

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 3 MAY 2023



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 3 May 2023
via teleconference
Commencing at 10:00am**

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1.0 APOLOGIES

Nil.

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

Minutes of the previous meeting are provided under separate cover for the information of the members.

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 12 APRIL 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 12 April 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2022/1610 - 35 BUSHEY PLACE DEE WHY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/260538
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/1610 for alterations and additions to a dwelling house on land at Lot B DP 408127, 35 Bushey Place DEE WHY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1610
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot B DP 408127, 35 Bushey Place DEE WHY NSW 2099
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jonathan David Ross Gard Joanne Rachel Gard
Applicant:	Fernando Arriola

Application Lodged:	31/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/11/2022 to 18/11/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 11.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 841,500.00
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EXECUTIVE SUMMARY

The application is referred to the Development Determination Panel (DDP) as the proposal involves a variation to the development standard for Building Height under Clause 4.3 of WLEP 2011 in excess of 10%.

The proposal involves a section of the building at the rear of the property, down slope, that does not comply with the development standard due to a measurement to an existing slab and historically excavated level.

Amended plans were provided to increase side setbacks at the upper level, reduce the size of the rear verandah, and provide additional landscaped area across the site.

The Clause 4.6 Variation request for the non-compliance with Building Height standard arises from the proposal having a maximum overall height of 9.5m, being a 11.7% variation to the standard (8.5m).

The building height is compliant with the 8.5m when measured from general topography of the land (Bettar measurement using interpolated levels). However, the accepted measurement is according to Merman, which is from existing excavated levels. The proposal complements the existing height of buildings in the surrounding area. The request is assessed as being well founded and is supported.

Other assessment issues include; Landscaped Open Space, Building Bulk, and Privacy.

Amended plans were submitted and the assessment issues were resolved.

Accordingly, the application is referred to the DDP with a recommendation for APPROVAL, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house.

Specifically, the works consist of:

Lower Ground Floor

- No changes to existing subfloor lower ground floor.

Ground Floor

- Re-configuration to ground floor to create two bedrooms, lounge room, study, family room, dining and living rooms.
- Verandah extension at the rear.
- Internal staircase to new first floor addition.

First Floor

- New first floor addition to provide main bedroom with WIR and ensuite; rear balcony; sitting room; rumpus room; and additional bedroom.

Amended Plans

Amended plans were submitted on 26/10/2022. These plans provided for an increase in the setback to part of the upper level (from 2m to 2.7m at the west and from 2.9m-3.9m at the east).

Further amended plans were submitted on 30/03/2023. These plans reduced the size of the proposed rear verandah (from a depth of 5.07m to 2.2m) and provided additional landscaping across the site.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot B DP 408127 , 35 Bushey Place DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of an allotment located on the northern side of Bushey Place. The site is regular in shape with a frontage of 14.3m along Bushey Place and a depth of 37.7m. The site has a surveyed area of 605.6m². The site is located within the R2 Low Density Residential zone and accommodates dwelling house. The site has a slope from the front down to the rear with an approximate crossfall of 5m. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development.

Map:



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/11/2022 to 18/11/2022 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 2 submission/s from:

Name:	Address:
Ms Ingeborg Evelyn	33 The Crescent DEE WHY NSW 2099

Name:	Address:
Carpenter	
Mr Adrian Bernard Palser	33 The Crescent DEE WHY NSW 2099

The above issues are addressed as follows:

- **Overshadowing**

The submission raised concerns that the proposed development, and particularly the verandah extension, will cause overshadowing impact.

Comment:

The amended plans reduced the terrace extension from a depth of 5.07m to 2.2m. This resulted in the proposed extension being offset from the neighbouring windows, allowing for an open corridor for sunlight access. Further to this, the proposal complies with the requirements for Solar Access under the Warringah DCP.

- **View loss**

The submission raised concerns that the proposed development, and particularly the verandah extension, will cause view loss.

Comment:

The amended plans reduced the terrace extension from a depth of 5.07m to 2.2m. As well as maintaining an open corridor for sunlight access, this also results in the retention of a more open corridor for outlooks from neighboring habitable windows. Further, views toward the ocean will be maintained as can be seen in the photo below, and the assessment concluded that the impact on views and outlooks is satisfactory.



Photo 1: View across the rear of 35 Bushey Place, Dee Why from No. 33 to the west. It is noted that the amended plans involve a 2.2m extension toward the rear from the edge of the existing terrace (balustrade of existing terrace can be seen on the right of the photo).

- **Request for reduction in length of deck**

The submissions raised concerns that the deck would reduce the area of open space, affect

sunlight access and air flow, cause privacy issues, and result in a visual bulk that is inconsistent with surrounding development.

Concern is raised that the planting under the deck will not have adequate access to sunlight.

Concern is also raised with the bulk of the privacy screen causing amenity impact.

Concern is further raised with the length of the built form along the eastern boundary.

Comment:

The amended plans reduced the terrace extension from 5.07m to 2.2m in depth. This offsets the terrace area from the neighboring window to ensure there would be no unreasonable amenity impact, including privacy impact. This also results in the proposed terrace area area complying with the 6m control for rear setbacks, to ensure an appropriate length of built form.

- **Reduction to Landscaped area and inaccurate calculations**

The submissions raised concerns that the proposal does not meet the 40% requirement for landscaped open space.

Comment:

The proposal does not meet the numerical requirement for Landscaped Open Space under the WDCP. However, there is an increase to the landscaped area (as compared to the existing situation) as existing hardsurfaces are to be removed. Given the proposal is for alterations and additions to a dwelling, and the proposal meets the overarching outcomes of the Landscaped Open space clause (as further discussed in this report), the proposal provides a reasonable outcome for the site. The calculations for landscaping were based on the assessment officers review.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	General Comments Environmental Health has reviewed the amended plans that show the height and location of the flue documents have been supplied showing the that the proposed heater will meet the AS 4013 Environmental Health can recommend approval Recommendation APPROVAL - subject to conditions
Landscape Officer	The proposal is supported with regard to landscape issues.

Internal Referral Body	Comments
	<u>Additional Information Comment 31/03/23:</u> The amended plans are noted. The proposed removal of some deck in the rear setback and driveway in the front setback to increase the available landscaped open space is supported. An amended Landscape Plan shall be submitted prior to issuing a Construction Certificate nominating the proposed planting for these aforementioned areas. All trees and vegetation shown to be retained shall be protected during works, subject to the imposed conditions. <u>Original Comment Summary:</u> • concern was raised with the insufficient landscape open space, • clarification was requested regarding the existing deck in the rear setback.
Parks, reserves, beaches, foreshore	The property adjoins Bushey Place Reserve. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A473480).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.5m	11.7%	No (see comments)

Note: For the purpose of this calculating building height the existing ground level is taken to be the

excavated ground level at the lower ground floor slab, in accordance with the Land and Environment Court Case of Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582.

Compliance Assessment

Clause	Compliance with Requirements
Part 4 Principal development standards	No
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
5.8 Conversion of fire alarms	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:	9.5m
Percentage variation to requirement:	11.7%

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.

Applicants Written Request

The applicants written request argues, in part:

The site has a steep topography, and the building height is determined by measurement from the existing excavated levels of the site, which provides a "artificial existing ground level." It is further noted that when applying the extrapolation method, the building height would comply with the 8.5m.

It is agreed that when extrapolating ground levels to find the natural topography of the site, the proposal complies with the building height standard when measured from those levels. Given the slope of the site, and context of the area, the proposal has an appropriate building height which will complement surrounding development and not cause any unreasonable amenity impacts.

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 extension result in a dwelling that is generally two storeys in height, and steps well with the topography of the land. In assessing interpolated levels of the natural topography of the land, the proposal is under 8.5m from these points. This provides a situation in which the building is 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 extensions are well articulated and stepped so as to minimise the visual impact of the built form. Further to this, the proposal provides appropriate physical separation between the proposed built form and neighboring living spaces. This ensures there is no unreasonable impact on amenity.

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

Comment:

The proposal is well articulated, and maintains open corridors at the front and rear of the site, through compliant front and rear setbacks. This appropriately minimises adverse impact of the development on scenic quality of the area.

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

Comment:

The proposal has a compliant front setback and is stepped down from the street. This ensures visual impact is well minimized when viewed from the public road.

Zone Objectives

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

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

Comment:

The proposal maintains the use of a dwelling house and this contributes to housing needs.

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 single dwelling use is appropriate and permissible with consent.

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 involves landscaping to the front and rear of the site, and provides a well articulated built form to integrate appropriately with landscaped character. As such, the proposal contributes appropriately to the zone.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.6m-8.4m	16.6%	No (see comments)
B3 Side Boundary Envelope	5m x 45 degrees (east)	Outside Envelope	-	No (see comments)
	5m x 45 degrees (west)	Outside Envelope	-	No (see comments)
B5 Side Boundary Setbacks	0.9m (east)	Ground Floor: 9.38m First Floor: 1.4m-3.9m	-	Yes
	0.9m (west)	Ground Floor: 0.95m First Floor: 1.2m-2.7m	-	Yes
B7 Front Boundary Setbacks	6.5m	13.34m	-	Yes
B9 Rear Boundary Setbacks	6.0m	8.6m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting Site area: 570sqm)	40% (228sqm)	29.4% (167.3sqm) Existing: 29.1% (166.3sqm)	30.16%	No but increase on existing (see comments)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposal does not comply with the wall height control of 7.2m. The proposed wall height is up to 8.4m at the eastern elevation.

Merit consideration:

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

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

Comment:

The proposal involves a dwelling that has a new upper level that is well articulated, and well setback from boundaries. The proposal also maintains a suitable landscaped setting. Therefore, the visual impact of the development has been sufficiently minimised.

To ensure development is generally beneath the existing tree canopy level

Comment:

The proposed dwelling is generally two storeys in height and scape and this assists in ensuring the dwelling will remain generally below the tree canopy levels in the vicinity.

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

Comment:

The compliant rear setback and stepping-in of the upper level from the side boundaries ensures the proposal maintains viewing corridors through the sides as well as over the subject site.

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

Comment:

The proposal involves an upper level that is well-stepped and setback from the boundaries and is well articulated. Further to this, the proposal involves a style and size of windows that minimise opportunities for overlooking. This ensures visual and amenity impact has been minimised.

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

Comment:

The proposal provides for additions to an existing dwelling, and does not involve any significant excavation or change to natural landform.

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

Comment:

The proposal provides sufficient scope for the skillion style roof form which is appropriate given the context of the area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

B3 Side Boundary Envelope

Description of Non-compliance

A representation of the non-compliance with the side boundary envelopes is as follows:



With regard to the consideration for a variation, the development is remains consistent with the underlying Objectives of the Control as follows:

24

Comment:

Notwithstanding the envelope breach, the proposed development will not be visually dominant by virtue of its height and scale. The dwelling complies with the setback controls, provides articulation, and the built form is well separated from the street and neighbours. As such, the proposal will not 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 proposal provides a good separation between the proposed works and neighboring living spaces. This ensures there will be no unreasonable impact on solar access or privacy.

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

Comment:

The proposed built form steps-down with the topography of the site, and the proposal does not involve any significant excavation. As such, the dwelling responds appropriately to the topography of the land.

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

D1 Landscaped Open Space and Bushland Setting

Description of Non-compliance

The numerical control for Landscaped Open Space on the site is a minimum of 40% or 228sqm.

The proposal involves an increase to the amount of landscaping on site from 29.1% (166.3sqm) to 29.4% (167.3sqm). This net increase in landscaping arises from a conversion of some hardsurface areas to soft landscaping.

It is also noted that there are new areas for planting under the verandah and to the east of the existing rear deck. Although, these areas do not meet the requirements for "Landscaped Open Space" (as defined), they contribute to providing a positive landscape outcome for the site including a circumstance where the proposal is consistent with the overarching objectives of the numerical control below.

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 maintains a landscaped frontage including a landscaped Council owned lot as a part of the road reserve. This provides both a compliant and landscaped front setback area, and a landscaped

road reserve This maintains appropriate opportunities for planting to enhance the streetscape.

To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.

Comment:

The proposal does not remove any substantial vegetation and also provides some new planting. Further the proposal does not significantly alter the topography of the land. As such, the indigenous vegetation, topographical features and habitat for wildlife is conserved.

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 maintains areas of landscaping at the front and rear of the dwelling that are sufficient in size for the growing of vegetation that will assist in mitigating the bulk of the dwelling.

To enhance privacy between buildings.

Comment:

The proposal provides sufficient separation between the terrace and the neighbouring living spaces. The proposal also involves a privacy screen to further prevent opportunity for overlooking. This ensures that the proposal would adequately maintain privacy between dwellings.

To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.

Comment:

Along with the landscaped areas to the front and rear of the site, the proposal also provides decking associated with the swimming pool to provide outdoor recreational opportunity. This sufficiently contributes to providing appropriate space for recreational opportunities for the occupants.

To provide space for service functions, including clothes drying.

Comment:

There is sufficient open space maintained on the site for clothes drying.

To facilitate water management, including on-site detention and infiltration of stormwater.

Comment:

The proposal maintains landscaped area to the front and rear of the dwelling to ensure permeable area contributes to minimising impacts of stormwater.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS**Northern Beaches Section 7.12 Contributions Plan 2022**

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

A monetary contribution of \$8,415 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$841,500.

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

The proposal involves non-compliances with several planning controls, including the building height development standard under WLEP 2011, however, these variations do not give rise to any unacceptable or unreasonable built form, character or amenity impacts.

The proposal involves a design which provides sufficient minimisation of building bulk, positively relates to the topography of the site and incorporates adequate spatial separation from the street, and neighbours to minimise amenity and environmental impacts.

The revised scheme results in an increase the overall landscaped area, reduction in the size of the elevated rear terrace, and a reduction in the size of the upper level (providing greater side setbacks). It is noted that some existing hardsurface areas will be converted to soft landscaping, which is a new improvement.

The amended design, coupled with the recommended conditions, results in a design that is consistent with the planning controls, despite the numerical variations.

The Clause 4.6 variation for building height is well founded and is supported.

It is recommended that the Development Determination Panel APPROVE the application. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2022/1610 for Alterations and additions to a dwelling house on land at Lot B DP 408127, 35 Bushey Place, DEE WHY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
3 - Site Plan - Rev R	28 March 2023	FJA Designs
4 - Demolition Plan - Rev R	28 March 2023	FJA Designs
5 - Basement Floor Plan - Rev R	28 March 2023	FJA Designs
6 - Ground Floor Plan- Rev R	28 March 2023	FJA Designs
7 - First Floor Plan - Rev R	28 March 2023	FJA Designs
8 - Elevations - Rev R	28 March 2023	FJA Designs
9 - Elevations - Rev R	28 March 2023	FJA Designs
10 - Section - Rev R	28 March 2023	FJA Designs
11- Sections 2- Rev R	28 March 2023	FJA Designs
12- Window Schedule - Rev R	28 March 2023	FJA Designs
13 - Fireplace - Rev R	28 March 2023	FJA Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Approval 14 - Certificate of Compliance for Solid Fuel Heaters	28 March 2023	FJA Designs
Geotechnical Report	24 October 2022	Geonalysis

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
Proposed Landscape Plan	31/01/2023	A Total Concept Landscape Architects & Swimming Pool Designers

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	26/10/2022	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.

FEES / CHARGES / CONTRIBUTIONS

- Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$8,415.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$841,500.00.

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.

3. **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

4. **Amended Landscape Plan**

An amended landscape plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- a) include the proposed planting scheme for the areas of demolished deck in the rear setback, and demolished driveway in the front setback.
- b) Updated to reflect all changes in the "Rev R" plans dated 28.03.2023.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

5. **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.

6. **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.

7. **Waste Management Plan**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **Tree and Vegetation Protection**

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development

sites, and any recommendations of an approved Arboricultural Impact Assessment,

- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project 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/Project 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/Project 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/Project 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/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 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 AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

9. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- a) a general decline in health and vigour,
- b) damaged, crushed or dying roots due to poor pruning techniques,
- c) more than 10% loss or dieback of roots, branches and foliage,
- d) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- e) yellowing of foliage or a thinning of the canopy untypical of its species,
- f) an increase in the amount of deadwood not associated with normal growth,
- g) an increase in kino or gum exudation,
- h) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- i) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

10. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

11. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Should any problems arise with regard to the existing trees on public land during the construction period, the applicant is to immediately contact Council's Tree Services section and resolve the matter to Council's satisfaction.

Reason: To protect and/or restore any damaged public asset.

12. **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.

13. **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.

14. **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.

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

15. **Installation and certification of solid/fuel burning heater**

The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide to the Principal Certifier certification that the solid fuel heater has been installed by an appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

16. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved amended Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) shrub and groundcover planting shall be installed as indicated on the approved amended Landscape Plan(s),
- c) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

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

Reason: Environmental amenity.

17. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy

of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

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

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

Reason: To ensure satisfactory management of stormwater.

18. **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.

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

19. **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 to maintain the landscape theme and be generally in accordance with the approved amended Landscape Plan(s) and any conditions of consent.

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

Reason: To maintain local environmental amenity.

20. **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.

21. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

Reason: To ensure that works do not interfere with reasonable amenity expectations of

residents and the community.

22. **Operation of solid fuel burning heaters**

The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

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

**NOTE: REFER TO LANDSCAPE PLAN
FOR SEPERATE LANDSCAPE AREA
CALCULATIONS**

SITE DEVELOPMENT CALCULATION Warrington Development Control Plan 2011 LAND SIZE: 600.7m² LOT WIDTH: 15.24m PRIVATE OPEN SPACE LANDSCAPE FRONT: 60.6m² LANDSCAPE REAR: 80.05m² LANDSCAPE TOTAL: 140.65m²	LOT B No.35 BUSHEY PLACE DEE WHY NSW 2099 DP 408127 NORTHERN BEACHES Area Calculations <table><thead><tr><th>Room Name</th><th>Area</th></tr></thead><tbody><tr><td>1 LOWER GROUND</td><td>56.29</td></tr><tr><td>2 DECK</td><td>26.70</td></tr><tr><td>3 GROUND FLOOR</td><td>172.85</td></tr><tr><td>4 GARAGE</td><td>38.54</td></tr><tr><td>5 PORCH</td><td>3.29</td></tr><tr><td>6 VERNH</td><td>16.07</td></tr><tr><td>7 VERN'EXT</td><td>10.95</td></tr><tr><td>8 FIRST FLOOR</td><td>99.30</td></tr><tr><td>9 FF BALCONY</td><td>7.89</td></tr><tr><td></td><td>431.88 m²</td></tr></tbody></table>	Room Name	Area	1 LOWER GROUND	56.29	2 DECK	26.70	3 GROUND FLOOR	172.85	4 GARAGE	38.54	5 PORCH	3.29	6 VERNH	16.07	7 VERN'EXT	10.95	8 FIRST FLOOR	99.30	9 FF BALCONY	7.89		431.88 m ²
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REV	DESCRIPTION	BY	DATE
A	CONCEPT PLAN	FA	25.05.2021
B	CONCEPT PLAN	FA	16.06.2021
C	CONCEPT PLAN	LH	01.03.2022
D	CONCEPT PLAN	LH	07.03.2022
E	CONCEPT PLAN	LH	17.03.2022
F	CONCEPT PLAN	MB	28.04.2022
G	CONCEPT PLAN	LH	30.05.2022
H	CONCEPT PLAN	LH	02.06.2022
I	CONCEPT PLAN	LH	28.06.2022
J	APPROVAL PLAN	LH	12.08.2022
K	CONCEPT PLAN - AMENDMENT	LH	09.09.2022
L	APPROVAL PLAN UPDATES	MB	14.08.2022
M	CONCEPT PLAN	LH	01.10.2022
N	AMENDED TO SUIT CLAUSE 4.3	FA	06.10.2022
O	AMENDED TO SUIT CLAUSE 4.3	FA	06.10.2022
P	AMENDED TO PLANS AS PER COUNCIL REQ	MB	12.01.2023
Q	FIRST FLOOR REDESIGNED	FA	31.01.2023
R	FLOOR PLANS AND LANDSCAPE AS AMENDED	MB	20.01.2023
S	LANDSCAPE ADJUSTMENT	FA	28.03.2023

Signed _____

Date _____

FJA Designs

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 info@fjadesigns.com.au

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SHALL NOT BE REPRODUCED UNLESS A WRITTEN PERMISSION IS
PROVIDED BY FJA DESIGNS PTY LTD

GENERAL BUILDING NOTES

1. THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH SPECIFICATIONS PROVIDED.
2. THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH BUILDER'S TENDER/CONTRACT DOCUMENTATION.
3. THE DOCUMENT SHALL TAKE PREFERENCE TO THESE DRAWINGS.
4. FIGURED DIMENSIONS MUST TAKE PREFERENCE TO SCALING.
5. ALL WORK SHOWN AND NOTED THEREON ARE TO BE CONFIRMED ON SITE BY SURVEYOR.
6. DRAINAGE CONCEPT PLAN IS SCHEMATIC ONLY. RELATED WORKS TO BE VERIFIED BY LICENSED DRAINER AND/OR CIVIL/MECHANICAL ENGINEER BEFORE WORK COMMENCEMENT. IF ENGINEER DRAWINGS ARE REQUIRED SUCH MUST TAKE PREFERENCE TO THESE DRAWINGS.
7. ALL WORK SHOWN AND NOTED THEREON ARE TO BE VERIFIED BEFORE COMMENCEMENT OF BUILDING WORKS BY REGISTERED SURVEYOR.
8. IN CASE OF ALTERATIONS OR DISCREPANCIES NOTIFY FJA DESIGN OFFICE IMMEDIATELY.

ALTERATIONS & ADDITIONS

JOB NUMBER FJ095

Site Plan

CLIENT Jonathan & Joanne Gard

LOCATION

LOT B No.35 BUSHEY PLACE DEE
WHY NSW 2099

DP 408127

LGA NORTHERN BEACHES

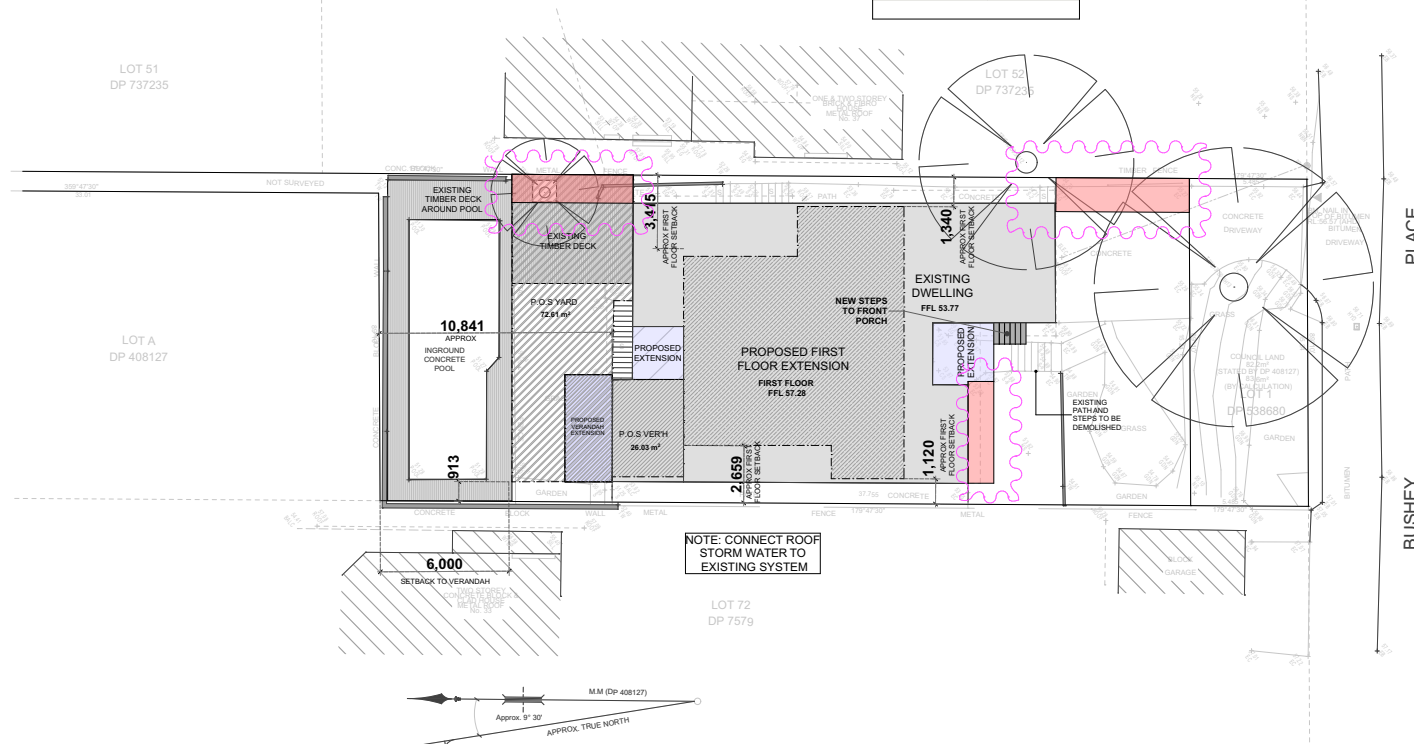
DESIGNER FA - BDAA Accreditation No.6617

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FACADE: NA

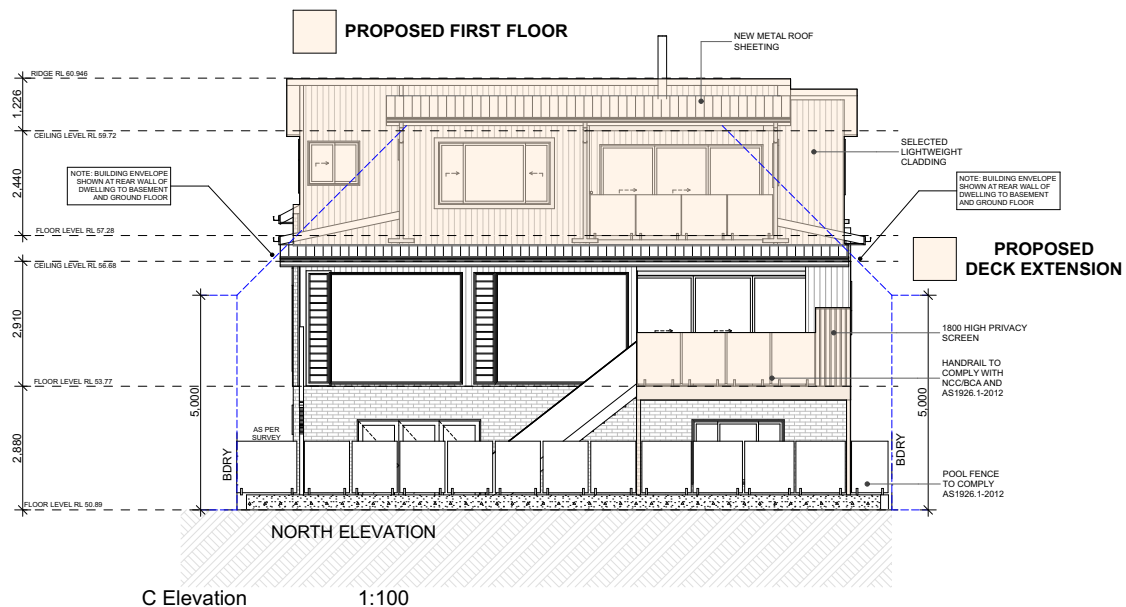
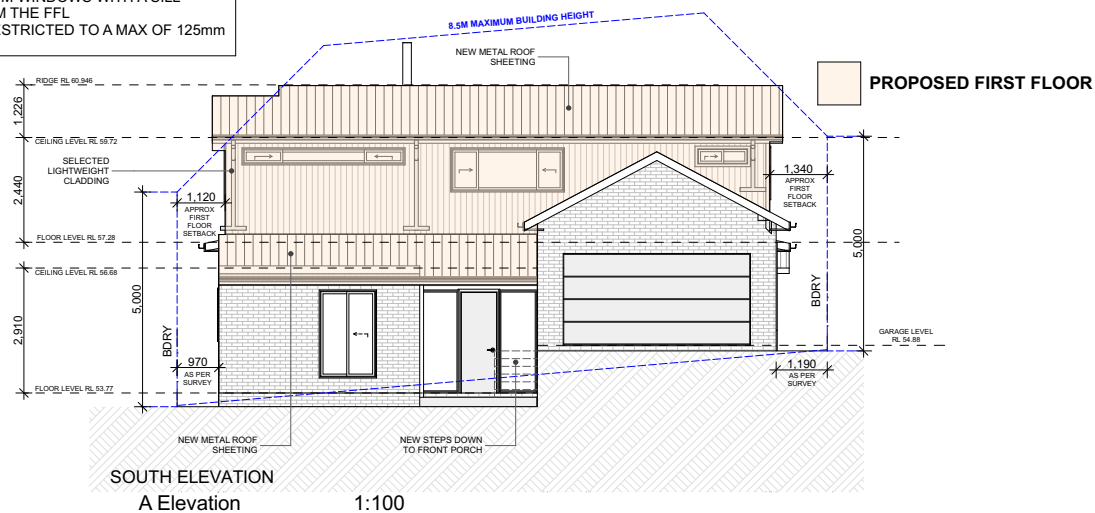
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DATE PRINTED
Tuesday, 28 March 2023



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NOTE: ALL FIRST FLOOR BEDROOM WINDOWS WITH A SILL HEIGHT LESS THAN 1700mm FROM THE FFL REQUIRE THE OPENING TO BE RESTRICTED TO A MAX OF 125mm IN ACCORDANCE WITH THE BCA.



REV	DESCRIPTION	BY	DATE
A	CONCEPT PLAN	FA	25.05.2021
B	CONCEPT PLAN	FA	16.06.2021
C	CONCEPT PLAN	LH	01.03.2022
D	CONCEPT PLAN	LH	07.03.2022
E	CONCEPT PLAN	LH	17.03.2022
F	CONCEPT PLAN	MB	28.04.2022
G	CONCEPT PLAN	LH	30.05.2022
H	CONCEPT PLAN	LH	02.06.2022
I	CONCEPT PLAN	LH	28.06.2022
J	APPROVAL PLAN	LH	12.08.2022
K	CONCEPT PLAN - AMENDMENT	LH	09.09.2022
L	APPROVAL PLAN UPDATES	MB	14.09.2022
M	APPROVAL PLAN - BASIC	LH	15.09.2022
N	AMENDED TO SUIT CLAUSE 4.3	FA	06.10.2022
O	BUILDING HT AMENDED TO PLANS AS PER COUNCIL RT	MB	12.01.2023
P	FIRST FLOOR REDESIGNED	MB	13.01.2023
Q	FLOOR PLANS AND LANDSCAPE AREAS AMENDED	MB	20.01.2023
R	LANDSCAPE ADJUSTMENT	FA	28.03.2023

CLIENT APPROVAL PLAN APPROVAL

Signed _____
Date _____

FJA Designs

Building Design + Drafting Services

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(02) 46002505
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ALTERATIONS & ADDITIONS

JOB NUMBER FJ095

Elevations

CLIENT Jonathan & Joanne Gard

LOCATION
LOT B No.35 BUSHEY PLACE DEE WHY NSW 2099

DP 408127

LGA **NORTHERN BEACHES**

DESIGNER FA - BDAA Accreditation No.6617

DESIGN: NA

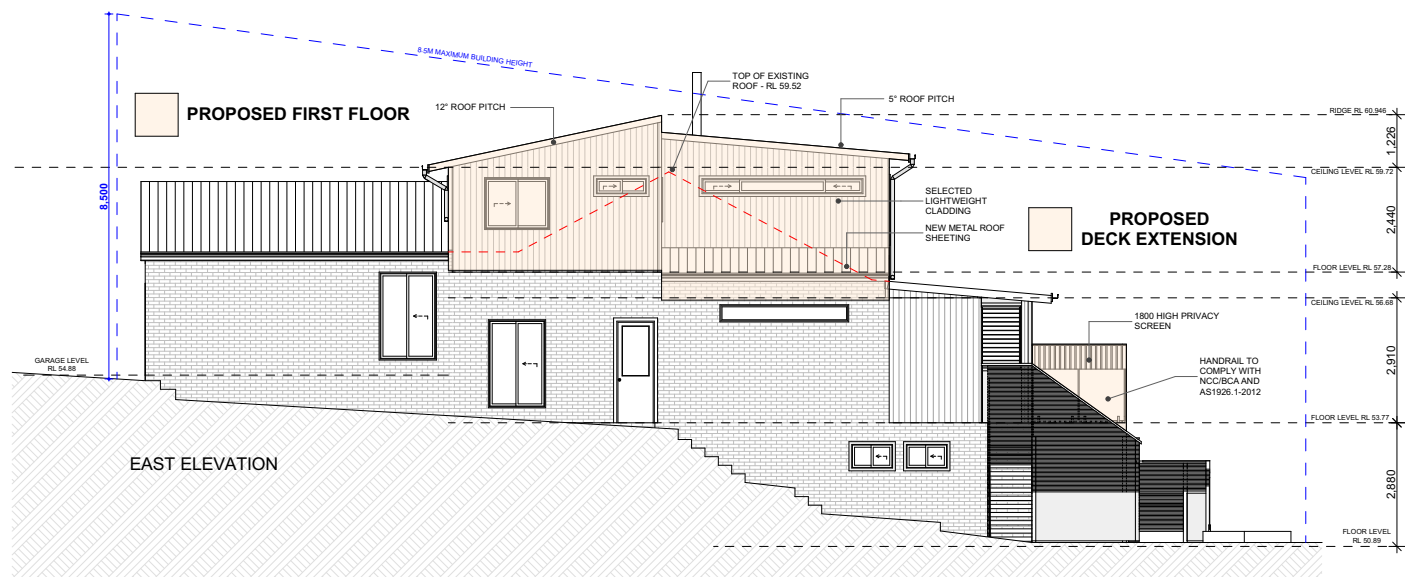
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APPROVAL- 8

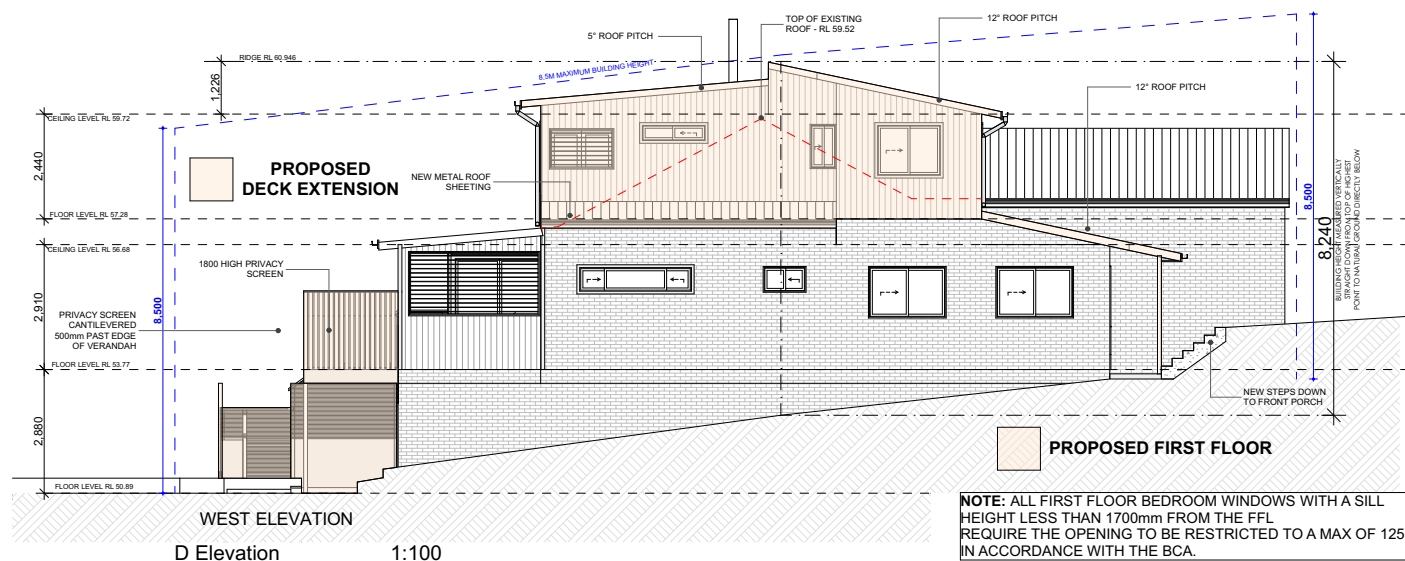
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B Elevation 1:100



D Elevation 1:100

NOTE: ALL FIRST FLOOR BEDROOM WINDOWS WITH A SILL HEIGHT LESS THAN 1700mm FROM THE FFL REQUIRE THE OPENING TO BE RESTRICTED TO A MAX OF 125mm IN ACCORDANCE WITH THE BCA.

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R	LANDSCAPE ADJUSTMENT	FA	28.03.2023

CLIENT APPROVAL PLAN APPROVAL

Signed _____
Date _____

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ALTERATIONS & ADDITIONS

JOB NUMBER FJ095

Elevations

CLIENT Jonathan & Joanne Gard

LOCATION
LOT B No.35 BUSHEY PLACE DEE WHY NSW 2099

DP 408127

LGA **NORTHERN BEACHES**

DESIGNER FA - BDAA Accreditation No.6617

DESIGN: NA

FAÇADE: NA

SHEET NO:
APPROVAL- 9

SCALE:
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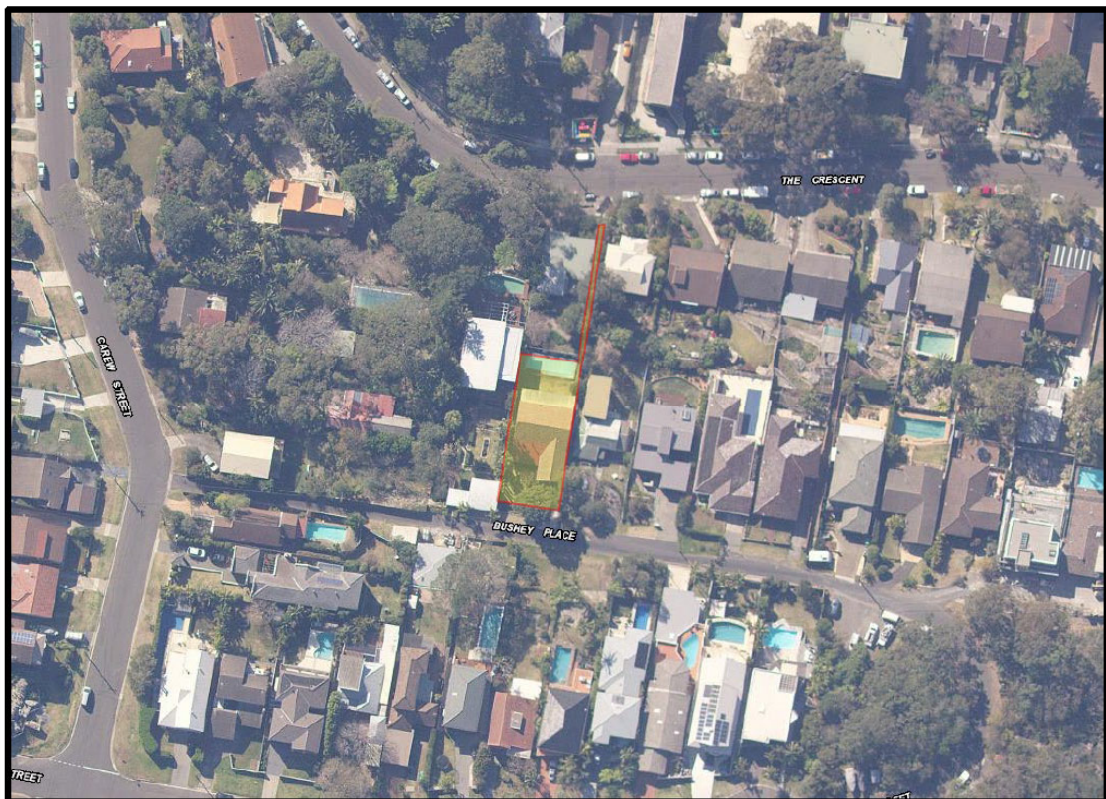
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STATEMENT OF ENVIRONMENTAL EFFECTS



SITE: Lot B DP 408127
35 Bushey Place
Dee Why

PROPOSED DEVELOPMENT: Alterations and additions to an existing dwelling



APPENDIX



Appendix 1 – Clause 4.6 Variation Overall Height

It is requested that Council consider the following request for a variation under the provisions of Clause 4.6 of *Warringah Local Environmental Plan 2011 (WLEP2011)* during assessment of this application:

Warringah Local Environmental Plan 2011

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.*

Clause 4.6 of the LEP - Exceptions to development standards provides the opportunity for Council to vary the controls based on the merits of the application. It is considered that the current application satisfies the Clause 4.6 criteria in the LEP, and therefore should be supported, as detailed below.

- (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.*

The overall height development standard is not expressly excluded from the operation of Clause 4.6.

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant 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*

As discussed below, it is unreasonable and unnecessary to require compliance with the overall height control as all key Clause 4.6 requirements are satisfied despite the non-compliance.



The proposed floor addition height exceeds the maximum permitted building height for the development by 820mm. It is considered that the application, and in particular the proposed building height, should be supported as:

The subject site is zoned 'R2 Low Density Residential' under Clause 2.1 of the WLEP2011.

The objectives of the zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed development will maintain a low-density residential dwelling being compatible with the existing and future character of the locality. The proposed development has been designed to meet the day to day needs of the residents and is provided with appropriate services and facilities. Furthermore, the dwelling is designed to provide a high level of amenity for adjoining residents whilst considering the natural restraints of the site.

The proposal, including building height variation, is consistent with the objectives of the R2 Low Density Residential zone in that the proposal will continue to provide low-impact residential development, that the proposal maintains overall landscaped area and vegetated character of the site, and that solar access continues to be available to the subject site and existing neighbouring developments.

Therefore, the proposal is considered to meet the objectives of the R2 Zone.

The objectives of Clause 4.3 are:

- (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 objective of this control is understood to be a measure to ensure the dwelling does not have an unreasonable impact on adjoining properties or the streetscape by way of overshadowing, overlooking or visual bulk.

The 820mm non-compliance is the direct result of the topography of the allotment, with a significant fall through the site it is difficult to site the proposed addition without a level of non-compliance to the height provisions. It is considered that some level of variation is anticipated on allotments such as the subject site where the allotment has a significant fall to the rear and the need to site the proposed works over existing ground floor walls for structural integrity. Thus, providing a compliant proposal would render re-development of the existing dwelling unviable.

The proposed addition has been designed with consideration given to the existing topography on the site and the existing overall streetscape character. The proposed design incorporates a first floor addition and internal works to modernise the dwelling, increase its lifespan and enhance internal amenity.

The required variation only relates to the northern upper most portion of the proposed addition. The variation will not detrimentally impact on the amenity of the adjoining properties given the articulated design, adequate side and rear setbacks and building separation distances along with the orientation of the site which will allow for a reasonable level of solar access to living areas and private open space areas of the adjoining properties. The windows proposed to the upper floor bedrooms are not likely to provide opportunities for overlooking as they are appropriately designed, setback and offset. The shadows cast by the proposed development will not have an overall negative impact upon the adjoining properties, whilst there is still some overshadowing, the POS of the adjoining property will have a reasonable level of solar access throughout the day.

The front façade and material choices are anticipated to be in keeping with recent development throughout the area and will help to enhance the character of the street which contains dwelling streetscape appearances of one and two storey dwellings. The visual bulk of the proposed addition as viewed from the adjoining dwellings is not considered to be excessive as a result of the variation given the increased setback from the existing rear building line, appropriate roof form, articulation provided throughout the design as well as the existing landscaping to the front and sides of the



proposal to further reduce the bulk of the development. As there is no perceived impact on the streetscape character of the area or the amenity of adjoining properties beyond that of a compliant proposal, the dwelling is considered to be able to meet the objectives of the height control despite the numerical non-compliance.

In the circumstances of this particular case, it is considered that strict compliance with the overall height requirements of Warringah Local Environmental Plan 2011 is considered unreasonable and unnecessary as the alterations and additions to an existing dwelling has been designed to reduce the height as much as possible, whilst still providing a design which is in keeping with the existing dwelling and the residents' needs. The increase in height proposed for the residence is the direct result of the topography and is consistent with the development theme in the surrounding area. Despite the non-compliance the proposed development can still attain the objectives of the Environmental Planning and Assessment Act 1979, R2 Low Density Residential zone and the subject development standard.

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

The requested variation relates to Clause 4.3(2) as shown below:

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

The subject site is identified to have a maximum building height of 8.5m.

In this instance the proposed development provides a maximum building height of 9.32m is proposed requiring a 820m variation to the 8.5m development standard however the subject site is noted to have steep topography which impacts the building height. The requested variation is restricted to the northern rear portion of the proposed addition and relates to the works located over an existing built form where the topography of the land has been altered through historic development. The area of the non-compliance relates to a small portion of the south-western corner of the dwelling, and will not detrimentally impact on the amenity of the adjoining properties and is in keeping with the established context of the streetscape.



The building height of the proposed development is large exacerbated by the existing excavation on the allotment which provides an artificial existing ground level for the calculation of building height, thus an overall building height of 9.32m. When applying the extrapolation method for determining building height this would result in a compliant building height.

The increase to the overall building height is considered to have minimal impact on the overall development in terms of bulk and scale appearance, due to the maximum building height positioned to the rear of the dwelling and screened by suitable landscape planting throughout the development. The proposed development is not considered to be excessive in size, having been designed to include extensive articulation, increased setbacks from existing building lines and the retention of suitable existing landscaping that follows the topography of the allotment and softens the visual bulk of the development. The proposed development is in keeping with surrounding developments in an area where the overall height control appears to have been abandoned due to the topography of the allotments. Further the proposed development provides a suitably sized dwelling in keeping with developments of the surrounding area.

The proposed alterations and additions is considered to be a reasonable development for the site as three storey dwellings are considered to be a suitable use of the land. The variation directly relates to the topography of the land due to historical development. Reducing the overall building height of the dwelling is not considered feasible as the reduction in height would detrimentally impact the amenity of the development through reducing ceilings heights that have been minimised as much as practical whilst considering the existing dwelling.

Despite the variation the proposed continuation of low density residential land use is considered to be an orderly and economic use and development of the land in an established residential area where increased residential dwelling has set a theme for dwellings in this area of Dee Why.

The variation will result in a maximum increase in height by 820mm from the permitted overall height. The development will not be visually excessive in size due to maintaining appropriate setbacks, stepping of the front façade, as well as suitable existing landscaping to screen the development from the streetscape and neighbouring properties. The proposed development provides a suitably sized addition to an existing dwelling in keeping with adjacent developments on Bushey Place and in the surrounding area.



Whilst being numerically non-compliant with the height of buildings control the proposed development is not anticipated to detrimentally impact the streetscape or surrounding developments by way of solar access or privacy. In fact, the proposed development will result in an improved amenity and streetscape appearance as a result of the urban renewal development and by ensuring that the bulk and scale of the development is consistent with surrounding developments.

The objects of the Environmental Planning and Assessment Act 1979 are understood to be as follows:

1.3 Objects of Act

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 most relevant objects to this development are objects 1.3(c), 1.3(g) and 1.3(h) as outlined above.

The proposed development relates to alterations and additions to an existing dwelling within a residential setting. Allowing alterations and additions to an existing dwelling, despite the numerical non-compliance with the height of buildings provisions, ensures that the dwelling can be retained on the site whilst providing improved internal amenity and an improvement to the life span of the built



form. Further, allowing the increase in building height ensures that the existing dwelling is enhanced which is considered to promote orderly and economic use and development of the land.

Allowing the updating of existing dwellings through alterations and additions within residential area ensures that a range of dwelling and development types are available for residential occupation. The design of the proposed development is for the alteration and addition to an existing built form which promotes good design through improved functionality of the floor plan. Further the proposed alterations and additions provide increased areas within the design ensuring that the amenity of the development is enhanced as a result of the development.

The design of the proposed development has given consideration to the streetscape locality, surrounding development along with the orientation of the allotment during the design process. The development appropriately addresses the street frontage and provides visual bulk in keeping with recent development throughout the Dee Why area. Consideration of these key aspects promotes good design through a high quality architectural development. Further the proposed alterations and additions has been designed to provide high level of amenity to the development and future occupants of the dwellings.

Whilst "environmental planning grounds" are not separately defined within the EP&A Act 1979 the proposed development is considered to provide orderly and economic use and development of the land through retention of an existing dwelling. Further the proposal meets good design principals and enhanced amenity of the dwelling through additional bedrooms and living spaces without detrimentally impacting the surrounding development by way of visual bulk, privacy, amenity and solar access.

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



The proposal is able to satisfy 3(a) and 3(b) as discussed above, therefore the proposed development is considered to be in the public interest. Further the proposed alterations and additions are orderly and economic use and development of the land whilst providing good design and amenity for the occupants of the development.

- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

There is considered to be no public benefit in refusing the application (for the reasons stated above) so as to ensure that full compliance with the maximum height of buildings control is achieved. The contravention of the standard does not raise any matters of state or regional significance nor would it be detrimental to the site or surrounding area.

Accordingly, Council's agreement is sought to the proposed variation in maximum overall building height for the site.

ITEM 3.2	DA2022/1694 - 995 BARRENJOEY ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/260613
ATTACHMENTS	1 ↓Assessment Report 2 ↓Site Plan and Elevations 3 ↓Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of 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 Council as the consent authority refuses Development Consent to DA2022/1694 for alterations and additions to a dwelling house on land at Lot 61 DP 13620, Lot 1 DP456145 & Lot LIC 521955, 995 Barrenjoey Road PALM BEACH, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1694
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 61 DP 13620, 995 Barrenjoey Road PALM BEACH NSW 2108 Lot LIC 521955, 995 Barrenjoey Road PALM BEACH NSW 2108 Lot 1 DP 456145, 995 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Christopher Scott Meehan
Applicant:	Christopher Scott Meehan
Application Lodged:	14/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/10/2022 to 04/11/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 45.8%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 6,581,266.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due breaching the 8.5m height limit, with the extent of variation up to a 45.8% departure from the development standard.

There was one (1) submission received regarding the proposal, this submission requested that a

dilapidation report be undertaken for the neighbouring property prior to any works being undertaken. This could be accommodated in any development of the site.

Critical assessment issues include consideration of building height breach and the proposed tunnel excavation to connect the dwelling to the foreshore area which is up to 12m deep.

A Clause 4.6 request for the non-compliance with the height standard under Clause 4.3 of PLEP 2014, arises from the introduction of a proposed upper level sited over the existing building footprint. The new upper level replaces an existing pitched roof. Contained within the new upper level is a bedroom and a bathroom, along with storage areas within the roof cavity. The new pitched roof introduces three dormer style windows, each with a terrace. It is considered the new upper level will read as a fourth level as viewed from the waterway and will be inconsistent with the adjoining dwelling and the desired future character of Palm Beach. A detailed assessment is undertaken within this report under the Clause 4.6 Assessment and Council is not satisfied there are sufficient environmental planning grounds to warrant departure from the development standard to the extent proposed.

A tunnel excavation was approved previously under a development consent in 2007 by Pittwater Council in a similar location and depth as now proposed. However, this element was subsequently deleted via a Section 96 Modification Application (modification approved in 2012) and as such, there is no current approval for these works. Although a similar extent of excavation was previously approved 15 years ago, since this time the zoning of the land has now changed to C4 Environmental Living, which includes objectives to require low-impact residential development in such an environmentally sensitive area. Whilst it is acknowledged some excavation is required on steeply sloping sites, the tunnel excavation for the lift is not supported as it is not considered to be 'low impact' and inconsistent with the C4 Zone objectives.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for alterations and additions to a dwelling house. Specifically, the proposal consists of:

• Demolition works

- Pool Level – Portion of retaining wall and wall of boatshed
- Lower Level – Guest bedroom, portion of guest ensuite and storage room
- Middle Level – Terraces and balustrades, internal walls, doors and windows, kitchen, bathroo
- Entry Level – Terraces and balustrades, internal walls, doors and windows, bathrooms, stairc
- Street Level – Portion of roadside barrier, and fence and gate
- Existing Roof

• Excavation works

- Tunnel from dwelling house to foreshore at an approximate maximum depth of 12.9m
- Lower-level rock excavation at pool level
- Total excavated volume is approximately 195m³

• Construction works

- Pool Level – New retaining walls, stairs, bathroom in boatshed, sink, storage, tunnel, and lift
- Lower Level – New plant room, bunk room, bunk ensuite, guest bedroom, guest ensuite, terr
- Middle level – Lounge room, kitchen and dining, gallery, pantry, terrace, staircase, and lift
- Entry Level – Library, laundry, master bedroom, master robe, master ensuite, bedroom 01, b
- Street Level – Attic bedroom, attic bedroom ensuite, storage, and terraces
- New Roof

• Landscaping works

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 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - D12.2 Scenic protection - General
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 61 DP 13620 , 995 Barrenjoey Road PALM BEACH NSW 2108 Lot LIC 521955 , 995 Barrenjoey Road PALM BEACH NSW 2108 Lot 1 DP 456145 , 995 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of two (2) allotments located on the western side of Barrenjoey Road. One of the lots is an irregular shaped triangular portion of lands adjoining Barrenjoey Road, which forms part of the subject site. The combination of the lots is considered to be 'the site'.

The site is irregular in shape with a frontage of 25.18m along Barrenjoey Road and a depth of 25.91m. The site has a surveyed area of 752.7m².

The site is located within the C4 Environmental Living zone and accommodates a three storey dwelling house, with detached boat shed at the foreshore and a swimming pool at the foreshore. The dwelling house presents as single storey from Barrenjoey Road, whilst has a three storey presentation facing the Pittwater waterway. A BBQ and outdoor area also exists in the western portion of the site adjoining the waterway.

The site is very steep, with a 17.3m fall from the front (eastern) boundary to the rear (western) boundary. The slope across the building footprint is almost a 1 in 2 gradient (50%).

The site has a number of locally native trees, including pittwater spotted gum trees, which currently protrude through the decks of the existing dwelling and scattered around the edge of the building footprint. These trees enhance the visual quality of the site as viewed from the waterway.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached two and three storey dwelling houses, also situated on the hillside adjoining the waterway. To the north is a three storey residential dwelling and to the south is a 1 and 2 storey dwelling house. The western facade of the adjoining houses has balconies facing the waterway to capture views of the Pittwater.

Map:



SITE HISTORY

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

Application **N0304/07** for Alterations and additions to the existing dwelling was on 05/11/2007 by Pittwater Council. It is noted that this approval included a tunnel excavation from the dwelling house to the boat shed.

Modification Application **N0304/07/S96/1** for Alterations and additions to the existing dwelling. The modification was for a 12 month extension of time for fulfillment of Condition 1, Part 1 of consent. The application was approved by Pittwater Council 01/10/2009.

Modification Application **N0304/07/S96/2**. The modification involved numerous changes to the approved plans, however of note deleted the tunnel excavation. The application was approved by Pittwater Council on 06/08/2012.

Modification Application **N0304/07/S96/3**. Modifications involve deletion of condition E14, added storage below garage, deletion of future stairs and reconfigured stairway. Application was approved by Pittwater Council on 06/02/2013.

Application **N0149/13** for Slipway and skid ramp approved by Pittwater Council on 26/07/2013.

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	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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 could be addressed via a condition of consent. <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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested seek deletion of the tunnel and reduction of the overall building height. The applicant provided a written response to the issues and an updated Clause 4.6 variation. The documents have been considered as part of the assessment. <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 could be addressed via a condition of consent. <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. <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 could be addressed via a condition of consent. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and	(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.

Section 4.15 Matters for Consideration	Comments
economic impacts in the locality	(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development, being a dwelling house. However, the built form outcome and tunnel excavation is not suitable and considered against the relevant planning controls.
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 C4 Environmental Living Zone and building height under Clause 4.3 of PLEP 2014, 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 aims and planning controls under PLEP 2014 and P21DCP and the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney Bushfire Consultants, dated 18 August 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/10/2022 to 04/11/2022 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:
Ms Elaine Gurney	993 Barrenjoey Road PALM BEACH NSW 2108

The following issues were raised in the submissions:

- *I request that the applicant appoints the appropriate consultants to issue a dilapidation report before and after construction.*
- *I also request that the construction hours are strictly adhered to and that our driveway is kept clear at all times.*

The above issues are addressed as follows:

- *I request that the applicant appoints the appropriate consultants to issue a dilapidation report before and after construction.*
- *I also request that the construction hours are strictly adhered to and that our driveway is kept clear at all times.*

Comment:

Both of these requests could be accommodated via consent conditions, in the event that consent were to be granted.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<u>Supported subject to conditions</u> The proposal is supported with regard to landscape issues. 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): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality 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. Landscape Referral raises concern that the proposed development does not achieve the 60% landscaped area under the PDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. It is noted there is an existing non-compliance.

Internal Referral Body	Comments
	An Arboricultural Impact Assessment (AIA) and Landscape Plan is included in the application and will be assessed as part of the Landscape Referral. No trees are proposed to be removed as part of the works which is supported by the findings in the AIA. A Project Arborist must be engaged to supervise all work around the existing trees to be retained, and in particular tunnelling and construction of the proposed decks. The decking must be designed in collaboration with the Arborist, and to the Arborist's satisfaction in regards to tree protection. The landscape proposal is generally supported and all proposed planting shall be installed as per the requirements outlined in the conditions of consent. Substitute all <i>Rhaphiolepis</i> with a suitable alternative as Council deems this species an environmental threat. Substitute the 2 x <i>Plumeria</i> species, in the rear setback, with 2 x <i>Livistona australis</i>. All new landscaping should be managed in accordance with Planning for Bushfire Protection 2019. Works are proposed in the road reserve and the applicant may apply for a separate Minor Encroachment within public road reserve for consideration of any public road reserve encroachment, and support shall be sought from Council's Road Reserve Referral Team. Landscape Referral has only assessed works within the property boundary.
NECC (Bushland and Biodiversity)	Supported subject to conditions The proposal seeks approval for alterations and additions to a dwelling house. The comments on this assessment relate to SEPP (Resilience and Hazards) 2021 - Section 2.10 Development on land within the coastal environment area. The proposal has been submitted with an arborist report stating that no trees will be removed for the purpose of the proposed alterations and additions. However, the use of protective measures has been recommended and will be conditioned as per the Landscape Referral Response (17/11/2022). The proposal includes a planting schedule that needs to be amended as it has included plants that have been identified as weeds in the Northern Beaches Council Local Priority Weed Management Plan (2021-2026). In order to protect native vegetation within the coastal environment area, new landscaping is to comprise at least 60% locally native species selected from the Pittwater Ward section of the Native Planting Guide, and/or the relevant section of the Pittwater Native Gardening Booklet, both available on Council's website. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	Supported subject to conditions

Internal Referral Body	Comments
	The application has been assessed in consideration of the: • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience & Hazards) 2021; • Pittwater LEP 2014 and Pittwater 21 DCP; and • submitted plans and supporting documents lodged with this DA. In regard to the final dot point, it is noted that the proposed alterations and additions to the boatshed structure have now been removed from the development proposal (letter from GYDE Consulting dated 18/11/2023). Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is considered consistent with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. 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 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the SEPP (R & H) apply for this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Gyde Consulting dated September 2022 and also as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 5 September 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of SEPP R&H. As such, it is considered that the application can comply with the provisions of the State Environmental Planning Policy (Resilience & Hazards) 2021 subject to conditions. Pittwater LEP 2014 and Pittwater 21 DCP Estuarine Risk Management 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

Internal Referral Body	Comments
	relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 5 September 2022, estuarine planning levels (EPLs) would apply to proposed development within the subject site as follows: • RL 3.1m AHD for the foreshore works; • RL 2.7m AHD for the seaward end of the tunnel; and • RL 2.72m AHD for the tunnel adjacent to the lift. On internal assessment and as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 5 September 2022, certain development in the foreshore area and the proposed floor level (1.93m AHD) for the storeroom at the seaward end of the tunnel are below the recommended EPLs for the site. Proposed alterations and additions to the dwelling, however, are well above the highest EPL and are therefore compliant with the B3.7 Estuarine Hazard Controls. Components of the proposed development are subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP. Development on Foreshore Area 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. The DA proposes new works on the foreshores such as BBQ kitchen and seating arrangements. They can be considered as picnic facilities and are consistent with Clause 7.8(2)(b). On internal assessment and as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 5 September 2022, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014. Chapter D of the Pittwater 21 DCP: D15.15: Waterfront Development - Boatshed iv) Boatsheds cannot be used for any other purpose than the storage of small boats and/or boating equipment. The incorporation [sic] 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.

Internal Referral Body	Comments
	Appropriate general conditions have also been applied to address the coastal relevant requirements of SEPP (R&H) and Pittwater 21 DCP.
NECC (Development Engineering)	Supported subject to conditions The existing driveway crossing and garage are to remain which is acceptable. The proposed stormwater design connecting to the existing system is also acceptable. The submitted Geotechnical report addresses the relevant DCP controls. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	Supported subject to conditions This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. <i>Riparian</i> The site is adjacent to Pittwater Estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater, or the quantity and quality of surface and ground water flows that it receives. Stormwater plans must comply with the Water Management for Development Policy (see navigation tables at start of document and section 5.5). Section 5.5 is relevant to this property as the land naturally falls away from the street so is unable to connect to the Council Stormwater System and discharges directly into a waterway. Consider installing an on-site absorption pit or level spreader. <i>Sediment Management</i> 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. <i>Ongoing stormwater management</i> 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. <i>Dewatering</i> Your development has been identified as at risk of groundwater interference and/or pollution from dewatering. A dewatering permit application may be required for multiple instances or continuous dewatering of groundwater or tailwater. Please contact catchment@northernbeaches.nsw.gov.au for a dewatering permit and for advice on Council's water quality

Internal Referral Body	Comments
	requirements for dewatering of groundwater and of tailwater that collects in an excavation during works. The groundwater/tailwater to be discharged must be compliant with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997. All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.
Traffic Engineer	Supported subject to conditions Referral comments 9/1/23 This application is for alterations and additions to the existing dwelling house, ancillary structures, landscaping and excavation (including a lift and tunnel from the dwelling to the foreshore) works at the subject site. The development maintains the existing access and carparking arrangement within the site. The existing garage provides two car parking spaces with access provided directly from Barrenjoey Road. The Statement of Environmental Effects indicates that a Construction Traffic Management Plan (CTMP) has been prepared by Local Traffic Services under Appendix L. However, the Applicant has only submitted a Traffic Control Plan, for the closure of a traffic lane on Barrenjoey Road so that traffic flow is reduced to one direction only under a Stop Go control and utilising boom gates on the public road. A CTMP was requested to provide further information including the size, type, and frequency of vehicles proposed and how they enter and exit the site during the different phases, as well as pedestrian and traffic management. Nevertheless, a Demolition Traffic Management Plan (DTMP) must be submitted for approval prior to any commencement, and the CTMP be submitted prior to the issue of the Construction Certificate. Barrenjoey Road is a State Road, under the authority of Transport for NSW (TfNSW), and it was also recommended that the DA be referred to TfNSW for comment. TfNSW has since raised no objection to the proposal, subject to a Road Occupancy Licence (ROL) be obtained from Transport Management Centre (TMC) for any works that may impact traffic flows on Barrenjoey Road. It should be noted that TMC

Internal Referral Body	Comments
	generally restricts occupation of the roadway during peak travel times, which will impact delivery times and/or construction activities. The proposal can be supported subject to the recommended Conditions.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	The application was referred to Transport for NSW (TfNSW) in accordance with Clause 118 of State Environmental Planning Policy (Transport & Infrastructure) 2021. TfNSW States: <i>TfNSW has reviewed the submission and notes there are no changes to access. As such, TfNSW raises no objections to the alterations & additions to the existing dwelling subject to the following conditions being complied with:</i> <i>1. A Road Occupancy Licence (ROL) shall be obtained from Transport Management Centre for any works that may impact on traffic flows on Barrenjoey Road during construction activities. A ROL can be obtained through</i> https://myrta.com/oplinc2/pages/security/oplincLogin.jsf

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. A466192 dated 14 August 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—

- (i) the design of the vehicular access to the land, or
 - (ii) the emission of smoke or dust from the development, or
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

Transport for NSW (TfNSW) provided the following response:

"TfNSW has reviewed the submission and notes there are no changes to access. As such, TfNSW raises no objections to the alterations & additions to the existing dwelling subject to the following conditions being complied with:

1. A Road Occupancy Licence (ROL) shall be obtained from Transport Management Centre for any works that may impact on traffic flows on Barrenjoey Road during construction activities."

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

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

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

Comment: The site is not within the coastal wetlands or 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 site is not within proximity to the coastal wetlands or littoral rainforest area.

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: Not within the coastal vulnerability area.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment: Council has reviewed the application and are satisfied the development will not have an adverse impact to the matters listed in a) to g).

- 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: In regards to the matters listed a) to g), Council consider that adverse impacts have been either avoided or could be minimised.

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 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: Council is satisfied that the proposal will not further inhibit public access to the foreshore areas as listed in **i)**. Council is satisfied that overshadowing and views are not unreasonably impacted for the foreshore area **ii)**.

Council is not satisfied that the visual amenity and scenic qualities of the coastal environment area have been minimised. The additional building height will be visible from the waterway and the building will be higher than the two adjoining properties and result in additional building bulk as visible from the waterway. Council is not satisfied that the development has been designed to avoid and minimise visual impact from the waterway as required by matter **iii)**.

Council is satisfied that impact to aboriginal heritage has been avoided **iv)**. Council is satisfied that impacts to cultural and built environment heritage have been avoided **v)**.

Division 5 General

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

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

Comment: Council is satisfied the development will not impact 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: No coastal management plan is in place for the land.

As such, it is considered that the application does not comply with requirement 2.11(a)(iii) with regards to impacts to the visual amenity and scenic qualities of the coastal use area within Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021. For this reason, non-compliance with the clause is a reason for refusal.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12.4m max	45%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.6 Exceptions to development standards	No
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

In considering if Council is to grant development consent, it must be considered if the proposal is consistent with the C4 Environmental Living Zone objectives, which are the following:

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

Comment: The proposal to increase the building height is not consistent with the zone objective to provide for low impact development in an area of aesthetic value, with the development becoming more visually prominent due to the increased height and upper floor bulk as viewed from the Pittwater Waterway.

The proposal to provide an excavated tunnel, requiring up to 12m of excavation, is not considered to be 'low impact' residential development, nor site responsive development.

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

Comment: The proposal to increase the height and upper floor bulk of the building will have an adverse impact on the visual quality of the C4 Zone adjoining the waterway. The additional building height/bulk is not in keeping with the expectation that the buildings will conform to the topography of the land, which includes minimising building height by stepping down the slope of the land.

The excavation will permanently alter the natural form of the land through deep excavation which is inconsistent with the expectation that residential development be consistent with a 'low-impact' and more site responsive approach to development in the C4 Zone.

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

Comment: The development, which would result in an increased height and scale, does not maintain a low scale and that integrates with the landscape. The additional height will result in the building being more visually prominent as viewed from the waterway and surrounding properties. The additional height will result in the building being less integrated with the landform and landscape, making it more difficult for building to sit beneath the surrounding canopy trees. The excessive excavation does not reflect an integration with landform, when such excavation is not essential or necessary for the provision of a dwelling house on this waterfront site.

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

Comment: The proposal results in further reduction in landscape area and as such, does not encourage enhancement of foreshore vegetation.

The proposal is not considered to be consistent with the C4 Zone objectives and therefore, it is not recommended that consent be granted. The proposal being inconsistent with the C4 Zone objectives form a recommended reason for refusal.

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.3m to 12.4m
Percentage variation to requirement:	Up to 45.8%

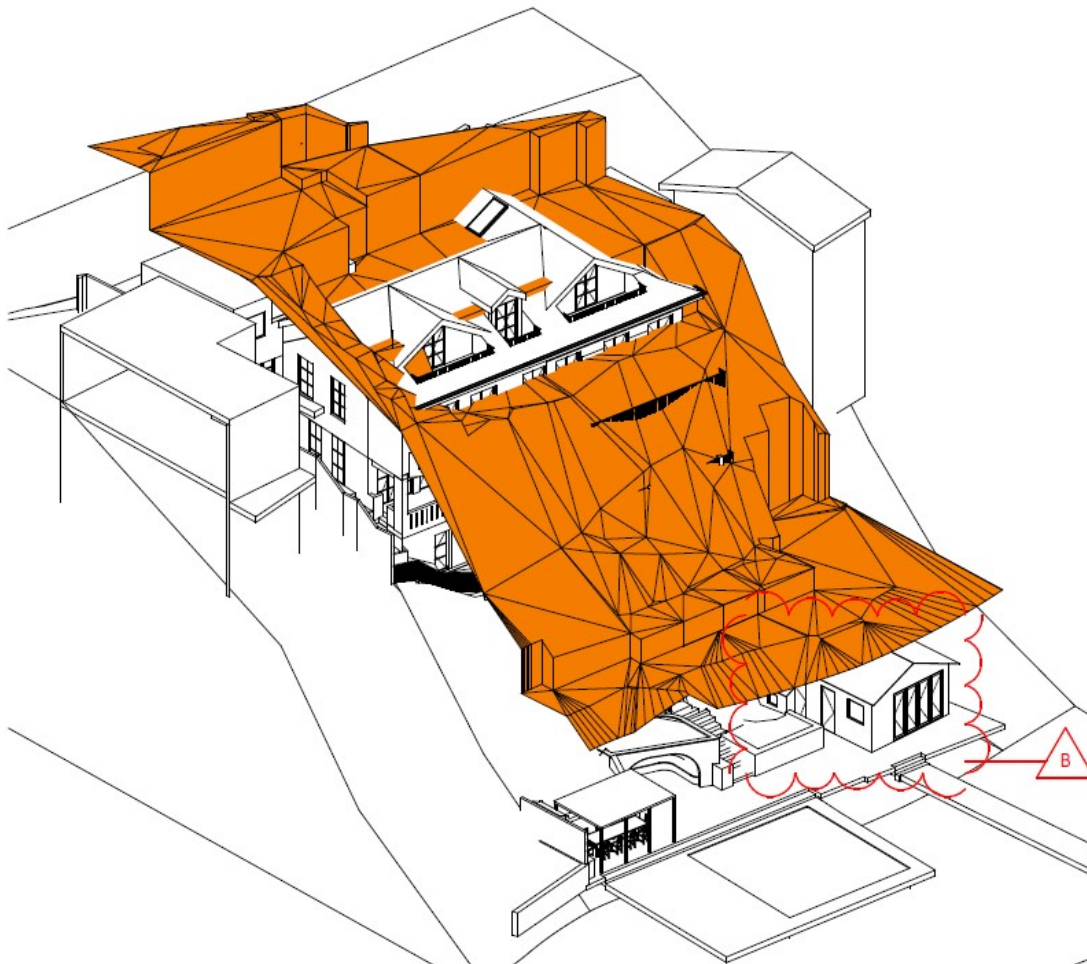


Figure 1 - Height blanket of 8.5m building height. Source - Alexander and Co Architects.

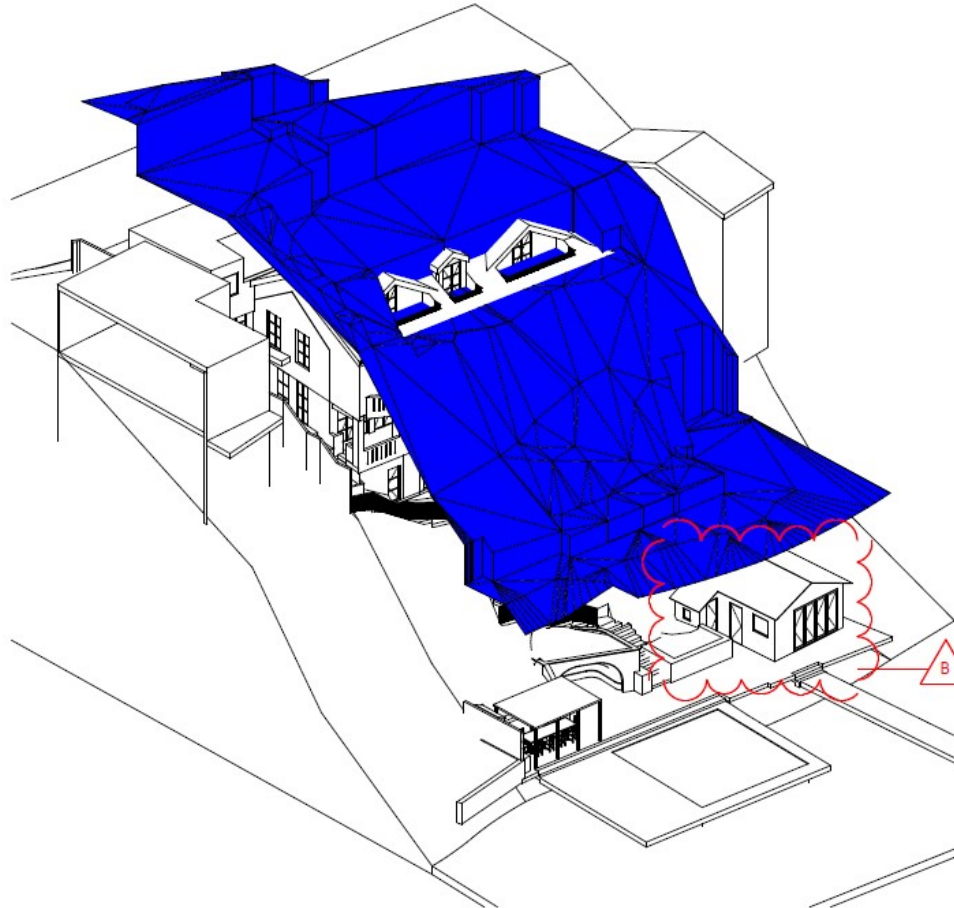


Figure 2- Height blanket of 10m building height, which is an exception provided under Clause 4.3(2D) PLEP 2014. Source - Alexander and Co Architects.

Assessment of request to vary a Development Standard

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

Clause 4.6 Exceptions to Development Standards

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental

planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) Assessment

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

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

Comment:

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

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

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

Comment:

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

grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

Applicants Written Request

The applicants written request argues, in part:

- *The variation sought satisfies the objectives of the height development standard and the objectives of the zone.*
- *The site is steeply sloping in excess of 30 degrees. This steep slope results in the extent of the existing (2.5 metre) and proposed variation (3.9 metres) from the 8.5 metre standard. The development has designed mostly within the existing dwelling house envelope.*
- *While the proposed development results in some additional shadow at 3:00pm, the extent of the proposed shadow is minor with consideration of the existing dwelling house. The resultant shadow does appear on a detached structure on the adjoining property at 993 Barrenjoey Road. This structure is a non-habitable garage. Accordingly, the proposed variation minimises shadow impact to adjoining areas of POS or living room windows.*
- *The proposal, as it contravenes the standards, delivers a high quality design and amenity to the subject site and surrounding development. As demonstrated within this request, the proposed built form is sympathetic to the surrounding natural environment and allows for the provision of a well-designed dwelling consists with the provisions of the PDCP.*
- *The contravention of the standard allows for a development which causes negligible to no view loss for adjacent dwellings and the surrounding locality.*
- *For completeness we note that the size of the variation (45%) is not in itself, a material consideration as whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6: GM*

Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85].

Assessment Officers Comments on Environmental Planning Grounds

For the reasons outlined in Council's assessment against the zone objectives and the height of development standard objective (provided below), Council is not satisfied that the proposal meets these objectives.

It is agreed that the site is steeply sloping, is in excess of 30% and is a constrained site for this reason. As such, the Pittwater LEP allows for minor portions of a building to protrude the 10.0m height under Clause 4.3(2D) when it is a steeply sloping site. However, the proposal is still in excess of 10.0m when measured from either the existing ground level (the 'Merman Method' - Figure 1 and 2 above) or the extrapolated ground level (the 'Bettar' method' - Figure 3 below). The applicant has stated that the building, as existing, is in breach of the height 8.5m and 10m height limits. Whilst this is correct, the existing breaching elements are more minor. The proposal introduces a new habitable level and storage areas with additional building height/bulk above the permitted height plane. The most western extent of the existing building breaching the height limit is a small gable roof at the southern side of the building. The proposal introduces a more substantial gable roof form at the middle and northern roof, windows and balustrading, as well as an increase to the maximum ridge height, all in excess of the control.

Therefore, although there is an existing non-compliant roof form, the proposed additions are not 'akin' to the existing non-compliant element, and in fact add a significant amount of additional building bulk and height. The northern wall is also increased in height to account for the new upper level, adding building bulk at the northern edge of the building.

The absence of impacts in regards to solar access and views are noted, however should not alone be relied upon alone as an environmental planning grounds to warrant such a breach.

It is not agreed that the additional height will be sympathetic to the surrounding natural environment. The additional height will make it more difficult for the building to sit below the tree canopy and be integrated into the natural environment as viewed from the waterway. The statement that the proposal is consistent with the provisions of the DCP is also not agreed, noting the extent of non-compliant building envelope at the northern facade, reduction in landscape area and inconsistency with the Desired Future Character statement, which envisages a residential character comprising of two storey dwellings.

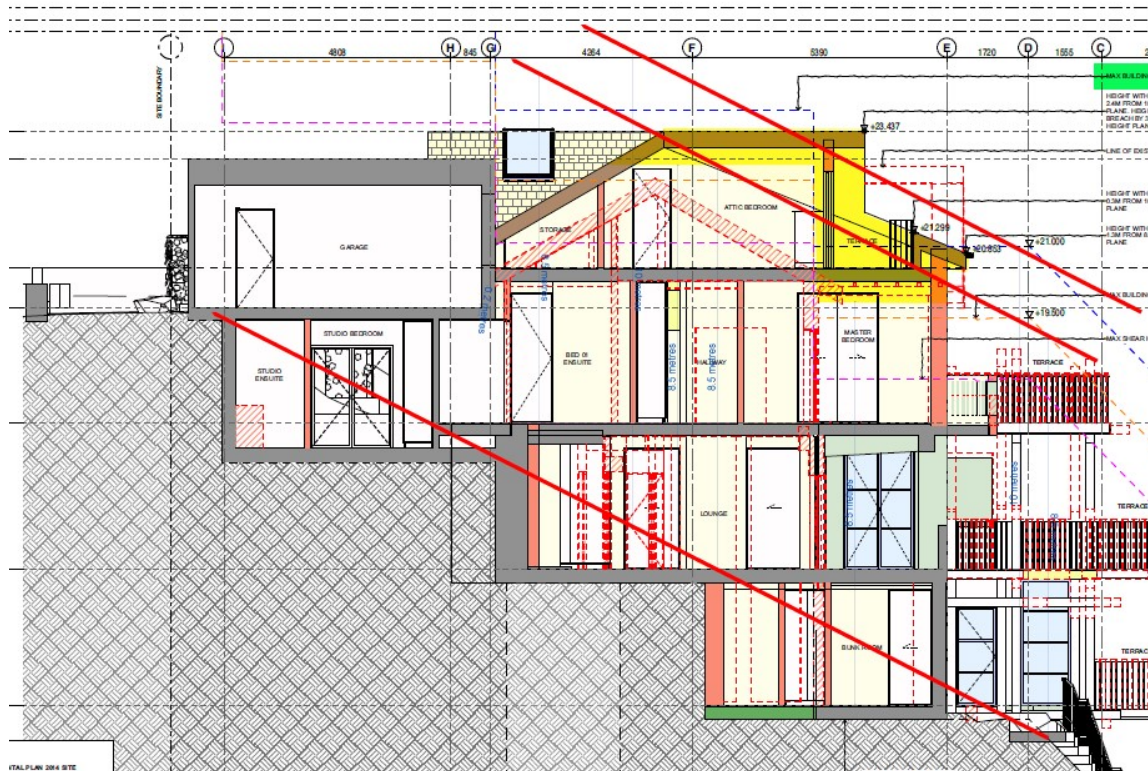


Figure 3 - Marked up plan (by assessing officer) showing the 8.5m and 10m building height through Section C using the 'Bettar' extrapolated ground level method of measurement.

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

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

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the 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 Palm Beach desired future character statement makes reference to development comprising of predominantly two storey dwellings in a landscape setting. The proposed upper level results in a fourth storey and additional height that will make the building more difficult to blend into the landscape setting as viewed from the waterway. Whilst it is recognised the existing dwelling is three storeys, and there are surrounding buildings that are also three storeys, the additional height will make the building even less compatible with the DFC.

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

Comment: The maximum ridge of the building will be above the two adjoining properties. Based on the survey, the height of the western façade of 997 Barrenjoey Road is RL22.84 and setback further from the waterway than the proposal. The top of the gable roof forms of the proposal are at RL 23.437 (approx 600mm higher) and have a lesser setback to the waterway. As such, the proposal will read as a taller building than the adjoining building when viewed from the waterway. The proposal is also taller than 993 Barrenjoey Road. The proposal will make the building less compatible with the height of the surrounding buildings as a result of the new top floor.

c) to minimise any overshadowing of neighbouring properties,

Comment: Council is satisfied there will not be unreasonable overshadowing of living room windows or POS of adjoining sites.

d) to allow for the reasonable sharing of views,

Comment: Due to the position of the building and slope of the land, there will not be unreasonable view impacts.

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

Comment: The proposal does not respond sensitively to the slope of the land, as it increases the height of the building and does not conform to either the 8.5m height or the 10m concession for sloping sites under the PLEP 2014. The bulk and height of the roof is emphasised through the proposed windows and balconies which read as a new storey from the waterway.

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

Comment: As discussed above, the proposed upper level will add additional building scale and bulk as viewed from the waterway, making the building more visually dominant in the landscape and higher than the adjoining property at 997 Barrenjoey Road. The DFC requires that buildings sit within a landscape setting and the building is secondary to landscaping. The increase in height will make the building more dominant as viewed from the waterway and sit further above the canopy trees.

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.

Comment: The proposal to increase the building height is not consistent with the zone objective to provide for low impact development in an area of aesthetic and scenic value, with the development being visually prominent from the Pittwater Waterway.

The proposal to provide an excavated tunnel, requiring up to 12m of excavation, is not considered to be 'low impact' residential development and not site responsive development.

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

Comment: The proposal to increase the height and upper floor bulk of the building will have an adverse impact on the visual quality of the C4 Zone adjoining the waterway. The additional building height/bulk is not in keeping with the expectation that the buildings will conform to the topography of the land, which includes minimising building height by stepping down with the slope of the land.

The excavation will permanently alter the natural form of the land through deep excavation which is inconsistent with the expectation that residential development consist of a 'low-impact' approach to development in the C4 Zone.

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

Comment: The development, which would result in an increased height and scale, does not maintain a low scale and that integrates with the landscape. The additional height will result in the building being more visually prominent as viewed from the waterway and surrounding properties. The additional height will result in the building being less integrated with the landform and landscape, making it more difficult for building to site beneath the surrounding canopy trees.

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

Comment: The proposal results in further reduction in landscape area and as such, does not encourage enhancement of foreshore vegetation.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the C4 Environmental Living zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard,

given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

7.1 Acid sulfate soils

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

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

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

The submitted geotechnical report does not consider that the watertable is likely to be lowered. In this regard, an Acid Sulphate Soils management plan is not required. Council can be satisfied the clause is addressed.

7.2 Earthworks

The objective of Clause 6.2 - '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: Council's referral officers (engineers, riparian and creeks, coast and catchment) consider that 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. The land is most likely to be maintained for residential purposes into the future.

(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. Fill is not required to be brought onto the site.

(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. Drainage can be dealt with via conditions if consent were to be granted. Conditions could be included if consent were to be granted to limit impacts during excavation/construction.

(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. Fill is not required for the proposal.

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

Comment: Impacts to the waterway could be managed via conditions if consent were to be granted.

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

Comment: Conditions could be implemented that would minimise the impacts of the development, should consent be granted.

(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 specific requirements of Clause 7.2 of the Pittwater LEP 2014, however the extent of excavation is considered to be excessive, unnecessary in terms of the provision of a dwelling house on this sensitive waterfront property and is not supported,

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 conditions of consent.

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 conditions of consent.

(b) the consent authority is satisfied that:

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

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, 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.

As the proposed excavation for the tunnel has been considered within the geotechnical report and Council's engineers have raised no concerns regarding geotechnical risk, Council can be satisfied this clause has been addressed.

7.8 Limited development on foreshore area

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

- *the extension, **alteration or rebuilding of an existing building** wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed development is for rebuilding of some existing retaining walls and replacement of the pool plant door partly within in the foreshore area, but will not result in the footprint retaining walls extending further into the foreshore area. The structures replace existing structures, like for like and do not encroach further into the foreshore area.

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

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore*

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

Comment:

The proposed rebuilding of the retaining wall structures like for like is not inconsistent with the objectives of the C4 zone given these elements do not introduce new impacts (they are existing structures). The appearance of the proposed retaining wall structures are compatible with the surrounding area and compatible with what exists on the site currently. The proposed retaining walls will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed retaining walls will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains the existing level of public access along the foreshore.

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

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

Comment:

The reconstruction of the retaining walls will not further impact upon the existing situation with regard to continuous public access to and along the foreshore. The proposed retaining walls are acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form	Requirement	Proposed	%	Complies
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Control			Variation*	
Front building line	6.5m	1m to 7.6m - New upper floor 0.7m to 5.1m - Existing Entry 1m to 7.6m - Existing Middle 7.9m to 12m - Existing Lower	N/A N/A N/A N/A	No - However consistent with existing No - Unchanged No - Unchanged No - Unchanged
Rear building line	Foreshore Building Line	Dwelling Alterations Behind FSBL Rebuilding of retaining walls addressed under PLEP cl. 7.8	N/A	Yes
Side building line	2.5m	South - 2.7m to 5.2m New works	N/A	Yes
	1m	North - 1m to 3m New works	N/A	Yes
Building envelope	3.5m	South - Outside (up to 800mm)	N/A	No
	3.5m	North - Outside envelope (up to 3m outside)	N/A	No
Landscaped area	60% (451.6m ²)	22.42% deep soil landscape (168.7m ²) *Existing quantum of deep soil landscape 24.4% or 183.7m ²	62%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	No
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
B5.13 Development on Waterfront Land	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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C5.1 Landscaping	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.2 Scenic protection - General	No	No
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	No
D12.10 Landscaped Area - Environmentally Sensitive Land	No	No
D12.14 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The desired future character (DFC) statement of the Palm Beach Locality states that *"The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape"*.

Whilst it is recognised that the site at present current consists of a three (3) storey residential dwelling with a deficient quantum of landscaping and there are surrounding buildings in the area that are also three storeys, the proposal will result in a building that further departs from this DFC statement. Notably, the increase in building height results in the addition of a fourth storey, and the proposal reduces the quantum of deep soil landscaping within the site.

As such, the proposal does not address the DFC in a satisfactory way and the new works will result in a development that is a greater departure from the character outcome that envisaged under the DFC statement.

For this reason, the proposal is not supported due to the inconsistencies with the DFC. The recommended reasons for refusal regarding building height and landscaped area are informed by the inconsistency with the DFC.

D12.2 Scenic protection - General

The control states that *"Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve."*

The objectives of the control are:

*Achieve the desired future character of the Locality.
Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment. (En, S)*

Comment: As discussed within the Clause 4.6 variation assessment, the proposal will have additional bulk and scale when viewed from the waterway and therefore is not consistent with the objectives of this control.

D12.5 Front building line

The new proposed upper floor sits above the alignment of the existing building and will maintain low height presentation to Barrenjoey Road. The proposal maintains the existing alignment of the front setbacks to the street and is within the maximum building height presenting to the road frontage. As such, this alignment to the front setback is acceptable.

D12.8 Building envelope

Description of Non-Compliance

Clause D12.8 of the P21 DCP prescribes a 3.5m side building envelope, but permits a variation to that envelope where the building footprint is situated on a slope of 16.7 degrees (30% gradient) or more, which is relevant to the subject site.

The proposal has an encroachment of the southern side boundary building envelope (Figure 1 below). The dwelling facade on the northern side encroaches to a greater extent (figure 2 below).

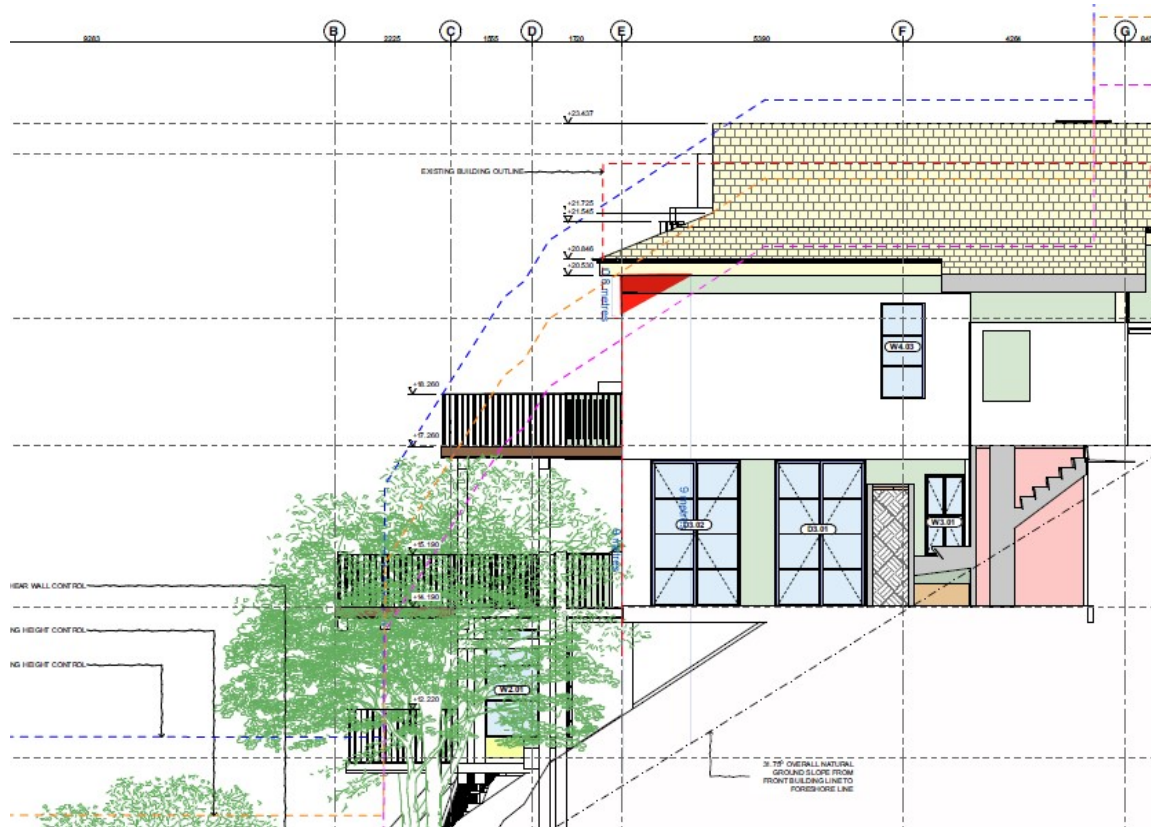


Figure 1 - Southern Side of building - Area marked red non-compliant.

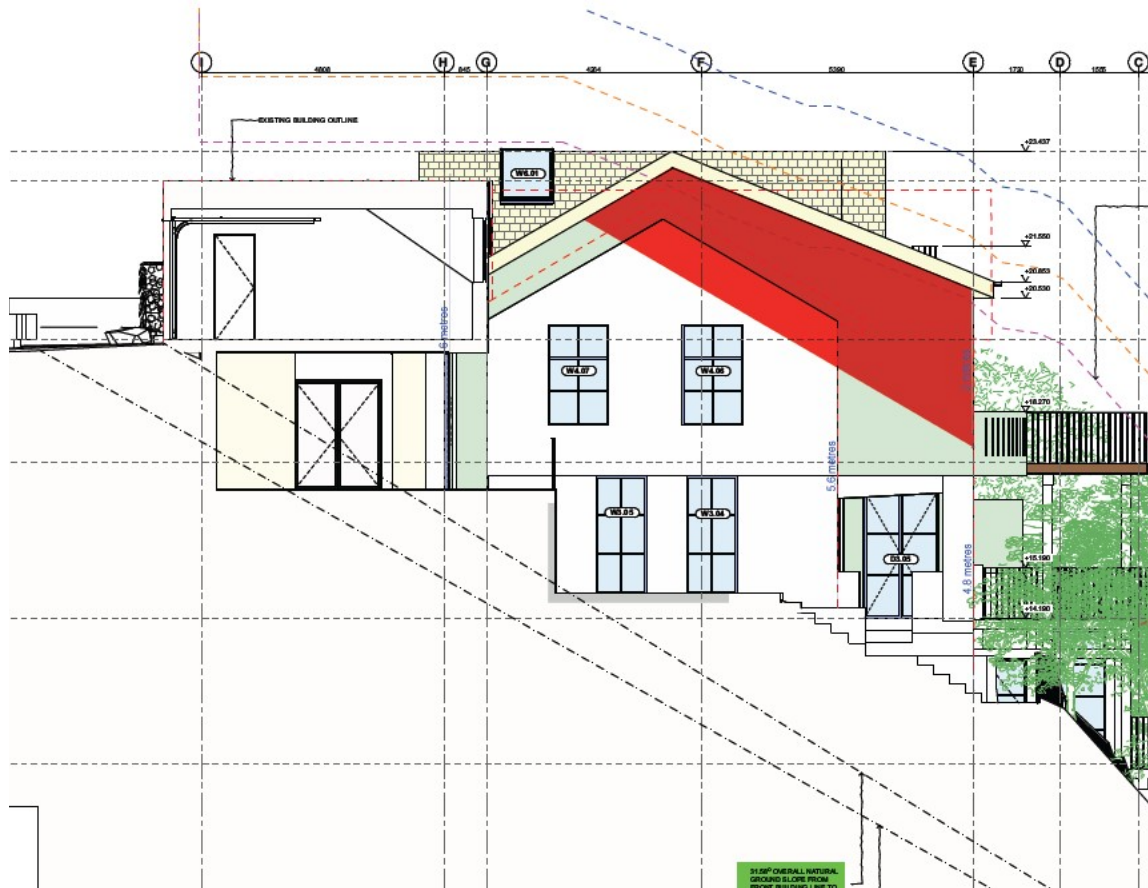


Figure 2 - Northern Side of Building - Area marked red non-compliant.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below:

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

Comment: The Palm Beach desired future character statement makes reference to development comprising of predominantly two storey dwellings in a landscape setting. The proposed upper level results in a fourth storey and additional height that will make the building more difficult to blend into the landscape setting as viewed from the waterway. Whilst it is recognised the existing dwelling is three storeys and there are surrounding buildings that are also three storeys, the additional height will make the building less compatible with the DFC. Inconsistent with this objective.

- *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 proposal as read from the street is low scale and consistent with the street character. However, as viewed from the waterway the proposal will be more dominant in the

natural landscape than the existing building. The non-compliance is a result of the new fourth level in excess of the maximum building height and does not promote a scale of building below the height of the trees. Inconsistent with this objective.

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

Comment: The additional level of the building is sited over the existing building footprint and does not change the spatial relationship between the building and the boundary. Consistent with this objective.

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

Comment: The addition of a new upper level results in the extension of the northern wall which attributes to the overall bulk of the building. Inconsistent with this objective.

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

Comment: The proposal will not result in unreasonable view impacts. Consistent with this objective.

- *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 maintain amenity for the adjoining properties with regards to solar access, privacy and views. Consistent with this objective.

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

Comment: The existing trees on the site are retained, however the amount of deep soil landscaping is slightly reduced which does not allow enhancement of the landscaping on the site to visually reduce built form. Inconsistent with this objective.

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

D12.10 Landscaped Area - Environmentally Sensitive Land

Clause D12.10 requires:

The total landscaped area on land zoned R2 Low Density Residential or E4 Environmental Living shall be 60% of the site area.

Any alterations or additions to an existing dwelling shall provide a minimum 60% of the site area as landscaped area.

Comment:

The existing development has 183.7m²/24.41% of landscaped area (deep soil) in the site. The proposed development will result in 168.7m²/22.42% in landscaped area (deep soil). a reduction of

15m² of deep soil landscaping. In place of this deep soil landscaping, it is proposed to place landscaping over structure with 400mm-600mm soil depth. However, the proposal will result in a loss of deep soil landscaping on a site which is severely deficient at present. There should be no net loss of calculable landscaped area considering the environmentally sensitive C4 zoned waterfront location.

Due to the shortfall in deep soil landscape, the proposal is assessed against the objectives of the control:

Achieve the desired future character of the Locality.

Comment: The proposal results in an increase to the building height, whilst a loss in deep soil landscaping. The desired future character of the Palm Beach locality is for '*two storey dwellings in a landscape setting*'. Although at present the site consists of a three storey dwelling with landscaping less than the DCP requirement, the proposed development makes the proposal more inconsistent with the DFC statement by adding building height and reducing deep soil landscaping.

The bulk and scale of the built form is minimised.

Comment: The reduction in deep soil landscaping will make it more difficult for landscaping to mitigate the building form.

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

Comment: This objective is satisfied.

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

Comment: The further reduction in deep soil landscaping does not allow enhancement of vegetation to assist in mitigating building form.

Conservation of natural vegetation and biodiversity.

Comment: Council's biodiversity team is satisfied with the proposal. Notwithstanding this, the further reduction in deep soil landscaping limits the kind of vegetation that could be provided to enhance biodiversity on the site.

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

Comment: This matter could be dealt with via conditions of consent, if consent were to be granted.

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

Comment: The further reduction of landscaping does not allow enhancement of the bushland character of the site, which is attributed to the C4 Zone objectives and the Palm Beach desired future character statement.

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

Comment: Water management could be dealt with via conditions if consent were to be granted.

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.

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 \$65,813 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,581,266.

CONCLUSION

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

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

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

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

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

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environment Plan 2014 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 dwelling house and associated earthworks has been referred to the Development Determination Panel (DDP) due to a breach of the building height development standard under Clause 4.3 of the PLEP 2014 of more than 10%.

The critical assessment issues are the building height breach (up to 45.8%), the excessive excavation for the tunnel, the inconsistency with the Palm Beach Character statement and the building envelope breach.

The assessment has found the Clause 4.6 written request has not established there to be sufficient environmental planning grounds to warrant the extent of departure from the control.

The tunnel excavation is not consistent with the C4 Zone objectives.

On balance, the proposed development is not a site responsive proposal, considering the environmentally sensitive nature of the site, being in a C4 zone, waterfront, steep and with high a high degree of visual and scenic sensitivity. The proposal to increase the height and bulk and scale of the existing, already substantially sized dwelling, reduce the non-compliant landscaped area, breach the building envelope and heavily excavate the site for an access tunnel, is inappropriate and unsuitable for the site and the character of the locality and will set an undesirable precedent for other similar overdevelopments.

As such, it is recommended the DDP refuse the application for the reasons contained in the Recommendation.

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 Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/1694 for the Alterations and additions to a dwelling house on land at Lot 61 DP 13620,995 Barrenjoey Road, PALM BEACH, Lot LIC 521955,995 Barrenjoey Road, PALM BEACH, Lot 1 DP 456145,995 Barrenjoey Road, PALM BEACH, 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 State Environmental Planning Policy (Resilience and Hazards) 2021. In particular, Council is not satisfied that the proposal has been designed to avoid and minimise impacts to the visual amenity and scenic qualities of the coast, as required by Clause 2.11 (1)(a)(iii) of the SEPP (Resilience and Hazards) 2021.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the

proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the zone objectives of the E4 Environmental Living Zone of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.2 Scenic protection - General of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.8 Building envelope of the Pittwater 21 Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.10 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.





CONTROL SUMMARY

PYTHOWER LOCAL ENVIRONMENTAL PLAN 2014 SITE RESTRICTIONS

MAX HEIGHT OF BUILDING = 8.5m
MAX HEIGHT OF BUILDING UNDER LEP 4.3 (D) = 10m
ZONING MAP = L4 ENVIRONMENTAL LIVING
SITE AREA = 752.75sqm
GFA - EXISTING = 365.89sqm
GFA - PROPOSED = 962.83sqm

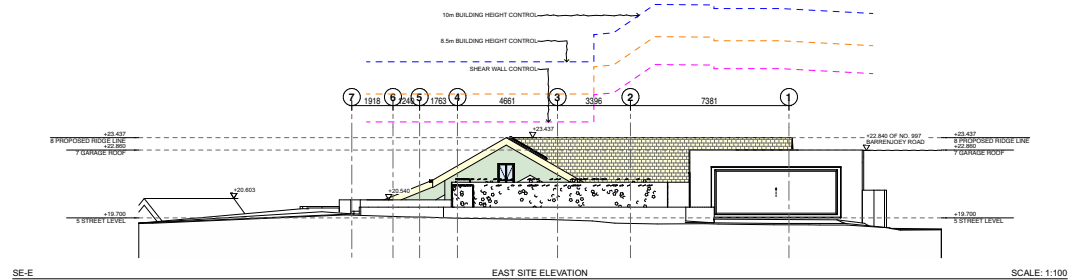
NOTE:
GFA IS CALCULATED AS THE SUM OF INTERNAL FLOOR AREA MEASURED FROM THE INTERNAL FACE OF EXTERNAL WALLS MEASURED AT 1M ABOVE FFL AND EXCLUDES VOIDS, GARAGE AND SERVICE AREAS, BALCONIES AND TERRACES.

DA MATCH LEGEND

EXISTING WALLS	TIMBER - FACE
DEMOLITION - CUT	TIMBER - CUT
DEMOLITION - FACE	METAL - FACE
BRICK - FACE	METAL - CUT
BRICK - CUT	TILE - ROOF
RENDER - FACE	TILE - FACE
CONCRETE - CUT	STONE - FACE
RENDER - INTERNAL FACE	GLASS - FACE
	SMITH - FACE

HYDRAULIC ENGINEER
ALL HYDRAULIC NOTES ARE INDICATIVE. PLEASE REFER TO HYDRAULIC ENGINEER DRAWINGS FOR ALL DRAINAGE LOCATIONS AND SPECIFICATIONS.

LANDSCAPE DESIGNER
ALL LANDSCAPE NOTES ARE INDICATIVE. PLEASE REFER TO LANDSCAPE DESIGNER DRAWINGS FOR ALL PLANTING SPECIFICATIONS.



REV	DATE	DESCRIPTION	BY
1	12/02/2023	FOR DA	DA
2	14/11/2023	FOR DA - BATHHOUSE SCOPE LIMITED	DA

REMARKS
THIS DRAWING IS TO BE USED IN CONJUNCTION WITH THE SITE PLAN AND THE LOCAL ENVIRONMENTAL PLAN 2014. IT IS NOT TO BE USED IN ISOLATION. ANY CHANGES TO THIS DRAWING MUST BE APPROVED BY THE COUNCIL. THIS DRAWING IS THE PROPERTY OF NORTHERN BEACHES COUNCIL AND IS NOT TO BE REPRODUCED OR COPIED WITHOUT THE WRITTEN PERMISSION OF NORTHERN BEACHES COUNCIL.



CLIENT
COREY AND MICHAEL A. BEEHAN

ADDRESS
905 BARRACLOUGH ROAD
PALM BEACH, NSW 2108



DRAWN BY
COREY AND MICHAEL A. BEEHAN

SITE ELEVATION - EAST & WEST

SCALE: 1:100 (EAST & WEST)
1:100 (EAST & WEST)
1:100 (EAST & WEST)
1:100 (EAST & WEST)

CHANGED
50

GYDE

Clause 4.6 Variation Request

Alterations and additions to the existing
dwellings house

995 Barrenjoey Road, Palm Beach

Submitted to Northern Beaches Council
On behalf of Chris and Michaela Meehan

24 March 2023

GYDE.COM.AU

**Clause 4.6 Variation Request**

This report was prepared by:

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Project: P22-228
Report Version: Final - Amended post lodgement

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Clause 4.6 Variation Request

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Clause 4.6 Variation Request – Height of Buildings

1. EXECUTIVE SUMMARY

This request has been prepared to justify a variation to clause 4.3 *height of buildings* as listed within the *Pittwater Local Environmental Plan 2014* (PLEP). The subject development application (DA) involves alterations and additions to an existing dwelling house located at 995 Barrenjoey Road, Palm Beach (the subject site).

This clause 4.6 request addresses a contravention of clause 4.3 (height of buildings) of the *Pittwater Local Environmental Plan 2014* (PLEP).

Clause 4.3(2) of the PLEP states:

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

The height of buildings map identifies the maximum permissible building height as being 8.5 metres. It is noted that clause 4.3(2D) of the PLEP would allow a 10 metre building height to apply to the site given 4.3(2D)(a)-(d) of the PLEP are achieved. However, as stated below, the proposal exceeds the 10 metre building height and therefore, this clause 4.6 variation request must refer back to the 8.5 metres building height development standard.

The proposal contravenes the 8.5 metre height of buildings development standard as follows:

- Northern Ridge of the attic/upper level – Height with variation of 3.9m (RL +23.437)
- Middle Ridge of the attic/upper level – Height with variation of 3.9m (RL +23.437)
- Southern Ridge of the attic/upper level – Height with variation of 2.4m (RL +23.437)
- Northern Balustrade – Height with variation of 1.8m (RL +21.299)
- Middle Balustrade – Height with variation of 1.8m (RL +21.299)
- Southern Balustrade – Height with variation of 1.8m (RL +21.299)

The existing dwelling house presents a 29% variation to the 8.5 metre height of buildings development standard and the maximum variation proposed in this application represents a 45% variation from the 8.5 metre height of buildings development standard, reflecting a 16% variation greater than the existing dwelling.

For comparison, the existing dwelling house presents a 10% variation to the 10 metre height of buildings development standard and the maximum variation proposed in this application represents a 24% variation from the 10 metre height of buildings development standard.

It is appropriate to provide a degree of flexibility in the circumstance, as the proposed contravention to the height standard will achieve a better planning outcome by:

- Creating a high-quality built form design that:
 - Responds to the existing conditions of the dwelling house,
 - Responds to the existing conditions of the site and natural topography,
 - Responds to the steep slope of the site in excess of 30 degrees,
 - Is designed to ensure the built form mass is appropriately distributed across the site,



Clause 4.6 Variation Request – Height of Buildings

- Is designed with consideration of the character of the locality,
- Does not result in view loss,
- Does not overshadow any area of principal open space (POS) or living room area of the site or adjoining properties,
- Is materially sympathetic comprising earthy tones, and
- Demonstrates thorough consideration of the adjoining development.
- Facilitating development that is consistent with the existing and future character of the locality,
- Maintains reasonable view sharing and minimises overshadowing impact onto adjoining properties.

The height of buildings has been calculated taking into account the existing excavated levels on the site, in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council* [2020].

The variation is in the public interest because the development satisfies the objectives of the C4 Environmental Living zone that applies to the land as well as the height of buildings standard.

This request has been prepared pursuant to clause 4.6 of the PLEP and demonstrates compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify the contravention. Further, the proposal is consistent with the objectives of the zone for the site and the development standard itself and is, therefore, in the public interest. This request also addresses the requirement for the concurrence of the Secretary.

Clause 4.6 Variation Request – Height of Buildings

2. INTRODUCTION

This is a formal request that has been prepared in accordance with clause 4.6 of the PLEP to justify a variation to the height of buildings development standard proposed in a development application (DA) submitted to Northern Beaches Council for alterations and additions to the existing dwelling house at 995 Barrenjoey Road, Palm Beach. The development is shown in the architectural drawings prepared by Alexander & Co. and surveyor's drawings by Hill & Blume that form part of the DA.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80], and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)];
3. That 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 [clause 4.6(4)]

This request also addresses the requirement for the concurrence of the Secretary as required by clause 4.6(4)(b), and the judgement of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 of which Council adopted the interpretation of ground level (existing) in August 2022.

Clause 4.6 Variation Request – Height of Buildings

3. STANDARD TO BE VARIED

The site is located in the C4 Environmental Living zone pursuant to the PLEP. Dwelling houses are permitted with development consent in the C4 zone. The standard proposed to be varied is the height of buildings development standard which is set out in clause 4.3(2) of the PLEP as follows:

4.3 Height of buildings

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

As shown in Figure 1, the numerical value of the development standard in this instance is 8.5 metres.



Figure 1: Extract of height of buildings map, Site outlined in red (Source: NSW Legislation)

Pursuant to clause 4.3(2D) development on land that has a maximum building height of 8.5 metres may exceed 8.5 metres but be no more than 10 metres if:

- (a) The consent authority is satisfied that the portion of the building above the maximum height shown on that land on the Height of Buildings Map is minor, and



Clause 4.6 Variation Request – Height of Buildings

- (b) *The objectives of clause 4.3 are achieved; and*
- (c) *The building footprint is situated on a slope that is in excess of 16.7 degrees (that is 30%); and*
- (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 design that allow the building to step down the slope."*

While it is noted that clause 4.3(2D) does not apply. The provision of clause 4.3(2D)(a)-(d) are achieved:

- a) The portions of the building that exceed the height standard mainly pertain to roof structure. This structure is minor compared to the overall building and roof area and is a minor max projection (1.4 metres) above the contravention of the existing dwelling house.
- b) The objectives of Cl 4.3 are as follows:

- *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- *to minimise any overshadowing of neighbouring properties,*
- *to allow for the reasonable sharing of views,*
- *to encourage buildings that are designed to respond sensitively to the natural topography,*
- *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The proposal meets these objectives in the following ways:

- The built form is consistent with the desired future character of the Palm Beach Locality as assessed within Chapter D of the Pittwater DCP in the following ways:
 - **D12.1** – From Barrenjoey Road the proposal presents design elements consistent with the current spatial separation by retaining the existing setbacks, built form design by ensuring the colours and materials are consistent with section D12.3, character by predominately utilising the established built form, and landscaping by retaining all existing trees onsite and proposing a comprehensive landscaping strategy.
 - **D12.2** – The proposal presents a superior visual presence when viewed from the waterway, and Barrenjoey Road by ensuring the proposed built form is integrated within the established vegetation and tree canopy onsite while predominately maintaining the built form footprint of the existing built form onsite.
 - **D12.3** – In accordance with section D12.3, the selected materials and colours of the site reflect dark and earthy tones as required by the PDCP.
 - **D12.5** – The proposal does not alter the existing front setback as established by the existing dwelling house. Accordingly, the existing and proposed built form are considered to be compatible with established locality.
 - **D12.6** – The proposal maintains the side and rear setbacks of that of the existing dwelling,



Clause 4.6 Variation Request – Height of Buildings

- the proposal has been designed with strict consideration of the outcomes of D12.6.
- The development sits comfortably within the bushland setting and is consistent with the height and scale of the surrounding development. The proposal has been designed with thorough consideration of the site's natural topography and environmental assets to ensure the site maintains a high level of amenity for both the residents and adjoining properties.
 - The proposal minimises overshadowing onto neighbouring properties. Solar diagrams have been prepared and are available within the Architectural Package.
 - The proposed development does not result in view loss to neighbouring development on the opposite side of Barrenjoey Road
 - The building has been designed and responds to the steep topography of the site by stepping down the site. Existing excavation has been used to minimise excavation.
 - As evident in the sections, all habitable areas of the dwelling house have been designed, wherever possible, to the existing ground levels.
- c) The building footprint is situated on the slope well in excess of 16.7 degrees. Alexander & Co. have confirmed on the section drawings that building sits on a slope in excess 16.7 degrees, noting the slope of the site is on average:
- Boundary line (eastern boundary) to foreshore (western boundary): 29.48 degrees
 - Front building line to foreshore: 31.58 degrees
- The steep slope contributes to the extent of the existing variation to the height standard (10 metres) and the proposed variation (12.4 metres) being 2.4 metre difference. At the point of variation, the land drops by approximately 2.75 metres, this depth is greater than the proposed variation and demonstrates the nature of this particular site circumstances.
- d) The building has been designed to minimise the extent of excavation wherever possible. Notwithstanding, excavation to an approximate maximum depth of 12.9m is required to accommodate the proposed tunnel. As illustrated on the sections prepared by Alexander & Co, the habitable spaces on all levels of the dwelling house have been designed on or above existing ground level. The proposal responds to the varying site levels, minimising the requirement for cut and fill.

Notwithstanding the above, the proposal exceeds the 10 metre building height and therefore, this clause 4.6 variation request must refer back to the 8.5 metres building height development standard.

The height of buildings development standard is not excluded from the operation of clause 4.6 of the PLEP.

For clarity, the definition of building height in the PLEP is:

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.

4. EXTENT OF VARIATION

The existing dwelling house located on the subject site exceeds the 8.5m (and 10 metre) height of buildings development standard. The existing height of buildings in 11 metres at the highest ridge point, represents an existing 29% variation to the 8.5 metre height of buildings development standard. The proposed alterations and additions are mostly contained within this existing envelope, except those areas discussed below and as demonstrated within Figure 2 and Figure 3 below. Consent is sought for an additional 1.4 metre variation above the existing height, being 16% greater than the existing variation, and representing a 45% variation to the 8.5 metre development standard.

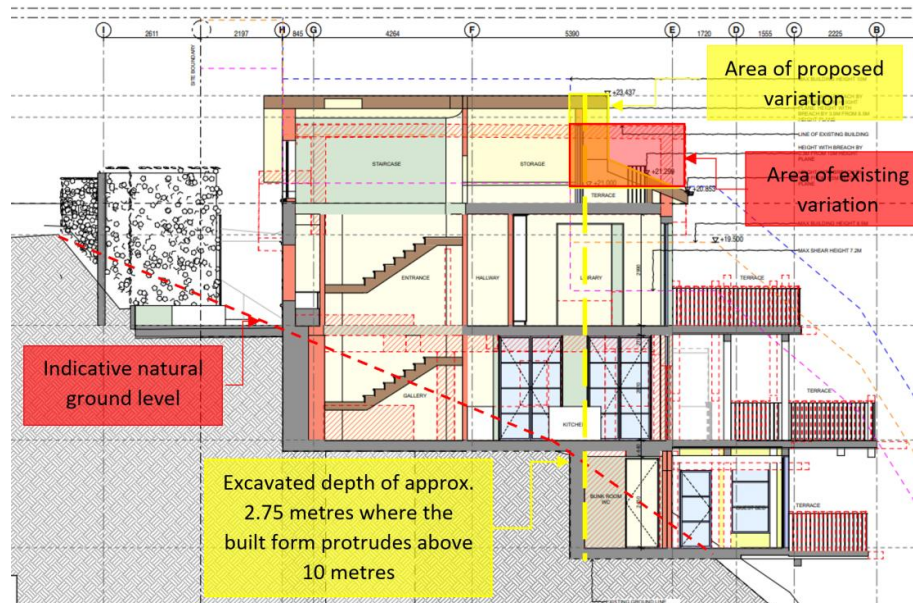


Figure 2: Extract of section plan showing extent of excavation where built form varies the development standard (source: Marked-up by GYDE Consulting)

It is important to note that while the proposal seeks additional height to that of the existing dwelling house, the existing built form variation presents a larger area of variation as shown in yellow in Figure 1 below. Accordingly, in some areas the proposed built form presents a lesser impact than that of the existing dwelling house currently located on the subject site.

Clause 4.6 Variation Request – Height of Buildings

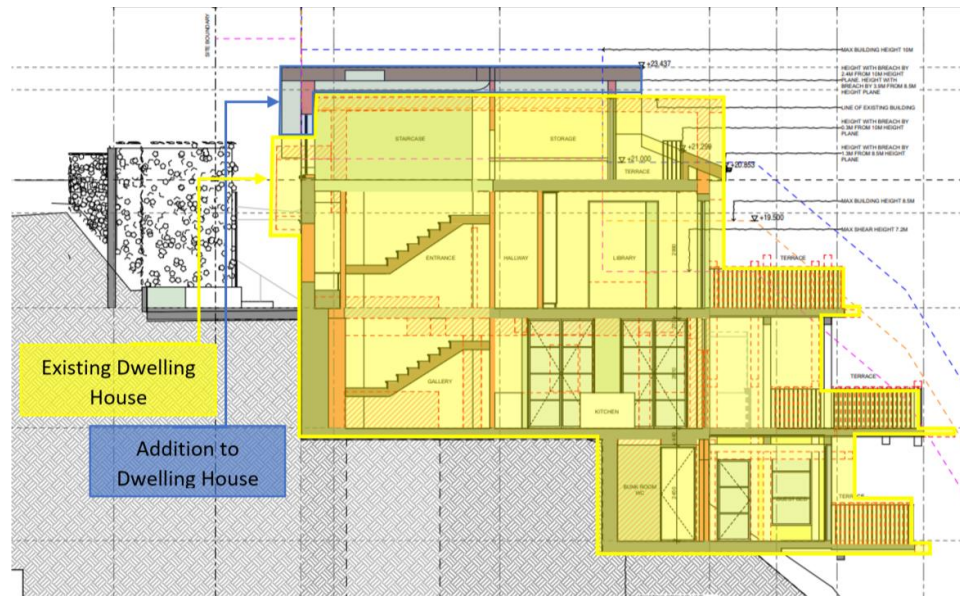


Figure 3: Extract of section plan showing extent of proposed addition (source: Marked-up by GYDE Consulting)

The proposal contravenes the 8.5 metre height of buildings development standard as follows:

- Northern Ridge of the attic/upper level – Height with variation of 3.9m (RL +23.437)
- Middle Ridge of the attic/upper level – Height with variation of 3.9m (RL +23.437)
- Southern Ridge of the attic/upper level – Height with variation of 2.4m (RL +23.437)
- Northern Balustrade – Height with variation of 1.8m (RL +21.299)
- Middle Balustrade – Height with variation of 1.8m (RL +21.299)
- Southern Balustrade – Height with variation of 1.8m (RL +21.299)

Extract of the height plane diagrams are provided in Figure 4 and Figure 5 below.

Clause 4.6 Variation Request – Height of Buildings

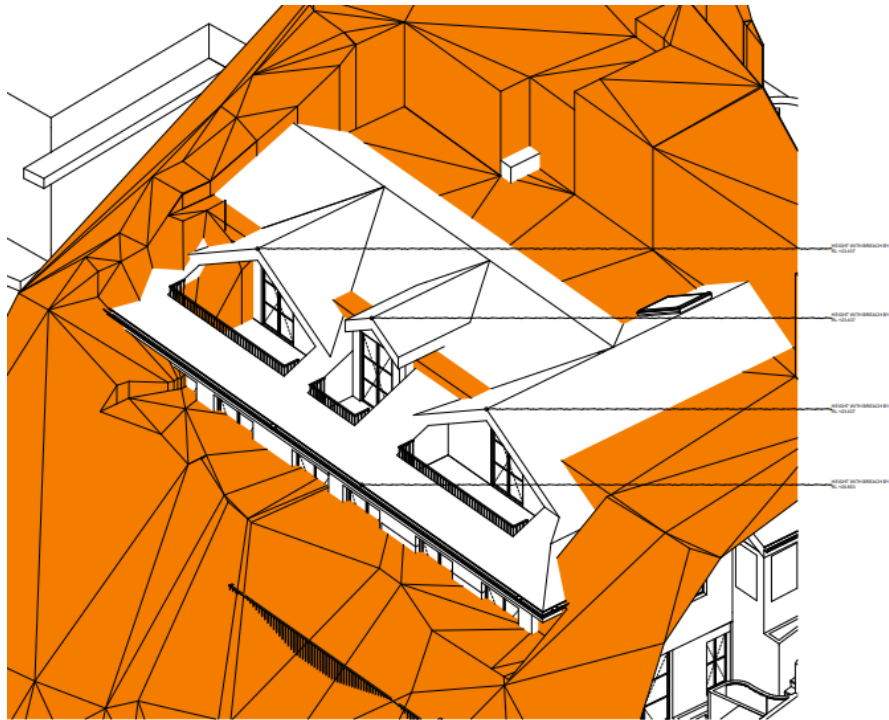


Figure 4: Extract of Height Plane Mesh showing proposed height variation - Detail (source: Alexander & Co.)

Clause 4.6 Variation Request – Height of Buildings

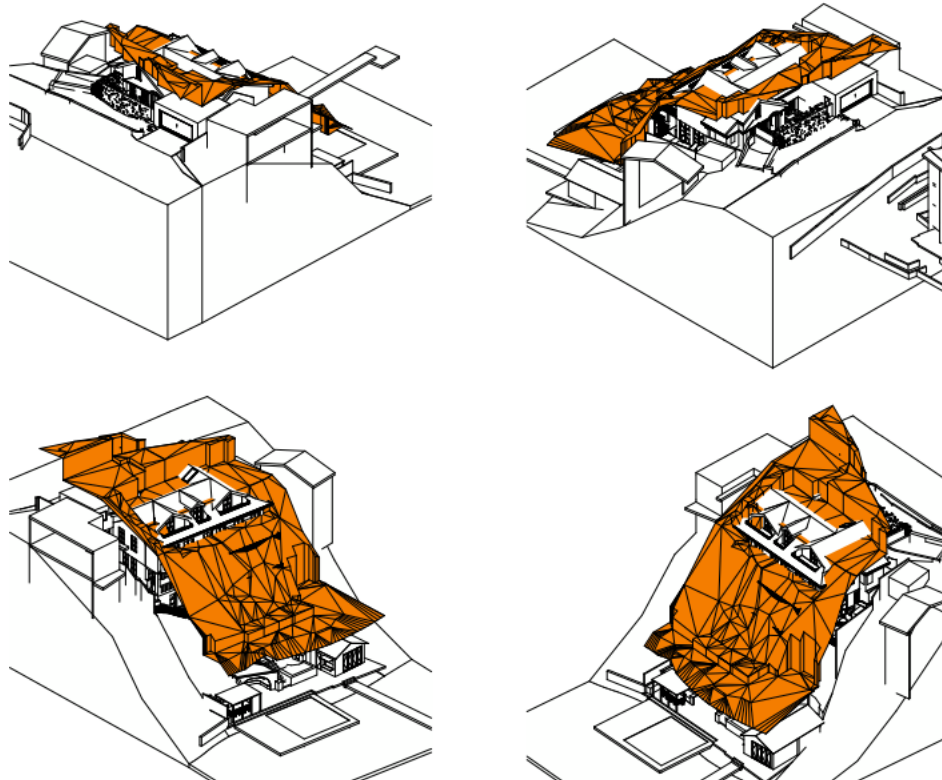


Figure 5: Extract of the 10 metre Height Plane Diagram showing the proposed variation (Source: Alexander & Co.)

Refer to the Architectural Plans prepared by Alexander & Co. for further detail.

Clause 4.6 Variation Request – Height of Buildings

5. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objective would be defeated, thwarted or undermined (*Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]) if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate.

It is sufficient to demonstrate only one (1) of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]).

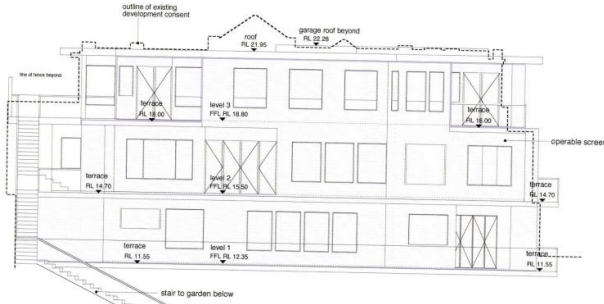
In this case, it is demonstrated that Test 1 and 4 has been satisfied.

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

The table below considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First test under *Wehbe*).

Clause 4.6 Variation Request – Height of Buildings

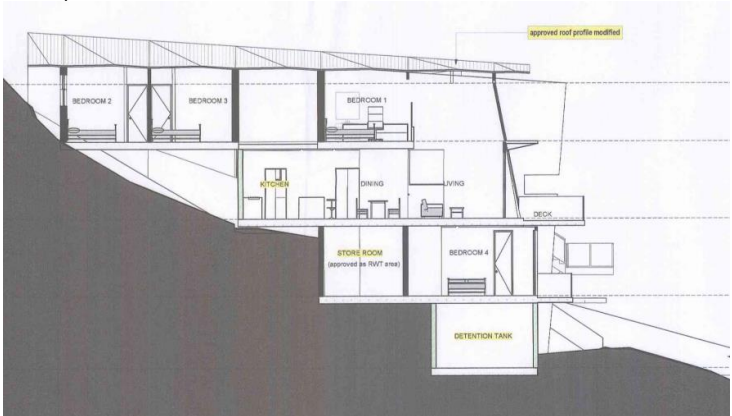
Table 1: Achievement of objectives of clause 4.3 of the PLEP

OBJECTIVE	DISCUSSION
(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality	The site is located within the Palm Beach locality and is orientated west towards the inlet area. The proposal is situated predominately within the existing building envelope and hence has a comparable impact. The proposal is generally consistent with the built form and controls for the site as established in the PLEP and PDCP. The proposal is consistent with the established and desired character of the locality notwithstanding the non-compliance to the 8.5 metre (and 10 metre) height of buildings development standard which is demonstrated by analysis of surrounding development.  Figure 6: Locality Analysis (source: GYDE Consulting) Based on the immediate locality analysis, the following is noted: • 997 Barrenjoey Road, Palm Beach (DA No. N004/04, 11 June 2004)– Consented built form approximately 11 metres in height.  Figure 7: Extract of Elevation Plan of 997 Barrenjoey Rd (source: Northern Beaches DA)

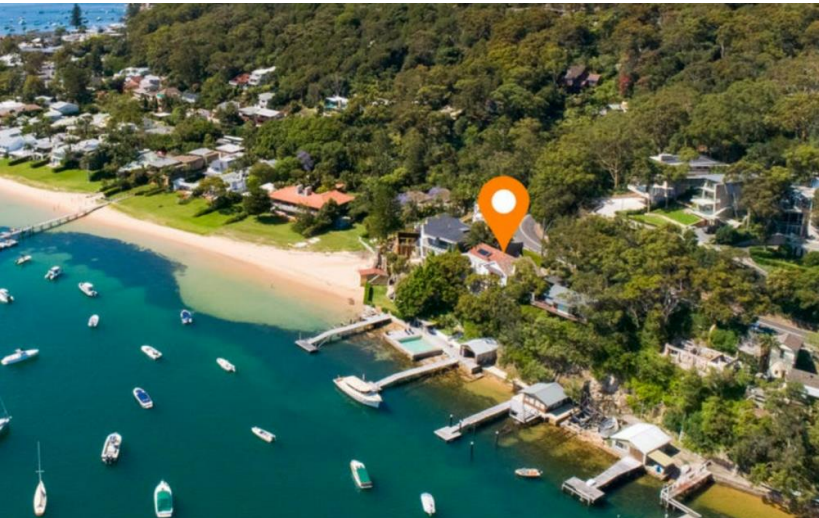
Clause 4.6 Variation Request – Height of Buildings

OBJECTIVE	DISCUSSION
	<i>Tracker)</i> 999 Barrenjoey Road, Palm Beach (DA 2018/1644, 28 May 2019) – Consented development 10.7 metres in height.  <i>Figure 8: Extract of 999 Barrenjoey Road (source: Northern Beaches DA Tracker)</i> 980 Barrenjoey Road, Palm Beach (DA No. N0321/09, 09 June 2010) – Consented height approximately 9.5m using “Betar” interpretation (from natural ground levels as extrapolated). Using <i>Merman Investments Pty Ltd v Woollahra Municipal Council</i> [2021] NSWLEC 1582 the RLs of the section plan (Figure 9 below) demonstrate that the maximum height is approximately 12.5 metres; higher than that of the proposed development.  <i>Figure 9: Extract of section plan of 980 Barrenjoey Road (source: Northern Beaches DA Tracker)</i>

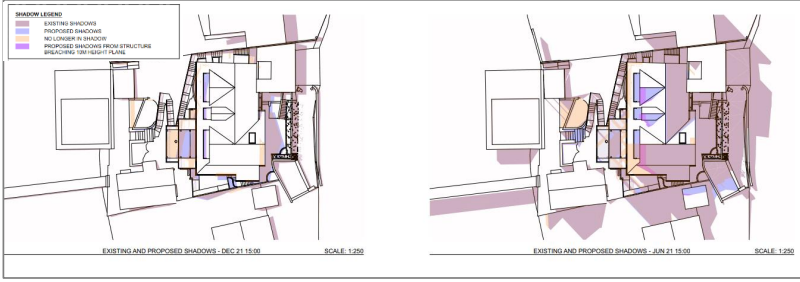
Clause 4.6 Variation Request – Height of Buildings

OBJECTIVE	DISCUSSION
	978 Barrenjoey Road, Palm Beach (App No. N0264/06/S96/4, 29 November 2019) – Consented height utilised “Bettar” interpretation (from natural ground levels as extrapolated). Using <i>Merman Investments Pty Ltd v Woollahra Municipal Council</i> [2021] NSWLEC 1582 the RLs of the section plan (below) demonstrate that the maximum height is approximately 12.8 metres; higher than that of the proposed development.  Figure 10: Extract of section plan of 978 Barrenjoey Road (source: Northern Beaches DA Tracker) The proposed contravention is the result of the steep slope of the land and taking into account the existing excavated floor levels in accordance with <i>Merman Investments</i>. The variation to the development standard is greatest where there the site slopes and existing excavation is even greater, further towards the western boundary. The proposed built form has been designed with thorough consideration of the site's natural topography which has resulted in a variation to the 8.5 metre (and 10 metre) height of buildings development standard. The contravention numerically represents a 45% variation of the standard, notwithstanding, the exceedance is minor having regard to the steep slope of the land (in excess 30 degrees) with consideration of the existing dwelling house onsite and development within the immediate vicinity of the site as identified above. As such, despite the proposed variation to the development standard, the building is consistent with the desired future character. Objective (a) is achieved.
(b) to ensure that buildings are compatible with the height and scale of surrounding and	The proposed development is compatible with the height and scale of the surrounding nearby development as clearly demonstrated in (a) above. The surrounding development within the immediate and broad locality is characterised by large detached residential dwellings located along Barrenjoey Road orientated west maximising water views and access. Notwithstanding the proposed contravention, the proposal achieves this objective by:

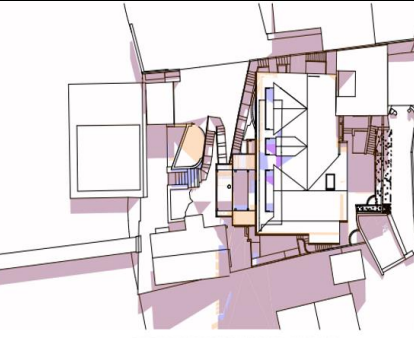
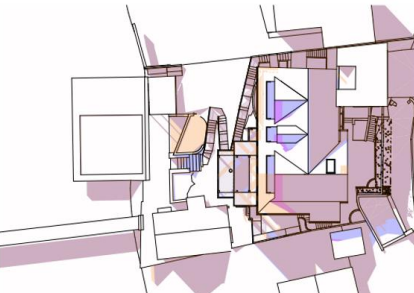
Clause 4.6 Variation Request – Height of Buildings

OBJECTIVE	DISCUSSION
<i>nearby development</i>	• Maintaining the mass of the development within the footprint of the existing dwelling on the subject site, • Providing a suitable balance between built form and landscaping, ensuring the built form sits comfortably within the natural bushland setting and protecting all established trees onsite, • Ensuring privacy, solar access and view sharing principals are maintained, and • Proposing materials which are earthy and sympathetic of the locality. As shown in Figure 11 below, the scale of the existing dwelling is compatible with those dwellings in the locality and notably on the western (water) side of Barrenjoey Road. The proposed contravention is visible from the western elevation and is isolated to attic roof structures and balustrades. The proposal, as it contravenes the standard, is consistent with the scale of surrounding and nearby development within the immediate locality.  Figure 11: Extract of aerial image (Source: Realestate.com.) Objective (b) is achieved.
<i>(c) to minimise any overshadowing of neighbouring properties</i>	The proposal minimises overshadowing impacts to neighbouring properties as the area of the proposed built form that exceeds the development standard is located centrally within the middle of the subject site. Further to this key consideration, the development has been designed to utilise the footprint of the existing dwelling house, accordingly the additional shadow that results from the proposed height variation is minor. To clearly outline this important point, detailed shadow diagrams have been prepared by Alexander and Co. Extracts

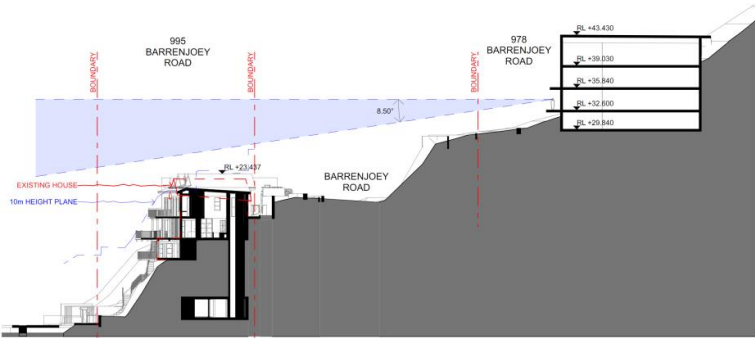
Clause 4.6 Variation Request – Height of Buildings

OBJECTIVE	DISCUSSION
	of the shadow diagrams are provided in Figure 12 to Figure 14.  Figure 12: Proposed shadow cast 9am (Source: Alexander & Co.)  Figure 13: Proposed shadow cast 12pm (noon) (Source: Alexander & Co.)  Figure 14: Proposed shadow cast 3pm (Source: Alexander & Co.) Due to the orientation of the site, the largest shadows occur in the morning. The quality of solar access increases throughout the day to provide adequate solar access to the proposed development as well as the adjoining properties, particularly 993 Barrenjoey Road. Overall, it is clear that the proposed height variation does not cause adverse shadow impacts.

Clause 4.6 Variation Request – Height of Buildings

OBJECTIVE	DISCUSSION
	 EXISTING AND PROPOSED SHADOWS - JUN 21 09:00 SCALE: 1:250 June 21, 09:00 – No impact to site or neighbouring properties as a consequence of the height variation. In some areas (identified in orange) the solar outcome is improved as a result of the proposal and proposed height variation.
	 EXISTING AND PROPOSED SHADOWS - JUN 21 12:00 SCALE: 1:250 June 21, 12:00 – No impact to site or neighbouring properties as a consequence of the height variation. In some areas (identified in orange) the solar outcome is improved as a result of the proposal and proposed height variation.
Objective (c) is achieved.	 EXISTING AND PROPOSED SHADOWS - JUN 21 15:00 SCALE: 1:250 June 21, 15:00 – Minor additional impact as a consequence of the height variation where the proposed shadow (light purple) is cast over a structure on the adjoining site to the south? at 993 Barrenjoey Road. This structure has been confirmed to be a non-habitable garage. Accordingly, the shadow resulting from the proposed height variation does not impact the neighbouring areas of private open space (POS) or living room windows.

Clause 4.6 Variation Request – Height of Buildings

OBJECTIVE	DISCUSSION
(d) to allow for the reasonable sharing of views	The proposed development has been designed with thorough consideration of the key view sharing principles established within <i>Tenacity Consulting v Waringah</i> [2004] NSWLEC 140. Notwithstanding the contravention of the development standard, the proposed development does not result in view loss to neighbouring development on the opposite side of Barrenjoey Road. In order to clearly demonstrate this point, a long section has been prepared by Alexander & Co. which clearly identifies that the existing built form at 978 Barrenjoey Road maintains unobstructed view.  Figure 15: Extract of long section (source: Alexander & Co.) The roof structures and balustrades which contravene the standard are situated on the western elevation of the building and mostly centrally locality. In maintaining the existing setbacks and the centralised nature of the variations, no view impacts arise for the properties immediately joining to the site to the north (997) and south (993). Specifically, the removal of the existing height variation, which protrudes further to the west towards the water allows for any views north and south to be improved. Notwithstanding the non-compliance the proposed variation and the proposal as a whole does not cause view loss to the surrounding properties, nor along Barrenjoey Road.
(e) to encourage buildings that are designed to respond sensitively to the natural topography	As detailed in this request, the site is situated on a steep slope (30 degrees). The proposed alterations and additions, except those which contravene the standard, are contained within the existing building envelope. The natural topography is therefore mostly retained. The proposed tunnel involves excavation; however, this facilitates equitable access to the foreshore and does not result in the proposed contravention to the standard. Having regard to the proposed variation the alterations and additions to the existing dwelling respond to the existing natural topography and the proposed variation results from steep slope and calculating the height of building having regard to the existing excavation levels in accordance with the <i>Merman Investments</i> case law.
(f) to minimise	The site is not within a heritage conservation area (HCA), nor located within proximity to any



Clause 4.6 Variation Request – Height of Buildings

OBJECTIVE	DISCUSSION
<i>the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items</i>	items of heritage. The proposed height variation has no impact on the visual impact of the of the development from the natural environment.

As demonstrated, the objectives of the height of buildings development standard (in clause 4.3(1) of the PLEP) are achieved notwithstanding the proposed contravention.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the height development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, the other recognised ways are considered as follows.

- 5.2. Comparison underlying objective or purpose is not relevant to the development with the consequence that compliance is necessary

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

- 5.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

The objective would not be defeated or thwarted if compliance was required. This reason is not relied upon.

- 5.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary

The following variations to the clause 4.3 development standard have been approved within the last two (2) years.

Table 2: Clause 4.6 Variation Requests – Height of Buildings – Relevant Approvals

Application No.	Address	Category of Development	Development Standard Varied	Variation, Control & Approval
DA2020/1756	351-353 Barrenjoey	Mixed use	4.3 Height of	Variation: 37.6%



Clause 4.6 Variation Request – Height of Buildings

Application No.	Address	Category of Development	Development Standard Varied	Variation, Control & Approval
	Road, Newport		buildings	Control: 8.5m Proposal 11.7m
DA2021/1231	1A Florida Road, Palm Beach	Residential – alterations and additions	4.3 Height of buildings	Variation: 33.8% Control: 8.5m Proposal: 11.37m (existing dwelling doesn't comply with height control)
DA2020/1518	1173 Barrenjoey Road, Palm Beach	Residential – alterations and additions	4.3 Height of buildings	Variation: 38.25% Control: 4m Proposal: 5.53m
DA2020/1693	1094 Barrenjoey Road, Palm Beach	Residential - Alterations and additions	4.3 Height of buildings <i>(NB-height of existing building significantly exceeds the LEP control due to slope of site)</i>	Variation: 141.17% Control: 8.5m Proposal: 20.5m
DA2021/0268	346-352 Whale Beach Road, Palm Beach	Residential - Single new detached dwelling	4.3 Height of buildings <i>(NB – height exceedance due to topography/slope)</i>	Variation: 30.35% Control: 8.5m Proposal: 11.08m

Whilst it is not suggested that the control has not been abandoned, there is a pattern of variation seen within the immediate locality which further identifies that the variation and proposal as a whole is consistent with the existing and desired character of the area.

5.5. The zoning of land is unreasonable or inappropriate

The zoning of the land is reasonable and appropriate and therefore is not relied upon.

5.6. Other grounds

No other grounds are relied upon in this clause 4.6 Variation Request.

Clause 4.6 Variation Request – Height of Buildings

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

The environmental planning grounds to justify the contravention of the height of buildings development standard as set out in the preceding sections in detail. As discussed above, the non-compliant development does not result in any meaningful additional adverse environmental impact and instead provides a built form that achieves the desired future character for the area for the area and is consistent with the objectives of clause 4.3.

Additionally, the proposed development, notwithstanding the non-compliance with the height standard, better achieves important statutory goals. The superior outcome, in terms of statutory planning goals, combined with the absence of meaningful additional adverse environmental impacts are environmental planning grounds that justify the contravention.

The relevant environmental ground and the statutory planning goals achieved are as follows:

- The variation sought satisfies the objectives of the height development standard and the objectives of the zone.
- The site is steeply sloping in excess of 30 degrees. This steep slope results in the extent of the existing (2.5 metre) and proposed variation (3.9 metres) from the 8.5 metre standard. The development has designed mostly within the existing dwelling house envelope.
- While the proposed development results in some additional shadow at 3:00pm, the extent of the proposed shadow is minor with consideration of the existing dwelling house. The resultant shadow does appear on a detached structure on the adjoining property at 993 Barrenjoey Road. This structure is a non-habitable garage. Accordingly, the proposed variation minimises shadow impact to adjoining areas of POS or living room windows.
- The proposal, as it contravenes the standards, delivers a high quality design and amenity to the subject site and surrounding development. As demonstrated within this request, the proposed built form is sympathetic to the surrounding natural environment and allows for the provision of a well-designed dwelling consistent with the provisions of the PDCP.
- The contravention of the standard allows for a development which causes negligible no view loss for adjacent dwellings and the surrounding locality.

For completeness we note that the size of the variation (45%) is not in itself, a material consideration as to whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6: *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85].

Some examples that illustrate the wide range of commonplace numerical variation to development standards under clause 4.6 (as it appears in the Standard Instrument) are as follows:

- In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a floor space ratio variation of 187 per cent.



Clause 4.6 Variation Request – Height of Buildings

- In *Abrams v Council of the City of Sydney* [2019] NSWLEC 1583 the Court granted development consent for a four-storey mixed use development containing 11 residential apartments and a ground floor commercial tenancy with a floor space ratio exceedance of 75 per cent (2.63:1 compared to the permitted 1.5:1).
- In *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 the Court granted development consent to a six-storey shop top housing development with a floor space ratio exceedance of 42 per cent (3.54:1 compared to the permitted 2.5:1).
- In *Artazan Property Group Pty Ltd v Inner West Council* [2019] NSWLEC 1555 the Court granted development consent for a three storey building containing a hardware and building supplies use with a floor space ratio exceedance of 27 per cent (1.27:1 compared to the permitted 1.0:1).
- In *Stellar Hurstville Pty Ltd v Georges River Council* [2019] NSWLEC 1143 the Land and Environment Court granted development consent for 12-storey residential tower, on the basis of a clause 4.6 request, with a floor space ratio exceedance of 8.3 per cent.
- In *88 Bay Street Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1369 the Land and Environment Court granted development consent for a new dwelling house, swimming pool and landscaping at 6 Bayview Hill Road, Rose Bay with a height exceedance of 49 per cent (14.16m compared to the permitted 9.5m).

In short, clause 4.6 is a performance-based control so it is possible (and not uncommon) for large variations to be approved in the right circumstances.



Clause 4.6 Variation Request – Height of Buildings

7. PUBLIC INTEREST

In this section it is explained how 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. This is required by clause 4.6(4)(a)(ii) of the PLEP 2014.

In section 4 it was demonstrated that the proposed development achieves the objectives of the development standard notwithstanding the contravention of the development standard. Further to this, it is demonstrated in Table 3 below that the proposed development overall achieves the objectives of the C4 Environmental Living zone notwithstanding the variation of the development standard.

Table 3: Consistency with C4: Environmental Living zone objectives

Objectives of the C4 Environmental Living Zone	Discussion
<i>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i>	The proposal is a low impact residential development. The development involves alterations and additions to an existing dwelling house. The alterations and additions sit predominately within the existing building envelope, except minor projections of the roof for the attic and balcony which result in the proposed height variation. The proposed built form has been designed to be consistent with the existing and described character of the area. The proposal satisfies this objective.
<i>To ensure that residential development does not have an adverse effect on those values.</i>	As demonstrated above, within section 5.1 of this request, the proposal causes no view loss from the immediately adjacent properties of 993 Barrenjoey Road to the south and 997 Barrenjoey Road to the north, or 978 Barrenjoey Road on the eastern side of Barrenjoey Road. The proposal demonstrates thorough consideration of potential overshadowing impacts to neighbouring properties. While the proposed development results in some additional shadow at 3:00pm, the extent of the proposed shadow is minor with consideration of the existing dwelling house. The resultant shadow does appear on a detached structure on the adjoining property at 993 Barrenjoey Road, this structure is a non-habitable garage. Overall, the proposal appears to reduce the shadow impact as shown on the Solar Diagrams available within the Architectural Package prepared by Alexander & Co. Accordingly, the proposal does not result in additional shadow impact to adjoining areas of POS or living room windows. The proposed dwelling house is design to maintain privacy by maintaining existing dwelling house. Further to the above, the proposal retains the majority of the landscaping on the site. This demonstrates key consideration of the zone objectives during the design of the proposal to maintains the natural elements of the site. The proposal integrates into the surrounding locality through a sympathetically aesthetic design and provides a suitable development for the area.

Clause 4.6 Variation Request – Height of Buildings

Objectives of the C4 Environmental Living Zone	Discussion
	The site contains significant constraints regarding flora and fauna values, bushfire risk and geotechnical hazard risk. The proposed structure has been designed in a manner that respects these risks, and thereby contributes to the site values through providing a development which integrates the ecological, and aesthetic values of the site. Regarding flora and fauna, an Arborist Report has been prepared by Bluegum Tree Care and Consultancy, which identified that all trees are to be retained, one (1) tree, known as tree no.10, is proposed to be relocated within the site. A Bushfire Assessment Report has been prepared by Sydney Bushfire Consultants to inform the proposal and has provided nine recommendations that are achievable for the proposed development. The proposal is to carefully considers these recommendations and is therefore considered to embrace the bushfire sensitivity of the area. The proposal involves excavation to facilitate the proposed tunnel. In accordance with the recommendations provided within the Preliminary Assessment Report it is considered that the proposal will not adversely affect geotechnical processes or increase the level of risk for people, assets or infrastructure in the vicinity of the site. The proposal satisfies this objective.
<i>To provide for residential development of a low density and scale integrated with the landform and landscape.</i>	The development sits comfortably within the surrounding dwelling setting and is consistent with the height and scale of the surrounding development as demonstrated earlier in this request. The proposal is designed in a manner that utilises the footprint of the existing dwelling house to ensure the key elements of the locality, natural environment, and high-quality design is maintained. An extract of the indicative Waterfront Visual is provided in Figure 4 above. The development is designed in a manner that integrates all levels to encourage connectivity of the dwelling while incorporating luxurious opening to allow inclusion of the unique natural elements the site offers. The internal built from design demonstrates logical and innovative design to encourage solar access and passive ventilation. The proposal is consistent with this objective in that the low density and scale development sits sympathetically within the local context setting, as illustrated in the photomontage below. The proposal satisfies this objective.
<i>To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.</i>	The proposal retains and enhances the existing foreshore vegetation and wildlife corridors of the locality. Additionally, the proposal is designed with material features and tones that are reflective of the vegetation of the natural environment to further enhance the surrounding natural environment. The proposal satisfies this objective.

As demonstrated in Table 3 above, the proposal is consistent with the objectives of the zone and in Section 4.1 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(a)(ii), therefore, the proposal is in the public interest.



Clause 4.6 Variation Request – Height of Buildings

8. STATE OR REGIONAL ENVIRONMENTAL PLANNING AND ASSUMED CONCURRENCE

This section considers whether the contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of State or regional significance that would result as a consequence of contravening the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

The Secretary (of Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 20–002 'Variations to development standards', dated 5 May 2020. This circular is a notice under section 55(1) of the Environmental Planning and Assessment Regulation 2021.

A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given. The circular provides for assumed concurrence.

The Secretary can be assumed to have given concurrence to the variation, provided that the determination is not made by a delegate of the Council. (It should be noted that a panel and the Land and Environment Court are not delegates of the Council).

Clause 4.6 Variation Request – Height of Buildings

9. CONCLUSION

This submission requests a variation, under clause 4.6 of the PLEP, to the height of buildings development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case;
- The development achieves the objectives of the development standard and is consistent with the objectives of the C4 zone; and
- There are sufficient environmental planning grounds to justify the contravention.

It is appropriate to provide a degree of flexibility in the circumstance, as the proposed contravention to the height standard will achieve a better planning outcome by:

- Creating a high-quality built form design that:
 - Responds to the existing conditions of the dwelling house,
 - Responds to the existing conditions of the subject site and natural topography,
 - Responds to the steep slope of the site in excess of 30 degrees,
 - Is designed to ensure the built form mass is appropriately distributed across the site,
 - Is designed with consideration of the character of the locality,
 - Does not result in view loss,
 - Does not overshadow any area of principal open space (POS) or living room area,
 - Is materially sympathetic comprising earthy tones, and
 - Demonstrates thorough consideration of the adjoining development.
- Facilitating development that is consistent with the existing and future character of the locality,
- Maintains reasonable view sharing and minimises overshadowing impact onto adjoining properties.

The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of C4: Environmental Living zone notwithstanding non-compliance with the height of buildings development standard and is therefore in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 20-002.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.

ITEM 3.3

**DA2022/2101 - 4 & 6 FAIRLIGHT STREET MANLY -
ALTERATIONS AND ADDITIONS TO SEMI-DETACHED
DWELLINGS, INCLUDING A FIRST FLOOR ADDITION TO NO.
6 FAIRLIGHT STREET AND ASSOCIATED WORKS**

REPORTING MANAGER

Adam Richardson

TRIM FILE REF

2023/260419

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/2101 for alterations and additions to semi-detached dwellings, including a first floor addition to No. 6 Fairlight Street and associated works on land at Lot 1 & Lot 2 DP 701403, 4 & 6 Fairlight Street MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2101
Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 2 DP 701403, 4 Fairlight Street MANLY NSW 2095 Lot 1 DP 701403, 6 Fairlight Street MANLY NSW 2095
Proposed Development:	Alterations and additions to semi-detached dwellings, including a first floor addition to No. 6 Fairlight Street and associated works
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Cathie Forster
Applicant:	Cape Cod Australia Pty Ltd
Application Lodged:	08/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	15/12/2022 to 20/01/2023
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 356,269.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing semi-detached dwelling. Specifically, the proposal is for a first floor addition.

The application is referred to the Development Determination Panel (DDP) due to receiving more than five submissions in objection to the application.

Concerns raised in the objections predominantly relate to view loss, privacy and sunlight access.

Critical assessment issues included sunlight access, privacy, view loss and setbacks. Additional

information was requested from the applicant in relation to maintenance of views and sunlight access. The applicant provided amended plans shifting the first floor addition to the rear of the site to retain views for surrounding properties. The applicant also provided hourly elevational shadow diagrams demonstrating compliance with the requirements for sunlight access.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of alterations and additions to an existing semi-detached dwelling. Specifically, the works include a first floor addition to No. 6 Fairlight Street and associated works. The works also include the extension of the adjoining chimney at No. 4 Fairlight Street.

Application History

A Request for Further Information (RFI) letter was sent to the applicant on 16 February 2023 requesting additional information in relation to view loss and sunlight access. Amended plans were requested to set the first floor further back to the rear in order to retain views and a view sharing assessment was requested. Hourly elevational shadow diagrams were also requested demonstrating compliance with the control.

Amended plans and a view analysis assessment were received on 17 March 2023. As the amendments resulted in a lesser environmental impact, the application was not required to be re-notified in accordance with 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

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

SITE DESCRIPTION

Property Description:	Lot 2 DP 701403 , 4 Fairlight Street MANLY NSW 2095 Lot 1 DP 701403 , 6 Fairlight Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Fairlight Street. The lot is regular in shape and has a surveyed area of 221.8m². The site slopes down from the western side boundary towards the eastern side boundary. The site is currently occupied by a single storey semi-detached dwelling that adjoins No. 4 Fairlight Street. The surrounding development consists of residential flat buildings and multi dwellings.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <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 views and solar access. <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. <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. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

Section 4.15 Matters for Consideration	Comments
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered un/suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/12/2022 to 20/01/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr George Yuri Opadchy	2 / 2 Roseberry Street BALGOWLAH NSW 2093
Mr Mark Anthony Elliott Ms Victoria McKenna	2 / 6 B Fairlight Street MANLY NSW 2095
Mr Saul Ivor Baker	1 / 6 B Fairlight Street MANLY NSW 2095
Mr David Grant Nash Mrs Marlene Grace Nash	5 / 4 George Street MANLY NSW 2095
Ms Sandra Lee Brewis-Weston	4 / 4 George Street MANLY NSW 2095
Ms Kelly Louise Grace Dee	4 / 6 B Fairlight Street MANLY NSW 2095

The following issues were raised in the submissions:

- Privacy
- Views
- Sunlight Access
- Aesthetics

- Roof Height
- Property Value

The above issues are addressed as follows:

- **Privacy**

The submissions raised concerns that the proposed development will cause privacy impacts for the occupants of the units in No. 6B Fairlight Street. Specifically units 1, 3 and 5 face the western boundary of the subject site whereby the proposed windows will provide opportunities for overlooking into the windows of these units. Additionally, No. 6B Fairlight Street has a common courtyard which is the only private open space provided for the occupants of the building. Concern is raised that the proposed development will cause privacy impacts with the courtyard being overlooked by the first floor addition.

Comment:

Amended plans have been received which alter the location of the first floor addition so it is setback further to the rear of the site. As such, the locations of the new windows W2 and W3 are moved to the rear of the site and are now not aligned with the windows of the units in 6B Fairlight Street or the common courtyard. A detailed assessment is provided under 3.4.2 Privacy and Security of this report.

- **Views**

The submissions raised concerns that the proposed development will impact on the views enjoyed by No. 4/4 and 5/5 George Street and No. 3/6B and 5/6B Fairlight Street.

Comment:

The proposal has been amended to set the first floor addition further to the rear of the site to improve view sharing and mitigate the impact of the proposal. A detailed view loss assessment is provided under 3.4.2 Maintenance of Views of this report.

- **Sunlight Access**

The submissions raised concerns that the proposed development will result in additional overshadowing to the units of No. 6B Fairlight Street and also the common courtyard. Additionally, overshadowing from the proposed development could also cause issues of dampness.

Comment:

Amended plans and updated shadow information has been provided including hourly elevational shadow diagrams. The diagrams show an increase in overshadowing of the common courtyard at 9am which is significantly reduced by 10am, and fully eliminated by 11am whereafter the area is in sunlight. The proposal complies with the requirements for solar access and a detailed assessment is provided under 3.4.1 Sunlight Access and Overshadowing of this report.

- **Aesthetics**

The submissions raised concerns that the proposed material for the addition is not in keeping

with the surrounding area and results in an unsightly exterior. The submissions state that the site is at the entrance to Manly Cove and the building design does not appear to be compatible with the character of Manly and other buildings.

Comment:

The proposal consists of a modest first floor addition to an existing semi-detached dwelling resulting in a two storey dwelling. The surrounding development comprises predominantly three storey residential flat buildings. As such, the resultant built form is not considered to be visually obtrusive when compared with the context of surrounding development. The proposed colours and finishes complement that of the existing dwelling and are considered acceptable.

- **Roof Height**

The submissions raised concerns that the plan is not specific in relation to roof height and label the roof as approx. 1.3 metres. The submission is concerned that the roof height needs to be specific so that the roof does not extend higher than the height shown on the plans.

Comment:

The plans indicate the maximum RL of the ridge as 28.970 AHD and the roof will be built to this.

- **Property Value**

The submissions raised concerns that the impacts to views, sunlight access and privacy will reduce the value of the affected properties.

Comment:

NSW Land & Environment Court (LEC) has commonly had to approach issues regarding property value impacts as a matter that cannot be appropriately validated as a relevant planning consideration in terms of a local development in environmental impact assessment. (This is separate to the use of the Court pursuant to appropriate Class 3 proceedings under the Valuation of Land Act and whereby the NSW Valuer-General may address certain claims / valuation methods). Therefore, this issue is not a valid planning consideration for Council under the EP&A Act 1979. Additionally, the impacts to views, sunlight access and privacy have been assessed and considered acceptable.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council

Policies have been considered in the merit assessment of this application.

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A475076_02 dated 14 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 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	7.9m	N/A	Yes
Floor Space Ratio	FSR: 0.75:1 (166.35m ²)	FSR: 0.72:1 (160.4m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 221.8m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	N/A	Yes
	Dwelling Size: 150sqm	221.8sqm	N/A	Yes
4.1.2.1 Wall Height	N: 9m (based on gradient 0)	6.0m	N/A	Yes
	S: 10m (based on gradient 1:6.5)	7.1m	N/A	Yes
	E: 9.6m (based on gradient 1:10)	7.4m	N/A	Yes
	W: 9m (based on gradient 0)	6.1m	N/A	Yes
4.1.2.2 Number of Storeys	3	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.3m	N/A	Yes

	Pitch: maximum 35 degrees	24 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Existing Ground Floor: 2.9m First Floor: 11.6m	51.7% N/A	No Change Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: 2.0m (based on wall height)	1.7m-3.0m	15%	No
	Windows: 3m	3.0m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	Existing Ground Floor: 5.5m First Floor: 5.5m	31.3% 31.3%	No Change No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2	Open space 50% of site area	17.8% (39.5m ²)	64.4%	No Change
	Open space above ground 25% of total open space	0%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 30% of open space	33.9% (13.4m ²)	N/A	Yes
	1 native tree	No Change	N/A	No Change
4.1.5.3 Private Open Space	18sqm	>18sqm	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	N/A	No Change

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	No	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

3.4.1.1 Overshadowing Adjoining Open Space

This clause stipulates that development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice. The applicant has provided hourly elevational shadow diagrams demonstrating compliance with this control. Evidently, the proposed development results in an increase in shadowing to the common courtyard at 9am, which is significantly decreased by 10am and completely eliminated by 11am. Sunlight access from 11am to 3pm remains unaffected by the proposed development. As such, the proposal does not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice.

3.1.4.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

This clause stipulates that for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice. The following units No. 1/6B, 3/6B and 5/6B of 6B Fairlight Street have windows that face the western boundary of the subject site. It is noted that in each unit there are 3 windows which are to bedrooms not living rooms. Notwithstanding this, the proposal maintains the existing level of solar access for more than 4 hours to these windows.

3.4.2 Privacy and Security

Concerns have been raised in the submissions regarding the privacy impacts of the proposed development on the occupants of the units in No. 6B Fairlight Street. Specifically, the windows of units 1, 3 and 5 that face the western boundary of the subject site and the common courtyard which is the only private open space available for the occupants of the building.

A detailed assessment of the proposed development against the underlying Objectives of the Control is provided as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

Amended plans have been received which alter the location of the first floor addition so it is setback further to the rear of the site. As such, the locations of the new windows W2 and W3 are moved further to the rear of the site and are not aligned with the windows of the units in 6B Fairlight Street and the common courtyard area. This limits opportunities for direct viewing between windows and outdoor living areas of adjacent buildings. It is also noted that windows W2 and W3 comply with the 3.0 metres setback requirement for windows providing sufficient spatial separation to mitigate privacy impacts. Therefore, it is considered that the proposal has been appropriately designed for privacy and mitigating direct viewing between windows and outdoor living areas of adjacent buildings.

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

Comment:

The proposal has been amended so as to improve view sharing, sunlight access and privacy for adjoining properties. It is considered that privacy is maintained without compromising access to light, air and views.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal maintains a reasonable level of casual surveillance to provide neighbourhood security.

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

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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

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

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

Comment:

The views affected include partial water views of Manly Wharf and Manly Harbour from 3/6B and 5/6B Fairlight Street and 4/4 and 5/4 George Street.



Figure 1 - View obtained from bedroom of 3/6B Fairlight Street



Figure 2 - View obtained from bedroom of 5/6B Fairlight Street



Figure 3 - View obtained from living room of 4/4 George Street



Figure 4 - View obtained from living room of 5/4 George Street Manly

Note: The photos used are indicative representations of the actual view , as the camera lenses magnifies items closer and makes some items seem further away smaller.

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

Comment:

The views obtained from 3/6B and 5/6B Fairlight Street are over a side boundary from bedrooms in both sitting and standing positions. The views obtained from 4/4 and 5/4 George Street are over a rear

boundary from sunroom/living room/dining room from both sitting and standing positions. The property 4/4 George Street also obtains standing views from the master bedroom.

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

Comment:

The amended plans have been received to reduce the extent of the impact on views by setting the first floor addition back further to the rear of the subject site. As the views are obtained over the front of the subject site from surrounding properties, these amendment allows the existing partial water views to be retained. The amended application has been supported by a view loss analysis plan demonstrating that the proposal retains all existing views as seen in Figure 5 below. The view loss is therefore considered negligible.



Figure 5 - Existing view and proposed view obtained from 4/4 George Street

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

Comment:

The proposal is considered reasonable given that it presents a modest first floor addition to an existing semi-detached dwelling. The proposed development complies with the height and floor space ratio requirements, whereby view impacts have not arisen as a result of a non-compliance. The assessment found that a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. As such, amended plans were requested and subsequently received which shifted the location of the first floor addition to the rear of the site to improve view sharing. The resultant proposal is considered acceptable and the view sharing is reasonable.

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

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

Description of non-compliance

Clause 4.1.4.2 stipulates that setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. For the proposed development, the western side setback is required to be 2.0 metres for a wall height of 6.1 metres. The proposed first floor is setback 1.7 metres - 3.0 metres and is partly non-compliant with this control.

Clause 4.1.4.4 requires development to be setback 8.0 metres from the rear boundary. The proposed first floor is setback 5.5 metres from the rear boundary and does not comply with the control. It is noted that the existing ground floor is setback 5.5 metres from the rear boundary and this setback is retained.

Amended plans were requested to setback the first floor further to the rear in order to retain views over the front of the subject site from adjoining properties.

Merit consideration:

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

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

Comment:

The proposed development is sited at the rear of the subject site and is not immediately visible from the street. The pitched roof from of the existing dwelling is maintained and the proposed first floor incorporates a pitched roof which is consistent with the appearance of the existing dwelling.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views*

and vistas from private and public spaces.

- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed development provides a reasonable level of privacy through maintaining sufficient spatial separation and incorporating appropriate window design. The proposal maintains equitable access to light sunshine and air movement and complies with the requirements for sunlight access as demonstrated in the submitted shadow diagrams. The proposal has been amended to facilitate view sharing for surrounding properties providing adequate space between buildings to maintain view corridors over the front of the subject site. The proposal largely retains the appearance of the existing dwelling when viewed from the streetscape and will be in keeping with the existing character. There is a somewhat irregular rhythm and pattern of spaces as the surrounding vicinity contains a mix of residential flat buildings, multi-dwellings and low density residential dwellings whereby, the proposed development will not disrupt the existing streetscape. Lastly, the proposal will not impact on the existing traffic conditions.

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

Comment:

Flexibility is warranted regarding the siting of the first floor addition at the rear of the site which results as a request to retain views for surrounding properties. Given the proposal retains the rear setback of the existing ground floor, it is not considered to result in unreasonable impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal does not alter the existing planting and landscaping across the site and no vegetation is proposed to be removed. The existing natural features of the site will be retained.

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

Comment:

The subject site is not located within a bushfire prone area.

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

in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within residential open space area 2 requiring 50% (110.9m²) of the site area to be total open space and 30% (33.3m²) of that to be landscaped area.

The site currently provides 17.8% (39.5m²) total open space which does not comply with the control. Of this, 33.9% (13.4m²) is landscaped area. No changes are proposed to the existing open space and landscaped area and these calculations remain unchanged.

Merit consideration:

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

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

Comment:

The proposal retains all existing landscaping and vegetation across the site.

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

Comment:

The proposed first floor addition is sited above the existing ground floor and does not alter the existing landscaped areas and open space at ground level. There is limited opportunity for new plantings on the site due to the footprint of the existing dwelling, however all existing vegetation is to be retained.

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

Comment:

As discussed elsewhere in this report, the proposal maintains reasonable sunlight access, privacy and views for surrounding properties. The proposed development is not considered to give rise to adverse amenity impacts on the site, streetscape and surrounding area.

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

Comment:

Sufficient soft surface is provided throughout the site to provide adequate water infiltration.

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

Comment:

The proposal is not likely to cause the spread of weeds and degradation of private and public open space. The proposed development has been amended to be sympathetic to the views obtained of public open spaces.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The site is located within a high density residential area, whereby the proposed development is not considered to impact wildlife habitat and wildlife corridors.

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

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

This clause requires dwelling houses and semi-detached dwellings to provide two (2) off-street parking spaces. The site currently provides no off-street parking facilities and the proposal does not change the existing parking conditions. The existing site conditions do not allow for any parking to be provided on the site and compliance with the control is not possible in this instance. On-street parking is available in the surrounding vicinity and the site is also well-located with regards to transport connections.

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 \$3,563 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$356,269.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;

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

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to an existing semi-detached dwelling has been referred to the Development Determination Panel (DDP) due to receiving more than five objections.

The concerns raised in the objections have been addressed and resolved by amended plans shifting the location of the first floor addition to the rear of the site to obtain views over the front of the site. The applicant provided a detailed view loss analysis demonstrating reasonable view sharing. The applicant also provided hourly elevational shadow diagrams demonstrating compliance with the requirements for sunlight access.

The critical assessment issues included sunlight access, privacy, view loss and setbacks.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/2101 for Alterations and additions to semi-detached dwellings, including a first floor addition to No. 6 Fairlight Street and associated works on land at Lot 2 DP 701403, 4 Fairlight Street, MANLY, Lot 1 DP 701403, 6 Fairlight Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Page 2 Issue E - Site Plan	24 February 2023	Cape Cod Australia
Page 3 Issue E - Proposed Ground Floor Plan	24 February 2023	Cape Cod Australia
Page 4 Issues E - Proposed First Floor	24 February 2023	Cape Cod Australia
Page 5 Issue E - South and West Elevation	24 February 2023	Cape Cod Australia
Page 6 Issue E - North and East Elevation	24 February 2023	Cape Cod Australia
Page 7 Issue E - Section AA and Section BB	24 February 2023	Cape Cod Australia

Engineering Plans		
Drawing No.	Dated	Prepared By
Proposed Additions to Residence at 6 Fairlight Street, Manly	13 September 2022	Kneebone & Beretta Consulting Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A475076_02	14 March 2023	Cape Cod Australia

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 Report	Undated	Cape Cod Australia

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
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(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 \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that

occurs on Council's property.

- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerage areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$3,562.69 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 \$356,269.00.

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 \$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 Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

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

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

Reason: To ensure satisfactory management of stormwater.

8. 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.

9. 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.

10. **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. Light colours such as off white, cream, silver or light grey colours are 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.

11. **Sydney Water "Tap In"**

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

12. **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.

13. **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.

14. **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.

15. **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.

16. **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**

17. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

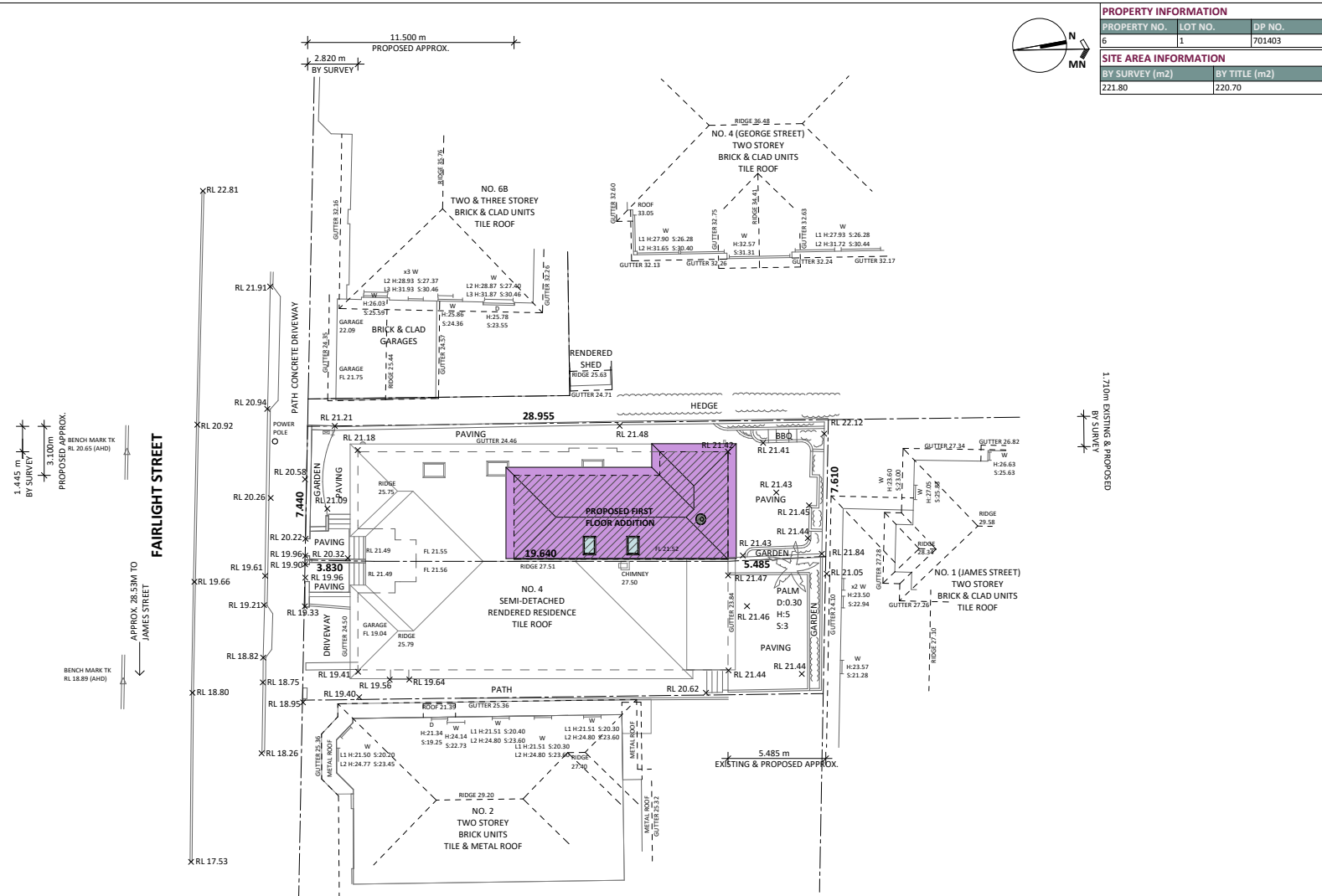
The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document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

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

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

Reason: To ensure satisfactory management of stormwater.

SITE PLAN



PROPOSED ADDITION FOR:
8205 DR C FORSTER, 6 FAIRLIGHT STREET, MANLY NSW 2095

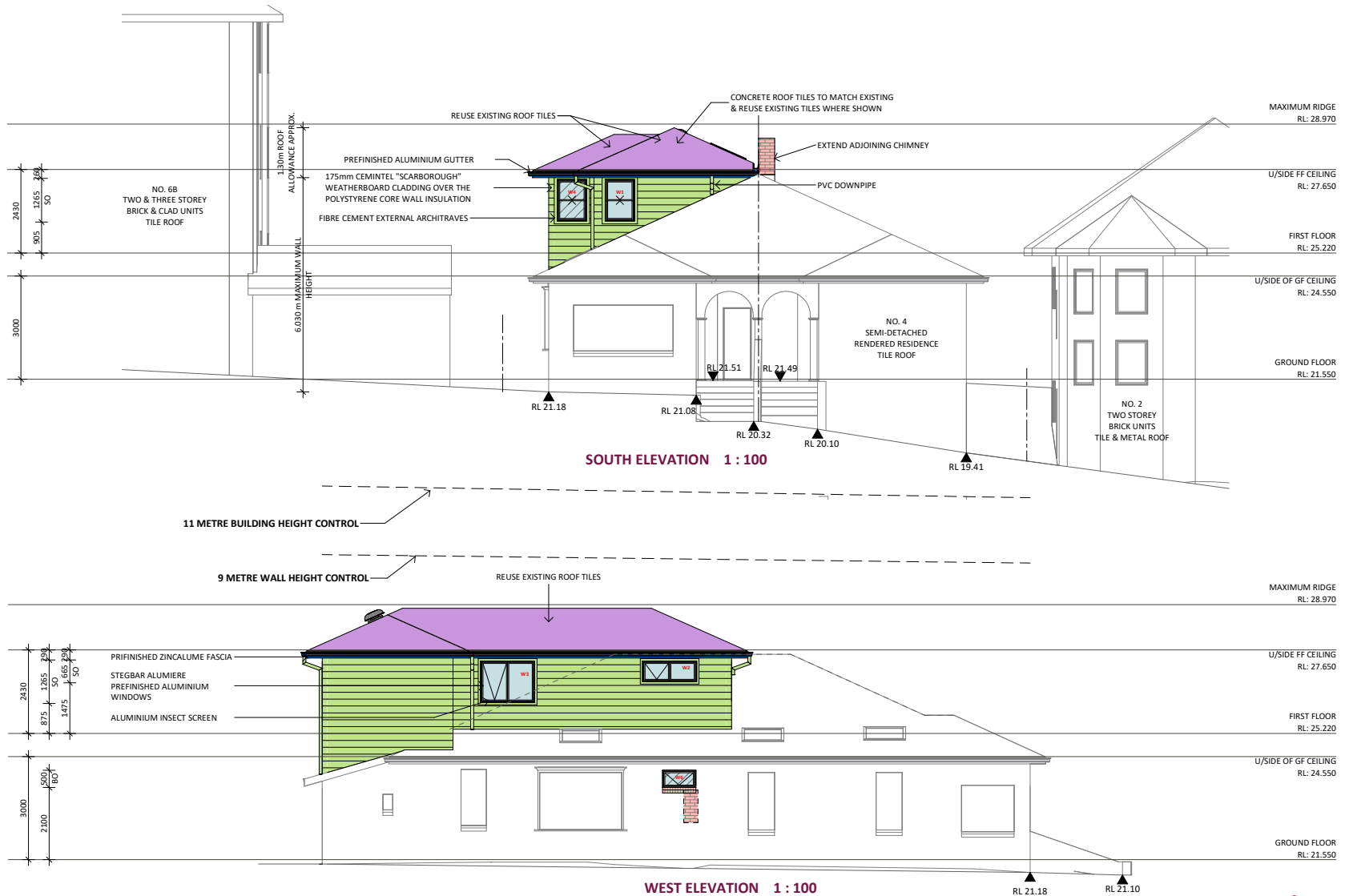
SITE PLAN 1:200

WORKING PLANS PAGE 2 OF 10 ISSUE E
REVIT VERSION V016

Cape Cod
AUSTRALIA

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ELEVATIONS



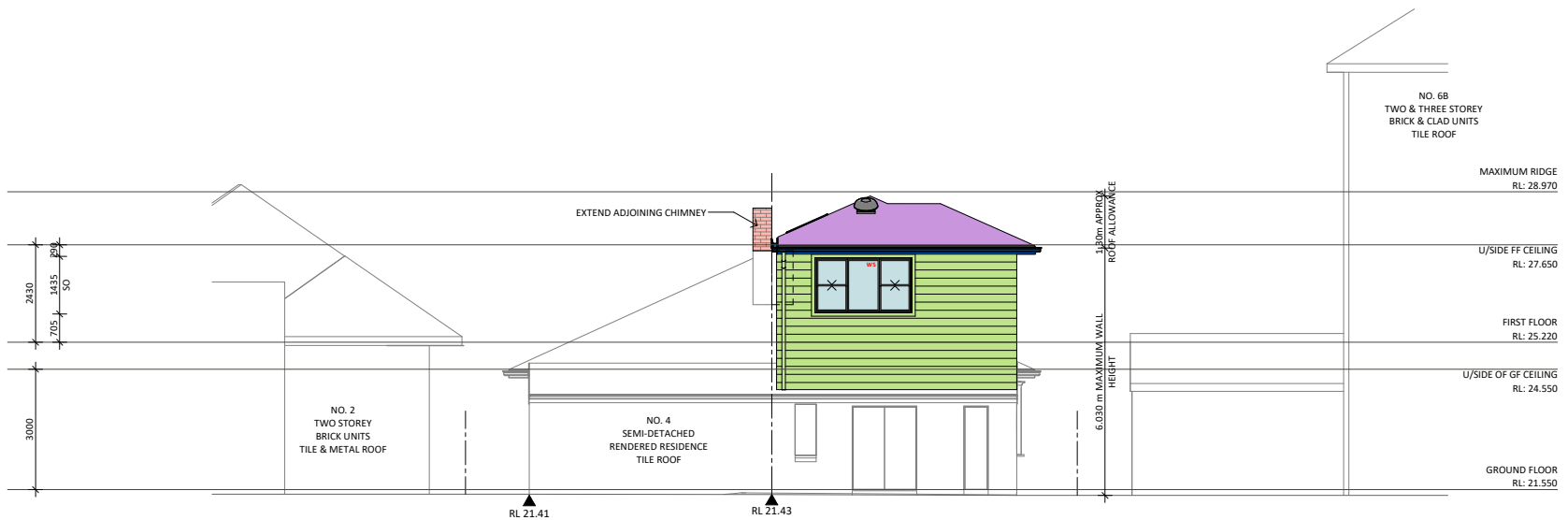
PROPOSED ADDITION FOR:
8205 DR C FORSTER. 6 FAIRLIGHT STREET, MANLY NSW 2095

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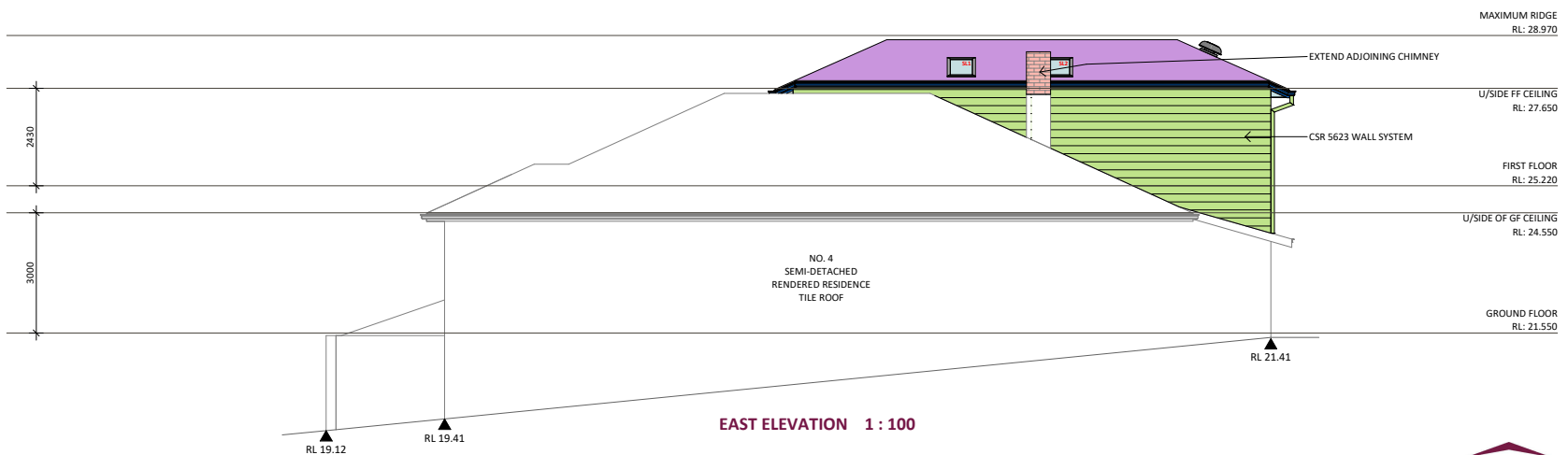
WORKING PLANS PAGE 5 OF 10 ISSUE E
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ELEVATIONS



NORTH ELEVATION 1 : 100



EAST ELEVATION 1 : 100

PROPOSED ADDITION FOR:
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WORKING PLANS PAGE 6 OF 10 ISSUE E
REVIT VERSION V016

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ITEM 3.4	DA2022/1784 - 35 FISHER STREET BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL AND CARPORT
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/260465
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/1784 for alterations and additions to a dwelling house including a swimming pool and carport on land at Lot 1 DP 597826, 35 Fisher Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1784
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 597826, 35 Fisher Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool and carport
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Craig Alexander Horlin Lisa Susan Street
Applicant:	Peter Downes
Application Lodged:	16/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	22/11/2022 to 06/12/2022
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 14.1%
Recommendation:	Approval
Estimated Cost of Works:	\$ 930,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a departure from the height of buildings development standard by more than 10%. The maximum height of the proposed development has been measured at 9.7m, which represents a variation of 14.1% to the prescribed 8.5m building height limit.

The clause 4.6 request for the non-compliance with height standard arises from the sloping nature of the site

towards the northeastern boundary and the existing excavation beneath the dwelling.

The application was notified in accordance with Council's Community Participation Plan to the adjoining and opposite properties. Four (4) submissions were received raising several issues, including building height, wall height, setbacks, privacy, solar access, view loss, landscaping and the building height covenant on title.

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the prevailing built form of the locality and will not cause unreasonable impact to the amenity of adjacent properties, including solar access, privacy and view sharing. The proposed additions retain the low density residential character, while being built primarily upon the existing footprint and not resulting in the removal of any significant vegetation or require significant alteration to the landform.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling, including construction of a first floor addition, swimming pool and detached double carport with associated landscaping, earthworks and retaining walls.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 1.9A Suspension of covenants, agreements and instruments
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 1 DP 597826 , 35 Fisher Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southwestern side of Fisher Street. The site is regular in shape with a frontage of 14.225m along Fisher Street and a depth of 47.635m. The site has a surveyed area of 677.3m². The site is located within the R2 Low Density Residential zone and accommodates a two-storey residential dwelling. The site falls approx. 13m from the southwest towards the northeast. The site contains landscaped areas at the front and rear of the dwelling with grass and gardens. The street verge is heavily vegetated with a steep embankment falling to the street. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuilding.

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:

Pre-lodgement Meeting **PLM2022/0098** was held on 14/06/2022 for Alterations and additions to a dwelling house and a carport. The outcome of the meeting recommended the proposal be amended to reduce the bulk and scale of the dwelling, including lowering the building height and reducing floor space area.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the

Section 4.15 Matters for Consideration	Comments
	submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <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. <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. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would

Section 4.15 Matters for Consideration	Comments
	justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/11/2022 to 06/12/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Lynton Carl Stevenson Bill Tulloch	37 Fisher Street BALGOWLAH HEIGHTS NSW 2093
Mr David John Holihan Mrs Melissa Katie Holihan	29 Fisher Street BALGOWLAH HEIGHTS NSW 2093
Mrs Faye Lorraine McConachie	23 Fisher Street BALGOWLAH HEIGHTS NSW 2093
Boston Blyth Fleming Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085

The following issues were raised in the submissions:

- Building height
- Building setbacks
- Wall height and number of storeys
- Privacy
- View loss
- Streetscape impact
- Stormwater
- Title height covenant
- Impact upon shared driveway

The above issues are addressed as follows:

- **Building height**

The submissions raised concerns that the proposed development exceeds the maximum permitted building height and causes unreasonable impact upon adjacent properties.

Comment:

The proposed development is not considered to cause unreasonable impact upon adjacent properties or the streetscape as a result of the non-compliant building height. A detailed assessment of the proposed building height and its impact upon adjacent properties is included below under clause 4.6 of MLEP 2013.

- **Building setbacks**

The submissions raised concerns that the proposed setbacks of the proposed development cause unreasonable impact upon adjacent properties.

Comment:

The proposed development is not considered to cause unreasonable impact upon adjacent properties or the streetscape as a result of the non-compliant building setbacks. A detailed assessment of the proposed building setbacks and its impact upon adjacent properties is included below under Part 4.1.4 of MDCP.

- **Wall height and number of storeys**

The submissions raised concerns that the proposed development does not comply with the maximum permitted wall height and number of storey control requirements.

Comment:

The proposed development is not considered to cause unreasonable impact upon adjacent properties or the streetscape as a result of the non-compliant wall height or number of storeys. A detailed assessment of the proposed building height and its impact upon adjacent properties is included below under Part 4.1.2 of MDCP.

- **Privacy**

The submissions raised concerns that the proposed development, including the new balconies and windows will result in unreasonable privacy impacts upon adjacent dwellings.

Comment:

The proposed development is not considered to cause unreasonable privacy impact upon adjacent properties, subject to the addition of a privacy screen along the southeastern edge of the proposed first floor balcony. A privacy screen is proposed along part of the northwestern edge of the first floor balcony. This is considered to provide acceptable levels of privacy between dwellings. The proposed windows on the southwest elevation have a spatial separation between the adjacent dwelling of more than 9m. This distance is considered to appropriately mitigate privacy impacts from the windows.

A detailed assessment of the proposed building height and its impact upon adjacent properties is included below under Part 3.4.2 of MDCP.

- **View loss**

The submissions raised concerns that the proposed development will cause unreasonable levels of view loss to adjacent properties.

Comment:

The proposed development is not considered to cause unreasonable view loss upon adjacent properties. A detailed assessment of the expected view loss and its impact upon adjacent properties is included below under Part 3.4.3 of MDCP.

- **Streetscape impact**

The submissions raised concerns that the proposed carport is not consistent with the prevailing streetscape character.

Comment:

The proposed carport is not considered to cause unreasonable impact to the prevailing streetscape character. A detailed assessment of the impact of the carport on the streetscape is included below under Part 3.1.1 of MDCP.

- **Stormwater**

The submissions raised concerns regarding the disposal of stormwater from the property.

Comment:

Council's Development Engineer has reviewed the proposal and raises no objection to the proposed stormwater management plan, subject to conditions.

- **Title height covenant**

The submissions raised concerns that the proposed development exceeds the maximum height permitted by the covenant on the land title.

Comment:

Under clause 1.9A of MLEP 2013, Council is not required to consider the height covenant in its assessment of this development application.

- **Impact upon shared driveway**

The submissions raised concerns regarding the impact construction works and vehicle movements may have on the shared driveway.

Comment:

A condition is recommended to require the preparation of a pre-construction and post-construction dilapidation report recording the condition of the shared driveway.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is supported with regard to landscape issues.

Internal Referral Body	Comments
	Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings All trees and vegetation shown to be retained shall be protected during works. The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the conditions of consent. The height covenant is noted, and no tree or shrub may grow in excess of 67.33 metres above AHD. Substitute the proposed <i>Glochidion ferdinandi</i> and <i>Tristanopsis laurina</i> in the rear setback with a native shrub, subject to the imposed conditions.
NECC (Development Engineering)	The proposal is for alterations and additions to the existing dwelling including a carport off the existing hardstand. No objections to approval subject to conditions as recommended.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A466825, dated 30/09/2022). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Biodiversity and Conservation) 2021

Chapter 10 – Sydney Harbour Catchment

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

An assessment of the proposal against Section 10.1(1) (aims of the Chapter), Section 10.10 (nominated planning principles) and Section 10.19 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of this Chapter.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

zone objectives of the LEP?	Yes
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Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.7m	14.1%	No
Floor Space Ratio:	0.45:1 (304.8m ²)	0.413:1 (279.8m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

1.9A Suspension of covenants, agreements and instruments

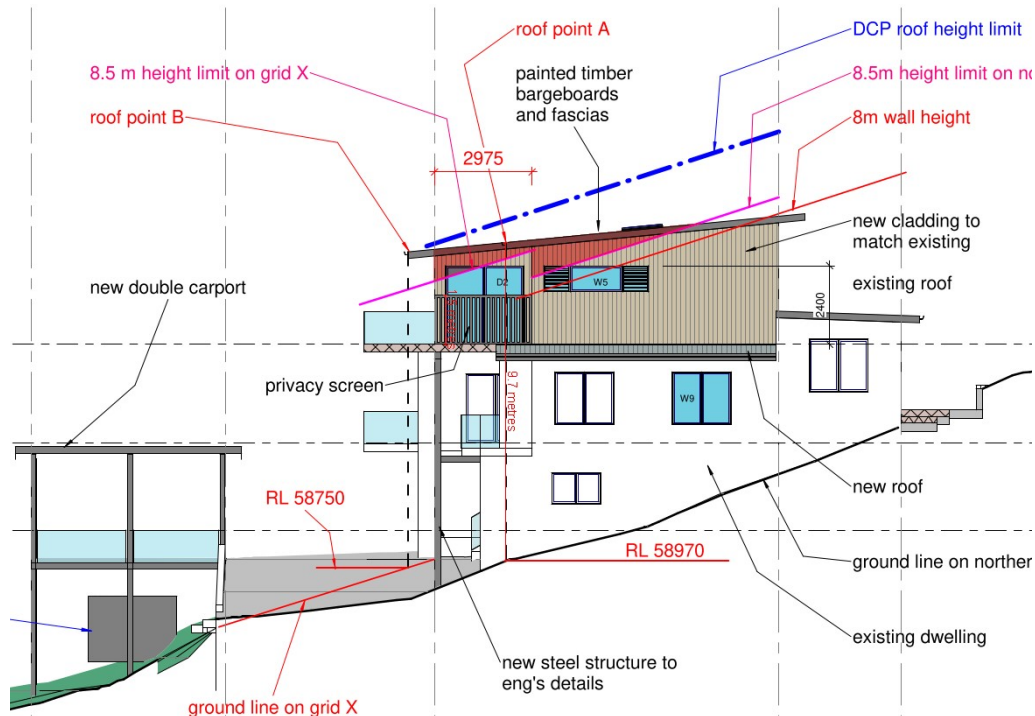
The lot is burdened by a covenant that restricts building above a height of RL 66.50. The proposed development has a maximum height of RL 69.545, which is 3.045m above the height covenant. The covenant has been imposed to benefit the dwelling at 27 Fisher Street. The owner of that property are identified as the having the right to release, vary or modify the covenant.

Despite this covenant, pursuant to clause 1.9A of MLEP 2013, Council does not need to consider the requirements of the covenant in its assessment of the proposed development.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.7m
Percentage variation to requirement:	14.1%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

justify the contravention of the development standard by demonstrating:

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that 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 steep nature of the topography at 35 Fisher Street is the primary reason the proposed roof line breaches the height limit. Together with the cross fall on the site, the roof line breaches the 8.5m as the land falls away despite the skillion form of the roof.*
- *Notwithstanding the height above ground level (existing) as defined, it is relevant to note that an objective of the Height of Buildings development standard places significant emphasis on the response of buildings to the topography of the site. When comparing the proposal to the natural fall of land in both an easterly and northerly direction, the numerical performance of the proposals height is much improved and highly compliant.*
- *The approach taken to the design on the site is to minimise site disturbance and maximise performance on sustainability grounds through the reuse and renewal of the existing structure in its current footprint as much as possible. The balance achieved between these initiatives and providing for the needs of the occupants results in a dwelling which marginally exceeds the Height of buildings development standard. Notwithstanding this, the variation comes with minimal adverse impact and maximises a positive outcome in relation to environmental and sustainability considerations.*

Council generally concurs with the applicant's justification to vary the building height development standard. It is considered the proposed development is appropriately sited to minimise site disturbance given its steep topography. The design of the development is commensurate to other development in the locality and appropriately balances the impacts of its built form and view impact on adjacent 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 MLEP 2013 are:

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

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

Comment:

The dwelling will present as a three-storey building which is generally consistent other dwellings in the locality. The proposed roof form presents a contemporary design while being sympathetic to other roof forms found in the locality. The proposal is considered to be generally consistent with the topographic landscape, the prevailing building height and the streetscape character of the locality.

b) to control the bulk and scale of buildings,

Comment:

The height, bulk and scale of the proposed development is generally consistent with that of other dwellings in the locality.

c) to minimise disruption to the following:

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

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

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

Comment:

The proposal demonstrates reasonable levels of view sharing between properties. Refer to detained assessment under Part 3.4.3 of MDCP.

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

Comment:

The proposed development will not cause unreasonable overshadowing of adjacent properties.

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

Comment:

Not applicable.

Zone objectives

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

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

Comment:

The proposed development maintains the low density residential land use of the site and provides a more functional dwelling for occupants.

It is considered that the development satisfies this objective.

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

Comment:

The proposal does not alter the existing low density residential land use.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with

correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 677.3m ²	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 500m ²	1 dwelling	N/A	Yes
	Dwelling Size: 129m ²	279.8m ²	N/A	Yes
4.1.2.1 Wall Height	NW: 8.0m (based on gradient 1:4)	GF - 3.5m to 6.2m	N/A	Yes
		FF - 7.7m to 9.4m	Nil to 17.5%	No
	SE: 8.0m (based on gradient 1:4)	5.8m to 8.3m	Nil to 3.8%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Pitch: maximum 35 degrees	5.5 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (approx. 14m)	Carport - 6m, inconsistent with prevailing setback	57.1%	No
		Dwelling - 17.7m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NW: GF - 2.05m (based on wall height)	1.4m	Existing	As existing
	NW: FF - 3.1m (based on wall height)	2.4m	22.6%	No
	SE: Front - 2.74m (based on wall height)	2.4m	12.4%	No
	SE: Rear - 2.34m (based on wall height)	1.4m	40.2%	No
	Windows: 3m	1.4m	53.3%	No
4.1.4.4 Rear Setbacks	8m	15m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (372.5m ²)	54.1% (366.4m ²)	1.6% (6.1m ²)	No
	Open space above ground 25% of total open space (91.6m ²)	6.5% (23.7m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (128.2m ²)	70.6% (258.5m ²)	N/A	Yes
	3 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18m ²	366.4m ²	N/A	Yes

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.7m	N/A	Yes
	1m curtilage side/rear setback	1m	N/A	Yes
	1.5m water side/rear setback	1.2m	20%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Description of non-compliance

3.1.1.4 Garages, Carports and Hardstand Areas

The control requires garages, carports and hardstand areas be designed and sited in a manner that does not to dominate the street frontage. Exceptions may be considered where parking structures are a positive element of the streetscape.

The proposed development incorporates a carport that is to be sited within the front setback area. The carport is designed with predominantly open sides with a lightweight post and sloped roof design.

Merit consideration

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

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

Comment:

Despite the lack of similar carport structures along the southwest side of Fisher Street, it is considered the proposed carport is generally compatible with the existing development on the site and the character of the locality. The siting of the carport allows for vehicles to turn around within the site for safer forward ingress and egress of the site. The carport demonstrates a lightweight design with minimal bulk and scale associated with the structure. The structure is not expected to cause unreasonable visual impact to the streetscape.

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

Comment:

The proposed carport is mostly obscured by existing vegetation in the street verge. It is considered the structure will not cause unreasonable impact to the streetscape character. The siting of the carport is generally consistent with the existing swimming pool located at 31 Fisher Street and an approved swimming pool at 29 Fisher Street. It is unlikely that other properties to the northwest will be able to construct similar structures in the front setback area due to topographic and easement constraints, therefore the proposed

carport is not expected to lead to additional development within the front setback area.

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

Comment:

Existing landscaping and vegetation in the street verge will assist in softening the built form of the carport.

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

3.4.2 Privacy and Security

Description of non-compliance

3.4.2.2 Balconies and Terraces

It is considered the proposed first floor balcony has the potential to cause unreasonable privacy impacts upon the southeastern adjacent dwelling due to the lack of a privacy screen along the southeast edge of the balcony.

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

A condition is recommended to require the construction of a 1.7m high privacy screen along the southeastern edge of the first floor balcony to ensure that reasonable levels of privacy are maintained between the subject dwelling and the adjacent dwelling.

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

Comment:

The privacy screen is conditioned to be of vertical louvre style construction with the louvres angled toward the northeast with spacing of 50mm between the louvres to ensure minimal impact upon the most iconic portion of the available view corridor.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Existing levels of neighbourhood security are maintained.

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

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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

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

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

Comment:

The view corridor at risk of the largest impact is towards the northeast. This view corridor contains iconic elements, including the North Harbour waterway, Manly isthmus, Manly Wharf, parts of North Head and the coastal interface of Fairlight. Wider district views towards the northwest are also able to be obtained. Most iconic elements found in the view corridor have limited obstruction from existing development and vegetation and are considered to be whole.

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

Comment:

The views described above are able to be obtained from the primary internal living areas of each adjacent dwelling. The proposed development does not impact the existing view obtained from the

dwelling at 29 Fisher Street. The view corridor obtained from the dwelling at 37 Fisher Street is across the side and front boundaries, primarily from a standing position. The view corridor obtained from the dwelling at 27 Fisher Street is across a side boundary between it and the subject site and the side boundary between the subject site and 29 Fisher Street and can be viewed from seated and standing positions.

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

Comment:

27 Fisher Street

An inspection of the dwelling at 27 Fisher Street was undertaken to determine the extent of view impact by the proposed development. The images below depict the existing view corridor obtained from the dwelling with an overlay of the expected area of view loss determined by the surveyed height poles and submitted architectural plans.

The image below is taken from the edge of the ground floor living area and balcony from a standing position looking towards the northeast.



The image below is taken from a seated position at the dining table looking towards the northeast.



The image below is taken from the ground floor kitchen at a standing position looking towards the northeast.



Based on these images and the expected view loss overlay, the extent of view impact is concentrated to the foreground and will have the greatest impact upon the North Harbour water body. However, the most iconic elements of the view corridor, including the land water interface, Manly isthmus, wharf and ocean are not expected to be impacted by the proposal at a standing level and a limited impact at a sitting level from the dining table. Views obtained from the first floor bedrooms are not impacted by the proposed development.

It is considered that the overall impact of the proposed development on the views obtained from the dwelling at 27 Fisher Street is minor.

37 Fisher Street

An inspection of the dwelling at 37 Fisher Street was undertaken to determine the extent of view impact by the proposed development. The images below depict the existing view corridor obtained from the dwelling.

The image below is taken from the principal dwelling living area (first floor) from a standing position looking towards the northeast.



The image below is taken from the secondary dwelling living area from a standing position looking towards the northeast.



Based on these images, the greatest view impact is caused from the living area of the secondary dwelling. The proposed development will obscure a significant proportion of the Manly isthmus. As the presence of a secondary dwelling on the site is reliant on a principal dwelling, greater weight is given to the view obtained from the principal dwelling. The impact of the proposed development on the view obtained from the living area of the principal dwelling is negligible. All existing views of the North Harbour waterway, North Head and Manly isthmus is maintained.

It is considered that the overall impact of the proposed development on the views obtained from the dwelling at 37 Fisher Street is minor.

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

Comment:

The proposed development is considered to cause, at worst, a minor impact upon existing view corridors. Despite partially exceeding the maximum permitted building height, the portion of the proposed development that causes the most view impact complies with the building height. As such, no part of the building that exceeds the building height causes unreasonable view loss.

Views from side adjacent properties are not considered to be unreasonably impacted as views from the primary internal living area of these dwellings is mostly unimpeded by the proposed development. Views from the rear adjacent dwelling are more impacted, however the extent of the impact maintains the most iconic portion of the view corridor, including Manly Wharf, the coastal interface of the Manly

isthmus and the distant ocean horizon.

Alternative siting of the upper floor of building towards the rear boundary would result in a reduced building height non-compliance, but would also cause substantially more view loss. Despite the non-compliance, the proposal represents a skilful design that respects view sharing between properties while allowing for reasonable additional development on the site.

Overall, the proposed development is considered reasonable in the context of the site and surrounds and does not result in unreasonable view loss upon adjacent properties.

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

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

Description of non-compliance

4.1.2.1 Wall Height

The control requires the maximum external wall height to be calculated based on the slope of the land under the proposed wall.

Based on a gradient of 1:4, the maximum permitted wall height is 8.0m.

The proposed dwelling is to have a maximum wall height of 9.4m on the northwest elevation and 8.3m on the southeast elevation, representing a variation of 17.5% and 3.8%, respectively.

4.1.2.2 Number of Storeys

The control requires that buildings must not exceed two storeys.

The proposed dwelling contains a maximum of three storeys.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report.

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

Description of non-compliance

4.1.4.1 Street Front setbacks

Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity. Where the street front building lines of neighbouring properties are variable and there is no prevailing building line in the immediate vicinity, a minimum 6m front setback generally applies.

Council calculates the prevailing building line for the site as being approx. 14m.

The proposed carport is setback 6m from the front boundary, representing a variation of 57.1%.

The setback of proposed works to the dwelling are consistent with the prevailing building line.

4.1.4.2 Side setbacks and secondary street frontages

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

The proposed first floor addition is setback between 1.4m and 2.4m from the side boundaries, representing a variation of between 12.4% and 40.2%.

The proposal does not alter the existing side setbacks of the dwelling at the ground floor level and below. Despite some of these setbacks being non-compliant, they are acceptable on merit as they are to remain unchanged.

The control also requires new windows to be setback 3m from the side boundaries.

The proposal includes windows setback less than 3m to the side boundaries.

Merit consideration:

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

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

Comment:

The proposed development is consistent with the bulk and scale of the existing dwelling and surrounding development. The proposed carport is not expected to cause unreasonable impact upon the streetscape as the street verge is heavily vegetated which will screen the structure when viewed from the public domain.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

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

Comment:

The proposed development is considered to be appropriately sited and utilises much of the footprint of the existing dwelling.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal provides sufficient deep soil areas and planting on the site.

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

Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

4.1.5.1 Minimum Residential Total Open Space Requirements

The site is located in the OS3 area, which requires a minimum 55% of site area (372.5m²) to be classified as Total Open Space (TOS).

The proposed development incorporates of 54.1% site area (366.4m²) as TOS, representing a variation of 1.6% (6.1m²).

The proposed development demonstrates compliance with the landscape area requirements.

Merit consideration:

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

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

Comment:

The proposed development does not result in the removal of any significant or native vegetation.

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

Comment:

The site is compliant in terms of landscaped area.

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

Comment:

The proposed development is not expected to result in unreasonable amenity impact to adjacent properties by way of solar access, privacy and view loss.

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

Comment:

The proposed landscaped area is sufficient and will assist in water infiltration, thereby decreasing stormwater runoff.

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

Comment:

The proposal will not lead to a spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposal will not compromise potential wildlife habitat within the locality.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

4.1.9.2 Location and Setbacks

The control requires swimming pools be have a minimum setback to the side and rear boundaries of 1m to the curtilage and 1.5m to the water edge.

The proposed water edge of the pool is setback 1.2m to the southeast side boundary, representing a variation of 20%.

Merit consideration

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

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

Planting is to be established between the swimming pool and the boundary to mitigate visual and acoustic amenity impacts of the swimming pool on the adjacent dwelling, as well as softening the built form of the pool.

A consent condition is recommended to limit the pool filter noise to be no higher than 5dBA above background level at the nearest property boundary.

It is considered the siting of the pool will not cause any unreasonable amenity impact upon adjacent dwellings.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The swimming pool is located in the rear yard and will not be visible from the street public domain. As such, no impact on the streetscape character is expected.

Objective 3) To integrate landscaping; and

Comment:

Landscaping is to be integrated into the proposal to improve the natural amenity of the site and reduce amenity impact upon adjacent properties.

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

Comment:

Not applicable.

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

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 \$9,300 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$930,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including a swimming pool and carport has been referred to the Development Determination Panel (DDP) due to the development exceeding the building height development standard by more than 10%.

The concerns raised in the objections have been addressed, with some resolved by conditions of consent.

The critical assessment issues were the variations to the maximum permitted building height, wall height, maximum number of storeys for buildings, front and side setbacks, outdoor open space, privacy and view sharing.

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

Accordingly Council as the consent authority grant Development Consent to DA2022/1784 for Alterations and additions to a dwelling house including a swimming pool and carport on land at Lot 1 DP 597826, 35 Fisher Street, BALGOWLAH HEIGHTS, 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
2103 01 Rev A	01/09/2022	Peter Downes Designs
2103 03 Rev A	01/09/2022	Peter Downes Designs
2103 04 Rev A	01/09/2022	Peter Downes Designs
2103 05 Rev A	01/09/2022	Peter Downes Designs
2103 06 Rev A	01/09/2022	Peter Downes Designs
2103 07 Rev A	01/09/2022	Peter Downes Designs
2103 08 Rev A	01/09/2022	Peter Downes Designs
2103 09 Rev A	01/09/2022	Peter Downes Designs
2103 10 Rev A	01/09/2022	Peter Downes Designs
2103 11 Rev A	01/09/2022	Peter Downes Designs
2103 12 Rev A	01/09/2022	Peter Downes Designs

Engineering Plans		
Drawing No.	Dated	Prepared By
STORM-1/A	07/10/2022	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A466825	30/09/2022	Lin & Associates
Geotechnical Assessment (Ref: AG 22421)	30/09/2022	Ascent Geo

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
187.22/274	September 2022	iScape Landscape Architecture

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	03/10/2022	Peter Downes

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	24/11/2022

(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 the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013.

Any variation to the approved land use 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 \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable

cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,300.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$930,000.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

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

8. **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.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **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.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy", and generally in accordance with the concept drainage plans prepared by Taylor Consulting Engineers, drawing number Storm -1/A, dated 30/9/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

i. OSD shall be provided in accordance with Section 9.3.3.2 of Council's Water Management for Development Policy

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

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

12. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway 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.

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.

13. **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.

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:

- “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.

15. **Privacy Screen**

A 1.7 metre high privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost southeastern edge of the balcony located off the Dining Room as shown on the approved plans. The privacy screen shall be of vertical louvre style construction (with a maximum spacing of 50mm and angled toward the northeast), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **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 the driveway and any associated structure shared with Lots 10 and 11 DP 747094.

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 arising from the works.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

18. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Principal Certifier must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

19. **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.

20. **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.

21. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

22. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor 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.

23. **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.

24. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance

with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal 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

25. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan (by iScape Landscape Architecture dated September 2022), and inclusive of the following conditions:

- i) substitute the proposed *Glochidion ferdinandi* and *Tristaniopsis laurina* in the rear setback with a native shrub to achieve 2-3 metres height at maturity,
- ii) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- iii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1 metre from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iv) mass planting shall be installed at minimum 1 plant per metre square for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at least 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- 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.

Prior to the issue of an Occupation Certificate, details from a landscape architect or landscape designer shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

26. **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.

27. **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.

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

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

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

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

29. **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 Certifier prior to the issue of the Occupation Certificate.

Reason: Compliance with this consent.

30. **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.

31. **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

32. **Landscape Maintenance**

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

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

All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

33. **Geotechnical Recommendations**

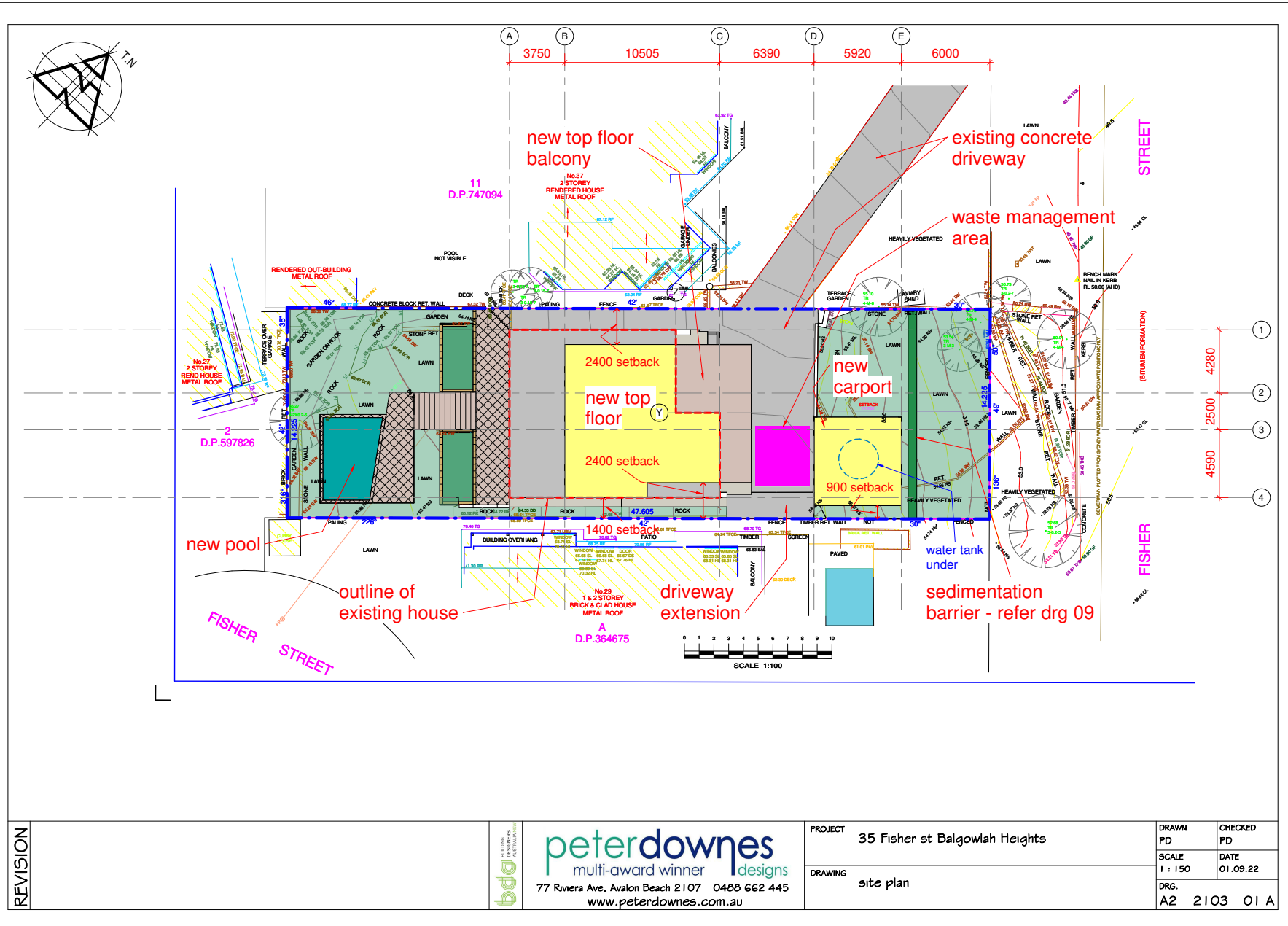
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

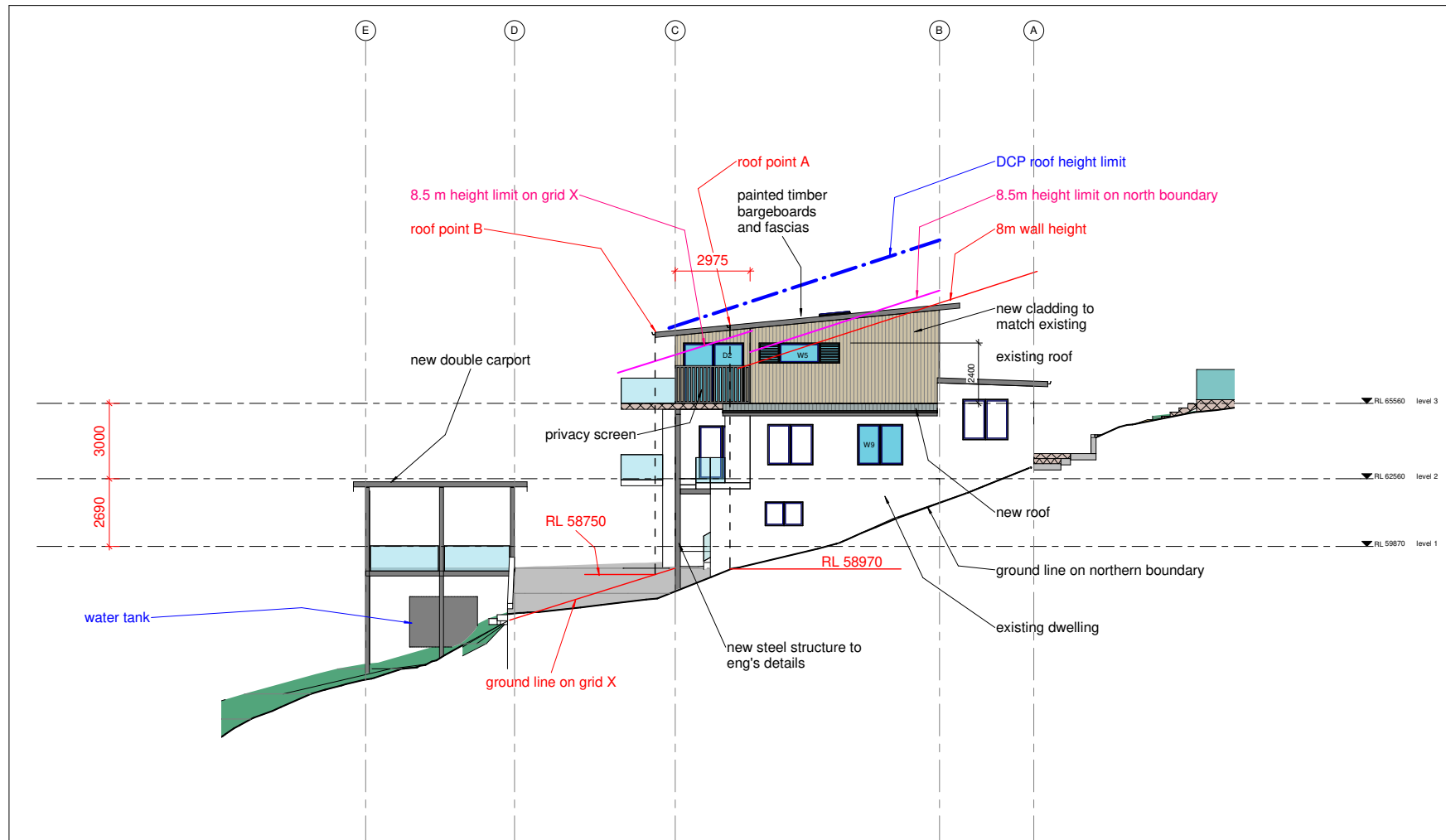
Reason: To ensure geotechnical risk is mitigated appropriately.

34. **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.





REVISION

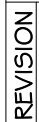
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PROJECT 35 Fisher st Balgowlah Heights

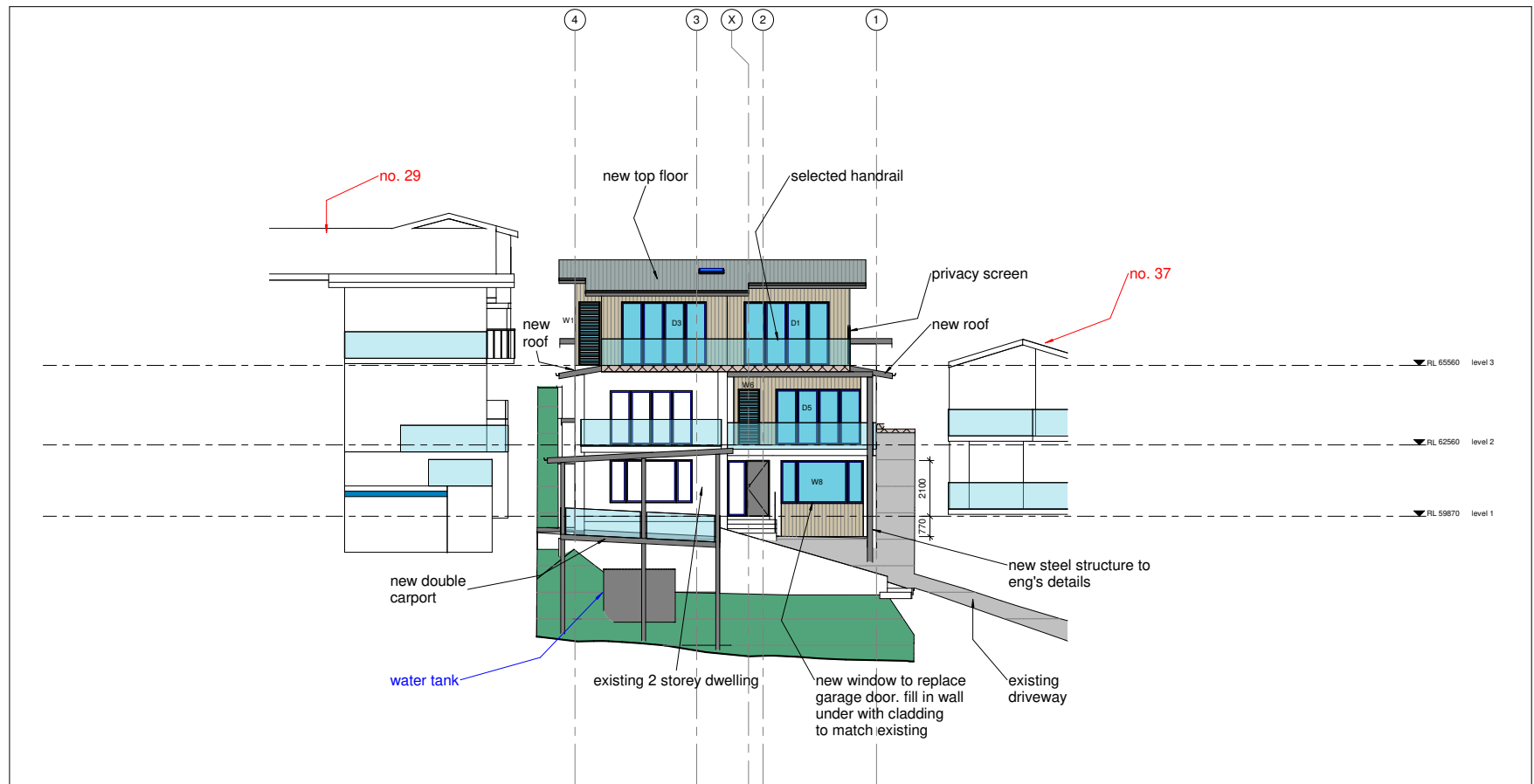
DRAWING north elevation

DRAWN PD	CHECKED PD
SCALE 1 : 100	DATE 01.09.22
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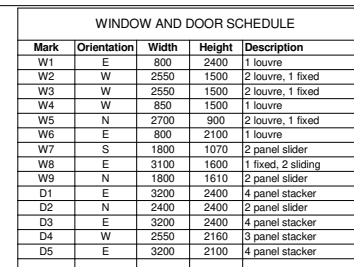
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PROJECT 35 Fisher st Balgowlah Heights

DRAWING east elevation

DRAWN PD	CHECKED PD
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all windows and doors to be powder coated aluminium

all window and door dimensions to be verified by the builder

all doors and windows to be fitted with draft seals

glazing specification to be in accordance with BASIX etc

All window openings to be in accordance with BCA 3.9.2.6 and 3.9.2.7

All work to be carried out by suitably licensed and qualified tradesmen, and to comply with all relevant standards and Councils requirements.

Main contractor to be responsible for obtaining all necessary inspection certificates.

An approved sedimentation control system is to be installed and maintained for the duration of the construction.

Smoke alarms are to be fitted in accordance with Building Code of Australia requirements.

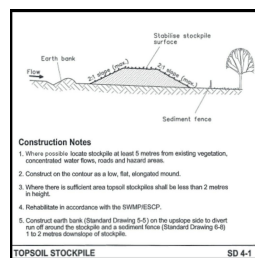
Termite protection is to be in the form of a physical barrier (eg Termimesh or similar) - no chemical barriers to be used.

existing house, garage, driveway, paths, retaining walls, external stairs etc to be demolished

all demolition materials to be disposed of in an approved and proper manner

adjoining properties to be protected at all times

asbestos (if encountered) is to be disposed of in an approved and proper manner



1. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
2. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
3. Where excavations extend below the level of the base of the footings of a building on an area of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
4. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
5. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.
6. Builder to confirm the locations of barrier fences and stockpiles on-site, see suggested main barrier fence location on site plan.
7. Sediment fences and stockpiles to be constructed in accordance with modern standards and the diagrams seen to the left.
8. Due to the steeply sloping site, special care will be taken to prevent sediment runoff into existing drains or the waterway.
9. Note that due to the constraints of the site, barriers may need to be relocated during construction.
10. All ESDP measures are to be installed and managed in accordance with Landcom's Managing Urban Stormwater: Soils and Construction 2004.

REVISION	  77 Riviera Ave, Avalon Beach 2107 0488 662 445 www.peterdownes.com.au	PROJECT	35 Fisher st Balgowlah Heights	DRAWN PD	CHECKED PD
		DRAWING	west elevation, windows and doors, notes, ESCP	SCALE 1 : 100	DATE 01.09.22
				DRG.	A2 2103 09 A



BLACKWATTLE PLANNING

CLAUSE 4.6 Request for
variation to
Manly LEP 2013
HEIGHT OF BUILDINGS

for alterations and additions to a
dwelling, including swimming pool
and carport at

**35 Fisher Street
Balgowlah Heights**

Content

- 1.0 Introduction
- 2.0 Manly Local Environmental Plan 2013
- 3.0 Variation to Clause 4.3 Height of buildings
- 4.0 Clause 4.6 Exceptions to Development Standards
- 5.0 Conclusion

Figures

- Figure 1 Zoning Map Manly LEP 2013
- Figure 2 Height of Buildings Map Manly LEP 2013
- Figure 3 Plan showing Height of Level 3
- Figure 4 Photo of site from Fisher Street

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1.0 Introduction

This Clause 4.6 Request for Variation to the Height of Buildings development standard under Manly Local Environmental Plan 2013 (MLEP 2013) is prepared by Blackwattle Planning on behalf of Peter Downes Designs. The Request is provided to support a Development Application for alterations and additions to a dwelling, including a swimming pool and carport at 35 Fisher Street Balgowlah Heights to be submitted to Northern Beaches Council.

The Development Application consists of the following components:

Level 1

- Convert existing garage to a family room
- New entrance to existing guest bedroom
- Extend existing driveway to allow turning into a new double carport.

Level 2

- Construct internal walls to provide Master bedroom, walk in robe and ensuite
- Demolish and construct internal walls to create 3 additional bedrooms, bathroom, and laundry

Level 3

- Construct additional Level 3 to create open plan living, dining, kitchen, pantry and WC.
- Construct new deck to north eastern elevation

External Works

- Construct new open double carport adjacent the existing driveway.
- Construct new swimming pool in the rear yard

This document should be read in conjunction with the Statement of Environmental Effects prepared by Peter Downes Designs.

Through this document it is demonstrated that compliance with the Height of Buildings Development Standard of MLEP 2013 is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention of the development standards.

2.0 Manly LEP 2013

35 Fisher Street Balgowlah Heights (the site) falls within the area to which MLEP 2013 applies. The site contains an existing dwelling and has an area of 677.3 sqm. The land is situated on the south western side of the lower part of Fisher Street and rises steeply from the street frontage. There is also cross fall on the site from south to north which contributes to the circumstances of the height breach. The site gains vehicular access from Fisher Street via a right of carriageway over three properties to the north. The driveway is steep and terminates at No. 35 Fisher Street.

Under **Clause 2.2** of MLEP 2013, the site is zoned R2 Low Density Residential as shown in Figure 1 below. Dwelling houses are permitted with consent. The proposal to construct alterations and additions to the dwelling including a swimming pool and carport is permissible with consent in the R2 Zone.



Figure 1: The site outlined red on map indicating zone R2 Low Density Residential,
Source: Northern Beaches Online Mapping

Clause 4.3 of MLEP 2013 restricts the height of development on the site in accordance with the Height of buildings Map at Figure 2 below to 8.5m. Clause 4.3 is a development standard.



Figure 2: The site outlined in red on map indicating Category I, 8.5m Height limit.

Source: Northern Beaches Online Mapping

Clause 4.6 of MLEP 2013 enables the consent authority to grant consent to development even though the development does not comply with a development standard. The purpose of the Clause is to allow flexibility in the application of certain development standards which may in turn result in better outcomes.

3.0 Variation to Clause 4.3 Height of building

This written request seeks a variation to Clause 4.3 Height of buildings development standard in MLEP 2013.

MLEP 2013 defines building height as follows:

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.

The highest point of the proposed development is at Roof Point A on the drawing below where the Level 3 roof RL of 68.66 above the existing ground level of RL 58.97 achieves an overall height of 9.695m. The variation to the 8.5m Height of buildings development standard sought is 14%, and is shown in Figure 3 below:

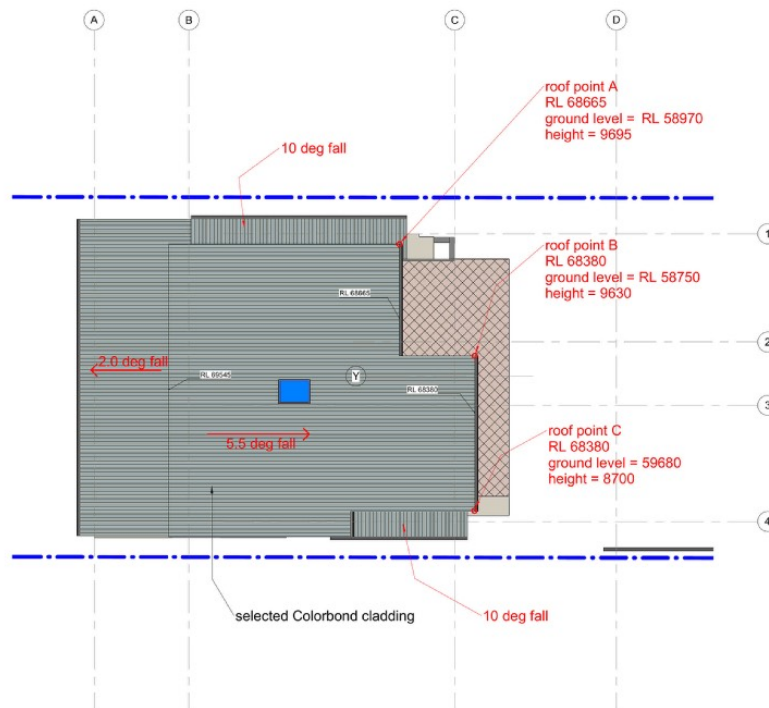


Figure 3: Plan showing height of Level 3 Roof over existing ground levels, **Source:** Peter Downes Designs

4.0 Clause 4.6 Exceptions to Development standard

The objectives of Clause 4.6 are set out in subclause (1) 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.*

Decisions of the NSW Land and Environment Court have established that Clause 4.6(1) is not an operational Clause.

Clause 4.6(2) is the enabling Clause that permits development consent to be granted to a development that contravenes a development standard imposed by MLEP 2013. As the Height of buildings is a development standard and is not expressly excluded from the operation of the Clause, a variation may be granted, subject to the remaining subclauses of Clause 4.6 being satisfied.

4.1 Clause 4.6(3) of MLEP 2013 provides that:

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.*

This written request addresses these requirements in turn, having regard for relevant key decisions of the NSW Land and Environment Court that have informed the approach to the application of Clause 4.6

4.2 **Clause 4.6(3)(a) demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

The decision in *Wehbe v Pittwater Council 2007* establishes five ways that an applicant may commonly demonstrate that this Clause is achieved. The decision also establishes that it may be sufficient to establish only one way.

The first of those pathways is to establish that *the objectives of the development standard are achieved notwithstanding non-compliance with the standard*. This request relies on this pathway.

The objectives of the Height of Buildings development standard are set out below, together with a discussion of how the objectives are met by the proposal, notwithstanding the variation to the standard.

4.2.1

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

Comment: The roof to Level 3 is a skillion form that slopes to the front of the dwelling reflecting the topography of the site. As there is also significant cross fall towards the north across the site, the forward projection of the roofline has been limited on the northern side of Level 3 to ensure the roof form does not achieve excessive scale.

Dwellings on the uphill side of Fisher Street where topography is steep are consistently and noticeably higher than others in the vicinity. The proposed design fits comfortably within the heights of buildings in its immediate context, providing a logical transition between No. 37 Fisher Street to the north and No. 29 Fisher Street to the south, which sits substantially higher.

The additional level proposed will have a negligible impact upon the streetscape as the steep land in front of the dwelling is heavily vegetated and the dwelling itself is not readily apparent when viewed from the street below. Where it is viewable, the new Level 3 and only part of the existing Level 2 will be visible ensuring that the existing vegetated streetscape context is retained.

This part of Fisher Street benefits from a wide and heavily vegetated road reserve which is augmented by vegetation on the site, assisting with screening dwellings generally on the high side of the road and providing good spatial separation. To ensure that the proposed design is not wholly reliant upon the landscaped road reserve, additional substantial planting is proposed in the front setback.



Figure 4: The existing dwelling is largely screened from Fisher Street.

The new Level 3 will be apparent, however will sit below the level of the adjoining No. 29 Fisher Street. The majority of the dwelling will be screened by both the topography and the dense vegetation.

4.2.2

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

Comment: The variation occurs primarily because of the fall of the land both to the east and north. Consideration has been given to the form of the roof to ensure that the scale of the dwelling is not excessive and remains consistent with the surrounding dwellings. Only the north eastern portion of the roofline is non-compliant, with the majority of the roof falling well under the 8.5m limit. To avoid additional scale, the roofline over the northern corner of the dwelling has not been extended over the balcony

4.2.3

(c) to minimise disruption to the following—

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

Comment: Views to the nearby urban area are obtained from Fisher Street over the rear yard of No. 29 Fisher Street and over the rear yard of the subject site. Most of these views will be retained as the new Level 3 is located over the front portion of the existing dwelling footprint and has a skillion roof form which facilitates retention of views with a downward angle.

Views to public spaces and valued geographical features from adjoining neighbours are almost entirely retained by the proposal. The proposal has been designed to achieve a view sharing scenario with particular attention to impacts from No.s 27 and 29 Fisher Street.

An analysis of these views has been provided within the accompanying Statement of Environmental Effects and concludes that notwithstanding minor breaches of the Height of Buildings Development Standard, a view sharing scenario is achieved.

4.2.4

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

Comment: As the new level 3 of the proposal sits lower than its southern neighbour, there remains adequate and reasonable levels of sunlight to No. 29 Fisher Street. Having a north east orientation for both the subject site and No. 29 Fisher Street, shadows falling

on No. 29 are minimal for the midwinter morning period. Both open space and east and north facing habitable rooms in these dwellings benefit from high levels of sunlight maintaining the compliant scenario.

4.2.5

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

Comment: As the site is located within the R2 Low Density Residential zone, this objective is not strictly applicable, however the height and bulk of the proposed dwelling responds well to the steep topography and has no impact upon vegetation or bushland. The dwelling presents a scale that is consistent with and complimentary to that of many other dwellings on the high side of Fisher Street.

4.2.6

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

Comment: The site does not fall within a heritage conservation area and is not a heritage item. No heritage items are in the vicinity of the site. The height of the dwelling will not be obtrusive in the visual catchment of the area as it sits lower than its neighbours at both 29 and 27 Fisher Street, and is maintained within a highly landscaped context.

4.2.7 Conclusion under Clause 4.6 (3)(a)

We conclude that as the proposed development meets the objectives of the Height of buildings development standard as outlined above, compliance with the standard is found to be unreasonable and unnecessary in the circumstances.

4.3 **Clause 4.6(3)(b) demonstrating that *there are sufficient environmental planning grounds to justify contravening the standard***

Clause 4.6(3)(b) requires that sufficient environmental planning grounds be demonstrated to justify contravening the development standard. As established in relevant caselaw, the sufficient grounds must relate to the circumstances of the proposed development and focus on the relevant aspect of the development that contravenes the standard.

In this case, that part of the proposed works which exceeds the development standard is the northeastern portion of the roof line over Level 3. The environmental planning grounds that justify the exceedance of the development standard are as follows:

- The steep nature of the topography at 35 Fisher Street is the primary reason the proposed roof line breaches the height limit. Together with the cross fall on the site, the roof line breaches the 8.5m as the land falls away despite the skillion form of the roof.
- Notwithstanding the height above ground level (existing) as defined, it is relevant to note that an objective of the Height of Buildings development standard places significant emphasis on the response of buildings to the topography of the site. When comparing the proposal to the natural fall of land in both an easterly and northerly direction, the numerical performance of the proposals height is much improved and highly compliant.
- The approach taken to the design on the site is to minimise site disturbance and maximise performance on sustainability grounds through the reuse and renewal of the existing structure in its current footprint as much as possible. The balance achieved between these initiatives and providing for the needs of the occupants results in a dwelling which marginally exceeds the Height of buildings development standard. Notwithstanding this, the variation comes with minimal adverse impact and maximises a positive outcome in relation to environmental and sustainability considerations.

4.3.1 Objects of the Environmental Planning and Assessment Act

In demonstrating sufficient environmental planning grounds, it is noted that the contravention of the maximum height standard in this case fulfils the following objects of the Environmental Planning and Assessment Act 1979:

(g) to promote good design and amenity of the built environment,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

4.3.2 Conclusion under Clause 4.6(3)(b)

In our opinion the above environmental planning grounds are sufficient to justify the exceedance of the Height of buildings development standard.

4.4 *Clause 4.6(4)(a)(i) The written request adequately addresses the matters required to be demonstrated by subclause (3)*

This written request comprehensively addresses the matters required to be demonstrated by subclause (3).

4.5 *Clause 4.6(4)(a)(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*

4.5.1 Consistent with objectives of development standard

As outlined in paragraphs 4.2 of this document, the proposed exceedance of the height limit does not prevent the proposal being consistent with the objectives of the Height of buildings development standard.

4.5.2 Consistent with objectives of the R2 Low Density Residential Zone

The objectives of this zone and the manner in which the objectives are achieved by the proposed development are as follows:

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

Comment: The proposed design maintains a low density residential environment through the provision of additional floor space for a single dwelling, with minimal disturbance of the site.

- *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 prevent the achievement of this objective noting that the site is already utilised for residential purposes consistent with the zone objectives and permitted uses.

4.6 Clause 4.6(4)(b) *The concurrence of the Planning Secretary has been obtained*

Concurrence is obtained from the Secretary of the Department of Planning in these circumstances through Planning Circular dated 5 May 2020 which established concurrence can be assumed for variations exceeding 10% where a Local Planning Panel is the Consent authority. Advice from the DPIE dated 2 November 2021 permits Clause 4.6 variations greater than 10% to building height to be determined by Council staff under delegation in accordance with Council procedures.

5.0 Conclusion

This document demonstrates that the required tests contained in Clause 4.6 have been met by the proposed development. In particular, that:

- Compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case given that the objectives of Clause 4.3 Height of Buildings have been met; and,
- Sufficient environmental planning grounds have been demonstrated to justify the contravention of the development standard; and,

- The proposed development is found to be in the public interest given its consistency with the objectives of the development standard and of the R2 Low Density Residential zone.

Following this, the consent authority can be satisfied that it is appropriate to apply the flexibility permitted under Clause 4.6 of MLEP 2013 to vary the Height of Buildings development standard of MLEP 2013 to the extent proposed.



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ITEM 3.5**DA2022/0485 - 7 GRANDVIEW GROVE SEAFORTH -
DEMOLITION WORKS AND CONSTRUCTION OF A SEMI-
DETACHED DWELLING HOUSE INCLUDING SWIMMING POOL****REPORTING MANAGER****Rod Piggott****TRIM FILE REF****2023/260506****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/0485 for demolition works and construction of a semi-detached dwelling house including swimming pool on land at Lot 2 DP 108726, 7 Grandview Grove SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0485
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 2 DP 108726, 7 Grandview Grove SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a semi-detached dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Alan David Fischer Vicki Lee Ferrier
Applicant:	Case Ornsby
Application Lodged:	28/04/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	20/05/2022 to 03/06/2022
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 984,000.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and the construction of a new semi-detached dwelling.

The application is referred to the Development Determination Panel (DDP) as the proposal attracted a total of eight submissions.

Concerns raised in the objections predominantly relate to:

- Built form compliance, bulk and scale;



- Compatibility of the design, materials and finishes with the streetscape;
- View loss, overshadowing and privacy impacts; and
- Construction and excavation impacts.

As detailed in the report, none of the concerns raised in the submissions warrant the refusal of the application subject to the recommended conditions of consent.

Critical assessment issues included the compliance of the proposal with the relevant MLEP and MDCP controls, and consideration of the resulting visual and amenity impacts.

The application does not propose any variations to development standards.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and the construction of a new two and three-storey semi-detached dwelling house as follows:

Lower ground floor

- Covered terrace
- Swimming pool and deck
- Plant and store area

Ground floor

- Double garage
- Dwelling entry, gallery, lift and stairs
- Bedrooms 1 and 2
- Bathroom
- Laundry
- Bar
- Sitting room with rear terrace

First floor

- Master bedroom with ensuite, robe and front balcony
- Study
- Powder room
- Kitchen, scullery and balcony
- Living and dining room with rear balcony

External

- New driveway
- Landscape works including paving/paths, tree removal and new planting



Amendments to Proposal

Following lodgement of the application, the following amendments were made to the proposal:

- Reduce garage width at facade by 1.5m
- Relocate swimming pool from eastern side setback to rear yard
- Incorporate privacy screens to rear terraces/balconies
- Reconfigure undercroft store/services area
- Reduce skylight height by 500mm
- Reduce screen width to first floor front balcony
- Addition/amendment of level and construction details

The amendments made to the proposal are not considered to result in additional environmental impacts and as such were not formally re-notified, in accordance with the Northern Beaches Community Participation Plan. However, all previous objectors were informally notified of the amended plans on multiple occasions and were afforded the opportunity to make further submissions.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 2 DP 108726 , 7 Grandview Grove SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Grandview Grove. The site is irregular in shape with a frontage of 11.45m along Grandview Grove and a depth of 50.715m. The site has a surveyed area of 546.9m². The site is located within the R2 Low Density Residential zone and accommodates an existing one and two-storey semi-detached dwelling. The site slopes approximately 3.6m from front to rear. The site contains one significant tree and a variety of smaller planted vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by two and three-storey detached dwellings.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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. <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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in the form of amended architectural and stormwater plans to address concerns raised by Council. <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. <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. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	(i) Environmental Impact The environmental impacts of the proposed development

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/05/2022 to 03/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Mr Jeffrey John Bertram	14 Grandview Grove SEAFORTH NSW 2092
Mr Anthony David Price	12 Grandview Grove SEAFORTH NSW 2092
Mr Thomas Mario Leonardi	9 Grandview Grove SEAFORTH NSW 2092
Mr James Anthony Madden	10 Grandview Grove SEAFORTH NSW 2092
Mr Alan Michael Johnson	4 Grandview Grove SEAFORTH NSW 2092
Mr Sean Norman Larcombe Mrs Bianca Jane Larcombe	26 Ponsonby Parade SEAFORTH NSW 2092
Mr Nicholas John Fitzpatrick	8B Grandview Grove SEAFORTH NSW 2092
Mr Timothy Robert Sedgwick	28 Ponsonby Parade SEAFORTH NSW 2092



Name:	Address:
Ms Joanne Sedgwick	

The issues raised in the submissions are addressed as follows:

- **Built form non-compliance, bulk and scale**

The submissions raised concerns that the proposal is non-compliant with various MLEP and MDCP controls and will result in adverse visual bulk and scale impacts.

Comment:

The proposal complies with the building height and floor space ratio development standards applicable to the site, as well as the DCP setback and open space controls. The proposed wall heights at the eastern and western elevations exceed the 7m control by a maximum of 800mm and the three-storey element centrally within the dwelling is non-compliant with the number of storeys control. These non-compliances are considered against the relevant objectives under 4.1.2 in this report and are not found to result in undue bulk, scale or amenity impacts to surrounding properties.

The proposed front setback is compatible with the adjoining developments and the broader streetscape. The 6.5m facade height and the eastern and western side setbacks provided at the building line minimise the visual bulk as viewed from the street. Similarly, the 3m eastern side setback, the 1.9m western side setback at the rear and the stepped design of the rear elevation articulate the building as viewed from the adjoining properties.

The LEP and DCP built form controls seek to limit the footprint, height and overall bulk of new development, thereby minimising the potential visual and amenity impacts to adjoining land. Given that the proposal is in full compliance with these built form controls, with the exception of MDCP 4.1.2, the proposal is considered to be of an appropriate level of bulk and scale in relation to the site and surrounding locality.

This matter is not considered to warrant refusal of the application.

- **Streetscape impact, design, materials and finishes**

The submissions raised concerns that the design, materials and finishes of the proposal are incompatible with the existing streetscape character.

Comment:

A detailed assessment of the streetscape and character impacts of the proposal, including the building form, materials and finishes, is completed under 3.1 in this report. The proposed dwelling is considered to be compatible with surrounding developments within the visual catchment and the broader locality. The selected materials and finishes, predominantly render, face brick, timber detailing and glazing, complement those found in the surrounding streetscape. The limited use of tray cladding to the garage and roof is not considered to conflict with the streetscape character of the locality.

This matter is not considered to warrant refusal of the application.

- **Consistency with MLEP and MDCP objectives**



The submissions raised concerns that the proposal is inconsistent with the MLEP and MDCP objectives.

Comment:

This assessment finds that the proposal achieves the objectives of all relevant controls contained within the MLEP and MDCP. As such, the proposal is also found to be consistent with the overarching aims and objectives of these plans.

This matter is not considered to warrant refusal of the application.

- **View loss**

The submissions raised concerns that the proposal will result in adverse view loss impacts.

Comment:

A detailed assessment of view loss is completed under 3.1.3 in this report, having regard to the view loss planning principle set out in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. In summary, the proposal's design and level of compliance with the built form controls minimises the proportion of the available views lost in relation to those retained. The overall impact to views is assessed as minor and is found to be acceptable in this case.

This matter is not considered to warrant refusal of the application.

- **Sunlight access**

The submissions raised concerns that the proposal will result in adverse overshadowing impacts.

Comment:

A detailed assessment of the overshadowing impacts of the proposal is completed under 3.1.1 in this report. In summary, the resulting impact is generally to the rear private open space areas of surrounding properties, and does not result in a numerical non-compliance with the control. As such, the overshadowing impacts are considered to be acceptable.

This matter is not considered to warrant refusal of the application.

- **Privacy**

The submissions raised concerns that the proposal will result in adverse privacy impacts.

Comment:

The privacy impacts of the development are discussed in detail under 3.4.2 in this report. In summary, the proposed screening measures to the eastern and western elevations and the substantial separation distances to the adjoining properties to the south are considered to mitigate the resulting privacy impacts. The existing, proposed and conditioned planting will also provide supplementary screening.

This matter is not considered to warrant refusal of the application.



- **Construction and excavation impacts**

The submissions raised concerns that the proposed design and associated construction and excavation works will impact the adjoining semi-detached dwelling.

Comment:

The amended proposal makes sufficient provision for structures to enclose the roof cavity of the adjoining semi. With regard to the practicality and construction of the proposal, the submitted information is sufficient for development application stage. A condition is recommended requiring the preparation of a Construction Methodology Plan (CMP) at construction certificate stage. The CMP must provide details of the timing and methods of the works to be undertaken, and must be supplied to affected properties owners/residents prior to the commencement of works. The submitted Geotechnical Report includes recommendations requiring further review of the structural and hydraulic drawings prior to construction, along with inspections of excavations and footings during works; these recommendations are incorporated into the conditions of consent. Conditions are also imposed requiring the completion of pre and post-construction dilapidation surveys of adjoining properties to identify any damage caused during construction and assist in any subsequent civil dispute.

This matter is not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported with conditions <u>Planning Comments</u> Based on the amendment of the proposal to relocate the swimming pool, part (iv) of the recommended Landscape Completion condition was amended to clearly identify the required location and height of the Lily Pilly hedge at the eastern boundary. Part (vii) of the condition was also added by the assessing planner to ensure that the Lily Pilly hedge at the rear boundary achieves an effective screening height. <u>Landscape Comments</u> The development application is for demolition of the existing semi detached dwelling house and associated structures, and the construction of a new dwelling house, swimming pool, landscaping and other required site works, as described and illustrated in the reports and plans. A Landscape Plan accompanies the application and is assessed as part of this Landscape Referral. No Arboricultural Impact Assessment is submitted. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum

Internal Referral Body	Comments
	Tree Plantings where applicable The Landscape Plan submitted includes proposals to enhance the landscape setting of the property and streetscape including additional tree planting. However Manly DCP control 4.1.5.2 (c) is not satisfied as no native trees are proposed within the landscape proposal, and conditions of consent shall be imposed for such inclusion should the application be approved. Additionally conditions shall be imposed for the extension of the shrub screen planting to the extent of the proposed pool and pool deck for privacy as provided within the development site, as reliance on adjoining property planting is not reliable, and any structures on adjoining properties may be removed or subject to re-development. The existing property contains two existing trees within the frontage proposed for retention under powerlines and these provide streetscape amenity. Removal of one tree within the front setback raises no objection nor requires Council consent as this tree is under 5 metres in height and in fact the tree is heavily pruned and appears as a shrub.
NECC (Development Engineering)	Supported with conditions. The submitted stormwater management plan has been assessed. The consultant and property owner shall explore the opportunity to discharge the on site stormwater via an easement/ a gravity system rather than a level spreader in accordance with the section 5.5 of Council's Water Management For Development Policy. If an easement cannot be obtained, Council can accept the discharge method with a level spreader. However, the submitted stormwater management plan must be amended: 1) the storage tanks and control devices must be located where can be accessed freely. 2) the total site discharge including by pass flow and controlled flow through the level spreader in 1% AEP must not exceed the 205 AEP state of nature storm event (100% pervious in pre development) As the above, Development Engineering cannot support the application due to clause 3.7 of Council's Manly DCP 2013. Amended Plan submitted 5/04/2023 The amended stormwater plan addresses the previous issues and is acceptable. Development Engineering support the proposal, subject to conditions as recommended.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of



External Referral Body	Comments
	Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application.

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

Commitment	Required Target	Proposed
Water	40	52
Thermal Comfort	Pass	Pass
Energy	50	57

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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



Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes
Floor Space Ratio	0.45:1 246.105m ²	0.41:1 223m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

6.2 Earthworks

The proposed excavation is limited to the basement level and swimming pool footprints. The excavation is to occur centrally within the site and is not anticipated to impact the natural environment or adjoining



properties. Conditions are recommended requiring compliance with the submitted geotechnical report recommendations and the preparation of pre and post-construction dilapidation surveys of the adjoining properties to the east and west.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 546.9m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	E: 7m (gradient 1:13)	Garage: 4m	N/A	Yes
		GF: 5.3m	N/A	Yes
		FF: 7.8m	11.4%	No
	W: 7m (gradient 1:13)	GF: 5.3m	N/A	Yes
		FF Balcony: 6.8m	N/A	Yes
		FF: 7.8m	11.4%	No
4.1.2.2 Number of Storeys	2	3 (2 + undercroft/terrace)	33.3%	No
4.1.2.3 Roof Height	Height: 2.5m	0.9m	N/A	Yes
	Parapet Height: 0.6m	0.3m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	10.1m - 11.6m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages (East)	Garage: 1.3m	1.34m	N/A	Yes
	GF: 1.77m	3.011m	N/A	Yes
	FF: 2.6m	3.011m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages (West)	GF: 1.77m (1/3 wall height) / 0m (semi-detached)	0m - 1.92m	N/A	Yes
	FF Balcony: 2.27m (1/3 wall height) / 0m (semi-detached)	1.94m	N/A	Yes
	FF: 2.6m (1/3 wall height) / 0m (semi-detached)	0m - 1.94m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	Undercroft: 9.8m - 11.5m Ground floor: 10.5m - 12m First floor: 14.5m - 16.1m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area 300.8m ²	56.5% 309.2m ²	N/A	Yes
	Open space above ground 25% of total open space	8.7%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 108.22m ²	68.6% 212.2m ²	N/A	Yes

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	53.7% (6.15m)	7.4%	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0m	N/A	Yes
	1m curtilage side/rear setback	1.8m	N/A	Yes
	1.5m water side/rear setback	1.8m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Compliance with control

3.1.1 Streetscape (Residential areas)

Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as



building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.

3.1.1.1 Complementary Design and Visual Improvement

a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:

i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;

Comment:

Development in the surrounding locality consists of one, two and three-storey dwellings in a range of architectural styles, finished with face, rendered or painted brick. Roof forms are primarily pitched tiled roofs, though there are also a number of dwellings with flat colourbond and concrete roofs. The proposed dwelling incorporates a variety of finishes including face brick, rendered concrete, wall and roof cladding, timber screening and a flat roof. The proposed design is contemporary and does not seek to replicate existing dwellings in the locality, but is considered to comprise and complement various elements of the the building forms, character, materials, finishes and architectural styles present in the area.

ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;

Comment:

The proposal complies with the applicable MLEP height of buildings and floor space ratio standards and the MDCP setback and open space controls. Despite the breaches of the DCP wall height and number of storeys controls, which are addressed under 4.1.2 of this report, the proposal's level of compliance demonstrates an appropriate level of bulk and is considered to minimise the impact of the development on the scenic amenity of the area. A further assessment of amenity impacts is completed under 3.4 of this report.

iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;

Comment:

The proposal has a height of 6.5m at the front building line and a maximum overall building height of 8.5m, in compliance with the LEP building height standard. The proposal is considered to be compatible - in height, scale, wall height and number of storeys - with adjacent and surrounding development, many of which are two and three-storey dwellings. The three-storey element of the proposal is contained to the central portion of the dwelling and is not visible from the street frontage or visually prominent from adjoining properties.

iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;

Comment:

The proposal does not incorporate elevated structures on columns.

v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations;

Comment:

There are no listed heritage items in close proximity to the site.

vi) visually improve existing streetscapes through innovative design solutions; and

Comment:

The proposal comprises a contemporary dwelling design that performs acceptably against the relevant



controls. The design and siting of the dwelling, including the substantial front setback and provision of landscaping, will improve the existing streetscape.

vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.

Comment:

As discussed under (i) above the proposal incorporates a variety of building materials and finishes prevalent in the locality, including face brick, render and timber elements.

Setback Principles in Low Density Areas

b) In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore.

See also paragraph 3.3 Landscaping and paragraph 4.1.5 Open Space and Landscaping.

Comment:

The proposal provides setbacks in excess of the MDCP numerical requirements to the front, rear and eastern side boundaries. The rear terraces/balconies and sitting room are also set back beyond the permitted nil side setback for semi-detached dwellings. The proposed setbacks ensure compliance with the total open space and landscaped area controls, and enable the provision of new planting to soften the built form.

3.1.1.4 Garages, Carports and Hardstand Areas

a) Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:

- i) its roof form, material choice and detailing by being subservient to the associated dwelling; and*
- ii) being compatible with the streetscape and the location in relation to front setback criteria.*

b) Exceptions to setback criteria referred to in this paragraph may be considered where parking structures are a positive element of the streetscape.

Comment:

The proposed front setback is compatible with the front building line of the dwellings on each of the adjoining properties. While there are various examples of garages and carports within the front setback in the surrounding streetscape, the proposed garage design and location is integrated into the facade of the dwelling thereby minimising visual impact. The proposed landscape treatment of the front setback provides opportunities for new planting that will screen the dwelling from the street frontage.

Merit consideration:

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

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

Comment:

No front walls or fencing is proposed as part of the development. The proposed front setback to the garage and landscaping within the front setback sufficiently minimise the resulting visual impact to the streetscape.

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

Comment:



As discussed above, the proposal incorporates materials and features that complement the surrounding streetscape.

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

Comment:

No front walls or fencing is proposed.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

3.4.1 Sunlight Access and Overshadowing

Compliance with control

3.4.1.1 Overshadowing Adjoining Open Space

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

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

Comment:

At 9am there is additional overshadowing of approximately 27m² of the rear yard of 9 Grandview Grove and minor additional impact to the rear yard of 11 Grandview Grove. By 12pm, the overshadowing is largely limited to the rear yard of the subject site, with only a 7m² strip of the rear yard of No. 9 affected adjacent to its eastern boundary. At 3pm, the proposal will overshadow an additional 85m² of the rear yard of 5 Grandview Grove and a small area adjacent to the rear boundary of 24 Ponsonby Parade.

The proposal will not eliminate more than one third of the existing sunlight access to any of the impacted properties throughout the day, and therefore complies with the control.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

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

b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);

c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

Comment:

The proposal will cause material overshadowing of any windows of the adjoining dwellings and complies with the control.

Merit consideration:

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



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

Comment:

Given the proposal's compliance with the above controls, equitable sunlight access is provided to the adjoining properties.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposal maintains adequate sunlight to the private open spaces of adjoining properties, noting that the nearby developments overshadow each other and themselves due to the southerly orientation of their rear yards.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposed dwelling is appropriately modulated and set back to facilitate sunlight access to adjoining properties. The proposal provides a 3m eastern side setback and the sitting room and rear terraces are set back 1.9m from the common boundary of the adjoining semi. The upper levels are progressively set back from the rear boundary and minimise overshadowing impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

3.4.2 Privacy and Security

Description of non-compliance

3.4.2.1 Window Design and Orientation

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

Comment:

The proposed windows at the eastern elevation incorporate full-height fixed privacy screens and the proposed study window at the western elevation is conditioned to be obscured/opaque glazing. The



remaining windows are orientated to the front and rear of the site and will not permit unreasonable overlooking of adjoining properties. A condition is recommended to ensure that all privacy screening has a maximum transparency of 30%.

3.4.2.2 Balconies and Terraces

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.

b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment:

The proposal includes rear terraces/balconies at the lower, middle and upper levels and a smaller front balcony at the upper level. The lower level rear terrace and upper level front balcony are enclosed at the eastern and western elevations. The middle and upper level rear terraces incorporate 1.5m high privacy screening at the eastern and western elevations to minimise view lines into the adjoining properties. The proposal provides rear setbacks of 10.5-12m to the middle level terrace and 14.5-16.1m to the upper level terrace. The separation distances, in addition to the screening afforded by the existing boundary fence, rear studio structure at 26 Ponsonby Parade and the existing, proposed and conditioned supplementary screen planting, are considered to sufficiently mitigate any overlooking impacts from these elevated terraces.

3.4.2.3 Acoustical Privacy (Noise Nuisance)

Comment:

The use of the development as a dwelling house is not anticipated to disturb the acoustic amenity of adjoining properties. A condition is recommended to ensure that the noise levels generated by any mechanical plant equipment is minimised.

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

For the reasons discussed above, the proposal is found to be appropriately designed to maintain visual and acoustic privacy between the subject site and adjoining properties.

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

Comment:

The proposal achieves an appropriate balance between privacy, sunlight access, outlook and views.



Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal includes opportunities for casual surveillance.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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

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

Note: Height poles were erected on the site at the request of Council in the positions indicated in the below surveyor's certification. The height poles visible on the site in the photos are not reflective of the current proposed design, which was subsequently amended to reduce the height of the pop up skylight (height poles 1 & 2) by 500mm to RL82.41.



URBAN SURVEYING
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Crearter Constructions,
No. 7 Grandview Grove, Seaforth
Ref No. 22194

In accordance with your instructions, I have Surveyed the 4 Height Poles - Lot 2 in DP 108726 situated at 7 Grandview Grove, Seaforth.

I have adopted the Benchmark from the Detail Survey plan by CMS Surveyors dated 23-04-2020 with reference number 12072detail issue 2.

I find the following

Pole 1 RL82.92 Survey – RL82.91 Design
Pole 2 RL82.90 Survey – RL82.91 Design
Pole 3 RL81.86 Survey – RL81.86 Design
Pole 4 RL81.86 Survey – RL81.86 Design



Kind Regards



George Spyridakos
Director – Urban Surveying

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

Comment:

8B Grandview Grove

The available views from 8B Grandview Grove take in water views of North Harbour to the east and west of The Spit, including various areas of land-water interface. The views also include the city skyline and district views of Mosman. The views from the lower terrace are partial as they are heavily obscured



by existing development and vegetation. The water views to the west of The Spit from the upper terrace and living areas are also somewhat disrupted by roofs and vegetation.



Photo 1. Views from 8B Grandview Grove upper terrace (standing).



Photo 2. Views from 8B Grandview Grove upper terrace (sitting).



Photo 3. Views from 8B Grandview Grove living room (standing).



Photo 4. Views from 8B Grandview Grove lower terrace (standing).

10 Grandview Grove

The available views from 10 Grandview Grove take in water views of North Harbour to the east of The Spit, including land-water interface at Wyargine Point and Middle Head. The views also include the city skyline and district views of Mosman. The water views are disrupted by existing development and vegetation, but are still considered to be whole views.



Photo 5. Views from 10 Grandview Grove living room (standing).



Photo 6. Views from 10 Grandview Grove terrace (standing).



Photo 7. Views from 10 Grandview Grove terrace (standing).



Photo 8. Views from 10 Grandview Grove terrace (sitting).

12 Grandview Grove

The available views from 12 Grandview Grove take in water views of North Harbour including land-water interface, city skyline and district views of Mosman. The affected views are partial as they are limited in extent and are disrupted by vegetation. The remaining views are generally whole views.



Photo 9. Views from 12 Grandview Grove eastern terrace (standing).



Photo 10. Views from 12 Grandview Grove western terrace (standing).

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:

8B Grandview Grove

The views are obtained from the lower terrace, upper terrace and adjacent living areas. The views are obtained across the front boundary from a sitting and standing position.

10 Grandview Grove

The views are obtained from the front terrace and adjacent living room. The views are obtained at an angle across the front boundary from a sitting and standing position.

12 Grandview Grove

The affected views are obtained from the middle level front balconies and adjacent living areas. The views are obtained at an angle across the front boundary from a sitting and standing position.



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

Comment:

8B Grandview Grove

The views lost from No. 8B include a portion of the water views to the west of The Spit, as depicted in Photos 1-4. The affected part of the water views are considered to be the least valuable of those available due to their limited extent and partial nature. The amended proposal is not anticipated to impact the land-water interface to the west of The Spit as viewed from the living level. The impact is greater from the lower terrace, however, the extent and value of the available water views are much less from this level. The impact on views from No. 8B is considered to be minor.

10 Grandview Grove

The impacted views from No. 10 include water and marina views to the east of The Spit, as depicted in Photos 5-8. The affected portion of the views is minimal and is disrupted by a number of dwellings and trees beyond the subject site. The more complete water views and land-water interface at Wyargine Point and Middle Head remain unaffected. The impact on views from No. 10 is considered to be minor.

12 Grandview Grove

The impact to views from No. 12 is limited to partial water views obtained from the middle level front balconies, as depicted in Photos 9 & 10. Based on the proportion of the views lost and the retention of the more valuable whole views over the proposed dwelling, the impact is found to be minor.

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

Comment:

The proposal complies with the height of buildings and floor space ratio development standards. The proposal is fully compliant with the DCP built form controls with the exception of the wall height and number of storeys controls. Given the proposal's compliance with the building height control and the overall level of view loss, the wall height and number of storeys breaches are not considered to contribute to unreasonable view loss.

The proposal demonstrates a skilful design that will minimise the view impacts to surrounding properties. Specifically, the dwelling height is stepped at the rear to limit the height and length of the first floor; the 3m eastern side setback minimises the width of the built form and maintains a view corridor through the site; and the proposal has been amended to lower the skylight height by 500mm to reduce the resulting view loss. As the impact is limited to the proportion of views obtained through the developable envelope of the subject site, the proposal is considered to be acceptable.



Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

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

Description of non-compliance

The proposed 7.8m eastern and western wall heights are non-compliant with the 7m control. The proposed dwelling is in part three-storeys, contrary to the two-storey control.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

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

Comment:

The proposed building height and roof form are consistent with the topography, prevailing building heights and desired streetscape character. The proposed 8.5m building height complies with the control and is comparable to that of existing two and three-storey dwellings in the immediate vicinity of the site. The dwelling has a two-storey presentation to the street and the building height is stepped towards the rear with the sloping topography of the site.

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

Comment:

The proposed dwelling's compliance with the applicable building height, floor space ratio, setback and open space controls demonstrates an appropriate level of bulk and scale in relation to the site area and surrounding developments. The wall height and number of storeys breaches are not considered to result in excessive bulk and scale or adverse amenity impacts to surrounding properties.

(c) to minimise disruption to the following—

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

Comment:

The proposed breaches will not unreasonably impact views to, from or between nearby residential development and public spaces, including the harbour and foreshores. A detailed assessment of the view loss impacts of the development is completed under 3.4.3 of this report.

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

Comment:



The proposal will not cause excessive overshadowing of adjoining properties or the public domain. A further assessment overshadowing impacts is completed under 3.4.1 of this report.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

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

Description of non-compliance

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas

c) the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The proposed 6.2m garage width exceeds the 50% frontage width control by 0.475m.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed double garage provides a compliant number of spaces for a dwelling house.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposal provides a double garage in place of the existing single garage, thereby reducing the demand for on-street parking.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:



The existing shared driveway crossing is retained and the new internal driveway will facilitate safe and convenient vehicular access. The 10.3m-11.6m garage front setback exceeds the 6.5m requirement and the garage is integrated into the design of the dwelling, thereby minimising the visual impact of the proposal on the streetscape.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed garage is at and above the existing ground level and will not require substantial excavation. The proposed garage design is not anticipated to cause site instability or disrupt ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The existing shared driveway crossing is maintained.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposal includes combined vehicular and pedestrian access, which landscaped areas provided to the east and west of the driveway. The landscaped areas within the front setback are sufficient to enable planting to screen the built form and contribute to the overall compliant landscaped area on the site.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

4.1.8 Development on Sloping Sites

The site is mapped as Landslip Hazard Area G4. The submitted Geotechnical Report includes recommendations that are incorporated in to the conditions of consent.

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 \$9,840 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$984,000.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for demolition works and the construction of a new semi-detached dwelling, has been referred to the Development Determination Panel (DDP) as it attracted eight submissions by way of objection.

The concerns raised in the objections have been addressed and resolved through the amendment of the proposal and the imposition of conditions where necessary.

The critical assessment issues are the compliance of the proposal with the relevant MLEP and MDCP controls and the associated visual and amenity impacts.



Overall, the development performs appropriately against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/0485 for Demolition works and construction of a semi-detached dwelling house including swimming pool on land at Lot 2 DP 108726, 7 Grandview Grove, SEAFORTH, 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
DA.02 Existing Floor / Demolition Plans	Rev. C, 15 February 2023	Case Ornsby Architecture
DA.03 Proposed Site Plan	Rev. F, 24 March 2023	Case Ornsby Architecture
DA.04 Proposed Ground and First Floor Plans	Rev. F, 24 March 2023	Case Ornsby Architecture
DA.05 Proposed First Floor & Roof Plans	Rev. F, 27 February 2023	Case Ornsby Architecture
DA.06 Proposed Elevations	Rev. G, 24 March 2023	Case Ornsby Architecture
DA.07 Proposed Sections	Rev. F, 24 March 2023	Case Ornsby Architecture
DA.08 Proposed Sections	Rev. E, 27 February 2023	Case Ornsby Architecture
DA.11 Materials and Finishes	Rev. B, 15 February 2023	Case Ornsby Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1259422S	23 February 2022	Case Ornsby Design
Report on Geotechnical Investigation	14 January	Crozier Geotechnical



	2022	Consultants
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LCP.01 Landscape Concept Plan	Rev. C, 15 February 2023	Case Ornsby Architecture

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	17 June 2022

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the



work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 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 sewerage areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,840.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$984,000.00.

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

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the



Subdivision Certificate (whichever occurs first).

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The west-facing window to the first floor Study shall consist of obscured/opaque glazing.
- All privacy screening shall be fixed and have a maximum transparency of 30%.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

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

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 referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.



9. **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.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Istruct Consulting Engineers, drawing number 211103 D01 Revision C, dated 04/04/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

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

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

11. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

12. **Waste Management Plan**

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

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

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



13. **Compliance with Standards**

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

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

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

14. **Construction Methodology Plan**

Given the changes to the existing roof line and the proximity of construction and excavation works to the existing party wall, a Construction Methodology Plan (CMP) shall be prepared by a suitably qualified person and provided to the Principal Certifying Authority prior to the issue of any Construction Certificate.

The CMP must address the 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 to minimise amenity impacts and prevent damage to adjoining properties;
- Make provision for all construction materials to be stored on site, at all times; and
- Specific protections proposed for adjoining properties.

Copies of the CMP are to be furnished to all adjoining property owners/residents site for their records at least 7 days prior to the commencement of any works on site.

Reason: To ensure appropriate measures have been considered for for the construction process.

15. **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

16. **Pre-Construction Dilapidation Report**

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



Properties:

- 5 Grandview Grove, Seaforth
- 9 Grandview Grove, Seaforth

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site as shown on the approved Landscape Plan,
- 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.

The Certifying Authority must ensure that:

c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

18. **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.

19. **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.

20. **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.

21. **Works in Proximity to Party Wall**

- i) All works shall be contained wholly within the boundaries of the subject site;
- ii) This consent grants no approval for any works involving the existing party wall without the consent of the adjoining property owner;
- iii) The proposed works shall not rely on the existing party wall for support. The building and necessary structural support must be contained wholly within the subject property; and
- iv) All exposed portions of the new wall intended to enclose the roof cavity of 9 Grandview Grove shall be finished in either face brick or render.

Reason: To ensure the stability of the party wall and to ensure that all works have appropriate owners consent.

22. **Survey Certificate**

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

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

23. **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.

24. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal 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**



25. Landscape Completion

Landscape works are to be implemented generally in accordance with the approved Landscape Concept Plan LCP.01, and inclusive of the following conditions:

- i) existing trees nominated for retention shall be protected as identified in the Tree and Vegetation Protection condition of consent,
- ii) at least three (3) native trees shall be planted within the property and shall be selected from the following lists: Northern Beaches Council's Native Plant Species Guide - Manly Ward, Manly DCP Schedule 4 - Part B - Native Tree Selection, or Council's Tree Guide,
- iii) all tree planting shall be a minimum pre-ordered 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, and shall be located at least 3.0 metres from buildings, typically 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iv) the proposed Lilly Pilly hedge along the eastern boundary shall be continued for the extent of the proposed pool, covered terrace and plant room, and shall achieve a mature or maintained height of 3 metres above ground level,
- v) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- vi) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.
- vii) The proposed Lilly Pilly hedge along the rear (southern) boundary shall achieve a mature or maintained height of 4 metres above ground level at the property boundary.

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

Reason: Environmental amenity.

26. 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 Certifying Authority prior to the issuing of any Occupation Certificate.

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



27. **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.

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

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

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

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

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

29. **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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings.

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

30. **Landscape Maintenance**

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

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



with the approved Landscape Plan and any conditions of consent.

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

Reason: To maintain local environmental amenity.

31. **Mechanical Plant**

Any mechanical plant equipment, including 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.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed

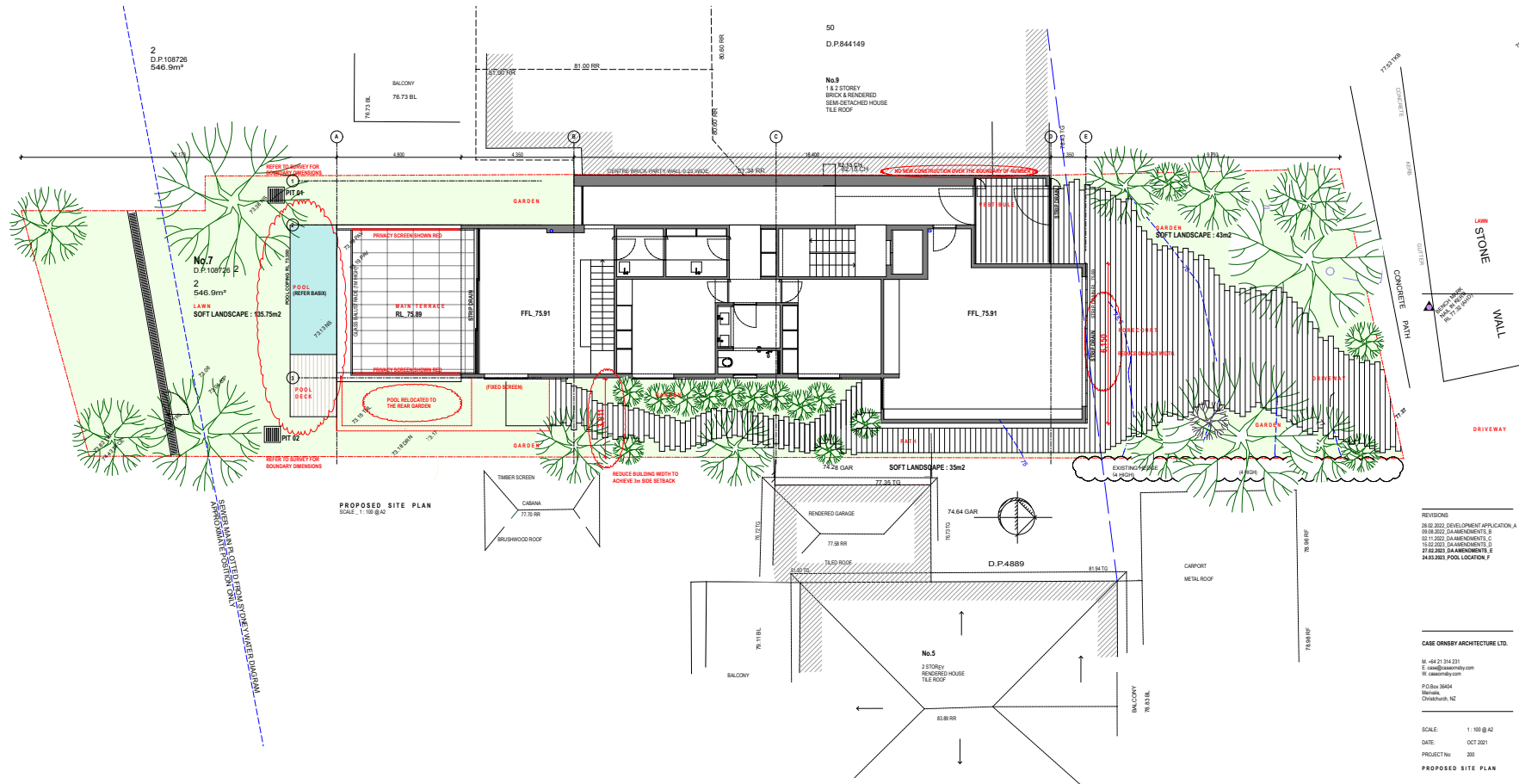
Rodney Piggott, Manager Development Assessments

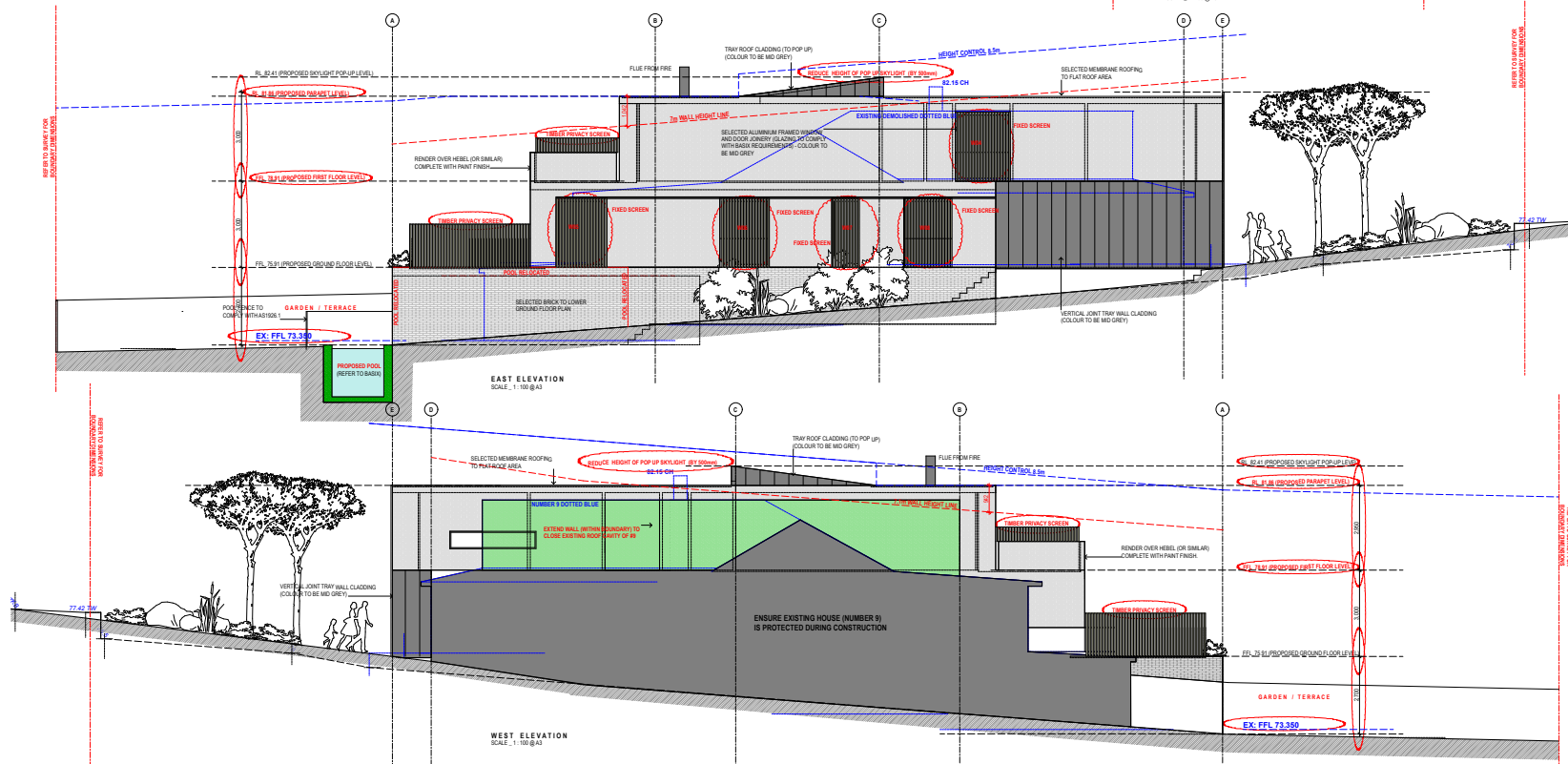
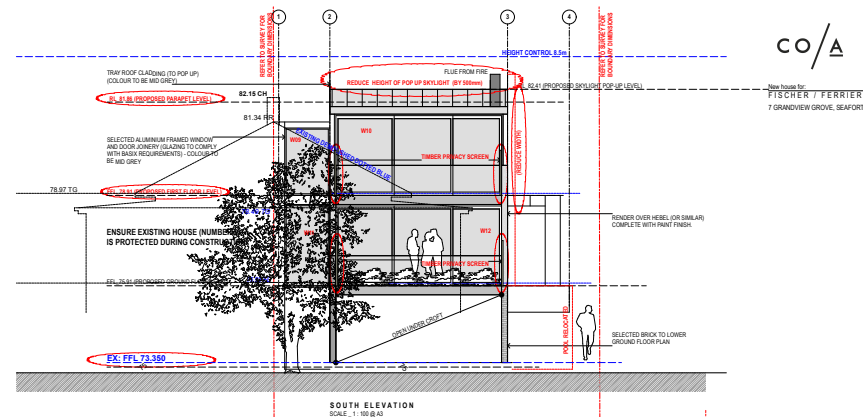
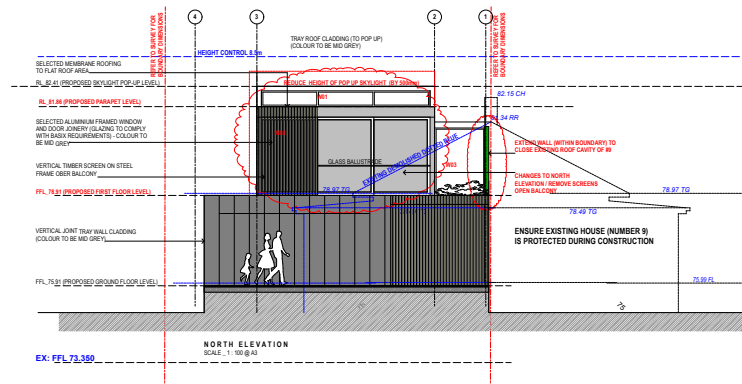
The application is determined on //, under the delegated authority of:

Rodney Piggott, Manager Development Assessments

CO/A

New house for:
FISCHER / FERRIER
7 GRANDVIEW GROVE, SEAFOORTH





REVISIONS
28.02.2022 DEVELOPMENT APPLICATION A
09.06.2022 DA AMENDMENTS B
02.11.2022 DA AMENDMENTS C
20.11.2022 DA AMENDMENTS D
15.03.2023 DA AMENDMENTS E
27.02.2023 DA AMENDMENTS F
24.03.2023 POOL LOCATION G

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SCALE: 1:100 @ A3
DATE: OCT 2021
PROJECT No: 203

PROPOSED ELEVATIONS

DA.06 #

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ITEM 3.6	DA2022/2135 - 1 WATTLE AVENUE FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/261338
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/2135 for alterations and additions to a semi-detached dwelling on land at Lot 2 DP 529896, 1 Wattle Avenue FAIRLIGHT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2135
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 2 DP 529896, 1 Wattle Avenue FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jarvis Peter Oldrey Katherine Anne Newton
Applicant:	Katherine Anne Newton
Application Lodged:	20/02/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/02/2023 to 09/03/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 12.9%
Recommendation:	Approval
Estimated Cost of Works:	\$ 260,862.84

EXECUTIVE SUMMARY

This development application seeks consent for Alterations and additions to a semi-detached dwelling.

The application is referred to the Development Determination Panel (DDP) due to the development exceeding the floor space ratio development standard by more than 10%. The floor space ratio of the proposed development has been calculated at 0.677:1 (123.1m²), which represents a variation of 12.9% to the prescribed 0.6:1 floor space ratio.

The clause 4.6 variation request regarding the non-compliance with FSR development standard arises due to the site being an undersized allotment. It is noted that the proposal achieves compliance with the FSR variations permitted within Manly DCP for undersized allotments.

One submission was received during the notification period that raised objection with matters relating to visual privacy, overshadowing and the materials and finishes.

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the prevailing built form of the locality and will not cause unreasonable impact to the amenity of adjacent properties, including solar access and privacy. The proposed additions are consistent with the prevailing residential character and are built upon the existing building footprint. Vegetation removal and landform alteration is not required to facilitate the development.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing semi-detached dwelling including an enlargement of the first floor towards the south, internal layout changes and facade treatments.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 2 DP 529896 , 1 Wattle Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one (1) allotment located on the

southern side of Wattle Avenue and western side of Suwarrow Street.

The site is irregular in shape with a curved frontage of 9.61m along Wattle Avenue and a secondary frontage of 22.1m along Suwarrow Street. The site has a surveyed area of 181.7m².

The site is located within the R1 General Residential zone and accommodates a two-storey semi-detached dwelling.

The site falls approx. 2m from the southwest towards then northeast.

The site contains a small landscaped area between the dwelling and front boundary with grass, gardens and a palm tree.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of low density and medium density housing, primarily in the form of dwelling houses, semi-detached dwellings and residential flat buildings.

Map:



SITE HISTORY

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

Application **DA 659/2001** for alteration and additions to an existing dwelling was approved on

15/05/2002 by the former Manly Development Control Unit.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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)	<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. <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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <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. <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. <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. <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.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/02/2023 to 09/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Bradley Gordon Clarke	3 Wattle Avenue FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

- Privacy
- Overshadowing
- Materials and finishes

The above issues are addressed as follows:

- **Privacy**

The submissions raised concerns that the proposed development will cause unreasonable visual privacy impact upon the adjacent property.

Comment:

The submission makes comment regarding a proposed balcony. The submitted plans do not indicate any new balcony as part of the proposed development. The new element at the front of the dwelling does not incorporate a balcony. All proposed windows are located in a manner that is unlikely to cause unreasonable impact to the privacy of adjacent properties.

- **Overshadowing**

The submissions raised concerns that the proposed development will cause unreasonable overshadowing of adjacent properties.

Comment:

It is considered the proposed development complies with the minimum solar access requirements set out under Part 3.4.1 of MDCP. As such, no unreasonable overshadowing is expected as a result of the development.

- **Materials and finishes**

The submissions raised concerns that the proposed colour finish of the first floor is inconsistent with the adjacent semi-detached dwelling and other dwellings in the locality.

Comment:

The materials and finishes of the proposed development are not considered to detract from the prevailing character of the streetscape. The proposal demonstrates a contemporary building design with colours and finishes that provide visual interest and articulation of the built form.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A458549, dated 06/12/2022). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.22m	N/A	Yes
Floor Space Ratio:	0.6:1 (109m ²)	0.677:1 (123.1m ²)	12.9%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (109m ²)
Proposed:	0.677:1 (123.1m ²)
Percentage variation to requirement:	12.9%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

Context

- *The area surrounding the subject site is characterised by 1, 2 and 3 storey detached residential dwellings, semi-detached dwellings and multi-dwelling housing, with a number of carports and garages on the street frontage.*
- *The dwelling proposes a compliant building height and has been designed to remain consistent with the character of the locality, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.*
- *The subject site is an existing undersized lot and the proposal complies with the FSR, DCP provisions for undersized lots.*
- *Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent*

for the following developments:

- DA2021/0932 – 1 Bower Lane Manly, FSR Variation of 7.5%
- DA2021/1222 – 12 Bareena Drive Balgowlah Heights, FSR Variation of 12%
- DA2021/1558 – 70 Bower Street Manly, FSR Variation of 8%
- DA2020/1477 – 43 Castle Circuit Seaforth, FSR variation of 20%
- DA2020/1487 – 89 Cutler Road Clontarf, FSR Variation of 48.8%
- DA2020/1748 – 10 Kangaroo Street Manly, FSR Variation of 9.1%
- DA2021/0617 – 37 Radio Avenue Balgowlah Heights, FSR Variation of 11.4%
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed development will allow for the provision of a modern floor plan, with a master bedroom, with WIR and ensuite on the first floor,
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with the adjoining semi and other buildings in the locality,
- Given the site context, the proposed variation is minor at reasonable at 11.48% or 13.28m² and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfilment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.
- The development does not require the removal of any native trees,
- The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with CI 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It utilises existing services, satisfying CI1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from

the public domain and there is recent precedent of similar variations being accepted by Council.

Council generally concurs with the applicant's justification that the breach of the floor space ratio development standard is reasonable in the context of the site and its surrounds and will not result in adverse amenity impact to adjacent properties or the public domain.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:

The bulk and scale of the proposed development is considered to be in keeping with the prevailing bulk and scale of other two and three storey dwellings in the locality.

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

Comment:

The proposed development is considered to exhibit an acceptable level of bulk in the context of the subject site. The level of impact to landscape and townscape features is considered reasonable in the context of the site and surrounds.

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

Comment:

It is considered the proposal demonstrates an acceptable visual relationship with the existing low density residential character and landscape of the area.

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

Comment:

It is demonstrated that the proposed development is designed in a manner that minimises impact on adjacent properties and the public domain.

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development maintains the residential land use of the site and provides a more functional dwelling for occupants.

It is considered that the development satisfies this objective.

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

Comment:

The proposal retains the existing semi-detached dwelling.

It is considered that the development satisfies this objective.

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

Comment:

The proposal does not alter the existing residential land use of the site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 181.7m ²	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 75m ²	123.1m ²	N/A	Yes
4.1.2.1 Wall Height	E: 7.1m (based on gradient 1:10)	GF - 4.4m	N/A	Yes
	S: 6.5m (based on nil gradient)	GF - 3.3m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Pitch: maximum 35 degrees	20 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	6.1m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	S: 1.09m (based on wall height)	3.1m	N/A	Yes
	Windows: 3m	3.1m	N/A	Yes
	Secondary street frontage: Prevailing setback	GF - Nil FF - 2.7m, consistent with prevailing setback	Existing N/A	Existing Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (99.9m ²)	35.1% (63.7m ²)	Existing	Existing

4.1.5.2 Landscaped Area	Landscaped area 35% of open space (22.3m ²)	42.9% (27.3m ²)	N/A	Yes
4.1.5.3 Private Open Space	18m ²	63.7m ²	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	Nil	Existing	Existing

Compliance Assessment

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

Detailed Assessment

4.1.3 Floor Space Ratio (FSR)

The proposed development has a floor space ratio of 0.677:1 (123.1m²), which represents a variation of 12.9% to the prescribed 0.6:1 (109m²) FSR requirement.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

MDCP provides guidance in assessing the floor space ratio of undersized allotments.

The site is located in 'Area C' on the MLEP 2013 Lot Size Map, meaning that, based on an actual lot size of 181.7m², calculation of the floor space ratio can be made as if the lot size were 250m².

As such, the floor space ratio of the proposed development is 0.492:1, which complies with the maximum permitted 0.6:1 floor space ratio.

4.1.5 Open Space and Landscaping

Description of non-compliance

4.1.5.1 Minimum Residential Total Open Space Requirements

The site is located in the OS3 area, which requires a minimum 55% of site area (99.9m²) to be classified as Total Open Space (TOS).

The proposed development incorporates of 35.1% site area (63.7m²) as TOS, representing a variation of 36.2% (36.2m²).

The proposal does not alter the existing amount of TOS on the site.

The proposed development demonstrates compliance with the landscape area requirements.

Merit consideration:

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

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

Comment:

The proposed development does not result in the removal of any significant or native vegetation.

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

Comment:

The site is compliant in terms of landscaped area.

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

Comment:

The proposed development is not expected to result in unreasonable amenity impact to adjacent properties by way of solar access, privacy and view loss.

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

Comment:

The proposed landscaped area is sufficient and will assist in water infiltration, thereby decreasing stormwater runoff.

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

Comment:

The proposal will not lead to a spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposal will not compromise potential wildlife habitat within the locality.

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

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

Description of non-compliance

For a dwelling houses, semi-detached and secondary dwellings, the control requires the provision of two off-street parking spaces.

The existing site does not contain any off-street parking spaces. The proposal does not seek to alter the existing arrangement.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed development does not alter the existing parking conditions.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposed development does not alter the demand for on-street parking. The site is significantly constrained in its ability to provide off-street parking due to the siting of the existing dwelling.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

N/A

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

N/A

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

N/A

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

N/A

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

N/A

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

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 \$2,609 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$260,863.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

to be carried out.

PLANNING CONCLUSION

This proposal, for alterations and additions to a semi-detached dwelling has been referred to the Development Determination Panel (DDP) due to the development exceeding the floor space ratio development standard by more than 10%.

The concerns raised in the objection have been considered. No alteration to the proposal is recommended in relation to the concerns raised.

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

Accordingly Council as the consent authority grant Development Consent to DA2022/2135 for Alterations and additions to a semi-detached dwelling on land at Lot 2 DP 529896, 1 Wattle Avenue, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2116 DA00.40 Rev B	19/07/2022	JKM Architects
2116 DA01.10 Rev B	19/07/2022	JKM Architects
2116 DA01.20 Rev B	19/07/2022	JKM Architects
2116 DA01.30 Rev B	19/07/2022	JKM Architects
2116 DA02.10 Rev B	19/07/2022	JKM Architects

2116 DA02.20 Rev B	19/07/2022	JKM Architects
2116 DA02.30 Rev B	19/07/2022	JKM Architects
2116 DA03.10 Rev C	19/07/2022	JKM Architects
2116 DA03.20 Rev C	19/07/2022	JKM Architects
2116 DA04.10 Rev B	19/07/2022	JKM Architects
2116 DA04.20 Rev B	19/07/2022	JKM Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
20220117 DA-SW200 Rev 2	06/12/2022	JCO Consultants
20220117 DA-SW600 Rev 2	06/12/2022	JCO Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A458549	06/12/2022	JKM Architects

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	Undated	Unnamed
2116 DA05.40 Rev A	09/02/2023	JKM 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	13/03/2023

(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 the site beyond the definition of a *semi-detached dwelling*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013.

Any variation to the approved land use 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 \$250,000. The Long Service Levy is calculated on 0.25% 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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for

swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$2,608.63 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 \$260,862.84.

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

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

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

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

7. Security Bond

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

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition

work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

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

8. **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.

9. **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.

10. **External Finishes to Roof**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **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.

12. **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.

13. **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.

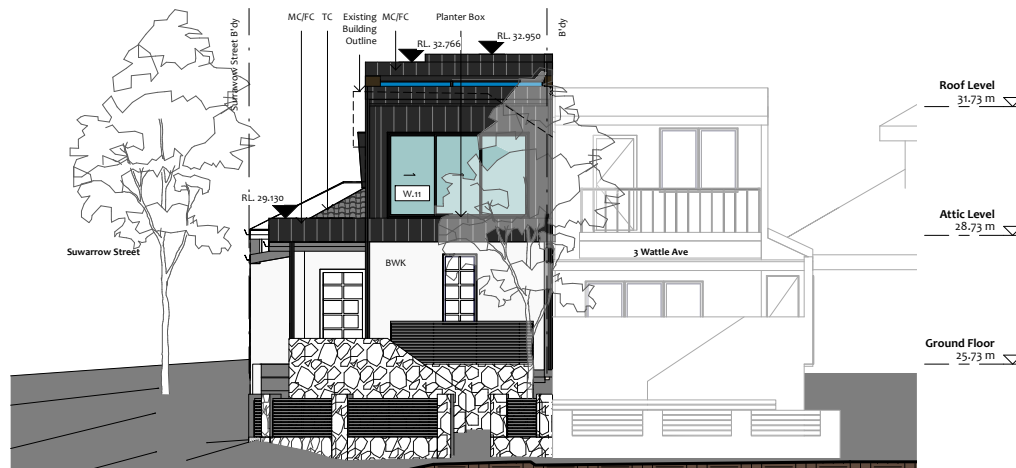
**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

14. **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.

[illegible]



1 North Elevation
1 : 100



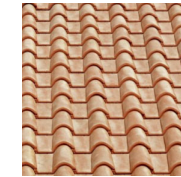
BWK (BRICKWORK)
EXISTING RENDERED BRICK WALL TO BE REPAINTED



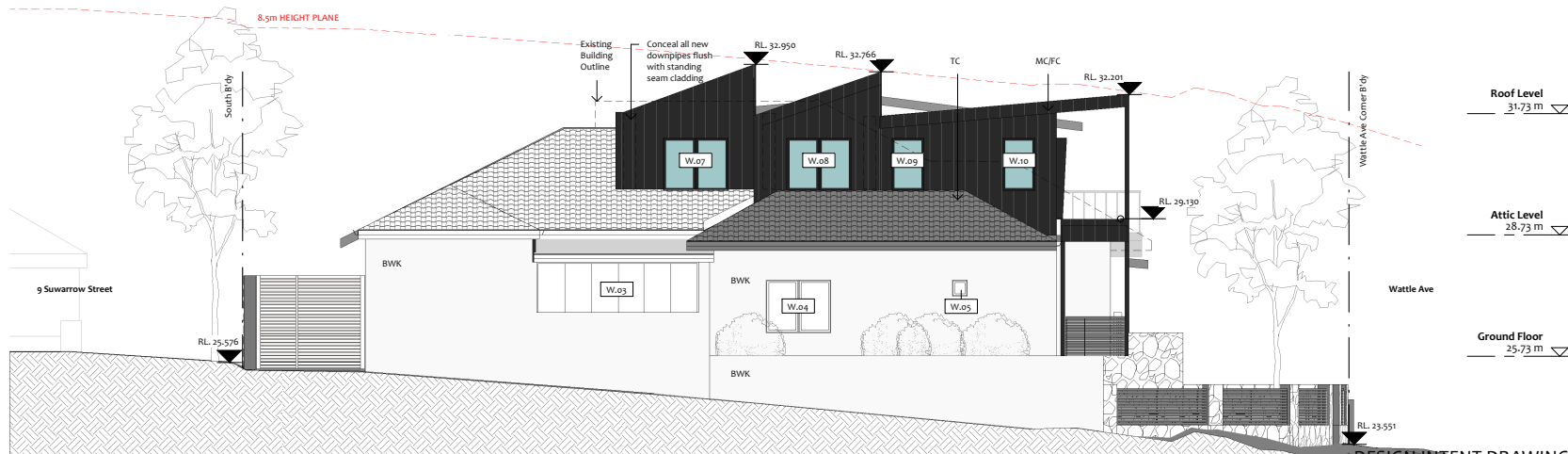
MC (METAL CLADDING)
COLORBOND STANDING SEAM

OR

FC (FIBRE CEMENT CLADDING)
IN BRONZE PEARL OR SIMILAR



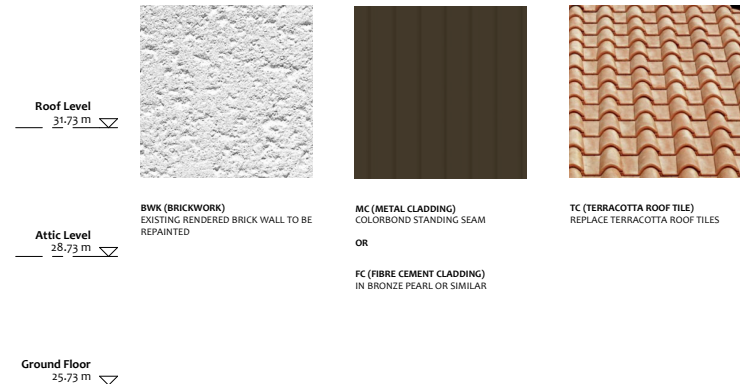
TC (TERRACOTTA ROOF TILE)
REPLACE TERRACOTTA ROOF TILES



2 East Elevation
1 : 100

**DESIGN INTENT DRAWINGS
NOT FOR CONSTRUCTION**

Disclaimer: Information shown on this drawing should be read in conjunction with the specification and BASIX certificate where applicable. Comply with relevant authorities requirements. Comply with Building Code of Australia requirements. Comply with relevant Australian Standards for materials and construction practice. All shown information should be sufficient for a reasonably competent and experienced builder to understand the design intent. Should this be not the case, the Client should be informed immediately for clarification. Some elements shown in this drawing may be subject to further advice from consultants/building consultants/builder, and not the architect, to ensure that the design intent is met satisfactorily.	Check all dimensions, site conditions and RL's against survey prior to commencement of any work, the purchase or ordering of any materials, fittings, plant, services or equipment and the preparation of any drawings and/or the fabrication of any components. Do not scale drawings. Any discrepancies discovered shall immediately be referred to the Client for clarification. Copyright remains with the JKMarchitects. The Client is licensed to use the documents and drawings to produce the project and for which they were intended, provided that the JKMarchitects has completed the extent of works for which they were commissioned, and all fees due to the JKMarchitects has been paid.	Legend C 2.3 EXISTING C 2.4 NEW C 2.5 PROPOSED C 2.6 DEMOLITION C 2.7 REPAIR/REPLACE C 2.8 ALTER C 2.9 REMOVE C 2.10 REPAIR/REPLACE C 2.11 ALTER C 2.12 REMOVE	Revision A 09.05.2023 For Information B 01.06.2023 For Information C 19.07.2023 Development Application	Architect JKM architects JKMarchitects Pty Ltd Suite 6.13 / 55 Miller Street, Perth, NSW 6009 ABN 98 621 373 483 Nominated Architect: Tai Kai Keith Ma NSW 6047	Client: Katherine Newton	Project Name: Fairlight House Project Address: 1 Wattle Avenue, Fairlight	Project No.: 2116 Sheet Name: North and East Elevation Drawing no.: DA03-10	Status: Development Application Scale: 1: 100 @ A3 Revision: 0 1000 2000 3000 mm C
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① South Elevation
1 : 100

DESIGN INTENT DRAWINGS
NOT FOR CONSTRUCTION

Disclaimer: Information shown on this drawing should be read in conjunction with the specification and BASIX certificate where applicable. Consult with relevant authorities requirement. Comply with Building Code of Australia requirements. Comply with relevant Australian Standards for materials and construction practice. The above information should be used for a reasonably competent and experienced builder to understand the design intent. Should it be the case, the Client should be informed immediately for clarification. Some elements shown on this drawing may be subject to further advice from consultant(s) who are not other than the architect. It is the responsibility of the consultant(s)/sub-consultant(s)/builder, and not the architect, to ensure that the design is met satisfactorily.	Check all dimensions, site conditions and B/L's against survey prior to commencement of any work, the purchase or installation of materials, fittings, plant, services or equipment and the preparation of shop drawings and/or the fabrication of any components. Do not scale drawings - Any discrepancies discovered shall immediately be referred to the Client for its attention. Copyright remains with the JKMArchitects. The Client is licensed to use the concepts and drawings to produce the project and to refer for which they were intended, provided that the JKMArchitects has completed the extent of works for which they were commissioned, and all fees due to the JKMArchitects have been paid.	Legend C = ... A = ... B = ... D = ... E = ... F = ... G = ... H = ... I = ... J = ... K = ... L = ... M = ... N = ... O = ... P = ... Q = ... R = ... S = ... T = ... U = ... V = ... W = ... X = ... Y = ... Z = ...	Revision A Date 09-06-2023 For Information B Date 06-07-2023 For Information C Date 15-08-2023 Development Application	Architect JKMArchitects Pty Ltd Suite 6-10 / 15 Mount Street, Fremont, NSW 2062 ABN 98 675 571 485 www.jkmarchitects.com.au Tel Kat Keith-Mo: NSW 06 917	Client: Katherine Newton Fairlight House Project Address: 1 Wattle Avenue, Fairlight	Project Name: Fairlight House Project Address: 1 Wattle Avenue, Fairlight	Project No.: 2116 Sheet Name: South Elevation Drawing no.: DA03.20	Status: Development Application Scale: 1: 100 @ A3 0 1000 2000 3000 mm	Revised By:
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Appendix One - Clause 4.6 Exceptions to Development Standards – Floor Space Ratio

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (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 aims and objectives of Manly LEP 2013 Clause 4.6 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.

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

(4)(a)(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,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R1 – General Residential

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

1.4 What is the development standard being varied?

CL 4.4 – Floor Space Ratio

**1.5 Under what clause is the development standard listed in the environmental planning instrument?**

CI 4.4 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

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

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the FSR development standard applicable to the subject site is 0.6:1, this equates to a maximum Gross Floor Area (GFA) of 109.02m² for the site area of 181.7m².

However, as the site is an existing undersized parcel, the Manly DCP permits an FSR equivalent to the mapped minimum lot size, which equates to 150m² for the mapped lot size of 250m².

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a GFA of 122.3m² or FSR of 0.67:1, a variation of 13.28m² or 11.48% to the LEP control, but compliant with the DCP provisions for undersized lots.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 13.28m² or 11.48%.



2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:



1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone



objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

5. Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.



3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The objectives of the standard are:

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

Comment

The proposed development is for the demolition of the existing attic rooms and the construction of a new first floor, to create a 2 bedroom semi-detached dwelling on the site. The dwelling complies with the building height for the site and the bulk and scale is consistent with surrounding properties.

The proposed variation is 13.28m² or 11.48% to the LEP control, but compliant with the DCP provisions for undersized lots and is considered minor and reasonable. It is considered this objective is met, despite the numerical variation.

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

Comment

The proposed built form and massing will be of a consistent scale to surrounding properties. The development proposes a compliant maximum building height and will not obscure any important landscape or townscape features and will not result in any view loss impacts.



It is therefore considered this objective is met, despite the numerical variation.

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

Comment

The proposed development is visually appropriate for the locality. The new first floor has compliant setbacks and retains a scale consistent with the adjoining semi and other properties in the locality.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings. Compliant levels of solar access are maintained despite the proposed variation and there will be no unreasonable impact on views, visual privacy or acoustic privacy.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

Not relevant as the subject site is not located in a business zone.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.



- 4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

- 5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the floor space ratio control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The area surrounding the subject site is characterised by 1, 2 and 3 storey detached residential dwellings, semi-detached dwellings and multi-dwelling housing, with a number of carports and garages on the street frontage.
- The dwelling proposes a compliant building height and has been designed to remain consistent with the character of the locality, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.
- The subject site is an existing undersized lot and the proposal complies with the FSR, DCP provisions for undersized lots.



- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
 - 2021/0932 – 1 Bower Lane Manly, FSR Variation of 7.5%
 - 2021/1222 – 12 Bareena Drive Balgowlah Heights, FSR Variation of 12%
 - 2021/1558 – 70 Bower Street Manly, FSR Variation of 8%
 - 2020/1477 – 43 Castle Circuit Seaforth, FSR variation of 20%
 - 2020/1487 – 89 Cutler Road Clontarf, FSR Variation of 48.8%
 - 2020/1748 – 10 Kangaroo Street Manly, FSR Variation of 9.1%
 - 2021/0617 – 37 Radio Avenue Balgowlah Heights, FSR Variation of 11.4%
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed development will allow for the provision of a modern floor plan, with a master bedroom, with WIR and ensuite on the first floor,
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with the adjoining semi and other buildings in the locality,
- Given the site context, the proposed variation is minor at reasonable at 11.48% or 13.28m² and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.
- The development does not require the removal of any native trees,
- The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.



- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with CI 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It utilises existing services, satisfying CI1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see CI 4.6(3)(A)).

An assessment of consistency with the objectives of the Zone is provided below:

Zone – R1 General Residential

Objectives of zone

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



Consistent. The proposed works will allow the current and future housing needs of the residents to be met in their current local community.

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

Consistent. The proposal will retain the existing semi-detached dwelling house.

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

Not relevant. No change of use is proposed.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

(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.*

Strict numerical compliance with the 0.6:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development to demolish the existing attic and construct a new first floor on land zoned R1 – General Residential is appropriate and reasonable for the following reasons:

- The proposal is compliant with Councils DCP, FSR control for existing undersized lots,
- There is recent precedent for similar variations to CI 4.4 FSR of the Manly LEP 2013 being accepted by Council,
- The proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts.
- The works proposed will allow the housing needs of the residents to be met, in their current community,
- The objectives of the R1 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.



The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.7	DA2022/1951 - 199 WHALE BEACH ROAD WHALE BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/261405
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of 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 Council as the consent authority **approves** Development Consent to DA2022/1951 for alterations and additions to a dwelling house on land at Lot 10 DP 10782 & Lot 200 DP 1033789, 199 Whale Beach Road WHALE BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1951
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 10 DP 10782, 199 Whale Beach Road WHALE BEACH NSW 2107 Lot 200 DP 1033789, 199 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Nancy Kim
Applicant:	Campbell Architecture
Application Lodged:	18/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/11/2022 to 09/12/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 19%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,530,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house. The application is referred to the Development Determination Panel (DDP) due to a non-compliance with the Height of Buildings development standard that exceeds a 10% variation.

The 4.6 request for the non-compliance with height standard arises from the site being partially excavated underneath the existing building creating a 19% variation for a small section of the building, being up to 1.65m above the 8.5m height plane. However, based on extrapolated natural ground levels the height would only be measured at a maximum of 0.3m above the height plane.



Critical assessment issues included building height, side boundary envelope and setback and landscaping considerations along the road frontage. No submissions of objections to the alterations and additions were received.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent for alterations and additions to an existing dwelling, including landscaping.

In detail, the development includes the following:

Level -1 (FFL 33.04)

- Construction of a new gym and storeroom.

Level 0 (FFL 36.04)

- Construction of Bedroom 4 with amenities.
- Construction of a new plantroom.

Level 1 (FFL 39.29 & FFL 39.67)

- Construction of a new deck over Bedroom 4 and adjacent to the existing swimming pool.
- Construction of new external stairs and a storeroom parallel to the western side elevation.
- Minor internal works at the southern side of the existing dwelling.

Level 2 (FFL 43.23 & FFL 44.20)

- Extension of the existing terrace.
- Construction of a new planter and external stairs.
- Minor internal works to the existing dwelling.
- New roof over the northern half of the existing dwelling.
- New awning and external wall additions to southern exterior of the existing dwelling.

Level 3 (FFL 46.26 & FFL 46.28)

- Construction of a new floor level to include Bedroom 1 and amenities.
- Construction of a new deck at the eastern side elevation to Bedroom 1.

External

- Clearing and installation of new landscaping throughout the site.

The proposal is consistent with being assessed as alterations and additions pursuant to the judgement



of *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*. This is based on the substantial main walls being retained (structural) external aesthetic pavilion style (retained), general building footprint floor levels, major ancillary elements and side, front and rear setbacks (consistent with existing house). The proposal has been considered pursuant to the qualitative and quantitative considerations of the changes proposed.

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 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D12.5 Front building line
Pittwater 21 Development Control Plan - D12.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 10 DP 10782 , 199 Whale Beach Road WHALE BEACH NSW 2107 Lot 200 DP 1033789 , 199 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Whale Beach Road. The site is an irregular shape (rhomboid) with a frontage of 21.25m along Whale Beach Road and an average depth of 53.43m. The site has a surveyed area of 1,057m ² . The site is located within the C4 Environmental Living zone and accommodates a part one/part two storey detached



dwelling with carport and elevated swimming pool.

The site slopes downward from the front boundary to the rear boundary by 16.8m (equating to a slope of 0.3:1 or 31.4%).

The site includes a variety of vegetation across the entire site made up of Australian natives and exotics plant species.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings of similar scale. Broad coastal views are available to many properties in the surrounding location.

Map:



SITE HISTORY

The property has been subject to the following development application:

P455/95

This application was lodged with Pittwater Council in 1995 for the erection of a new dwelling.

The application was approved on 6 May 1996.

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 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)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <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. <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. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.

Section 4.15 Matters for Consideration	Comments
	(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/11/2022 to 09/12/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported with conditions. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (LEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (DCP) controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation. • C1.1 Landscaping. • D12 Palm Beach Locality. The site is located in the C4 Environmental Living zone, requiring

Internal Referral Body	Comments
	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. The proposed alterations and additions under this development proposal retains all high retention trees within the rear of the property and all of the public road reserve trees. A Arboricultural Impact Assessment report is submitted recommending removal of three small trees within the property, identified as tree numbers 7, 12, and 14) and one tree within the public road reserve fronting the adjoining property, identified as tree number 8. Existing trees nominated in the report for retention are not impacted by the proposed development works and recommendations have been made regarding tree protection measures to limit the potential for impact on the retained trees. Existing trees 12 and 14 are exempt species and do not require Council consent for management or removal. No concerns are raised with the removal of existing tree 7 located in close proximity to the existing Garage, subject to tree replacement within the property, and conditions shall be imposed. The request to remove tree 8 (WA Weeping Myrtle - <i>Agonis flexuosa</i>), located within public road reserve is not supported. As the Arboricultural Impact Assessment report notes no development works are proposed within the tree protection zone of this tree and thus there is no valid reason to remove this tree under the development application. All Council street trees are to be protected.
NECC (Bushland and Biodiversity)	Supported with conditions. The proposal seeks approval for alterations and additions to a dwelling. The comments on this referral relate to the following provisions: • SEPP (Resilience and Hazards) 2021- Chapter 2 Development within the coastal environment area. • Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection. • Pittwater 21 DCP - Clause B4.6 Wildlife Corridors. The submitted arborist report recommends that a total of 4 trees be removed (T7, T8, T12 and T14). No objections are raised to the removal of T7, 12 and 14 as they are either introduced or non-locally native. Assessment of the removal of T8 within the road reserve will be undertaken by the Landscape Referrals team. The proposal has also been submitted with a landscaping plan which

Internal Referral Body	Comments
	should be amended to meet DCP criteria as the list of exotic species outweighs the presence of native and locally native species. Locally native species should be selected from the Pittwater Ward native planting guide and/or from the applicable section of the Pittwater Native Gardening Booklet, both of which are available on Council's website.
NECC (Coast and Catchments)	Supported with conditions. The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. 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>. 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. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Black Wattle Planning dated September 2022 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. Pittwater LEP 2014 and Pittwater 21 DCP No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.

External Referral Body	Comments



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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A474653 dated 27 September 2022).

The BASIX Certificate indicates that the development will meet the NSW government's requirements for sustainability.

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment



The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

Other Service Authorities.

The proposal was not required to be referred to Transport for NSW and no other Service Authority referrals are required. The infrastructure requirements of *Sydney Water* are managed directly through *Sydney Water* administrative procedures.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

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

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

Comment:

The site is not located on land within coastal wetlands or 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 site is not located on land in proximity to coastal wetlands or littoral rainforest.



Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

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

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

Comment:

A Coastal Vulnerability Area Map has, to date, not been adopted and therefore no Coastal Vulnerability Area has been identified.

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 site is located within the Coastal Environment Area. The development is for alterations and additions only and in an area which is currently occupied by similar structures. The development does not extend beyond the limit of those existing structures and will not impact upon the items listed under (a) to (g).



- 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 site is located within the Coastal Environment Area. The development is for alterations and additions only and in an area which is currently occupied by similar structures. The development does not extend beyond the limit of those existing structures and will be consistent with the criteria listed under (a) to (c).

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 site is located within the Coastal Use Area. The development is for alterations and additions only and in an area which is currently occupied by similar structures. The development does not extend beyond the limit of those existing structures and will not impact upon the items listed under (a)(i) to (v), will be consistent with the criteria under (b)(i) to (iii), and will be compatible with the requirements of (c).

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 site is located within the Coastal zone generally. The development is for alterations and additions and in an area which is currently occupied by similar structures. The development will not increase risk of coastal hazard.

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 by Council's Natural Environment Unit (Coast and Catchments). No objection was raised when considered against the provisions of the Coastal Management Act 2016, SEPP (Resilience and Hazards) 2021, and the Pittwater LEP and DCP.

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	4.4m to 10.15m	19% (1.65m)	No

Note: Non-compliant element occurs at the excavated section below the existing ground level. Height is measured pursuant to the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* the existing excavated ground level measured as per the architectural sections.

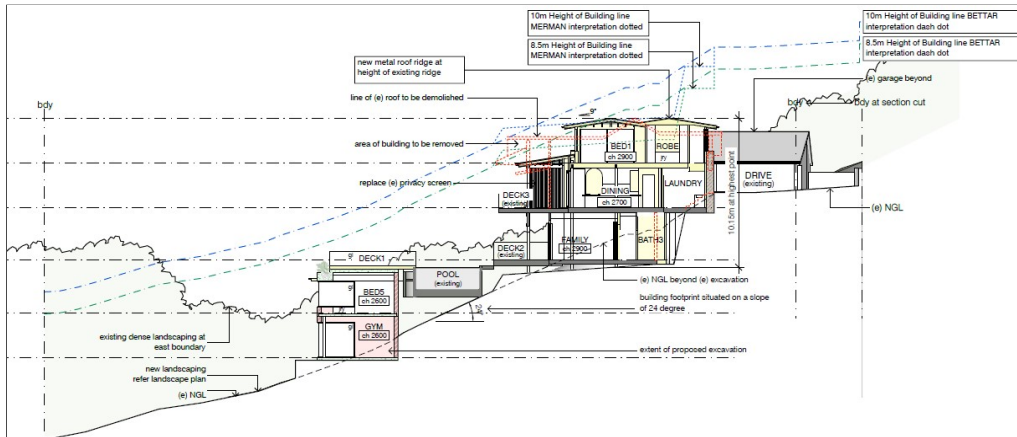


Image: Height line using 8.5 and 10m height line along natural ground level.

The diagram also demonstrates the building height as measured by the alternate method used in *Bettar v Council of City of Sydney* [2014] NSWLEC 1070 in which the building is 8.8m (2.5%) above extrapolated ground level.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Clause 4.3 - Height of Buildings
Requirement:	8.5m
Proposed:	10.15m
Percentage variation to requirement:	19% (1.65m)

Assessment of request to vary a development standard:

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



Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

The Pittwater LEP 2014 also include that:

"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
- (b) the objectives of this clause are achieved, and
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
- (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."

Comment:

The submitted site and section diagrams show the land is up to 24 degrees based on extrapolated



ground level and the levels along the side setbacks (beside the house). The clause of the LEP allows for difficulties of steep slope to be accommodated in the building design and may involve less deep excavation that preserves rock outcrops, or reduces stability risks and other natural constraints. Elevated "pier and beam" construction thus allows for minimal impact but this may raise the building height by not cutting into the site to get under the 8.5m height plane. In this case the land has been benched and excavated and the proposal by virtue of EGL is 10.15m high in adding the upper storey to the main dwelling. Therefore it is appropriate to consider the height variation in full, having regard to the principal 8.5m height line and the 10m height plane (for sloping sites) in context with Clause 4.6 and the zone objectives.

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 steep topography of the site is such that despite a significant stepping of the dwelling, the upper level will project beyond the 8.5m height limit.*
- *The majority of the non-compliance arises from the significant existing cut at Level 1, which was required to achieve levels for building on the steeply sloping land.*
- *The exceedance is justified because the new level three is able to utilise space currently occupied by the existing pitched roof, meaning that Level 3 is limited to no higher than the existing dwelling. As is evident on Section AA drawing, the existing dwelling is heavily non-compliant (regardless of how existing ground levels are measured) and the distribution of built form under the proposed design is a significantly better outcome despite the non-compliance.*
- *The performance of the proposed design when building height is measured using natural ground levels results in substantially less non-compliance. The minor height exceedance would comfortably meet the tests under Clause 4.3(2)(D) which allows development meeting such tests to reach up to 10m in height without relying on Clause 4.6.*
- *Given the steep terrain, natural ground levels are relevant to the consideration of building height relative to its context and this is reinforced by the objectives of the Height of buildings standard where buildings are encouraged to respond sensitively to the natural topography.*

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:

In response, the author of the request states:

"Level 3 is set well into the site with generous side setbacks which limit the extent to which it is viewed by neighbours or presents as a third level. Additional floor space takes the place of an existing gabled roof form to minimise scale on the site.

The already abundant vegetation will be retained and enhanced such that the existing dwelling, new Level 3, and new guest bedroom pavilion will sit comfortably and unobtrusively within the highly landscaped context. Significant mature canopy plantings on the site are retained and protected and the new roof will retain the RL of the existing, minimising scale in the proposal.

The horizontal massing of the existing dwelling is enhanced with low profile hipped roof lines at level 2 and 3. Additionally, the northward projecting gable end of the existing dwelling is removed, and the existing primary pitched roof form replaced with the modulated northern facade at Level 3.

A materials and finishes palette includes dark tones to allow the dwelling recede and become less prominent in the landscape context. A significantly stepped elevation is presented to both eastern and western neighbours. Together with enhanced landscaped open space areas, these design measures will integrate the dwelling with the landform and landscape.

A landscape concept for the site introduces significantly greater levels of native plantings providing habitat and food source for native wildlife".

The proposal satisfies this objective.

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

Comment:

In response, the author of the request states:

"The height of the proposed additions retain the height of the existing dwelling whilst reducing considerable bulk as viewed from neighbours. The new upper level largely occupies the space of the existing pitched roof form and provides more generous side setbacks thereby reducing the overall massing of structure at this level.



No. 201 Whale Beach Road to the west is a three storey dwelling which projects further to the north at its middle and lower level than the proposed dwelling at 199 Whale Beach Road. No. 197 Whale Beach Road to the east, whilst only over two levels, sits slightly higher in the landscape such that its roof ridge is approximately 1m lower than the proposed level 3 gutter line. Noting these circumstances the proposed dwelling will relate positively to the height and scale of nearby development, and will respect the existing built form proportions by not exceeding the existing roof RL".

The proposal satisfies this objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

In response, the author of the request states:

"Shading of neighbours is minimal because of the optimal orientation of the dwelling, and the location of Level 3 as far southwards as possible within the footprint. This allows shadows from the additional level to fall favourably for adjoining neighbours. The siting of the guest bedroom pavilion at lower levels on the site results in the majority of its shadow falling on its own curtilage".

The proposal satisfies this objective.

d) to allow for the reasonable sharing of views,

Comment:

In response, the author of the request states:

"The stepping of additional floor space both within the space of the existing roof and at the lower levels of the site for the guest bedroom pavilion ensures that view lines to the east and west are optimised for neighbours. The proposal will result in an improved outlook with the removal of the existing northward projecting Dutch gable and a reasonable sharing of views is maintained".

The proposal satisfies this objective.

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

Comment:

In response, the author of the request states:

"The stepped floor plates and replacement of the existing pitched roof with floor space ensures that the dwelling remains responsive to the steep terrain and that the need for significant excavation and fill is avoided".

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:

In response, the author of the request states:

"By not exceeding the height of the existing dwelling, the proposed design improves the visual



contribution of the dwelling in the highly scenic context. A strong landscape presence on the site is maintained and enhanced and ensures the dwelling sits unobtrusively in the highly vegetated context. No heritage conservation areas or items will be affected".

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.**

Comment:

In response, the author of the request states:

"The site has significant aesthetic value in the visual catchment of Whale Beach. The development maintains the existing height of building, whilst ensuring that the additions remain low impact, secondary to its landscape setting, and considerate of views and the local ecology".

The proposal satisfies these 2 objectives (grouped above).

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

Comment:

In response, the author of the request states:

"The proposed development maintains the existing height of building and respects the existing levels on the site. There is minimal site disturbance required and the dwelling will maintain its landscaped setting and good relationship with neighbouring dwellings and the public domain".

The proposal satisfies this objective.

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

Comment:

In response, the author of the request states:

"The proposed development maintains the existing generous landscaped rear setback and enhances the ecological values on the site through additional native planting".

The proposal satisfies this objective.

Conclusion

For the reasons detailed above, having regard to the principal 8.5m building height control (cl4.3 (2)) and 10.0m height provisions (cl4.3 (2D)) the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

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

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



to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Level -1: 27.2m Level 0: 27.2m Level 1: 8.3m Level 2: 3.0m - 6.1m Level 3: 5.6m to 6.9m	N/A N/A N/A 53.8% (3.5m) 13.8% (0.9m)	Yes Yes Yes No No
Rear building line	6.5m	Level -1: 18.6m Level 0: 18.6m Level 1: 18.6m Level 2: 25.7m Level 3: 38.1m	N/A N/A N/A N/A N/A	Yes Yes Yes Yes Yes
Side building line	<u>West</u> 2.5m	Level -1: 4.9m to 6.3m Level 0: 2.6m to 6.0m Level 1: 2.5m to 6.1m Level 2: 1.3m to 2.6m Level 3: 5.9m to 7.5m	N/A N/A N/A 48% (1.2m) N/A	Yes Yes Yes No Yes
	<u>East</u> 1.0m	Level -1: 5.4m to 6.3m Level 0: 5.4m to 6.3m Level 1: 5.4m to 6.3m Level 2: 10.6m to 11.5m Level 3: 1.4m to 4.4m	N/A N/A N/A N/A N/A	Yes Yes Yes Yes Yes
Building envelope	<u>West</u> 3.5m x 45°	Outside envelope	100%	No
	<u>East</u> 3.5m x 45°	Outside envelope	100%	No
Landscaped area	60% (634.2m ²)	57.1% (604m ²)	4.8% (30.2m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	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
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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.2 Scenic protection - General	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.11 Fences - General	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

The proposal is considered with regard to the objectives and requirements of *Clause 1.5 Visual Privacy* as follows:

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)*
- *A sense of territory and safety is provided for residents.*

**Comments:**

The development includes additional rear terraces at Levels 1 and 2 as well as a new terrace at the proposed Level 3.

The terrace at the pool level (Level 1) is adjacent to the neighbouring terrace at No. 201 Whale Beach Road however, both are screened by dense vegetation. Notwithstanding, the plans (DA 04) indicate that a planter box is proposed along the western edge of the new terrace to address potential privacy concerns.

The terrace at Level 2 is an extension to the existing deck and is sited at approximately the same level as the upper level terrace at No. 201 Whale Beach Road. The plans (DA 05) indicate that a substantial planter box is proposed along the western edge of the new terrace to address potential privacy concerns.

The terrace (Deck 4) at Level 3 faces towards the eastern side boundary and No. 197 Whale Beach Road. However, as above, the plans (DA 06) indicates that a wide planter is proposed between the terrace and the side boundary to mitigate any overlooking concerns. The Landscape Plan indicates that this planter will accommodate 6 x 35L *Viburnum odoratissima* (which can grow up to to a height of 4.0m) and 12 x 200mm Kalanchoe ' Silver Spoons' (which can grow up to a height of 1.0m).

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of Pittwater 21 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.

D12.5 Front building line**Description of the Non-compliance**

Clause D12.5 requires development to provide a minimum front setback of 6.5m.

The development provides a non-compliant front setback of between 3.0m to 6.1m at Level 2 and between 5.6m to 6.9m at Level 3.

The non-compliant element at Level 2 comprises a new awning over the entry and an addition to an existing wall, as detailed below in red:

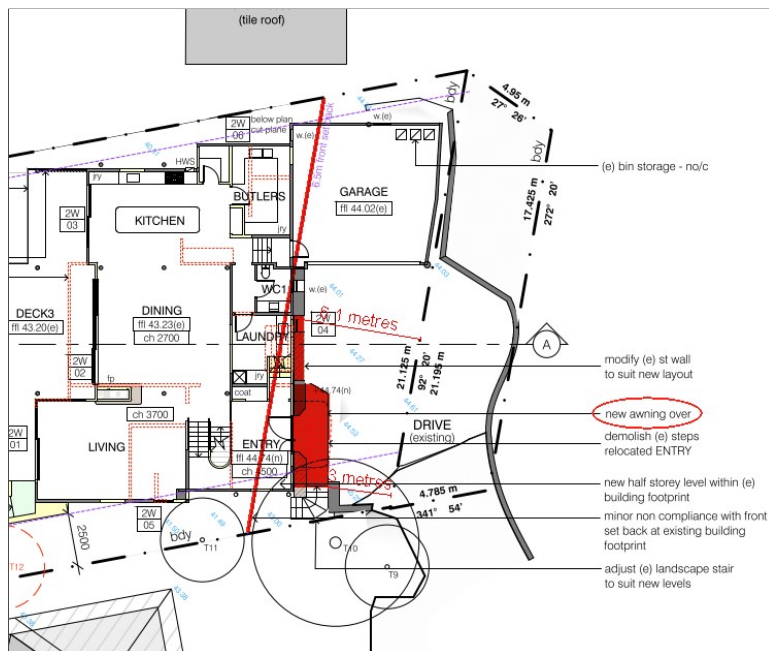


Image: Front boundary line and plan view including existing approved structures and new work (ground level).

The non-compliant element at Level 3 comprises the south-western corner of the new upper floor level which includes an internal stairwell as detailed below in red:

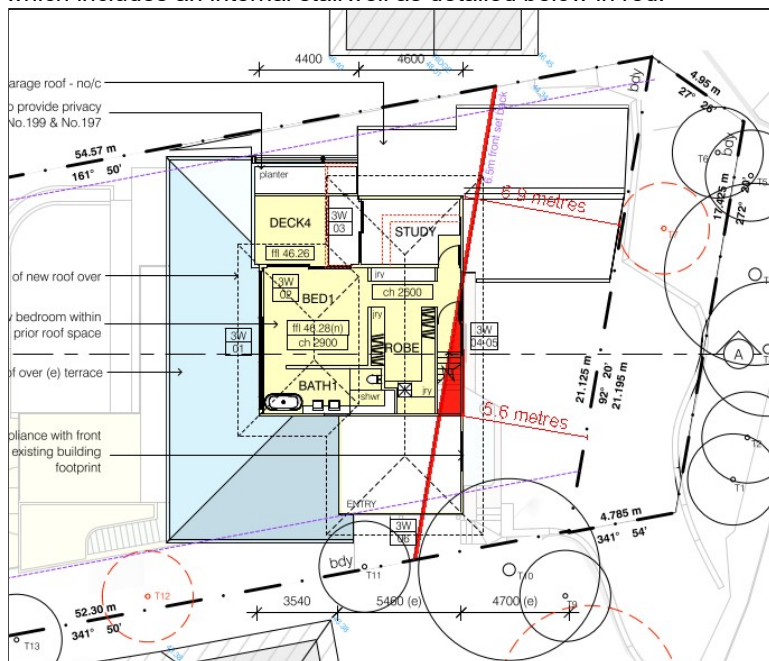


Image: Front boundary line and plan view including existing approved structures and new work (Upper level).

Merit Consideration



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

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

Comment:

The desired future character statement of the Palm Beach Locality states:

"The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a 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 the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

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, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

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

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.

Palm Beach will remain an important link to the offshore communities".

The development is for alterations and additions to an existing dwelling of which the only notable additions are to the top floor (Level 3) and at the rear lower levels.



The ridge line of the proposed roof is at RL 49.38 which is 1.24m higher than the street level. Noting that the street is heavily vegetated with plantings which achieve heights of between 2.0m and 5.0m the proposed development would be largely below the tree canopy and concealed from the public domain.

The development is designed to continue responding to the sloping topography of the site by maintaining a terraced outcome thereby minimising bulk and scale on what is a heavily constrained property.

The proposal satisfies this objective.

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

Comment

The building is set down the site with the new additions maintained to a low profile pitched roof where the major changes are proposed. The dwelling steps down across each level to maintain continuity with the slope of the land and allow opportunities for views and vistas from the public domain.

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

Comment

The building presents a 2 storey to the road but is set down below the road level when viewed across the front setback area. The garage however is set forward to enable vehicle access and safe entry from the road line via a ramped driveway and remain unchanged. The alterations and additions are consistent with the pattern and scale of surrounding dwelling houses that have been modernised by substantial alterations or new dwelling construction in the vicinity. Landscaping is provided to maintain a landscape setting for the site.

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

Comment

Landscaping is provided to maintain a landscape setting for the site. Replacement planting is suitable for the coastal environment and includes a mix of native species to enhance the appearance of the dwelling and provide amenity to the surroundings of the building in its residential setting.

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

Comment

The garage area remains substantially the same as approved and the shaped area of the driveway (widened section) allows for cars to turn around and leave in a forward direction from the existing double garage.

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

Comment

The proposal maintains the existing main tree planting on site and will include new landscaping works to provide for passive recreation for the occupants. The planting is suitable for the coastal residential environment with a suitable native plant species mix. The landscaping is supported by Council's Landscape Officer.

- *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 landscaping works are satisfactory for the surrounding urban environment. The majority of existing trees on site are to be retained and a mix of new low and medium sized planting are to be provided.

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

Comment

The proposal includes new landscape planting and works in the front setback area to improve the streetscape setting of the site. The proposed alterations and additions under this development proposal retains all high retention trees within the rear of the property and all of the public road reserve trees. Council's landscape officer has recommended conditions regarding the protection of trees along the road reserve where appropriate.

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

Comment

The proposal maintains the overall urban amenity of the site in terms of landscaping works and the alterations and additions are suitable to modernise the building and enhance the internal layout and functionality of the existing dwelling house.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of Pittwater 21 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.

D12.6 Side and rear building line

Description of the Non-compliance

The proposal includes non-compliance within the 1m the side setback and side boundary envelope for some corner elements along eastern and western wall lines associated with the entry area, living room, rear decks, new roof edge and minor structures (including some existing wall elements).

Merit Consideration

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

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

Comment

The proposal involves alterations and additions to the existing building and the new elements to the house including materials, landscaping planter boxes, roof profile, wall treatment and position of the new main elements of building bulk (master bedroom, deck, gym, bed 5) are consistent with the DFC, subject to conditions as recommended.

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

Comment

The building additions include minor "point" encroachments or generally short sections of non-compliance with the side setback / side boundary envelope. The existing front setback variation of the garage remains unchanged. The existing and new non-compliance are shown on drawings DA03 to



DA09 by *Campbell Architecture* and demonstrate the changes in the building in context with the side setbacks, height line and side boundary envelope.

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

Comment

The new roof span for the upper level is visible from the road area and overlooking properties to the south. The roof style is a low pitched metal clad (dark grey) in a hipped shape to suit the style of the building and minimise view impacts.

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

Comment

The alterations and additions maintain the principal wall alignments along the side boundaries, with the main new room elements centrally located to ensure a responsive design and minimise impact on views. No view impact submissions were received from any surrounding neighbours.

- *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 maintains the principal orientation of the site toward the rear yard. Overall the alterations and additions do not create an unreasonable loss of privacy or solar access to adjacent land. The use of planter boxes, privacy screening and window infill will assist to retain privacy and amenity to adjacent private property.

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

Comment

Substantial landscape trees on the site will be retained (as per the Arborist Report) and new landscaping works (new planting) will be provided throughout the site. Side setback areas are generally not suitable for large trees or dense planting due to adjacent dwelling positions, BCA access and drainage requirements.

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

Comment

The proposal involves alteration and additions which maintain the general building line along the side setbacks determined by the existing building footprint. Generally the encroachments are minor and influenced by the angled shape of the side boundaries in comparison the main wall lines of the dwelling. The proposal includes improved side access for the dwelling and a centralised position for the new master bedroom, deck 1, bedroom 4 and "gym" rooms. Therefore keeping the principal building works away from the side boundary envelope.

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

Comment

The proposal has included landscape elements in raised planter boxes to assist in providing a buffer to adjacent land. New planter boxes are shown for the western side of Deck 1 and Deck 3 to break up building bulk and assist in privacy separation to adjacent land.



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

Comment

The site is not located on the fringe of a commercial interface. This objective is not relevant.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of Pittwater 21 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.

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 \$25,300 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,530,000.

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, 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 Pittwater Local Environmental Plan 2014 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 dwelling house has been referred to the *Development Determination Panel* (DDP) due to a non-compliance with the Height of Buildings development standard that exceeds a 10% variation.

Critical assessment issues included building height, side boundary envelope and setback and landscaping considerations along the road frontage. No submissions of objections to the alterations and additions were received.

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 Building development standard pursuant to clause 4.6 of the Pittwater LEP 2014 as the applicant's written request has 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 standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/1951 for Alterations and additions to a dwelling house on land at Lot 10 DP 10782, 199 Whale Beach Road, WHALE BEACH, Lot 200 DP 1033789, 199 Whale Beach Road, WHALE BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance with the endorsed stamped plans and



documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 00 NTS (Drawing details)	5.9.2022	Campbell Architecture
DA 02 Site Plan & Roof Plan	5.9.2022	Campbell Architecture
DA 03 Plan Level 1 & Level 0	5.9.2022	Campbell Architecture
DA 04 Plan Level 1	5.9.2022	Campbell Architecture
DA 05 Plan Level 2	5.9.2022	Campbell Architecture
DA 06 Plan Level 3	5.9.2022	Campbell Architecture
DA 07 Elevation West & South (including external materials and finishes)	5.9.2022	Campbell Architecture
DA 08 Elevation East & North	5.9.2022	Campbell Architecture
DA 09 Section AA	5.9.2022	Campbell Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
SW01-A Stormwater Services Cover Sheet	7.10.2022	ADCAR Consulting
SW02-A Stormwater Services Erosion / Sediment Control Plan	7.10.2022	ADCAR Consulting
SW03-A Stormwater Services Levels 1 & 2	7.10.2022	ADCAR Consulting
SW03-A Stormwater Services Levels 1 & 2 (Details)	7.10.2022	ADCAR Consulting
SW05-A Stormwater Services Levels 0 & - 1	7.10.2022	ADCAR Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate A474653	27.9.2022	Eco Certificates
Arboricultural Impact Assessment	September 2022	Bluegum Tree Care & Consultancy
Geotechnical Report 2022-170	7.9.2022	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:

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan	4.11.2022	Vale Designs



Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan - 199 Whale Beach Road	28.9.2022	Campbell Architecture

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	25.7.2022

(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 \$25,300.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,530,000.00.

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

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

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



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

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. Landscape Plan

The submitted Landscape Plan is to be amended to provide for a minimum of 60% locally native species as a proportion of the total number of plants. Locally native species are to be consistent with the Pittwater Ward Native Planting Guide and/or the relevant section of the Pittwater Native Gardening Booklet available on Council's website.

The Landscape Plan is to be prepared by a suitably qualified landscape architect and evidence of compliance provided to the Certifier prior to issue of the Construction Certificate.

Reason: To achieve compliance with PDCP Clause B4.6 Wildlife Corridors.

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 referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

9. Compliance with Standards



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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

10. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and the recommendations of the Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- i) tree protection measures under section 6 Recommendations,
- ii) tree protection plan.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

11. **Tree Removal Within the Property**

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

- i) tree 7 - Ivory Curl Tree, *Buckinghamia celsissima*
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Exempt Species (by species type or by height) as listed in the Development Control Plan do not require Council consent for management or removal, and the following exempt species are identified in the Arboricultural Impact Assessment: trees 12 and 14.



Reason: To enable authorised development works.

12. **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

13. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site, as well as tree 8 WA Weeping Myrtle - *Agonis flexuosa* identified in the Arboricultural Impact Assessment, shall be protected in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites, or as deemed necessary by the project Arborist.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

14. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation, including tree 8 (WA Weeping Myrtle - *Agonis flexuosa*).

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree



protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,

- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Principal Certifier must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as 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.

Reason: Tree and vegetation protection.

15. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

16. **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.

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.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****18. Required Tree Planting**

One (1) locally native tree shall be planted within the property to achieve at least 8.5 metres height at maturity, and shall be selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or Council's Tree Guide, and in accordance with the following:

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

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

Reason: To maintain environmental amenity.

19. Condition of Retained Vegetation - Project Arborist

Prior to the issue of an Occupation Certificate, a report prepared by the project arborist shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained as listed in the Arboricultural Impact Assessment, including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

20. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) are to be imported on to the site prior to or during construction works.

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

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

21. Swimming Pool Requirements (existing pool modified by works)

The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

- (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) 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 warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.
- (c) All signage shall be located in a prominent position within the pool area.

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

22. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

23. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a 'secondary' dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent

In signing this report, I declare that I do not have a Conflict of Interest.

Signed

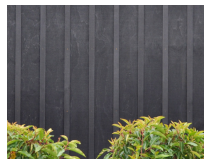
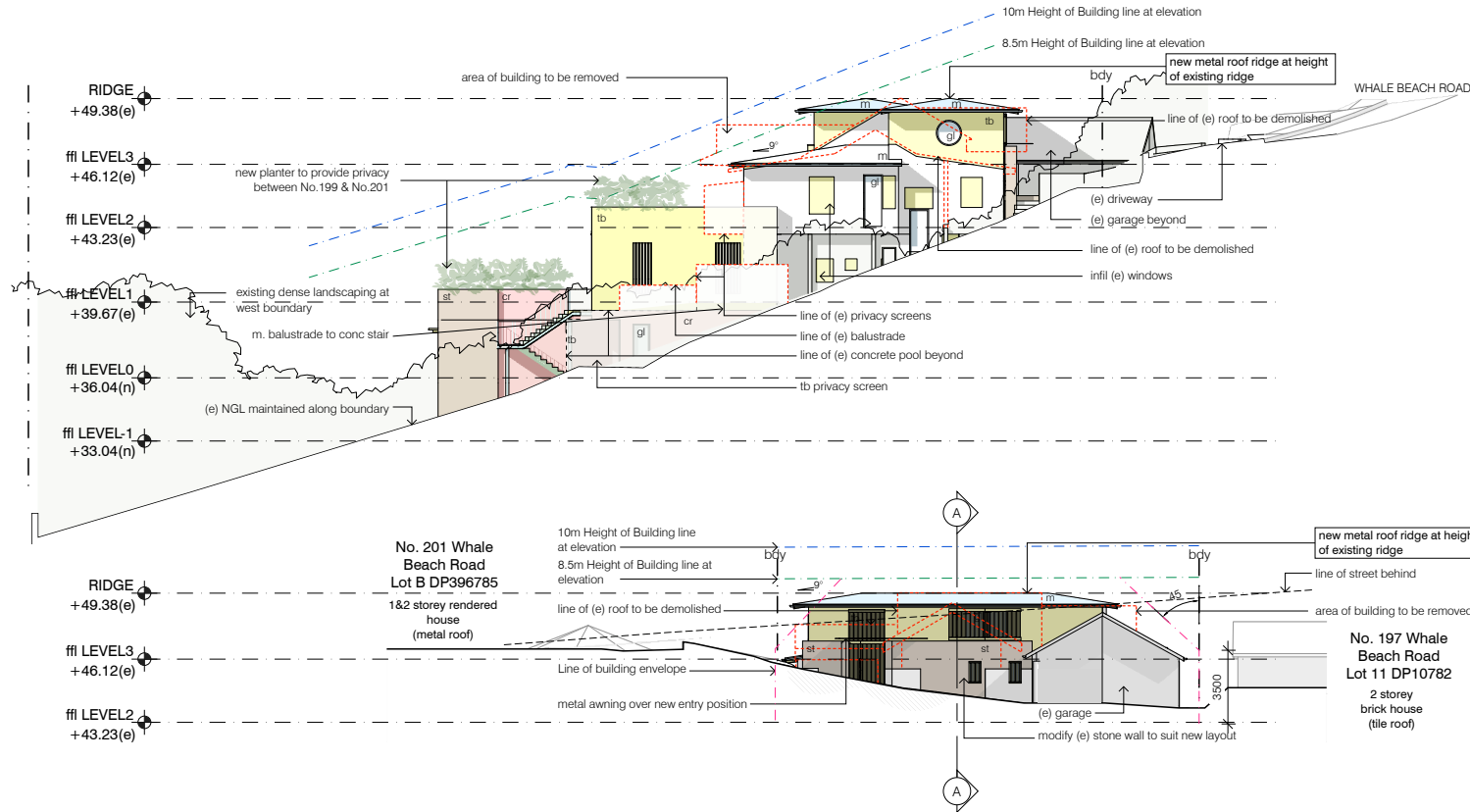
Rodney Piggott, Manager Development Assessments

The application is determined on //, under the delegated authority of:

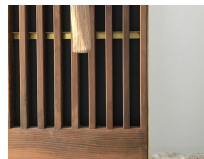


Rodney Piggott, Manager Development Assessments

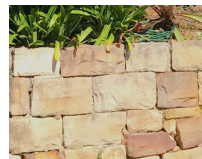




tb cladding



tb screens



existing sandstone walls



metal roof



tb decking



cement render walls



landscape stairs



date	description
05/09/2022	DA

The Contractor shall verify all dimensions & levels on the site.
Written dimensions to take preference over scaled dimensions.
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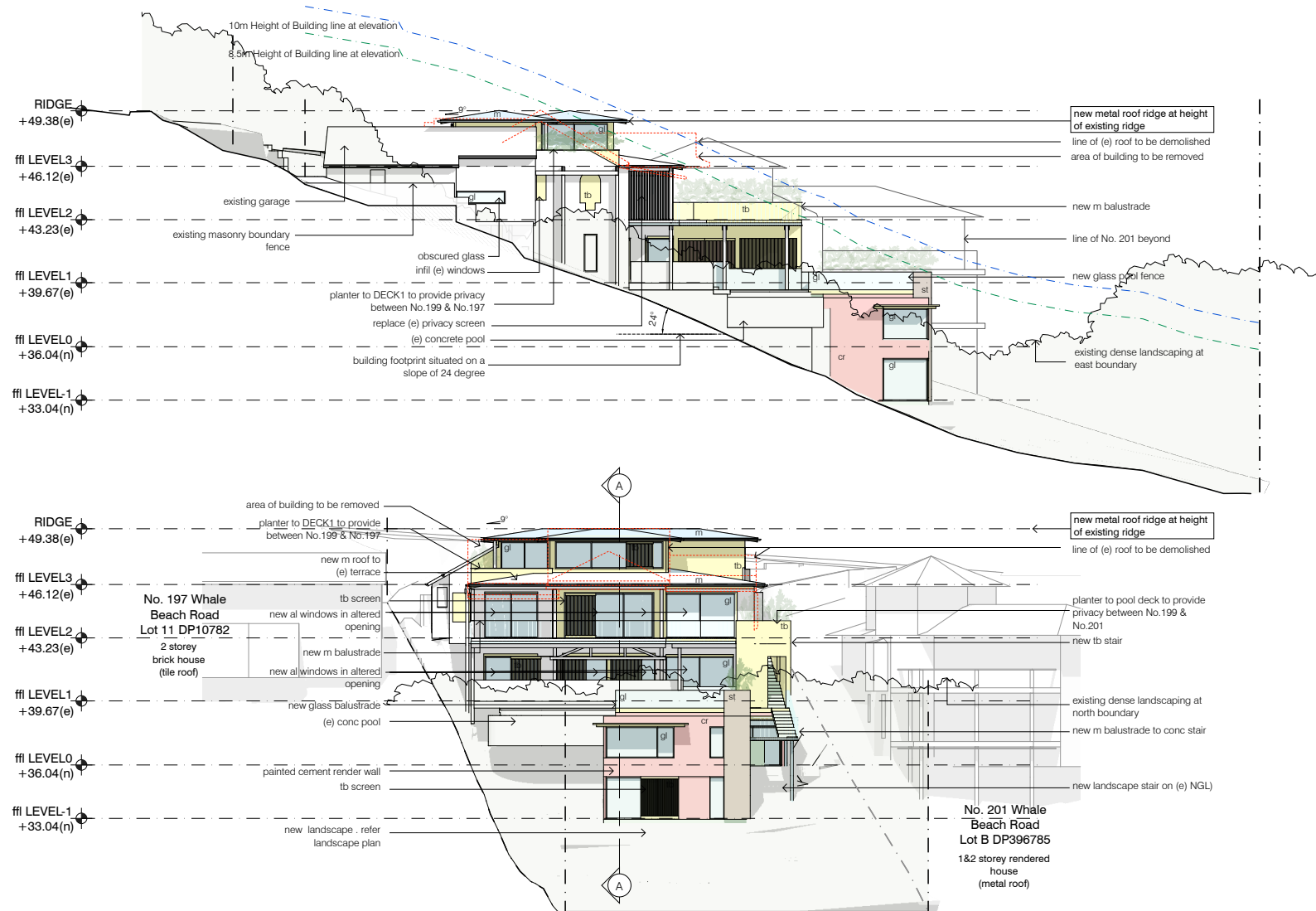
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e/ info@campbellarchitecture.com.au
ABN 48 616 525 449
NOM REG NO. 8324

elevation west & south
199 whale beach rd
whale beach

DA 07
1:200
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filename : 2107_plans_DA
2107

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architecture**





0 10m

date description
05/09/2022 DA

The Contractor shall verify all dimensions & levels on the site.
Written dimensions to take preference over scaled dimensions.
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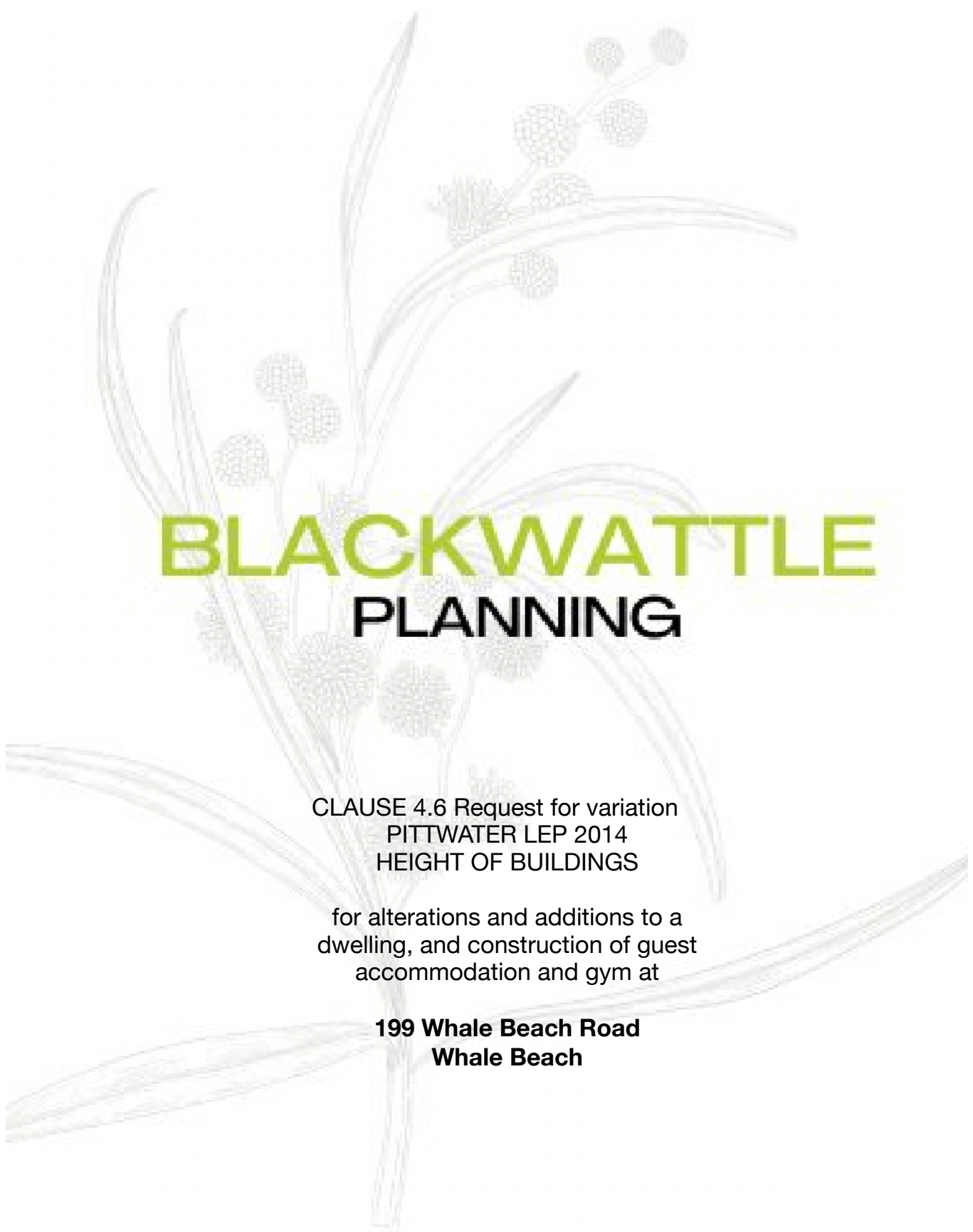
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NOM REG NO. 8324

elevation east & north
199 whale beach rd
whale beach

DA 08
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filename : 2107_plans_DA
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BLACKWATTLE PLANNING

CLAUSE 4.6 Request for variation
PITTWATER LEP 2014
HEIGHT OF BUILDINGS

for alterations and additions to a
dwelling, and construction of guest
accommodation and gym at

**199 Whale Beach Road
Whale Beach**

Content

- 1.0 Introduction
- 2.0 Pittwater Local Environmental Plan 2014
- 3.0 Variation to Clause 4.3 Height of buildings
- 4.0 Clause 4.6 Exceptions to Development Standards
- 5.0 Conclusion

Figures

- Figure 1 Zoning Map Pittwater LEP 2014
- Figure 2 Height of Buildings Map Pittwater LEP 2014
- Figure 3 Section

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1.0 Introduction

This Clause 4.6 Request for Variation to the Height of Buildings development standard under Pittwater Local Environmental Plan 2014 (PLEP 2014) is prepared by Blackwattle Planning in support of a Development Application for alterations and additions to a dwelling, and construction of guest accommodation and gym at 199 Whale Beach Road Whale Beach to be submitted to Northern Beaches Council.

The Development Application includes the following components:

Level 1 (existing)

- Retain existing pool and deck areas
- Extend new deck 1 over new pavilion and connect to new side access stairs
- Retain existing bedrooms with minor reconfiguration to create secondary family room.
- Minor extension to the south to create additional bathroom facilities

Level 2 (existing)

-
- Minor reconfiguration of walls to create open plan kitchen, dining and living space
- Relocate entry with new awning over and adjust external stairs
- Retain existing deck 3 with slight increase in depth
- Extend terrace and new planter from existing deck 3 and over external stairs
- Retain existing garage, driveway and landscaping
- New simplified roof form over existing deck 3

Level 3 (new)

- New bed 1 with ensuite, walk in robe, and study
- Small deck 4 and planter off bed 1

Level 0 (guest bedroom)

- New bed 4 with ensuite

Level -1

- New Gymnasium accessed from rear yard

This document should be read in conjunction with the Statement of Environmental Effects prepared by Blackwattle Planning dated September 2022.

Through this document it is demonstrated that compliance with the Height of Buildings Development Standard of PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

2.0 Pittwater LEP 2014

No. 199 Whale Beach Road Whale Beach (the site) falls within the area to which PLEP 2014 applies. The site contains an existing dwelling over three levels and a swimming pool. The site consists of two Lots. Lot 10 in DP 10782 is the primary lot on which the dwelling is constructed and has an area of 1057sqm. An additional allotment legally identified as Lot 200 in DP 1033789 adjoins the southern boundary. Lot 200 has an area of 86.6sqm and supports the existing driveway and landscaped frontage to the site.

Under **Clause 2.2** of PLEP 2014, the site is zoned C4 Environmental Living as shown in Figure 1 below. The proposal to construct alterations and additions to the dwelling is permissible with consent in the C4 Zone

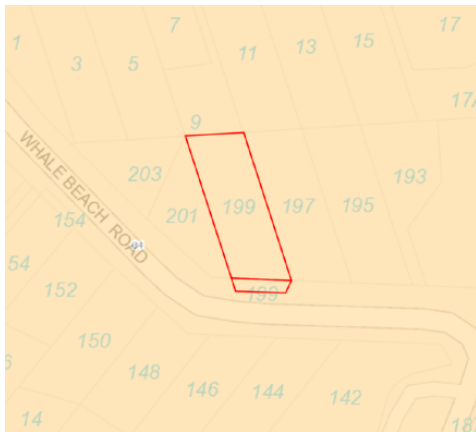


Figure 1: The site outlined red on map indicating zone C4 Environmental Living, Source: **Northern Beaches Online Mapping**

Clause 4.3 of PLEP 2014 restricts the height of development on the site in accordance with the Height of buildings Map (at Figure 2 below) to 8.5m. Clause 4.3 is a development standard.



Figure 2: The site outlined in red on map indicating Category I, 8.5m Height limit, Source: **Northern Beaches Online Mapping**

Clause 4.6 of PLEP 2014 enables the consent authority to grant consent to development even though the development does not comply with a development standard. The purpose of the Clause is to allow flexibility in the application of certain development standards which may in turn result in better outcomes.

3.0 Variation to Clause 4.3 Height of buildings

This written request seeks to justify the variation to Clause 4.3 Height of buildings development standard in PLEP 2014.

PLEP 2014 defines building height as follows:

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.

The highest point of the proposed new roof at Level 3 is at RL 49.38 achieving a maximum height of 10.15m above the existing excavated ground level. The variation to the 8.5m Height of buildings development standard sought is 19%. This calculation has utilised the interpretation of **building height** as outlined in *Merman Investments Pty Ltd v Woollahra Municipal Council 2021*.

Under the calculation of **building height** previously used by Northern Beaches Council, measuring height from interpolated natural ground level as outlined in *Bettar v Council of the City of Sydney 2014*, the highest point of the proposed new level 3 roof form is the gutter line at RL 48.78. This calculation results in a building height of 9.11m or 7%.

Figure 3 below indicates the building height as measured under both approaches. The diagram also demonstrates the new roof of level 3 is the same RL as the existing roof.

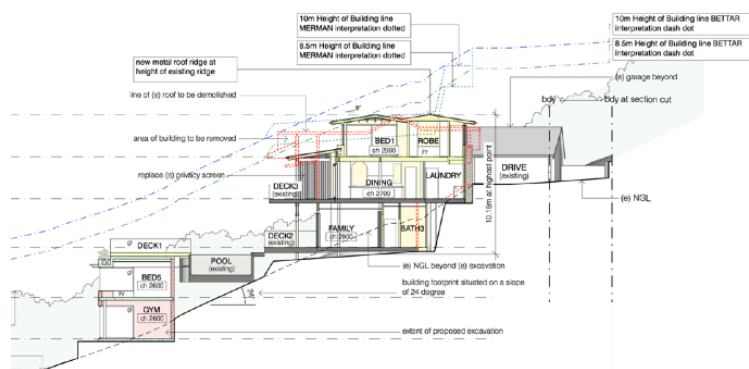


Figure 3: Plan showing extent of height breach under *Merman Investments* and *Bettar* interpretations of **building height**. **Source:** Campbell Architecture

4.0 Clause 4.6 Exceptions to Development standards

The objectives of Clause 4.6 are set out in subclause (1) 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.*

Decisions of the NSW Land and Environment Court have established that Clause 4.6(1) is not an operational clause.

Clause 4.6(2) is the enabling clause that permits development consent to be granted to a development that contravenes a development standard imposed by PLEP 2014. As the Height of Buildings is a development standard and is not expressly excluded from the operation of the clause, a variation may be granted, subject to the remaining subclauses of Clause 4.6 being satisfied.

4.1 Clause 4.6(3) of PLEP 2014 provides that:

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.*

This written request addresses these requirements in turn, having regard for relevant key decisions of the NSW Land and Environment Court that have informed the approach to the application of Clause 4.6

4.2 **Clause 4.6(3)(a) demonstrating that *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case***

The decision in *Wehbe v Pittwater Council 2007* establishes five ways that an applicant may commonly demonstrate that this clause is achieved. The decision also establishes that it may be sufficient to establish only one way.

The first of those pathways is to demonstrate that *the objectives of the development standard are achieved notwithstanding non-compliance with the standard*. This request relies on this pathway.

The objectives of the Height of Buildings development standard are set out below, together with a discussion of how the objectives are met by the proposal, notwithstanding the variation to the standard.

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

The site is located within the Palm Beach Locality. Pittwater 21 DCP provides a locality statement setting out the desired character of the locality. Parts of the statement relevant to a single dwelling are as follows:

Desired Character

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape...

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

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, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

.....

Comment: Level 3 is set well into the site with generous side setbacks which limit the extent to which it is viewed by neighbours or presents as a third level. Additional floor space takes the place of an existing gabled roof form to minimise scale on the site.

The already abundant vegetation will be retained and enhanced such that the existing dwelling, new Level 3, and new guest bedroom pavilion will sit comfortably and unobtrusively within the highly landscaped context. Significant mature canopy plantings on the site are retained and protected and the new roof will retain the RL of the existing, minimising scale in the proposal.

The horizontal massing of the existing dwelling is enhanced with low profile hipped roof lines at level 2 and 3. Additionally, the northward projecting gable end of the existing dwelling is removed, and the existing primary pitched roof form replaced with the modulated northern facade at Level 3.

A materials and finishes palette includes dark tones to allow the dwelling recede and become less prominent in the landscape context. A significantly stepped elevation is presented to both eastern and western neighbours. Together with enhanced landscaped open space areas, these design measures will integrate the dwelling with the landform and landscape.

A landscape concept for the site introduces significantly greater levels of native plantings providing habitat and food source for native wildlife.

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

Comment: The height of the proposed additions retain the height of the existing dwelling whilst reducing considerable bulk as viewed from neighbours. The new upper level largely occupies the space of the existing pitched roof form and provides more generous side setbacks thereby reducing the overall massing of structure at this level.

No 201 Whale Beach Road to the west is a three storey dwelling which projects further to the north at its middle and lower level than the proposed dwelling at 199 Whale Beach Road. No. 197 Whale Beach Road to the east, whilst only over two levels, sits slightly higher in the landscape such that its roof ridge is approximately 1m lower than the proposed level 3 gutter line. Noting these circumstances the proposed dwelling will relate positively to the height and scale of nearby development, and will respect the existing built form proportions by not exceeding the existing roof RL.

4.2.3 (c) *to minimise any overshadowing of neighbouring properties,*

Comment: Shading of neighbours is minimal because of the optimal orientation of the dwelling, and the location of Level 3 as far southwards as possible within the footprint. This allows shadows from the additional level to fall favourably for adjoining neighbours. The siting of the guest bedroom pavilion at lower levels on the site results in the majority of its shadow falling on its own curtilage.

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

Comment: The stepping of additional floor space both within the space of the existing roof and at the lower levels of the site for the guest bedroom pavilion ensures that view lines to the east and west are optimised for neighbours. The proposal will result in an improved outlook with the removal of the existing northward projecting dutch gable and a reasonable sharing of views is maintained.

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

Comment: The stepped floor plates and replacement of the existing pitched roof with floor space ensures that the dwelling remains responsive to the steep terrain and that the need for significant excavation and fill is avoided.

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

Comment: By not exceeding the height of the existing dwelling, the proposed design improves the visual contribution of the dwelling in the highly scenic context. A strong landscape presence on the site is maintained and enhanced and ensures the dwelling sits unobtrusively in the highly vegetated context. No heritage conservation areas or items will be affected.

4.2.7 Conclusion under Clause 4.6 (3)(a)

Having regard to the consistency of the proposed development with the objectives of the Height of Buildings development standard, compliance with the standard is found to be unreasonable and unnecessary in the circumstances.

4.3 **Clause 4.6(3)(b) demonstrating that *there are sufficient environmental planning grounds to justify contravening the standard***

Clause 4.6(3)(b) requires that *sufficient environmental planning grounds* be demonstrated to justify contravening the development standard. As established in relevant caselaw, the sufficient grounds must relate to the circumstances of the proposed development and focus on the relevant aspect of the development that contravenes the standard.

In this case, that part of the proposal which exceeds the development standard is the upper portion of proposed level 3. The environmental planning grounds that justify the exceedance of the development standard are as follows:

- The steep topography of the site is such that despite a significant stepping of the dwelling, the upper level will project beyond the 8.5m height limit.
- The majority of the non-compliance arises from the significant existing cut at Level 1, which was required to achieve levels for building on the steeply sloping land.
- The exceedance is justified because the new level three is able to utilise space currently occupied by the existing pitched roof, meaning that Level 3 is limited to no higher than the existing dwelling. As is evident on Section AA drawing, the existing dwelling is heavily non-compliant (regardless of how existing ground levels are measured) and the distribution of built form under the proposed design is a significantly better outcome despite the non-compliance.
- The performance of the proposed design when **building height** is measured using natural ground levels results in substantially less non-compliance. The minor height exceedance would comfortably meet the tests under Clause 4.3(2)(D) which allows development meeting such tests to reach up to 10m in height without relying on Clause 4.6.
- Given the steep terrain, natural ground levels are relevant to the consideration of building height relative to its context and this is reinforced by the objectives of the Height of buildings standard where buildings are encouraged to *respond sensitively to the natural topography*.

4.3.1 Objects of the Environmental Planning and Assessment Act

In demonstrating sufficient environmental planning grounds, it is noted that notwithstanding the contravention of the maximum height standard, the design fulfils the following objects of the Environmental Planning and Assessment Act 1979:

(g) to promote good design and amenity of the built environment,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.

4.3.2 Conclusion under Clause 4.6(3)(b)

We believe the above environmental planning grounds are sufficient to justify the exceedance of the height of buildings development standard in these specific circumstances.

4.4 **Clause 4.6(4)(a)(i) The written request *adequately addresses the matters required to be demonstrated by subclause (3)***

This written request comprehensively addresses the matters required to be demonstrated by subclause (3).

4.5 **Clause 4.6(4)(a)(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***

4.5.1 Consistency with objectives of development standard

As outlined in paragraphs 4.2 of this document, the proposed development notwithstanding the exceedance of the height limit is found to be consistent with the objectives of the Height of buildings development standard.

4.5.2 Consistency with objectives of the C4 Environmental Living Zone

The objectives of this zone and the manner in which the objectives are achieved by the proposed development are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values; and,*
- *To ensure that residential development does not have an adverse effect on those values.*

Comment: The site has significant aesthetic value in the visual catchment of Whale Beach. The development maintains the existing height of building, whilst ensuring that the additions remain low impact, secondary to its landscape setting, and considerate of views and the local ecology.

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

Comment: The proposed development maintains the existing height of building and respects the existing levels on the site. There is minimal site disturbance required and the dwelling will maintain its landscaped setting and good relationship with neighbouring dwellings and the public domain.

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

Comment: The proposed development maintains the existing generous landscaped rear setback and enhances the ecological values on the site through additional native planting.

4.6 **Clause 4.6(4)(b) The concurrence of the Planning Secretary has been obtained**

Concurrence is obtained from the Secretary of the Department of Planning in these circumstances through Planning Circular dated 5 May 2020 which established concurrence can be assumed for variations exceeding 10% where a Local Planning Panel is the Consent authority. Advice from the DPIE dated 2 November 2021 permits Clause 4.6 variations greater than 10% to building height to be determined by Council staff under delegation in accordance with Council procedures.

5.0 **Conclusion**

This document demonstrates that the required tests contained in Clause 4.6 have been met by the proposed development. In particular, that:

- Compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case given that the objectives of Clause 4.3 Height of Buildings have been met; and,
- Sufficient environmental planning grounds have been demonstrated to justify the contravention of the development standard; and,
- The proposed development is found to be in the public interest given its consistency with the objectives of the development standard and of the C4 Environmental Living zone.

In these circumstances the consent authority can be satisfied that it is appropriate to apply the flexibility permitted under Clause 4.6 of PLEP 2014 to vary the Height of Buildings development standard of PLEP 2014 to the extent proposed.



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