driveway crossing indicates that it may conflict with an existing Council stormwater pit and lintel in the road which has not been shown in the survey plan. The new crossing must be located a minimum of 1 metre from the lintel to ensure vehicles do not damage this infrastructure. The proposed new garage level requires the construction of retaining walls in the road reserve. The walls must be a minimum of 1.5 metres from the kerb and the verge area forward of the walls battered to suit. The plans are to be amended to suit these requirements.</p> <p>The proposal requires on-site stormwater detention. The concept plan does not show the minimum information required for approval. In this regard, the stormwater plan must include the volume of the tank and discharge rate in accordance with Council's Water Management for Development Policy.</p> <p>The submitted Geotechnical report addresses the relevant DCP controls.</p>

Internal Referral Body	Comments
	<p>Development Engineering cannot support the proposal, due to insufficient information to address vehicular access and stormwater in accordance with clauses B5 and B6 of the DCP.</p> <p>Amended Plans Received 27/01/2023</p> <p>The amended plans address the previous issues raised with the proposal. The increase in impervious area must include the proposed garage roof which has been conditioned.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
Road Reserve	<p>Supported - without conditions.</p> <p>The proposed works do not impact existing road infrastructure. Council's Development Engineering team to resolve engineering design and construction of driveway and supporting retaining walls in accordance with Council requirements for clear access and sight distance. The apparent unauthorised encroachment of the car port and retaining walls on Council's road reserve are to be removed.</p> <p>No in principle objection to the proposed works on road reserve subject to above requirements.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported - subject to conditions.</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p>Supported - without conditions.</p> <p>Development Application No. DA2022/1650 Description: Alterations and additions to a dwelling house including a swimming pool Address: 8 Baroona Road CHURCH POINT</p> <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>

External Referral Body	Comments
	Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A473077_02 dated 27 January 2023).

In the event that the development is recommended for approval, a Condition would be recommended requiring compliance with the BASIX commitments of the 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 5.0 metres of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30 meters of a structure supporting an overhead electricity transmission line and/or within 5.0 meters of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions that would be

recommended in the event that the development was recommended for approval.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.0m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The subject site is located in Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of the zone as detailed below:

- **To provide for low-impact residential development in areas with special ecological,**

scientific or aesthetic values.

Comment:

The proposed development is not considered to be of a built form which is representative of low-impact residential development, given the scale of the proposed development. The proposal presents a high-impact residential development, as a result of the stepped dwelling house, that presents a built form aesthetic that is inconsistent with the low-impact residential development, due to its disjointed form and over arching bulk. As such, it is considered that the proposed development is inconsistent with providing a low-impact residential development.

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

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

Comment:

The proposal is considered to have an adverse effect on the aesthetic values, as the proposal presents as a multi-storey and unit development that is presents as unaesthetic and not single residential in its built form. The design of the second and third floor are considered to be inconsistent with the design of the existing dwelling house, that presents a disjointed aesthetic.

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

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

Comment:

As outlined above, the proposal is not considered to provide for residential development of a low density, and scale. The proposal presents as a multi-storey and unit dwelling house when viewed from the streetscape. The proposal dwelling house presents as a dominating scale that does not appropriately integrate with the land-form, and landscape given the landscaped area non-compliance presented.

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

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

Comment:

The proposed development will not present an adverse impact upon the riparian, foreshore vegetation, or wildlife corridors.

It is considered that the development **satisfies** this objective.

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.

Comment:

The proposed works are outside 500 metres of adjacent Class 1, 2, 3 or 4 land and therefore the proposed development will not disturb, expose, or drain acid sulfate soils.

7.2 Earthworks

The proposal includes earthworks to accommodate for the proposed double garage.

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(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.

(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.

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments.

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

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment, or environmentally sensitive areas.

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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.

(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.

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.

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, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions of consent, if the development was recommended for approval.

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

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

Comment:

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

(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 recommended conditions of consent, if the development was recommended for

approval. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (South-East)	1.4m (Bin Store) 1.58m (Garage)	78.46% (5.1m) 75.69% (4.92m)	No No
Rear building line	6.5m (North-West)	22.2m	-	Yes
Side building line	2.5m (North-East)	2.1m (Swimming Pool Balance Tank)	16.0% (0.4m)	No
	1m (South-West)	0.9m (Walk-In-Pantry)	10.0% (0.1m)	No
Building envelope	3.5m (North-West)	Within envelope	-	Yes
	3.5m (South-West)	Within envelope	-	Yes
Landscaped area	60% (694.2m ²)	54.98% (636.1m ²)	8.37% (58.1m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	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
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	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
D4.1 Character as viewed from a public place	No	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	No	Yes
D4.6 Side and rear building line	No	No
D4.8 Building envelope	Yes	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.4 Church Point and Bayview Locality

The Church Point and Bayview Locality Statement notes as follows:

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

Comment:

The proposed development includes the addition of two levels located at the rear of the existing dwelling house, presenting a terraced style development that is multi-unit in its form. Whilst the proposal is terraced along the upwards sloping topography of the site, the proposal presents as a multi-storey dwelling when viewed from the streetscape (south-east elevation). Whilst, the proposal is technically compliant with the maximum number of storeys, it is considered that the proposed development is not considered to be of low-density residential, given the proposal includes 5 bedrooms, and additional rooms that comprise of sitting room, office, gym, two laundries, study, and family room

and a built form that is dominate, rather than recessive. It is considered that the scale of the proposed development does not integrate with the landform, or landscape, but dominates the landform and landscaped area given the non-compliance with the proposal landscaped area and setback variations.

It is considered the proposal **does not satisfy** this section of Desired Character of the Church Point and Bayview Locality.

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

Comment:

The proposal includes a new double garage, that has been designed in response to the steeply sloping blocks. It is considered however, the width and depth of the garage presents an unreasonable amount of excavation that is beyond the required dimensions for car parking in accordance with *Australian Standard AS/NZS 2890.-12004: Parking Facilities Part 1: Off Street Car Parking*. Therefore, it is considered that the provision of car parking has not been sensitively designed.

It is considered the proposal **does not satisfy** this section of Desired Character of the Church Point and Bayview Locality.

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

Comment:

The proposal includes the removal of two (2) exempt trees, that is supported by Council's Bushland and Biodiversity Officer, and Council's Landscape Officer. The proposal largely retains the existing tree canopy and vegetation, and includes additional landscaping as detailed in the accompanied Landscape Plan. The subject site is visible from Scotland Island, and the Pittwater waterway, and as such the proposed development will present a visually dominant dwelling house, that will present as a multi-storey dwelling that does not blend into the natural environment.

It is considered the proposal **does not satisfy** this section of Desired Character of the Church Point and Bayview Locality.

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

Comment:

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

It is considered the proposal **satisfies** this section of Desired Character of the Church Point and Bayview Locality

"Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm

to people and fauna, and facilitate co-location of services and utilities".

Comment:

Vehicular and pedestrian access to the site will be provided via Baroona Road. Council's Development Engineer has reviewed the proposal and recommended conditions for traffic management and control, and traffic control during works.

It is considered the proposal **satisfies** this section of Desired Character of the Church Point and Bayview Locality

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

Comment:

The proposal will not compromise pedestrian/cycle access around the foreshore area, or to areas of open space.

It is considered the proposal **satisfies** this section of Desired Character of the Church Point and Bayview Locality

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

Comment:

The site is located approximately 1.0 kilometers south of the Church Point Wharf. The proposed development will not impact the link from Church Point to the offshore communities.

It is considered the proposal **satisfies** this section of Desired Character of the Church Point and Bayview Locality

Conclusion

It is concluded that the proposed development is overall inconsistent with the intent of the Church Point and Bayview Desired Future Character Statement and that the development will adversely impact the visual relationship with the surrounding environment.

C1.3 View Sharing

A submission from No.10 Baroona Road CHURCH POINT raised concerns surrounding view impacts from the proposed development.

A site visit was conducted to assess the view impacts.

As such, a detailed view loss assessment has been undertaken to assess the impacts.

Merit consideration

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

- ***A reasonable sharing of views amongst dwellings.***

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The proposed development will impact upon expansive water views, and water views in which the interface between land and water is visible. The views include whole views that includes Scotland Island and across the Pittwater Waterway.

2. What part of the affected property are the views obtained

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

Comment to Principle 2:

The property obtains the view from the ground floor that includes the primary living area consisting of a the open plan living room (see **Figure 1**), and outdoor terrace (see **Figure 2**). The property also obtains the view from the first floor that includes a balcony (see **Figure 3**). The view is obtained across the north-eastern side boundary of No.10 Barooka Road. The views are obtained from both a standing and sitting position. It is acknowledged that the retention of side views are often unrealistic, however in this instance it is considered the view impacts are as a result of an over-development of the subject site.



Figure 1. View obtained from the ground floor living room of No.10 Barroona Road facing north-east (please note the height poles have been erected by the owners of No.10 Barroona Road, and are not accurately certified).



Figure 2. View obtained from the ground floor outdoor terrace of No.10 Baroona Road facing north-east (please note the height poles have been erected by the owners of No.10 Baroona Road, and are not accurately certified).



Figure 3. Views facing north-east from the first floor balcony of No.10 Baroona Road.

3. Extent of impact

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

Comment to Principle 3:

No.10 Baroona obtains a view facing east towards Pittwater Waterway (see **Figure 4**), however it is considered that the view facing north-east is significant as it include Scotland Island. The impact on views to No.10 Baroona is significant as it largely impacts the views obtained from the primary living area. It is considered that the potential view loss is severe in this instance, and as such the extent of the impact is unacceptable.



Figure 4. Views facing east from the ground floor of No.10 Baroona Road.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The reasonableness of the proposal that is causing the impact is considered to be inappropriate in this instance. The proposal presents variations to the Built Form Controls, including the Landscaped Area that demonstrates the proposed development is an over-development of the subject site, as it reduces the total landscaped area as a result of additional built form. The view impact for the rear addition to the existing dwelling house is considered to be unreasonable, and it is considered a more skilful design could be explored to reduce the impact to No.10 Baroona Road, although it is noted that the site has almost reached its highest and best use. In summary, the proposed development presents a significant view loss impact, that is unacceptable, and therefore unsupportable.

The proposed development **does not satisfy** this outcome.

- ***Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.***

Comment:

The proposal results in significant impacts to water, headland, beach, and bush views that are unprotected, and forgone as a result of the proposed development.

The proposed development **does not satisfy** this outcome.

- ***Canopy trees take priority over views.***

Comment:

The proposal largely retains the existing canopy trees as these are located at the rear of the subject site.

The proposed development **does not satisfy** this outcome.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C1.4 Solar Access

Description of non-compliance

Concerns were raised from No.10 Barooka Road in relation to solar access impacts as a result of the proposed development.

Under Clause C1.4 Solar Access of Pittwater 21 Development Control Plan, the controls state the following:

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

The main private open space of No.10 Barooka Road includes the ground floor terrace that is approximately 28m² (see Figure 5).



Figure 5. Private Open Space including ground floor terrace of No.10 Baroona Road

Under Clause C1.7 Private Open Space of Pittwater 21 Development Control Plan is defined as:

- *Minimum 80m² of Private Open Space per dwelling at ground level, with no dimension less than 3 metres. No more than 75% of this Private Open Space is to be provided in the front yard.*
- *Dwellings are to be designed so that Private Open Space is directly accessible from living areas enabling it to function as an extension of internal living areas.*
- *A balcony located above ground level, but which has access off living areas of dwellings, can be included as Private Open Space. The dimensions should be sufficient so that the area can be usable for recreational purposes (i.e. a minimum width of 2.4m).*

In this instance, the ground floor terrace of No.10 Baroona Road is considered to be the main useable private open space for the residents, as it is located directly off the primary living area, and is a elevated terrace area that can be includes as Private Open Space.

The proposal results in unacceptable solar access to No.10 Baroona Road. It is important to note, the provided shadow diagrams detail the shadows below the built form of No.10 Baroona Road, rather than overlaid.

Merit consideration

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

- **Residential development is sited and designed to maximise solar access during mid-winter.**

Comment:

The proposed development will result in overshadowing to the private open space of No.10 Baroona Road as detailed on the 9am Shadow Diagram (see Figure 6) and 12pm Shadow Diagram (See Figure 7) on 21 June. The proposal will unreasonable result in the reduction of solar access, and it is considered that the proposal presents a reduction in solar access that is less than the minimum of 3 hours of sunlight between 9am and 3pm on June 21st. The proposal will continue to maintain a minimum of 3 hours of sunlight between 9am and 3pm on June 21st to the windows of the principal living area of N0.10 Baroona Avenue.

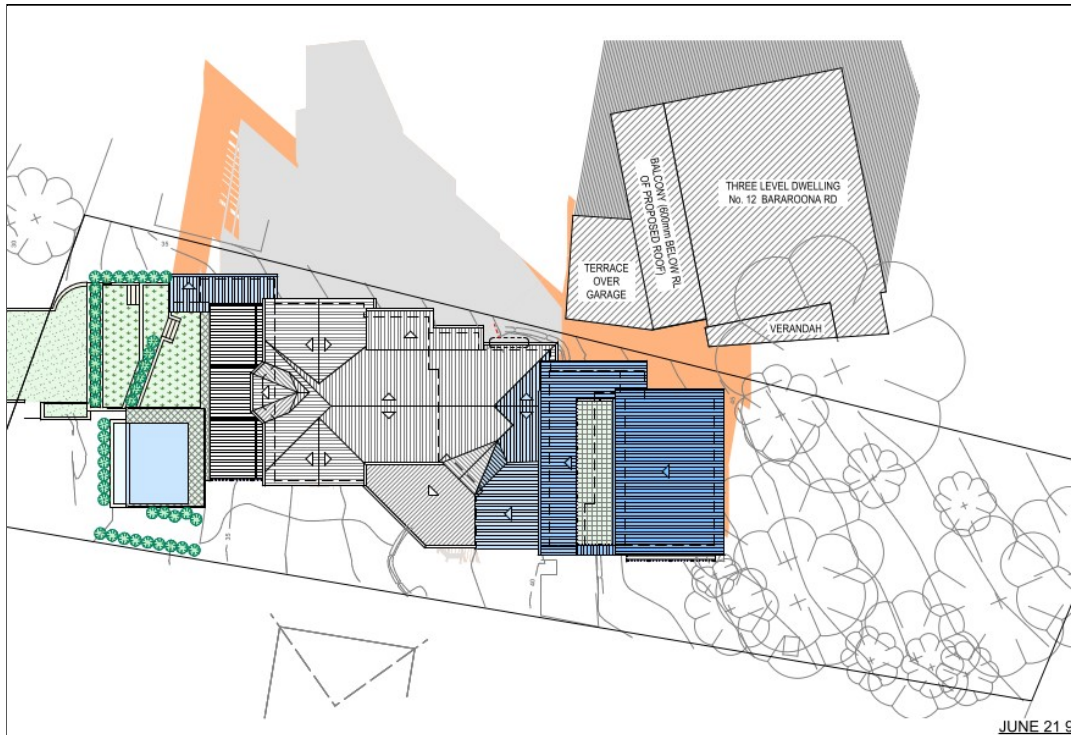


Figure 6. June 21 9am Shadow Diagram (orange highlighting new shadows).

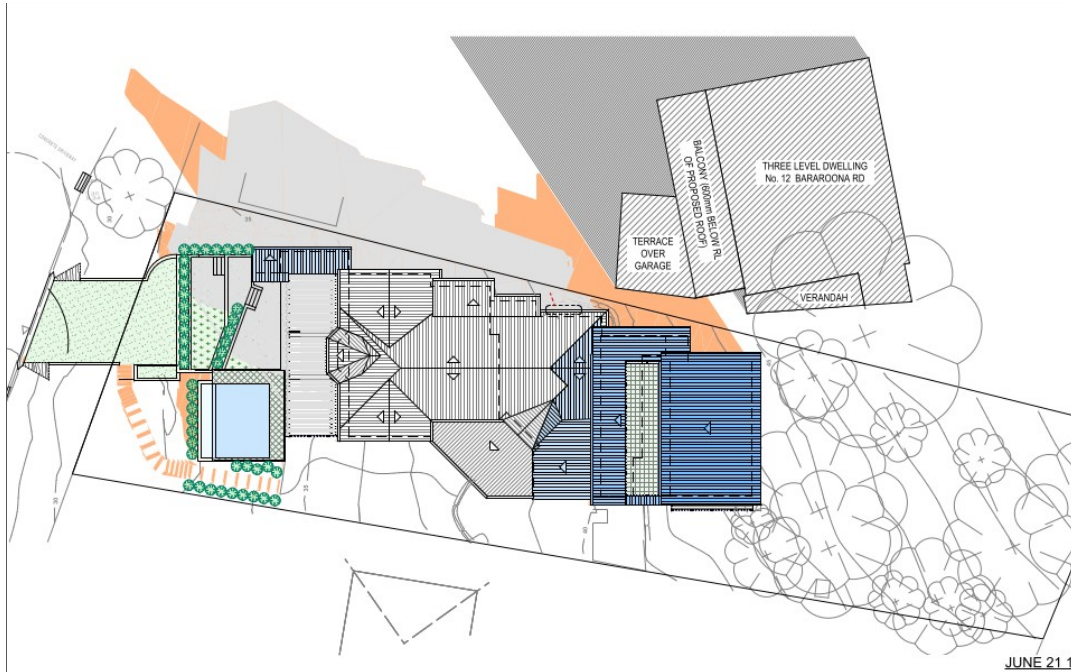


Figure 7. June 21 12pm Shadow Diagram (orange highlighting new shadows).

The proposed development **does not satisfy** this outcome.

- ***A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development.***

Comment:

It is considered the proposed development will result in an unreasonable level of solar access to the adjoining development, that presents a non-compliance to the required solar access to the private open space.

The proposed development **does not satisfy** this outcome.

- ***Reduce usage and/dependence for artificial lighting.***

Comment:

The proposal will not result in reduced usage and dependence for artificial lighting within the existing dwelling house of No.10 Baroona Road.

The proposed development **satisfies** this outcome.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant Outcomes of the Pittwater 21 Development Control Plan and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is unsupported in this particular circumstance.

C1.5 Visual Privacy

Description of non-compliance

The proposal includes a new deck on the third floor plan, that is located 4.5m from the terrace of No.10 Baroona Road.

Under Clause C1.5 Visual Privacy of Pittwater 21 Development Control Plan, the requirements are as follows:

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Whilst the deck could include privacy screens to provide appropriate privacy, this will add to the view impacts associated with rear addition. Furthermore, the proximity of the elevated deck of the subject site, is considered presents unacceptable privacy impacts to the principal private open space of No.10 Baroona Road.

Merit consideration

- **Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.**

Comment:

The proposal does not optimise privacy through good design, and presents a deck on the third floor that will result in unacceptable privacy impacts to the adjoining site at No.10 Baroona Road.

The proposed development **does not satisfy** this outcome.

- **A sense of territory and safety is provided for residents.**

Comment:

The proposal presents unacceptable overlooking, that will impact the sense of territory and safety for the adjoining residents at No.10 Baroona Road.

The proposed development **does not satisfy** this outcome.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant Outcomes of the Pittwater 21 Development Control Plan and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is unsupported in this particular circumstance.

D4.1 Character as viewed from a public place

Description of non-compliance

The proposed development as viewed from a public place is detailed on the South East Elevation (see **Figure 8**).

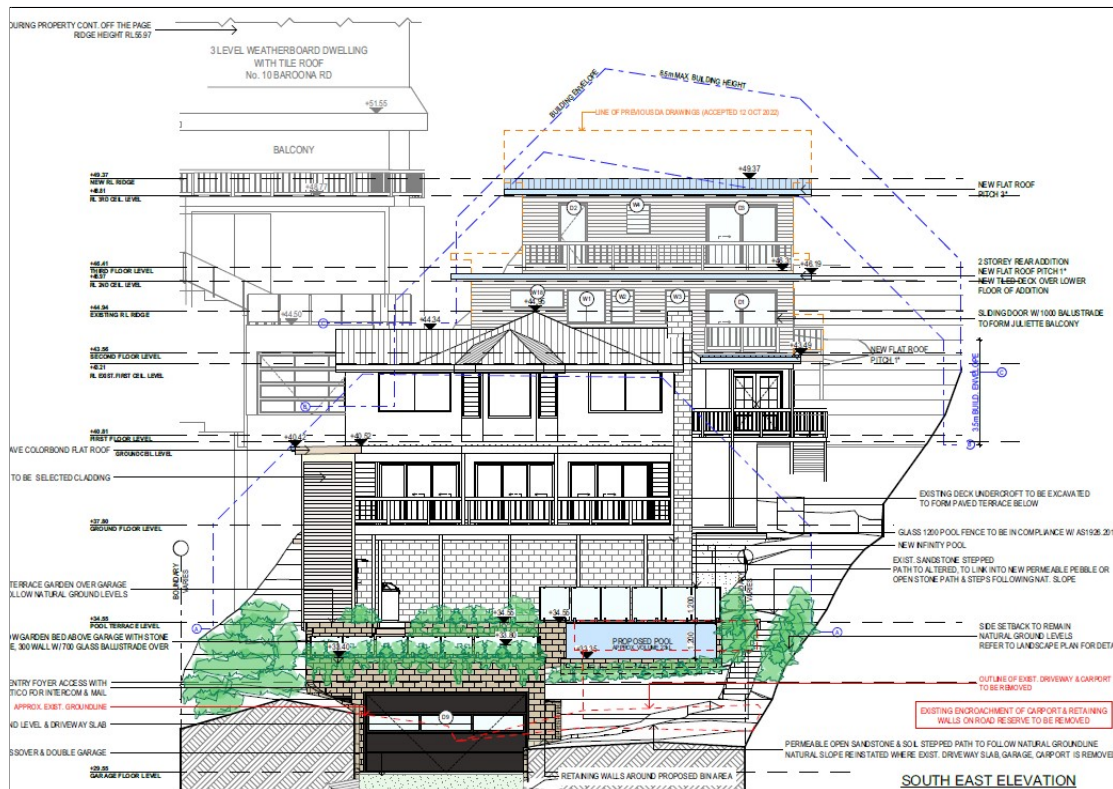


Figure 8. South East Elevation of No.8 Baroona Road

The application is considered to be inconsistent with the following requirements as detailed under Clause D4.1 Character as viewed from a public place of Pittwater 21 Development Control Plan:

- ***The bulk and scale of buildings must be minimised.***

Comment:

The proposal presents an excessive bulk and scale through the addition of the garage structure located within the front setback area, and the proposed two storey rear addition to the existing dwelling house. The proposal presents of excessive bulk and scale, that demonstrates inconsistencies with the built form controls, including front building lines, side building lines, and landscaped area. In conjunction, the proposal presents a collective number of non-compliances that present an over-development of the site through unacceptable bulk and scale.

- ***Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures must be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.***

Comment:

The proposed garage structure is located within the front building line area, and is approximately 8 metres in width. The lot frontage is 20.09 metres, therefore the width of the garage structure should be no greater than 7.5 metres. The proposed garage structure includes an entry foyer and vertical lift that contributes to the dominant site feature when viewed from a public place.

- ***Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.***

Comment:

The proposal presents a variation to the landscaped area requirement, and as such gives the appearance of the buildings appearing primary to landscaping and vegetation. The reduction in landscaped area as a result of the additional building footprint of the proposed garage structure, swimming pool, and rear addition to the existing dwelling house presents the landscaping as secondary. The proposal is inconsistent with the requirements of the control, with the built form taking precedence over the landscaping and vegetation.

Merit consideration:

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

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

Comment:

It is considered that the proposed development is inconsistent with the desired future character of the Church Point and Bayview Locality, as detailed under Clause A4.4 Church Point and Bayview Locality of Pittwater 21 Development Control Plan detailed within this report.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposed development does not appropriately respond to, reinforce, or sensitively relates to the spatial characteristics of the existing built and natural environment.

The proposed development **does not satisfy** this outcome.

- ***To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.***

Comment:

The proposal presents a garage structure that is inconsistent with the existing streetscape as it is of a scale and density that is over-sized, noting that the garage structure presents a maximum height of 6.2 metres.

The proposed development **does not satisfy** this outcome.

- ***The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.***

Comment:

The proposal presents a visual impact whereby the built form dominates the landscaping and vegetation. The additional building footprint proposed significantly reduces the landscaped area

on site, and as a result this presents a built form that is domineering.

The proposed development **does not satisfy** this outcome.

- ***High quality buildings designed and built for the natural context and any natural hazards.***

Comment:

The proposal presents a building that is designed and built through consideration to Geotechnical Hazards.

The proposed development **satisfies** this outcome.

- ***Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum.***

Comment:

The garage structure dominates the streetscape as a result of the reduced front building setback, and the height of the garage structure that is 6.2 metres in height. The proposed rear addition to the dwelling house gives an appearance of a multi-storey dwelling as a result of the terrace design of the dwelling house. The proposal will appear as a multi-storey dwelling, and as such the scale of the proposal is not supportable.

The proposed development **does not satisfy** this outcome.

- ***To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.***

Comment:

The proposal presents view impacts to the adjoining site at No.10 Baroona Road, and as such does not protect Pittwater's natural context.

The proposed development **does not satisfy** this outcome.

- ***To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.***

Comment:

The proposal results in a reduced landscaped area, that presents a non-compliance to the landscaped area control. The proposal will present as a predominant feature, that results in the dwelling house, and parking structure to be a primary component, rather than secondary to the bushland vista of Pittwater.

The proposed development **does not satisfy** this outcome.

- ***To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land.***

Comment:

The proposal is considered to present a dwelling house of unacceptable scale, that does not compliment the landscape character.

The proposed development **does not satisfy** this outcome.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is unsupported, in this particular circumstance.

D4.5 Front building line

Description of non-compliance

The proposed garage structure is located 1.58 metres from the front building line, presenting a variation of 75.69% (4.92 metres) to the 6.5 metres requirement. Furthermore, the proposed bin enclosure is located 1.4 metres from the front setback area, presenting a variation of 78.46% (5.1 metres) to the required 6.5 metres requirement.

Under Clause D4.5 Front building line of Pittwater 21 Development Control Plan (P21 DCP), variations can be made in the following instances:

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

It is considered that the subject site is steeply sloping, however the proposed garage structure, that incorporates an entry foyer is considered to of unacceptable width at approximately 8 metres, which significantly exacerbates its impacts. The proposal has been assessed against the outcomes of the control, and it is found that the proposal is inconsistent with the outcomes of the control.

Merit consideration

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

- ***Achieve the desired future character of the Locality.***

Comment:

It is considered that the proposed development is inconsistent with the desired future character of the Church Point and Bayview Locality, as detailed under Clause A4.4 Church Point and Bayview Locality of Pittwater 21 Development Control Plan detailed within this report.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposed garage will not result in an impact of views and vistas to and/or from public/private places. However, the proposed rear addition will impact upon view and vistas from No.10 Baroona Road. A detailed assessment has been conducted under Clause C1.3 View Sharing of Pittwater 21 Development Control Plan for a detailed view loss assessment.

The proposed development **does not satisfy** this outcome.

- ***The amenity of residential development adjoining a main road is maintained.***

Comment:

The subject site is not located on a main road, therefore this outcome is not relevant.

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

Comment:

The proposal presents a variation to the required Landscaped Area. It is noted that the proposal includes a green roof over the garage roof to assist in reducing the built form.

The proposed development **satisfies** this outcome.

- ***Vehicle manoeuvring in a forward direction is facilitated.***

Comment:

The site conditions do not permit vehicles to enter and exit the site in a forward direction. Council's Development Engineer has reviewed the development with respect to vehicular movement and off-street parking and raise no objections.

The proposed development **satisfies** this outcome.

- ***To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.***

Comment:

The proposed garage structure located within the front setback area is inconsistent with the existing streetscape, given the width and height of the structure. Whilst the garage structure is in keeping with the height of the natural environment, the proposal is inconsistent with the existing streetscape, that largely comprises of modest open carports, or garage structures.

The proposed development **does not satisfy** this outcome.

- ***To encourage attractive street frontages and improve pedestrian amenity.***

Comment:

The proposal is considered to detract from the existing street frontages, due to the unacceptable height from the finished floor level of the garage to the top of the terraced green roof above the garage that is approximately 5 metre in height. The proposal provides a new pedestrian pathway from the front driveway, as well as an internal lift located within the garage structure.

The proposed development **does not satisfy** this outcome.

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

Comment:

It is considered that the proposed development negatively responds to the spatial characteristics of the existing urban environment. The proposed garage structure presents a uncharacteristic dominance to the streetscape, that is inconsistent with the existing spatial characteristics in Barooka Road.

The proposed development **does not satisfy** this outcome.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant Outcomes of the Pittwater 21 Development Control Plan and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is unsupported in this particular circumstance.

D4.6 Side and rear building line

Description of non-compliance

Clause D4.6 Side and Rear Building Line of Pittwater 21 Development Control Plan, requires a side setback of 2.5 metres to one side and 1.0 metres to the other, and a rear setback of 6.5 metres. For this assessment, the 1.0 metres side building line is applied to the south-western boundary and the 2.5 metres side building line applied to the north-eastern boundary.

The proposal presents a non-compliance to the 2.5 metres north-eastern side building line, with the proposed swimming pool balance tank located 2.1 metres from the side boundary line, presenting a variation of 16.0% (0.4 metres). The proposed presents a non-compliance to the 1.0 metres south-western side building line, with the proposed walk-in-pantry located 0.9 metres from the side boundary line, presenting a variation of 10.0% (0.1 metres). The proposal is compliant with the rear building line.

The proposal has been assessed against the outcomes of the control, and it is considered that the proposal does not satisfy the outcomes, and as such the variations are not supportable.

Merit consideration

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

Comment:

It is considered that the proposed development is inconsistent with the desired future character of the Church Point and Bayview Locality, as detailed under Clause A4.4 Church Point and Bayview Locality of Pittwater 21 Development Control Plan detailed within this report.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal is considered to be of unacceptable bulk and scale, through the additional building footprint proposed. The encroachments within the side setback controls are considered to be unnecessary, and contributes to the bulk and scale of the proposed development.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposed rear addition will impact upon view and vistas from No.10 Baroona Road. A detailed assessment has been conducted under Clause C1.3 View Sharing of Pittwater 21 Development Control Plan for a detailed view loss assessment.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal has not considered view sharing through the siting of buildings, and the proposed design for the rear addition significantly impacts on the views currently obtained by No.10 Baroona Road. The proposal includes new plantings and landscaping, however the proposal overall presents a non-compliant landscaped area that is not supportable.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal will provide acceptable solar access to the subject site, and adjoining sites. However, the proposal includes unreasonable level of privacy, and amenity impacts as a result of the proposed development. The rear addition presents view loss impacts, and privacy impacts to No.10 Baroona Road. A detailed assessment has been conducted under Clause C1.3 View Sharing, and C1.5 Visual Privacy of Pittwater 21 Development Control Plan in relation to these amenity impacts.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal presents a non-compliant landscaped area that is considered to be unsubstantial landscaping. The proposal largely retains the mature tree canopy located at the rear of the site. Notwithstanding, the proposal presents an unacceptable impact to the streetscape as a result of the proposed garage structure that is considered to be of unreasonable bulk and scale.

The proposed development **does not satisfy** this outcome.

- ***Flexibility in the siting of buildings and access.***

Comment:

Flexibility is not afforded in this instance, as the siting of the structures located within the side building setback areas present no impediment to comply. Therefore, it is considered that flexibility to vary the side building line controls are not supportable in this regard.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal presents a reduction in vegetation, and as such there is a diminished ability to visually reduce the built form.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal is located within a residential zone, and therefore this outcome is not relevant.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant Outcomes of the Pittwater 21 Development Control Plan and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is unsupported in this particular circumstance.

D4.10 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The proposed development presents a total of 54.98% (636.1m²) of landscaped area, presenting a variation of 8.37% (58.1m²) to the required 60% (694.2m²) of the site area.

Under Clause D4.10 Landscaped area - Environmentally Sensitive Land variations can be made provided the outcomes of this control are achieved. As detailed below it is considered that the proposal does not meet the outcomes of the control, therefore the variation is not applicable in this instance.

The existing landscaped area on site is compliant at a total of 67.52% (781.23m²) as detailed in Figure 9. The existing site presents a compliant Landscaped Area, and as such the proposed development presents an unacceptable reduction in landscaped area that is representative of an over-development to the site.

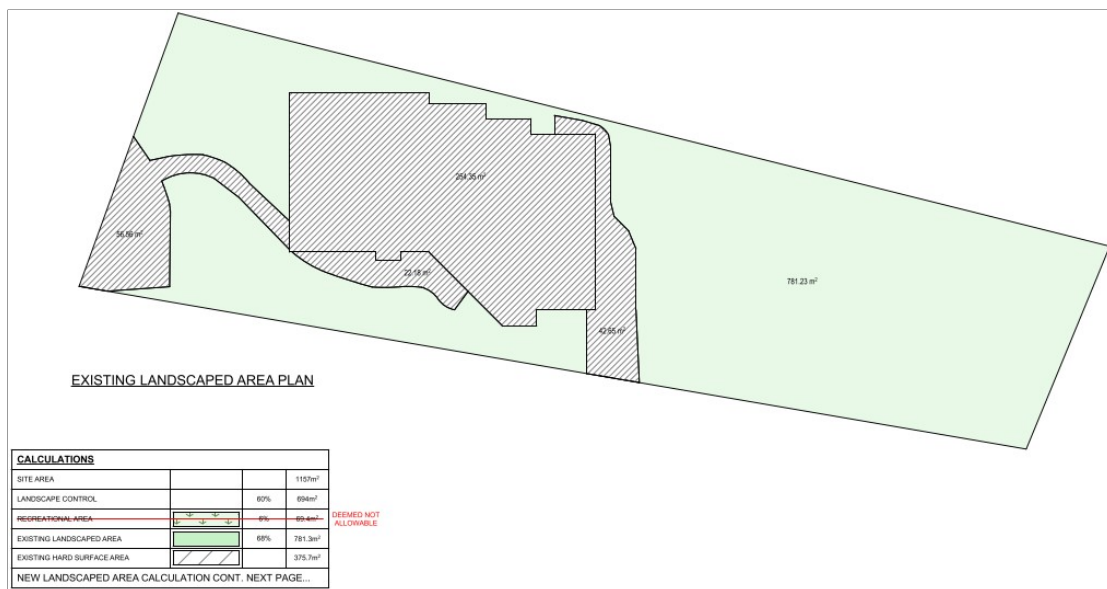


Figure 9. Existing Landscaped Area Plan

It is important to note, that the Proposed Landscaped Area Plan (Drawing No.DA.23, Rev B prepared by JJ Drafting, dated 27 January 2023) is inconsistent with the Master Landscape Plan (Drawing No.101, Rev C, prepared by Jamie King Landscape Architect, dated 27 January 2023). The Proposed Landscape Area Plan details a total of 675.8m², and the Master Landscape Plan detailed a total of 636.1m² as outlined above. In this instance, the proposal has been assessed by the Master Landscape

Plan, as it provides greater detail for the proposed plantings, and landscaping.

Notwithstanding, both plans detail a non-compliance to the required landscaped area, and as such the proposal has been assessed against the outcomes of the control accordingly.

Merit consideration

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

- ***Achieve the desired future character of the Locality.***

Comment:

It is considered that the proposed development is inconsistent with the desired future character of the Church Point and Bayview Locality, as detailed under Clause A4.4 Church Point and Bayview Locality of Pittwater 21 Development Control Plan as detailed within this report.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal presents an unacceptable bulk and scale of the built form, as a result of the additional building footprint, that results in a non-compliant landscaped area. The proposed garage structure, and rear addition to the existing dwelling house presents a bulk and scale that unreasonably diminishes soft landscaping areas.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal results in an unacceptable amenity impact to No.10 Baroona Avenue, as a result of the rear addition that presents an unacceptable view loss impact.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal results in the reduction of vegetation by way of the proposed rear addition, and proposed garage structure that results in an increase of built form to the site. The proposal increases the building footprint and overall built form, that presents an unacceptable visual impact.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal presents a reduction of natural vegetation on site. Council's Bushland and Biodiversity Officer has reviewed the proposal, and is supportable of the proposal subject to conditions, as the proposal is located outside of the Biodiversity values mapping.

The proposed development **satisfies** this outcome.

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

Comment:

The proposal presents an increase in potential stormwater runoff as a result of the reduction in pervious surfaces. Therefore, the proposal may result in unreasonable soil erosion, and siltation of natural drainage channels.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal presents a non-compliant landscaped area, as a result of the increase building footprint on the site. It is considered that the proposal detracts from the rural and bushland character of the area.

The proposed development **does not satisfy** this outcome.

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

Comment:

The proposal reduces the soft surface on the subject site, that reduces the infiltration to the water table, and may increase run-off, and negatively impact stormwater management.

The proposed development **does not satisfy** this outcome.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant Outcomes of the Pittwater 21 Development Control Plan and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is unsupported 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 \$9,750 is required for the provision of new and augmented public

infrastructure. The contribution is calculated as 1% of the total development cost of \$975,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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:

- 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 alterations and additions to a dwelling house including a swimming pool has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to more than 10 unique submissions received by way of objection.

The concerns raised in the objections have been addressed within this assessment report. The applicant provided amended plans during the assessment period, however the objections remain unresolved.

The critical assessment issues included inconsistency and non-compliance with Objectives of Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014, Clause C1.3 View Sharing of Pittwater 21 Development Control Plan, Clause D4.1 Character as viewed from a public place of Pittwater 21 Development Control Plan, Clause D4.5 Front building line of Pittwater 21 Development Control Plan, and Clause D4.10 Landscaped Area – Environmentally Sensitive Land of Pittwater 21 Development Control Plan.

Overall, the proposal indicates an over-development of the subject site that does not perform well against the relevant Clauses and Controls of the Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan will result in unreasonable amenity impacts upon adjoining, and nearby properties.

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 DA2022/1650 for the Alterations and additions to a dwelling house including a swimming pool on land at Lot A DP 391997,8 Baroona Road, CHURCH POINT, for the reasons outlined as follows:

1. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 1.2 Aims of The Plan, and Clause Zone C4 Environmental Living of the Pittwater Local Environmental Plan 2014.**

Particulars:

i) The proposed development fails to achieve consistency with the objectives of Clause 1.2 Aims of the Plan of the PLEP 2014 in that the proposal is inconsistent with the desired character of Pittwater's localities.

ii) The proposed development is inconsistent with the objectives of the C4 Environmental Living of the PLEP 2014, specifically as the proposed development is not considered to be low-impact residential development and presents an adverse impact on the aesthetic values as a result of the multiple non-compliances to the built form.

2. **Pursuant to Section 4.15(1)(a)(iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following controls within the Pittwater 21 Development Control Plan: Clause C1.3 View Sharing, Clause 1.4 Solar Access, Clause C1.5 Visual Privacy, Clause D4.1 Character as viewed from a public place, Clause D4.5 Front building line, Clause D4.6 Side and rear building line, and Clause D4.10 Landscaped Area - Environmentally Sensitive Land.**

Particulars:

i) The proposed development fails to meet the numerical requirements of the front building line, side building line, and landscaped area controls. The numerical non-compliances result in a cumulative impact, that significantly increases the building footprint, resulting in an over-development of the site.

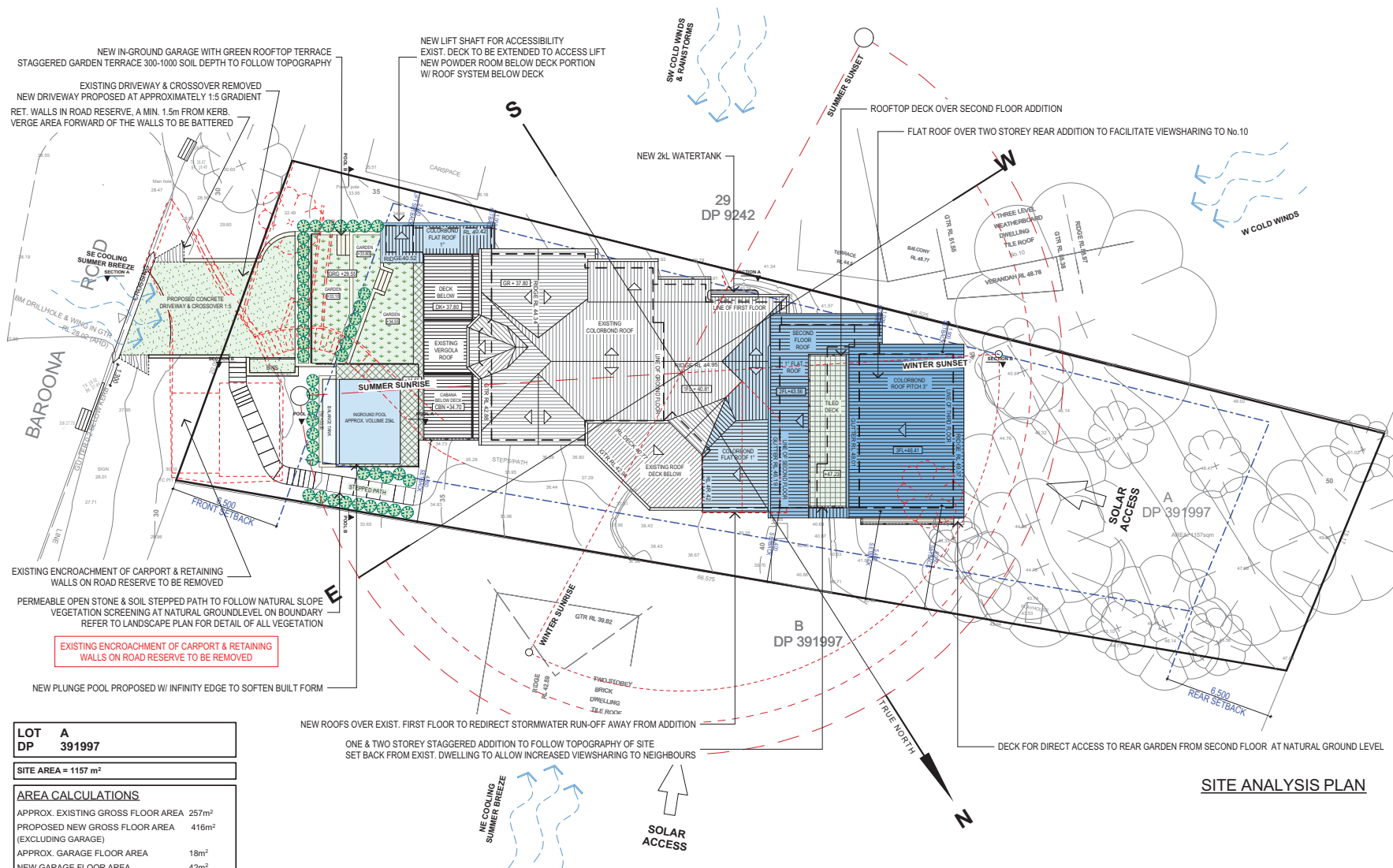
ii) The proposed development presents unacceptable amenity impacts by way of view sharing impacts, solar access impacts, and visual privacy impacts, that arise because of the rear addition to the existing dwelling house.

iii) The proposed bulk, and scale is inconsistent with the character as view from a public place and presents an unacceptable development due to the inconsistencies with the outcomes of the control.

3. **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 extent of non-compliances of relevant clauses within the Pittwater Local Environmental Plan 2014, and controls within the Pittwater 21 Development Control Plan, and the resultant unreasonable amenity impacts upon adjoining and surrounding properties, is such that an approval of the proposed development would not be within the public's interest.







NOTES (E & OE) • All structures including stormwater & drainage to engineer's details. • Do not obtain dimensions by scaling drawings. • All dimensions are to be checked on site prior to starting work. • These drawings are to be read in conjunction with all other consultant's drawings and specifications. • All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements. • New materials are to be used throughout unless otherwise noted. • Concrete footings, slab, structural beams or any other structural members are to be designed by a registered engineer.	 Division of JJ DRAFTING AUSTRALIA PTY LTD 26/90 Mona Vale Road, Mona Vale, NSW, 2103 PO Box 687, Dee Why, NSW, 2099 Mob. 0414 717 541 Email: jjdraft@jog.com.au www.jjdrafting.com.au	REV:	DATE:	DESCRIPTION:	PROPOSED ALTERATIONS AND ADDITIONS 8 BAROONA RD, CHURCH POINT 2105 CLIENT: SECH & ALISON	DATE:	DRAWN BY:	SCALE:
		A	23/01/23	DA AMENDED		MAY/22	AN	1:100 @ A3
		B	27/01/23	DA AMENDED	DRAWING TITLE: ELEVATIONS SHEET 2	JOB No:	CHECKED BY:	DRAWING NO:
						1030/22	JJ	DA.15



<div>NOTES (E & OE)</div> <ul style="list-style-type: none">• All structures including stormwater & drainage to engineer's details.• Do not obtain dimensions by scaling drawings.• All dimensions are to be checked on site prior to starting work.• These drawings are to be read in conjunction with all other consultant's drawings and specifications.• All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.• New materials are to be used throughout unless otherwise noted.• Concrete footings, slab, structural beams or any other structural members are to be designed by a registered engineer.	<div>JJ Drafting</div> <div>Division of JJ DRAFTING AUSTRALIA PTY LTD</div> <div>26/90 Mona Vale Road, Mona Vale, NSW, 2103</div> <div>PO Box 687, Dee Why, NSW, 2099</div> <div>Mob. 0414 717 541 Email: jjdrafting@pg.com.au</div> <div>www.jjdrafting.com.au</div>	<div>REV: DATE: DESCRIPTION:</div> <div>A 23/01/23 DA AMENDED</div> <div>B 27/01/23 DA AMENDED</div>	<div>PROPOSED ALTERATIONS AND ADDITIONS</div> <div>8 BAROONA RD, CHURCH POINT 2105</div> <div>CLIENT:</div> <div>SECH & ALISON</div>	<div>DATE:</div> <div>MAY/22</div>	<div>DRAWN BY:</div> <div>AN</div>	<div>SCALE:</div> <div>1:100 @ A3</div>
		<div>DRAWING TITLE:</div> <div>ELEVATIONS SHEET 3</div>	<div>JOB No:</div> <div>1030/22</div>	<div>CHECKED BY:</div> <div>JJ</div>	<div>DRAWING No:</div> <div>DA.16</div>	



<div>NOTES (E & OE)</div> <div><ul style="list-style-type: none">• All structures including stormwater & drainage to engineer's details.• Do not obtain dimensions by scaling drawings.• All dimensions are to be checked on site prior to starting work.• These drawings are to be read in conjunction with all other consultant's drawings and specifications.• All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.• New materials are to be used throughout unless otherwise noted.• Concrete footings, slab, structural beams or any other structural members are to be designed as a monolithic element.</div>	<div>JJ Drafting</div> <div>Division of JJ DRAFTING AUSTRALIA PTY LTD</div> <div>26/90 Mona Vale Road, Mona Vale, NSW, 2103</div> <div>PO Box 687, Dee Why, NSW, 2099</div> <div>Mob. 0414 717 541 Email: jjdraft@ppg.com.au</div> <div>www.jjdrafting.com.au</div>	<div>REV: DATE:</div> <div>A 23/01/23</div> <div>B 27/01/23</div>	<div>DESCRIPTION:</div> <div>DA AMENDED</div> <div>DA AMENDED</div>	<div>PROPOSED ALTERATIONS AND ADDITIONS</div> <div>8 BAROONA RD, CHURCH POINT 2105</div> <div>CLIENT:</div> <div>SECH & ALISON</div>	<div>DATE:</div> <div>MAY/22</div>	<div>DRAWN BY:</div> <div>AN</div>	<div>SCALE:</div> <div>1:100, 1:200 @</div>
		<div>JOB No:</div> <div>1030/22</div>	<div>CHECKED BY:</div> <div>JJ</div>	<div>DRAWING No:</div> <div>DA.17</div>			
		<div>DRAWING TITLE:</div> <div>ELEVATIONS SHEET 4</div>					

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2022/1689 - 14 AITKEN AVENUE, QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A DUAL OCCUPANCY.
AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2023/181695
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.

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. DA2022/1689 for Alterations and additions to a dual occupancy on land at Lot 23 DP 16941, 14 Aitken Avenue, QUEENSCLIFF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1689
Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 23 DP 16941, 14 Aitken Avenue QUEENSCLIFF NSW 2096
Proposed Development:	Alterations and additions to a dual occupancy
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Carmel Ann Forbes
Applicant:	Carmel Ann Forbes
Application Lodged:	13/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/10/2022 to 03/11/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 13.18%
Recommendation:	Approval
Estimated Cost of Works:	\$ 860,865.54

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing dual occupancy.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to the height of buildings development standard greater than 10% for a class 2 building. The height variation is supported by a written Clause 4.6 exceptions to development standards request.

Concerns raised in the objections predominantly relate to view loss and non-compliance with the height and envelope controls. Despite these concerns, the development has been found to be acceptable.

Critical assessment issues included existing use rights and the development is defined as a dual occupancy which is a prohibited land use within the R2 Low Density Residential Zone under the provisions of the Warringah Local Environmental Plan (WLEP) 2011. The applicant has demonstrated that the subject site benefits from existing use rights by satisfying the requirements under Section 4.65 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979).

The 4.6 request for the non-compliance with height standard arises from the steep topography of the site and prior excavations. These attributes are compounded by the built form of the existing building which also contributes to the proposed second floor addition resulting in a height breach. The proposed development has a maximum height of 9.62 metres presenting a variation of 13.18% to the 8.5 metre standard. The applicant's written request has provided sufficient environmental planning grounds to justify the contravention of the development 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 proposed development consists of alterations and additions to an existing attached dual occupancy.

Specifically, the works include reconfiguring the first floor layout of 'Apartment 1' to provide an open plan living room and extended kitchen. The kitchen opens onto a new balcony with a roof above. Internal stairs are provided to a new second floor with a master bedroom, bathroom and study/bedroom.

The proposal also includes works to widen the existing driveway crossing and provide an additional hardstand parking area for motorcycles and bin area along with new pedestrian access stairs to the site.

Application History

Following further assessment of the application, Council sent a Request For Information (RFI) letter to the applicant on 9 January 2023. Additional information was requested in relation to building assessment and development engineering. Council also raised concerns regarding the building height, wall height and envelope non-compliances and the subsequent impacts on views.

Additional information was received through the NSW Planning Portal on 27 February 2023 which included a response letter providing a view loss assessment and updated 4.6 variation request. The applicant also provided a BCA Compliance Report and amended plans.

As the amendments resulted in a lesser environmental impact, the application was not required to be re-notified as per Council's Community Participation Plan (CPP).

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 23 DP 16941 , 14 Aitken Avenue QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Aitken Avenue. The lot is irregular in shape and has a surveyed area of 476.4m².</p> <p>The site slopes down from the northern rear towards the southern street frontage with a fall of approximately 10.5 metres.</p> <p>The site is currently occupied by a two storey rendered brick attached dual occupancy. A detached single garage with terrace above is located at the front of the site and a detached laundry/shed is located at the rear of the site.</p> <p>The adjoining western property contains a three storey brick dwelling with a lift and an attached double garage with a terrace above. The adjoining eastern property consists of a two storey brick dwelling with an attached single garage.</p> <p>The surrounding development consists of a range of residential developments containing large three storey dwellings as well as smaller two storey dwellings. The context of the development varies in size and style.</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:

- **DA2003/1050** - Development application for Alterations and additions to an existing duplex. Approved 29 June 2005.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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>Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow</p>

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

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

Comment:

The Applicant has provided evidence in the form of a Development Consent, which reveals that the use of the building commenced as a lawful purpose on (or before) 29 June 2005, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building was lawfully approved by Council on 29 June 2005, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The Applicant states that no evidence has been discovered that suggests that the existing dual occupancy (attached) has not been continually occupied since the coming into force of the Warringah Local Environmental Plan 2011. The approval of DA2003/1050 granted consent for alterations and

additions to an existing duplex on 29 June 2005. This suggests that the building was already being used as a dual occupancy prior to the granting of consent. As there is no record of any development applications since, it is considered that the building has been continually used as a dual occupancy.

- **What is “the land on which the existing use was carried out” for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

Planning Principle 1 makes it clear that, whilst an existing use rights development cannot be assessed against numerical controls governing bulk and scale, such controls still need to be taken into account in order to gain an informed understanding of the future context of the character of surrounding development.

The judgement indicates that care must be taken in this assessment to avoid any de facto application of these standards and that failure to comply with these standards cannot be a consideration in the assessment. The focus of the assessment therefore, is to draw a comparison between the height, bulk, scale and density of the proposed development and the height, bulk, scale and intensity of existing development in the surrounding area and what is likely to occur in the vicinity in the future, based on the applicable planning controls.

Building Height

The site is subject to a 8.5 metre maximum building height development standard, as applicable in the R2 zone. The proposed development has a maximum height of 9.62 metres presenting a variation of 13.18% to the standard. A detailed assessment of the variation is provided under Clause 4.6 of this report. It is noted that the detailed 4.6 assessment finds the breach acceptable, particularly with regard to the extent of existing built form on the site, the topography and form of surrounding buildings.

Wall Height

The site is subject to a 7.2 metre wall height control and the proposed development provides a maximum wall height of 9.0 metres. The breach occurs as a result of the second floor addition which has been sited at the rear of the existing building. The extent of the second floor has been reduced in size to provide increased setbacks of 0.5 metres to the eastern and western side boundaries from the scheme originally lodged. The portion of the building that breaches the wall height control is compliant with the required front, side and rear setbacks to ensure bulk and scale is minimised. The proposal provides an innovative roof pitch that follows the sloping topography and minimises the visual impact of the height breach. The proposed wall height is considered to be consistent with that established by surrounding development and is not considered to give rise to any bulk, overshadowing or privacy impacts. Therefore, notwithstanding the numerical non-compliance, the proposed wall height is considered to be consistent with the surrounding development and will not cause unreasonable impacts. A further assessment against the objectives of the wall height control is provided below.

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

Comment:

The proposed second floor addition is sited at the rear of the existing building approximately 11.5 metres from the front boundary. The slanted roof pitch towards the street effectively minimises the visual appearance of the development when viewed from the street. The proposed development is setback 9.9 metres from the rear boundary which also ensures adequate spatial separation is provided to the rear adjoining properties. As such, the proposal does not result in significant visual impacts when viewed from adjoining properties and streets.

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

Comment:

The proposed development is generally beneath the existing tree canopy level and is consistent with the height of surrounding properties.

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

Comment:

A detailed assessment of views is provided in D7 of this report. It is considered that the proposal provides a reasonable and acceptable sharing of views.

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

Comment:

The proposal is considered to result in minimal impacts on adjoining properties as the works to the dwelling provide compliant front, side and rear setbacks. The spatial separation and appropriate window design ensures that a reasonable level of privacy is maintained to adjoining properties. A complaint level of solar access is also maintained to adjoining properties.

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

Comment:

The site slopes steeply down from the rear and the proposed works have been sited predominantly within the existing footprint which reduces excavation.

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

Comment:

The proposal incorporates a slanted roof that slopes down towards the street following the topography of the site.

Side Boundary Envelope

The site is subject to a building envelope determined by projecting planes at 45 degrees from a height of 5 metres above ground level at the side boundaries. The proposal encroaches both the eastern and western side boundary envelope. Following a request for additional information, amended plans were received which increased the side setbacks of the proposed second floor by 0.5 metres to each side. This resulted in a reduction in both side boundary envelope breaches.

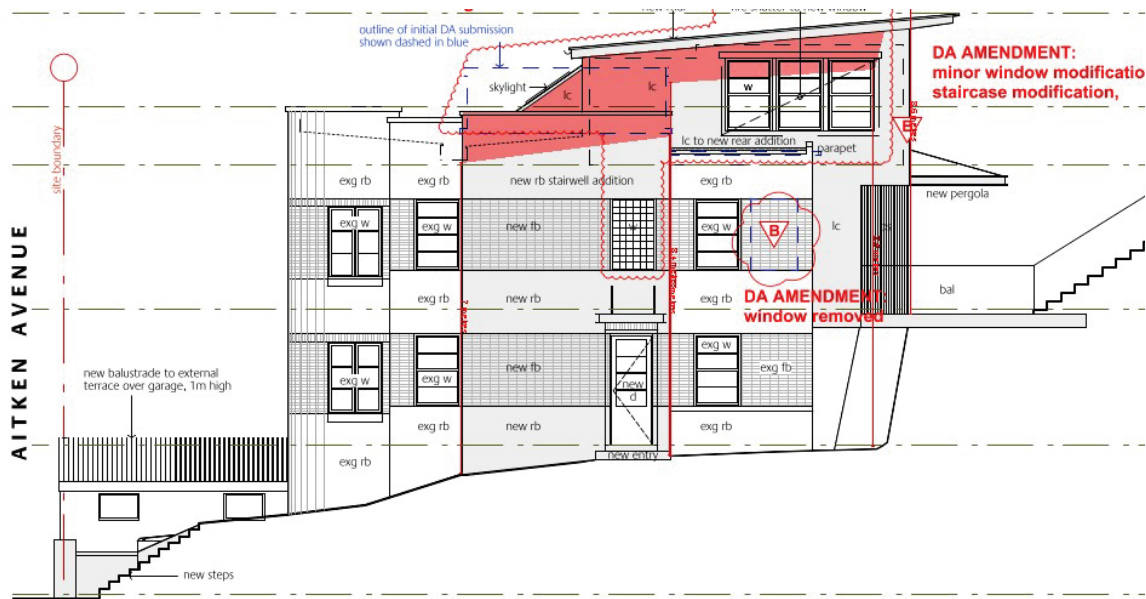


Figure 1 - East Elevation showing envelope encroachment in red

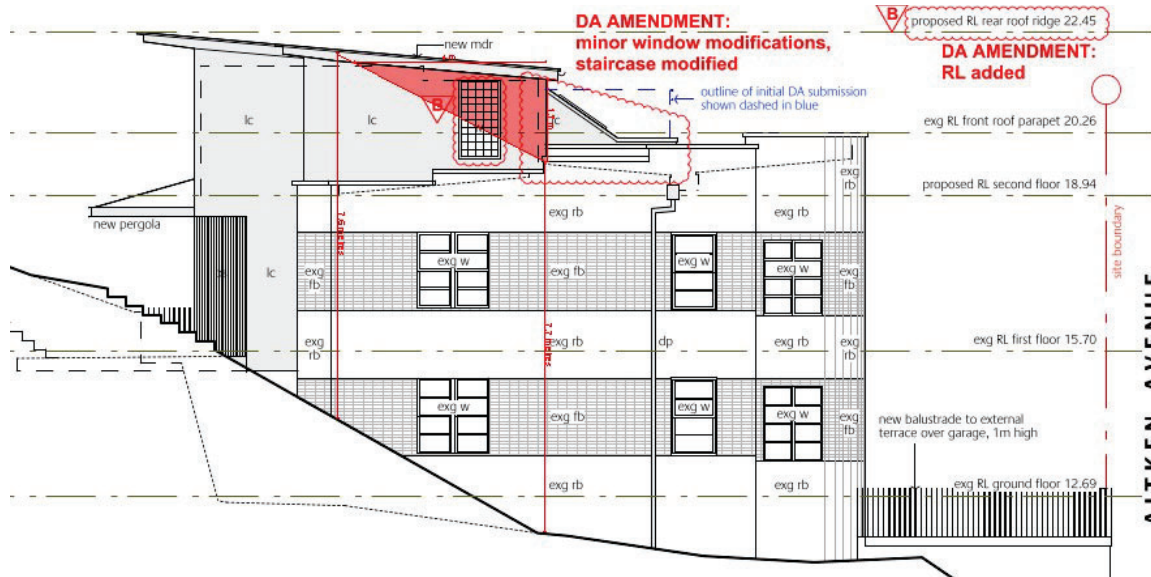


Figure 2 - West elevation showing envelope encroachment in red

The bulk and appearance of the resultant built form is consistent with that of the surrounding development and is considered acceptable notwithstanding the non-compliance with the envelope control. An assessment against the objectives of the side boundary envelope is provided below.

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposed second floor addition provides setback distances to the front and rear boundary in excess of the requirements. The extent of the second floor has been reduced to provide an additional 0.5 metre setback to both side boundaries. This ensures that the setbacks increase as wall height increases to provide a stepped appearance. As such, the development is not considered to become visually dominant by virtue of its height and bulk.

- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The proposed development does not give rise to unreasonable light and solar access impacts and provides sufficient spatial separation between adjoining properties.

- *To ensure that development responds to the topography of the site.*

Comment:

The proposed development responds well to the topography of the site with the increase in setbacks and reduction in size of the second floor. This ensures that the building is adequately stepped in response to the topography. The roof pitch is also sloped in accordance with the topography of the site.

Side Boundary Setbacks

The required side boundary setbacks are 0.9 metres to both side boundaries. The proposal complies with the required setbacks with the ground floor and first floor setback 2.0 metres from both the eastern and western side boundaries. The proposed second floor is setback 2.0 metres - 3.6 metres to the eastern side boundary and 2.6 metres - 2.7 metres to the western side boundary. The extent of the proposed second floor has been reduced following Council's request to reduce the size of the floor through the assessment process. The proposed side setbacks are considered acceptable.

Front Boundary Setbacks

The site is subject to a 6.5 metre front setback control. The existing detached single garage presents a nil setback to the front boundary and does not comply. The garage is an existing structure to be retained only the balustrades are proposed to be replaced. The proposal also includes new pedestrian access steps which provide a nil front setback. The proposed access steps are replacing the existing steps in a similar location and are not considered to result in adverse environmental or amenity impacts. An assessment against the objectives of the front boundary setback control is provided below.

- *To create a sense of openness.*

Comment:

The proposal retains the existing features of the front yard while adding a new hardstand parking area. The proposed parking area is fully open and helps create a sense of openness.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposed development is consistent with the surrounding pattern of buildings which comprises of garages forward of the front building line. Pedestrian access steps beginning at the front boundary are common due to the steep topography of the area. As such, the proposal maintains visual continuity.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposal maintains the existing single garage on the front boundary and proposes to widen the crossing to provide a new hardstand parking area. The new parking area does not include any structures and is not considered to impede upon the appearance of the streetscape. The proposed additions to the building are sited at the rear of the building and are not considered to impact on the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

A detailed assessment is provided under D7 Views of this report. It is considered that the

proposal achieves reasonable view sharing.

Rear Boundary Setbacks

The required rear setback is 6.0 metres. The proposed works are setback 9.9 metres from the rear boundary which is compliant and considered acceptable.

Landscaped Open Space LOS

The required LOS is 40% of the site area. The proposal provides 46.3% (220.3m²) LOS which complies and assists with visually softening and reducing the bulk and scale of the built form.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The existing dual occupancy will not be demolished. The resulting development will maintain a bulk and scale that is acceptable.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed development is not considered to generate significant additional impacts on adjoining land. Surrounding properties enjoy views over Manly Lagoon that extend to district views over Queenscliff. The proposed works have been designed and sited as such that reasonable view sharing is maintained for surrounding properties. A detailed assessment on views is provided under D7 of this report.

The proposed development is well setback from side and rear boundaries which provides ample spatial separation from adjoining properties. The new windows on the first and second floor have been designed well with regards to privacy by incorporating opaque glass blockwork. The spatial separation and design of windows mitigate opportunities for overlooking and provide acceptable levels of privacy which are commensurate with that of the medium density form of the locality.

The proposed development does not generate additional adverse solar access impacts or overshadowing to adjoining properties. It is considered that the proposal retains a reasonable level of solar access to the site and adjoining properties.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The proposed development serves to improve the internal amenity of the existing dual occupancy. The reconfiguration of the internal layout provides a more effective use of the existing floor space. The second floor addition provides apartment 1 with a suitable master bedroom suite which further enhances the amenity of the occupants.

Conclusion

The use has been approved under a previous environmental planning instrument (Warringah Local Environmental Plan 2000) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Warringah Local Environmental Plan 2011).

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/10/2022 to 03/11/2022 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 1 submission/s from:

Name:	Address:
Dijana Tasevska	10 / 132 Queenscliff Road QUEENSCLIFF NSW 2096

The following issues were raised in the submissions:

- RL's have not been provided for the new roof
- Height and Envelope Breach
- View Loss

The above issues are addressed as follows:

- **RL's have not been provided for the new roof**

The submissions raised concerns that the plans do not show the RL's for the new roof.

Comment:

Amended plans were requested and provided showing the RLs of the new roof.

- **Height and Envelope Breach**

The submissions raised concerns that the proposed development breaches the height and envelope controls.

Comment:

The subject site benefits from existing use rights for its use as a dual occupancy. While planning controls such as height and envelope do not apply to sites with existing use rights, they have relevance to the assessment to indicate the kind of development that is characteristic of the area. Additional information was requested from the applicant with regards to the height and envelope breach and amended plans were provided. A detailed assessment of the built form has been provided in this report.

- **View Loss**

The submissions raised concerns that the proposed new floor will result in view loss to 10/132 Queenscliff Road, Queenscliff.

Comment:

A detailed assessment on views is provided in D7 Views of this report having specific regard for the planning principles established in the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140. The development has found to be acceptable in this regard.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported with Conditions</i></p> <p><u>Amended Referral Comments based on BCA Report by Beyond Certification</u></p> <p>The application has been further investigated with respect to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval.</p> <p><u>Original Comments</u></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department and having regards to Section 64 of the Environmental Planning and Assessment Regulation. In this regard the following report is required:</p> <p>A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Registered Certifier will need to be submitted to council prior to the determination of the Development</p>

Internal Referral Body	Comments
	<p>Application</p> <p><i>The report is to detail the extent to which the existing building and proposed works does or does not comply with the deemed-to satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the existing building / works required to ensure that the specified measures and facilities contained in the existing building, including any modifications to be made by the proposed development are adequate for its intended use so as to:</i></p> <ul style="list-style-type: none"> <i>i) restrict the spread of fire from the building to other buildings nearby, and</i> <i>ii) protect persons using the building,</i> <i>iii) to facilitate their egress from the building in the event of fire, and</i> <i>iv) provide facilities and services appropriate for the development</i> <p><i>*To be regarded as an "appropriately qualified registered certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building. The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.</i></p>
NECC (Coast and Catchments)	<p>Supported without Conditions</p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021</p>

Internal Referral Body	Comments
	<p>Warringah LEP 2011 and Warringah DCP 2011</p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p>
NECC (Development Engineering)	<p>Supported with Conditions</p> <p>Original Comments It appears that proposed hardstand area near the front boundary will be utilized as parking facility. As per AS/NZS 2890.1:2004, the minimum length of the parking space shall be 5.4m. Further, Information regarding Reduced Level (RL) of the proposed hardstand area shall be provided.</p> <p>Therefore, Development Engineering cannot support the application because of the lack of information to assess C3 of the DCP.</p> <p>28/02/2023 The amended plan with level and dimension of the proposed hardstand area was provided. As per section 2.4.7 of AS/NZS 2890.1:2004, the parking space required for a motorcycle is 1.2m x 2.5m. The size of the proposed hardstand area shall be modified accordingly in the amended plan. Further, partition shall be provided between parking and bin area.</p> <p>Therefore, Development Engineering cannot support the application due to lack of information to assess clause C3 of the DCP.</p> <p>14/03/2023 The amended plan was provided. The Development Engineering supports the application.</p>
NECC (Riparian Lands and Creeks)	<p>Supported with Conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy <p>The site is on land identified as waterways and riparian land under the</p>

Internal Referral Body	Comments
	<p>DCP, and as coastal environment area under the SEPP. The development must not significantly impact on the biophysical, hydrological or ecological integrity of the nearby lagoon, or the quantity and quality of surface and ground water flows that it receives. 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>Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development. 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>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, subject to Conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p>Supported, subject to Conditions</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 any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A469121_03 dated 21 March 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal

environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- b) coastal environmental values and natural coastal processes,
- c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The proposal has been reviewed by Council's Coast and Catchments Officer deeming the proposal acceptable subject to conditions. It is considered that the proposed development is not likely to cause adverse impacts on the above matters.

- 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 proposed development consists of alterations and additions to the existing building whereby the works are predominantly within the existing footprint. As such, the development has been designed and sited to avoid adverse impacts on the coastal environment.

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 proposed development has been designed and sited to avoid adverse impacts on access to the foreshore, overshadowing, wind funnelling, views, visual amenity and 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 considered likely to cause increased risk of coastal hazards.

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

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

Comment:

The proposal has been reviewed against all relevant legislation and policies.

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

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.62m	13.18%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.62m
Percentage variation to requirement:	13.18%

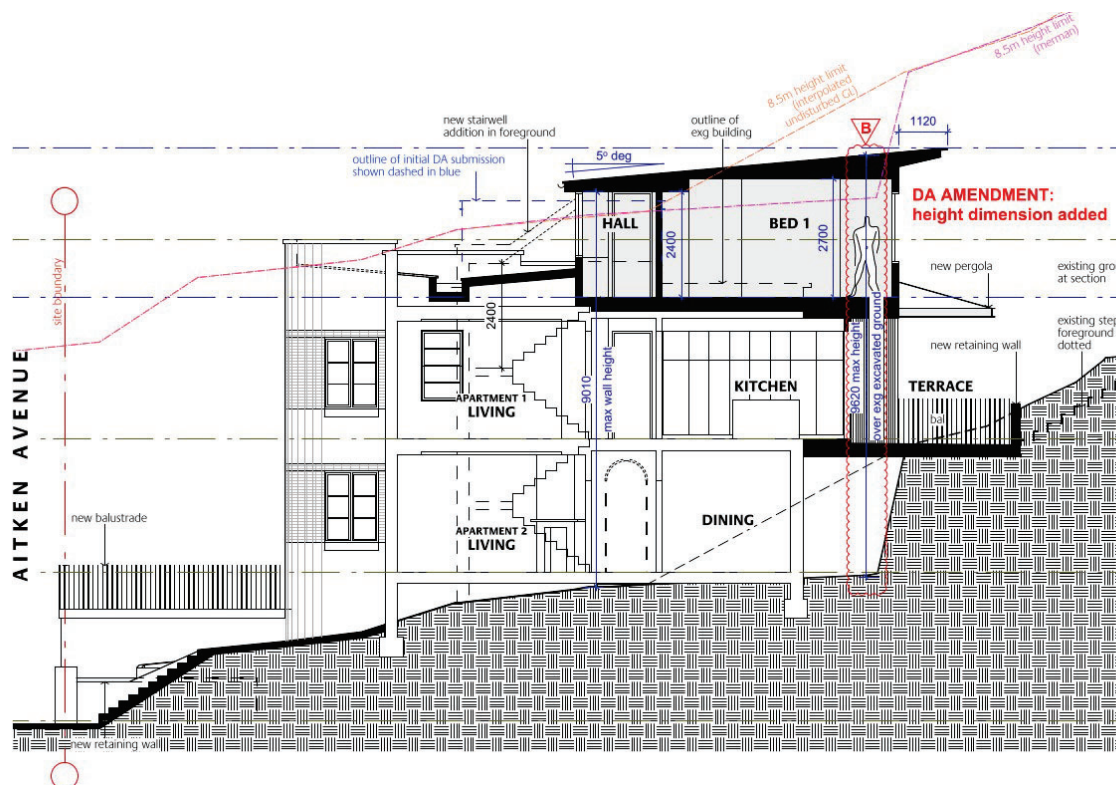


Figure 3 - Extent of Height Breach

Whilst Section 4.67(3) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) stipulates that the provisions contained within an Environmental Planning Instrument do not strictly apply to a development that relies on existing use rights, the recent judgement in the Land and Environment Court Case of *Made Property Group Pty Limited v North Sydney Council* [2020] NSWLEC 1332 required a written request pursuant to Clause 4.6 to be submitted to vary a development standard, despite the subject development benefiting from existing use rights.

Accordingly, an assessment against the matters within Clause 4.6 of Warringah LEP 2011 is provided below.

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 development is consistent with the height and scale of surrounding and nearby development given the steeply sloping topography of the area.
- The elements that breach the height standard are set well back from the street.
- The overall height of the addition is consistent with the height established by the existing building element at the front of the site.
- The steep and artificially modified topography of the land makes strict compliance difficult to achieve.
- The prior excavation of the site exacerbates the extent of the height breach compared to that when measured from the undisturbed natural ground levels.
- Strict compliance with the control would have a significant adverse impact on the internal amenity and layout of the building and would not result in a better planning outcome.
- The proposed development does not give rise to unreasonable environmental impacts.
- The proposal achieves the objectives of the development standard and the zone.

The applicant's written request is well-founded and the justification is generally agreed with. It is acknowledged that the steep topography of the site, prior excavation and the existing building footprint

restricts the ability of the proposal to comply with the height standard. It is noted that the existing building breaches the height standard which is not uncommon within the area as several surrounding developments also breach the height standard. As such, the resultant development is consistent with the height of surrounding development and will not be out of character for the area. It is agreed that the height breaching elements are well setback from the street and adjoining properties and are not considered to generate unreasonable environmental or amenity impacts for surrounding properties.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The proposed development results in a building that is compatible with the height and scale of surrounding and nearby development. The adjoining western property comprises a three storey building with a lift and an attached double garage with a terrace above. There is also a presence of three storey buildings to the east of the subject property and also a four storey residential flat building located on the adjoining rear property. The proposed development results in a three storey building that is evidently compatible with the height and scale of surrounding development.

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

Comment:

The proposed development provides sufficient separation, stepping and articulation to assist with minimising the visual impact. A detailed view loss assessment under D7 of this report has found that the proposal maintains reasonable view sharing. The proposal provides appropriate window designs incorporating glass blockwork and external fire shutters that ensure privacy impacts are suitably mitigated. Lastly, the proposal is not considered to cause a significant loss of solar access as seen in the submitted shadow diagrams.

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

Comment:

The proposed second floor addition is sited at the rear of the existing building with the works setback approximately 9.0 metres from the front boundary. The roof above slopes towards the street whereby the second floor is not visually dominant when viewed from the street. As such, the proposed development is not considered to cause an adverse impact on the scenic quality of Warringah's coastal and bushland environments.

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

Comment:

The site is located opposite Aitken Reserve and overlooks Manly Lagoon. As above, the proposed additions have been appropriately designed and sited to avoid adverse visual impacts when viewed from public places such as parks and reserves, roads and community facilities.

Zone objectives

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

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

Comment:

The proposal continues to provide for the housing needs of the community within a low density residential environment by providing a modest addition to the existing dual occupancy.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development does not detract from other land uses that provide facilities or services to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposal provides sufficient landscaped areas across the site in compliance with the requirements. The proposal is considered to maintain a low density residential environment characterised by landscaped settings.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, 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

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	9.0m	25%	No
B3 Side Boundary Envelope	East - 5m	Outside Envelope	N/A	No
	West - 5m	Outside Envelope	N/A	No
B5 Side Boundary Setbacks	East - 0.9m	Ground Floor: 2.0m First Floor: 2.0m Second Floor: 2.0m-3.6m	N/A N/A N/A	Yes Yes Yes
	West - 0.9m	Ground Floor: 2.0m First Floor: 2.0m Second Floor: 2.6m-2.7m	N/A N/A N/A	Yes Yes Yes
B7 Front Boundary Setbacks	6.5m	Access Steps: Nil Hardstand Parking: Nil	100% 100% N/A	No No Yes

		Additions: 9.0m		
B9 Rear Boundary Setbacks	6m	9.9m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	46.8% (222.8m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D7 Views	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C3 Parking Facilities

Merit consideration

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

- To provide adequate off street carparking.

Comment:

The development provides the following on-site car parking:

Use	Appendix 1	Required	Provided	Difference
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	Calculation			(+/-)
Dual Occupancy	2 Spaces per dwellings	4	1	-3

The proposal provides one off-street car parking space which does not meet the requirements. It is noted that the site currently only provides one off-street car parking space with the single garage that is to be retained in the proposal. The proposal also includes an additional hardstand area for motorcycle and scooter parking. The proposal does not increase residential density and is not considered to cause a significant increase in car parking demand. As such, the proposal provides adequate off-street carparking.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The existing single garage is to be retained and a new hardstand parking area is provided adjacent. The hardstand area does not include any new structures and will not visually impact on the streetscape.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

As above, the parking facilities are designed so as not to dominate the street frontage.

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

D7 Views

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North

Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The views affected include water views of Manly Lagoon and district views over Queenscliff.



Figure 4 - View from Balcony at 10/132 Queenscliff Road



Figure 5 - View from Bedroom at 10/132 Queenscliff Road

2. What part of the affected property are the views obtained

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

Comment to Principle 2:

The views are obtained from the property to the rear of the subject site 10/132 Queenscliff Road, Queenscliff. The views are obtained from the balcony off the living area and also the bedroom from both sitting and standing positions. The views are over the rear boundary.

3. Extent of impact

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

Comment to Principle 3:

The proposal retains the district views over Queenscliff as well as the water views of Manly Lagoon. A small portion of the water views of the Lagoon obtained from the bedroom will be impacted by the proposal. It is noted that this view is currently obscured by an existing Palm Tree whereby the impact of the proposal will be minor. The new roof to the second floor does not extend further south and sits behind the existing parapet at the front of the site. The slope of the roof down towards the southern street frontage also reduces the overall height and view impacts of the second floor addition. This ensures that the extent of the existing view of the lagoon is retained along with the land water interface as seen in Figure 6 below provided by the applicant. The proposal will impact the views of the grass and carpark area of Aitken reserve obtained from the balcony. The water views of the Lagoon and the district views will be retained and the view loss is considered negligible.

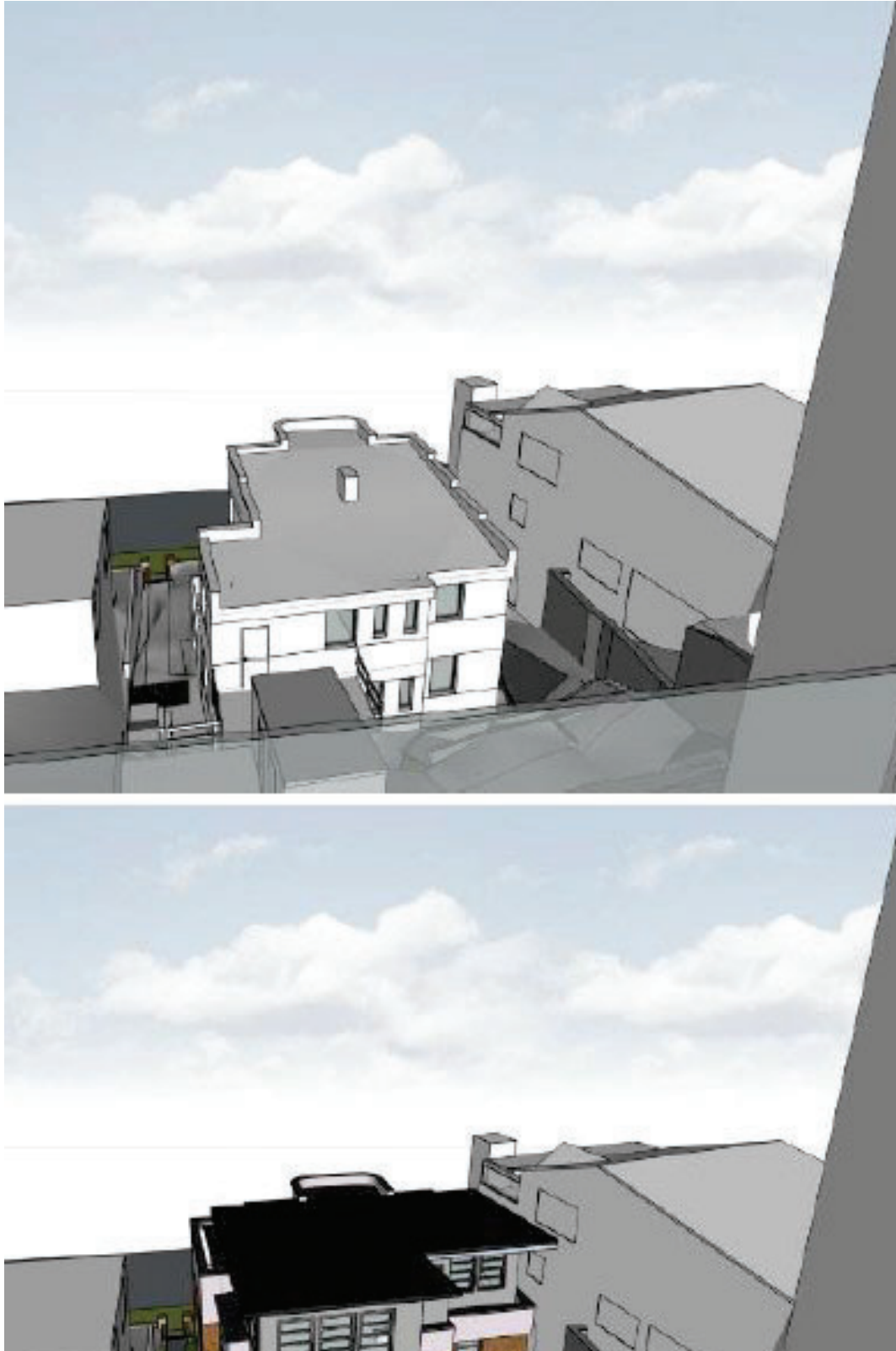


Figure 6 - Perspective images showing the existing and proposed development as viewed from the balcony of 10/132 Queenscliff Road (Provided by the applicant)

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

While the proposal breaches the height and envelope controls, amended plans were received which reduced the extent of these non-compliances. The second floor addition has been amended to reduce the height of the roof over the internal stair and the side setbacks have been increased. This has allowed reasonable view corridors to be maintained over the side boundaries of the subject site. The second floor addition has been appropriately sited at the rear of the dwelling which effectively minimises the impacts on view sharing. The subject site sits much lower in relation to the rear property 10/132 Queenscliff Road due to the steep topography. As a result, the rear adjoining property has a higher vantage point to obtain views from and subsequently retain views.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed development improves the internal amenity for the occupants of the subject site and provides a modest second floor addition. An innovative roof design has been incorporated over the addition that slopes in response to the topography of the site and minimises visual impacts.

- *To ensure existing canopy trees have priority over views.*

Comment:

The proposal retains all existing trees on the site and any existing canopy trees will have priority over views.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$8,609 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$860,866.

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.

PLANNING CONCLUSION

This proposal, for alterations and additions to a dual occupancy has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to the height of buildings development standard of greater than 10%.

The concerns raised in the objections have been addressed and resolved by amended plans reducing the height and envelope non-compliances and a detailed assessment has been provided in relation to view loss.

The critical assessment issues included existing use rights, height, envelope and view loss.

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 Council as the consent authority vary clause 4.3 Height of Buildings 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 DA2022/1689 for Alterations and additions to a dual occupancy on land at Lot 23 DP 16941, 14 Aitken Avenue, QUEENSCLIFF, 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
DA06 Rev C - Site Plan	8 March 2023	Hobbs Jamieson Architecture
DA07 Rev C - Proposed Lower Ground Floor Plan	8 March 2023	Hobbs Jamieson Architecture
DA08 Rev C - Proposed Ground Floor Plan	8 March 2023	Hobbs Jamieson Architecture
DA09 Rev C - Proposed First Floor Plan	8 March 2023	Hobbs Jamieson Architecture
DA10 Rev B - Proposed Second Floor Plan	22 February 2023	Hobbs Jamieson Architecture
DA11 Rev B - Proposed Roof Plan	2 February 2023	Hobbs Jamieson Architecture
DA12 Rev C - Proposed Elevations - South and East	8 March 2023	Hobbs Jamieson Architecture
DA13 Rev B - Proposed Elevations - North and West	2 February 2023	Hobbs Jamieson Architecture
DA14 Rev B - Proposed Section	2 February 2023	Hobbs Jamieson Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
D01 - Stormwater Drainage General	7 September	NB Consulting

Notes	2022	Engineers
D02 - Lower Ground and Ground Floor Stormwater Drainage Plan	7 September 2022	NB Consulting Engineers
D03 - First, Second Floor and Roof Stormwater Drainage Plan	7 September 2022	NB Consulting Engineers
D04 - Stormwater Drainage Details Sheet 1	7 September 2022	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A469121_03	21 March 2023	Efficient Living
BCA Report Class 2-9	22 February 2023	Beyond Certification
Preliminary Landslip Assessment for 14 Aitken Avenue Queenscliff	12 August 2022	Crozier Geotechnical Consultants

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	22 September 2022	Adam Hobbs

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	Undated
Aboriginal Heritage Office	AHO Referral Response	21 December 2022

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal 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 \$8,608.66 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 \$860,865.54.

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

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

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

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

6. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's "Water Management for Development Policy". Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

8. Erosion and Sediment Control Plan

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

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

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

Reason: Protection of the receiving environment.

9. Building Code of Australia Fire Safety Requirements

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Upgrade and Access Compliance Report prepared by Beyond Certification, dated 22/2/2023, Ref. BCA – 6523553R1, is to be considered, including any Performance Solutions, as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

10. Vehicle Driveway Gradients

The Applicant is to ensure driveway gradients within the private property are in accordance with the requirement of AS/NZS 2890.1:2004.

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

Reason: To ensure suitable vehicular access to private property.

11. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

12. **Compliance with Standards**

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

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

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

13. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

14. **Sydney Water "Tap In"**

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

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **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.

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

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) prior to commencement of any other works on site.

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

Reason: Protection of the receiving environment.

17. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

18. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.9 metres wide in accordance with Northern Beaches Council Drawing Normal High (NH) profile and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to 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 Certifier.

Reason: To facilitate suitable vehicular access to private property.

19. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

20. **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 Certifier prior to the issue of an Occupation Certificate.

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

21. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

22. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement of the Environmental Planning and Assessment Regulation 2021.

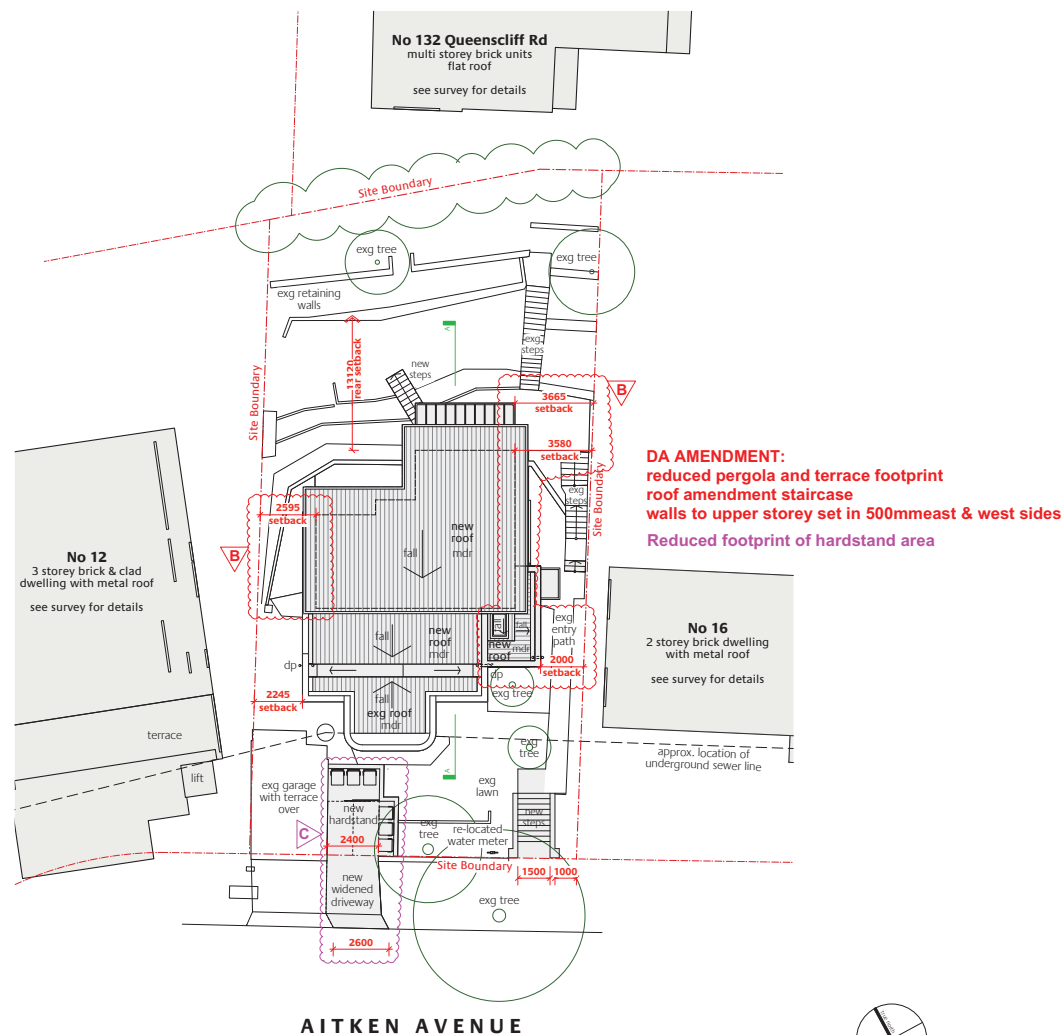
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

23. **Maintenance of Stormwater Treatment Measures**

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

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

Reason: Protection of the receiving environment.



Site plan
scale 1:100 @ A1

DEVELOPMENT APPLICATION DOCUMENTATION

Hobbs Jamieson
ARCHITECTURE

Revision	Date	Details
A	01/09/22	DA SET
B	02/02/23	REVISED DA SUBMISSION
C	6/3/23	Amended DA submission

Legend	
	Existing walls
	Existing to be demolished
	New walls
	New works

Abbreviations	
BAL	balustrade
DP	downpipe
EXG	existing
LC	lightweight cladding
MDR	metal deck roof
PS	privacy screen
PBK	painted brickwork
RB	rendered brickwork
RT	roof tile
RV	roof vent
SKY	skylight
TDK	timber deck
TFB	timber floor board
W	window

OWNERS
SIGNATURE

Alterations & Additions
14 Aitken Avenue, Queenscliff NSW
Lot 23 DP 16941

Project Stage
Development Application
Documentation

Client
Carmel Forbes & Mark Kennedy

Document Title
Site Plan

Scale
1:100 @ A1 / 1:200 @ A3

Document Number **Revision**
DA 06 **C**

Job 21/014 **Drawn** AH / CG

Hobbs Jamieson Architecture

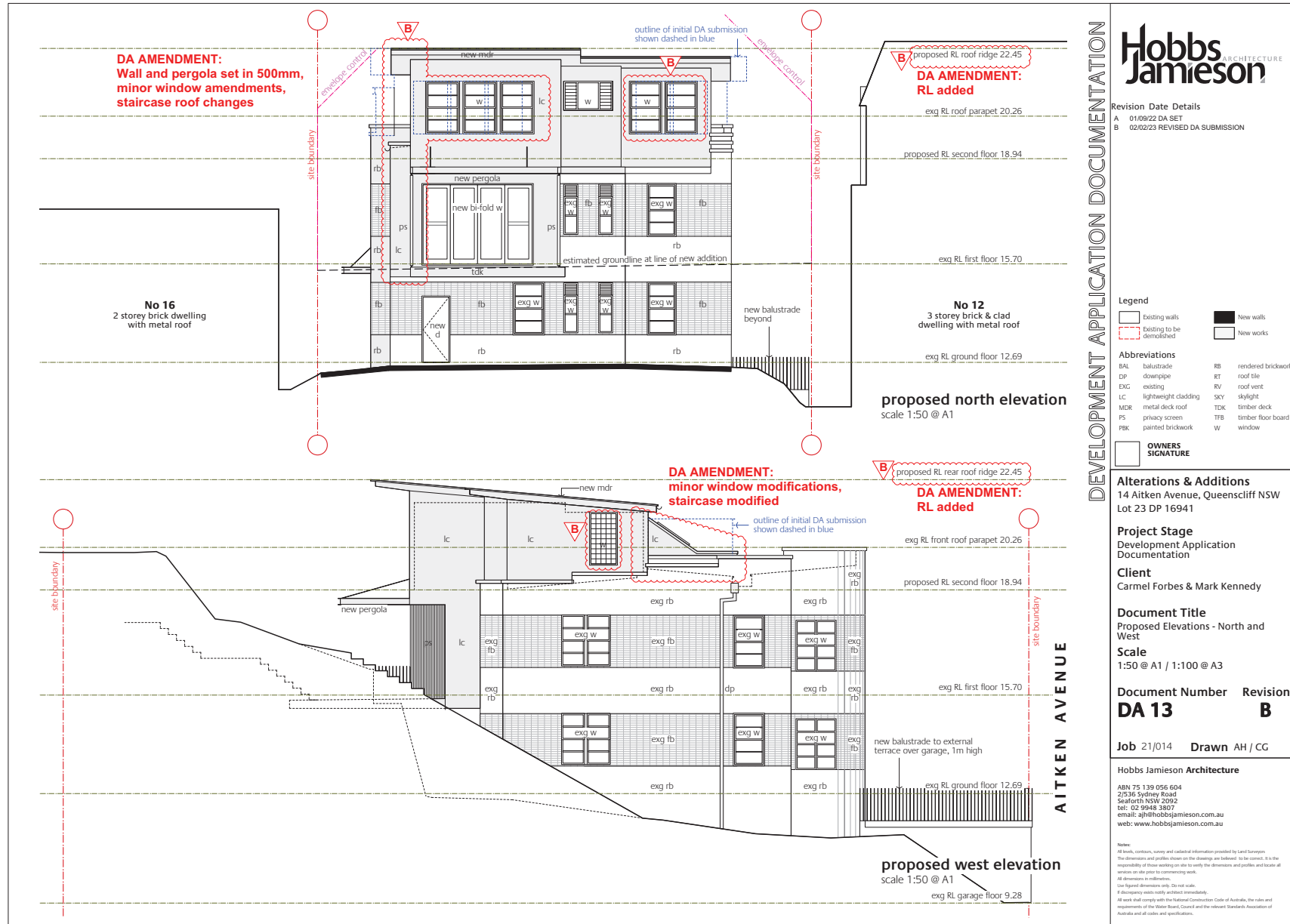
ABN 75 139 056 604
2/536 Sydney Road
Seaford NSW 2092
tel: 02 9948 3807
email: ajh@hobbsjamieson.com.au
web: www.hobbsjamieson.com.au

Notes:
All levels, contours, survey and cadastral information provided by Land Surveys.
The dimensions and profiles shown on the drawings are believed to be correct. It is the responsibility of those working on site to verify the dimensions and profiles and locate all services on site prior to commencing work.
All dimensions in millimetres.
Use figure dimensions only. Do not scale.
If discrepancies exist rectify and record immediately.
All work shall comply with the National Construction Code of Australia, the rules and requirements of the Water Board, Council and the relevant Standards Association of Australia and all codes and specifications.

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File Name: 21/014 Aitken.DASet.vwx



Notes:
All levels, contours, survey and cadastral information provided by Land Services.
The dimensions and profiles shown on the drawings are believed to be correct. It is the responsibility of those working on site to verify the dimensions and profiles and locate all services on site prior to commencing work.
All dimensions in millimetres.
Use figured dimensions only. Do not scale.
If discrepancy exists notify architect immediately.
All work shall comply with the National Construction Code of Australia, the rules and requirements of the Water Board, Council and the relevant Standards Association of Australia and all codes and specifications.



ANNEXURE 1

Clause 4.6 variation request – Height of buildings

Clause 4.6 variation request – Height of buildings

This clause 4.6 variation request has been prepared in support of a building height variation pertaining to an application proposing alterations and additions to an existing building containing 2 flats (dual occupancy (attached)) located on the existing property. The proposed development is depicted on the following plans prepared by Hobbs Jamieson Architecture:

DA 00	COVER PAGE
DA 01	SITE ANALYSIS
DA 02	DEMOLITION PLAN - EXISTING GROUND
DA 03	DEMOLITION PLAN - EXISTING FIRST
DA 04	DEMOLITION ELEVATION - SOUTH & EAST
DA 05	DEMOLITION ELEVATION - NORTH & WEST
DA 06	SITE PLAN
DA 07	PROPOSED LOWER GROUND FLOOR PLAN
DA 08	PROPOSED GROUND FLOOR PLAN
DA09	PROPOSED FIRST FLOOR PLAN
DA10	PROPOSED SECOND FLOOR PLAN
DA11	PROPOSED ROOF PLAN
DA12	PROPOSED ELEVATION - SOUTH & EAST
DA13	PROPOSED ELEVATION - NORTH & WEST
DA14	PROPOSED SECTION
DA15	MATERIALS BOARD - FRONT
DA16	MATERIALS BOARD - REAR
DA17	SHADOW ANALYSIS 1
DA18	SHADOW ANALYSIS 2
DA19	AREA CALCULATION

Pursuant to clause 4.3 WLEP the height of any building on the land shall not exceed 8.5 metres above existing ground level. The stated objectives of this clause are as follows:

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development 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.*

The dictionary to the LEP defines building height to mean:

building height (or **height of building**) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

It has been determined that the southern edge of the upper-level additions breach the 8.5 metre building height standard by 950mm of 11.1% with the extent of breach consistent with the existing upper-level parapet breach associated with the 2 storey street facing building element as depicted in Figure 1 below.

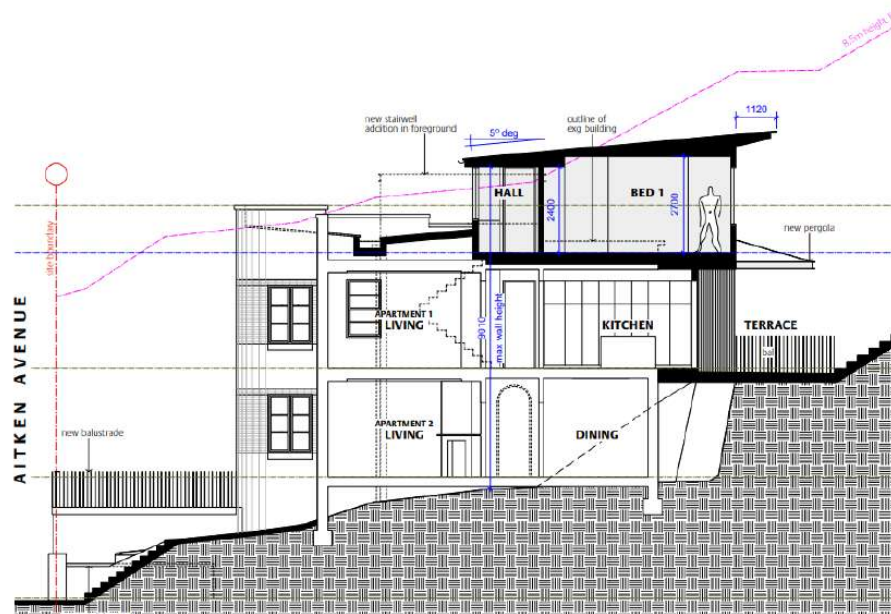


Figure 1 – Plan extract showing the extent of building height breach along the southern edge of the proposed upper-level additions with the extent of breach consistent with the existing upper-level parapet breach associated with the 2 storey street facing building element

Clause 4.6 of WLEP 2011 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This Clause applies to the Clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states 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 Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

Clause 4.6 Claim for Variation

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Consistency with zone objectives

The Warringah Local Environmental Plan (LEP) 2011 applies to the subject site and this development proposal. The subject site is located within the R2 Low Density Residential zone. The stated objectives of the zone are as follows:

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

Response: The development provides for the housing needs of the community within a low density residential environment notwithstanding the building height non-compliance proposed. This objective is achieved.

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

Response: Not applicable.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Response: The building height non-compliance does not prevent the attainment of appropriate landscape outcomes or a building height which is unable to be appropriately softened and screened by landscaping. This objective is achieved notwithstanding the building height non-compliances proposed.

The consent authority can be satisfied that the proposal is consistent with the zone objectives as outlined notwithstanding the building height variation proposed.

Assessment against objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: The building height breaching element is limited to the southern edge of the proposed upper levels additions. The overall height of the additions, relative to ground level (existing), is consistent with that established by the existing building adjacent to the frontage of the property as depicted in Figure 1. The height of the non-compliant building element is entirely consistent with that established by surrounding development which is characterised by 2 and 3 storey detached dwellings and residential flat development as depicted in Figures 2, 3 and 4 over page.



Figure 2 - View looking towards the subject property past the 3 storey dwelling houses located at No's 10 and 12 Aitken Avenue to the west of the subject property.



Figure 3 - Adjoining development to the west of the subject property



Figure 4 - Four storey residential flat building located to the rear of the subject property with frontage and address to Queenscliff Road

The consideration of building compatibility is dealt with in the Planning Principle established by the Land and Environment Court of New South Wales in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. At paragraph 23 of the judgment Roseth SC provided the following commentary in relation to compatibility in an urban design context:

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

The question is whether the building height breaching elements contribute to the height and scale of the development to the extent that the resultant building form will be incompatible with the height and scale of surrounding and nearby development. That is, will the non-compliant building height breaching elements result in a built form which is incapable of coexisting in harmony with surrounding and nearby development to the extent that it will appear inappropriate and jarring in a streetscape and urban design context.

In this regard, I have formed the considered opinion that the non-compliant building elements, including their associated height, bulk and scale, are entirely consistent with the height and scale anticipated on the land and that of surrounding and nearby development given the steeply sloping nature of topography within the sites visual catchment. The building height breaching elements are set well back from the street such that they are recessive elements in a streetscape context with the overall height of the addition is consistent with the height established by the existing 2 storey parapeted building element at the front of the site.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with the height and scale of surrounding and nearby development notwithstanding the building height breaching elements proposed. This objective is achieved.

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

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site I have formed the considered opinion that the height of the development, and in particular the non-compliant building height element, will not give rise to unacceptable or unanticipated visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties. I rely on the shadow diagrams at Attachment 1 in this regard.

Notwithstanding the non-compliant building height elements, I am satisfied that the development has been designed to minimise visual impact, disruption of views, loss of privacy and loss of solar access and accordingly this objective is achieved.

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

Comment: The non-compliant building height element will not be readily discernible as viewed from the street or coastal foreshore area. The proposal achieves this objective notwithstanding the building height breaching elements.

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

Comment: The non-compliant building height element is set well back from the street frontage and screened to a significant extent by the existing 2 storey parapeted front façade such that it will not be visually prominent as viewed from the street or any public area.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant building height portions of the building, offensive, jarring or unsympathetic in a streetscape context.

The non-compliant components of the development, as they relate to building height, demonstrate consistency with objectives of the zone and the building height standard objectives. Adopting the first option in *Wehbe* strict compliance with the building height standard has been demonstrated to be unreasonable and unnecessary

Sufficient Environmental Planning Grounds

In my opinion, there are sufficient environmental planning grounds to justify the variation namely the topography of the site which makes strict compliance with the building height standard difficult to achieve whilst maintaining appropriate amenity to the development in terms of roof design and ceiling heights.

Whilst strict compliance could be achieved by sliding the upper-level additions to the north and reducing ceiling heights such outcome would require the stair core to be moved to the north and therefore significantly impacting on the internal layout of the existing ground floor apartment. This would not represent good design and would reduce the amenity of the development in circumstances where the building height breaching element will not give rise to unacceptable adverse environmental consequences.

The building is of appropriate design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained through compliance with the zone and building height objectives as outlined.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the building height standard, and
- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the design quality of the development, and the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

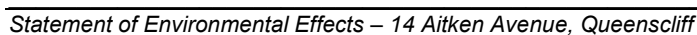
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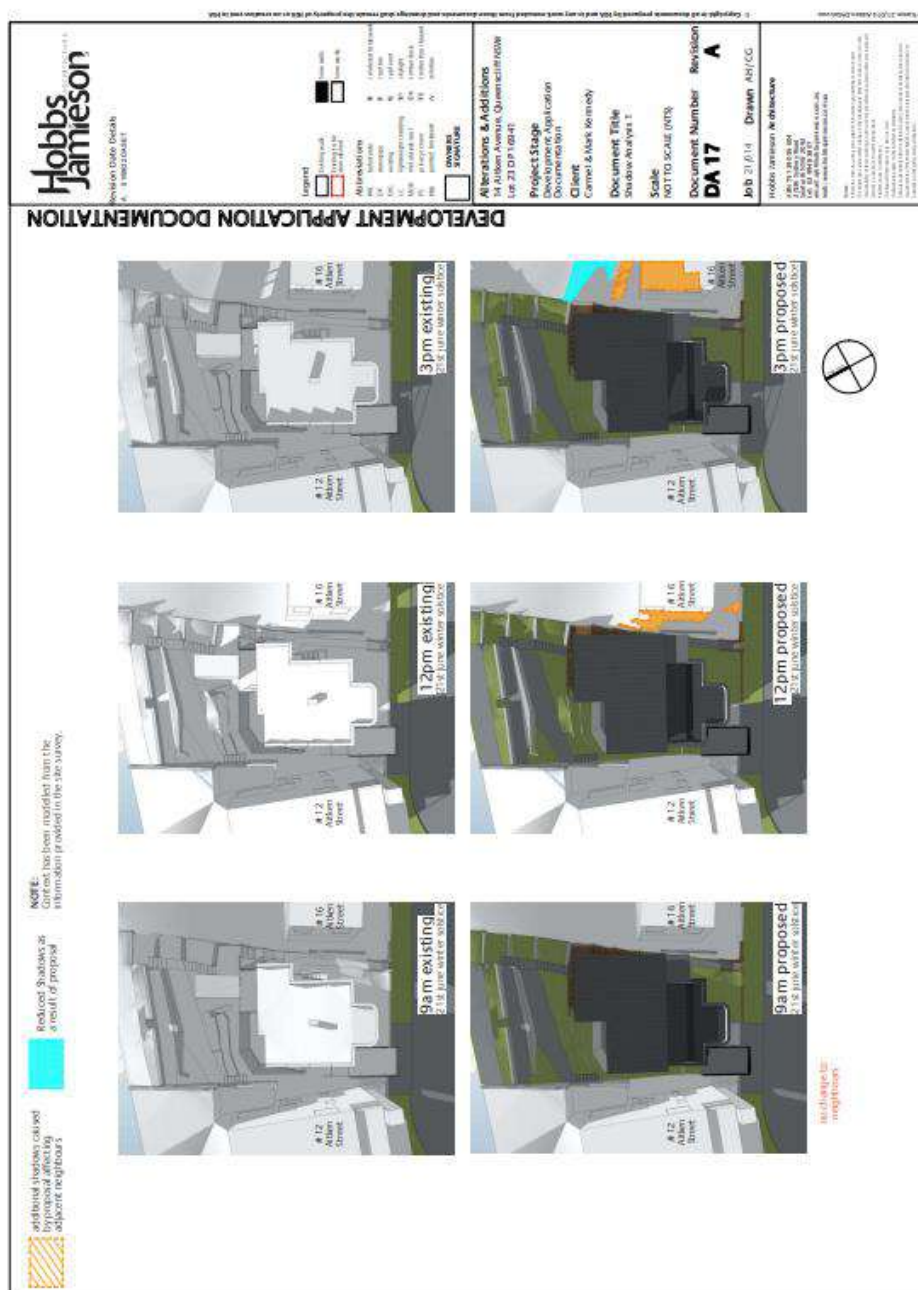


Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Attachment 1

Shadow diagrams





ITEM 5.2

DA2022/0133 - 182 MCCARRS CREEK ROAD, CHURCH POINT - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE AND BOAT SHED.

AUTHORISING MANAGER

Steve Findlay

TRIM FILE REF

2023/181708

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.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Limited Development on Foreshore Area of Clause 7.8 pursuant to clause 4.6 of PLEP 2014 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. DA2022/0133 for Demolition works and construction of a dwelling house, detached garage, inclinor and boat shed on land at Lot 11 DP 776130, 182 McCarrs Creek Road, CHURCH POINT, Lot LIC 467731, 182 McCarrs Creek Road, CHURCH POINT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0133
Responsible Officer:	Steven Findlay
Land to be developed (Address):	Lot 11 DP 776130, 182 McCarrs Creek Road CHURCH POINT NSW 2105 Lot LIC 467731, 182 McCarrs Creek Road CHURCH POINT NSW 2105
Proposed Development:	Demolition works and construction of a dwelling house, detached garage, inclinor and boat shed
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Anthony William Olding Caroline Anne Olding
Applicant:	Anthony William Olding
Application Lodged:	11/02/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/02/2022 to 08/03/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 11.7% 7.8 Limited development on foreshore area
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,001,046.00

EXECUTIVE SUMMARY

This application seeks consent for demolition of an existing dwelling and construction of a new dwelling-house with detached garage/workshop, and boatshed, inclinor, retaining walls and steps within the foreshore area.

The application is referred to the Northern Beaches Local Planning Panel due to two variations to the development standards under the PLEP 2014, including a breach of the 8.5m building height control

under Clause 4.3 and proposed works within the Foreshore Area that are not listed as exemptions under Clause 7.8 Limited Development on the Foreshore Area.

The notification of the application resulted in one (1) submission being received, raising concerns in relation to the character and bulk and scale of the development.

Critical assessment issues include; non-compliances with building height, building envelope, front setback and development within the foreshore area.

The assessment of this application has been lengthy, the delay arising from a rigorous assessment of an unconventional design on a difficult site, and consideration of the significant non-compliance with the side building envelopes, which was considered to not exhibit sufficient site responsiveness (stepping down the site and in from side boundaries) or minimisation of the non-compliances.

In the process of addressing the issues, the setbacks and height were amended and the resultant built form and non-compliances are now assessed as satisfactory.

A special condition has been imposed in relation to changing the built form of the garage element to an open carport design to provide greater openness in the streetscape and views of the waterway and surrounding bushland from the street.

The Clause 4.6 Variations are supported for the reasons discussed in this report.

On balance, the amended proposal, subject to special and standard conditions, is a suitable and appropriate development for the environmentally sensitive foreshore site in the C4 - Conservation Zone and the locality.

It is recommended that the NBLPP grant approval to the application, subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development involves the demolition of the existing dwelling and construction of a dwelling-house, with associated garage, driveway, boatshed, inclinor, waterway access stairs, which is detailed as follows:

Dwelling-House (3 Storey)

- Basement Floor Level - 2 Bedrooms, Bathroom, Laundry, Lift, Stairs
- Ground Floor Level - Dining, Living, Kitchen, Deck, WC, Airlock, Lift, Stairs
- First Floor Level - Bedroom, Study, Ensuite, Void, Robe, Lift, Stairs
- External Finishes - Concrete block and cladded walls, metal roof, concrete slab on ground, timber framed upper floors and timber or other verandahs

Detached Garage/Workshop/Storage and Driveway

- Double garage and bin store with workshop/storage below
- Suspended concrete driveway
- New Stairs in road reserve

Inclinor

- Bridge link from Garage to rain running down the northern boundary
- 2 stops, one to provide access to dwelling, one to provide access to the foreshore

Boatshed and Steps

- 3m x 6.8m, situated on a nil setback to the western boundary with foreshore
- Timber walls and metal roof
- Steps adjacent building are sandstone and grassed

Waterway Access Stairs and Retaining Walls

- Gravel paths
- Concrete retaining walls and steps

HISTORY AND BACKGROUND TO AMENDED PLANS**Formal Request for Information - 9 May 2022**

The original scheme was the subject of a detailed assessment and issue of a *Request for Information* (RFI), which included the following issues:

- Non-compliant and excessive Building Height
- Non-compliant Building Envelopes (up to 4-5m breaches on both side elevations)
- Excessive Bulk and Scale

Applicants Response to RFI - 23 May 2022

The applicant provided a detailed submission in support of the original scheme. That submission was considered and the proposal was deemed to be acceptable and the assessment report was completed on 8 November 2022.

Meeting with Applicant - 6 December 2022

After executive review of the application, a meeting was held with the Applicant to discuss concerns in relation to the extent of non-compliance with the side building envelopes on both the northern and southern side elevations.

Amended Plans Lodged - 20 December 2022

Arising out of the 6 December meeting was a set of revised plans which were the subject of review.

Response to Amended Plans - 23 January 2023

The applicant was advised that the additional setback to the northern boundary to the upper level and improved side boundary envelope compliance was supported, however, the degree of envelope non-compliance on the southern side was still problematic and required a degree of stepping-in of the upper level.

Final Amended Plans Lodged - 14 February 2023

The current set of revised plans, incorporating a significantly greater southern side setback (whole building), slightly reduced northern side setback and was lodged and forms the basis of this assessment report.

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 - 2.1 Land use zones
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D4.5 Front building line
Pittwater 21 Development Control Plan - D4.8 Building envelope
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 11 DP 776130 , 182 McCarrs Creek Road CHURCH POINT NSW 2105 Lot LIC 467731 , 182 McCarrs Creek Road CHURCH POINT NSW 2105
Detailed Site Description:	The subjects site consists of Lot 11 in DP776130 and is located on the western side of McCarrs Creek Road, in the south-western part of Church Point. The subject site has waterfrontage to McCarrs Creek and on the opposite side of the creek is Ku-ring-gai Chase National Park and McCarrs Creek Reserve.

The subject site is steeply sloping, slopes from east to west and has an average slope of 30 degrees.

The surrounding area is characterised by detached dwellings with 2 to 3 levels on the western side of the street, generally set below road level, and interspersed with native vegetation, and an informal road reserve (no footpaths or kerb and guttering).

There is a distinct character of ancillary development, including garages, carports and driveway ramps off McCarrs Creek Road, with inclinators, lifts and external stairs.

The area on the eastern side of McCarrs Creek Road opposite the site is characterised by remnant bushland with no residential development.

Map:



SITE HISTORY

The site has a history of residential development, which pertains to the existing dwelling as follows:

- **Consent No. N154/00** was granted for the construction of a detached garage and laundry, jetty, ramp, pontoon and deck extension on 6 December 2000.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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&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 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development. In this regard, the proposed residential redevelopment is a site responsive design, that has been designed with the physical constraints in mind and has sought to retain the landscaped foreshore character and minimise the extent of excavation and fill. The amended scheme has improved the level of compatibility with existing residential

Section 4.15 Matters for Consideration	Comments
	development and the visual impact of the building when viewed from the waterway, the street (subject to special condition) and neighbouring properties.
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. The notification of the application resulted in one (1) submission which is from a landowner who is not an adjoining resident or in close vicinity of the site, but made general comments on the levels of non-compliance and the character of the proposed development. The issues raised are addressed in the following section of the 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. The amended scheme has addressed the concerns raised during the assessment of the application, including the issues raised in the public submission, with the exception of the visual impact of the garage element, which is dealt with by way of a special condition. The resultant design is more consistent with the applicable planning controls under the PLEP 2014 and P21DCP, despite the remaining variations, which are justified and reasonable.

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 Blacklash Bushfire Consulting, dated 30 January 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 22/02/2022 to 08/03/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Josko Simundza	132 McCarrs Creek Road CHURCH POINT NSW 2105

The above issues are addressed as follows:

- **Inconsistent with the character of the area**

The submission raised concerns that the proposal does not comply with building height control and will present inappropriate bulk and scale to the waterway.

Comment:

In regard to building height, the assessment has found that the Clause 4.6 variation to the 8.5m maximum building height is well founded and is supported. The actual extent of the variation is relatively minor and has been minimised through a balance of some excavation, conservative floor to ceiling heights and a reasonably flat roof with little roof bulk. The proposed height is consistent and compatible with the prevailing height of dwellings extending to the south and north along this section of the foreshore. Additionally, there are no significant impacts on the amenity of adjoining dwellings or associated view loss. Further, the proposal will be satisfactory in terms of the visual and scenic impacts when viewed from the waterway, considering the substantial rear setback to the western boundary with McCarrs Creek and the retention of canopy tree screening of the development.

This issue does not warrant the further amendment to the proposal or the refusal of the application.

Community Participation Plan

The amended plans were not formally renotified during the course of the assessment as the various amendments amounted to a reduced impact on neighbouring properties and the character of the locality, including the waterway.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>SUPPORTED WITH CONDITIONS</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D4 Church Point and Bayview Locality <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>The proposal includes works within the road reserve including: suspended concrete driveway, new stairs and retaining walls, and localised fill. All works within the road reserve are subject to a section 138 application under the NSW Roads Act, for approval of otherwise</p>

Internal Referral Body	Comments
	<p>from the relevant Council business unit.</p> <p>The proposal maintains the natural landscape features of the property including trees and vegetation. A Arboricultural Impact Assessment is submitted and provides assessment and recommendations for removal for existing trees impacted by the development works, and otherwise provides tree protection measures for the preservation of nominated trees. Existing native trees within the property recommended for removal include T4 - Willow Bottlebrush, T5 - Lemon Scented Gum and T6 - Bastard Mahogany, whilst T8 - Black She Oak is assessed as arboriculturally dead and thus may be classified and removed as an exempt species. One existing street tree is required for removal to accommodate development works, identified as T3 - Chinese Loquat. Landscape Referral raise no objections to the tree removal based on the arboricultural assessment.</p> <p>Furthermore an Addendum to the Arboricultural Impact Assessment is submitted recommending the removal of an additional tree identified as T7 - Bastard Mahogany, based on confirmed change to site conditions involving change to natural soil levels / raised soil levels as reported with live roots becoming decay pathogen susceptible by virtue of declined organism activity in the tree rhizosphere (area immediately surrounding absorbing roots/root hairs). The Addendum notes the change over time has the potential to significantly impact upon live structural root integrity, and on this basis the Addendum supports the removal of T7.</p> <p>A Landscape Plan in title is submitted, and is generally suitable with new vegetation planting nominated as 80% locally native species. However, the tree replacement species nominated are shrub species and tree planting to replace the existing canopy loss shall be incorporated into the landscape scheme, and conditions shall be imposed for the completion of landscape works to satisfy the C4 zone and the DCP C1.1 requirements.</p> <p>All new landscaping should be implemented in accordance with the Asset Protection Zone requirements as specified within Appendix 4 of Planning for Bushfire Protection 2019, and the recommendations of the Bushfire Assessment Report.</p>
NECC (Bushland and Biodiversity)	<p>SUPPORTED WITH CONDITIONS</p> <p>Council's biodiversity team have reviewed the application against relevant controls in the Pittwater 21 DCP and LEP. These controls include;</p> <ul style="list-style-type: none"> • Pittwater LEP - cl. 7.6 Biodiversity, and • Pittwater DCP - B4 Controls regarding the natural environment. <p>The site is not represented by bushland vegetation and no threatened ecological communities are mapped on or adjoining the site. Whilst Seagrass is known to occur in vicinity of the site, no works are</p>

Internal Referral Body	Comments
	<p>proposed within the adjacent waterway and conditions of consent have been applied in regards to sediment and erosion controls. Recent vegetation clearing around the existing dwelling on site appears to have included removal of mostly exotic/garden vegetation and weeds. Council's landscape referral includes conditions of consent requiring the protection of retained trees and the planting of advanced trees to replace those removed. The submitted landscape plan identifies that 80% of plantings are to be native species. Conditions of consent have been included identifying requirements for local native plantings included within proposed landscaping.</p>
NECC (Coast and Catchments)	<p>SUPPORTED WITH CONDITIONS</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p>

Internal Referral Body	Comments
	<p>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>In accordance with the Estuarine Risk Management Report prepared by Salients dated 16 November 2021, an estuarine planning level (EPL) of RL 2.46 [m AHD would apply at the subject site.</p> <p>On internal assessment and as assessed in the submitted Estuarine Risk Management Report prepared by Salients dated 16 November 2021, the ground floor level for the proposed boatshed is at 1.64m AHD which is below the adjusted EPL for the site.</p> <p>The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes, among others, construction of a boatshed, access ways and the base of an inclinorator, All these proposed works are consistent with Clause 7.8(2)(b).</p> <p>On internal assessment, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>SUPPORTED WITH CONDITIONS</p> <p>The proposal involves demolition works and the construction of a new dwelling and boat shed. The submitted stormwater plan with the proposed discharge to Pittwater is satisfactory subject to conditions.</p> <p><u>Access</u></p> <p>Insufficient information has been provided with regard to the proposed access driveway and works on the road reserve. Additional information required for further assessment is as follows:</p> <ul style="list-style-type: none"> • Engineering long-sections at both edges and centerline of the proposed access driveway to the proposed garage and demonstrate compliance with AS2890. The sections are to include dimension as well as existing and proposed levels. • Details of the supporting structures for the proposed driveway and the road reserve. The plans are to indicate if the driveway is to be suspended with piers / retaining walls or if filling is proposed for the road reserve. • Engineering cross sections for the footpath and the road reserve to show the changes proposed on the road reserve between the subject site and adjacent properties. <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> • Vehicle access for the development in accordance with Clause B6 of Pittwater 21 DCP. <p>Amended Plans provided 14/7/2022</p> <p>The amended plans proposes to replace an existing poor quality retaining wall in the road reserve with a shotcrete reinforced concrete retaining system. As the existing retaining walls support the road embankment comments from Council's Road Asset team are required prior to Development Engineering providing comments.</p> <p>Additionally the sections do not comply with current standards. Gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility.</p> <p>Amended Plans Provided 25/10/2022</p> <p>The amended plans with the proposal to construct a suspended driveway supported by piles in Councils road reserve and suspended access stairs have been reviewed. No objections to approval subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>SUPPORTED WITH CONDITIONS</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</p>

Internal Referral Body	Comments
	<p>integrity of the 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.</p> <p>Subject to conditions, this application is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater estuary.</p>
NECC (Water Management)	<p>SUPPORTED WITH CONDITIONS</p> <p>The property abuts Pittwater estuary for which it is important to maintain a high level of water quality and so minimise impervious surfaces that prevent infiltration where possible.</p> <p>The proposal includes measures to remove organic matter and coarse sediments from stormwater prior to discharge from the land and these must be installed.</p> <p>The proposal also includes sediment and erosion controls that must be installed prior to disturbing any soil on site and maintained for the duration of works.</p> <p>On assessment, the proposal includes the features required to meet the water management requirements.</p>
Parks, reserves, beaches, foreshore	<p>SUPPORTED WITH CONDITIONS</p> <p>The development site adjoins McCarrs Creek waterway that is located downslope of the property.</p> <p>No physical encroachments over the site boundaries are permitted under the development application, and structures and built elements are not permitted beyond the site boundaries. Existing physical encroachment exist along the rear boundary, including retaining walls, stairs, and lawn area, as shown on the Survey Plan, and any approval of this development application does not grant approval for the existing encroachments, should they have not being historically approved.</p> <p>Public access to the waterways is not impacted by the proposed development and the development is not detrimental to the landscape character of the adjoining waterway, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>
Road Reserve	<p>SUPPORTED WITH CONDITIONS</p> <p>Officer comments</p> <p>The amended plans propose to replace existing retaining walls in the road reserve with shotcrete reinforced concrete retaining systems to support private structures within the boundary of the property. Shotcrete walls typically require rock/soil anchors for structural support. Any proposal to use rock/soil anchors into the public road reserve will not be supported, hence the proposal for a shotcrete wall as shown on the plans cannot be supported.</p> <p>All retaining works needed to support the car port, workshop and</p>

Internal Referral Body	Comments
	<p>storage area must be located within the property boundary. The existing wall, if replaced by an alternative structure, will need to be removed to 600mm below surface level and the verge restored to the property boundary.</p> <p>The proposal is therefore unsupported.</p> <p>Officer comments on amended plans received 21 October 2022</p> <p>The amended plans (drawing CD-1.0 Revision B) propose to construct a suspended slab driveway supported by piles in Councils road reserve, with suspended RC stairs linking the driveway to the existing stairway. Further low-height piles for retaining soil and a precast plank retaining wall is proposed to be constructed on Councils road reserve.</p> <p>The amendment is satisfactory and T&CI have no objections to the works. Development Engineers to condition the driveway, stairs, and associated retaining structures as part of a s138 application for civil works.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>CONCURRENCE ASSUMED</p> <p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>
Aboriginal Heritage Office	<p>SUPPORTED WITH CONDITIONS</p> <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>

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. 1248432S). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. <insert certificate number and date>).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	99

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 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 size and scale of the development, and separation of the dwelling from the coastline ensures that the development will not significantly impact on the above.

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 appropriate size and scale of the development including minimised excavation, ensures the proposal is consistent with the above.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed

- development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.
- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

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 minimises excavation, and separates built form from the coastline, with the exception of the boatshed. This is a sufficient design to ensure adverse impacts are avoided.

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 proposal is not likely to cause increased risk of coastal hazards on that land or other land due to sufficient design with respect to the coastline as outlined above.

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

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	Dwelling - 9.5m Garage - 9.0m	11.7% 5.8%	No (see comments) No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.1 Land use zones	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	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

Clause	Compliance with Requirements
7.2 Earthworks	Yes
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

2.1 Land use zones

Zone Objectives

The objectives of the C4 Environmental Living zone are addressed as follows:

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

Comment:

The proposal is for a detached dwelling house and ancillary development which is consistent.

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

Comment:

The proposal will not have an adverse impact on the site, streetscape or character of the locality.

- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*

Comment:

Not Applicable.

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

Comment:

The proposal, as revised and as conditioned, represents site responsive development that will have a satisfactory visual impact.

- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment:

The proposal involves the removal of several trees, however the most significant native trees are being

retained.

4.6 Exceptions to development standards

Clause 4.6 Variation No. 1 - Height of Buildings

Description of Non-compliance

Development Standard	Height of Buildings
Requirement	8.5m
Proposed	Dwelling - 9.5m (max) Garage - 9.0m (max)
Percentage variation to requirement	Dwelling - 11.7% Garage - 5.8%

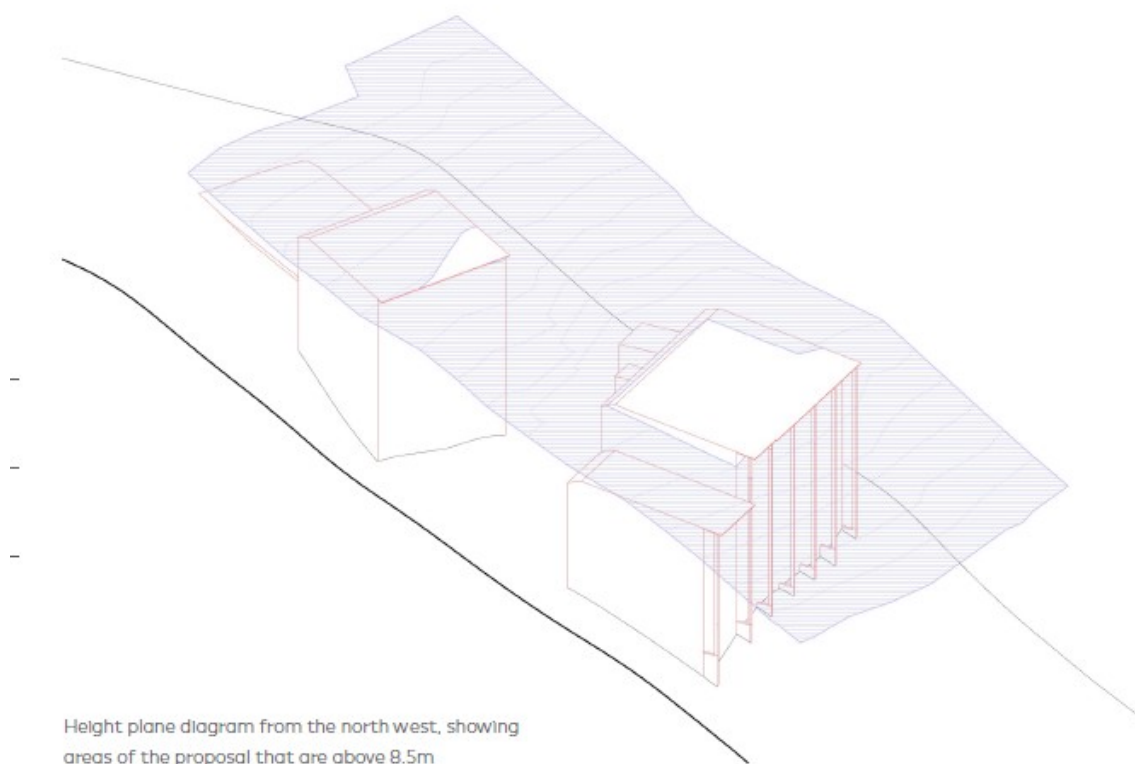


Figure 1 - Extent of non-compliance with 8.5m height standard

Assessment of Request to vary a Development Standard

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

In doing so, the Applicant's written request has adequately demonstrated that compliance with the

development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The proposal maintains the pattern of the predominant dwelling heights in the vicinity and along this section of the foreshore.
- The proposal generally maintains the existing footprint of development on the site.
- The dwelling is on a site with a significant slope with localised drop-offs in steepness.

It is concurred with that the proposal is compatible with the height of existing and nearby dwellings along this section of McCarrs Creek Road, and that the height variations can be attributed to the sloping nature of the site.

A height of buildings analysis was provided by the applicant showing the height and scale of the proposed development in relation to adjoining and nearby dwellings, which is reproduced below:

	180	182	184
182 McCarrs Creek Road, Church Point	3 storey frontage (no setback) + 1 storey (with setback)	Proposed 3 storey frontage	2 storey frontage (no setback) + 1 storey (with setback)
14/02/23	Breaks LEP height control Breaks DCP envelope control by 1.5 stories		Breaks LEP height control Breaks DCP envelope by 1 storey



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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration

must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the PLEP 2014 are:

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

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

Comment:

The desired character of development in this area is dwellings that appear as predominantly 2 storey in height and scale when viewed from the street and other public areas such as the waterway and reserve, maintaining an 8.5m height, except on steep sites, where up to 10m is permitted, subject to certain pre-conditions, and also that development is to be secondary to the bushland landscape. The overall height and scale of the dwelling and garage elements are not significantly higher than what is envisaged by the controls. Furthermore, the applicant has demonstrated that the exceedances have been minimised by reducing floor levels and the extent of the uppermost floorplate.

The proposal satisfies this objective.

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

Comment:

The applicants height and scale analysis demonstrates that the proposal is compatible with the predominant height and scale of dwellings along this section of McCarrs Creek Road. In particular, the proposal generally matches the three storey presentation when viewed from McCarrs Creek and public reserve opposite the site, and also provides a building footprint positioning that generally aligns with dwellings along this section of McCarrs Creek Road.

The proposal satisfies this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The revised proposal provides a larger setback of the entire dwelling to the southern boundary compared to the original scheme and does not project beyond the alignment of the adjoining dwelling to the south at 184A McCarrs Creek Road. The revised proposal complies with the Solar Access requirements under the P21DCP (*Clause 1.4 Solar Access*).

The proposal satisfies this objective.

d) to allow for the reasonable sharing of views,

Comment:

The proposal is well stepped back on the site compared to the adjoining property to the south and has a substantial separation to the adjoining property to the north, thus it maintains current view sharing arrangements.

The proposal satisfies this objective.

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

Comment:

The proposal does not involve significant excavation, and has a pavilion-style built form that steps down the site from road level (garage element) to the centre of the site (dwelling element). This provides an appropriate and sensitive response to the natural topography. Whilst the dwelling envelope dwelling itself is not stepped down the site, having somewhat of a vertical form, the footprint on the site is quite small and is designed to limit the disturbance of the site, the degree of excavation and meet the 60% landscaped area control.

The proposal satisfies this objective.

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

Comment:

The potential for visual impact associated with the proposed development is when viewed from the waterway, public reserve opposite the waterway and the public road. The significant rear setback of the dwelling to the waterway and the natural and earthy tones of the exterior finishes will ensure it is sympathetic to these important viewing areas. The dwelling itself is well setback from the front of the site and well below road level. In terms of the garage element, a special condition requires it to be changed from an enclosed garage to an open carport design, which will ameliorate the visual impact from the road. The garage element will be viewable from the west as it is perched above the ridge of the dwelling, but it is separated from the dwelling, has a narrower length of presentation to the west and is also to be treated in natural/earthy tones, hence it will not appear visually prominent on the hillside.

The proposal satisfies this objective.

Zone Objectives

The underlying objectives of the C4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*
- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*
- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment:

The revised proposal provides for a design that will be a low impact dwelling house development with regard to its visual presentation, impact on natural surroundings and impact on amenity. In particular, the generous landscape setting, retention of significant native trees and natural/earthy exterior finishes will provide for a built form that sufficiently integrates with the natural character of the area and the scenic qualities of the foreshore and surrounding bushland.

The proposal is consistent with the objectives of the zone.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Northern Beaches Planning Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Clause 4.6 Variation No. 2 - Foreshore Area

Description of Non-compliance

Development Standard	Clause 7.8 - Limited Development on Foreshore Area
Requirement	Foreshore Building line
Proposed	Inclinators, retaining walls and enlarged steps
Percentage Variation to Requirement	N/A - Non-numerical

Assessment of Request to vary a Development Standard

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

Clause 4.6 Exceptions to development standards

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

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

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

Comment:

Clause 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 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 maintains the pattern of existing development adjacent the foreshore in McCarrs Creek
- The inclinator allows for safe access to the foreshore and proposed boatshed and existing jetty, ramp and pontoon on a steeply sloping site
- The retaining walls assist in mitigating landslip risk and facilitate safe hillside development

It is agreed that the proposal follows the pattern of existing development and that the inclinator, retaining walls and associated steps assist in providing suitable access, and providing appropriate retention of natural ground conditions for this steeply sloping site, which has more difficult access from the street to a dwelling and from the dwelling to the waterway. It is agreed that the proposal will provide safe and contemporary resident access and amenity to existing and proposed foreshore facilities.

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 'Limited Development on Foreshore area' development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 7.8 – 'Limited Development on Foreshore Area' of the PLEP 2014 are:

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

(a) 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 works within the foreshore area are well integrated with landscape features and are not of a scale that would have an unreasonable impact on foreshore processes.

The proposal satisfies this objective.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Comment:

The proposed works are entirely on private property would not impact upon public access along the foreshore area and to the waterway. The proposed works are also well separated from the waterway area.

The proposal satisfies this objective.

Zone Objectives

The underlying objectives of the C4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*
- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*
- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment:

The proposal provides for a design of inclinator, retaining walls and steps that will be low impact with regard to visual presentation, impact on natural surroundings and impact on amenity.

The proposed structures in the foreshore area are consistent with the objectives of the zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Northern Beaches Local Planning Panel, may assume the concurrence of the Secretary for variations to the Foreshore building line Development Standard associated with a single dwelling house (Class 1 building).

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	10.0m	Dwelling - 4.2m to 15.7m Garage/Workshop/Storage - Nil	46% 100%	No (see comments)
Rear Building Line	6.5m	13.6m	N/A	Yes
Foreshore Building Line	15.0m	Boatshed - Nil Inclinator Landing - 3.1m		No (see comments)
Side Building Line	2.5m (South)	3.3m	N/A	Yes

	1.0m (North)	1.6m	N/A	Yes
Building Envelope	3.5m	Outside envelope	N/A	No (see comments)
	3.5m	Outside envelope	N/A	No (see comments)
Landscaped Area	60%	62%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	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
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	No	Yes
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	No	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D4.14 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
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	No	Yes
D15.19 Dredging	Yes	Yes

Detailed Assessment

C1.19 Incline Passenger Lifts and Stairways

The proposed inclinator is assessed against the relevant clauses as follows:

i) be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees, and

Comment:

The proposal involves a minor degree of excavation for the installation of the foundations for the structure. Two (2) trees, namely Trees 4 and 5 are required to be removed to allow for the installation, which has been addressed in the Arborists Report, and assessed by Council's Landscape Officer as being satisfactory.

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

Comment:

The inclinator track is located close to ground level.

iii) be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and

Comment:

The inclinator is separated from the adjoining dwelling to the north by approximately 8.0m, which is sufficient to ensure noise impacts are mitigated.

iv) be painted to blend in with surrounding vegetation and screened by landscaping and

Comment:

This will be dealt with by a suitable condition of consent.

v) be set back two (2) metres from the side boundary to the outer face of the carriage

Comment:

The proposal does not comply with the 2.0m minimum setback, however, the 8.0m separation distance to the nearest dwelling is a substantial buffer and does not warrant a greater setback to the inclinator.

vi) be located wholly on private land, and

Comment:

The inclinator is wholly on private land

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 proposal does not require such a screen to be installed.

Due to the above, the proposal is considered to be consistent with the objectives and acceptable.

D4.5 Front building line

Description of Non-compliance

The proposed dwelling has a varied setback from 5.8m to 14.2m and the garage/workshop/storage structure has a nil to 0.5m setback, both of which do not comply with the 10m front setback control.

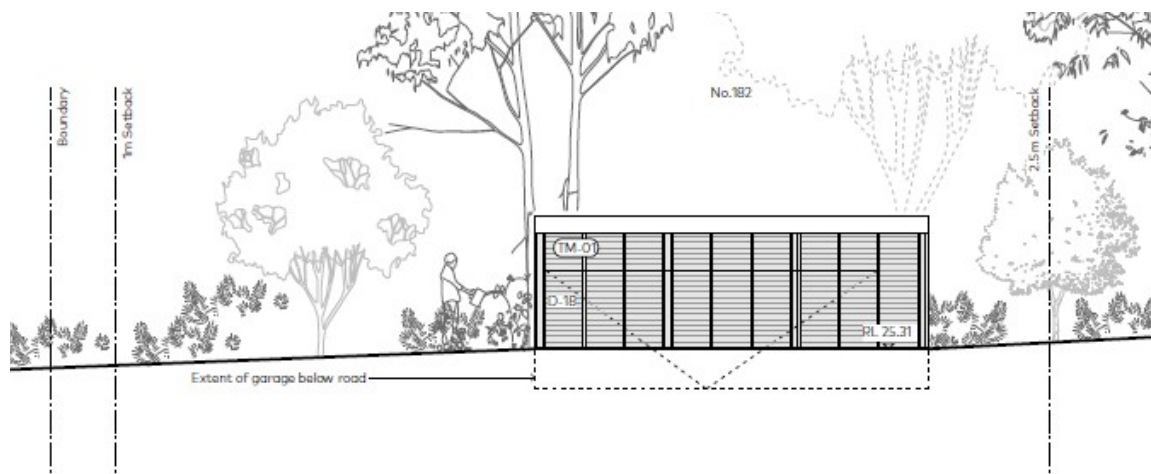


Figure 2 - Eastern (street) elevation of the garage level

Merit Consideration

The development is considered against the underlying Objectives of the numerical control as follows:

Achieve the desired future character of the Locality.

Comment:

The western side of McCarrs Creek Road is characterised by ancillary buildings, including garages, carports and open parking structures being situated close to the street and dwellings setback further down the slope.

Based on the prevailing streetscape and the topography, the location of the garage structure on a nil setback is consistent with the existing character and desired future character. However, the enclosed nature of the structure does not maintain the open streetscape as envisaged by the control, and should be converted to an open carport design. A special condition has been imposed in this regard.

The dwelling itself is largely compliant with the 6.5m control, with the only breaching element being the projecting WC element of the Ground Floor Level, which is set well down below the road level. Subject to the special condition in relation to the garage, the proposal will meet the desired future character of the area.

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

Comment:

The garage structure will obscure views and vistas of the waterway, reserve and bushland from the street. Therefore, as discussed above, a special condition has been imposed to ensure openness is maintained and views and vistas are preserved or created. The non-compliant WC element attached to the dwelling will have no impacts on views and vistas. Therefore, subject to the special condition, the proposal satisfies this objective.

The amenity of residential development adjoining a main road is maintained.

Comment:

The garage within the front setback will not adversely impact the amenity of adjoining residential properties.

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

Comment:

The front setback area of the site has a number of trees and a couple of the road reserve. The largest of these is Tree 1, which is a 24m high Ironbark and is to be retained and protected. Trees 7 and 9 are also to be retained. This will ensure a suitable tree setting for the garage structure and ameliorate its visual prominence.

Vehicle manoeuvring in a forward direction is facilitated.

Comment:

The driveway design is assessed by Council's Development Engineers are being satisfactory. It is

noted that the existing access driveway and informal parking area is wholly within the road reserve and there is no parking for the existing dwelling within the subject site, so the proposal represents a significant improvement in terms of parking and access.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment:

The proposed parking structure will maintain a building height that is compatible with other ancillary parking structures in front setbacks within the vicinity.

To encourage attractive street frontages and improve pedestrian amenity.

Comment:

Subject to the special condition to change from a garage to a carport, the proposal will enhance the existing street frontage character and is satisfactory in this regard.

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

Comment:

The front setback of the proposal, as conditioned, will be responsive to the prevailing streetscape character and integrates with the natural features of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D4.8 Building envelope

Description of Non-compliance

The revised proposal does not comply with the side building envelope control for the dwelling-house on the southern elevation and for the garage structure for the southern elevation.

Section D4.8 of the P21DCP states that:

"Where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis."

As the slope of the building envelope for the dwelling and garage both exceed 30%, the following merit assessment was undertaken.

The extent of the breaches is shown in the images below which have been verified by the assessment officer:

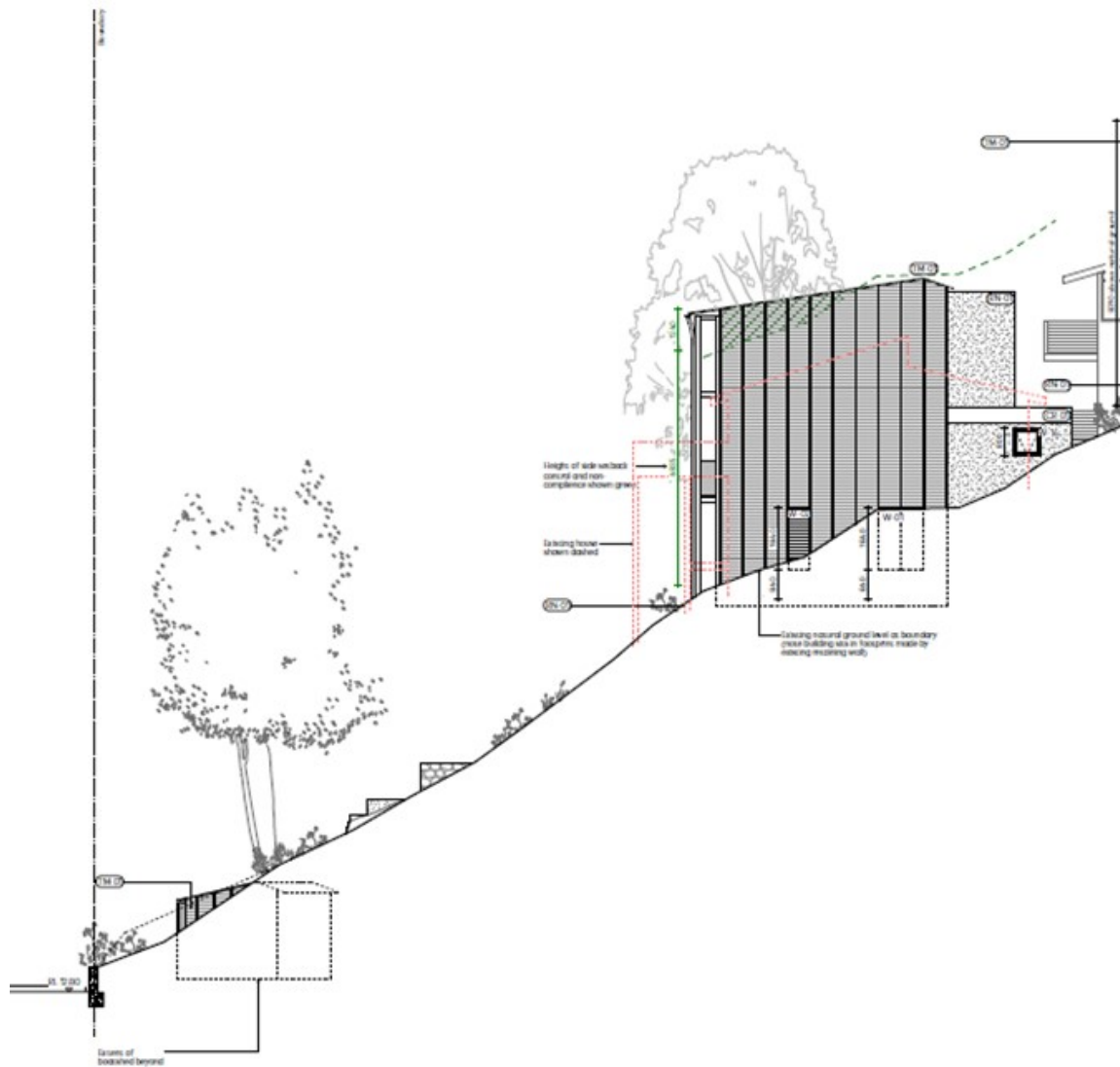


Figure 3: Extent of non-compliance with the side building envelope at southern elevation (shown in green cross-hatch)

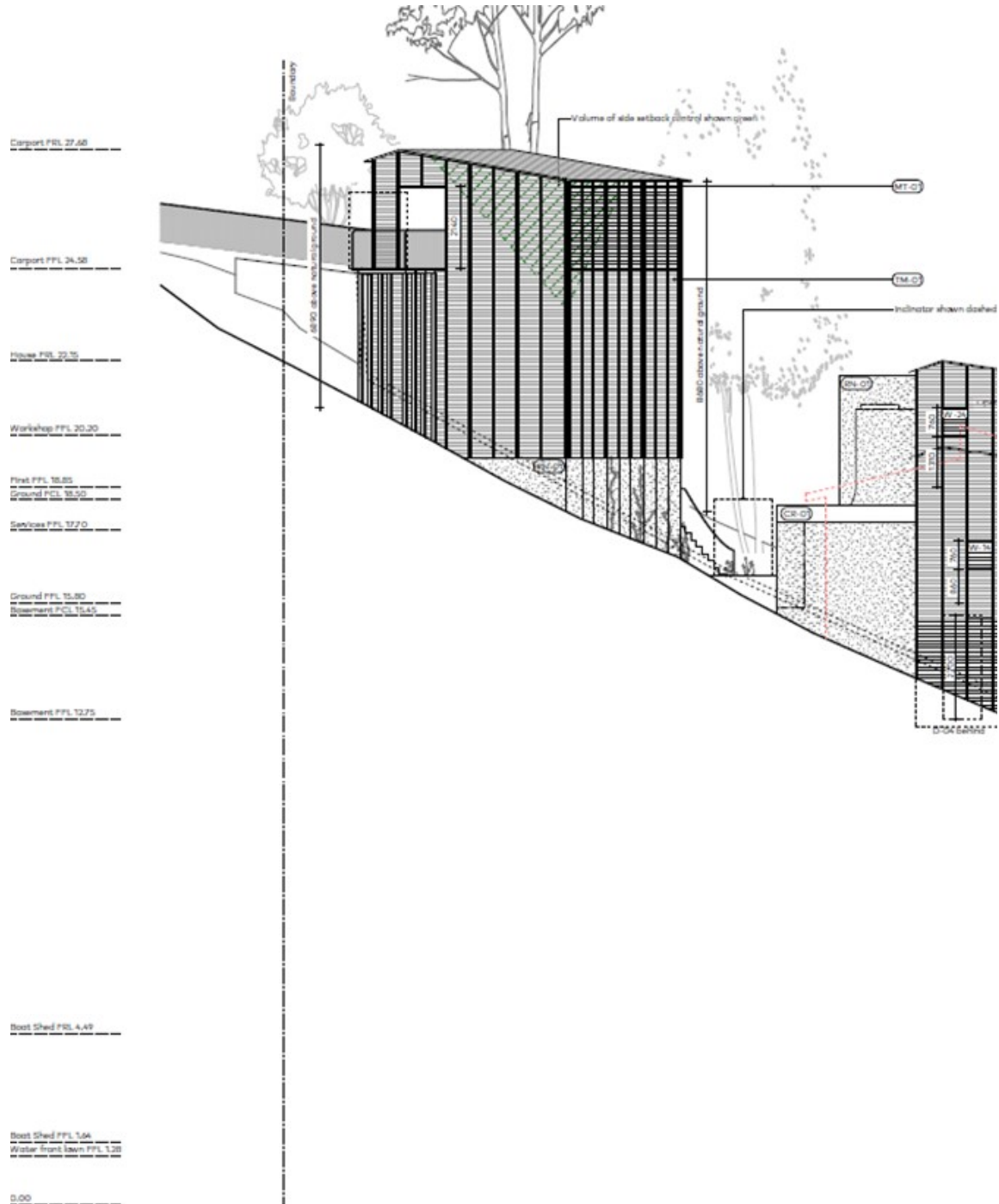


Figure 4 : Extent of non-compliance with the side building envelope at the northern elevation (shown in green cross-hatch)

Merit Assessment

To achieve the desired future character of the Locality.

Comment:

The subject site is heavily constrained by virtue of its steep slope. The applicants design response is premised on minimising the building footprints of the dwelling, by concentrating the floorspace in a vertically stacked arrangement, which renders it more than compliant with landscaped area and setbacks and hence maximises the natural setting for the development, but the side building envelopes do fall into non-compliance. The proposal, as revised to step in the uppermost level from both side boundaries, is characterised as being part 2/part 3 storey and is generally compatible with dwellings on adjoining properties and in the vicinity and in this particular bushland setting, and for these reasons is generally consistent with the desired future character.

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

Comment:

The proposed dwelling at just over 8.5m in height, with generous side setbacks and front and rear setbacks, is set well down from street level due to the steep slope from street to waterway. The detached garage structure presents as a single storey structure and a special condition will require it to be "opened-up" in its built form, by converting it into a carport design. The proposed buildings will continue to be set within a bushland surround, from native vegetation on the site, within the road reserve and the bushland on the eastern side of Mc Carrs Creek Road. The buildings will both be below the tree canopy.

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

Comment:

The revised proposal, combined with the special condition to convert the garage to a carport, provides sufficient modulation and stepping of the built form and maintains a substantial landscape setting for the buildings. The resultant development, although unconventional in its character and built form, will be site and locality responsive.

The bulk and scale of the built form is minimised.

Comment:

The bulk and scale of the original design was excessive, and the extent of breaches of the side building envelopes was also excessive. The revised scheme reflects a greater degree of stepping-in of the uppermost level from side boundaries (south is 3.3m and north is 5.0m), however it still exhibits a general lack of stepping over the building footprints in an east-west direction. But, it should be noted that the footprints are only 6.74m for the dwelling and 5.8m for the parking structure. Hence, there has been a minimisation of bulk and scale over the horizontal extent of the buildings over the slope, but a concentration over the footprints themselves. Nevertheless, the site visual impact and character analysis revealed that the proposed buildings will be visually prominent when viewed from the street or the waterway, owing to the substantial setback of the dwelling from the waterway and fact that the ridge height of the dwelling is well below street level.

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

Comment:

The revised scheme maintains viewing corridors from street level and adjoining properties down both sides of the dwelling.

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

Comment:

The revised scheme proposal for a compliant level of solar access for the adjoining property to the south and a satisfactory level of privacy.

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

Comment:

The proposal retains the most significant trees on the site and Council's Landscape Officer has reviewed the scheme and raised no concerns.

The proposal is consistent with the underlying outcomes of the clause and as such is reasonable in this instance.

D15.15 Waterfront development

The proposal involves excavation and the construction of a boatshed which is situated on a nil setback to the western boundary with McCarrs Creek. The DCP requirements for boatsheds are considered below:

i) Boatsheds shall be located above mean high water mark on freehold land, where practicable. Where this cannot realistically be achieved, as much of the proposed boatshed as is practical must be located above mean high water mark to minimise encroachment onto the littoral zone below mean high water mark.

Comment:

The proposed boatshed is located well above mean high water mark, wholly on freehold land.

ii) Boatsheds shall be one storey and no greater than 4.5 metres in building height above the platform on which it is built, 4.0 metres in width and 6.0 metres in length, as illustrated in Diagram 4. The use of lofts or similar design concepts shall not be permitted.

Comment:

The height of the boatshed is between nil and 2.0m above existing ground level, owing to the excavation required into the hillside to create the building platform. The building is parallel to the shoreline and its width is 6.84m (N-S) and its length is 3.0m (E-W). The width therefore exceeds the 6.0m maximum. Based on the constraints in accommodating a boatshed on this site, the width is satisfactory as it takes up less than 50% of the width of the lot, is setback 5.0m from MHW and provides suitable setbacks/separation to both side boundaries.

iii) Boatsheds shall not prevent or hinder public foreshore access. Alternative access must be provided where a proposed boatshed is likely to make existing foreshore access below mean high water mark difficult.

Comment:

The proposed location will not hinder public access to the foreshore.

iv) Boatsheds cannot be used for any other purpose than the storage of small boats and/or boating equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities shall not be permitted. Roof areas of boatsheds shall not be used for recreational or observational purposes.

Comment:

The design of the boatshed is an open floorplan with no built-in facilities. A condition of consent will be imposed restricting the use of the boatshed to its approved purpose.

v) Boatsheds shall be constructed of low maintenance materials that are of a tone and colour which is sympathetic to the surrounding setting. Structures proposed along the western foreshores, McCarrs Creek, Horseshoe Cove, Salt Pan Cove, Refuge Cove, Clareville and Careel Bay are to have specific regard for the natural landscaped character of the area. Reflective materials and finishes for private boatsheds shall not be permitted.

Comment:

The boatshed is to be constructed of timber walls and metal roof atop a concrete slab. The external finishes are satisfactory.

vi) The minimum floor level for proposed boatsheds shall be in accordance with the B3 Estuarine Hazard controls for foreshore development around the Pittwater Waterway.

Comment:

Council's Coastal Engineers have reviewed the proposal and Estuarine Risk Management Report and are satisfied that the floor level for the boatshed is in accordance with the B3 Estuarine Hazard controls for foreshore development.

vii) Boatsheds shall be able to be entirely enclosed. Boatsheds which either partially or wholly do not incorporate appropriate wall cladding shall not be permitted, as such structures tend to become visually obtrusive when viewed from the waterway.

Comment:

The boatshed is designed as a fully enclosed structure.

vii) All electrical equipment and wiring shall be water tight below the designed flood/tidal inundation level.

Comment:

The floor level of the boatshed at FFL 1.64 is below the Estuarine Planning Level of 2.64, so the structure is designed and will be constructed for occasional inundation. A condition will require electrical fittings to be above the EPL 2.64.

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 \$20,010 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,001,046.

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

Council is satisfied that:

1) The Applicant's written requests under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 7.8 Limited Development on Foreshore Area, have adequately addressed and demonstrated that:

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

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 application is referred to the Northern Beaches Local Planning Panel due to it involving two Clause 4.6 Variations, including a variation that is greater than 10% to the building height development standard under Clause 4.3 of the PLEP 2014 and a non-numerical variation to the provisions of Clause 7.8 of the PLEP 2014 - Limited Development on Foreshore Area.

The critical assessment issues included; building height, foreshore area, side boundary building envelopes and front setback.

The subject site is an environmentally sensitive site by virtue of it being zoned C4 Environmental Living, and due to its physical characteristics and constraints to development, including its foreshore location, steep slope, tree canopy, landslip risk and vehicular access from McCarrs Creek Road.

Overall, the proposed development, as revised, is a site responsive scheme, and a considered approach to hillside development against the prevailing planning controls. The pavilion-style design which separates the dwelling from the garage element allows for a stepping of the development down the site and to minimise excavation and site coverage.

The height, bulk and scale were reduced during the course of the assessment, although being protracted, have delivered a better balance of compliance with the controls and the built form outcomes. The character of the buildings, with their vertical planar walls are unique in certain ways, and not necessarily reflecting some of the conventional approaches on other foreshore sites, but the changes made to increase the setback to the southern boundary and step-in the uppermost storey from the northern boundary, renders the scheme sufficiently compatible and complementary, and the natural finishes combined with a generous landscape setting will ensure it provides a positive contribution to the foreshore character.

A special condition has been imposed to change the enclosed garage to an open carport design, to ensure it provides a more sympathetic presentation in the streetscape and provide openness and transparency for public views of the waterway and bushland beyond from McCarrs Creek Road.

The Clause 4.6 variations for height and foreshore area are assessed as being well founded and are supported for the reasons provided in this report.

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 the clause 4.3 Height of Building development standard and the Clause 7.8 Limited Development on Foreshore Area development standards pursuant to clause 4.6 of the PLEP 2014, as the applicant's written requests have adequately addressed the merits required to be demonstrated by sub-clause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standards 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 DA2022/0133 for Demolition works and construction of a dwelling house, detached garage, inclinor and boat shed on land at Lot 11 DP 776130, 182 McCarrs Creek Road, CHURCH POINT, Lot LIC 467731, 182 McCarrs Creek Road, CHURCH POINT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
PP-01 - Materials (External Finishes) - Rev D	21.3.2023	TRIAS
PP-03 - Proposed Site Plan/Roof Plan - Rev C	14.2.2023	TRIAS
PP-04 - Site Management/Excavation & Fill Plan - Rev B	14.2.2023	TRIAS
PP-101 - Garage Plan - Rev C	14.2.2023	TRIAS
PP-102 - First Floor Plan - Rev E	14.2.2023	TRIAS
PP-103 - Ground Floor Plan - Rev E	14.2.2023	TRIAS
PP-104 - Basement & Boatshed Plan - Rev E	14.2.2023	TRIAS
PP-101 - Landscape Plan - Rev B	14.2.2023	TRIAS
PP-201 - Elevations 01 - Rev C	14.2.2023	TRIAS
PP-202 - Elevations 02 - Rev C	14.2.2023	TRIAS
PP-203 - Elevations 03 - Rev E	21.3.2023	TRIAS
PP-204 - Elevations 04 - Rev E	14.2.2023	TRIAS
PP-205 - Elevations 05 - Rev D	14.2.2023	TRIAS
PP-206 - Section 01 - Rev E	14.2.2023	TRIAS
PP-207 - Section 02 - Rev E	14.2.2023	TRIAS

Engineering Plans

Drawing No.	Dated	Prepared By
CD-1.0 - CD2.0 - Driveway Details	not dated	SDA Structures

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation	27 September 2021	White Geotechnical Group
Stormwater and Waste Management Report	3 December 2021	Capital Consulting Engineers
Estuarine Risk Management Report	30 January 2022	Blacklash Bushfire Consulting
Construction Impact and Management Statement	December 2021	Growing my Way Tree Consultancy
BASIX Certificate No. 1248432S_02	14 February 2023	TRIAS PTY LTD

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	1/02/2022	Applicant

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

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

2. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

3. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$20,010.46 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 \$2,001,046.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Stormwater Disposal**

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 27/9/2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Erosion and Sediment Control Plan**

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

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

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

Reason: Protection of the receiving environment.

10. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

11. **Certification and Design of Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' design and certificate certifying that the elevated parking facility is designed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-

street car parking,
in particular Section 2.4.5 Physical controls.
Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: Safety and Compliance with this consent.

12. **Erosion and Sediment Control Plan**

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

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

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

Reason: Protection of the receiving environment.

13. **Stormwater Treatment Measures – Minor**

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

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

Reason: Protection of the receiving environment.

14. **Amendments to the approved plans**

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

- The garage is to be changed to an open sided carport design. A solid wall can be provided on the northern elevation of the parking area and the 900mm returns at each end, with the remaining sides to be open with a solid balustrade to 1.0m above the finished floor level.

Details of the amended design are to be incorporated into the architectural plan set and submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason : To ensure a satisfactory degree of openness of the parking structure, provide for public views and outlooks from the road and to demonstrate consistency with the streetscape

character.

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

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

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

16. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

17. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of vehicular crossing, access stairs and any retaining walls in the road reserve which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. A vehicular crossing 6 metres wide shall be constructed in accordance with concept plans by SDA Structures, drawing number 21372-CD-1.0, 21372-CD-2.0, revision A and Council specifications.
2. Structural details for the suspended driveway, pedestrian access stairs and associated retaining structures.
3. Engineering longsections along both edges and centerline of the proposed vehicular crossing.
4. Safety barriers and sight distances are to be in accordance with AS/NZS 2890.1:2004.

5. A minimum 600mm wide dish drain shall be provided at the edge of the bitumen.
6. Cross sections at the boundary and along the road reserve for the driveway and stairs shall be
7. provided.
8. Details of the demolition of the retaining walls at the frontage of the site.
9. The application is to include a geotechnical report that is prepared by an appropriately qualified Geotechnical Engineer to assess the impact of the proposed works on the roadway.
10. Structural Engineer's certification of the design of all retaining walls, piers, access stair, suspended driveway and safety barriers.
11. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided.

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

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

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

18. **Structural Adequacy and Excavation Work**

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

19. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

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

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

20. **Stormwater Discharge into Waterways and Coastal Areas**

Where a stormwater system discharges into a natural watercourse or coastal area, an outlet structure is required to be installed and designed to defuse the concentrated stormwater discharge to reduce flow velocities to prevent scour, be safe and easily maintained. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment (DACNECPCC2)

21. **Estuarine Hazard Design Requirements**

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

22. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.46m AHD has been recommended through submitted Estuarine Risk Management Report prepared by Salients dated 16 November 2021 and adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.46m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 3.7m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.46m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 3.7m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 3.7m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

23. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients dated 16 November 2021 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

24. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 25 years unless as justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Salients dated 16 November 2021.

Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

25. **Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

26. **Low Level Estuarine Inundation Risk Design**

All development must be designed and constructed to achieve a low risk of damage and instability due to estuarine inundation, wave impact and foreshore erosion hazards.

27. **Design Impact on Coastal Processes and Public/Private Amenity**

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure the development does not impact the coastal process and public/private

28. **External Finishes to Roof, Inclinator and Boatshed**

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

The boatshed and inclinator is also to have colours which are consistent with the control under *Clause D4.3* of the DCP.

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.

29. **Sydney Water "Tap In"**

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

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

30. **Tree Removal Within the Property**

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

- i) T4 - Willow Bottlebrush, T5 - Lemon Scented Gum, and T6 and T7 - Bastard Mahogany,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal, and within the property T8 - Black She Oak is assessed as arboriculturally dead and thus may be classified and removed as an exempt species.

Reason: To enable authorised development works.

31. **Tree Removal Within the Road Reserve**

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

- i) T3 - Chinese Loquat,
- ii) a qualified AQF level 5 Arborist shall identify the tree on site and tag or mark prior to removal.

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

Reason: Public liability.

32. **Pre-Construction Dilapidation Report**

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

Property / Properties: 180 and 184A McCars Creek Road

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

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

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

34. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

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

- c) Tree protection measures shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:
- i) section 4.4 - identified works within the comments
 - ii) section 5 Discussions

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

35. **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.

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

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) prior to commencement of any other works on site.

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

Reason: Protection of the receiving environment.

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

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) prior to commencement of any other works on site.

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

mesh or matting.

Reason: Protection of the receiving environment.

38. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

39. **Geotechnical Requirements**

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

40. **Survey Certificate**

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

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

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

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

41. **Installation and Maintenance of Sediment Control**

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

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

42. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

43. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

44. **Traffic Control During Road Works**

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

Reason: Public Safety.

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

45. **Landscape Completion**

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

- i) the nominated proposed street tree shall be substituted as *Eucalyptus paniculata* (Grey Ironbark) at a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees, planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, centralised within the road reserve verge, and located either within a prepared garden bed or lawn,
- ii) the nominated proposed tree planting within the property shall be substituted with locally native trees capable of attaining at least 8.5 metres in height, selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or as advised by any conditions under the Biodiversity Referral for specific species, with at least two Bastard Mahogany (*Eucalyptus umbra*) species to be planted,
- iii) all trees within the property 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,
- iv) mass planting shall be installed at a minimum 200mm container size at planting, and

groundcovers at a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
v) 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.
vi) all new landscaping including works under iii) and iv) should be implemented in accordance with the Asset Protection Zone requirements as specified within Appendix 4 of Planning for Bushfire Protection 2019, and the recommendations of the Bushfire Assessment Report,
vii) landscape works under this development application is limited only to works within the property boundaries,
viii) any landscape works within the road reserve are subject to a section 138 application under the NSW Roads Act, for approval of otherwise.

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

Reason: Environmental amenity.

46. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the 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 and vegetation protection.

47. **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 final Occupation Certificate.

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

48. **New Vegetation Planting**

Landscaping is to include a minimum of 80% locally native species as a proportion of the total number of plants. Locally native species are to be consistent with the Pittwater Ward section of the Native Gardening Booklet available on Council's website:
<https://www.northernbeaches.nsw.gov.au/node/34932>.

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

Reason: To maintain the local natural environment and improve wildlife connectivity.

49. **Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 –

2023) within the development footprint are to be removed.

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

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

50. **Post-Construction Dilapidation Report**

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

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

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

52. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

53. **Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation.

Reason: Compliance with this consent.

54. **Retaining wall & suspended slabs**

The retaining wall & suspended slab works in the road reserve shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

55. **Removal of Sediment and Erosion Controls**

Before demobilising from the site and once vegetation cover has been re-established across 70 percent of the site, the applicant is to remove all temporary sediment and erosion controls.

Any area of the site that requires ongoing stabilisation must have jute mesh or matting incorporated into the revegetated area. Mulch may be used on slopes subject to sheet flow with a gradient of no more than 1 metre in height for every 3 horizontal metres. Mulch must be laid to a depth of 50-100mm. If using mulch within two metres of the top of bank of a waterway, coir logs or similar must be placed at the downslope edge of the mulched area to prevent migration of the mulch to the waterway.

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

Reason: Protection of the receiving environment

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

57. **Removal of Sediment and Erosion Controls**

Before demobilising from the site and once vegetation cover has been re-established across 70 percent of the site, the applicant is to remove all temporary sediment and erosion controls.

Any area of the site that requires ongoing stabilisation must have jute mesh or matting incorporated into the revegetated area. Mulch may be used on slopes subject to sheet flow with a gradient of no more than 1 metre in height for every 3 horizontal metres. Mulch must be laid to a depth of 50-100mm. If using mulch within two metres of the top of bank of a waterway, coir logs or similar must be placed at the downslope edge of the mulched area to prevent migration of the mulch to the waterway.

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

Reason: Protection of the receiving environment

58. **Post Construction Coastal certificate**

Prior to the issue of the Occupation Certificate, a Post Construction Certificate for the boatshed shall be submitted to the Principal Certifying Authority that has been prepared and signed by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance.

Reason: To ensure the development has been constructed to the engineers requirements

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

59. **Landscape Maintenance**

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

Reason: To maintain local environmental amenity.

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

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

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

Reason: Protection of the receiving environment.

61. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

62. **Boatshed Not for Habitation**

At no time shall the boatshed be utilised or converted to provide for residential habitation. The boatshed must not be used for any other purpose than the storage of small boats, light watercraft and boating and marine equipment. The incorporation of any internal kitchen facilities, habitable rooms, shower or toilet facilities is not permitted.

Reason: To ensure compliance with Pittwater Estuarine Risk Management Policy.

63. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Salients dated 16 November 2021 and these recommendations are to be maintained over the life of the development.

Reason: To ensure preservation of the development and the estuarine environment



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Nominated Architect

Casey Bryant	NSW 9652 VIC 18129
Jennifer McMaster	NSW 10693

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Legend

- | | |
|---------------------------------|---|
| New lightweight construction |  |
| New CLT construction |  |
| New concrete construction |  |
| Finished floor / relative level | FFL / RL |
| Downpipe | DP |
| Concrete |  |
| Metal |  |
| Stone |  |
| Render |  |
| Timber |  |
- refer to Finish schedule for more detail

Date	Rev.	Description
09.11.21	A	Client Issue
14.12.21	B	DA Submission
14.02.23	C	DA Revision

Proleg

Project
New Dwelling
182 McCarrs Creek Road, Church Point

Client

Caroline and Tony Olding

Status

Planning Permit (PP)

Scale

Scale
1:150 @ A2



Drawing

Proposed Site Plan / Roof Plan

Project No. _____

Project No.	Sheet
P2106	PP-003



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Legend

New lightweight construction		
New CLT construction		
New concrete construction		
Finished floor / relative level		FFL / RL
Downpipe		DP
Concrete		
Metal		
Stone		
Render		
Timber		

refer to finishes schedule for more detail

Date	Rev.	Description
08.11.21	A	Client Issue
14.12.21	B	DA Submission
14.02.23	C	DA Revision

Project

New Dwelling
182 McCarrs Creek Road, Church Point

Client

Caroline and Tony Olding

Status

Planning Permit (PP)

Scale

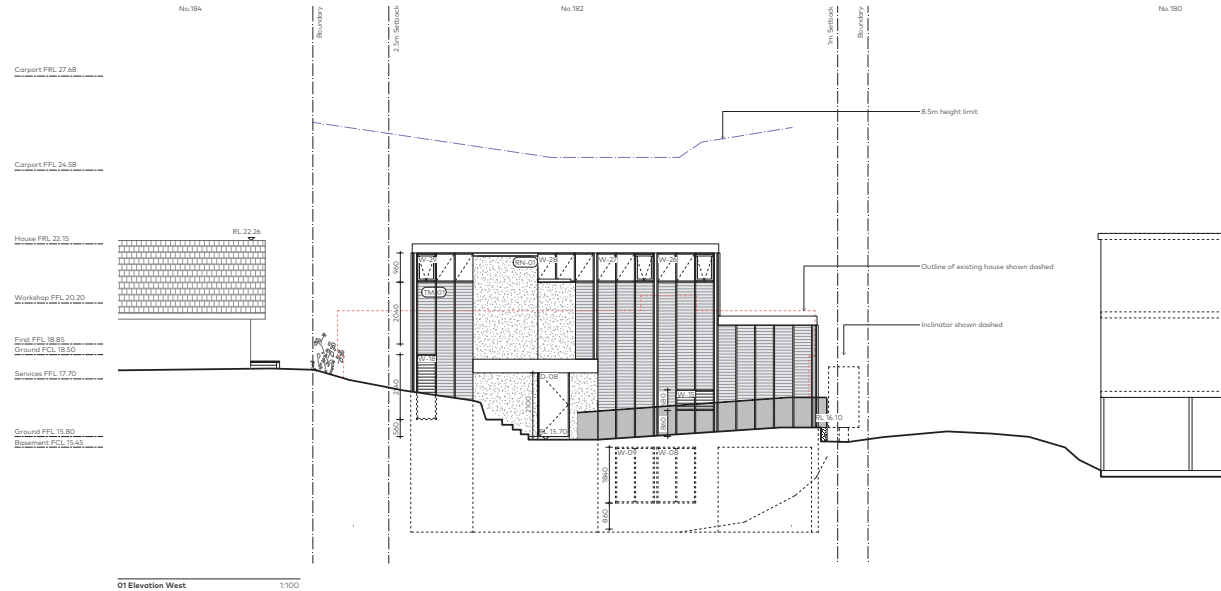
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Elevations 01

Project No. _____

PROJECT NO.
P2106



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Legend

New lightweight construction

New CLT construction

New concrete construction

Finished floor / relative level FFL / RL

Downpipe

Concrete

Metal

Stone

Render

Timber

refer to finishes schedule for more detail

Date	Rev.	Description
08.11.21	A	Client Issue
14.12.21	B	DA Submission
14.02.23	C	DA Revision

Project
New Dwelling
182 McCarrs Creek Road, Church Point

Client
Caroline and Tony Olding

Status
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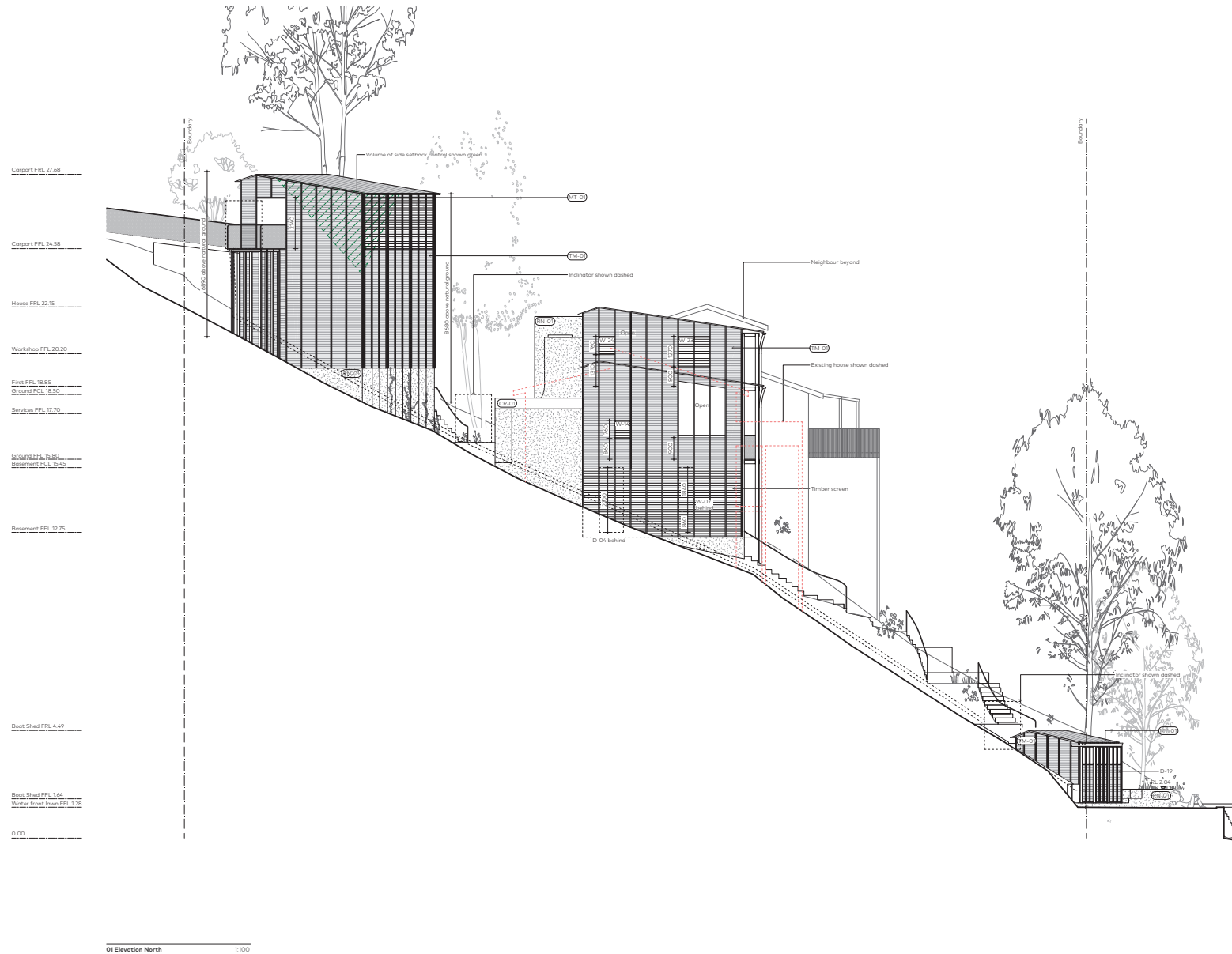
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North

Drawing
Elevations 02

Project No.
P2106

Sheet
PP-202





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Legend

New lightweight construction	
New CLT construction	
New concrete construction	
Finished floor / relative level	FFL / RL
Downpipe	DP
Concrete	CN-01
Metal	MT-01
Stone	ST-01
Render	RN-01
Timber	TM-01

refer to finishes schedule for more detail

Date	Rev.	Description
08.11.21	A	Client Issue
14.12.21	B	DA Submission
19.12.22	C	For Review
17.01.23	D	For Review
14.02.23	E	DA Revision

Project

New Dwelling
182 McCarrs Creek Road, Church Point

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Scale

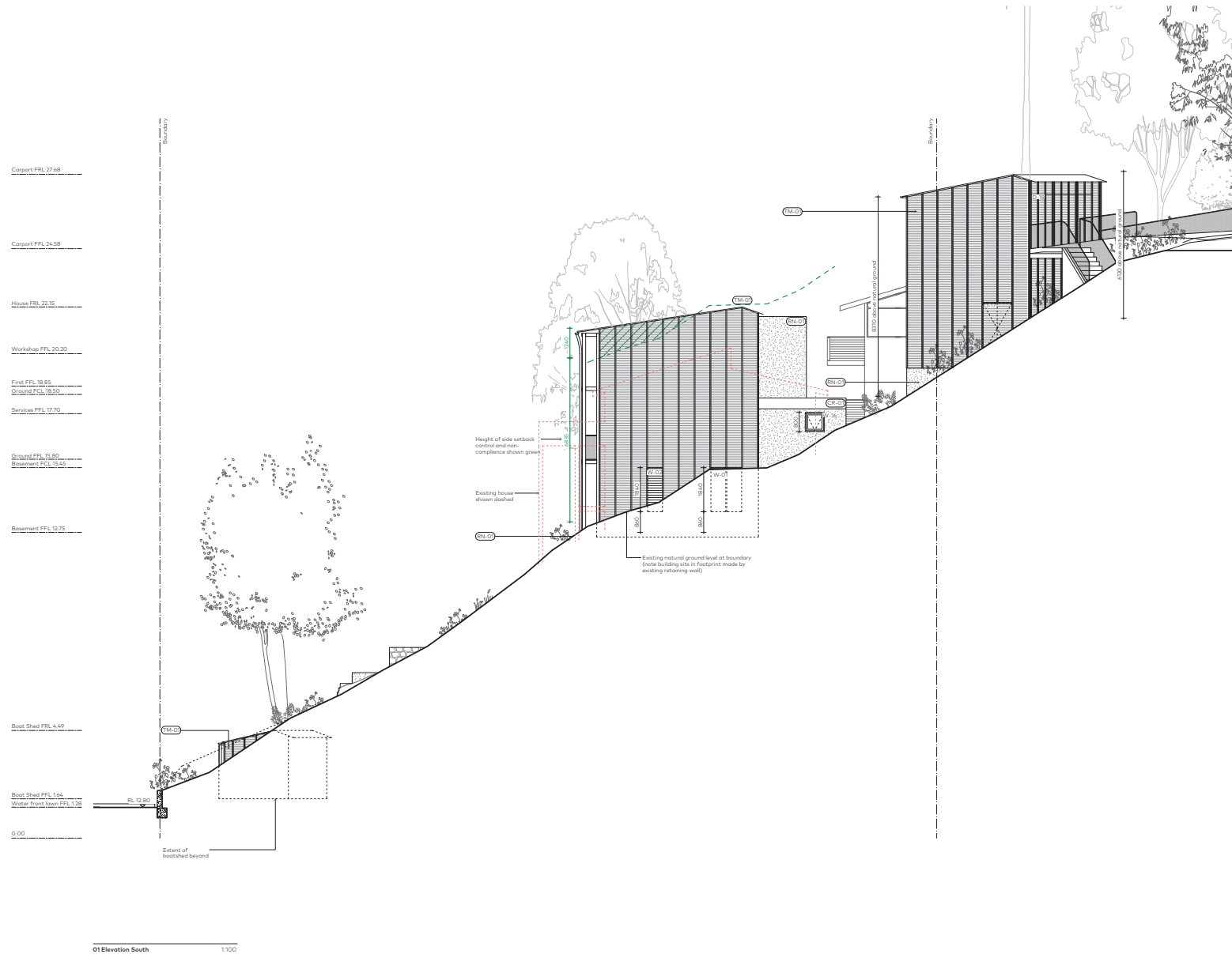
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1:100 @ A2

Drawing

Drawing
Elevations 04

Project No. _____

Project No.
P2106



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Intellectual Property

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Compliance

Comply with all relevant authorities, BEC and Australian Standards. Dimensions in mm. Do not scale from drawings - use figured dimensions only and verify architect if discrepancy exists.

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182 McCarrs Creek Road,
Church Point

21.03.23

Clause 4.6 Statement - Height of Buildings

Introduction

This document forms part of a Development Application for a new dwelling, garage and boat shed at 182 McCarrs Creek Road, Church Point. (Lot 11, DP 776130). It should be read in conjunction with the Statement of Environmental Effects and Architectural Drawings submitted with this application.

The proposal includes the construction of a new three storey dwelling and a detached garage and boat shed.

This statement outlines the extent and details of the non-compliance, and include an assessment of the Objectives of Clause 4.6 of the Pittwater LEP 2014 in order to show why compliance with the clause is unreasonable or unnecessary. This statement also demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard, as demonstrated by the relevant objects of the EP&A Act 1979.

This statement has been revised in March 2023 to reflect change made during the DA process. Working with Council, the proposal has been reduced in height, and a step has been introduced into the dwelling's form to the north.



Aerial Photo (source: map.six.nsw.gov.au)

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Photo from McCarrs Creek (by boat) that shows the neighbouring dwellings to the south of the subject site

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Clause 4.3 - Building Height

The Development Standard in question is Clause 4.3 - Building Height. The maximum height limit for this site is 8.5m under Clause 4.3 and the associated maps.

Clause 4.3 (2D) allows for a maximum height of 10m if the subject site has a slope that exceeds 16.7 degrees (that is, 30%). This clause applies in this instance, and suggests that subject to the proposal achieving the objectives of the clause, the proposal may exceed the 8.5m height control.

The proposed dwelling and garage both exceed the height standard. The extent by which varies around the site due to the uneven nature of the existing ground level.

Included below is a table outlining the heights of the buildings above ground at each corner. Following that are a series of height plane diagrams to clearly identify the non-compliance.

The heights noted below and the diagrams over page all show that the extent of non-compliance with the control is generally very small. For the majority of the dwelling, the height above ground is 8.7m. This 200mm non compliance is due to measurements being taken from the assumed ground level below the existing dwelling which is cut in, and therefore lower than the surrounding topography.

It is only at the extreme of the north west corner of the roof where the existing natural ground levels dip away dramatically that the height of the dwelling is higher. It is also important to note that this section of the non compliance is measure at a large eave. While the Pittwater LEP includes eaves in this calculation, other controls on the site - including the Pittwater DCP 21 - generally exclude eaves from calculations.

Dwelling	Height above existing ground	Variance from control	Complies? Clause 4.3	Complies? Clause 4.3 (2D)
NE corner	8.7m	2.4%	No	Yes
NW corner	9.5m	11.8%	No	Yes
SE corner	8.4m	-	No	Yes
SW corner	8.9m	4.7%	No	Yes

Garage	Height above existing ground	Variance from control	Complies? Clause 4.3	Complies? Clause 4.3 (2D)
NE corner	6.9m	-	Yes	Yes
NW corner	8.2m	-	No	Yes
SE corner	7.4m	-	Yes	Yes
SW corner	9.0m	5.9%	Yes	Yes

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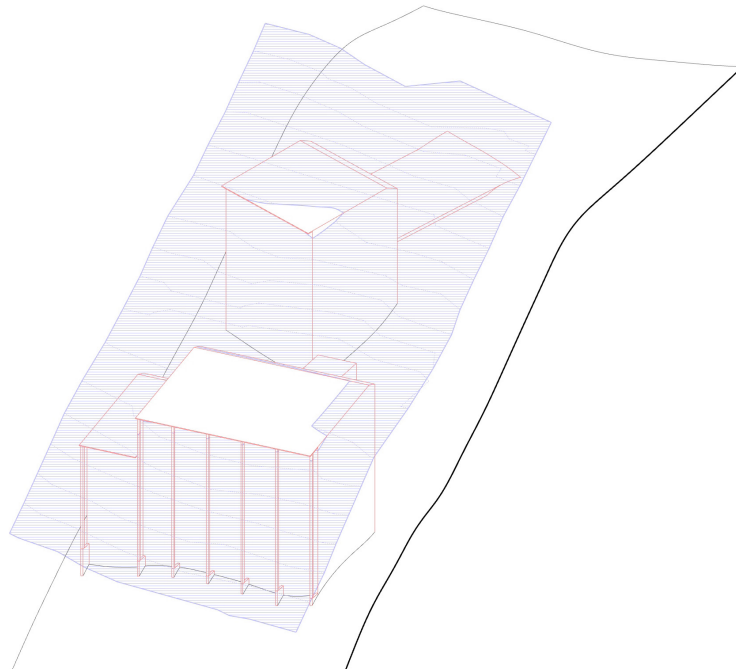
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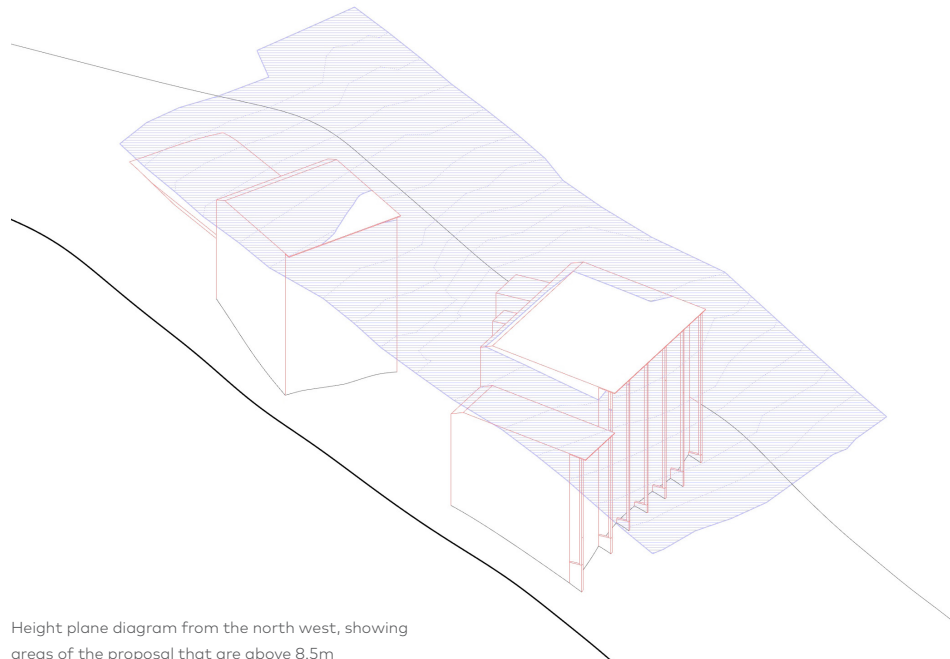
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Height plane diagram from the south west, showing
areas of the proposal that are above 8.5m



Height plane diagram from the north west, showing
areas of the proposal that are above 8.5m

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Clause 4.3 (2D) Exception

The Development Standard contains a clause for exceptions to the standard that applies in this case, for the reasons listed below:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

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

The portion above the maximum height for the dwelling is minor as it is consistent with the context and falls with the natural slope of the site. The neighbouring dwellings along this section of McCarrs Creek all break the Maximum Building Height Limit and present 3 and 4 storey frontages to the creek.

(b) the objectives of this clause are achieved, and

The objectives of this clause are achieved by this proposal and are noted on the following pages.

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

The proposed buildings are located on a section of the site that has a slope of approximately 25 degrees. The proposal has been sited to utilise existing topographical features and pose a minor impact on the natural environment.

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

The proposal uses the existing dwelling's footprint, and minimises cut and fill by using existing landscape levels. The proposed roof forms fall with the site to reduce height and the dwelling and garage are separated to step down the site.

Considering this exemption applies, the proposal meets the requirements of Clause 4.3 since it has a building height of less than 10m when measured from the existing natural ground level.

Objectives of Clause 4.6

Clause 4.6 of the Pittwater LEP 2014 allows a contravention of a development standard. The proposal meets the objectives of Clause 4.6, namely:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

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

Clause 4.6(3) requires the consent authority to consider the applicant's written request that seeks to justify the contravention of the development standard by demonstrating the following:

(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.

Compliance Is Unreasonable / Unnecessary

Compliance with the development standard is unreasonable or unnecessary in this circumstance as the proposal maintains the objectives of Clause 4.3 of the Pittwater LEP 2014, namely:

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

The proposal is consistent with the current and desired character of McCarrs Creek and McCarrs Creek Road. The proposed dwelling is sited in the same position as the existing dwelling, and is below the level of the street - maintaining the landscape character of the public realm. The proposed garage presents as a single storey form from the street - as do neighbouring garages.

The proposal includes articulation across its west facade by creating varied shadows, voids and textures that harmonise with the surrounding natural landscape. The proposal also includes 4 new trees between the dwelling and McCarrs Creek that compliment the existing tree canopy to help the built form recede and become secondary to the natural environment.

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Compliance Is Unreasonable / Unnecessary (Cont.)

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

The proposal maintains a consistent height and scale to it's neighbours - matching the roof line of number 184 McCarrs Creek Road, and being lower than number 180 McCarrs Creek Road. The proposed garage matches the height of the carport at number 180 and is set as low as possible while still maintaining a compliant driveway.

Submitted with further information as part of this DA is a study of the dwellings from 180 to 194 McCarrs Creek Road, based on information available from Council. This study shows that 5 of the 7 dwellings shown have a 3 storey frontage to the creek that does not contain and building stepping to create articulation. It also shows that 6 of the 7 dwellings shown are greater than the 8.5m LEP Building Height control.

The design of the proposal at 182 McCarrs Creek Road responds to this pattern, adopting a constrained footprint matching the predominant building line, and uses a skillion roof falling west to reduce the appearance of height from the creek.

(c) to minimise any overshadowing of neighbouring properties,

The proposal does not increase overshadowing on the private open spaces or habitable windows of the southern neighbour at number 184. The proposal matches the forms of the neighbouring dwellings and aligns to the predominant building footprint. This assures there is no overshadowing or loss of amenity along this collection of houses.

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

The proposal does not impede the views of any surrounding dwellings and is set below the street to maintain views of McCarrs Creek from the public realm. The proposal does not affect the natural bushland setting when viewed from McCarrs Creek.

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

The proposal follows the natural topography of the site and utilises the footprint of the existing dwelling. The proposal includes minimal cut and fill and includes roof forms that fall to mimic the topography of the site.

The proposed new dwelling is located with consideration for particular aspects of the natural environment that affect this dwelling. At the north west corner of the dwelling, the site dips away steeply to a mature gum tree and palm tree. Bringing the proposal forward of this line would create a large subfloor and a much larger frontage - not to mention impact on these trees. To the east, several mature trees are proposed to be retained and so the design cannot step back excessively without impacting on these trees. Also to the east, the design retains an existing rock shelf at the lower ground floor. Rock formations like this one are an important part of the natural environment in this area, and a deeper, stepping dwelling would impact on this.

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

The proposal maintains large areas of natural landscaping and makes space for new tree planting between the dwelling and McCarrs Creek. Water is managed on the site and natural topography is uninterrupted.

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Environmental Planning Grounds

There are sufficient environmental planning grounds to justify contravening the development standard, as demonstrated by the relevant objects of the EP&A Act 1979, namely:

(c) to promote the orderly and economic use and development of land,

The proposal maintains the pattern of the neighbourhood and follows the predominant heights and footprints of the neighbouring dwellings along McCarrs Creek Road. The proposal allows for increased amenity, safer access and easier use of the site for its occupants. This is shown in the reasons previously mentioned.

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

The proposal maintains the existing built footprint on the site and includes regenerative landscaping to make new habitats for local flora and fauna. The proposal includes new trees to enhance the existing bushland.

(g) to promote good design and amenity of the built environment,

The proposal is a carefully designed and considered dwelling that provides good amenity, outlook and high quality construction. It uses good design to achieve the client's brief with less material use and land degradation, and will be less impactful on the environment due to its high specification and sustainable fixtures.

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

The proposed dwelling replaces an existing dwelling that is dilapidated and unsafe to inhabit. The proposed garage provides safe parking arrangements that replace a currently dangerous driveway.

Conclusion

The proposal has been design in accordance with the design provisions contained in the Pittwater DCP 21 and is consistent with the neighbourhood character the Church Point locality.

The proposal has carefully considered the objectives of Clause 4.3, and the relevant objects of the EP&A Act 1979, and it is considered that the development standard of 8.5m maximum height is unnecessary in this case, will not compromise the objectives of Clause, and is sufficient environmental planning grounds to justify the development.

We therefore request an exemption to the Clause 4.3, Height of Buildings development standard in this case.

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ITEM 5.3**DA2022/2052 - 32 COLLAROY STREET, COLLAROY -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL.****AUTHORISING MANAGER****Steve Findlay****TRIM FILE REF****2023/181714****ATTACHMENTS**

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

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is a relative of a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/2052 for Alterations and additions to a dwelling house including a swimming pool on land at 32 Collaroy Street, COLLAROY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2052
Responsible Officer:	DM Planning (external planning consultant)
Land to be developed (Address):	32 Collaroy Street, COLLAROY
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Determination Level:	Northern Beaches Local Planning Panel (NBLPP)
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Edward Daryl Codd
Applicant:	Rita Modesto
Application Lodged:	1/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential
Notified:	06/12/2022 to 11/01/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$105,600

EXECUTIVE SUMMARY

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

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a conflict of interest, being that the landowner is related to a member of Council staff who is involved in exercising functions of EP&A Act, being all DA and Strategic Planners and Administration Team members from these teams and including staff providing referral advice from other business units.

The key planning issue in the assessment of this proposal is the non-compliance with the front boundary setback and landscaped open space requirement.

The application was on notification for 14 days, in accordance with Council's Community Participation Plan, and one submission was received in response.

The proposal satisfies the relevant planning objectives and does not impact unreasonably on the amenity of surrounding and nearby properties.

Given the constraints of the site created by the location of the existing dwelling, the location of the proposed garage is assessed as reasonable.



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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the construction of alterations and additions to a dwelling house. Specifically, the proposal comprises of excavation and the construction of a double garage at the front of the site and a swimming pool at the side.

The proposal includes:

- Demolition of part of the existing front wall and public stair in the road reserve
- Excavation of north-east corner of the site
- Construction of a double garage with storage area, swimming pool, external stairs and front wall.
- Landscaping works including a grass area and planter bed above the garage and additional planting at the rear.

Associated works in the road reserve comprise of construction of a vehicle crossing and driveway, tree removal, relocation of a power pole and new public stairs.

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 Development Control Plan – B7 Front boundary setback
Warringah Development Control Plan – C3 Parking Facilities
Warringah Development Control Plan – C7 Excavation and Landfill
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland

SITE DESCRIPTION

Property Description:	Lot 25 DP11374, 32 Collaroy Street, COLLAROY
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Collaroy Street.</p> <p>The site is regular in shape with a frontage of 17.42m to Collaroy Street and a depth of approximately 27m. The site has a surveyed area of 470.3m².</p>

	<p>The site is located within the R2 Low Density Residential zone and accommodates a two storey brick dwelling house. There is no on-site parking.</p> <p>The site slopes approximately 6m from the south-west corner to the north-east corner at the street frontage.</p> <p>The site contains lawn areas and garden beds. There are no details of any threatened species on the subject site.</p>
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Map:



Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwelling houses on sloping sites.

SITE HISTORY

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

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

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of one (1) submission from:



Name:	Address:
Ellen Turchini	30 Collaroy Street, Collaroy

The following issue was raised in the submission:

- The proposal is supported, however, the owners request that the Council impose a condition that the front retaining wall of 30 Collaroy Street be repaired or reconstructed by the applicant, if required.

Comment:

A condition of consent will require the applicant to prepare a pre-construction dilapidation report for 30 Collaroy Street. This document is for record-keeping purposes and may be used by the applicant or property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

REFERRALS

Internal Referral Body	Comments
Landscape Referral Response	<p>Supported</p> <p>The proposed development includes the removal of one existing street tree within the road reserve. This tree is in poor condition and no concerns are raised subject to a replacement street tree. Landscape works including planters at the front and garden beds at the rear are proposed and conditions shall be imposed.</p>
Engineering Referral Response	<p>Supported</p> <p><u>1st referral</u> The applicant proposes to excavate the property frontage and construct a garage with a pool and a vehicle crossover which will require alterations to Council's footpath and stairs.</p> <p>No development engineering objections, subject to conditions.</p> <p><u>2nd referral</u> Amended plans provided which incorporate moving the pool south and the slight adjustment of the front stairs. Requires an increase in excavation.</p> <p>No development engineering objections, subject to conditions.</p>
Roads and Assets Referral Response	<p>Supported</p> <p>No objection to proposed changes to the public footpath although a ramp would be preferable to maintain accessibility - relocate pathway alignment if necessary. Development Engineers to assess and require a condition for civil works application. If a ramp cannot be achieved, stairs must be compliant with Council design specifications (1.5m wide, 300mm tread and 150mm riser with handrail.)</p> <p><u>Amended Plans - 22/2/2023</u></p>

Internal Referral Body	Comments
	<p>No amendments are shown to works on the public road reserve.</p> <p>An existing "informal" stairway from the kerb to the footpath aligning with the existing front gate is noted. Given the informal and private nature of the stairs, s138 application shall address this non-compliant encroachment and either remove or upgrade the stairway to a compliant structure.</p>

External Referral Body	Comments
Ausgrid: (SEPP T&I)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 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 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the front boundary setback, garage design and landscaped open space.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 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 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.



BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection. A Bushfire Hazard Assessment was submitted with the application that included a certificate (prepared by Bushfire Planning and Design, dated 24/11/2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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)

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	1.8m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of Buildings	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

WARRINGAH DEVELOPMENT CONTROL PLAN

Built Form Controls

Built Form	Requirement	Proposed	% variation*	Complies
B1 Wall height	7.2m	1.8m	-	Yes
B3 Side boundary envelope	4m (east)	Within envelope	-	Yes
	4m (west)	Within envelope		Yes
B5 Side boundary setbacks	0.9m (east)	Garage – 0.9m	-	Yes
	0.9m (west)	Stairs – 5m	-	Yes
B7 Front boundary setbacks	6.5m	Nil	-	No
B9 Rear boundary setbacks	6m	15.5m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland setting	40% (278.7m ²)	33.4% (158.91m ²)	16.5%	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	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
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

B7 Front Boundary Setbacks

The proposed garage has a nil setback to the front boundary and therefore does not comply with the required 6.5m front setback applicable under the WDCP.

The WDCP requires that the front boundary setback area is to be landscaped and generally free of any structures, basements, car parking or site facilities other than driveways, letter boxes, garbage storage areas and fences.

Merit consideration

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

- ***To create a sense of openness.***

Comment:

The proposal maintains the existing dwelling and surrounding ground levels. The garage is provided by excavating into the front of the site and reinstating the undulating lawn above. The majority of the garage is below the existing ground level and therefore has minimal impact on the sense of openness.

- ***To maintain the visual continuity and pattern of buildings and landscape elements.***

Comment:

The parapet of the proposed garage maintains the height of the top of the existing retaining wall and therefore provides continuity with the height of the remaining section of the front retaining wall. There are other examples of reduced front setbacks (30 Collaroy Street) and high walls (34 and 36 Collaroy Street) along the southern side of Collaroy Street. The proposed garage is consistent with the pattern of buildings in the streetscape.

- ***To protect and enhance the visual quality of streetscapes and public spaces.***

Comment:

The encroachment into the front setback is significant, however, the design is consistent with the visual quality of the streetscape and maintains the height of the existing front retaining wall. The use of stone facing to the front of the garage, a timber batten garage door and waterfall landscaping along the street edge of the garage, contribute to the quality of the streetscape.

- ***To achieve reasonable view sharing.***

Comment:

The proposed garage complies with the building height, wall height, building envelope and side setback controls. The proposed encroachment into the front setback will not result in any unreasonable impact on views. The proposal satisfies this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP, and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, given that the objectives of the control are satisfied, the proposed variation to the front building line is supported, in this particular circumstance.

C3 Parking Facilities



The proposed double garage at the street frontage does not satisfy the WDCP requirement for garage doors to be integrated into the house design and to not dominate the façade.

Merit consideration

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

- ***To provide adequate off street car parking.***

Comment:

Appendix 1 of the WDCP requires that a dwelling house be provided with 2 car spaces. Given the constraints created by the location of the existing dwelling, the location of the proposed garage is assessed as reasonable.

- ***To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.***

Comment:

The proposed garage has been excavated into the site with an overall height consistent with the top of the existing retaining wall. The use of natural finishes and landscaping above the garage, will minimise visual impacts on the street frontage.

- ***To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.***

Comment:

The proposed garage is largely below the existing ground level. The use of stone cladding and additional landscaping will ensure that the proposed garage does not dominate the street frontage.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, given the lack of existing onsite parking, the proposed garage is supported, in this particular circumstance.

D1 Landscape open space and Bushland

The site is required to provide 40% of the site (188m²) as landscaped open space (LOS).

The existing LOS measures 36% of the site area (170m²) and does not satisfy this requirement. The proposal further reduces the LOS by 11.1 m² and totals 33.4% of the site (158.91m²).

As the WDCP states that landscaped open space must be at ground level (finished); and the minimum soil depth of land that can be included as landscaped open space is 1 metre, the area above the garage is not included in LOS calculations.

Merit consideration

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

- ***To enable planting to maintain and enhance the streetscape.***

Comment:

The proposal provides additional planting in the rear yard and reinstates the undulating lawn above the garage. The proposed planter bed at the street edge includes 'waterfall' planting to soften the garage façade. The proposal contributes plantings to the streetscape.



- ***To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.***

Comment:

There is minimal indigenous vegetation, significant topographical features, or habitat on the site. A recommended condition of consent specifies the requirements for additional native planting on the site.

- ***To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.***

Comment:

The proposal provides for sufficient landscaped open space to provide for the planting of shrubs and trees. A recommended condition of consent specifies the requirements for additional plantings on the site.

- ***To enhance privacy between buildings.***

Comment:

The proposed development will maintain suitable levels of privacy with the adjoining properties.

- ***To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.***

Comment: The proposed development provides a swimming pool and a more usable open space area at the front of the site.

- ***To provide space for service functions, including clothes drying.***

Comment: Adequate space for service functions, including clothes drying has been provided.

- ***To facilitate water management, including on-site detention and infiltration of stormwater.***

Comment: The application has been reviewed by the Council's Development Engineer who has recommended conditions of consent to ensure appropriate stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, given that proposal includes a satisfactory landscaping response to the site, the proposed shortfall is supported, in this particular circumstance.

7.12 CONTRIBUTIONS

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

A monetary contribution of \$528 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$105,600

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.

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grants Development Consent to DA2022/2052 for Alterations and additions to a dwelling house including a swimming pool on land at 32 Collaroy Street, COLLAROY, 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
Basement plan DA06, Rev E	17.02.2023	Gelder Group Architects
Lower ground floor DA07, Rev E	17.02.2023	Gelder Group Architects
Ground floor, DA08, Rev E	17.02.2023	Gelder Group Architects
Section, DA09, Rev E	17.02.2023	Gelder Group Architects
Elevations, DA10, Rev E	17.02.2023	Gelder Group Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Environmental Effects	November 2022	Gelder Group Architects
Geotechnical Assessment	24.11.2022	Ascent Geo
Bushfire Hazard Assessment	24.11.2023	Bushfire Planning and Design

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	25.11.2022	Gelder Group 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	09/12/2022

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

A dwelling house is defined as:

"dwelling house means a building containing only one dwelling."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. Prescribed Conditions

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



- outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
- A. the name and licence number of the principal contractor, and
- B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement

5. General Requirements

- (a) Unless authorised by Council:
- Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,



- No work on Sundays and Public Holidays.
Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out



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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$528 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 2021. The monetary contribution is based on a development cost of \$105,600.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

7. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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



8. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$25,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

9. **On Slab Landscape Works**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule. The following soil depths are required to support landscaping: 300mm for groundcovers and 600mm for shrubs.

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

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

10. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by ASCENTGEO dated 24/11/2022 rev AG 22486 are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.



The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

13. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of the driveway and the amendments to the existing footpath which are to be generally in accordance with the Council's Minor Works Specification for engineering works. The plan shall be prepared by a qualified civil engineer. The design must include the following information at a minimum:

- Vehicle Crossover and 3.5m layback at boundary in accordance with Councils standard profiles
- Footpath and stair realignment works. Applicant to utilise a ramp in lieu of stairs if possible. If ramp is not possible, the applicant is to demonstrate it's not possible within documentation.
- Certification from a suitably qualified Civil/Structural engineer that the design has been prepared in generally accordance with the Geotechnical recommendations contained within the ASCENTGEO report dated 24/11/2022
- Utility works

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

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

14. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

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 Certifier prior to the issue of the Construction Certificate.

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

16. **Sydney Water "Tap In"**

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

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

17. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior



- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

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

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

The Construction Traffic Management Plan shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

**18. Tree Removal Within the Road Reserve**

This consent approves the removal of the following tree within the road reserve, subject to replacement. Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.

Reason: Public liability.

19. 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.

- o 30 Collaroy Street, Collaroy

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. If access is denied, then no dilapidation report is required.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**20. Road Reserve**

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

Reason: Public safety.

21. 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.

22. Geotechnical Requirements

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

23. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

24. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans. Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

25. Installation and Maintenance of Sediment Control

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

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

26. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.



Details demonstrating compliance are to be submitted to the Principal Certifier and/or Roads Authority.

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

27. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to the Certifier for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent

28. Traffic Control During Road Works

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

Reason: Public Safety.

29. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

30. Stockpiling of Topsoil

During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment

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

31. Street Tree Planting

Street tree planting shall be installed in accordance with the following species: one (1) *Tristanopsis laurina* 'Luscious'.



All street trees shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees. All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be generally located at least 2.0 metres or more from driveways, and shall generally be centralised within the road verge.

Reason: to maintain environmental and streetscape amenity.

32. Required Planting

Planting to the proposed planters and garden bed shall satisfy the following requirements:

- a) the selected planting is to comprise of native species capable of attaining a height of 3m metres at maturity,
- b) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a planter or garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

Reason: To maintain landscape amenity.

33. 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 Certifier prior to the issue of an Occupation Certificate.

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

34. 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:

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

35. Geotechnical Certification Prior to Occupation Certificate

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.



36. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

37. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

38. Acoustic Treatment of Pool Filter

The pool filter is to be acoustically treated so that it does not emit any noise louder than 5dB

- (A) above background noise at the nearest residential receiver. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the acoustic amenity of the neighbouring residents

39. House / Building Number

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

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

Reason: Proper identification of buildings.

40. 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 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
- (b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, 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 Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life

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

41. Landscape Maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. 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 shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species in accordance with any conditions of consent.

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

Reason: To maintain local environmental amenity.

42. Geotechnical Recommendations

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

43. Swimming Pool/Spa Motor Noise

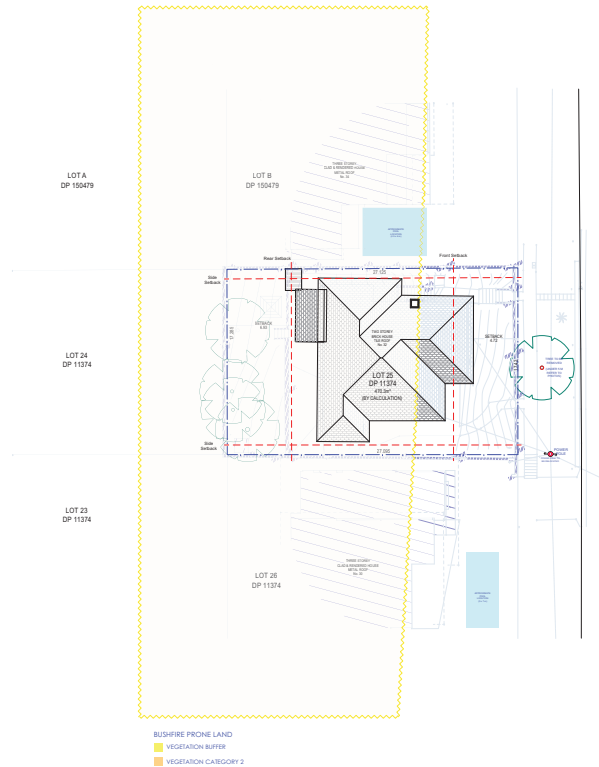
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

**FINAL DECLARATION**

Consultant Name: Danielle Deegan, DM Planning

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.

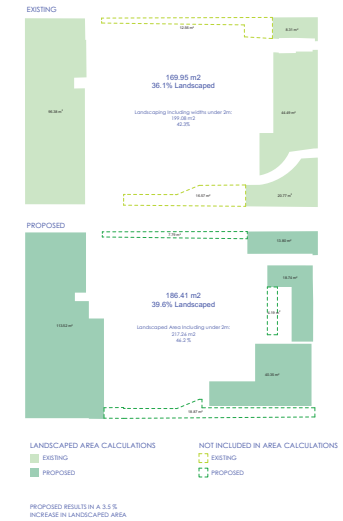
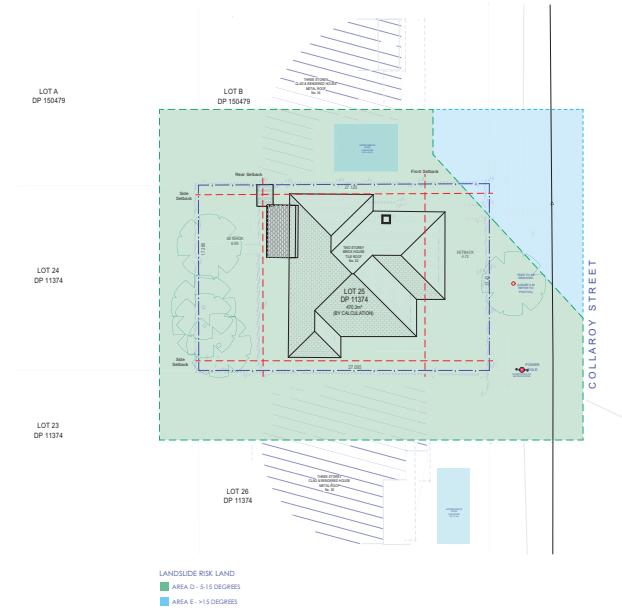


Warringah DCP Controls:

BUSHFIRE PRONE LAND	Vegetation Buffer Zone
LANDSCAPING AND PRIVATE SPACE	40% Minimum Required (more than 2m width)
EXISTING:	169.95 m ² = 36.1 %
PROPOSED:	186.41 m ² = 39.6 %
LAND SLIP RISK:	Area D and E
SETBACKS:	Front - 6 m Sides - 0.9 m Rear - 6 m

eSpatial Planner:

SITE AREA	470.3 m ²
FSR	n/a
ZONING	R2
MAX. BUILDING HEIGHT	8.5 m
HERRITAGE	No



**Alterations & Additions
at
32 Collaroy Street
Collaroy
for
Take 2 Management PTY LTD**



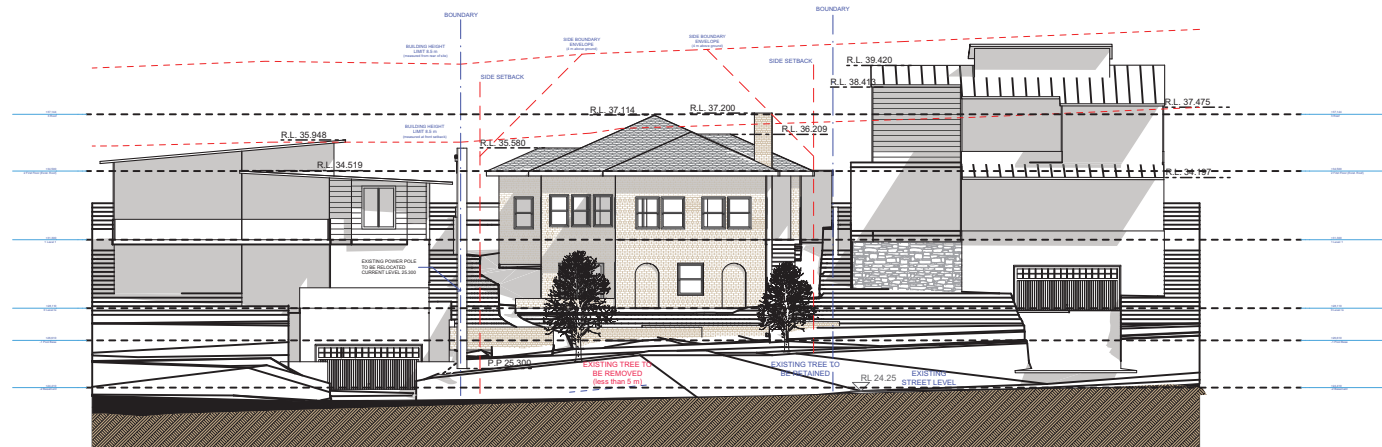
Level 2 19-23 Bridge Street PYMBLE NSW 2073 AUSTRALIA
 T: (02) 9440 2455 E: info@gelder.com.au W: gelder.com.au
 ABN 48 000 878 827 NSW AHS REG ARCHITECT, GELDER # 61348

Site Analysis

The property in this drawing and in the associated report with this drawing is being provided to you for your information only. It is not intended to be used as a basis for any decision or action. It is not intended to be used as a basis for any decision or action. It is not intended to be used as a basis for any decision or action.

Project No: **2070** Date: **Month Year**
 Drawing No: **DA02** Scale: **1:200, 1:100**
 Date Printed: **17/02/2023**

AT ORIGINAL SIZE

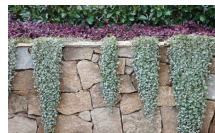


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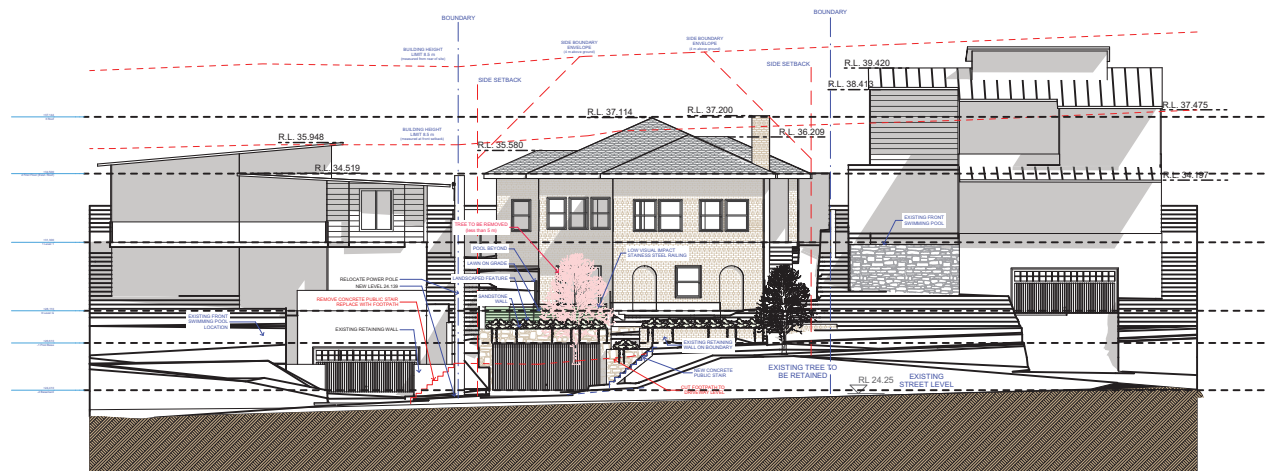
Front Elevation - Existing
1:200



Example of proposed native
Australian drought resistant
planting for the front gardens



Example of 'waterfall' planting for
garage facade, to soften the
appearance from the street



2
-

Front Elevation - Proposed
1:200

Alterations & Additions
at
32 Collaroy Street
Collaroy
for
Take 2 Management PTY LTD

GGA
GELDER GROUP
ARCHITECTS

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Elevations

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Project No:	2070	Date:	Month Year
Drawing No:	DA10	Scale:	1:200
		Drawn By:	17/02/2023

A3 ORIGINAL SIZE