northern beaches council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 26 APRIL 2023

Ashleigh Sherry
Manager Business System and Administration

northern beaches council

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 26 April 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 31 MARCH 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 31 March 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	**DA2022/2223 - 20 BAREENA DRIVE BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING DEMOLITION WORKS AND CARPORT**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/245242**
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 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 DA2022/2223 for alterations and additions to a dwelling house including demolition works and carport on land at Lot 2 DP 758044, 20 Bareena Drive BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2223

Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 2 DP 758044, 20 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including demolition works 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:	Jake Douglas Oliver Bromwich Natalie Jane Bromwich
Applicant:	Leon Varley

Application Lodged:	20/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/01/2023 to 09/02/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 20%
Recommendation:	Approval

Estimated Cost of Works:	$ 607,345.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to the application proposing a greater then 10% variation to the Floor Space Ratio development standard.

The written Clause 4.6 request for the non-compliance with FSR standard arises from a 49.2m^2 (20%) addition in floor space. The existing building has an existing floorspace 0.46:1 (282.7m^2), which is at 34.8m^2 (14%) above the maximum permitted by the LEP (FSR: 0.4:1 (247.9m^2) based on historical approvals with the proposal increasing the FSR: 0.48:1 (297.4m^2). The additional floorspace does not

significantly increase the bulk or scale of the building as the proposed development seeks to infill the existing patio area on the ground floor.

There were no submissions received during the notification period.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed is for alterations and additions to an existing two storey dwelling house as follows:-

Lower Ground Floor

- Boundary brick wall and fence
- Gates x 2
- Carport
- Retaining walls
- Stairs
- Plant room
- Door

Ground Floor

- Garage roof
- Internal walls
- External walls
- Door
- Windows x 5
- Bedrooms x 2
- Fireplace
- Bathroom
- Linen closest x 2
- Kitchen
- Bar
- Dining
- BBQ

First Floor

- Bedroom roof

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 2 DP 758044 , 20 Bareena Drive BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Bareena Drive. The site is irregular in shape with a frontage of 18.34 metres along Bareena Drive and a depth of 43.28 metres along the eastern side boundary and 24.385 metres along the western side boundary. The site has a surveyed area of 619.70m². The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling with a tile roof, a garage, pergola, deck and swimming pool in the rear yard. The site has a fall from from east to west of 1m and a fall from the southeast to the northwest of 1.5 metres. The site has a mix of native and exotic species of plants, shrubs and trees. **Detailed Description of Adjoining/Surrounding Development**

	Adjoining and surrounding development is characterised by single and double storey dwellings with associated outbuildings and structures with landscaped gardens.

Map:

SITE HISTORY

DA144/94 - Proposed Enclose Carport approved 6 May 1994

BC2022/0224 - Block retaining wall / timber framing, timber external deck adjacent to existing pool approved 8 February 2023

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested for the driveway and carport levels. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental 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.

Section 4.15 Matters for Consideration	Comments

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 26/01/2023 to 09/02/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	***Supported (no conditions)*** **General Comments** Environmental Health has been requested to consider this proposal for "Alterations and additions to a dwelling house including demolition works and carport." specifically in relation to the inclusion of a solid fuel heater. Update 02/03/2023 - Council planning staff have been advised that the existing fireplace will remain unaltered by the proposed development. Accordingly, concurrence is no longer required from Environmental Health and the proposal is supported. **Recommendation** SUPPORTED - No conditions
Landscape Officer	***Supported subject to conditions*** The proposal is supported with regard to landscape issues. 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

Internal Referral Body	Comments
	The proposed works are mainly contained to the existing dwelling footprint and no trees are proposed to be removed. All trees and vegetation shown to be retained shall be protected as per the requirements outlined in the conditions of consent.
NECC (Development Engineering)	***Supported subject to conditions*** The proposed carport is designed to be constructed over the existing driveway. The grade of the driveway exceeds 1 in 20 (5%) and as such exceeds the maximum allowable grade in accordance with AS/NZS 2890.1:2004. As the internal driveway is widening, the crossing will need to be reconstructed to suit. In this regard, the applicant will need to submit a section through the driveway crossing from the kerb invert to the rear of the proposed carport to demonstrate compliance with AS/NZS 2890.1:2004 and Council's Normal driveway profile which is available on Council's website. Development Engineering cannot support the proposal due to insufficient information to address parking in accordance with Schedule 3 of the DCP. **Amended plans received 22/03/23** The slab level within the proposed carport has been amended to meet the grade requirements of the previous comments. The proposed development has a connection to the kerb for stormwater which is acceptable. The existing driveway crossing is to remain which is acceptable. Development Engineering support the proposal, subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported subject to conditions*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable and no impact on Ausgrid assets with the proposed development.

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. A477007 dated 18 October 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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	9.182m*	-	Unchanged
Floor Space Ratio	FSR: 0.4:1 (247.9m^2)	FSR: 0.48:1 (297.4m^2)**	20% (49.5m^2)	**No**

* Existing roof height (remains unaltered by the proposed development)
** Existing FSR is 0.46:1 (282.7m^2) a variation of 14% (34.8m^2)

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
Part 6 Additional local provisions	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (247.9m^2)
Proposed	0.48:1 (297.4m^2)
Percentage variation to requirement	20% (49.5m^2)

The proposal presents a total variation to the Floor Space Ratio development standard of 20% (49.5m^2).

It is important to note the existing FSR on site is 0.46:1 (282.7m^2) with an existing variation of 14% (34.8m^2) to the Floor Space Ratio development standard.

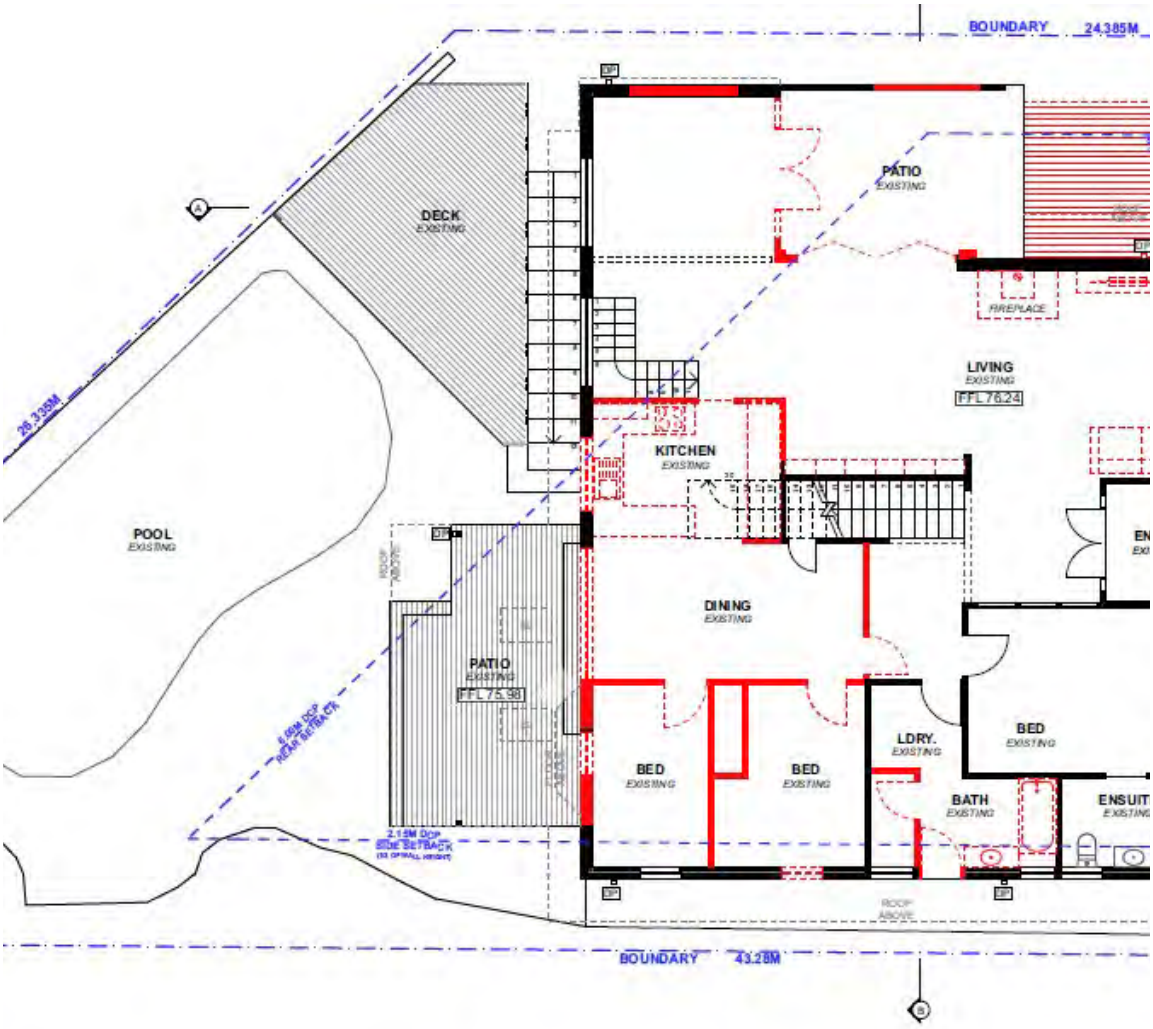


Figure 1 - Existing Ground Floor Plan

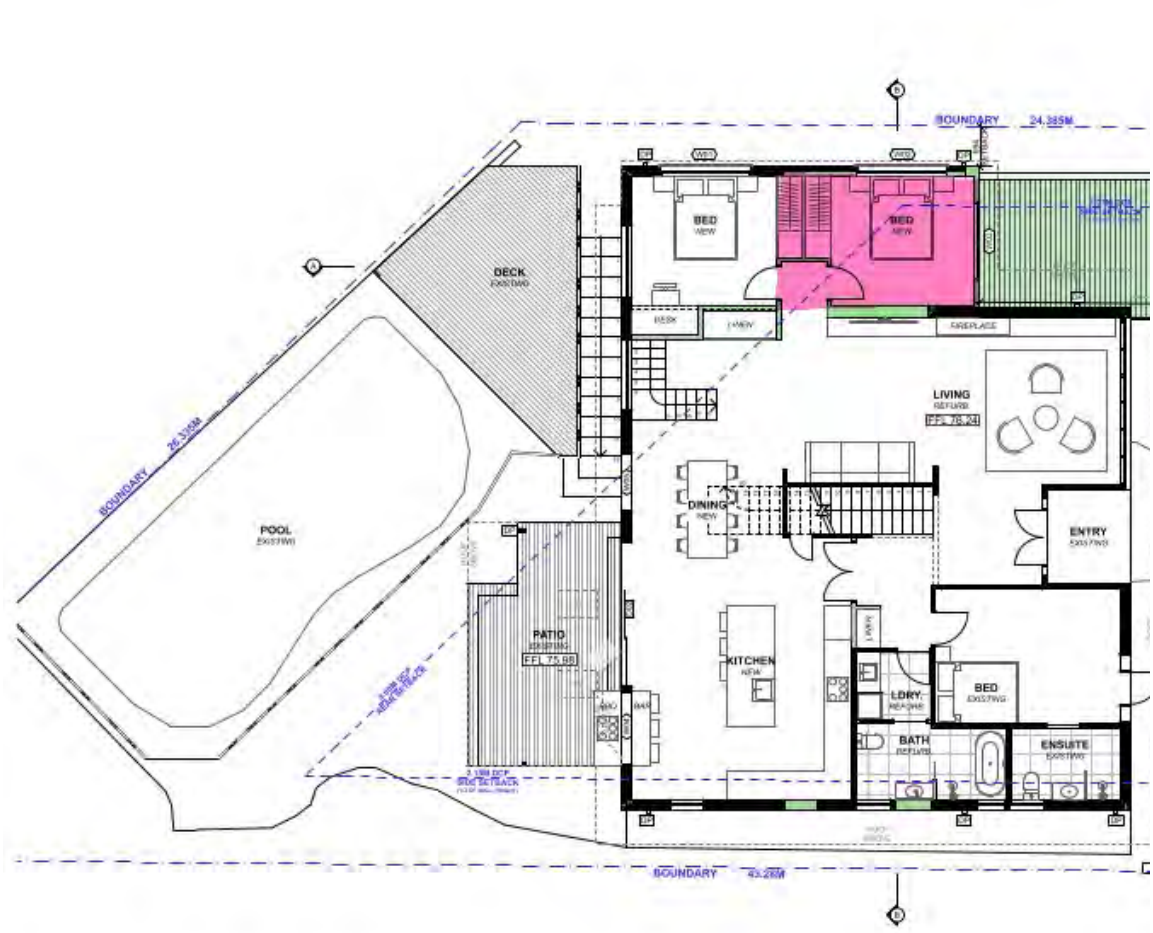


Figure 2 - Ground Floor Plan (additional Gross Floor Area in Pink)

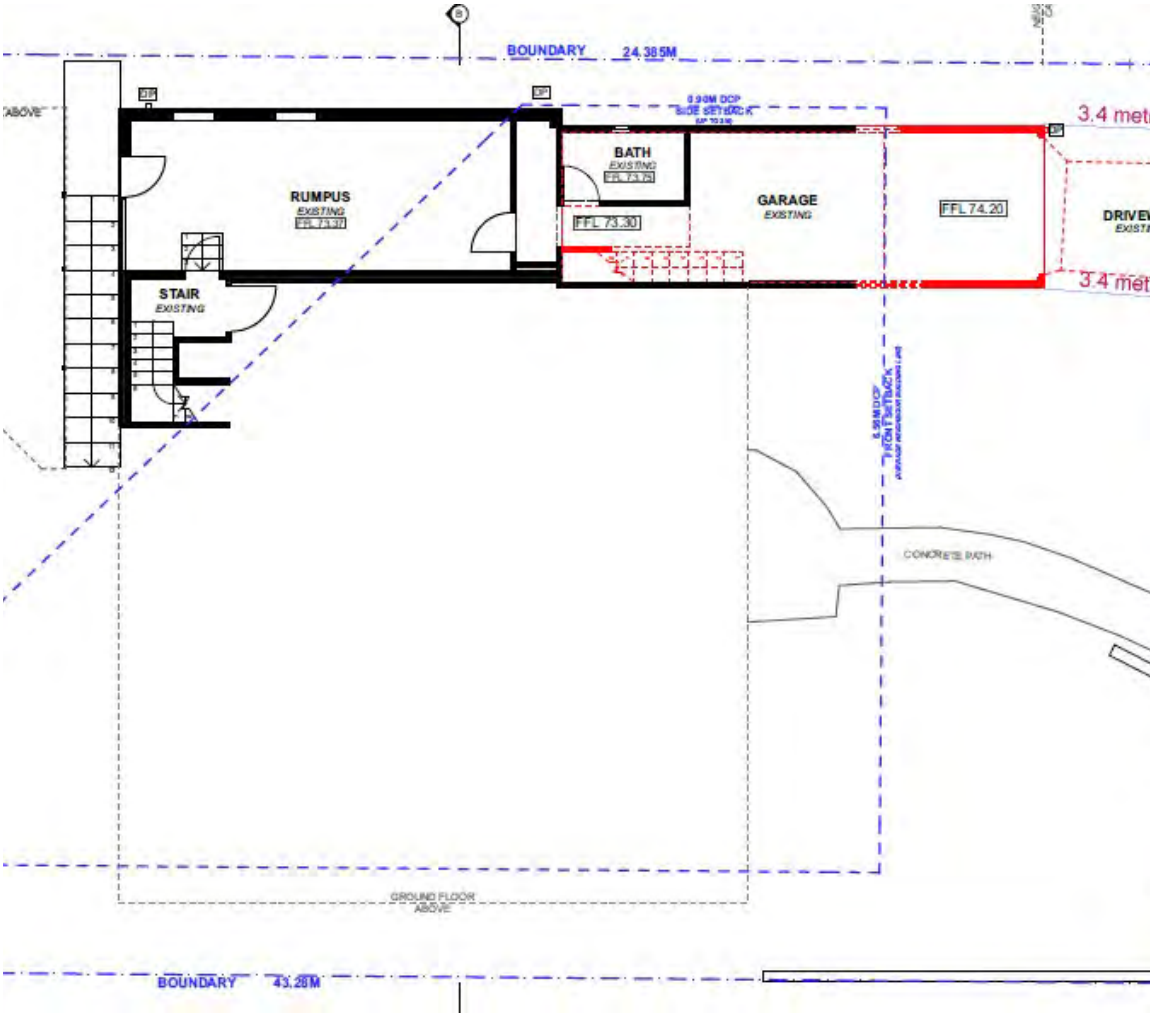


Figure 3 - Existing Lower Ground Floor

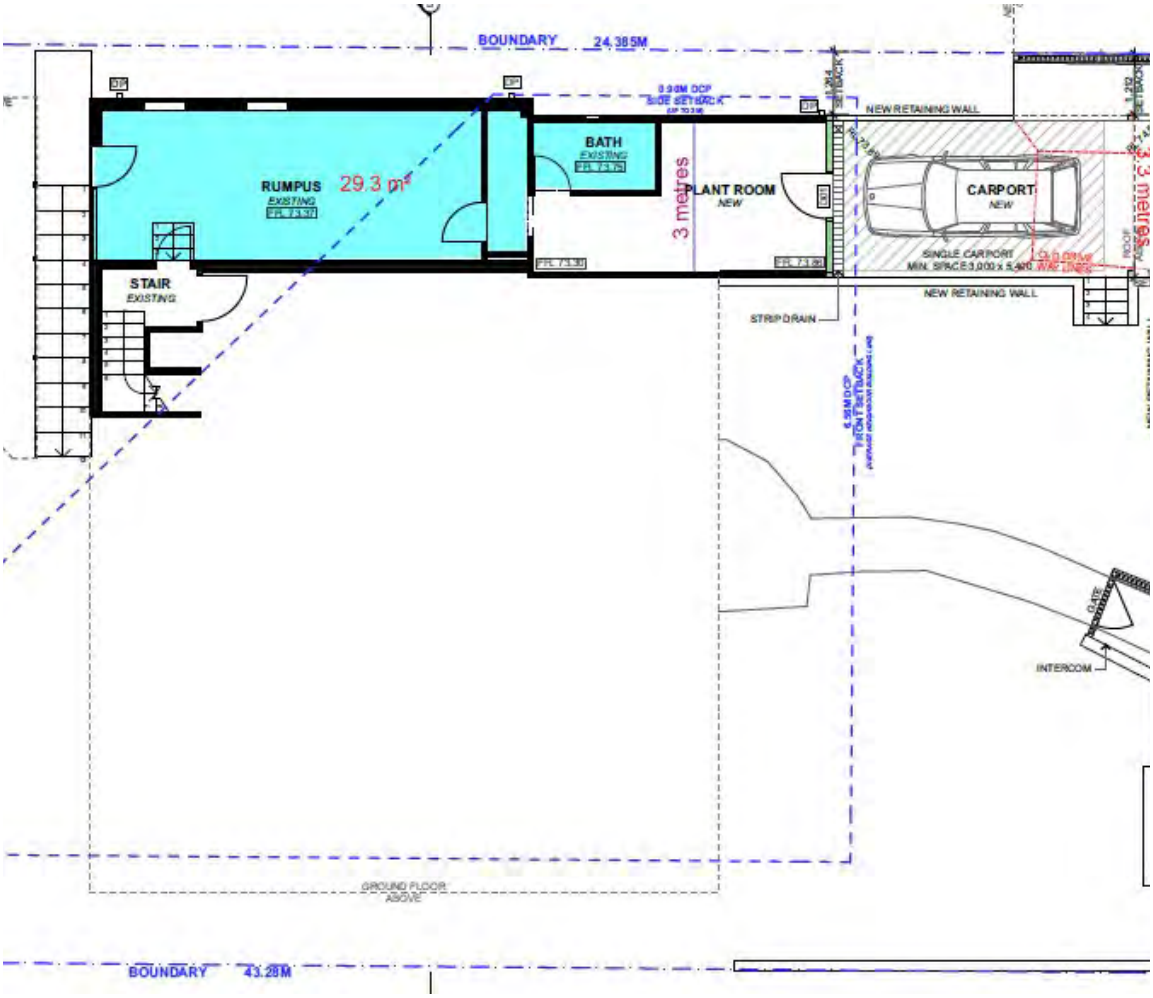


Figure 4 - Proposed Lower Ground Floor

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

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

The applicants written request argues, in part:

- *"The development is contained within the existing side setbacks of the dwelling house footprint. The development does not significantly alter the private open space on the site or the access to that private open space.*

- *The development proposes materials consistent with the existing palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality without impact on the character and amenity of the area.*

- *The development does not significantly increase bulk or scale or significantly decrease the landscaping area.*

- *The proposed works will provide for improved amenity for the occupants, which promotes good design which is consistent with the Objective 1.3(g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.*

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for floor space ratio.

- *The proposed alterations and additions are considered to promote good sustainable design and*

enhance the residential amenity of the buildings" occupants, which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.

- *The variation to the floor space ratio is inconsequential as it is of negligible impact to the streetscape and the amenity of the neighbouring properties and is an existing non-compliance that is not different from the existing development."*

Planner's Comment

It is agreed that the additional gross floor area of 14.7m^2 is a minor variation. The extension of ground floor by enclosing the existing patio and minor modifications to the lower ground floor will not result in any unacceptable amenity impacts, does not alter the footprint or design of the existing dwelling, nor does it dramatically change the outer form of the building and as such the variation to the Floor Space Ratio development standard is supportable.

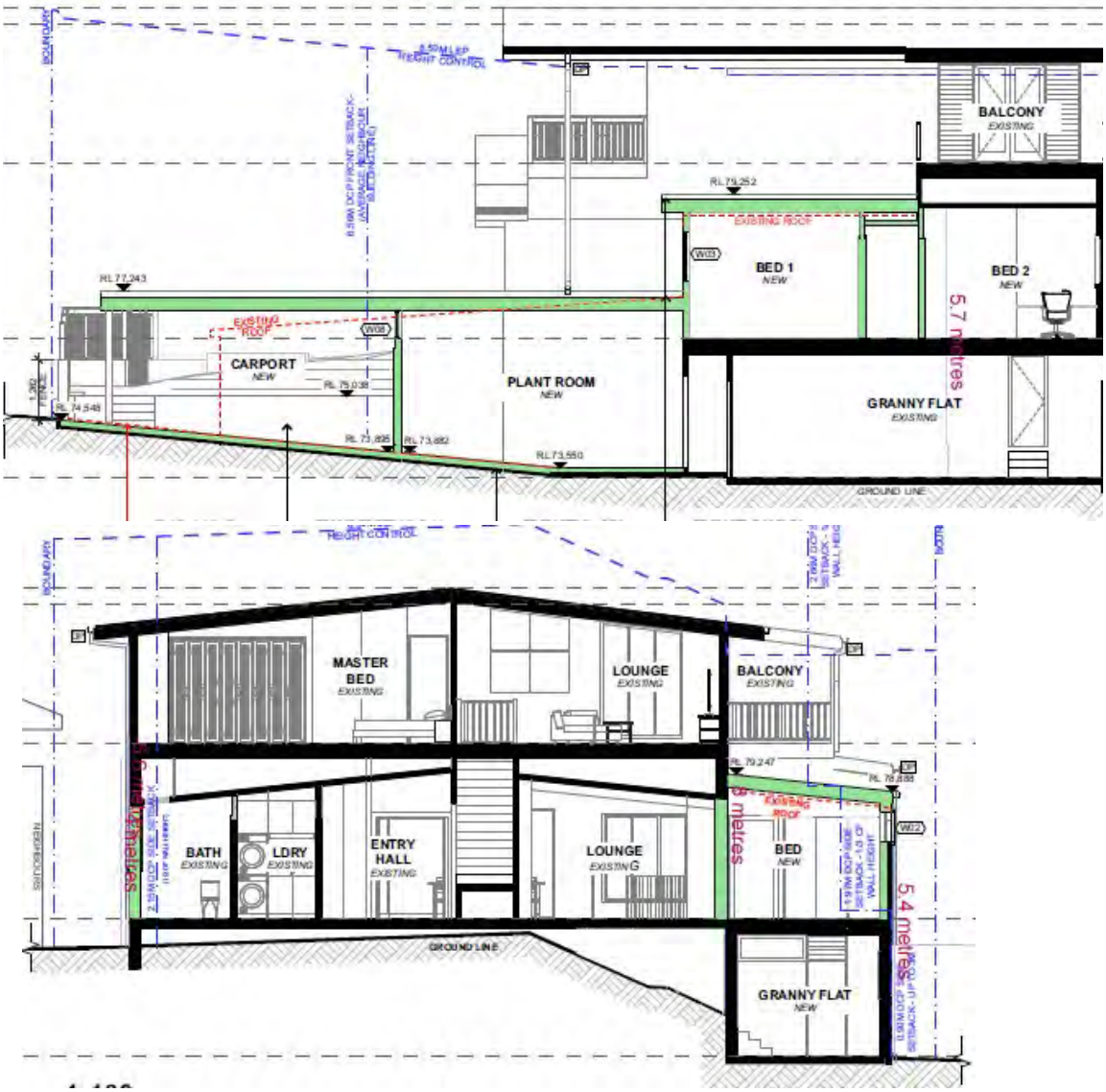


Figure 5 - Section A

Figure 6 Section B

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 C3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment:
The proposal will ensure the bulk and scale of the 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,

Comment:
The proposal appropriately controls density and bulk, and as such the 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,

Comment:
The proposal will maintain an appropriate visual relationship between new development and the existing character. The proposal will not result in any changes to the existing landscape of the area.

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

Comment:
The proposal will not result in any unacceptable 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*.**

Comment:
The subject site is located in a residential zone and as such this objective is not relevant.

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 is for a dwelling house.

  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: N/A

  It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning,

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: 679sqm	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.2.1 Wall Height	E: 7.1m	6.6m	-	Yes
	W: 7.1m	8m (Existing)* 5.4m (Ground Floor)	- -	Unchanged Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.4m	-	Yes
	Pitch: maximum 35 degrees	6 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1m (Carport) 9.2m (Dwelling)	84.8% -	**No** Yes
4.1.4.2 Side Setbacks	East: 2.15m West: 2.66m	East: 1.4m (Existing)* West: Lower Ground Floor: 1m - 1.264m Ground Floor: 0.994m First Floor: 4.4m (unaltered)	- 62.4% 62.6% -	Unchanged **No** **No** Yes
	Windows: 3m (habitable building)	0.994m	62.6%	Yes
4.1.4.4 Rear Setbacks	8m	2.8m* - 14m	-	Unchanged
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (371.8sqm) of site area	53% (328.3sqm)	11.7%	**No**
	Open space above ground 25% of total open space	0%*	-	Unchanged
4.1.5.2 Landscaped Area	Landscaped area 40% (131.4sqm) of open space	54% (177sqm)	-	Yes
	1 native trees	>1 trees	-	Yes
4.1.5.3 Private Open Space	18sqm	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or	Maximum 50% of frontage up to maximum	3.3m	-	Yes

Hardstand Areas	6.2m			
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space**	-	**No**

* Existing and unchanged
** Variation addressed under Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) - parking remains consistent with existing situation.

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and 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
Part 4	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	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4 Other Development (all LEP Zones)	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
Part 5	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Please refer to Clause 4.1.10 Fencing of MDCP for a detailed assessment of the front fence.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013). In summary, the applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene the development standard.

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

Description of non-compliance

Under Clause 4.1.4.1 of MDCP 2013, the requirements for front setback of the prevailing building lines.

The ***required front setback*** is as follows:

- Northern boundary: 6.56m

The ***proposed front setback*** is as follows:

- Northern boundary:

  - Carport: 1m (resulting a variation of 84.8%)
  - Dwelling: 9.2m

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 carport is consistent with the character of other developments in the immediate vicinity, noting that parking facilities that encroach into the front setback area to a minor extent are observed. Due to the relatively low height and open style nature of the proposed carport and porch, the proposal is not anticipated to dominate the front of the site nor be highly visible from the neighbouring western property. Furthermore, existing vegetation in the front yard and along the western side boundary is proposed to be retained to maintain the landscape character of the streetscape and assist in softening the built form.

Objective 2) To ensure and enhance local amenity by:

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

Comment: The proposal is not anticipated to result in any adverse amenity impacts to adjoining properties in regards to solar access, view sharing, or privacy. Given the relatively small scale nature of the proposed development, equitable access to light, sunshine and air movement will be maintained.

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

Comment: Flexibility in the siting of new works is considered reasonable in this circumstance as the proposed carport has been designed to be positioned over the existing driveway on the site. It is noted the existing driveway into the existing garage does not comply with the Australian Standards. As such, the projection into the front setback is considered appropriate in this instance to provide for sheltered parking.

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 will retain the existing landscaped area on site which includes deep soil zones

and accommodates a variety of vegetation. The nature of the development does not unduly detract from the context of the site, and the site does not adjoin open space lands, national parks, or urban bushland.

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

Comment: The site is not located on bush fire prone land, therefore this objective is not relevant for this application.

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

Under Clause 4.1.4.2 of MDCP 2013, the requirements for 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 ***required side setback*** is as follows:

- Western boundary: 2.66m
- Eastern boundary: 2.15m

The ***proposed side setback*** is as follows:

- Western boundary:

  - Lower Ground Floor: 1m - 1.264m (resulting a maximum variation of 62.4%)
  - Ground Floor: 0.994m (resulting in a variation of 62.6%)
  - First Floor: 4.4m (unaltered)

- Eastern boundary:

  - Ground and First Floor: 1.4m (unaltered)

Under Clause 4.1.4.4 of MDCP 2013, the requirements for setbacks between any part of a building and the rear boundary must not be less than 8 metres.

The ***required rear setback*** is as follows:

- Southern boundary:

  - Dwelling: 2.8m - 14m (unaltered)

The required western side setback is 2.66m. The proposed setback for the western lower ground floor is varies from 1m - 1.264m, the ground floor has a proposed 0.994m setback, and for the western first

floor remains unaltered 4.4m. The required setback for the eastern side setback is 2.15m, and the existing setback remains unaltered to the ground floor and first floor is 1.2m. Additionally, the rear setback control under 4.1.4.4 Rear Setbacks is 8m and it is noted that the existing dwelling remains unaltered with a setback varying from 2.8m at the southwestern corner through to 14m when measured from the southeastern corner of the dwelling to the southern rear boundary. It is noted that the site is irregular and has varying depths for the respective side boundaries (east - 43.28m and west - 24.385m) with a splayed rear boundary. The built form of the proposal is modulated through articulation as demonstrated by the varying side setbacks, and does not impose unreasonable building mass on adjoining properties.

It is noted that the existing setbacks for the lower ground and ground floors remains unaltered and the dwelling demonstrates a recessive setback as the building rises in height.

Figure 2 note the recessive setback to the first floor level and low tilted roof over the ground floor additions. Additionally an argument could be made that the lower ground floor is compliant and the side setback to the ground floor could be reduced 1.97m given the wall height (at the top of the ground floor level).

Under Clause 4.1.4.2 of MDCP 2013, the requirements for all new windows that face the side boundary are to be setback at least 3m from side boundaries. The proposal presents existing and new windows to the lower ground floor and ground floor that are setback 0.994m - 1m.

The variations to the side setback requirements, and window setback requirements are supportable in this circumstance as the objectives of the control have been met as outlined below.

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 considered to maintain, and enhance the existing streetscape through presenting desired spatial proportions of the street, street edge, and is consistent with the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment: The proposal ensures local amenity is maintained by providing appropriate privacy measures to adjoining properties. The proposal includes new windows along the western façade, that have included appropriate design and use of highlight windows to ensure adequate privacy to adjoining neighbours. Additionally on the eastern façade a window and a door are to be infilled on the ground floor. The proposal is accompanied with shadow diagrams that demonstrate equitable access to light, sunshine, and air movement. The proposal does not result in any adverse view impacts to and from public and private spaces. The streetscape character is maintained and enhanced, and it is considered that adequate separation between adjoining sites is appropriate. Lastly, the proposal will not alter any traffic conditions as a result of the development.

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

Comment:
Flexibility is afforded in this circumstance as the proposed side setbacks, and window setbacks will not result in unreasonable amenity impacts to adjoining sites.

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 proposed development results in a compliant landscaped area that includes plantings, deep soil zones, and vegetation. The subject site does not detract from the context of the site and the site does not adjoin open space lands, national parks, or urban bushland.

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

Comment:
The subject site is not located in bush fire prone land and therefore 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 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 non-compliance

The subject site is located within Residential Open Space Area 4. As such, at least 60% (371.8m^2) of the site is to be open space and at least 40% (131.4m^2) of the open space to be landscaped area.

The proposed development results in a numerically non-compliant total open space of 53% (328.3m^2), presenting a variation to this control by 11.7% (43.5m^2).

The proposal achieves compliance with the landscaped area with a total of 54% (177m^2) provided.

In this instance, the variation to the total open space is considered to be supportable as the objectives of the control have been met as outlined below.

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 does not result the removal of any important landscape features, or vegetation including any significant native flora and fauna.

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 proposal maximises soft landscaped areas providing a more than compliant area of soft landscaping. Council's Landscape Officer has recommended conditions for protection of existing street trees and trees and vegetation on the site.

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

Comment:
The proposal does not result in any unreasonable impacts to amenity including sunlight, privacy, and views. The proposal is consistent with the surrounding area and streetscape character.

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

Comment:

The proposed development provides ample soft open spaces for the purpose of onsite water infiltration to minimise stormwater runoff.

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

Comment:
The proposed development is not likely to lead to the significant spread of weeds, or degradation of private open space.

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

Comment:
The proposed development is not likely to affect any existing wildlife habitat and potential for 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.

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

Description of non-compliance

The proposal presents one (1) parking space in the form of carport in front of the existing garage which will be converted into a plant room (it is noted that the existing driveway leading down to the garage is not compliant with the Australian Standard.

Therefore, whilst the proposal is numerically inconsistent with Schedule 3 of MDCP 2013 that requires two (2) parking spaces, the provision of one (1) car parking within the subject site is considered appropriate given the existing site context.

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 proposal presents one (1) parking space that will provide accessible and adequate parking on the site that is considered acceptable.

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:
It is considered the non-compliant number of parking spaces is not unreasonable in this instance given the existing situation only allows for one (1) car space on site. It is noted there is ample on street parking within Bareena Drive.

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 location and design of the driveway is consistent with the existing site arrangement, that will ensure efficient, safe, and convenient access to the dwelling house. The proposed carport is an open structure that is considered to visual integrate into the dwelling house design that will minimise any unreasonable impact 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 layout of parking spaces will not significantly alter any site excavation, as the car parking space is located in the existing hard stand area.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:
The existing vehicular driveway crossover location is retained, and as such the number of footpath crossings remains unaltered as one footpath crossing.

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 proposed carport is in the same location as the existing driveway in order to limit the amount of impervious surfaces. The proposal integrates landscaping through the lawn area located to the west of the carport that will assist in softening the built form. The access from the carport is through the plant room and via the new stairs on the eastern side of the carport, and this will provide suitable access that is integrated into the dwelling house.

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:
The site is located within a dense residential area with nearby public transport readily available to reduce the demand for onsite parking requirements.

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.

4.1.10 Fencing

Description of non-compliance

Under Clause 4.1.10 of MDCP 2013, fences between the front street boundary and the building are to

be no more than 1m high above ground level at any point.

The proposal includes the additional front boundary fencing and gates to match with the existing front fencing with a varying height between 1.259m to 2.084m. The proposed front fencing includes a sliding vehicular gate, and pedestrian entry gate.

In this instance, the objectives of the control have been met as outlined below and the proposed fencing, sliding vehicular gate, and pedestrian gate is supportable subject to recommended condition that requires a reduction of the maximum height of the fencing to 1.8m above natural ground level.

Merit consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control. The control relies upon the objectives specified within Clause 3.1 of the MDCP 2013.

Objective 1) To minimise any negative visual impacts of walls, fences and carparking on the street frontage.

Comment:
The proposed additional fencing (subject to condition) will not give rise to any negative visual impacts of fencing on the street frontage. The proposal is consistent with fencing along Bareena Drive, and therefore the proposal will not detract from the existing streetscape.

Objective 2) To ensure development is generally viewed from the street complements the identified streetscape.

Comment:
The height of the fence (subject to condition) is consistent with fencing along the identified streetscape, and the proposed fencing will ensure the development is complimentary to the existing character of Bareena Drive.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:
The front fence is considered appropriate in this instance (subject to recommended condition), as the additional fencing will link in with the existing fence that will improve the aesthetics and visual appearance. It is important to note that Bareena Drive is a busy road as leads to Tania Park, and the masonry fence will assist in mitigating road noise.

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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $6,073 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $607,345.

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 dwelling house has been referred to the Development Determination Panel (DDP) due to the variation to the floor space ratio development standard non-compliance.

The critical assessment issues within this assessment report have been addressed: -

- Clause 4.4 Floor Space Ratio of the MLEP 2013;
- Clause 3.1.1 Streetscape (Residential areas) of the MDCP;
- Clause 4.1.3 Floor Space Ratio (FSR) of the MDCP;
- Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the MDCP;
- Clause 4.1.5 Open Space and Landscaping of the MDCP;
- Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities); and
- Clause 4.1.10 Fencing of the MDCP

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 DA2022/2223 for Alterations and additions to a dwelling house including demolition works and carport. on land at Lot 2 DP 758044, 20 Bareena Drive, 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**
DA04	17 November 2022	Progressive Plans
DA05	17 November 2022	Progressive Plans

DA06	17 November 2022	Progressive Plans
DA07	17 November 2022	Progressive Plans
DA08	17 November 2022	Progressive Plans
DA09	17 November 2022	Progressive Plans
DA10	17 November 2022	Progressive Plans
DA11	17 November 2022	Progressive Plans
DA12	17 November 2022	Progressive Plans
DA13	17 November 2022	Progressive Plans
DA14	17 November 2022	Progressive Plans
DA15	17 November 2022	Progressive Plans
DA16	17 November 2022	Progressive Plans
DA17	17 November 2022	Progressive Plans
DA21	17 November 2022	Progressive Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (A477007)	18 October 2022	Progressive Plans

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.	**Submitted**
Waste Management Plan	17 January 2023

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**
Ausgrid	Ausgrid Referral Response

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

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

3. **Approved Land Use**
Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

"Dwelling house means a building containing only one dwelling."

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $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.

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

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

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

7. **External Finishes to 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.

8. **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.

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

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

Reason: To provide public and private safety.

10. **Vehicle Parking Gradients**
The Applicant is to ensure the proposed parking gradients within the private property do not exceed a gradient of 1 in 20 (5%). The existing boundary levels for the driveway are to remain.

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

Reason: To ensure suitable vehicular access to private property.

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

- The front fence shall be amended so that at any one point (including the peirs and gates) that the fence is no higher than 1.8m above natural ground level.

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

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

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 tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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 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 complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

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

Reason: Public safety.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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 COMPLETION

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

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

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

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

22. **Mechanical Motor Noise**
The mechanical motor(s) shall not produce noise levels that exceed 5dB(A) 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.

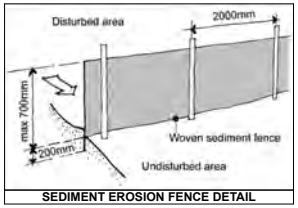
23. **No Approval for Secondary Dwelling**

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.

Reason: To ensure compliance with the terms of this consent.

SKIP BIN RECYCLING | SKIP BIN WASTE | MATERIAL STORAGE

SKIP BINS & MATERIAL STORAGE TO BE STORED IN FRONT YARD



SEDIMENT EROSION FENCE DETAIL

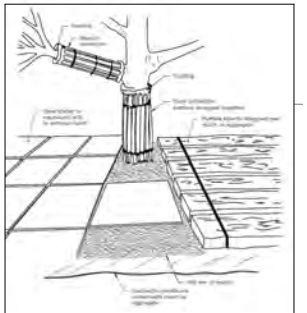
TREE PROTECTION ZONE (TPZ) FENCING (WHEN POSSIBLE):

1. CHAIN WIRE MESH PANELS WITH SHADE CLOTH (IF REQUIRED) ATTACHED, HELD IN PLACE WITH CONCRETE FEET.

2. ALTERNATIVE PLYWOOD OR WOODEN PALING FENCE PANELS. THE FENCING MATERIAL ALSO PREVENTS BUILDING MATERIALS OR SOIL ENTERING THE TPZ.

3. MULCH INSTALLATION ACROSS SURFACE OF TPZ (AT THE DISCRETION OF THE PROJECT ARBORIST). NO EXCAVATION, CONSTRUCTION ACTIVITY, GRADE CHANGES, SURFACE TREATMENT OR STORAGE OF MATERIALS OF ANY KIND IS PERMITTED WITHIN THE TPZ.

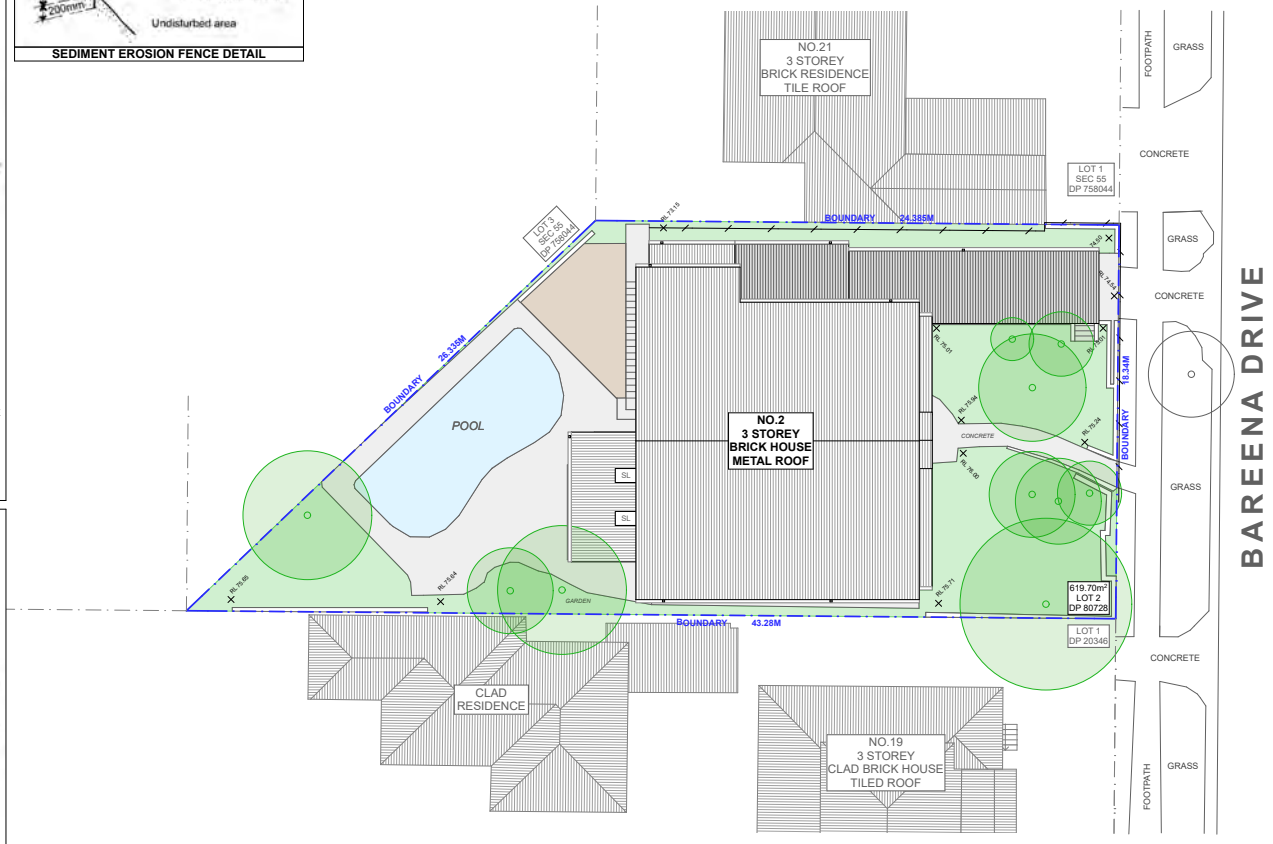
4. BRACING IS PERMISSIBLE WITHIN THE TPZ. INSTALLATION OF SUPPORTS TO AVOID DAMAGING ROOTS.



TREE PROTECTION ZONE (TPZ) FENCING (NOT POSSIBLE):

1. FOR TRUNK AND BRANCH PROTECTION USE BOARDS AND PADDING THAT WILL PREVENT DAMAGE TO BARK. BOARDS ARE TO BE STRAPPED TO TREES, NOT NAILED, OR SCREWED.

2. RUMBLE BOARDS SHOULD BE OF SUITABLE THICKNESS TO PREVENT SOIL COMPACTION AND ROOT DAMAGE.



1 SITE - WASTE - SEDIMENT PLAN 1:200

progressive plans
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UNIT 4/40-42 AVALON PARADE
AVALON, NSW, 2107
HELLO@PROGRESSIVEPLANS.COM.AU
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NOTES

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DO NOT SCALE THE DRAWING.
DRAWINGS SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNTIL ISSUED BY THE DRAFTING OFFICE FOR CONSTRUCTION AND NOTED ON THE TITLE BLOCK.
THE WORK MUST BE VERIFIED BY STRUCTURAL ENGINEER BEFORE WORK COMMENCES.

REV.	NOTES.	INITIAL	DATE
A	DA DOCUMENTATION	IA	17.11.22

LEGEND

EXISTING
DEMOLISHED
EXISTING ROOF
PROPOSED ROOF
LANDSCAPE / GRASS
CONCRETE / PAVERS
TIMBER DECK
POOL / WATER
SEDIMENT EROSION FENCE

ABBREVIATIONS

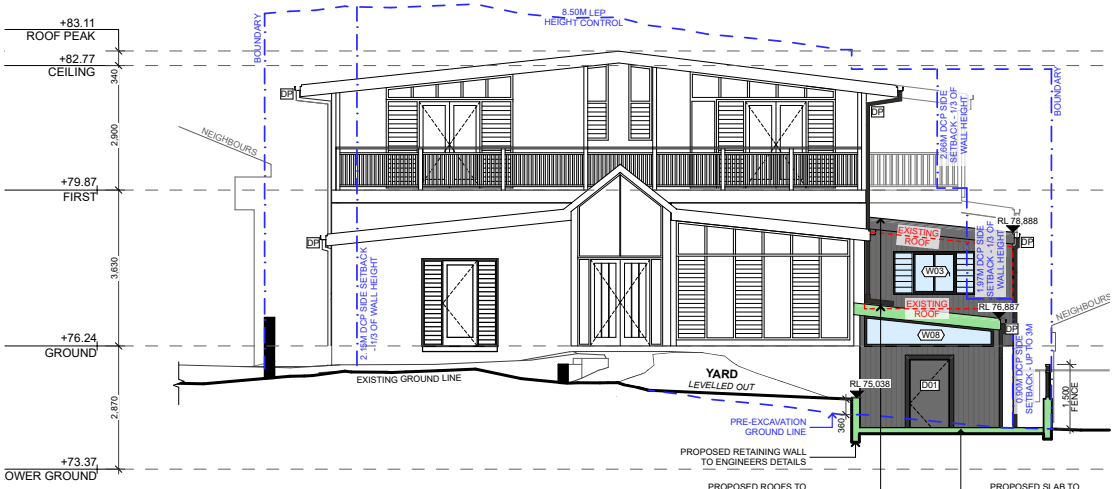
DP: DEPOSIT PLAN
RL: REDUCED LEVEL
SP: STRATA PLAN

NORTH POINT

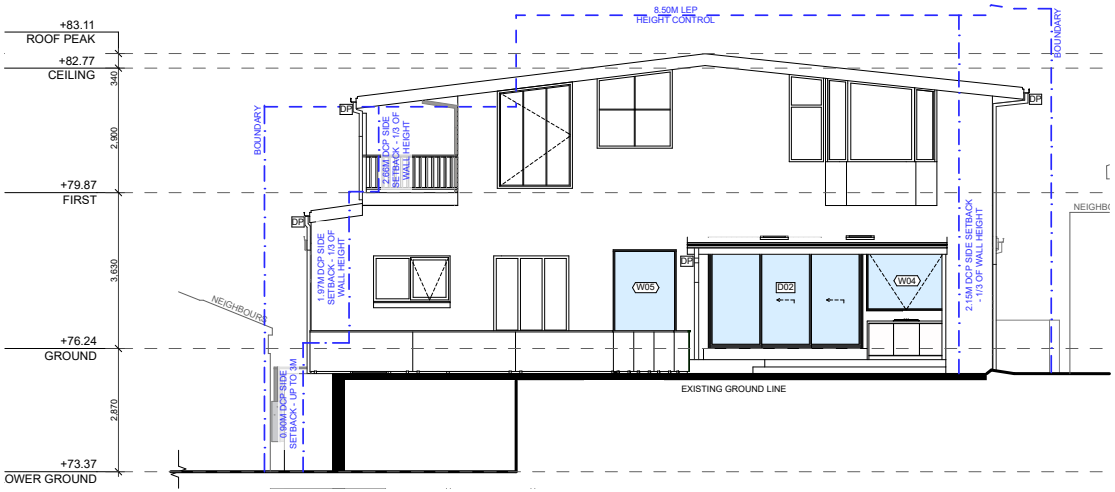
CLIENTS:
JAKE & NATALIE BROMWICH

SITE ADDRESS:
20 BAREENA DRIVE
BALGOWLAH, NSW, 2093

DRAWING TITLE: SITE - WASTE - SEDIMENT PLAN
SCALE: 1:200 @A3
DATE: 17/11/2022
PROJECT NO: 1010
DRAWING NO: DA04



1 NORTH ELEVATION 1:100



2 SOUTH ELEVATION 1:100

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REV.	NOTES.	INITIAL	DATE
A	DA DOCUMENTATION	IA	17.11.22

LEGEND

- EXISTING
- DEMOLISHED
- JH AXON CLADDING
- COLORBOND BASALT
- RENDERED BRICK & PAINTED GREY
- PAINT FINISH TO MATCH EXISTING
- GLASS

ABBREVIATIONS

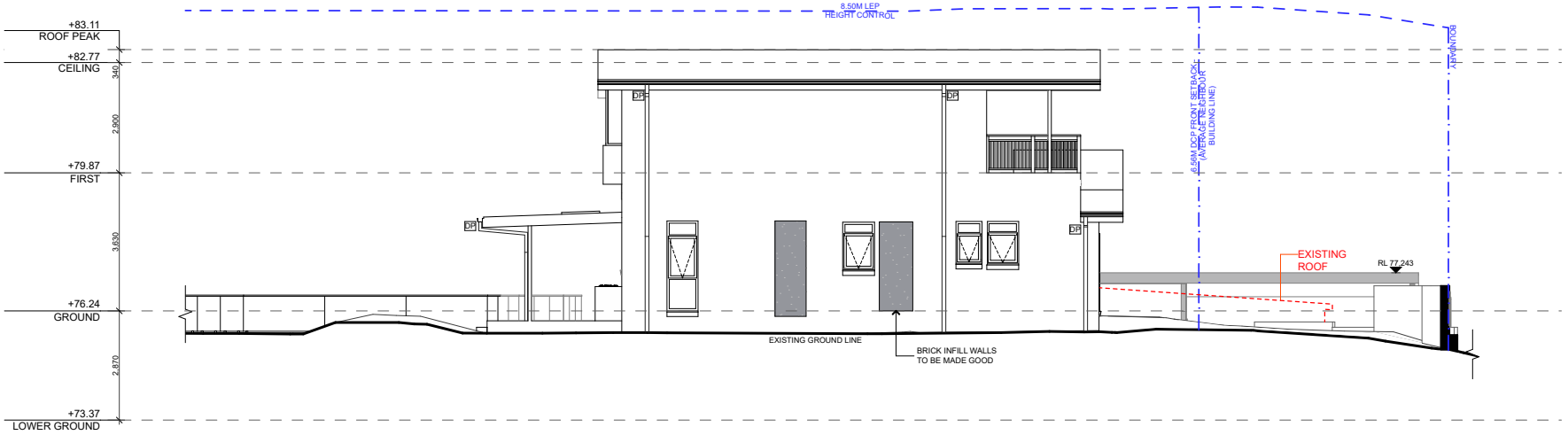
CPD: CUPBOARD
DP: DOWNPIPE
DPS: DOWN PIPE SPITTER
DPRH: DOWN PIPE RAIN HEAD
FFL: FINISHED FLOOR LEVEL
HWS: HOT WATER SYSTEM
RL: REDUCED LEVEL

CLIENTS:
JAKE & NATALIE BROMWICH

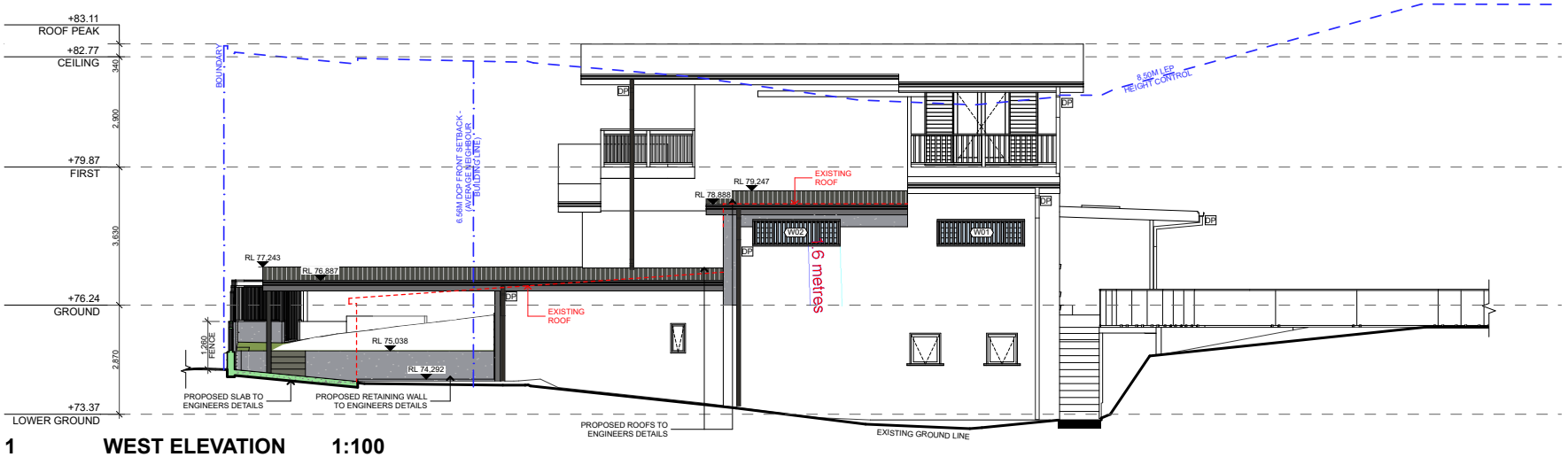
SITE ADDRESS:
20 BAREENA DRIVE
BALGOWLAH, NSW, 2093

DRAWING TITLE:
ELEVATIONS - NORTH & SOUTH

SCALE: 1:100 @A3
DATE: 17/11/2022
PROJECT NO: 1010
DRAWING NO: DA13



2 EAST ELEVATION 1:100



1 WEST ELEVATION 1:100

progressive plans

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REV.	NOTES.	INITIAL	DATE
A	DA DOCUMENTATION	IA	17.11.22

LEGEND

- EXISTING
- DEMOLISHED
- JH AXON CLADDING
- COLORBOND BASALT
- RENDERED BRICK & PAINTED GREY
- PAINT FINISH TO MATCH EXISTING
- GLASS

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CLIENTS:
JAKE & NATALIE
BROMWICH

SITE ADDRESS:
20 BAREENA DRIVE
BALGOWLAH, NSW, 2093

DRAWING TITLE:
ELEVATIONS - EAST & WEST

SCALE: 1:100 @A3
DATE: 17/11/2022
PROJECT NO: 1010
DRAWING NO: DA14

1 FRONT FENCE ELEVATION 1:100

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REV.	NOTES.	INITIAL	DATE
A	DA DOCUMENTATION	IA	17.11.22

LEGEND

- EXISTING
- DEMOLISHED
- JH AXON CLADDING
- COLORBOND BASALT
- RENDERED BRICK & PAINTED GREY
- PAINT FINISH TO MATCH EXISTING
- GLASS

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RL: REDUCED LEVEL

CLIENTS:
JAKE & NATALIE BROMWICH

SITE ADDRESS:
20 BAREENA DRIVE
BALGOWLAH, NSW, 2093

DRAWING TITLE:
ELEVATION - FRONT FENCE

SCALE: 1:100 @A3
DATE: 17/11/2022
PROJECT NO: 1010
DRAWING NO: DA15

URBANISM
PLANNING & DEVELOPMENT

CLAUSE 4.6 VARIATION TO MANLY LOCAL ENVIRONMENTAL PLAN 2013

MAXIMUM FLOOR SPACE RATIO AS DETAILED IN CLAUSE 4.3(2) OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

Proposal:	Alterations and additions to an existing dwelling house
Address:	20 Bareena Drive, Balgowlah Heights
Applicant:	Progressive Plans

1.0 Introduction

This variation request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013 (MLEP2013). It is requested that Council supports a variation to the maximum floor space ratio as described in Clause 4.3(2) of the MLEP2013.

2.0 Background

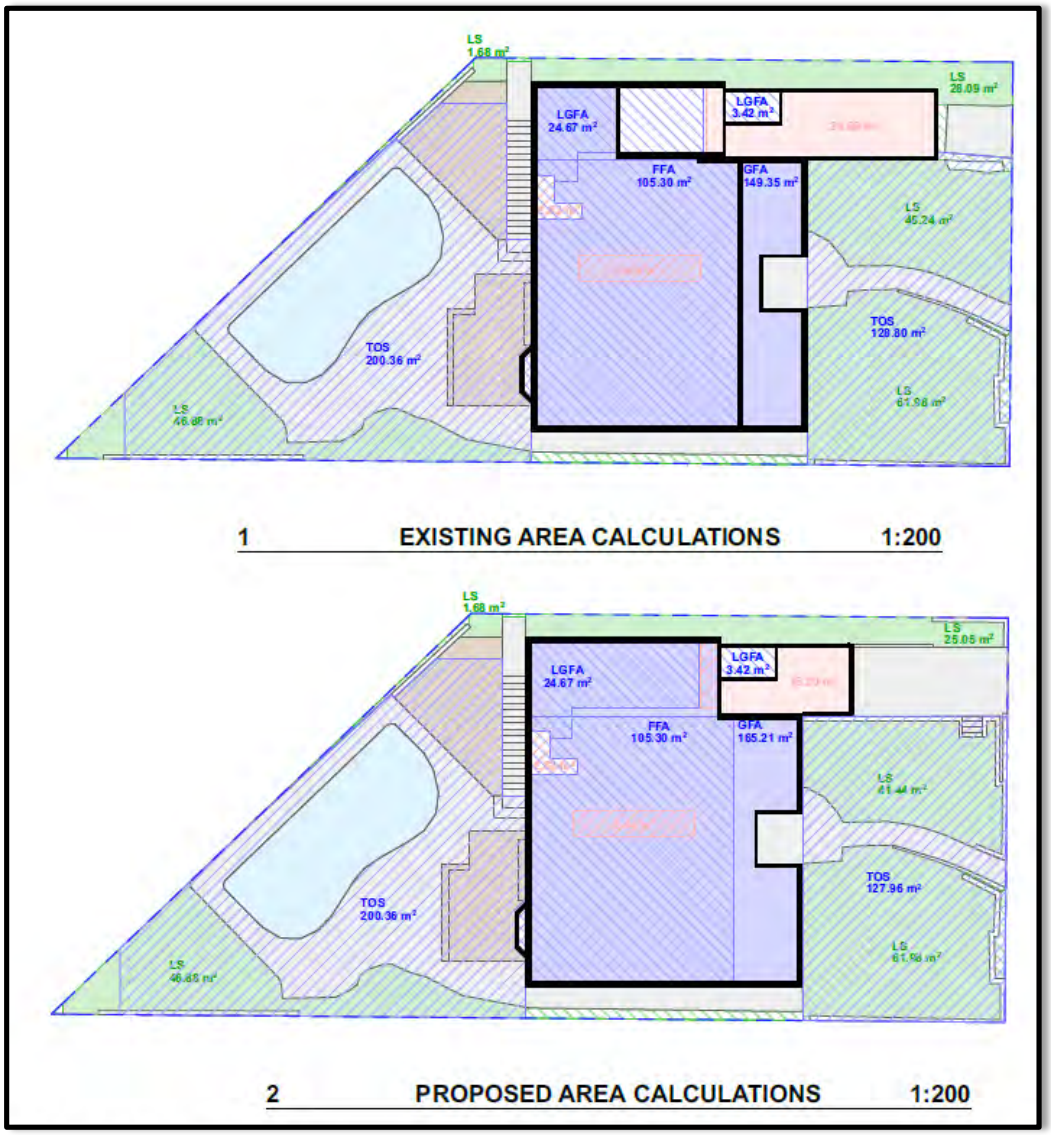
Clause 4.4(2) establishes the floor space ratio for development within this area and refers to the maximum floor space ratio noted within the "Floor Space Ratio Map".

The relevant floor space ratio for this locality is 0.4:1 and is considered to be a 'development standard' as defined by Section 4 of the *Environmental Planning and Assessment Act 1979*.

The existing dwelling house has a floor space ratio of 0.45:1 (GFA 282.77sqm) and the lots size by DP is 619.7m^2 which is smaller than the minimum lot size (750m^2) for this site. The development proposes to increase the existing non-compliance to 0.48:1 (GFA 298.6sqm). This represents an increase over the maximum floor space ratio of 8.18%.

The following figure shows the minor nature of the existing encroachment over the maximum floor space ratio which will be altered by the proposed development:

Figure 1: 3D perspective showing floor space ratio breach



Source: Progressive Plans

The alterations and additions include internal and external alterations and additions at lower ground and ground level within the existing building footprint.

The proposal is considered acceptable and there are sufficient environmental planning grounds

URBANISM
PLANNING & DEVELOPMENT

to justify contravening the development standard.

3.0 Purpose of Clause 4.6

The MLEP 2013 contains a variations clause (Clause 4.6) which allows departures from a development standard. Clause 4.6 of the LEP is similar in purpose to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

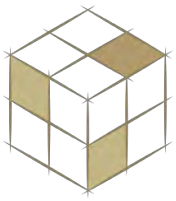
The development will achieve a better outcome in this instance as the site will provide for the alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the R2 Low-Density Residential Zone, which are noted as:

- *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.*

As sought by the zone objectives, the proposed alterations and additions to the existing dwelling provide for the housing needs of the community within a low-density residential environment.

The side and rear setbacks are unchanged. The front setback is increased to 6.5m. The lower ground floor has a compliant side setback and existing non compliant rear setback. The ground and first floor have an existing non compliant side and rear setback being 1/3 of the wall height. Importantly, the alterations and additions do not increase the non compliance which is directly related to the irregular shape of the lot and the steeply sloping topography of the lot.

The external building materials and colours and roof form of the alterations and additions will



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be consistent with the existing building.

Notwithstanding the non-compliance with the maximum floor space ratio control, the works will maintain an attractive residential development that will not detract from the character and function of the local residential neighbourhood and are therefore consistent with the zone objectives.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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

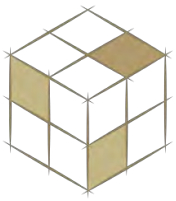
This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument and NSLEP2013 should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:

> *"Clause 4.6 of LEP 2014 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl4.6(4)(a)(i))."*



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Precondition 1 - Consistency with zone objectives

The proposed development of and use of the land within the R2 Low-Density Residential Zone is consistent with the zone objectives, which are noted over as:

- *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.*

Comments

It is considered that the proposed development is consistent with zone objectives for the following reasons:

- The proposal provides for the housing needs of the community. Specifically, the alterations and additions are to be undertaken by the owner comfort of the occupants and the liveability of the development.
- The proposal maintains the existing land use pattern with the alterations and additions proposed broadly maintaining the existing building footprint.
- A high standard of design and built form is promoted through the maintenance of setbacks of the existing development which are consistent with the existing and surrounding developments.
- The landscape and open space area on the lot is maintained.

Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum floor space ratio control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.4 are articulated at Clause 4.4(1):

> *"(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.*

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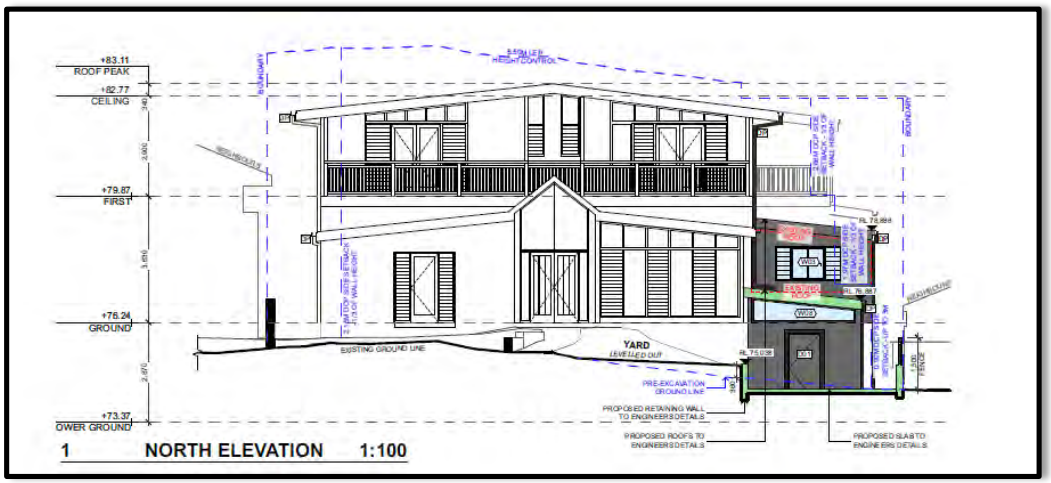
Comments:

The development is compatible with the existing and desired future character of the locality in floor space, as the floor space as viewed from the street is maintained. The floor space is breached due to the conversion of the patio to a bedroom at ground floor. A high standard of design and built form is promoted through the maintenance of setbacks of the existing development which are consistent with the existing and surrounding developments.

The site is favourably located along the north – south axis with shadows cast to the neighbouring properties for only a part of the day and not resulting in excessive overshadowing to any living spaces. The alterations and additions maintain solar access to the living areas to the front of the site and the existing balcony at upper level directly accessible from a living area. In excess of the required open space is available to the rear of the site. In excess of the required landscaping is maintained on the site at both the front and the rear of the dwelling.

The proposal does not inhibit any views to or from the site or any public vantage points.

Figure 2: Elevations from the front (north) presenting the Barrena Drive Streetscape.



Source: Progressive Plans

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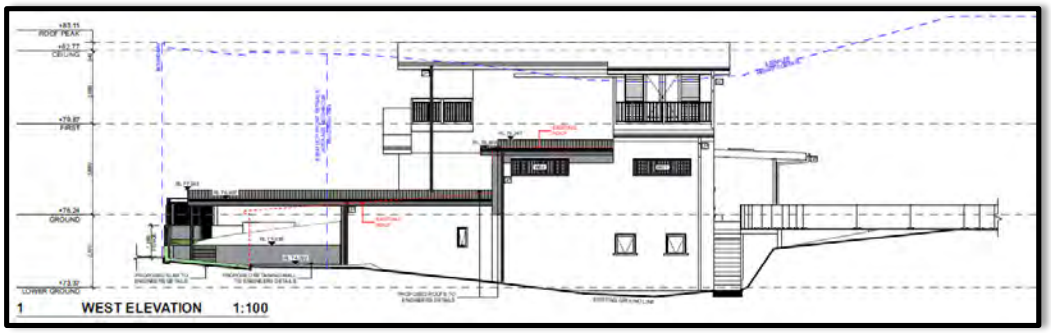
Figure 3: Elevation from the side (west)



Source: Progressive Plans

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides alterations and additions to an existing dwelling.

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.4:1.

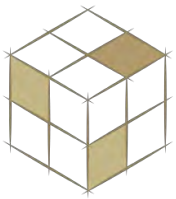
It is considered that the proposal achieves the objectives of Clause 4.4 and that the development is justified in this instance for the following reasons:

1) The development is modest in scale and does not add excessive bulk or scale as demonstrated in NSW Land and Environment Court in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, which considered Scale and density in the context of the surrounding area which formed the following planning principle: Compatibility in the urban environment.

   The planning principles provide: The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

   In order to test whether a proposal is compatible with its context, two questions should be asked.

   i. *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites*



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In relation to the physical impacts, consideration is given to noise, overlooking, overshadowing and constraining development potential which can be assessed with relative objectivity (as was applied in this principle).

The development is for the alterations and additions to an existing dwelling. The alterations and additions propose a minor extension within the existing building footprint to the front and western side of the dwelling. The development will not impact upon privacy being at ground level or including highlight windows. The development does not significantly affect solar access to the neighbouring dwellings beyond the existing arrangement. Minor increases in overshadowing are caused however these are confined to very small increases in the early morning to the adjoining western property. These changes do not impact the windows of habitable rooms.

ii. Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by **building height, setbacks and landscaping**. In special areas, such as conservation areas, **architectural style and materials** are also contributors to character. As this site is not located within a conservation area the test is applied to **building height, setbacks and landscaping.**

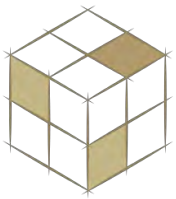
The principle notes front and rear setbacks are an important element of urban character and determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way. The development proposes a decrease in the front setback and no change to the side setbacks. Landscaping remains compliant on the site.

Notwithstanding, in the most common sense, the Commissioner provides that most people "experience the urban environment without applying the kind of analysis described above" and simply moving around a city is enough for a person to respond to their surroundings and like in the planning principle that if simply taking a walk in this neighbourhood there is little chance that with the alterations and additions that this development would be seen "out of context" and therefore within a compatible **Scale and density in the context of the surrounding area.**

For the above reasons it would therefore be unreasonable and unnecessary to require strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.4:1 for the subject development.
The existing development has a floor space ratio of 0.45:1 (GFA 282.77sqm) and the development proposes to increase the non compliance to 0.48:1 (GFA 298.6sqm) hence the non-compliance.



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The development is justified in this instance for the following reasons:

- The development is contained within the existing side setbacks of the dwelling house footprint. The development does not significantly alter the private open space on the site or the access to that private open space.
- The development proposes materials consistent with the existing palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality without impact on the character and amenity of the area.
- The development does not significantly increase bulk or scale or significantly decrease the landscaping area.
- The proposed works will provide for improved amenity for the occupants, which promotes good design which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for floor space ratio.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The decision on appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2016 the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the Four2Five decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligations is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case …and that there are sufficient environmental planning grounds to justify contravening the development standard." He

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held that this means:

> *"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".*

Accordingly, in regard to the proposed development the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed alterations and additions are considered to promote good sustainable design and enhance the residential amenity of the buildings' occupants, which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard
- The variation to the floor space ratio control is inconsequential as it is of negligible impact to the streetscape and the amenity of neighbouring properties and is an existing non-compliance that is not substantially different from the existing development.

In the Wehbe judgment (*Wehbe v Warringah Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded, and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

i. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

ii. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant and the purpose is satisfied.

iii. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development. Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

iv. *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;*

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Comment: Not applicable.

v. 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.

Comment: The development standard is applicable to and appropriate to the zone.

7.0 Conclusion

This development proposes a departure from the maximum floor space ratio development standard, with the existing dwelling house featuring a maximum floor space ratio of 0.48:1 (GFA 298.6sqm). This represents an increase over the maximum floor space ratio of 8.18%. The proposed alterations and additions while changing the ground and lower ground portion of the dwelling are a minor increase from the existing non-compliance.

This objectives for the maximum floor space ratio development standard specified in Clause 4.4(1) of MLEP 2013 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality. Strict compliance with the maximum floor space ratio would be unreasonable and unnecessary in the circumstances of this case and should be supported.

Kind regards

Wesley Folitarik
B. Environmental Planning (UWS); M. Property Development (UTS)
Managing Director │Urbanism

ITEM 3.2	**DA2022/1875 - 108 CABARITA ROAD AVALON BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/236756**
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 DA2022/1875 for alterations and additions to a dwelling house on land at Lot 5 DP 237925, 108 Cabarita Road AVALON BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1875

Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 5 DP 237925, 108 Cabarita Road AVALON 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:	Andrew John Scully
Applicant:	Spannenberg & Son Pty Ltd

Application Lodged:	08/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	15/11/2022 to 29/11/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 17.06%
Recommendation:	Approval

Estimated Cost of Works:	$ 957,000.00

EXECUTIVE SUMMARY

This development application seeks consent for the alterations and additions to an existing dwelling house, and is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10% to *Clause 4.3 Height of Buildings* of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

The maximum permitted building height under the LEP is 8.5 metres. A variation to which a Clause 4.6 variation request for the non-compliance with the building height standard arises from the replacement of the roof material and addition of two (2) skylights and the existing building has a height of 9.95 meters, resulting in a variation of 17.06%. A window addition is also included on the eastern elevation (BED 2), which will be located above 8.5 metres, but will remain under the existing non-compliant building height of 9.95 metres.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days. No submissions were received.

Generally, the proposal is compliant with all relevant built form controls of the Pittwater 21 Development Control Plan (P21DCP), with the exception of a variation to Clause D1.11 Building Envelope, Clause D1.14 Landscaped Area - Environmentally Sensitive Land and Clause D1.9 Side and rear building line. These variations are not considered to result in unacceptable environment or amenity impacts, with the development achieving the objectives of the relevant clause.

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

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the alterations and additions to an existing dwelling house.

Specifically, the works comprise of the following:

- Demolition and internal reconfigurations works;
- Extension to the rear ground floor deck;
- External access stairs;
- Extension to the first floor to accommodate a new bedroom, walk in robe, bathroom and new balcony;
- Window amendments or additions, including the addition of two skylights to the roof; and
- Material change to the existing roof form, from roof tiles to roof metal sheeting.

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 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - B6.7 Transport and Traffic Management
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D1.5 Building colours and materials
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 5 DP 237925 , 108 Cabarita Road AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Cabarita Road. The subject site is legally identified as Lot 5 in Deposited Plan 237925, 108 Cabarita Road, Avalon Beach. The site is irregular in shape with a frontage of 19.81 metres and a depth of 36.765 metres. The site has a surveyed area of 695.5m². The site is located within the C4 Environmental Living zone under the provisions of the Pittwater Local Environmental Plan 2014 and accommodates a dwelling house and swimming pool. The site benefits from a Right of Carriage through No. 106 Cabarita Road, Avalon Beach for vehicular access. The site topography slopes downward from west to east by approximately 9.0 metres. The site consists of various forms of vegetation, and a canopy tree to the western front façade of the dwelling house. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwelling houses of various architectural designs within a landscaped setting.

Map:

SITE HISTORY

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

Current Application History

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan and resulted in no submissions.

Council requested amended plans and additional information to address the following concerns:

- **Shadow Diagrams:** The DCP requires that Shadow diagrams must be submitted for all new developments that will result in additional shadow impacts, to demonstrate compliance with the requirements of the Pittwater 21 Development Control Plan.

- **Clause 4.3 Height of Buildings of the Pittwater Local Environmental Plan 2014:** The proposed first floor extension did exhibit a variation of approximately 0.8m to the clause requirements, which is not supportable by Council. It is noted that the proposal is accompanied by a Clause 4.6, and that the existing dwelling exhibits a building height of 9.95 metres. However, it was apparent that a more skillful design that provides scope to reduce the non-compliance to the first-floor extension.

- **Secondary Dwelling/Dual Occupancy:** It is noted that the proposal has the potential to facilitate a secondary dwelling or dual occupancy, within the subfloor level. Which allows for separate access and a new proposed bathroom. Confirmation was needed whether the proposal intends to build an additional separate occupancy within the existing dwelling. If this is so, then the application shall be updated and re-notified to reflect this.

Four sets of amended plans were received. The first on 2 February 2023, and the second on 7 March 2023 to address the above concerns. The third set was received on 28 March 2023, which included an additional section to accurately assess the building height. Finally, the last set was received on the 31

March 2023, which was to include boundary lines to all proposed floor plans.

Formal re-notification was not required due to a reduction in environmental impacts and further clarification on the design.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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 recommended condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Shadow Diagrams and Clause 4.3 Building Height of the Pittwater Local Environmental Plan 2014. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a recommendation condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended 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. (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 15/11/2022 to 29/11/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, subject to conditions.*** Council's Landscape Referral is assessed against the Pittwater Local

Internal Referral Body	Comments
	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 • D1 Avalon 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 P21DCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. It is noted that there is an existing non-compliance which will be slightly further reduced. The proposed alterations and additions are mainly contained to the existing dwelling footprint and the proposed deck will be situated over the existing driveway. No trees are proposed to be removed and all trees and vegetation shown to be retained shall be protected as per the requirements outlined in the conditions of consent. **Planner Note:** A landscaped area assessment occurred, the existing landscape area will remain as existing, and will not result in a reduction.
NECC (Bushland and Biodiversity)	***Supported, subject to conditions.*** The proposal seeks approval for alterations and additions to a dwelling house. The proposal has been assessed against the following provisions: • NSW Biodiversity Conservation Act 2016 • SEPP (Resilience and Hazards) 2021 - Chapter 2 Development within the coastal environment • Pittwater LEP 14 - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).

Internal Referral Body	Comments
	However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS. The alterations and additions that are proposed will take place in highly disturbed areas of the site and therefore, impacts to native flora and fauna are unlikely.
NECC (Coast and Catchments)	***Supported, no conditions required.*** The application has been assessed in consideration of the *Coastal Management Act 2016,* 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 *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **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, the DA satisfies requirements of the SEPP R&H. As such, it is considered that the application does/does not 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.
NECC (Development Engineering)	***Supported, subject to conditions.*** The proposal is for alterations and additions to the existing dwelling. The site falls to the rear and as such the stormwater management shall be in accordance with Section 5.5 of Council's Water Management for Development Policy. The submitted geotechnical

Internal Referral Body	Comments
	report addresses the DCP controls. No changes are proposed to the existing vehicular access. No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, 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. A462704_04 dated 6 March 2023).

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

SEPP (Transport and Infrastructure) 2021

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

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

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

SEPP (Resilience and Hazards) 2021

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

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

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

Comment
The proposal has been reviewed by Council's Coastal, Biodiversity and Landscape Officers, who are in support of the proposed works, subject to recommended conditions, which will mitigate any potential impacts.

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
As mentioned above, the development is unlikely to create unacceptable impacts to the foreshore or waterway areas and will not detract from the scenic quality of the locality, maintaining an appropriate visual relationship with the surrounding built environment.

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	First Floor Extension: 8.5m Skylight Addition: 9.1m	- 7.06%	Yes No (Refer to Clause

		Window Addition: 9.4m Existing Building/ Replacement Roof: 9.95m	10.6% 17.06%	4.6) No (Refer to Clause 4.6) No (Refer to Clause 4.6)

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The C4 - Environmental Living zone objectives are addressed below:

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

  Comment
  The proposal consists of replacing the existing roof tiles to roof metal sheeting, the construction of a first floor extension, ground floor deck extension, various internal reconfigurations and window additions, that have been designed to complement the surrounding natural and aesthetic values of the site. The proposal is considered to be of low impact, despite the building height non-compliance (refer to *Clause 4.6 Exceptions to development standard,* elsewhere in the report).

  The subject site is located within the Department of Planning and Environment's Biodiversity Values Map (BV Map), however it is noted that the proposed works are located outside of the BV Map area and does not include the removal of any significant vegetation. Majority of the works are located upon or within the existing building footprint, in an existing disturbed area of the site. 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, however these areas will not be impacted upon in a detrimental manner as stated by Council's Coastal Officer.

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

  Comment
  Recommended conditions have been included by Council's Biodiversity and Landscape Officers

to ensure that any potential impacts to the site are minimised.

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

  Comment
  The proposal includes a low density development design that is compatible with surrounding properties. The proposal retains the existing surrounding vegetation and landscape buffer located within the front setback area, which will continue to soften the built form.

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

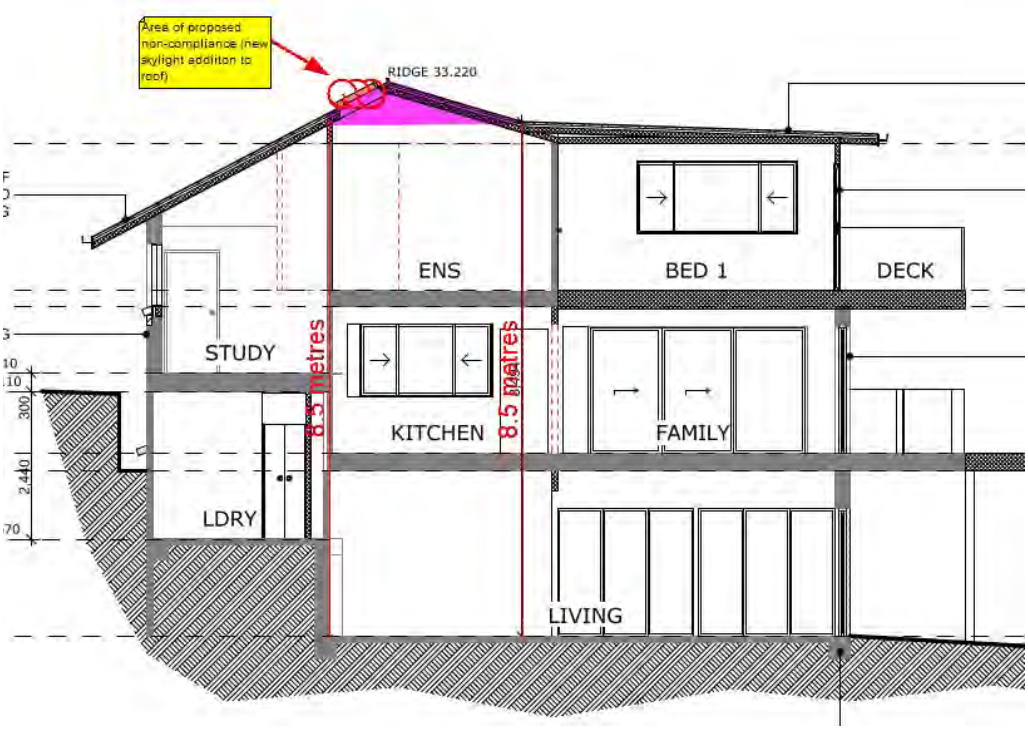
  Comment
  Councils Biodiversity Officer has reviewed the proposal and support the development subject to recommended conditions to ensure that any impacts to the native wildlife corridors are also minimised.

4.6 Exceptions to development standards

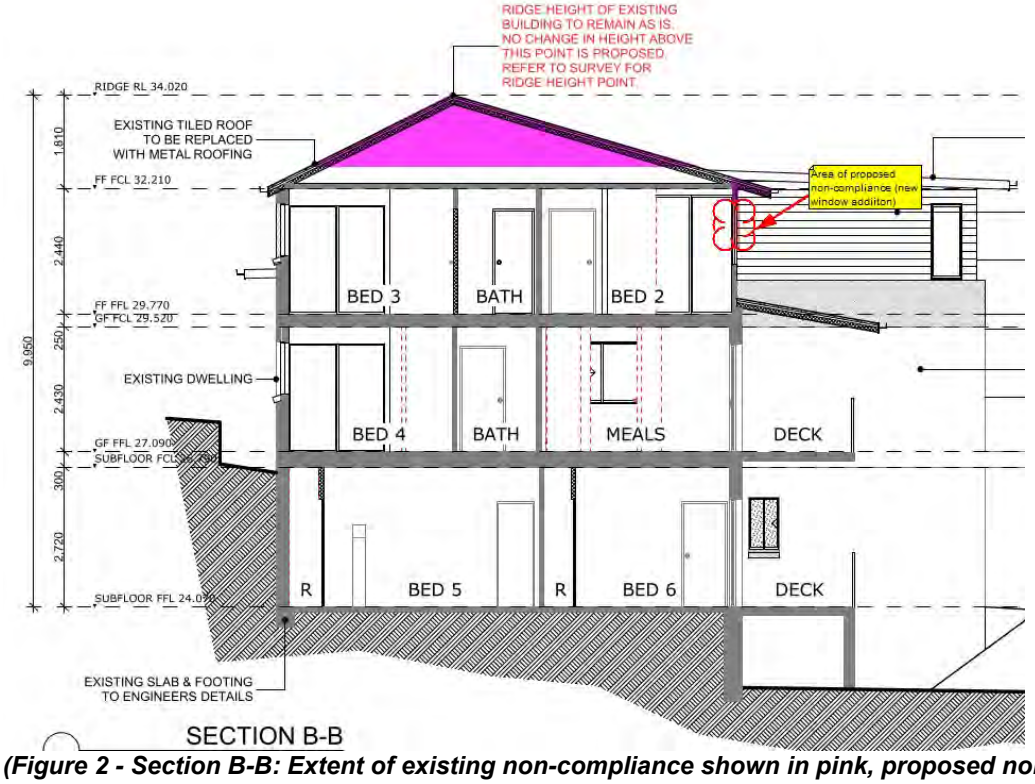
Description of Non-Compliance

Development standard	Height of buildings
Requirement	Max: 8.5 metres
Proposed	Max: 9.95 metres The non-compliance directly relates to the retention of an already existing building height of 9.95 metres, and an addition of a skylight and additional windows, located above 8.5 metres.
Percentage variation to requirement	17.06%

An extract of the submitted architectural plans showing the extent of non-compliance is shown below:



(Figure 1 - Section A-A: Extent of existing non-compliance shown in pink, proposed non-compliance shown in red.)



(Figure 2 - Section B-B: Extent of existing non-compliance shown in pink, proposed non-

compliance shown in red.)

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

Clause 4.6 Exceptions to development standards
(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

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

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

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

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

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

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

Comment

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

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

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

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

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

s 1.3 of the EPA Act reads as follows:

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

The applicants written request argues, in part:

- *"The proposed first floor addition complies with the maximum permitted building height however the existing built form that it being retained as part of the development has a height of 9.95m requiring a variation to the height of buildings provisions.*

- *The non-compliance is the direct result of the development retaining the existing non- compliant building height and the topography of the allotment. With a moderate fall through the site, it is difficult to retain the existing development without a level of non-compliance to the height*

provision.

- *The required 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 reasonable level of solar access to living areas and private open space areas of the adjoining properties.*

- *The windows proposed to the first floor extension have been appropriately offset from neighbouring windows and are able to be screened via landscaping to ensure they do not present opportunities for overlooking.*

- *The façade and material choices of the proposed development are in keeping with the existing dwelling and complement the existing character of the street which contains two and three storey dwellings of varied architectural styles.*

- *Remains below the maximum ridge height of the existing dwelling to ensure it will not pose detrimental impacts to the dwelling's overall streetscape appearance.*

- *Reducing the overall building height of the existing dwelling is not considered feasible as the reduction in existing built form height would detrimentally impact the amenity of the development and render re-development of the dwelling unviable.*

- *Whilst the existing dwelling is numerically non-compliant with the height of buildings control, the proposed addition is provided with a compliant building height and is not anticipated to detrimentally impact the streetscape or surrounding developments by way of solar access or privacy."*

The proposal is consistent with the locality and surrounding developments within the immediate vicinity that are of similar height and scale. The proposal is considered to be an appropriate design to preserve the low density residential setting and landscaped environment, with amenity impacts to surrounding development being acceptably mitigated.

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

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

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

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

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

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

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

Objectives of development standard:
The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment
The proposal includes a first floor extension that is compliant with the building height standard of 8.5 metres, and will be situated below surrounding tree canopy. The non-compliance directly relates to the retention of an already existing building height of 9.95m which will however replace the materials of the roof, but maintain the roof form/design. A addition of skylights and additional window, are also located above the building height standard of 8.5m, but below the existing building height of 9.95m.

As the non-compliance is generally existing, and the landscaping and screen planting on site will be retained, the proposal is considered to maintain a primarily a low-density residential design within a landscaped setting. This is consistent with the desired character of the Avalon Beach locality.

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

Comment
The surrounding development along Cabarita Road, primarily the properties on the low side of the street present dwelling house designs of two (2) and three (3) storeys that encroach the building height standard of 8.5m, with immediate properties exhibiting roof ridge heights of approximately RL 33.70 and RL 34.86. As mentioned above, the majority of the non-compliance (in exception of window additions and roof material change) is as existing, and will not be altered or encroach above the existing roof ridge height of RL 34.020. the proposal demonstrates consistency in way of height and spatial proportions when compared to the properties within the immediate vicinity.

c) to minimise any overshadowing of neighbouring properties,

Comment
The proposal is accompanied by shadow diagrams that are compliant with the relevant clause requirements.

d) to allow for the reasonable sharing of views,

Comment
As the proposal is retaining the original roof form and roof ridge height (in exception of a material change and addition of skylights), it is not considered that any unacceptable view loss impacts shall occur.

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

Comment
The proposal has taken in consideration the topography of the land, by locating the first floor addition in an area that would not result in a building height encroachment. The retention of the existing roof form that exhibits a building height non-compliance will not alter or impact the the natural topography of the land, as it will remain as existing.

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

Comment
The subject site is not a heritage item, is not located in close proximity to a heritage item and is not located within a heritage conservation area. Therefore, the proposal will not adversely impact any development of heritage significance. In addition, the development will not facilitate the removal of any significant vegetation, or excavation of the existing topography.

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 consists of replacing the existing roof tiles to roof metal sheeting, a first floor extension, addition of a new deck, various internal reconfigurations and window additions, that have been designed to complement the surrounding natural and aesthetic values of the site. The proposal is considered to be of low impact, despite the building height non-compliance (refer to Clause 4.6 Exceptions to development standard, elsewhere in the report).The subject site is located within the Department of Planning and Environment's Biodiversity Values Map (BV Map), however it is noted that the proposed works are located outside of the BV Map area and does not include the removal of any significant vegetation. Majority of the works are located upon or within the existing building footprint, in an existing disturbed area of the site. 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, however these areas will not be impacted upon in a detrimental manner as stated by Council's Coastal Officer.

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

  Comment
  Recommended conditions have been included by Council's Biodiversity and Landscape Officers to ensure that any potential impacts to the site are minimised.

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

  Comment
  The proposal includes a low density development design that is compatible with surrounding properties. The proposal retains the existing surrounding vegetation and landscape buffer

located within the front setback area, which will continue to soften the built form.

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

  Comment
  Councils Biodiversity Officer has reviewed the proposal and support the development subject to recommended conditions to ensure that any impacts to the native wildlife corridors are also minimised.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the 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, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies.

(3) The consent authority must consider the below 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
As the land is classified as "Geotechnical Hazard H1", the proposed development was accompanied by a geotechnical risk assessment and certified forms as set out in Council's Geotechnical Risk Management Policy for Pittwater relating to the potential impact of excavation on land stability. It is noted that no major cut or fill will take place under this development consent. Conditions however have been recommended to ensure that all recommendations (if any) included in the geotechnical risk assessment referenced in Condition 1 of this consent are required to be complied with during works, to ensure geotechnical risk is mitigated appropriately.

Conditions have also been recommended to ensure the satisfactory drainage and management of stormwater and wastewater.

(4) 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
As mentioned above, conditions have been recommended to ensure the satisfactory drainage and management of stormwater. Council's Development Engineer has also reviewed the proposal and is in support, subject to recommended conditions.

(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
In light of the above comments, it is considered that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front Building Line	6.5m Western Boundary	Dwelling: 8.3m Front Porch: 7.8m	-	Yes
Rear Building Line	6.5m Eastern Boundary	Dwelling: 11.6m Deck : 6.5m	-	Yes
Side Building Line	2.5m Northern Boundary	Existing Dwelling: 6.6m Deck: 5.0m Proposed First Floor Extension: 6.9m External Staircase: 1.0m	- 60.0%	Yes **No**
	1.0m Southern Boundary	Existing Dwelling: 1.0m Deck: 4.6m Proposed First Floor Extension: 5.1m	-	Yes
Building Envelope	3.5m Northern	Proposed Works: Within Envelope	-	Yes

	Envelope			
	3.5m Southern Envelope	Proposed Works: Outside Envelope	Max: 37.1%	**No**
Landscaped Area	60.0% (417.3m²)	35.7 % (248.3m²)	40.5% (169.0m²)	No (Existing non-compliance) No further reduction in landscaped area proposed

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	No	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	No	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
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	No	Yes
D1.8 Front building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D1.21 Masterplan - Careel Bay	Yes	Yes
D15.22 Masterplan - Careel Bay	Yes	Yes

Detailed Assessment

B6.7 Transport and Traffic Management

A condition has been recommended requiring the applicant to submit a Construction Traffic Management Plan that shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate. This is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems i.e. Right of Carriageway.

C1.5 Visual Privacy

Merit Consideration
Clause C1.5 requires that habitable rooms and outdoor living areas of dwellings optimise visual privacy through an appropriate design outcome. Private open space areas including swimming pools and living rooms of the proposal, and any existing adjoining dwellings are to be protected from direct overlooking within 9.0m, through the use of privacy screens or another similar design element.

The proposed upper ground deck extension and first floor balcony are located to the rear of the dwelling, however they are within 9.0m of the southern adjoining neighbour (No. 110 Cabarita Road). It is noted that No. 110 Cabarita Road is located behind the subject site's dwelling house, however downward or backward viewing into the property could still occur. To prevent any unacceptable privacy impacts as a result, both the upper ground floor deck and first floor balcony shall be required by recommended condition to provide a privacy screen to the southern end with a height of 1.65m.

The property to the north (No. 96 Cabarita Road) is located more than 9.0m from the proposed works, with a Right of Carriageway in between. This property will not be impacted.

The property to the east (No. 15 Careel Bay Crescent), is located below the subject site, with the dwelling house being orientated in an easterly and northerly direction, towards the favourable ocean views of Pittwater. No. 15 Careel Bay Crescent consists of an elevated deck/alfresco area, attached to the dwelling house, which is located approximately 9.0m from the proposed deck and balcony of the subject site. The proposed works under this application are also orientated towards the east, with the viewing direction being up and out towards the ocean views, rather than down into the eastern property. Overgrown vegetation and trees are situated between both these properties, which will also aid in obstructing any potential downward viewing and shall protect the privacy levels of the eastern adjoining neighbour. No further privacy measures are considered necessary.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control

have been achieved. Therefore, the application is supported on merit.

D1.5 Building colours and materials

Clause D1.5 Building Colours and Materials require that buildings are to utilise medium to dark colour ranges with natural and earthy tones.

The proposed development indicates that the primary materials for the dwelling house are to consist of a medium colour scheme (i.e. mid grey) for the external wall cladding and roof metal sheeting.

However, the window and door architraves are proposed to be of a light colour scheme (e.g. surfmist). Given this would be a minor potion of the development, which is not considered to visually dominate or disrupt the existing character of the area within the immediate vicinity, the proposed lighter colour is considered acceptable in this instance.

A condition is to be recommended to ensure the proposed roof and wall cladding will maintain a medium to dark range (BCA classification M and D) and that any roof with a metallic steel finish is not permitted in order to minimise solar reflections to neighbouring properties.

D1.9 Side and rear building line

Description of Non-Compliance
Clause D1.9 Side and Rear Building line prescribes a side setback of 2.5m to one side and 1.0m to the other, with a rear setback of 6.5m. For this assessment, the 2.5m side building line is applied to the northern boundary and the 1.0m side building line applied to the southern boundary. The rear setback is applied to the east.

The development is compliant with the above requirements, in exception of an external staircase, which exhibits a side setback of 1.0m to the northern boundary, where 2.5m is required.

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

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

  Comment
  The proposed external staircase will not disrupt the locality of the area. The proposal overall will maintain a low density residential dwelling house, with a landscaped front façade.

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

  Comment
  The staircase will link the pool area to the lower ground floor/driveway, and is considered lightweight in design. The staircase is located at the rear and side of the house, and will not be viewed from the street, with its location adjacent to a right of carriageway.

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

  Comment
  This encroachment into the side setback area is not considered to result in any unreasonable view loss from surrounding private properties or the public domain.

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

  Comment
  The staircase location, is not considered to negatively impact on the current view sharing of the adjoining properties.

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

  Comment
  The staircase will not unreasonably impede on the amenity or privacy to the neighbouring properties, as it is not located in close proximity to any adjoining dwellings. Solar Access is compliant with the relevant clause requirements.

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

  Comment
  Vegetation and established trees have been retained with adequate space for future planting, providing a sufficient level of landscaping. The proposed pergola will not impact the streetscape having been located towards the rear of the dwelling and will sit below mature tree canopy height.

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

  Comment
  The addition of an external staircase from the parking area and lower ground floor area to the upper ground floor area will provide for improved access and flexibility .

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

  Comment
  As previously mentioned, the existing vegetation and the established trees are to be retained and will act to mitigate any perceivable bulk and scale, in relation to the proposed staircase and overall dwelling.

- ***A landscaped buffer between commercial and residential zones is achieved.***

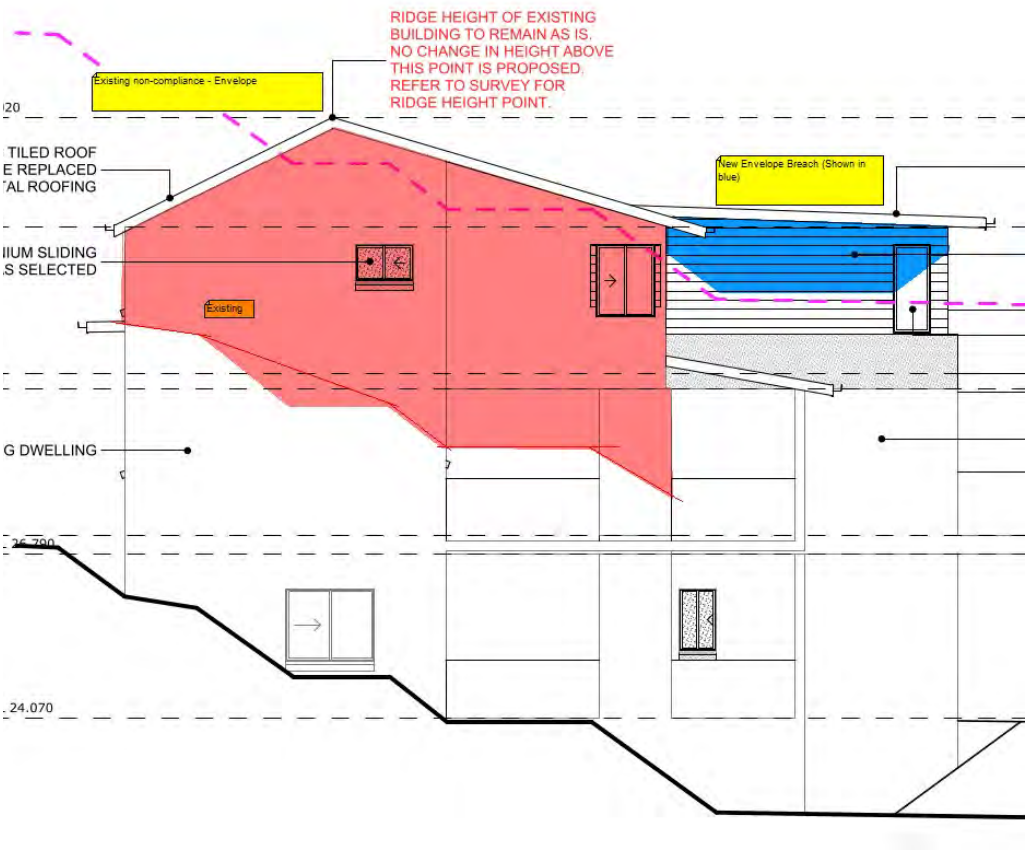
  Comment
  The subject site is located in and is surrounded immediately by either environmental protection or residential zones, this outcome does not apply.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D1.11 Building envelope

Description of Non-Compliance
Clause D1.11 Building Envelope require development to be sited within a 3.5m building envelope to ensure the bulk and scale of the built form is minimised.

The proposed development encroaches the side building on the southern elevation, exhibiting a maximum variation of 48.6% to the clause requirements (shown in blue below). It is noted that the existing dwelling house consists of an existing non-compliance to the building envelope on the southern elevation (shown in red below). The assessment of Clause D1.11 will however, only apply to the newly proposed works, and not the existing built form that will be retained.



(Figure 3: Proposed extent of envelope breach shown in blue, and existing shown in red)

The non-compliance can be contributed to the existing built form, which the first floor is built upon. The area where the proposed works are located, avoids the potential of further encroaching the building height. Amended plans were received which lowered the roof pitch, minimising the bulk and scale of this area. It is considered that the breach to the building envelope has been minimized, recognising that the breach is as a consequence of the positioning of the existing built form arrangement on site, which has been arranged to take advantage of a favorable aspect.

Merit Consideration
The Building Envelope is assessed on a merit basis and is considered against the underlying Outcomes of the Clause as follows:

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

  Comment
  The proposed development will maintain a low density residential design, located within a landscaped setting and will be situated below tree canopy height.

- ***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
  Due to the retention of the landscaping within the front setback area, and surrounding canopy trees, the dwelling house is not easily viewed from the street. This streetscape will therefore not be significantly altered when compared to that of the existing.

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

  Comment
  The works will not require any significant excavation to facilitate the works, therefore resulting in minimal site disturbance. The proposed development is situated below the height of the surrounding tree canopy level of the locality. It is considered advantageous that the proposed development is located atop the existing building footprint, as doing so does not impact any ecologically significant parts of the site.

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

  Comment
  The bulk and scale of the building is consistent with that of surrounding properties within the street, particularly those located on the low side of Cabarita Road. The dwelling house will maintain the presentation of a two (2) storey house when viewed from the east and north, but rather a three (3) storey house when viewed from the south and west. This is a similar occurrence, when comparing dwelling houses within the immediate vicinity.

  Notwithstanding, the design overall incorporates acceptable levels of articulation**,** particularly in relation to the proposed works. The retention of the existing style and roof form (in exception of the material change), will aid in visual interest and mitigation of bulk and scale. As mentioned above, the surrounding natural environment consists of canopy trees and other various forms of vegetation, which will aid in the visual softening and screening of the development.

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

  Comment
  The proposed extension (non-conforming element), exhibits a building height compliant with the required 8.5m. The existing dwelling house although replacing the existing roof, will maintain the roof design and building height of below 9.95m. As the roof design shall not change, it is not considered that any adjoining properties will experience unacceptable view loss impacts.

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

  Comment
  It is considered that the proposal provides adequate spatial separation between adjoining buildings, and has been accompanied with compliant shadow diagrams. The works are not considered to unacceptably impact upon the amenity or reduce privacy levels the to neighbouring properties.

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

Comment
The proposed works do not necessitate in the removal of any significant trees or plantings and is considered to continue to aid in the visual reduction of the the built form.

Having regard to the above assessment, it is concluded that the applicable outcomes of this control are achieved. Therefore, the application is supported on merit in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land

The subject site presents an existing non-compliant landscaped area of 35.7% or 248.3m², where 60.0% or 417.3m² is required.

The proposed works will not increase or alter the numerical non-compliance, with the works being located upon the existing building footprint, within the dwelling house or within existing impervious areas.

As such, a detailed merit assessment is therefore not required, in this instance.

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 $9,570 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $957,000.

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 the alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to *Clause 4.3 Height of Buildings* under the provision of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, with no submissions received.

Amended plans were requested by Council, re-notification was not required due to a reduction in environmental impacts and further clarification on the design. It is considered that the fourth set of amended plans received, addressed the planning issues identified in the initial assessment, which form the basis of this report.

On balance, and considering the preceding detailed assessment of the application, including a detailed analysis of the variation to Clause 4.3 of the PLEP 2014, it is considered that the 'amended' proposal, subject to recommended conditions will result in a development that is acceptable in design, and will not detrimentally impact the character or amenity of the area or adjoining properties

Therefore, proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is referred to the DDP with a recommendation for **approval**.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.
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 PLEP 2014 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 DA2022/1875 for Alterations and additions to a dwelling house on land at Lot 5 DP 237925, 108 Cabarita Road, AVALON 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**
No. 101, Site Plan, Revision B09	31 March 2023	Spannenberg & Son
No. 201, Subfloor, Revision B09	31 March 2023	Spannenberg & Son
No. 202, Ground Floor, Revision B09	31 March 2023	Spannenberg & Son
No. 203, First Floor, Revision B09	31 March 2023	Spannenberg & Son
No. 301, Subfloor, Revision B09	31 March 2023	Spannenberg & Son
No. 302, Ground Floor, Revision B09	31 March 2023	Spannenberg & Son
No. 303, First Floor, Revision B09	31 March 2023	Spannenberg & Son
No. 401, Elevations, Revision B09	31 March 2023	Spannenberg & Son
No. 402, Elevations, Revision B09	31 March 2023	Spannenberg & Son
No. 403, Elevations, Revision B09	31 March 2023	Spannenberg & Son
No. 501, Section & Details, Revision B09	31 March 2023	Spannenberg & Son

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Basix Certificate (No. A462704_04)	6 March 2023	Spannenberg & Son P/L
Geotechnical Investigation (Ref. J4586)	19 October 2022	White Geotechnical Group

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	-	Sketch Studio 77 Pty. Ltd.

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	21 November 2022

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

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

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 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 $9,570.00 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 $957,000.00.

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

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

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

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

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

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

7. **Stormwater Disposal from Low Level Property**
The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Water Management for Development Policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 19/10/2022 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

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

a) **Upper Ground Floor Deck**: A privacy screen is to be installed along the southern edge of the upper ground floor "Proposed Deck" as shown on the approved plans, for a length of 3.4m, with the starting point being the edge of the dwelling house. The screen is to have a minimum height of 1.65 metres above the finished floor level. The privacy screen shall be of fixed opaque panels or angled louver style construction (with a maximum spacing of 20mm), in durable materials that complement the design of the dwelling.

b) **First Floor Deck**: A privacy screen is to be installed along the entire length of the southern edge of the first floor "Deck" as shown on the approved plans, to a minimum height of 1.65 metres above the finished floor level. The privacy screen shall be of fixed opaque panels or angled louver style construction (with a maximum spacing of 20mm), in durable materials that complement the design of the dwelling

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

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

11. **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.

12. **External Finishes to Roof and Walls**
The external finish to both the roof and wall cladding 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.

13. **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.

14. **Construction Traffic Management Plan**
A Construction Traffic Management Plan is to be prepared for the development given its unusual access arrangements.

The Construction Traffic Management Plan shall include (but not be limited to) the following:

i) 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;
ii) Details for maintaining access to adjacent properties and properties which benefit from the right of carriageway easement;
iii) Details regarding the proposed method of access to and egress from the site for construction vehicles, and demonstration these vehicle will manoeuvre the right of way safely – i.e. enter and leave in a forward direction;
iv) Details for storage of materials;
v) Provision of parking for workers;
vi) Details for loading and unloading of materials;
vii) Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic;
viii) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure; and
ix) The location and operation of any on site crane.

The Construction Traffic Management Plan shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **Right of Carriageway Access**
Construction vehicles and material are not to impede access for the properties that benefit from the right of way and turning area throughout the construction phase. The applicant must provide neighbours who use the right of way and turning area with contact details of the contractor in the event that access to the right of way is blocked.

Reason: To ensure access is available to all property owners who benefit from the right of carriageway during the construction phase.

25. **Implementation of Construction Traffic Management Plan**
All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation.

Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

26. **Damage to the Right of Carriageway**
Any damage to the right of carriageway, caused by the construction of the development, is to be repaired prior to the issue of the occupation certificate.

Reason: To ensure the site is left in an acceptable state and that access is maintained for adjoining neighbours.

27. **Construction of works**

No construction access, materials, excavated materials or movement of workers or machinery shall occur from the Cabarita Road frontage of the site.

Reason: To protect the natural features of the site.

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

28. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

29. **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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **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:
(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

33. **Landscape Maintenance**
The approved landscaped areas shall remain as planting.

All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

34. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **No Approval for a 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.

SPANNENBERG & SON builders & contractors since 1971

OWNER'S ACKNOWLEDGMENT

The owner acknowledges that these drawings are correct pursuant to the building contract between the owner and the builder.
The builder's quotation that forms part of the building contract shall take precedence over these drawings should any discrepancies arise.

OWNER SIGNATURE *DATE*

OWNER SIGNATURE *DATE*

PROPOSAL:
ALTERATION & ADDITION

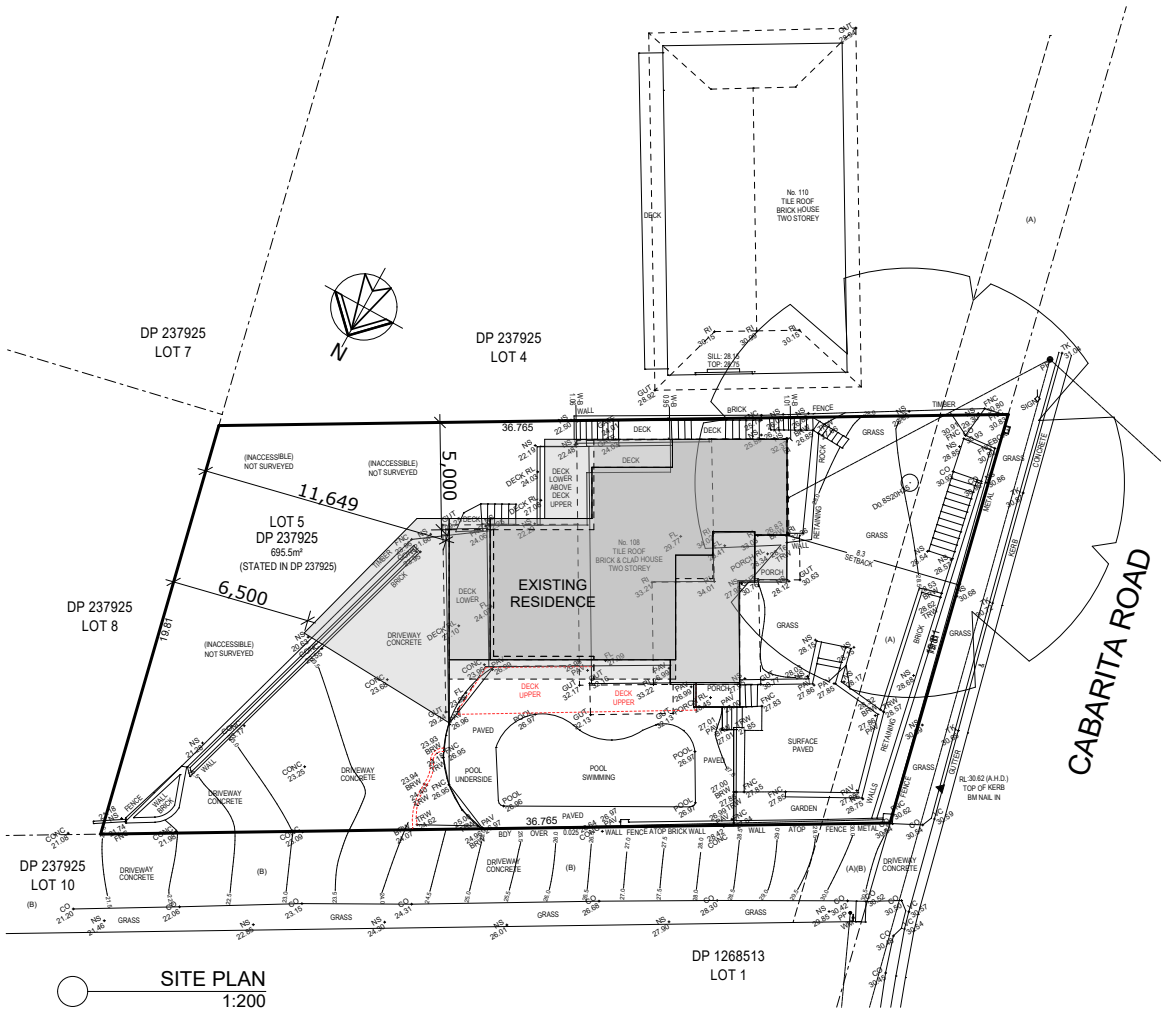
ADDRESS:
108 CABARITA ROAD,
AVALON BEACH NSW 2107
LOT: 5 DP: 237925

LGA:
NORTHERN BEACHES

AMENDMENT	*DATE*
COUNCIL LETTER	03.03.23
AMENDMENTS	06.03.23
COUNCIL LETTER	14.03.23
ADDITIONAL INFO	31.03.23

DRAWING:	*REVISION:*
SITE PLAN	B09

JOB REFERENCE:	*SHEET:*	*PAPER:*
108Caba	101	A3



SITE PLAN
1:200

DEVELOPMENT CALCULATIONS

LOT AREA:	695.50sqm
EXISTING AREA	
GROUND FLOOR:	111.73sqm
SUBFLOOR:	110.99sqm
FIRST FLOOR:	68.06sqm
SUBFLOOR DECK:	13.01sqm
POOL AREA:	96.16sqm
PORCH:	3.29sqm
GF DECK 1:	12.57sqm
GF DECK 2:	13.01sqm
GF DECK 3:	2.32sqm
PROPOSED AREA	
FIRST FLOOR:	27.55sqm
GF DECK:	36.14sqm
FF DECK:	19.36sqm
TOTAL AREA:	514.19sqm
FLOOR AREA:	318.33sqm
FLOOR COVER AREA:	222.72sqm
SITE COVER RATIO:	32.02%
LANDSCAPING AREA:	248.30sqm
LANDSCAPING RATIO:	35.70%
ROOF AREA:	149sqm

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DRAWING:		REVISION:
ELEVATIONS		B09
JOB REFERENCE:	SHEET:	PAPER:
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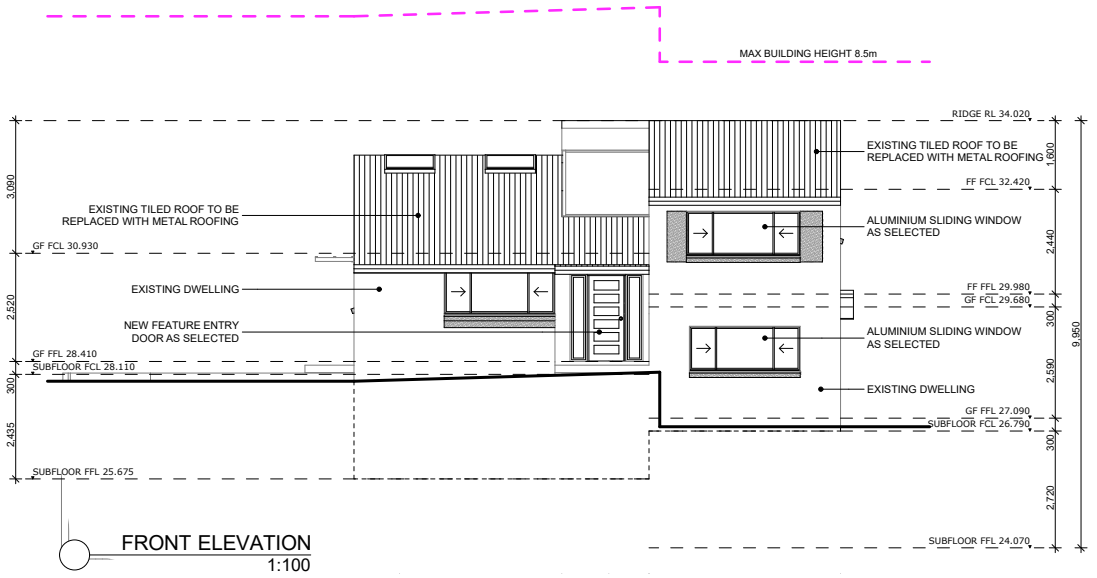
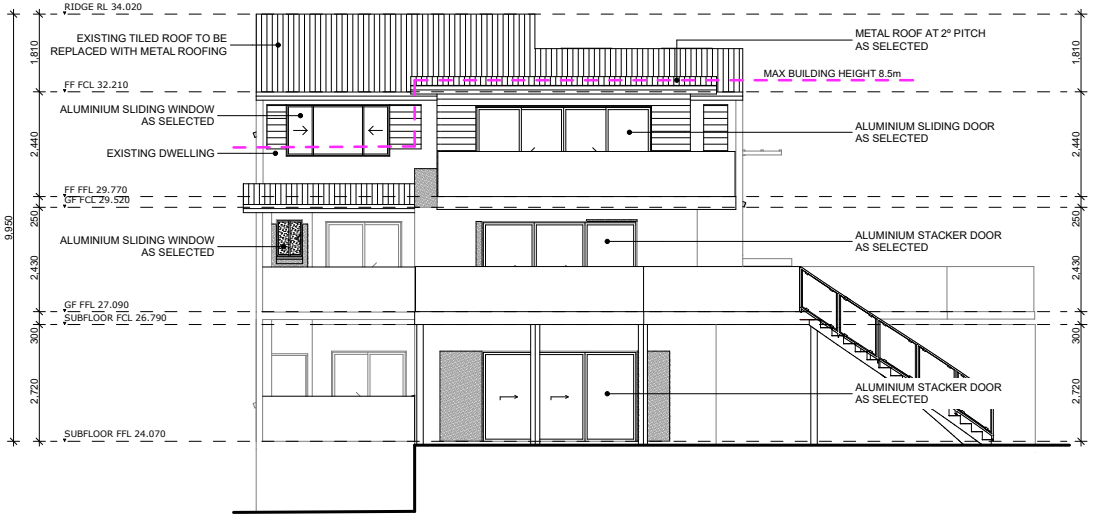


FRONT ELEVATION
1:100



REAR ELEVATION
1:100

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LOT: 5 DP: 237925

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COUNCIL LETTER	14.03.23
ADDITIONAL INFO	31.03.23

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ELEVATIONS		B09
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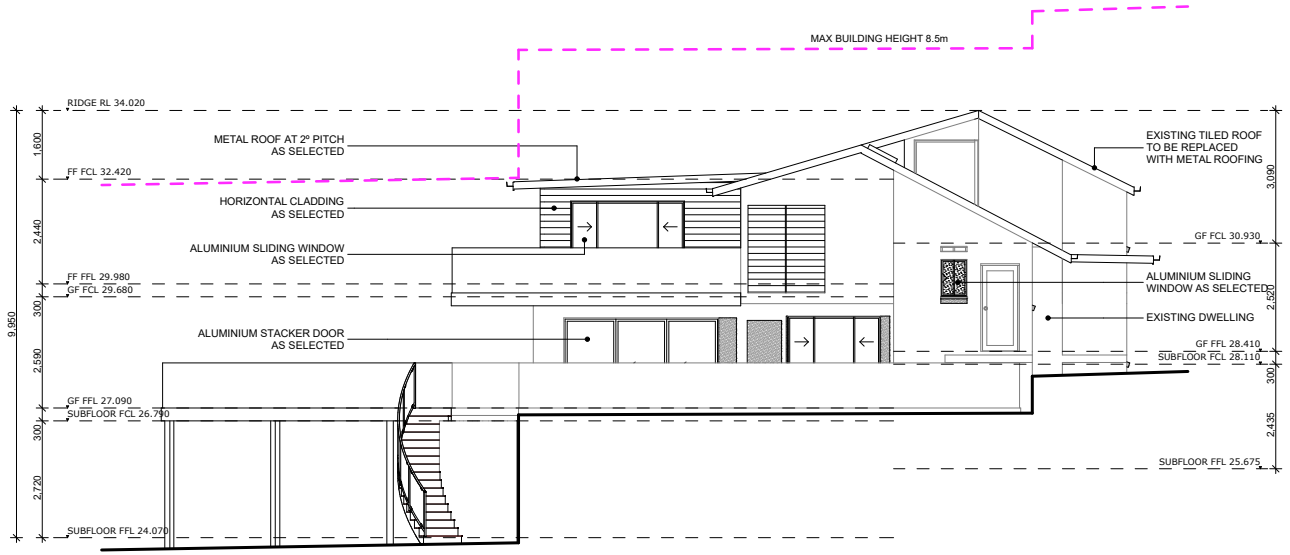

LEFT ELEVATION
1:100

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OWNER SIGNATURE *DATE*

OWNER SIGNATURE *DATE*

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ALTERATION & ADDITION

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AVALON BEACH NSW 2107
LOT: 5 DP: 237925

LGA:
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COUNCIL LETTER	03.03.23
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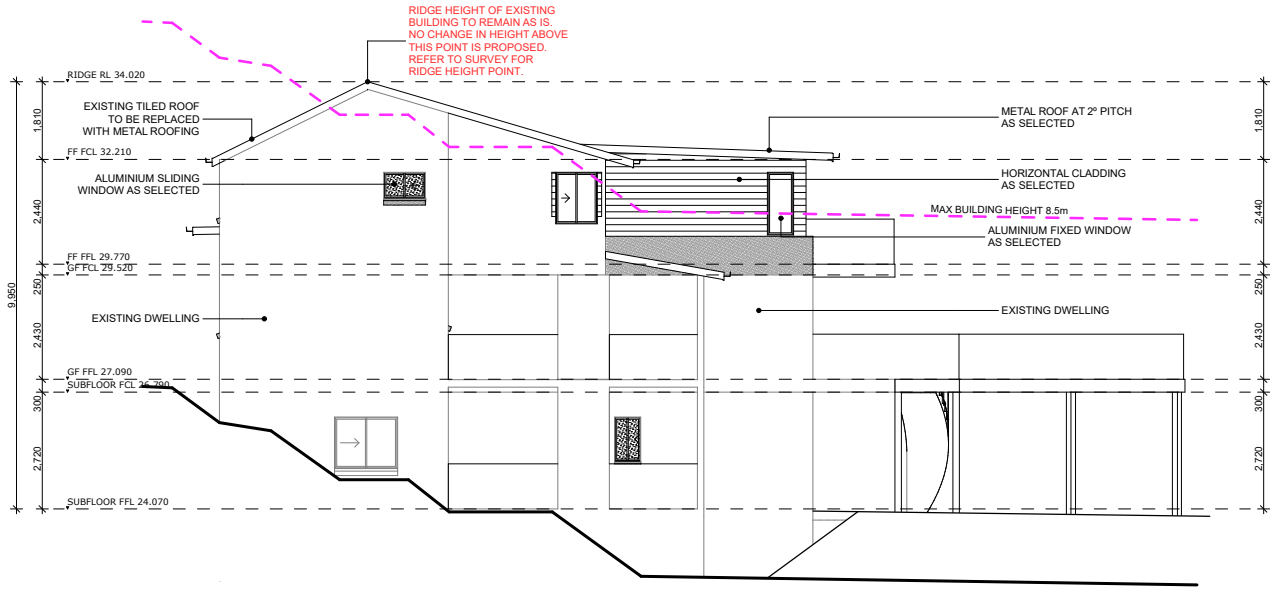
COUNCIL LETTER	14.03.23
ADDITIONAL INFO	31.03.23

DRAWING:		*REVISION:*
ELEVATIONS		B09
JOB REFERENCE:	*SHEET:*	*PAPER:*
108Caba	403	A3



RIGHT ELEVATION
1:100

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 Pittwater Local Environmental Plan 2014 (PLEP2014) during assessment of this application:

Pittwater Local Environmental Plan 2014
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 bydemonstrating—

(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 first floor addition complies with the maximum permitted building height however the existing built form that it being retained as part of the development has a height of 9.95m requiring a variation to the height of buildings provisions. It is considered that the application, and in particular the proposed building height, should be supported as:

The subject site is zoned 'C4 Environmental Living' under Clause 2.1 of the MLEP2013.

The objectives of the zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposed development can satisfy the objectives of the zone as it complements the existing residential setting. Residential amenity can be maintained by the proposed development as the site is within an area intended for this form of development.

The proposed development is compatible with the existing and future character of the locality. The development is designed to provide a high level of amenity for adjoining residents whilst considering the natural constraints of the site.

The siting of the alterations and additions is in the most appropriate location, which minimises disturbance and follows a similar development density evident throughout the area.
The proposed dwelling is considered to meet the objectives of the C4 Zone.

The *objectives of Clause 4.3* are:

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

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

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 1.45m non-compliance is the direct result of the development retaining the existing non-compliant building height and the topography of the allotment. With a moderate fall through the site, it is difficult to site retain the existing development 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 fall from the street and the need to retain the existing built form of the existing dwelling. Thus, providing a compliant addition is considered acceptable without the need to provide a compliant building height to the existing built form 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 an extension to first floor to provide a master bedroom suite and thus provide enhanced internal amenity.

The required 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 reasonable level of solar access to living areas and private open space areas of the adjoining properties. The windows proposed to the first floor extension have been appropriately offset from neighbouring windows and are able to be screened via landscaping to ensure they do not present opportunities for overlooking. 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 southern adjoining property will have a reasonable level of solar access throughout the day.

The façade and material choices of the proposed development are in keeping with the existing dwelling and complement the existing character of the street which contains two and three storey

dwellings of varied architectural styles. The proposed non-compliance relates to the rear of the dwelling however remains below the maximum ridge height of the existing dwelling to ensure it will not pose detrimental impacts to the dwelling's overall streetscape appearance.

The proposed first floor extension has been designed in keeping with the existing dwelling in terms of materials, articulation and roof form to ensure the dwelling retains its existing streetscape character. The visual bulk of the development as viewed from the adjoining dwellings is not considered to be excessive as the proposed addition is provided with a compliant height and the area of non-compliance relates to the existing structure only. The proposed works are provided with appropriate setbacks and articulation throughout the design in addition to the existing and proposed landscaping 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 Pittwater Local Environmental Plan 2014 is considered unreasonable and unnecessary as the alterations and additions are provided with a compliant building height and the non-compliance relates to the existing built form which is unchanged by the proposed development. The proposed alterations and additions have 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 height non-compliance is the direct result of the existing non-compliant building height and the topography of the allotment, and remains 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, C4 Environmental Living 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 9.95m, requiring a 1.45m variation to the development standard. The proposed addition is provided within a compliant building height of 8.5m and remains below the non-compliant building height of the existing dwelling. The requested variation is restricted to the centre of the dwelling and is the result of the topography of the allotment.

The non-compliant building height is considered to have minimal impact on the overall development in terms of bulk and scale appearance, due to the proposed addition remaining below the maximum building height provisions and being of a reasonable scale. The proposed alterations and additions are not considered to be excessive in size, having been designed to complement the existing dwelling and including extensive articulation. The proposed development is in keeping with surrounding developments in an area where the overall height control appears to have been abandoned with regards to existing built forms due to the topography of the sites. Further the proposed development provides a suitably sized dwelling in keeping with developments of the surrounding area.

The proposed alterations and additions retain a three storey dwelling on the allotment. The proposed development is 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 and the provision of an addition above the existing dwelling walls for structural integrity. Reducing the overall building height of the existing dwelling is not considered feasible as the reduction in existing built form height would detrimentally impact the amenity of the development and render redevelopment of the dwelling unviable.

Despite the variation, the proposed 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 Avalon Beach.

The variation will result in maintenance of the existing building height as the prposed works are provided with a compliant building height. The proposed alterations and additions are considered to have minimal impact on the existing dwelling design that already exceeds building height limits. The proposed development is not considered to be excessive in size and provides a suitably sized addition to an existing dwelling in keeping with developments in the surrounding area.

Whilst the existing dwelling is numerically non-compliant with the height of buildings control, the proposed addition is provided with a compliant building height and is not anticipated to detrimentally impact the streetscape or surrounding developments by way of solar access or privacy. Furthermore, 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 the existing dwelling.

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.

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 extension of 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. Further, allowing the existing building height to be retained whilst the proposed addition is provided with a compliant height ensures that the proposed development enhances the amenity of the existing dwelling which is considered to promote orderly and economic use and development of the land.

Allowing the alterations and additions within residential areas 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 is located to the front of the dwelling however has been designed in keeping with the existing dwelling design in terms of materiality, scale, articulation and roof form to ensure the streetscape character of Cabarita Road is maintained. Consideration of these key aspects promotes good design through a high quality architectural development. Further the proposed alterations and additions have been designed to provide a 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 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 being 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 3.3	**REV2023/0001 - 37 MCCARRS CREEK ROAD CHURCH POINT - REVIEW OF DETERMINATION OF APPLICATION DA2021/2645 FOR USE OF AN EXISTING STRUCTURE AS A DWELLING HOUSE**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/245246**
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 **Defers Commencement Approval** to Development Consent, REV2023/0001 for Review of Determination of Application DA2021/2645 for use of an existing structure as a dwelling house on land at Lot 4 DP 566781, 37 McCarrs Creek Road CHURCH POINT, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0001

Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 4 DP 566781, 37 McCarrs Creek Road CHURCH POINT NSW 2105
Proposed Development:	Review of Determination of Application DA2021/2645 for use of an existing structure as 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:	Belinda Rose-Mary Knierim
Applicant:	Lance Doyle

Application Lodged:	10/02/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	16/02/2023 to 02/03/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	$ 0.00

EXECUTIVE SUMMARY

This review application seeks to review the determination of Development Application DA2021/2645 which was determined by way of refusal on 28 October 2022.

The application is referred to the Development Determination Panel (DDP) as any Review of Determination under Section 8.2 for a development previously determined by a Manager is required to be determined by the DDP, and the application has received five objections.

DA2021/2645 was refused by Council for the following six (6) reasons as detailed below:

1. *Pursuant to Section 4.15(1) (c) & (e) of the Environmental Planning and Assessment Act 1979,*

the site is not suitable for the proposal and the proposed development is not in the public interest.

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)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.4 regarding the desired future character of the Pittwater 21 Development Control Plan.*
4. *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 B6.3 Off-Street Vehicle Parking Requirements of the Pittwater 21 Development Control Plan. There is no suitable access between the approved garage and the proposed use of dwelling. Further, there is no right of way or agreement of the use of the neighbouring driveway as access.*
5. *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 C1.12 Waste and Recycling Facilities of the Pittwater 21 Development Control Plan.*
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 D4.6 Side and rear building line of the Pittwater 21 Development Control Plan.*

In seeking the review, the applicant has sought to address the reasons for refusal through the provision of additional and amended information. On balance, the reviews finds that the use of the existing structure of a dwelling house is supportable, subject to a deferred commencement approval.

Concerns raised in the objections predominantly relate to the existing structure, and the unauthorised works undertaken. It is noted that the regularisation of the existing structure is under assessment by way of a Building Information Certificate (BC2021/0294).

Critical assessment issues largely relate to the unauthorised works of the structure. However, these will be addrseses separately under the Building Information Certificate. It is important to note that the Review Application is for the use of the existing structure of a dwelling house only.

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

PROPOSED DEVELOPMENT IN DETAIL

The Review Application is for the review of determination of a DA which sought consent for the use of an existing structure as a dwelling house.

In summary, the Review Application has addressed the reasons for refusal of DA2021/2645 as detailed below:

1. *Pursuant to Section 4.15(1) (c) & (e) of the Environmental Planning and Assessment Act 1979, the site is not suitable for the proposal and the proposed development is not in the public interest.*

   Comment:
   The proposed development is for the use of an existing structure as a dwelling house. The integrity of the existing structures adequacy is subject of a Building Information Certificate (Ref No.BC2021/0294) which is currently under assessment by Council. It is considered that the site

is suitable for the proposal as it has an ongoing landuse for residential purposes and currently does not contain any separate or other dwellings. The provision of a dwelling house on the site is consistent with surrounding sites, that largely include large allotments with dwelling houses.

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.

   Comment:
   The proposed development upon review is considered to be consistent with Clause 1.2 Aims of The Plan inclusive of Clause 1.2(2)(a-j) of the Pittwater Local Environmental Plan 2014.

3. *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 A4.4 regarding the desired future character of the Pittwater 21 Development Control Plan.*

   Comment:
   The proposed development upon review is considered to be consistent with Clause A4.4 Church Point and Bayview Locality that specifies, "*The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape*". The use of the existing structure as a dwelling house is thereby consistent with the desired future character of Pittwater 21 Development Control Plan.

4. *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 B6.3 Off-Street Vehicle Parking Requirements of the Pittwater 21 Development Control Plan. There is no suitable access between the approved garage and the proposed use of dwelling. Further, there is no right of way or agreement of the use of the neighbouring driveway as access.*

   Comment:
   The subject site has a garage that provides two (2) spaces which are access from the street. The garage was subject of a separate approval and has recently obtained an Occupation Certificate (Ref No.OC2023/0118). As such, the proposed development is considered to be consistent with Clause B6.3 Off-Street Vehicle Parking Requirements that stipulates 1 space is required for a 1 bedroom dwelling. The subject site obtains acceptable pedestrian access from the garage to the existing structure at the rear of the site.

5. *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 C1.12 Waste and Recycling Facilities of the Pittwater 21 Development Control Plan.*

   Comment:
   The subject site obtains suitable space adjacent to the existing garage for the storage of Council bins. Therefore, there are no concerns surrounding the disposal or management of domestic waste.

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 D4.6 Side and rear building line of the Pittwater 21 Development Control Plan.*

   Comment:
   The proposed development s for the use of the existing structure as a dwelling house. It is

considered that whilst the structure does not strictly comply with the residential setbacks prescribed for the side and rear boundaries, contextually the setbacks are acceptable and they do not result in any negative amenity or built environment impacts when the structure is used domestically upon adjoining properties. It is important to note, that the proposed development subject of the Review Application is for the use of the existing structure as a dwelling house, and thereby does not include any building 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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities
Pittwater 21 Development Control Plan - D4.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 4 DP 566781 , 37 McCarrs Creek Road CHURCH POINT NSW 2105
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of McCarrs Creek Road. The site is irregular in shape with a frontage of 39.33 metres along McCarrs Creek Road and a depth of 112.01 metres. The site has a surveyed area of 2402m².

	The site is located within the C4 Environmental Living zone from PLEP 2014 zone and accommodates two (2) metal shed structures at the rear of the site, and a detached double garage at the front of the site. The site slopes from the front northern boundary upwards to the rear southern boundary over approximately 15 metres. The site contains lawn areas, plantings, and vegetation. There are no details of any threatened species on the subject site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design.

Map:

SITE HISTORY

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

PLM2020/0005
Pre-Lodgement Meeting for Construction of a dwelling with associated driveway ramp and the subdivision of land.
Meeting held 30 January 2020.
The notes concluded: *The proposal is not acceptable in its current form and requires redesign prior to submission to address the issues raised in these Notes.*

DA2020/1354

Development Application for Construction of a garage.
Approved on 10 December 2020.

CC2021/1341
Construction Certificate for Construction of a garage.
Approved on 30 October 2021 by External Certifier.

DA2021/2645
Development Application for Use of an existing structure as a dwelling house.
Refused on 28 October 2022.

OC2023/0118
Occupation Certificate for Construction of a garage.
Approved on 16 February 2023 by External Principal Certifier.

PLM2022/0047
Pre-Lodgement Meeting for Construction of a dwelling house and elevated driveway.
Meeting held 14 April 2022.
The notes concluded: *The proposed development is not supported in its current form, but may be supported subject to the design amendments outlined within these notes. Further investigation is required in relation to the feasibility of the subdivision of the land and it is recommended that advice be sought from Council under a separate pre-lodgement meeting for this part of the development. The elevated driveway would not be supported.*

BC2021/0294
Building Information Certificate for Metal Clad Dwelling.
Under Assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 28 October 2022 and the notice of determination was issued on 28 October 2022. The review was lodged on 8 February 2023 and is to be considered by 28 April 2023, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the ‘Detailed Description of Works” section of this report.

A review of the original and amended plans has found that there are fundamental similarities between

the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act

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 Development Application (prepared by Bushfire Planning Services, dated 8 December 2021). A Bush Fire Cover Letter was submitted with the Review Application (prepared by Bushfire Planning Services, dated 27 January 2023).

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report and Bush Fire Cover Letter, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent. As such, the proposed development is considered to be consistent with the considerations if Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/02/2023 to 02/03/2023 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 5 submission/s from:

Name:	**Address:**
Department of Industry Crown Lands	PO Box 2185 DANGAR NSW 2309
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093
Ms Jennifer Marion Cummins	39 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Ian Robert Black	21 A McCarrs Creek Road CHURCH POINT NSW 2105
Mrs Margaret Rose Curtis	33 McCarrs Creek Road CHURCH POINT NSW 2105

The following issues were raised in the submissions:

- **Crown Public Road**
- **Unauthorised Works**
- **Garage**
- **Stone Access Steps**
- **Rear Setback**
- **Building Assessment Referral Response**
- **Waste Water System**

- **Removal of Vegetation**
- **Storage of Building Materials**
- **Future Development**

The above issues are addressed as follows:

- **Crown Public Road**

  The submissions raised concerns that a portion of McCarrs Creek Road is a Crown Public Road, and the Department recommends the Council investigate the transfer of McCarrs Creek Road (and any developed Crown roads in the vicinity) to the management and control of Northern Beaches Council.

  Comment:
  The Review Application relates to aa DA for the use of an existing structure on privately owned land as a dwelling house, and therefore there is no changes to the use of McCarrs Creek Road. Therefore the consideration for transferring a portion of McCarrs Creek Road is not relevant to this application.

- **Unauthorised Works**

  The submissions raised concerns that the use of an existing structure as a dwelling house benefits from unauthorised works.

  Comment:
  A separate Building Information Certificate has been lodged with Council (Ref No.BC2021/0294) and is currently under assessment for the Metal Clad Dwelling.

- **Garage**

  The submissions raised concerns that the site obtains an incomplete garage structure.

  Comment:
  An Occupation Certificate has been provided to Council for the Construction of a garage (Ref No.OC2023/0118). Notwithstanding this, that application / development is unrelated to this proposal.

- **Stone Access Steps**

  The submissions raised concerns that stone access steps have been constructed.

  Comment:
  The Review Application relates to a DA that is for the use of the existing structure as a dwelling house. The stone access steps, and any works constructed are subject to separate approval via a Building Information Certificate, if required.

- **Rear Setback**

  The submissions raised concerns that the rear setback of the proposed dwelling house obtains a zero rear setback, and does not comply with the planning controls.

  Comment:
  The structure of the dwelling house is under assessment by way of a Building Information Certificate (Ref No.BC2021/0294), and the rear setback will be assessment under this

application. A detailed assessment has been conducted under Clause D4.6 of Pittwater 21 Development Control Plan. In summary, the rear building line variation is supportable as the outcomes of the control have been met.

- **Building Assessment Referral Response**

  The submissions raised concerns that the Building Assessment Referral Response includes conditions that need to be implemented including construction and separation of external walls, natural light and ventilation.

  Comment:
  The conditions recommended Council's Building Assessment team are matters to be resolved / complied with under the Building Information Certificate (Ref No.BC2021/0294). As such, the Review Application, has been recommended with a deferred commencement condition subject to obtaining a Building Information Certificate prior to the granting of consent for the use of the existing structure as dwelling house.

- **Waste Water Management**

  The submissions raised concerns surrounding how wastewater is being management and whether it meets relevant standards.

  Comment:
  The applicant provided a Wastewater Report (prepared by Broadcrest Consulting dated 30 March 2023). Council's Environmental Health Officer (unsewered lands) has reviewed the report, and is supportable of the existing septic system, subject to the satisfaction of a deferred commencement condition requiring a copy of a s68 (Local Government Act 1993) approval to operate the Waste Water System that is required prior to the consent is operational.

- **Removal of Vegetation**

  The submissions raised concerns that removal of vegetation has been undertaken.

  Comment:
  The use of the existing structure of a dwelling house does not include any vegetation removal. Therefore, such concerns are separate and unrelated.

- **Storage of Building Materials**

  The submissions raised concerns that the applicant has stored building materials at the front of the property.

  Comment:
  The review application is for the use of an existing structure as a dwelling house, and as such does not include any building works. Therefore, such concerns are separate and unrelated.

- **Future Development**

  The submissions raised concerns that the subject site may be subject to a future dwelling house.

  Comment:
  A condition has been recommended to ensure that if a future dwelling house is proposed, the existing structure is not able to be continued to used as a dwelling house, unless a separate approval that is consistent with the planning controls in place at the time is obtained prior.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	***Supported - without conditions.*** The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage. **Planner Comment:** The recommended conditions by Building Assessment are required to be complied with prior to the issuance of a Building Information Certificate. As such, the recommended conditions have been excluded from the Conditions recommended as part of the Review Application, as the Review Application is for the use of an existing structure as a dwelling house, and does not include any building works.
Environmental Health (unsewered lands)	***Supported - subject to conditions.*** **General Comments** Environmental Health has reviewed the Broadcrest Onsite Wastewater System report dated 30/3/2023 which states David Marshal from Action Environmental conducted an inspection of the septic system, confirming the system has adequate capacity for the current single bedroom dwelling **Recommendation** APPROVAL - subject to conditions
NECC (Development Engineering)	***Supported - without conditions.*** The proposal is for the use of the existing structure as a dwelling. Stormwater from the development shall be discharged to the existing absorption system as conditioned. The property has an approved garage at the front of the site. Planning to consider the access from the garage to the proposed dwelling at the rear and if additional parking is required at the rear. No objections to approval subject to conditions as recommended. **Planner Comment** The recommended conditions by Development Engineer are required to be complied with prior to the issuance of a Building Information

Internal Referral Body	Comments
	Certificate. As such, the recommended conditions have been excluded from the Review Application, as the Review Application is for the use of an existing structure as a dwelling house, and does not include any building works.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported - without 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. However, as there are no proposed works, the conditions recommended by Ausgrid are not applicable.
Rural Fire Service - Local Branch - EP&A Act, s4.14	***Supported - subject to conditions.*** The proposal was referred to NSW Rural Fire Service who provided a response on 5 April 2023 stating that the proposal is acceptable subject to compliance with previous advice dated 22 July 2022. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	***Supported - without conditions.*** Development Application No. REV2023/0001 Description: Review of Determination of Application DA2021/2645 for use of an existing structure as a dwelling house Address: 37 McCarrs Creek Road CHURCH POINT 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. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1370538S dated 02 February 2023).

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

Commitment	Required Target	Proposed
Water	40	40
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. However, as the Review Application does not proposed any physical works there is no requirement for these conditions.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been

carried out as follows:

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

Comment:
A portion of the subject site is located in land identified as "coastal environment area". The location of the use of an existing structure as a dwelling house is located outside of the "coastal environment area" mapping. Therefore, the use of an existing structure as a dwelling house will not cause an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

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 use of an existing structure as a dwelling house will not cause an adverse impact to items listed under Clause 2.10(1)(a-g).

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:
A portion of the subject site is located in land identified as "coastal use area". The location of the use of an existing structure as a dwelling house is located outside of the "coastal use area" mapping. Therefore, the use of an existing structure as a dwelling house will not cause an adverse impact to items listed under Clause 2.11(1)(a)(i-v) inclusive. The use of an existing structure as a dwelling house is designed, sited, and managed to avoid an adverse impact to items under Clause 2.11(1)(a)(i-v) inclusive. The use of an existing structure as a dwelling house has taken into consideration the surrounding coastal and built environment, bulk, scale, and size of the existing structure.

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 use of an existing structure as a dwelling house will not result in an increased risk of coastal hazards on the land or other land.

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

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

Comment:
There is no certified coastal management program applicable to the land.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is

contaminated. Council records indicate that the subject site has been used for residential 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	3.0m (existing)	-	Yes

Compliance Assessment

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

Detailed Assessment

Zone C4 Environmental Living

The subject site is located in land identified as C4 Environmental Living zone of Pittwater Local Environmental Plan 2014.

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

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

  Comment:
  The proposed use of an existing structure as a dwelling house will provide for a 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:

The residential development will not have an adverse effect on special ecological, scientific, or aesthetic values.

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

  Comment:
  The proposed use of an existing structure as a dwelling house will provide for a residential development of a low density scale that is integrated with the landform, and landscape.

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

  Comment:
  The proposed use of an existing structure as a dwelling house will not adversely impact upon the riparian, foreshore vegetation, or wildlife corridors.

7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

(a) the supply of water,
(b) the supply of electricity,
(c) the disposal and management of sewage,
(d) stormwater drainage or on-site conservation,
(e) suitable vehicular access.

Comment:
The use of the existing structure as a dwelling house has demonstrated that adequate services are available including the supply of water, supply of electricity, disposal and management of sewage, stormwater drainage, and suitable vehicular access.

The site obtains an existing connection to Sydney water, and an existing connection to Ausgrid for electricity.

Council's Environmental Health (unsewered land) Officer has reviewed the application, and provided referral comments in response to the request for a Wastewater Report (prepared by Broadcrest Consulting Pty Ltd dated 30 March 2023). Upon receipt of the Wastewater Report, Council's Environmental Health (unsewered land) Officer is supportable of the application, and a suitable condition has been recommended.

Council's Development Engineer has reviewed the application, and is supportable of the stormwater drainage and vehicular access. The site obtains an existing double garage that provides vehicular parking, and an existing pathway provides access from the garage to the existing structure.

Therefore, the existing structure obtains the essential services to satisfy the requirements of Clause 7.10 Essential services of Pittwater Local Environmental Plan 2014.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (North-West)	>80m (existing)	-	Yes
Rear building line	6.5m (South-East)	0.0m (existing)	100% (6.5m)	**No**
Side building line	2.5m (North-East)	5.8m (existing)	-	Yes
	1m (South-West)	2.85m (existing)	-	Yes
Building envelope	3.5m	Within envelope (existing)	-	Yes
	3.5m	Within envelope (existing)	-	Yes
Landscaped area	60% (1441.2m^2)	91.71% (2202.9m^2)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	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
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	Yes	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The minimum number of vehicle parking spaces to be provided for off-street parking is two (2) spaces for dwelling houses.

The subject site obtains an existing double garage that provides off-street parking for two (2) vehicles. Furthermore, the subject site obtains existing pedestrian access from the double garage to the existing structure.

Therefore, the proposal is consistent with Clause B6.3 Off-Street Vehicle Parking Requirements of Pittwater 21 Development Control Plan, an no further assessment is required.

C1.12 Waste and Recycling Facilities

A site visit was undertaken as part of the assessment process, and it was noted that the Council bins are stored adjacent to the existing garage.

As such, there are no concerns surrounding disposal of waste from the subject site.

D4.6 Side and rear building line

Description of non-compliance

The proposal is for use only and does not involve any new buildings or alterations and additions to existing buildings.

The existing structure will be assessed by Council's Building Assessment team under the concurrent Building Information Certificate (BC2021/0294).

Notwithstanding, the variation to the existing structure obtains a nil rear setback, presenting a variation of 100% to the 6.5m required setback.

As such a detailed assessment has been undertaken against the outcomes of the control, and it is considered that the variation to the rear building line is supportable as the outcomes have been met as detailed below.

Merit consideration

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

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

  Comment:
  The existing structure to be used as a dwelling house is consistent with the desired future character if the Church Point and Bayview Locality. The desired character includes low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape.

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

Comment:
The existing structure is of minimal bulk and scale as it is a single storey structure that is compliant with the building envelope control that aims to mitigate any unreasonable bulk and scale.

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

  Comment:
  The existing structure does not impact upon any significant views and vistas to and/or from public and private places.

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

  Comment:
  The existing structure will not impact upon view sharing, and it is considered the existing structure is an appropriate design, that allows for sufficient landscaping on the site.

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

  Comment:
  The existing structure does include any windows along the rear south-eastern facade, and as such will not result in any unacceptable privacy impacts to the adjoining site. Furthermore, the existing structure provides appropriate amenity, and solar access to the development site and adjoining residential properties.

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

  Comment:
  There is no removal of vegetation on the subject site under this application, and it is considered that the site obtains substantial landscaping, and existing plantings. The existing structure is located at the rear of the site, and as such is not visible from the streetscape.

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

  Comment:
  Flexibility is afforded in this circumstance, as the location of the existing structure will not result in any unacceptable amenity impacts.

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

  Comment:
  The existing vegetation on site is retained, and includes existing planting to visually reduce the built form.

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

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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

PLANNING CONCLUSION

This proposal, for the use of an existing structure as a dwelling house has been referred to the Development Determination Panel (DDP) as any Review of Determination under Section 8.2 for a development previously determined by a Manager is required to be determined by the DDP, and the application has received five objections.

The concerns raised in the objections have been addressed and resolved as the concerns largely relate

to the Building Information Certificate (BC2021/0294).

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

RECOMMENDATION

A. THAT Council as the consent authority, reviews the determination of DA2021/2645, pursuant to Section 8.2 of the Environmental Planning and Assessment Act, 1979.

B. THAT Council, as the consent authority in revieing the determination of DA2021/2645, grants Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021, to REV2023/0001 for the use of an existing structure as a dwelling house on land at Lot 4 DP 566781, 37 McCarrs Creek Road, CHURCH POINT, subject to the conditions printed below.

C. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part B of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. **Building Information Certificate**
   A Building Information Certificate is to be obtained for the existing structure that is to be used as a dwelling house before this consent can become operational.

   Reason: To regularise unauthorised development.

2. **Waste Water System**
   A copy of a s68 (Local Government Act 1993) approval to operate the Waste Water System, and the waste water system must be activated and effectively operating to the satisfaction of Council before this consent can become operational.

   Details demonstrating compliance are to be submitted to the Council.

   Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

   Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

   Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

3. **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**
CP2105, Rev A	2 December 2021	Code Green
Site Plan	30 April 2019	Adam Clerke Surveyors Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (No.1370538S)	02 February 2023	Sustain Build Projects
Bushfire Report	27 January 2023	Bushfire Planning Services

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

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

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.

4. **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**
NSW Rural Fire Service	NSW RFS Correspondence - Review of Determination - 37 McCarrs Creek Road Church Point	5 April 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.

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

5. **Dwelling House**
The site is limited to only one (1) Dwelling House being permitted on the subject site at any one time.

In the event that separate approval is obtained from Council for further residential development on site (such as a new or further dwelling), the use of the structure as a dwelling authorised under this consent shall cease if that approval is activated, with all improvements and fixtures which facilitates its residential occupation shall be removed. The building maybe used for storage.

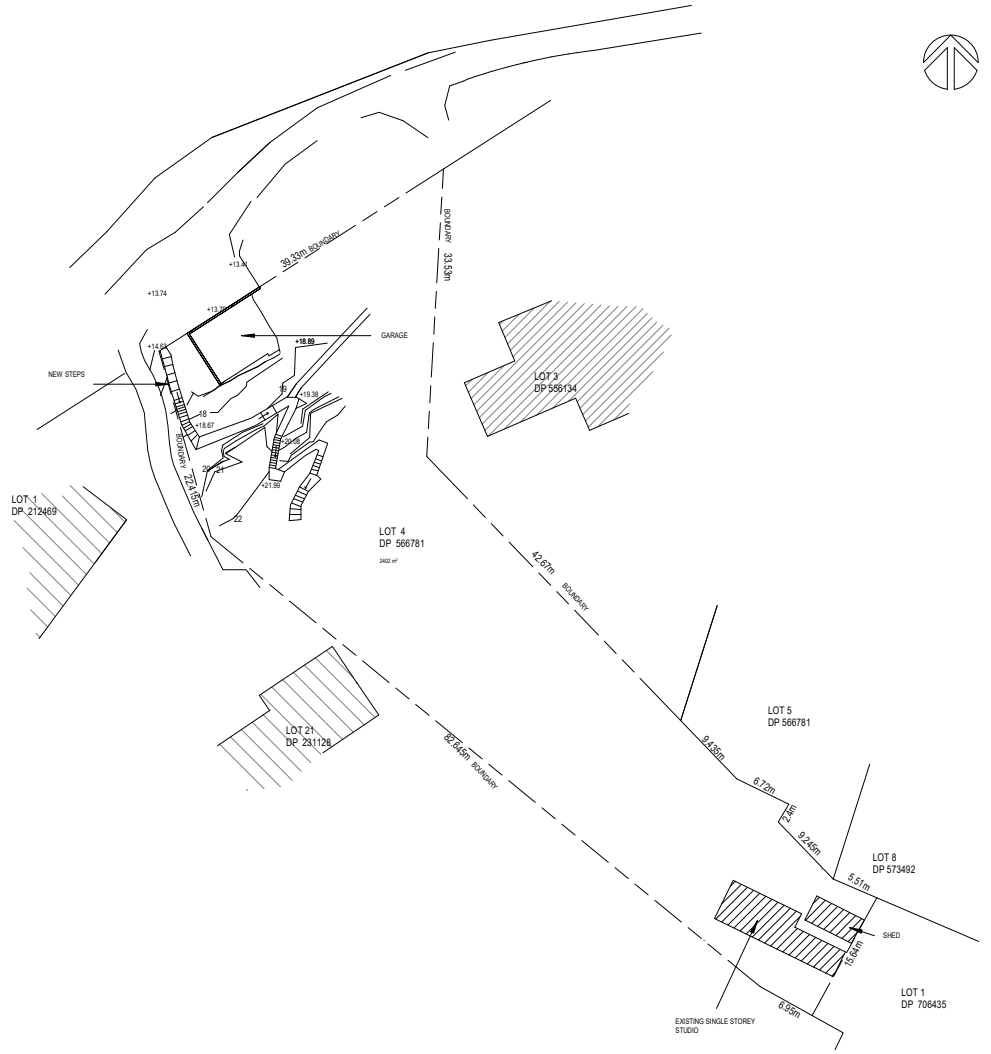
A future consent may specify or authorise the ongoing residential occupation of this building or a use of it that is consistent with the planning controls which apply at the time.

Reason: To ensure development is carried out in accordance with this consent.

6. **No Approval for Physical Works**
No approval is granted or implied under this Development Consent for any physical works.

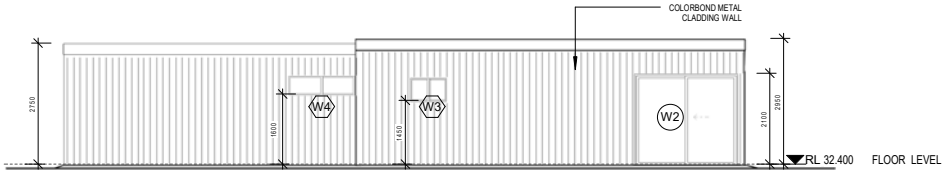
Reason: To ensure development is carried out in accordance with this consent.

LOCATION PLAN
Scale NTS



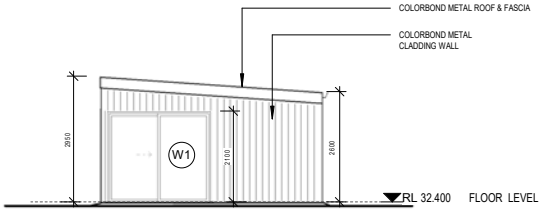
@ A3

CODE GREEN	**PROJECT:** STAIRWAY & RAMP CONSTRUCTION ABOVE GARAGE 37 McCARRS CREEK ROAD CHURCH POINT NSW 2105	**DWG TITLE:** SITE PLAN **APPLICANT:** CHRIS KNIERIM	**PROJECT NUMBER:** 5012	**DRAWN BY:** CK **SCALE:** 1:500	**ISSUE DATE:** 09.03.2023	**DRAWING NO:** SP001	**REV:** A



3 North East Elevation

1 : 100 @ A3



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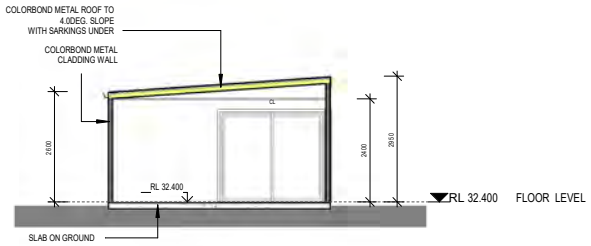
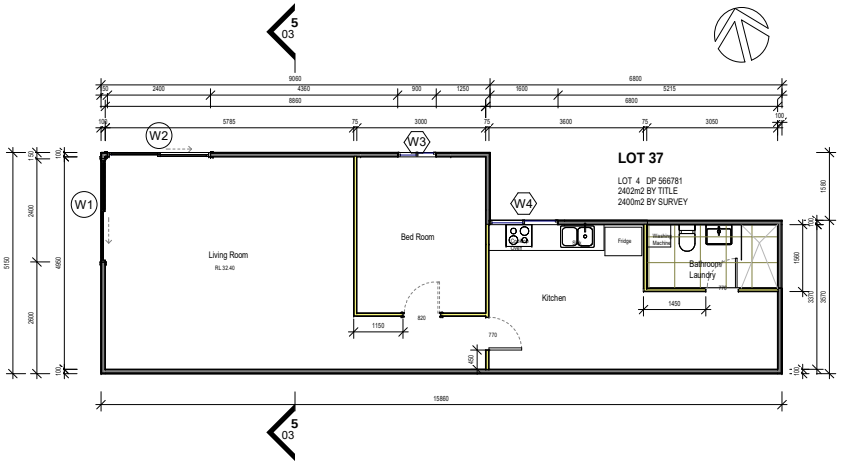
1 : 100 @ A3



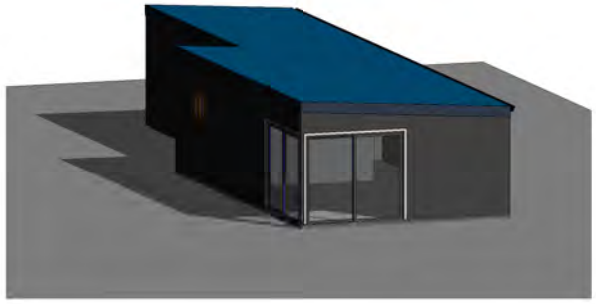
5 Section

1 : 100 @ A3



1 FLOOR LEVEL

1 : 100 @ A3



4 3D VIEW

CODE GREEN	**PROJECT:** 37 McCARRS CREEK ROAD CHURCH POINT NSW 2105	**TITLE:** RENOVATION OF EXISTING STUDIO TO CREATE DWELLING	**PROJECT NUMBER:**	**DRAWN BY:** CK	**ISSUE DATE:**	**DRAWING NO:**	**REV:**
		APPLICANT: CHRIS KNIERIM	N/A	**SCALE:** 1:100	02.12.2021	CP2105	A

ITEM 3.4	**DA2022/1097 - 316 WHALE BEACH ROAD PALM BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A GARAGE AND SWIMMING POOL**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2023/245251**
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 DA2022/1097 for demolition works and construction of a dwelling house including a garage and swimming pool on land at Lot 312 DP 16362, 316 Whale Beach Road PALM BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1097

Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 312 DP 16362, 316 Whale Beach Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of a dwelling house including a garage and swimming pool
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:	Alexi Rae Dascarolis
Applicant:	Madeleine Blanchfield Architects Pty Ltd

Application Lodged:	14/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	10/08/2022 to 24/08/2022
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 4,342,788.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and the construction of a new dwelling and swimming pool.

The application is referred to the Development Determination Panel (DDP) due to five (5) submissions being received raising concerns about the proposal.

Concerns raised in the objections predominantly relate to geotechnical risk, setbacks, privacy, views, landscaping and impact of construction works on the adjoining sites.

Critical assessment issues included the quantum of landscaped area on the site and the issues raised

within the public submissions. It is noted that some of the public submissions raised are 'in principle' supportive of the application, however had some queries/concerns they wished for Council to review and address. Some of these queries have been responded to by the applicant by way of additional information and plan amendments. Some of the concerns have been addressed by recommended conditions of consent where necessary.

The site has a very steep and challenging topography which results in excavation to provide a suitable garage access/entrance for the site. However, the profile of the building is stepped well with the existing site topography and although does involve excavation, will ultimately result in a development that will be integrated into the landform once completed and landscaping has been established as per the detailed landscape plans. The proposal will maintain high levels of amenity for the surrounding properties and be compatible with the bulk/scale and landscape treatment of the surrounding properties, resulting in a high quality built form and architectural outcome.

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 is for the demolition of the existing dwelling house and swimming pool, and construction of a new dwelling house and swimming pool.

The proposal consists specifically of the following:

Site works
Demolition of existing dwelling and swimming pool.

Garage level (FFL 39.3)
• Double garage
• Bin storage
• Storage for recreational equipment
• Laundry
• Rainwater tanks
• Lift

Ground Floor (FFL 42.3)
• Rumpus room with access to level garden area
• Bathroom
• Lift

Second Floor (FFL 48.5)
• Master bedroom with ensuite and walk-in wardrobe
• Home office
• Lift

First Floor (FFL 45.4)
• Bedroom 2 with ensuite and built-in wardrobe
• Bedroom 3 with built-in wardrobe
• Bedroom 4 with built-in wardrobe
• Bathroom
• Lift

Third Floor (FFL 51.6)

• Main entry
• Open plan kitchen and living room opening onto east facing terrace
• Open plan dining and sitting room
• Powder room
• Storage room
• Lift

Pool level (FFL 59.15)
• Pool cabana
• Bathroom
• Swimming pool and spa

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 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
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 312 DP 16362 , 316 Whale Beach Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Whale Beach Road. The site is regular in shape with a frontage of 14m along

	Whale Beach Road and a depth of 46.3m. The site has a surveyed area of 693.8m². The site is located within the C4 Environmental Living zone and accommodates a two storey dwelling house and swimming pool with cabana. The site has a very steep gradient falling from the northern (rear) boundary to the southern (front) boundary. The site has a fall of 20m from the front boundary to the rear of the existing swimming pool, with a roch wall/shelf to the south of the pool. The site generally has low lying shrubs and gardens scattered around the edges of the existing dwelling. There are six cheese trees within the site, one Kentia Palm Tree and one Bottlebrush. T1 (Cheese Tree) is up to 9m in height, with the remainder of the trees 5m or less. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by recently developed or renovated two and three storey dwelling houses. To the west is a two and three storey rendered brick house. To the east is a two and three storey timber clad house. Both of the adjoining dwellings have garages down at the street level in close proximity to the front boundary. The adjoining properties to the south (upslope) consist of dwelling houses, however sit well above the site.

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.

History of Current DA Assessment

Council wrote to the applicant seeking further information regarding the geotechnical report, increase to landscaped area, additional shadow diagrams and information regarding the driveway profile/design.

Additional information and amended plans were provided to Council and are considered as part of the assessment.

As the amended plans resulted in a reduction to the building form and the environmental impacts, the application was not required to be re-notified, as per Council's Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans to increase landscape area, provide additional shadow diagrams, engineering information, updated geotechnical report. This information has been submitted and has been considered as part of the

Section 4.15 Matters for Consideration	Comments
	assessment of the DA. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/08/2022 to 24/08/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Michael Lowdon	318 Whale Beach Road PALM BEACH NSW 2108
Sean Christopher Southon	16 Stewart Street ARTARMON NSW 2064
Mr Peter Wachtel	18 Pacific Road PALM BEACH NSW 2108
Dr Michael Bernard Hale	14 Norma Road PALM BEACH NSW 2108
Mr Peter McCallum	5 Pacific Road PALM BEACH NSW 2108

The following issues were raised in the submissions:

- Geotechnical concern - Excavation of the rear of the site and potential landslip issues for the bank stability of the upslope properties.
- No testing done of asbestos and confirmation that asbestos will be appropriately dealt with during demolition.
- Dust arising from construction
- Landscape planting to be limited in height to retain view corridors from rear properties.
- Reliance on landscape planters for compliance with the LOS requirement.
- Positioning of the house is close to the boundary of 314 Whale Beach Road.
- Increase overshadowing at the rear of 314 Whale Beach Road.
- Overlooking of the rear of 314 Whale Beach Road - What screening would be included down the side/rear boundary?
- Concerns about how drainage is handled (general concern)
- Confirmation the pool and air-conditioning equipment will be acoustically dealt with
- Confirmation that access will be maintained to 314 Whale Beach Road during construction.
- Any damage during construction of 314 Whale Beach Road will be rectified.
- Will the 2 large palm trees at the site frontage be retained?
- We note that we will lose some views from our living areas and terraces to the north-east (at 318 Whale Beach Road). The owners of 318 Whale Beach Road have asked who determines the positioning of the house. They note if the home was pushed further south back into the hillside, then it would reduce privacy concerns and reduce shadowing.

The above issues are addressed as follows:

- **Geotechnical concerns for the adjoining properties due to existing boulders. Excavation of the rear of the site and potential landslip issues for the bank stability of the upslope properties.**

  Comment: The geotechnical report makes an assessment of the risks to the surrounding sites and finds the development can be carried out with no unacceptable geotechnical risks, subject to the recommendations of the report. An updated geotechnical report has been received which makes reference to the upslope properties being 14 Norma Road and 1 Pacific Parade, Palm

Beach. The updated geotechnical report meets Council's requirements and compliance with this report will form conditions of consent. The geotechnical report makes reference to sandstone boulders on the site and adjoining sites.

- **No testing done of asbestos and confirmation that asbestos will be appropriately dealt with during demolition.**

  Comment: A condition has been recommended to deal with any potential asbestos removal as part of the development.

- **Dust arising from construction**

  Comment: Standard conditions are recommended to deal with construction works and it is not expected that dust levels will be unreasonable.

- **Landscape planting to be limited in height to retain view corridors from rear properties.**

  Comment: The rear properties (being 14 Norma Road and 1 Pacific Parade) are situated well above the site. The nominated plantings are generally low to medium height, with the exception of three cabbage tree palms at the front of the property (mature height 10m-15m), one Coachwood (10m-15m) and a Kentia palm (15m) scattered around the site to meet Council's landscape controls requiring new canopy trees. Given the sites to the rear are situated well above the subject site, it is not expected the proposed planting will be excessive or give rise to view impacts.

- **Reliance on landscape planters for compliance with the LOS requirement.**

  Comment: Amended plans were received which increased the quantum of deep soil landscaping for the proposal. A detailed assessment has been undertaken later in this report regarding the quantum of landscaping.

- **Positioning of the house is close to the boundary of 314 Whale Beach Road.**

  Comment: Amended plans were received increasing the setback of all buildings to 1.0m in accordance with the DCP control to the eastern boundary. The proposal provides compliant side setbacks.

- **Increase overshadowing at the rear of 314 Whale Beach Road.**

  Comment: An assessment of the overshadowing impact of 314 Whale Beach Road is undertaken later in this report. A reasonable level of solar access is maintained in accordance with the DCP controls.
- **Overlooking of the rear of 314 Whale Beach Road - What screening would be included down the side/rear boundary?**

  Comment: The eastern elevation of the proposal has no window openings at the rear that would result in overlooking. The central courtyard aligns with the rear deck area of 314 Whale Beach Road, however as demonstrated on the eastern elevation the courtyard is sunken into the ground level and will be screened by boundary fencing, thus not presenting any overlooking. The proposed rear cabana/deck area has reasonable spatial separation from the rear deck area and due to the position of the pool will block direct, downward views into the rear deck area of 314 Whale Beach Road. Is is noted that at present, there is an elevated pool deck in a similar location and during a site inspection it was observed that this deck did not currently present any

unreasonable overlooking due to the spatial separation and vegetation on both sites.

- **Concerns about how drainage is handled (general concern)**

  Comment: Council's Development Engineers have reviewed the drainage plans and are satisfied, subject to conditions.

- **Confirmation the pool and air-conditioning equipment will be acoustically dealt with**

  Comment: A condition has been recommended regarding noise from plant equipment.

- **Confirmation that access will be maintained to 314 Whale Beach Road during construction.**

  Comment: A Construction Traffic Management Plan will need to be prepared as per Council's recommended condition. The traffic management plan requires access to neighouring properties to be maintained.

- **Any damage during construction of 314 Whale Beach Road will be rectified.**

  Comment: A condition for Dilapidation Reports for 314 and 318 Whale Beach Road is recommended.

- **Will the 2 large palm trees at the site frontage be retained?**

  Comment: The proposal seeks to remove two palm trees in the property frontage and replace this with three new palm trees as part of the landscape works. The removal of the existing palms is supported by Council's Landscape Officer.

- **We note that we will lose some views from our living areas and terraces to the north-east (at 318 Whale Beach Road). The owners of 318 Whale Beach Road have asked who determines the positioning of the house. They note if the home was pushed further south back into the hillside, then it would reduce privacy concerns and reduce shadowing.**

  Comment: A view impact assessment is undertaken later in this report, noting that the proposal will have only minor to negligible impact upon views from 318 Whale Beach Road. The position of the house is determined by the front setback requirements, which the main dwelling is compliant with and the garage is consistent with the street character (given the low height of the garage, the garage will not impact upon views).

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported Subject to Conditions** The development application is for demolition works and construction

Internal Referral Body	Comments
	of a new dwelling, including a garage and swimming pool, and associated works, as described and illustrated in the reports and plans. 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. An Arboricultural Impact Assessment (AIA) and Landscape Plan is included in the application and will be assessed as part of the Landscape Referral. Trees T1, T2(G2), T4, T5 and T7 are all exempt by size, proximity to an approved dwelling or species and do not require consent for removal. Trees A-D are located in the neighbouring property and must be retained and protected as per the recommendations in the AIA and conditions of consent. Should the development application be approved, a Project Arborist shall be engaged to supervise all excavation works within the tree protection zone of trees A-D and any pruning required, as identified in the AIA, subject to the imposed conditions. Based on the significant improvement to the landscape treatment proposed in the road reserve and the recommendation in the AIA, trees E-G are supported for removal. Landscape Referral can also support the AIA recommendation for the removal of tree T3 and T6 due to their short useful life expectancy and poor condition. The landscape proposal is generally supported. Landscape Referral raises some concerns; however, these concerns can be addressed in an amended Landscape Plan prior to issuing a construction certificate, as per the conditions of consent. The stairs adjacent to the northern boundary shall be constructed as sympathetically as permissible to the existing exposed sandstone outcrops.
NECC (Coast and Catchments)	**Supported Subject to Conditions** The application has been assessed in consideration of the *Coastal Management Act 2016,* 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

Internal Referral Body	Comments
	and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Use Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Mersonn Pty. Ltd. dated June 2022, the DA satisfies requirements under clauses 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does/does not 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.
NECC (Development Engineering)	**Supported Subject to Conditions** <u>1st Referral - Additional information required</u> The proposal is for construction of a new dwelling including a new driveway. Insufficient information has been provided with regard to the proposed access driveway. The proposed driveway appears steep. The Applicant shall provide a engineering long-section at both edges and centerline of the proposed access driveway to the proposed garage and demonstrate compliance with AS2890. the sections are to include dimensions and existing and proposed levels. The driveway shall incorporate one of Council's standard vehicle crossing profiles. <u>2nd referral</u>

Internal Referral Body	Comments
	Long sections provided No objection subject to conditions

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, with conditions*** The proposal was referred to Ausgrid who raised no objections to the development, subject to conditions as included in the recommendations of this report.

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. 1308810S dated 24 June 2022). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0007825391 dated 24 June 2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	52

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

SEPP (Transport and Infrastructure) 2021

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 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: Land is not 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: Land is not within proximity to 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 other land, and
   ii) 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: Land is not within 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: Land is not within coastal environment area.

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

will be managed to minimise that impact, or

c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment: N/A

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 does not impact the matters listed within A) and the development has been sited to avoid and minimise impact to the matters listed i) to v). The building is consistent with the bulk and scale of the two adjoining properties as demonstrated in the photomontages provided with the application.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment: The proposal does not increase coastal risks.

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: There is no coastal management plan applying to the land.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential 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	8.4m max from existing ground level	N/A	Yes

Compliance Assessment

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

Detailed Assessment

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(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. Conditions have been included in the recommendation of this report 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. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

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

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

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

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

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

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

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

7.7 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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	(north) 6.5m	Garage Level - 0.3 - 0.7m	95%	**No**
		Ground Floor - 6.5m	-	Yes
		First Floor - 6.5m	-	Yes
		Second Floor - 7.4 - 13.6m	-	Yes
		Third Floor - 12.6 - 13.3m	-	Yes
		Pool Level - 24.5m	-	Yes
Rear building line	(south) 6.5m	Pool Cabana - 8m	-	Yes
		Third Level - 13.7m	-	Yes
Side building line	(east) 1m	Garage Level - 1m	-	Yes
		All other Levels - 1m+	-	Yes
	(west) 2.5m	2.5 - 4.1m	-	Yes
Building envelope	(east) 3.5m	Outside envelope	N/A	**No**
	(west) 3.5m	Outside envelope	N/A	**No**
Landscaped area	60% (416.28m^2)	43% (300m^2) deep soil *56% (350m^2) with permitted variations (impervious areas <1m and 6% unenclosed recreation area)	6%	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
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
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
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	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

  Comment:

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

  1. Nature of the views affected

  "*The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly*

than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The views from 318 Whale Beach Road are considered in this assessment. There is potential for some partial views to be impacted of the Pacific Ocean looking over the subject site to the north-east. The view is filtered through trees of the ocean horizon from the upper level terrace (figure 1). The views are of the ocean horizon from the lower level terrace (figure 2).

Figure - Image taken from realestate.com which shows the available views from an upper floor terrace looking in a north-east direct.

Figure 2 - *Image taken from realestate.com which shows the available views from the lower level terrace looking in a north-east direct.*

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

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

Comment to Principle 2:

The areas of potential view impact are from the upper floor terrace and lower terrace, both connecting to a living room. The views are available from within the living rooms adjoining each terrace. The views would be available from a standing and seated position. The views that could be impacted are obtained over the side boundary of the property.

3. Extent of impact

"*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued*

because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3: The view to be impact is a minor portion of the ocean horizon looking north-east (if any) the upper and lower terrace and living rooms. The view is partially obscured by existing vegetation. Expansive uninterrupted views are retained from both of the terraces and living rooms looking north which consist of iconic features such as Barrenjoey Lighthouse, Barrenjoey Headland, land/water interface and looking north up towards the central coast. On balance of the views to be retained and views impacted, the overall impact is considered negligible given the extent of views retained and the lower quality filtered views impacted.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4: The building is situated below the LEP height limit and the western façade of the building is fully compliant with the building setback and building envelope. Any view impacted is obtained over a side boundary and would be impacted as a result of a fully compliant portion of the development. The building demonstrates skillful design in the current form with stepping of the building with the slope of the land to minimise overall height and impact on adjoining sites. The development is acceptable and demonstrates skillful design, meeting the fourth step of tenacity.

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

  Comment:

  Views from public places are not impacted from the development.

- *Canopy trees take priority over views.*

  Comment:

  Canopy trees are not proposed to be removed to facilitate views. Replacement canopy trees are proposed within the site to meet Council's landscape controls.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP 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.

C1.4 Solar Access

The controls require the following for solar access:

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

Comment: The applicant has provided hourly shadow diagrams to demonstrate the extent of solar access received for adjoining properties, with the property at 314 Whale Beach Road being the only property which will experience some overshadowing. It is noted that the principle private open space for 314 Whale Beach Road is a north facing terrace directly connected to the living area on the fourth level. This area will continue to receive more than 3 hours solar access with minimal impact from the development.

It is noted there is a deck area to the south of the dwelling with a spa (adjoining bedrooms). This area will experience some additional overshadowing however is largely overshadowed at present by the dwelling on 314 Whale Beach Road and this area is highly susceptible to overshadowing due to the orientation. Notwithstanding the minor overshadowing to this spa/deck area at the rear of the dwelling, the proposal will be compliant with the controls as the main POS (adjoining the living area) facing north will retain full sunlight.

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

Comment: The north facing living room windows off the fourth level will maintain full solar for more than 3 hours, compliant with the control.

D12.5 Front building line

The DCP front setback control required 6.5m. However, the DCP contains a provision for steeply sloping sites as follows:

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

The proposed development provides a double garage setback between 0.3m-0.7m, with the remainder of the dwelling set behind the front setback control of 6.5m in compliance with the control.

The site has a significant slope form front to rear, with the current dwelling providing access via a steep driveway. The proposal to provide a reduced setback garage is consistent with the current street character, with the two adjoining properties providing a reduced setback double garage. The garage incorporates a planter box at the front elevation to allow landscaping to soften the building at the street frontage and utalises the natural slope of the road reserve to 'bury' portions of the garage structure fronting the road. Additional landscape planting is proposed in front of the left hand side of the garage door.

The garage has been stepped in from both side boundaries to allow the natural site topography to adjoining the two neighbouring properties. On top of the garage, a landscape planter has been provided with sufficient soil depth to allow plantings and ground coverings to mature to enhance the visual outlook from the two adjoining site (looking down on the garage area). The landscape planter on top of the garage (approx 60sqm) will provide a genuine landscape offering for the site and provides usable

open space.

Given the slope of the site, consistency with the surrounding development and landscaped elements integrated into the garage design, the setback of the garage is supported and is acceptable having regard to the permitted variation to the front setback for steeply sloping sites under the DCP.

Figure 1 - Extract from photomontage - Source: Madeleine Blanchfield Architects

D12.8 Building envelope

Description of Non-Compliance

Clause D12.8 of the P 21 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 eastern side boundary building envelope. The dwelling façade on the western side is compliant. The extent of encroachment is displayed in red on the below diagrams:

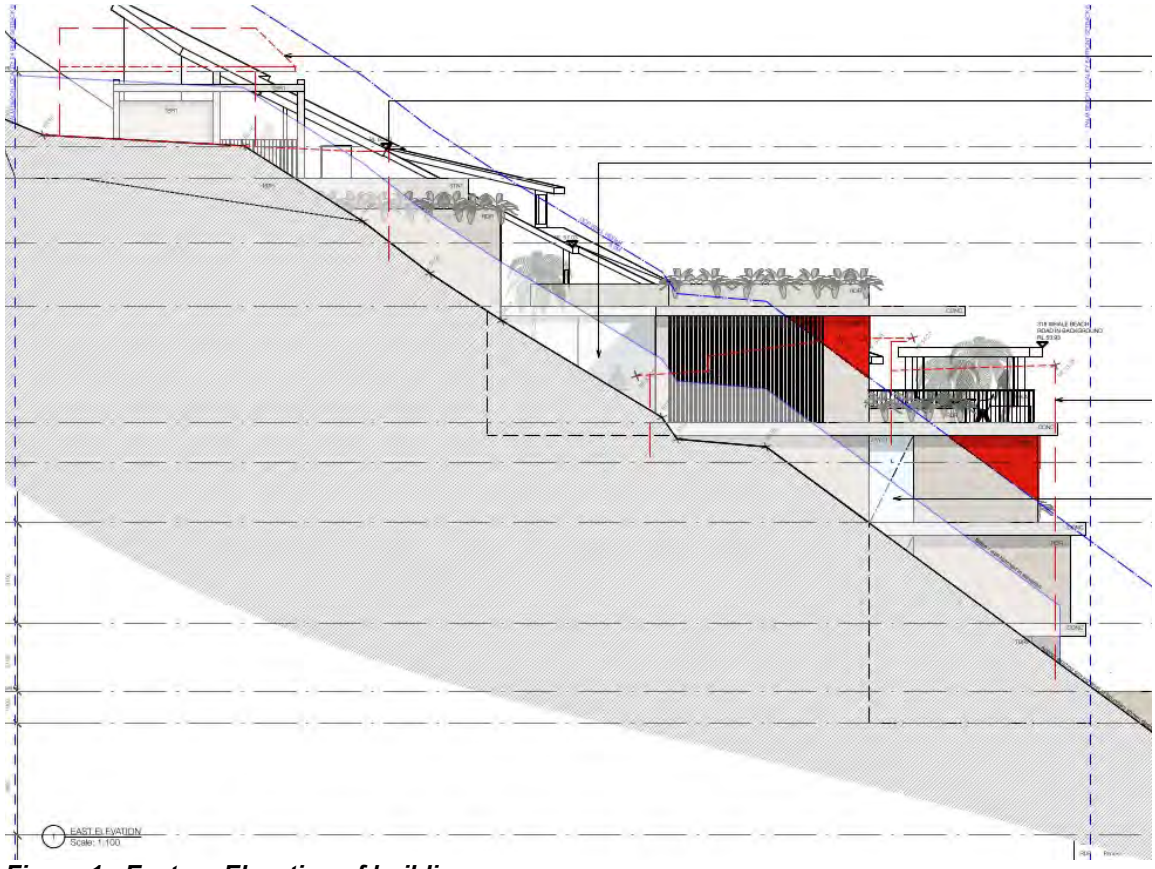


Figure 1 - Eastern Elevation of building.

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: Notwithstanding the encroachments to the building envelope, the proposal is deemed to achieve the desired future character of the Palm Beach Locality. This being, a dwelling within the 8.5m height limit surrounded by a landscape setting, with a building form that is similar to the two/three storey character of the locality of the adjoining buildings.

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 site provides sufficient opportunity of landscaping which is incorporated as deep soil and landscape elements over planters, including roof planting. Notwithstanding to envelope encroachment, the proposed dwelling provides a compliant building height, which is compatible with the locality's established building scale and density. In addition, the proposal involves landscaping design that compliments the area as demonstrated on the landscape plan. The proposal will have a high quality presentation to the streetscape and incorporates landscape elements between the buildings stepping up the site presenting to the street.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of

the existing natural environment.

Comment: The building appropriately steps down the land, while including a flat roof line that minimises bulk and scale. In addition, the proposal achieves compliance with P21DCP setback controls (with a compatible garage setback), which is symptomatic of a development compatible with the existing spatial characteristics of the surrounding environment.

The bulk and scale of the built form is minimised.

Comment: The proposal incorporates various materials and varied setbacks to provide visual breaks along each elevation. In addition, the proposed landscape design is considered to enhance the site's natural features, through minimising the visual impact of the built form, including planters with a 500mm-1000mm soil depth capable of contributing to the landscape quality of the site. Overall, the proportions of the encroaching elements are not considered to cause unreasonable bulk that is inconsistent with the dwellings on adjoining sites. A landscape courtyard is provided central of the site to break down the building further.

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

Comment: The envelope encroachment will not contribute to any view impacts from public or private places.

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

Comment: The upper floors have been designed to face the front boundary, with minimal windows on the side elevations. No privacy impacts will arise due to the non-compliant areas of the building.

The application is accompanied by detailed shadow diagrams showing the additional overshadowing of the property east. It is noted living room windows are overshadowed for the adjoining properties for the northern property. The proposal demonstrates that at least 50% of the POS area will retain sunlight for 3 hours mid-winter. The proposal is acceptable with regards to solar access.

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

Comment: The proposal retains and enhances a satisfactory degree of vegetation as assessed elsewhere in this report.

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

D12.10 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.

The use of porous materials and finishes is encouraged where appropriate.

Variations

Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

i) impervious areas less than 1 metre in width (e.g. pathways and the like);
ii) for single dwellings on land zoned R2 Low Density Residential or E4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).

Comment:

The proposed development will result in 300m^2/43% deep soil landscaping (i.e no structure above or below). However, the proposal includes landscape steps which will incorporate natural landscape elements (such as the existing rock outcrops) along the eastern boundary. The steps are necessary given the gradient of the land. Impervious pathways less than 1m are permitted to be included in the calculation and when incorporating these steps (which are less than 1m wide) the proposal will result in 50% landscape area. In addition, the control permits 6% of the site to consist of unenclosed recreation areas. For this site, this would include the cabana at the rear (of which 41sqm can be included).

When including the permitted variations under the control, the landscape area is 56%. This calculation has not included any of the landscape planters on the site.

It is noted that a generous landscape planter over the garage has been provided (between 500mm-1000mm soil depth) that is 60sqm. This provides a generous landscape offering and will be visible from the east and west adjoining properties looking down, contributing to the landscape character of the site. When including this planter and permitted variations, the site would consist of 451sqm/65% landscaping.

The proposal is considered to meet the outcomes of the control, as discussed below:

Merit assessment

Achieve the desired future character of the Locality.

Comment: The building will present as a two/three storey building within a landscape setting, which is consistent with the residential character of Palm Beach. The areas of above structure planting and landscape steps are considered to contribute to the landscape quality of the development and enable the building to further blend into the landscape setting of the locality.

The bulk and scale of the built form is minimised.

Comment: The landscape planting around the perimeter of the dwelling, rear setback and side setbacks, plus planting over structure, contributes to minimising bulk and scale of the development. The building is compliant with the 8.5m LEP building height which sets the desired scale of development for the area.

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

Comment: The proposal will not result in any unreasonable amenity impacts in terms of solar access, as demonstrated in the submitted shadow diagrams. Landscape planting will further enhance privacy between sites.

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

Comment: No significant vegetation is impacted and the proposal provides adequate room for replacement planting, which is proposed in the landscape plan and required as conditions. The planting over structure is considered to contribute to the landscape quality of the area and visually screen portions of the development and reduce visibility of portions of the development.

Conservation of natural vegetation and biodiversity.

Comment: Council's landscape team also support the proposal and the proposal will not result in impacts to significant vegetation.

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

Comment: Council's Development Engineer offers no objection subject to condition.

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

Comment: Subject to landscape conditions the proposal will preserve and enhance the landscape character of the locality.

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

Comment: The planting over structure further contributes to areas for water infiltration and water sensitive urban design. The areas of landscaping around the site contribute to stormwater management and Council's engineers are satisfied subject to conditions.

Having regard to the above assessment, it is concluded that subject to condition the proposed development is consistent 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 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 $43,428 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $4,342,788.

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

PLANNING CONCLUSION

This proposal, for demolition of the existing dwelling and construction of a new dwelling and associated swimming pool and cabana has been referred to the Development Determination Panel (DDP) due to receiving five (5) submissions against the proposal.

The concerns raised in the objections have been addressed and resolved by way of plan amendments and recommended conditions.

The critical assessment issues issues include the quantum of landscaped area on the site, views, the extent of excavation and the issues raised within the public submissions.

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 DA2022/1097 for Demolition works and construction of a dwelling house including a garage and swimming pool on land at Lot 312 DP 16362, 316 Whale Beach Road, PALM 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.100 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.101 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.301 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.305 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.306 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.307 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.308 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.309 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.310 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.311 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.401 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.402 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.403 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.501 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.502 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.503 Rev B	16/01/2023	Madeleine Blanchfield Architects
DA.902 Rev B	16/01/2023	Madeleine Blanchfield Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**

C000 P3, C100, C101, C102, C200, C201 and C300 Rev P2, C700 P1, C800 P1, C900 P1 and C901 P1	27/05/2022 and 21/12/2022	JHA Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Investigation, 2021/116.1 Issue 1	27 January 2023	Crozier Geotechnical Consultants
BASIX Certificate No. 1308810S	24 June 2022	Integreco Consulting Pty Ltd
Arboriculatural Impact Assessment Report	2 July 2022	Martin Peacock Tree Care

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**
LP01-D4221 to LP07-D4221	09/06/2022	Danger Barin Smith

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
DA.903 Rev B	16/01/2023	Madeleine Blanchfield Architects
Waste Management Plan	24/06/2022	Applicant

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

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

2. **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	2022/450372	25/07/2022

(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 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 $43,427.88 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 $4,342,788.00.

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. **Amended Landscape Plan**
An Amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to include the following details:

i) Drawing number LP02,
- substitute the 5 x *Agave weberi* with 3 x *Doryanthes excelsa*,
- substitute the 10 x *Rhaphiolepis indica* with 10 x *Correa alba*,
- provide at least a 1 metre setback for all planting to the road edge,

ii) Drawing number LP03,
- the raised planter, which runs boundary to boundary, shall incorporate planting to achieve at least 1.5 metre height at maturity. The *Bougainvillea* is insufficient to help soften the visual bulk of the floors above,

iii) Drawing LP04,
- move 1 x *Banksia integrifolia* to the north-west side of the proposed stair (at least 2.5 metres from the proposed dwelling and 1 metre from the boundary),

iv) Drawing LP06,
- move 1 x *Banksia integrifolia* to the approximate location of removed tree T6, ensuring it is planted at least 2.5 metres from the neighbours and the proposed dwelling, and 1 metre from the boundary,

v) Drawing LP07,
- substitute 2 x *Howea forsteriana* with 2 x *Livistona australis*,
- the planter which includes 80 each of *Rosmarinus*, *Aloe* and *Pandorea* (around the perimeter of the pool) shall have planting along the entire north-west edge which shall achieve a mature height of at least 1.5 metres.

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

Reason: Landscape amenity.

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

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

The following soil depths are required to support landscaping as proposed:
i) 300mm for lawn, groundcovers or native grasses,
ii) 600mm for shrubs,
iii) 1m for small trees.

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

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

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

Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated January 2023 Project No: 2021-116.1 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

12. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of the vehicular crossing and all associated retaining structures which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. Design of vehicular crossing 4 metres wide in accordance with AS2890.1:2001 and Council specifications
2. Engineering long sections at both edges and centerline of the vehicular crossing up to the proposed garage.
3. Structural details for the driveway and retaining walls within the road reserve.
4. Structural Engineer's certification of the design of all retaining walls in the road reserve.
5. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided.

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

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

Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

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

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

Reason: To provide public and private safety.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **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) all works in the tree protection zone of trees A, B, C and D.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

All tree protection measures specified must:
a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

16. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) within the property (as recommended and identified by tree number in the Arboricultural Impact Assessment):
i) trees T3 and T6 - *Glochidion ferdinandi*,
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

17. **Tree Removal Within the Road Reserve**
This consent approves the removal of the following tree(s) within the road reserve (as recommended in the Arboricultural Impact Assessment):
i) tree E - *Callistemon viminalis*, tree F - 2 x *Syagrus romanzoffiana*, and tree G - *Acacia saligna*,
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

18. **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: 314 and 318 Whale Beach Road Palm Beach

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.

19. **Public Liability Insurance - Works on Public Land**
Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of $20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **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. Retention of rock outcrops, on the north-west side of the dwelling, shall influence the design of the proposed stair which shall be sympathetic to these natural features.

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.

21. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an

Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:
c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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.

22. **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.

23. **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.

24. **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 Certifying Authority, 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.

25. **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.

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

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

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

27. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

28. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection

of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

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

29. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan's (drawing LP02, LP03, LP04, LP05, LP06 and LP07 by Dangar Barin Smith), inclusive of the conditioned amended Landscape Plan's, and the following conditions:
i) all tree planting shall be a minimum planting size of 75 litres or as otherwise scheduled if greater in size, and shall meet the requirements of Natspec - Specifying Trees,
ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 2.5 metres from buildings, 2.0 metres from structures, and at least 1 metre from common boundaries, and located either within garden bed or within a prepared bed within lawn,
iii) mass planting shall be installed at minimum 1 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,
iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

The landscape works under the development application is permitted only within the legal property boundaries, and the proposed landscape works within the road verge shall be part of a Works within the Road Reserve application under section 138 and 139 of the Roads Act, for approval or otherwise.

Reason: Environmental amenity.

30. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:
i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

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

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

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

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

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

32. **Waste Management Confirmation**
Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority 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.

33. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), engineers' certification.

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

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

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

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

Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

36. **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.

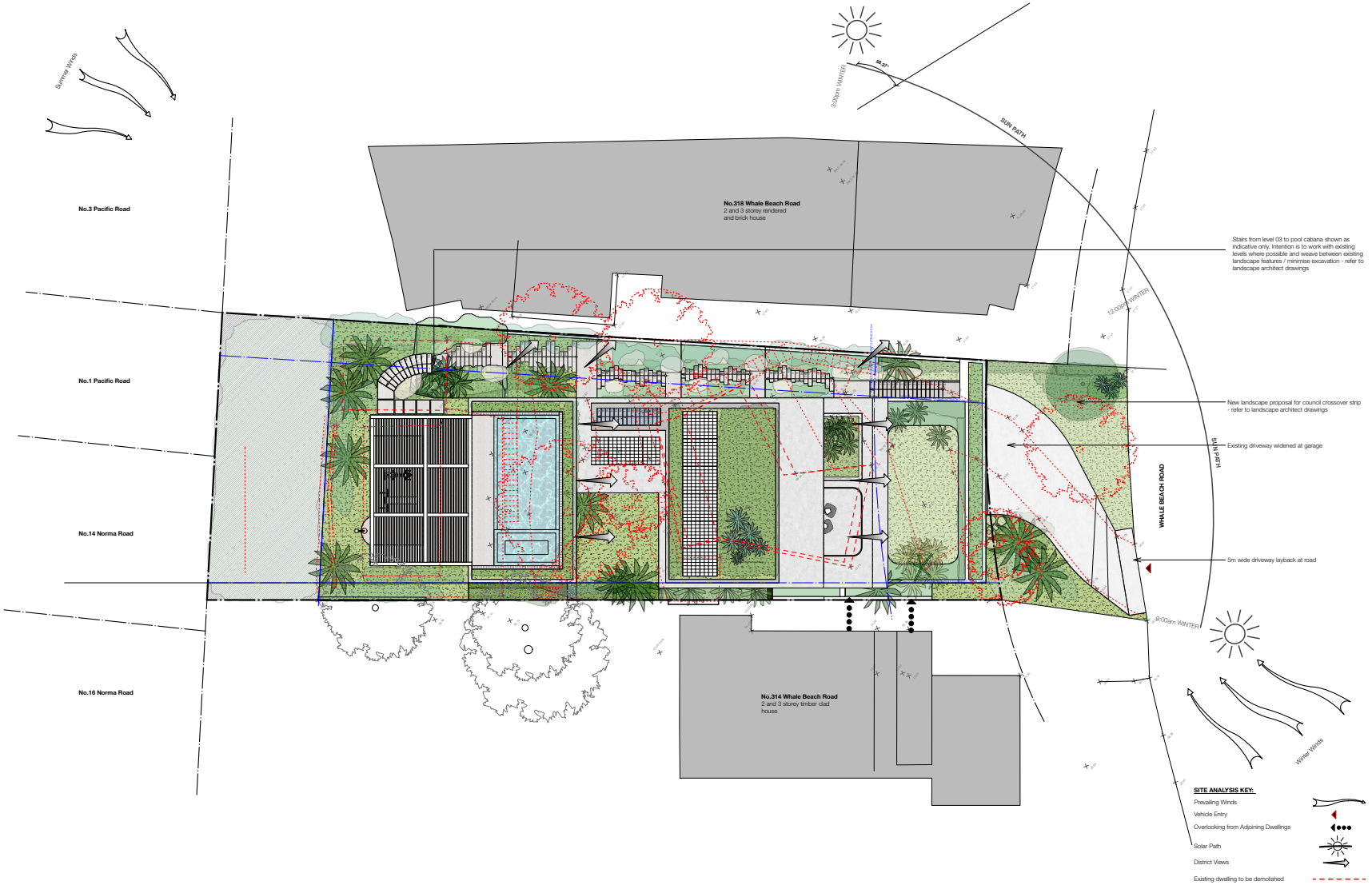
If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

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

Reason: To maintain local environmental amenity.

37. **Swimming Pool/Spa Motor Noise and air conditioning**
The swimming pool / spa motor and air-conditioning units 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.



FOR DEVELOPMENT APPLICATION ONLY

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To Be Read In Conjunction With All Other Consultant's Drawings.
The Architect To Be Immediately Notified Of Any Discrepancies.

REV.	FOR	DRAWN	DATE
B	MODIFED FOR DA	NC	16/1/23
A	DEVELOPMENT APPLICATION	NC	23/06/22

Project
GEORGE RESIDENCE
316 WHALE BEACH ROAD PALM BEACH NSW 2108

Drawing
DA.101 SITE ANALYSIS PLAN

Scale 1:200@A3 | Date JANUARY 2023 | Drawing **DA.101** | Rev. **B**

1 NORTH ELEVATION
Scale: 1:100

MATERIALS LEGEND

BALM	Balustrade, metal	STN1	Stone - Type 1
MTL	As scheduled	STN2	Stone - Type 2
CONC	Concrete off-form	TBR1	Timber - Type 1
GLS	Glass	TBR2	Timber - Type 2
RDR	Hendry	SCR	Screen

FOR DEVELOPMENT APPLICATION ONLY

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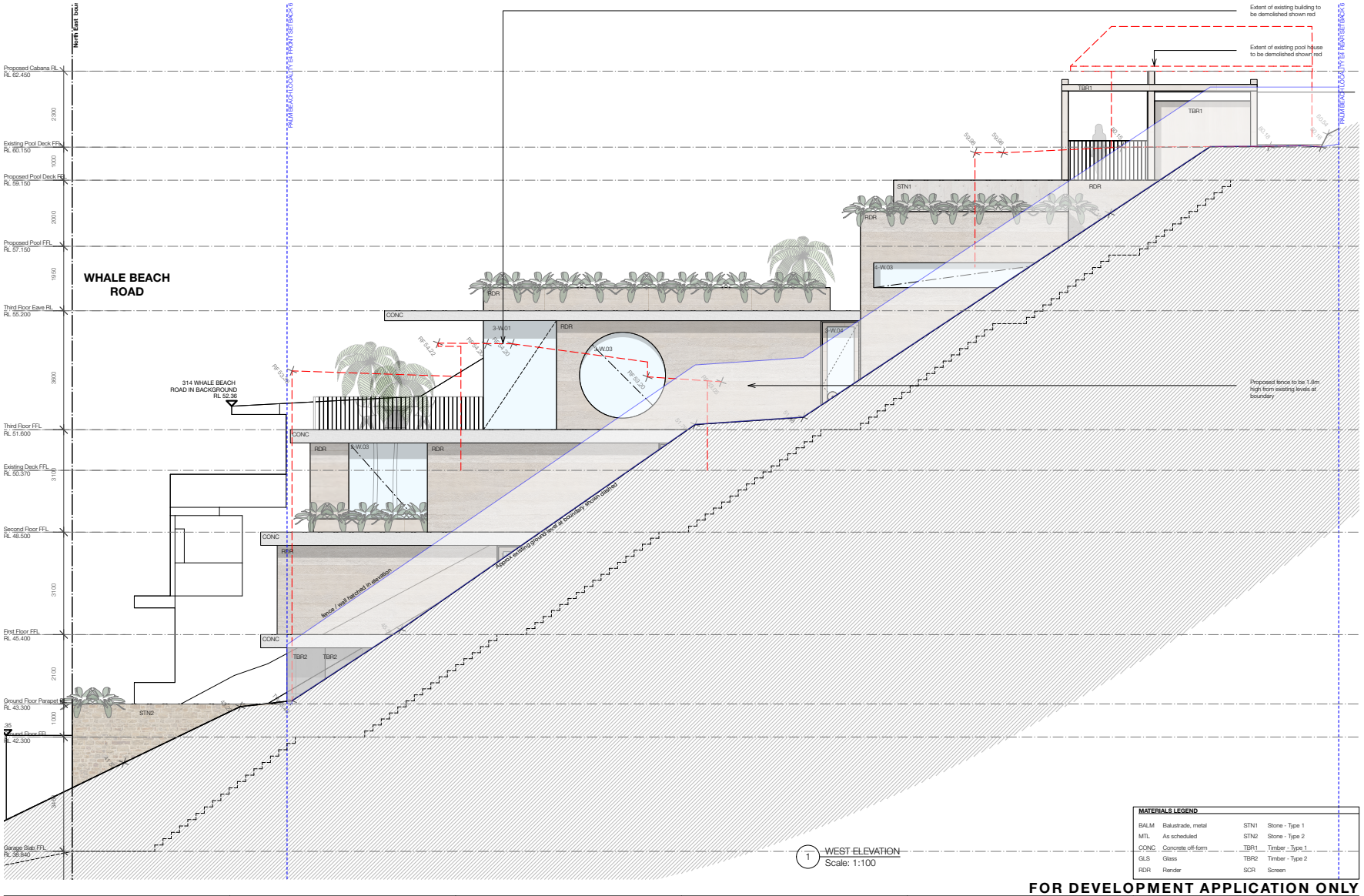
Project
GEORGE RESIDENCE
316 WHALE BEACH ROAD PALM BEACH NSW 2108

0 1 2 3 4 5 M

Drawing
DA.401 FRONT / NORTH ELEVATION

Scale 1:100@A3 | Date JANUARY 2023 | Drawing **DA.401** | Rev. **B**



MATERIALS LEGEND

BALM	Balustrade, metal	STN1	Stone - Type 1
MTL	As scheduled	STN2	Stone - Type 2
CONC	Concrete off-form	TBR1	Timber - Type 1
GLS	Glass	TBR2	Timber - Type 2
RDR	Render	SCR	Screen

FOR DEVELOPMENT APPLICATION ONLY

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Project
GEORGE RESIDENCE
316 WHALE BEACH ROAD PALM BEACH NSW 2108

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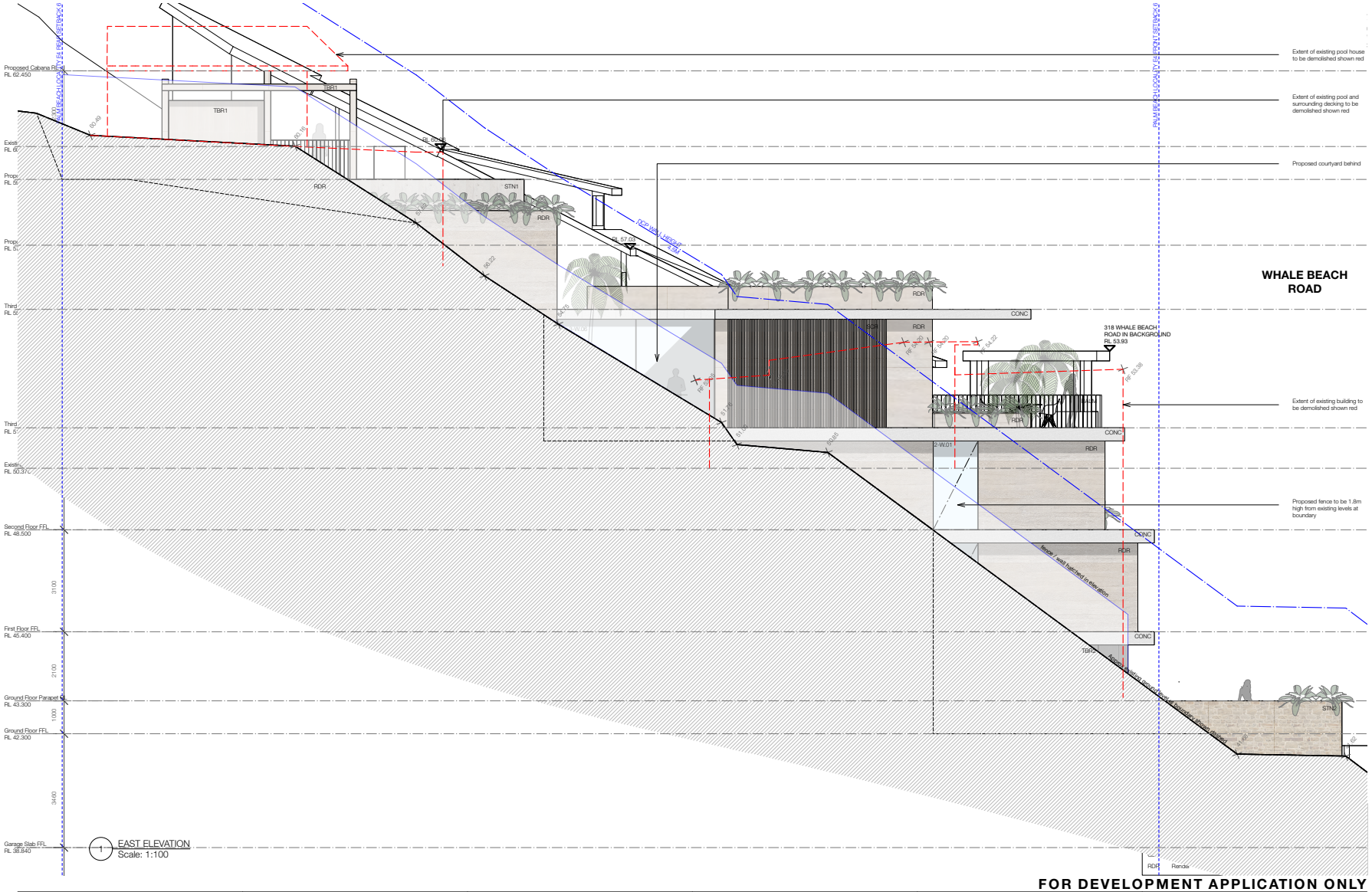
Drawing
DA.402 WEST ELEVATION

Scale 1:100@A3 | Date JUNE 2022 | Drawing **DA.402** | Rev. **A**



FOR DEVELOPMENT APPLICATION ONLY

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A	DEVELOPMENT APPLICATION	NC	23/06/22

Project
GEORGE RESIDENCE
316 WHALE BEACH ROAD PALM BEACH NSW 2108

0 1 2 3 4 5 M

Drawing
DA.403 EAST ELEVATION

Scale 1:100@A3 | Date JANUARY 2023 | Drawing **DA.403** | Rev. **B**

ITEM 3.5	**DA2021/2231 - 31 MORELLA ROAD WHALE BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2023/245856**
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 DA2021/2231 for demolition works and construction of a dwelling house on land at Lot 153 DP 15376, 31 Morella Road WHALE BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2231

Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 153 DP 15376, 31 Morella Road WHALE BEACH NSW 2107
Proposed Development:	Demolition works and construction of 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:	Donna Barbara Alison Woodhill
Applicant:	Jamie Woodhill

Application Lodged:	19/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/12/2021 to 15/12/2021
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	4.3 Height of buildings: 4.2%
Recommendation:	Approval

Estimated Cost of Works:	$ 2,397,005.00

EXECUTIVE SUMMARY

The application is referred to the Development Determination Panel (DDP) due to there being 5 unique submissions.

Concerns raised in the objections primarily relate to excessive height, bulk and scale and excavation and unreasonable impacts on the Palm Beach locality. Amenity impacts include concerns relating to privacy, solar access and views. Landscape issues include impacts on trees and insufficient retention of landscape open space. Driveway and access issues and errors and inconsistencies in documentation.

The amended plans reduce the height of the dwelling, increase the site setbacks and increase the amount of landscape open space. The amended design generally address the issues raised in respect of excessive bulk and scale and ensures that the dwelling responds to the Palm Beach Locality.

Subject to conditions requiring replacement planting and tree protection measures, Council's Landscape Officer and Biodiversity Officer have no objections.

Critical assessment issues included the breach in the 8.5m height limit. On merit, the minor 2.4% breach (357mm) of the height limit, which relates to the corner of the roof to the upper floor bedroom-study, is assessed as acceptable given that there are no unreasonable impacts on neighbouring amenity in respect to view loss, solar access or privacy. The amount of excavation is not excessive and the revised scheme demonstrates that the dwelling steps down the site to respond to the sloping topography. It is noted that the Clause 4.6 variation was amended on three (3) occasions to ensure that it correctly address the current method of measuring building height (*Merman* judgment).

Likewise, the minor breach in the buildings envelope and landscape open space (net loss of 1.1% or 7sqm compared to the existing) will not result in unreasonable impacts to neighbours, the streetscape or the environment. A condition also requires the privacy screen proposed along the northern edge of the ground level balcony to be amended to be a solid wall to ensure that acoustic and visual privacy is maintained to No. 33 Morella Road.

Additional details have been submitted in respect of the work to the shared driveway, including a construction access management report. The additional information was assessed as acceptable by Council's Development Engineer and Landscape Officer subject to conditions. In addition, the application was re-notified to the affected neighbours again and no further issues were raised in respect of access.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal, as amended, seeks consent for the demolition of the existing dwelling, garage shared driveway and retaining walls, stairs and paths and the construction of a new three storey dwelling. In detail, the development comprises:

Lower Ground Floor Plan RL39.000

- family room
- three bedrooms, one with an ensuite
- gym
- laundry
- bathroom
- linen storage
- stairs access

Ground Plan RL 42.600

- garage
- open plan kitchen, living and dining
- adjoining balcony with vergola over the north-eastern end
- WC
- entry
- stair access

Level 1 Plan RL46.6

- master bedroom with WIR, ensuite and study
- adjoining balcony
- stair access

Other

- construction of a new shared concrete driveway (shared between No. 27, 31 and 22 Morella Road). The work includes new retaining walls
- removal of x trees
- excavation to a depth of 3.6m
- detention tank
- external stair access
- reconstruction of shared driveway on Council land including the construction of associated retaining walls

External Materials

- artedomus block work (urban white), titanium zinc metal roof sheeting colour slate, titanium zinc metal wall cladding colour brown, titanium zinc metal wall for gutters and down pipes colour slate, hardwood timber posts, beams and screens, sandstone walls, powder-coated aluminium framed windows, louvres and doors.
- reconstruction of shared driveway on Council land including the widening of the road and construction of 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.

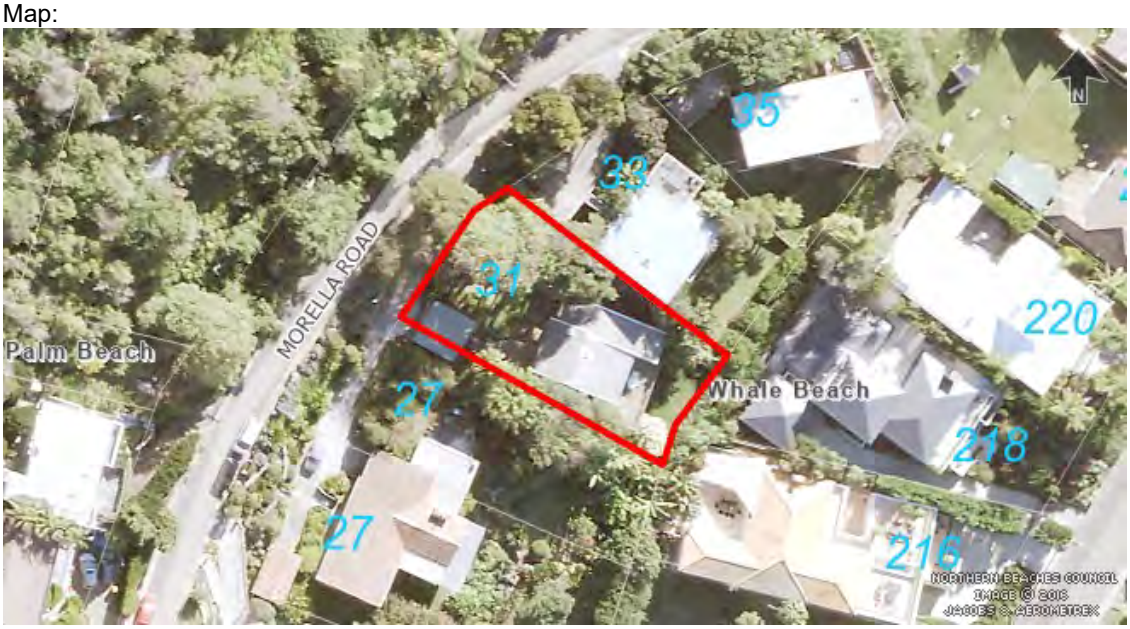
SUMMARY OF ASSESSMENT ISSUES

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 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - B4.6 Wildlife Corridors
Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place
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
Pittwater 21 Development Control Plan - D12.13 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 153 DP 15376 , 31 Morella Road WHALE BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the south- eastern side of Morella Road. The site is irregular in shape with a splayed frontage of 21.9m along Morella Road and a variable depth of between 35.78m and 38.9m. The site has a surveyed area of 714.2m². The site is located within the C4 Conservation Zone from PLEP 2014 within the Palm Beach Locality and accommodates a part one part two storey detached brick dwelling with a to corrugated roof. The dwelling has an east facing elevated deck to the rear and a detached carport. The dwelling is accessed via a shared concrete right of carriageway which sits approximately 3m below Morella Road. The shared driveway provides access to three dwellings No. 27 and 31 Morella Road. The site falls approximately 7m across its surface from the front (west) to the rear (east) and contains a number of significant trees. The site is mapped on Council's maps as having the following environmental constraints, biodiversity, geotechnical (hazard 1), bushfire (Vegetation Buffer). **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised predominantly by low density one, two and three storey dwellings orientated to the east in landscaped settings.

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:

History of Development Application

April 2022
On 12 April 2022, a letter was sent to the applicant raising issues with respect of the bulk, scale and height, non-compliance with the built form controls (side and front setbacks, building envelope and landscape open space), impacts on residential amenity (privacy and solar access), issues with the following referrals; landscape, bushland and biodiversity, development engineer and issues raised in submissions.

July 2022
On 22 July 2022, amended plans and a revised Clause 4.6 variation was received. The applicant describes the changes as follows:

- *The proposed floor levels have been lowered by 1 metre and the overall height of the building by 1.3 metres,*
- *The building has been reduced in width and size to comply with the 1m / 2.5m side boundary setbacks achieve setbacks*
- *The upper-level plan and roof have been significantly reduced in size and lowered to achieve a greater level of compliance with the building envelope control,*
- *The landscape area has been significantly increased through increased setbacks and the removal of rear and upper deck areas including the relocation of the SW detention tank, and*
- *The driveway has been amended to address engineering issues.*

Stormwater easement refusal letters have also been submitted from the owners of No's 216 and 218 Whale Beach Road.

The amended plans resulted in a lesser or reduction of environmental impacts and so re-notification was not required in accordance with the Community Participation Plan (CPP).

September 2022
On 19 September 2022, an amended landscape plan, driveway plan and and arborist report were submitted in addition to a revised Clause 4.6 variation, that addresses the Merman judgment, additional shadow analysis and a response to the submissions. The amended plans have been re-notified to the affected neighbours and all those that made a submission to the original DA for a period of 14 days as they include work on the shared driveway. The amended plans include:

- the deletion of the stairs retaining walls and associated excavation adjacent to tree 8 and the retaining walls and associated excavation located adjacent to tree 12
- the driveway plan provide details of a new shared driveway which includes a change of levels to the existing shared driveway and the construction of retaining walls

December 2022
On 9 December 2022, the applicant uploaded the following amended details on the planning portal: amended plans (including driveway design), amended Clause 4.6 variation, and a construction access management report. The application was re-notified to the affected adjoining neighbours for a period of 14 days as they include work on the shared driveway. The additional plans include the following:

- sections showing the existing ground level
- a reduction in the slab depth

13 March 2022
On 13 March 2022, the applicant uploaded amended details on the planning portal: amended plans (including a height blanket diagram) and an updated clause 4.6 variation having regard to Merman. The plans do not change the design of the development, as such, re-notification is not required.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to building height, driveway access, tree loss, solar access and privacy impact, earthworks and access. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or	See discussion on “Notification & Submissions Received” in this report. Importantly, there were 9 written

Section 4.15 Matters for Consideration	Comments
EPA Regs	submissions made, but these relate to only 4 individual properties, hence the official number of submissions is "4".
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code and Bushfire Hazards Solutions Pty Ltd, dated 25 August 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 01/12/2021 to 15/12/2021 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 9 submission/s from:

Name:	Address:
Dr Claudio Ferraris	40 Morella Road WHALE BEACH NSW 2107
BBC Consulting Planners	Level 2 55 Mountain Street ULTIMO NSW 2007
Ms Sharon Terese Bayfield	216 Whale Beach Road WHALE BEACH NSW 2107
Planning Progress	Po Box 213 AVALON BEACH NSW 2107
Mr David Brendan McGovern Mrs Roslyn Louise McGovern	27 Morella Road WHALE BEACH NSW 2107
Campbell Architecture	75 Renwick Street ALEXANDRIA NSW 2015
Michael Robilliard & Associates	64 Goodhope Street PADDINGTON NSW 2021
Melvyn Simpson	35 Morella Road WHALE BEACH NSW 2107
Mrs Gillian Anne Simpson	48 Northwood Road NORTHWOOD NSW 2066

Note: In accordance with the CCP, a total of 5 unique submissions were received over the course of the various notifications, as all submissions received by or on behalf of the same dwelling will be

considered as a single submission.

The following issues were raised in the submissions to the original proposal:

- **height**
- **building envelope**
- **bulk and scale**
- **Palm Beach locality / character**
- **clause 4.6 variation**
- **views**
- **privacy**
- **solar access**
- **landscaping, trees and biodiversity**
- **stormwater**
- **boundary survey**
- **earthworks and acid sulfate soils**
- **driveway design and access**
- **errors and inconsistencies in documentation**

The above issues are addressed as follows:

- **Height**

  The submissions raised concerns that there is a misrepresentation of landforms resulting in an inaccurate calculation of height. The proposed height on the northern elevation is 10.8m.

  Comment:

  The height of the dwelling has been reduced by 1.3m and the dwelling, as amended, generally complies with the 8.5m height limit with the exception of a 357mm corner of the roof to the upper floor bedroom and study, refer to the detailed discussion under Clause 4.6 of this report.

  The amended building height has been calculated in accordance with the findings in Merman judgment in relation to the calculation of building height relative to existing ground level. The building height has been established from existing surveyed levels across the site and the Clause 4.6 variation has been updated to reflect the amended design using the Merman interpretation of building height.

- **Building envelope**

  The submissions raised concerns that the breach of the building envelope is excessive and the calculation is inaccurate. The bulk and scale of the breaching envelope will have unreasonable impacts on neighbouring properties in terms of substantial scale and bulk impacts and view loss impacts to No. 33 Morella Road.

  Comment:

  The envelope breach has been reduced as a result of the reduction in the height of the dwelling. The envelope breach to the northern elevation relates primarily to the privacy screen to the upper floor bedroom. The screen measures 2.5m in height and a condition requires the

screen to be reduced in height to 1.8m which will in turn reduced the extent of the envelope breach. The envelope breach on the southern elevation relates to a small corner of the study.

On merit, the extent of the envelope breach is not considered to result in excessive visual impact in term of bulk and scale to neighbours and will not in itself contribute to impacts on neighbouring properties. The proposed dwelling generally sits on the footprint of the existing dwelling and the new dwelling will not give rise to any new view loss impacts from No. 33 looking to the south. Refer to detailed discussion under clause D12.8 and C1.3.

- **Bulk and scale**

The submissions raised concerns that about the size and footprint of the development, including the garage is excessive in size and inconsistent with the overall aesthetic. Height poles and 3D images have been requested to assess the bulk and scale of the dwelling and overbearing impacts.

Comment:

As discussed above, the bulk and scale of the dwelling has been reduced and the double garage is not considered to be excessive. The proposal has also been amended to increase the amount of landscaped area as a result of the deletion of stairs and retaining walls along the side of the dwelling. Height poles are not considered necessary to assess the impact of bulk and scale as sufficient architectural drawings including montages have been submitted to assess the visual impact of the proposed dwelling.

- **Breach of planning controls**

The submissions raised concerns that the proposal breaches the following controls: objectives of the C4 zone, maximum height development, building envelope, overshadowing, privacy, standard.

Comment:

The design of the dwelling has been amended to reduce the height, scale and bulk so as to ensure the dwelling is consistent with the objectives of the C4 Environmental Living zone. The dwelling, as amended, and subject to conditions integrates with the landform and landscape and will not result in unreasonable amenity impacts (solar access or privacy) to neighbours or environmental impacts on the ecological values of the site despite the minor breach of height and envelope. Refer to detailed discussion under the Clause 4.6 variation section of this report and clause C1.4 (Solar Access) and C1.5 (Privacy).

- **Palm Beach Locality**

The submissions raised concerns that bulk and scale of the development will result in unreasonable impacts on the desired future character of the Palm Beach locality and on the visual and environmental amenity when viewed from Whale Beach.

Comment:

The design of the dwelling has been amended to reduce its height, bulk and scale and conditions are included in the recommendation requiring tree protection measures and tree replacement planting to ensure the dwelling integrates with the landform and landscape. The dark external materials and colours will help ensure that the dwelling recedes into the landscape

as viewed from Whale Beach and due to the topography of the site the dwelling will not be discernible when viewed from Morella Road. In summary, the proposal is assessed as being consistent with the desired future character of the Palm Beach Locality, refer to detailed discussion under Clause A4.12 Palm Beach Locality.

- **Clause 4.6 variation**

  The submissions raised concerns that clause 4.6 variation should not be accepted due to inconsistencies with the calculation of height.

  Comment:

  As discussed above, the height has been calculated in accordance with the Merman judgement and the clause 4.6 variation has been updated to reflect the reduced height as calculated in accordance with Merman in respect of the existing ground levels. The applicant has confirmed that the building height has been established from existing surveyed levels across the site.

- **Views**

  A submissions raised concerns about impacts on views from No. 40 Morella Road. A submission from No. 33 also raises view loss impacts.

  Comment:

  The site is located on the low side of Morella Road and to the north of No. 40 Morella Road. The dwelling sits approximately 16 lower than the dwelling at No. 40 and it is not anticipated that there will be any view loss to this property.

  The dwelling generally sits on the footprint of the existing dwelling, with the exception of some minor to moderate view loss from an upper floor bedroom window looking across the side of the subject site there will be no additional view loss to No. 33 when looking to the south-east, refer to detailed discussion under Clause C1.3.

- **Acoustic and visual privacy**

  The submissions raise concerns that the rear balconies will directly overlook private gardens and habitable rooms and result in unreasonable acoustic impacts.

  Comment:

  The spatial separation of the rear elevated ground floor balcony to the open plan living and dining room and the balcony to the bedroom / study to 216 Whale Beach Road exceeds the 9m control and the use of the balconies will not result in unreasonable impacts to this property.

  A privacy screen is proposed along the northern edge of the ground level balcony and the proposal has been amended to include a privacy screen to the northern side of the balcony to the upper floor master bedroom to ensure that acoustic and visual privacy is maintained to No. 33 Morella Road. Despite this the owner at No. 33 has requested that the privacy screen to the master bedroom be amended to a solid wall. This is not an unreasonable request, and a condition is recommended to address this outstanding concern.

- **Access to the driveway**

The submissions raised concerns that new work is proposed in the road reserve and along the shared accessway are excessive and will restrict access to a private property during the construction.

Comment:

The application has been amended to include details of the new driveway. In addition, a preliminary construction management plan has been submitted which provides details of stages of work and measures to ensure that there will be no unreasonable impact on access to 27 Morella Road during the reconstruction of the shared driveway. Additional conditions are imposes requiring a separate Section 138 and 139 approval for this work to the shared driveway and the submission and approval of a detailed Construction Traffic Management Plan (CTMP).

- **Solar access**

The submissions raised concerns that insufficient information has been submitted to assess shadow impacts.

Comment:

The application has been amended to include additional shadow analysis in plan and elevation. The additional information confirms that solar access to the primary area of private open space to the neighbouring dwelling at 27 Morella Road will be retained mid winter in compliance with the solar access controls with 2 hours of solar access being provide to the window to the primary living room. The site is constrained by its location on the low side of the street and its orientation, on merit the proposal, as amended does not unreasonable impact on the solar access to the neighbouring dwelling, refer to detailed discussion under Clause C1.4.

- **Stormwater**

The submissions raised concerns that insufficient information has been submitted in terms of stormwater, including maintenance requirements.

Comment:

Council's Development Engineer has no objections to the proposal as amended subject to conditions, refer to comments in the referral section of this report.

- **Boundary survey**

The submissions request a revised boundary identification survey to include neighbouring properties to accurately assess the distance of the development to neighbouring dwelling's.

Comment:

A boundary survey has been submitted in accordance with Council's DA lodgment requirements. It is unreasonable to require a detailed survey of neighbouring properties, despite this the survey is adequately detailed to provide details of the windows to 33 Morella Road. The architectural plans are to scale and allow for the distance of the new dwelling to be accurately measured to allow for a proper assessment. A condition requires registered survey certificates to be prepared for the different stages of the development to ensure that the levels are consistent with the stamped approved plans.

- **Landform and lack of integration of the dwelling**

  The submissions raise concerns about the scale of the development and the lack of integration with the landform.

  Comment:

  The design of the dwelling is suitably stepped to allow for the integration with the landform.

- **Trees and biodiversity**

  The submissions raise concerns that the proposed development includes the removal of 8 trees on the site, 4 of which are LGA protected palm trees. Tree Protection Zones of trees on the site are to be undermined by the required excavation. The proposal will result in significant adverse environmental impacts.

  Comment:

  Council's Landscape Officer and Biodiversity Officer offer no objections to the amended proposal subject to conditions requiring suitable replacement planting and tree protection measures

- **Acid Sulphate Soils**

  The submissions raise concerns given that the level of excavation required, it should be determined whether an acid sulphate soil management plan should be submitted and assessed.

  Comment:

  The site is not mapped as in an area that is affected by acid sulphate soil.

- **Earthworks**

  The submissions raise concerns that risks and impacts associated with earthworks to

  Comment:

  The application is supported with a geotechnical report and a condition requires compliance v

Re-notification

Amended plans were received on 19 September 2022, which included a driveway plan which provided details of the construction of a new shared driveway on Council land. The amended plans were re-notified to the neighbouring properties and to all those that made a submission to the original DA. Two additional submissions have been received from owners of No 27 and 33 Morella Road. The submissions reiterate the issues raised in the original DA in addition to the following new issues:

- A submission has been received from Bekker Engineers on behalf of the owner of No. 27 Morella Road that raise the following issues in respect of the proposal to modify the shared driveway (Right of Carriageway) which provides access to No. 27 and 31 Morella Road:

(a) The proposed work will require extensive excavation of the road reserve and double the width of the right of carriageway and changes to the levels by up to 1.6m to match the new garage level at No. 31. The proposal will involve significant engineering structural support and it is unclear how this will be achieved.
(b) The widening of the driveway will result in the need for large retaining walls up to 2m in height. There is insufficient information on how this will be treated.
(c) The proposal will reduce the landscaped verge between the driveway and Morella Road.
(d) The construction of the driveway (and dwelling) will impact on the access to No. 27 Morella Road by car and other users including visitors and trades people.
(e) Widening the driveway will create a large parking area which will result in visual impacts on the existing landscape character of the driveway.
(f) The proposal will increase stormwater runoff into No. 27 Morella Road.

- ***The amended plans do not address issues pertaining to the extent of excavation of the boundary, potential structural impacts and impacts on tree retention adjacent to the boundary.***
- ***The amended plans do not address the issues in relation to the non-compliances with height, building footprint, landscape area and envelope and the impacts on neighbouring properties. The proposal continues to contain errors, omissions and misrepresentations to disguise the extent of the non-compliances.***

The applicant was asked to respond to the Bekker Engineering submissions.

On 9 December 2022, amended plans and additional information, including a construction access management report, was submitted by the applicant and re-notified to neighbouring properties. The additional information was assessed as acceptable by Council's Development Engineer and Landscape Officer subject to conditions. In addition, the application was re-notified to the affected neighbours again and no further / new issues were raised in respect of access.

The re-exhibition resulted in a total of three submissions which reiterated previous concerns and raised the following new issues:

- ***the landscape plans are inaccurate, eg. the plan includes area that are under an upper floor, the plan does not include external paving this and combined with the building footprint will reduce the amount of LOS resulting in a non-compliance with the required 60%. The amended proposal will require significant excavation and the construction of retaining walls which will impact on trees on No. 33 adjacent to the boundary. The ground levels are not retained adjacent to trees 8 and 14 and significant excavation, including excavation will occur within the TPZ.***

  Comment:

  It is agreed that the landscaped area calculation is inaccurate and Council has calculated the area based on the P21DCP definition, to have a net 7sqm reduction or 1.1% loss compared to the existing site. Refer to detailed discussion under Clause D12.10.

  Council's Landscape Officer and Biodiversity Officer have reviewed the amended plans and offer no objections to the reconstruction of the driveway associated earthworks and retaining walls.

- ***The amended plan shows an undefined privacy screen along the the of the balcony to the level 1 master bedroom. The screen should be replaced with a solid wall to protect the acoustic and visual privacy to No. 33.***

  Comment:

  The amended plans provide details of a 2.5m high privacy screen along the northern edge of the Level 1 balcony to the bedroom. A condition requires the timber screen to be replaced with a 1.8m high solid wall to address the excessive height and concerns from the neighbour in respect of acoustic and visual privacy.

- ***The floor levels are 3500 floor to floor which results in a non-compliance with the height limit.***

  Comment:

  With the exception of a minor 357mm corner of the south-western roof, the dwellings sits below the 8.5m height limit, refer to detailed discussion under the Clause 4.6 variation section of this report.

- ***The amended plans remain to be based on inaccurate topographical details (ground levels) and the building envelope breach is greater than suggested.***

  Comment:

  The amended plans are based on the survey which has been produced by a registered surveyor. Councils assessment of the envelope breach is discussed in detail under Clause D12.8 of this report.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported, subject to conditions** The proposal is supported with regard to landscape issues. Additional Information Comment 20/09/22: The amended Architectural Plans by Quattro Architecture (22/08/22), Landscape Plan by Space Landscape Designs (Revision D), and the Additional Information Response by Boston Blyth Fleming (15/09/22) are noted. The Additional Information Response states "*the architectural and landscape plans have been amended to completely remove the stairs, retaining walls and associated excavation adjacent to tree 8 with existing ground levels within 2.5 metres of the boundary maintained to ensure the viability of this tree*" and "*similarly, the retaining walls and associated excavation previously proposed adjacent to tree 12 have been removed with existing ground levels retained between the boundary and proposed building footprint*". The deletion of these works and retention of the existing ground levels is supported and will

Internal Referral Body	Comments
	help in retaining neighbouring trees 8 and 14. It is likely some ground works will be required to provide access to the laundry door, and the building footprint remains in close proximity to tree 12, therefore a non-destructive tree root investigation will be required for tree 12 prior to issuing a Construction Certificate, subject to the imposed conditions. The findings from the tree root investigation shall inform tree sensitive construction methods if it is deemed necessary. The retaining walls to be constructed in close proximity to trees 1 and 4 will require footings to be designed in collaboration with the Arborist to reduce any significant impact, as outlined in the conditions of consent. Furthermore, a Project Arborist shall be engaged to supervise all work in the tree protection zones of all trees to be retained. The amended proposal requires the removal of two prescribed trees, 3 and 7, and proposes to transplant two prescribed trees, 2 and 6. The Landscape Plan shows one (1) native replacement tree; however, the removal of trees 3 and 7 will require two (2) replacement native trees, and the species shall be informed by the Bushland and Biodiversity Referral body. Transplanting trees 2 and 6 shall be in accordance with the requirements outlined in the conditions of consent. All proposed planting shall be installed as conditioned. Landscape Referral has assessed the application within the property boundaries only and any proposed driveway works shall also seek support from Council's Road Reserve Referral Team. <u>Original Comments Summary:</u> Concerns were raised regarding the removal of significant prescribed vegetation and the impact to neighbouring trees from side access stairs and retaining walls. Amended coordinated plans were requested.
NECC (Bushland and Biodiversity)	**Supported, subject to conditions** **Additional Biodiversity Referral (23 September 2022)** The additional information, including Landscape Plan, is noted. The design amendments to remove proposed stairs, retaining walls and excavation will assist in retaining neighbouring trees (Trees 8 and 12). The Landscape Plan now identifies two prescribed Cabbage Tree Palms (*Livistona australis;* Trees 2 and 6) for relocation, and two prescribed trees (Trees 3 and 7) for removal. In order to compensate for trees approved for removal, a minimum of two replacement trees is required. This will be conditioned. Tree protection and relocation measures conditioned by the Landscape Referrals Team will serve to retain existing trees not approved for removal. **Updated Biodiversity Referral (26 July 2022)** This updated biodiversity referral is based on the following additional information: • Amended Architectural Plans (Quattro Architecture, 26 May 2022)

Internal Referral Body	Comments
	• Supplementary Statement of Environmental Effects (Boston Blyth Fleming, 6 June 2022) The amended plans with increased side and rear setbacks are noted. Whilst the bulk and scale of the proposed development appears to have been reduced, the submitted additional information does not address how the amended design will enable retention of high retention value native trees, in particular the significant Cabbage Tree Palms (*Livistona australis*) on site. No updated arborist report has been submitted to demonstrate how additional trees will be retained, nor has an updated landscape plan with provisions for relocation of palms or replacement plantings. Given that the amended plans indicate that the proposal will still result in a net loss of 4 - 6 native canopy trees of high landscape significance, it appears that the proposal remains inconsistent with applicable biodiversity LEP/DCP controls. An updated arborist report and landscape plan demonstrating how additional high significance trees can be retained may be considered, otherwise the proposal is not supported. **Original Biodiversity Referral (5 January 2022)** The Biodiversity referrals body cannot support the proposal as submitted due to inconsistency with the following applicable controls: - Pittwater LEP Clause 7.6 (Biodiversity Protection) - Pittwater DCP Clause B4.6 (Wildlife Corridors) The submitted arborist report assesses fourteen trees and identifies eight trees for removal. Four of these trees are exempt and therefore do not require further Council approval to remove. The other four (Trees 1, 3, 7 and 9) are prescribed native Cabbage Tree Palms (*Livistona australis*). In addition, there remains uncertainty around potential impacts to a further four prescribed trees, which have either been identified for removal on the Landscape Plans (Trees 2 and 6) or are likely to experience major encroachments (Trees 3 and 8) where the location of important roots has not been identified. The proposal may therefore result in the loss of eight prescribed native trees of high or medium retention value. PLEP Clause 7.6 (Biodiversity Protection) requires developments to be designed and sited to avoid adverse environmental impacts, while PDC B4.6 (Wildlife Corridors) requires that development protects the connectivity of the wildlife corridor and does not result in a net loss of native canopy trees. Given that the submitted proposal will require the removal of at least four locally native canopy trees of high or medium retention value, is likely to impact on up to four more prescribed trees, and does not provide for appropriate replacement planting, it cannot be considered to comply with the control objectives. The applicant is encouraged to consider a redesigned proposal which would achieve greater consistency with applicable controls by retaining existing locally native canopy trees, particularly those of high retention value.
NECC (Development	

Internal Referral Body	Comments
Engineering)	**Supported, subject to conditions** Applicant seeks approval to demolish existing dwelling and construction of a new dwelling. **<u>Stormwater</u>** Applicant's Engineer has proposed an On Site Detention Basin with a level spreader spreader dispersion type drainage system. Applicants geotechnical engineers has strongly recommended a piped drainage system from the development site over the down stream property to connect into the street below. Whilst the OSD can mitigate, stormwater runoff rate, however the volume of stormwater runoff will persist. Council's Water Management for Development Policy clause 5.5.1.1 recommends in stage 1 (process) to obtain a drainage easement over down stream property with signed agreement between owners. If applicant is unable to successfully obtain a drainage easement, written evidence shall be submitted to Council, prior to Council considering the submitted stormwater management. <u>Driveway.</u> The development site is serviced by a common driveway. The southern side of proposed garage finished surface level is about 500mm above the common existing driveway levels which may cause an access issue to the adjoining property. No detail driveway levels (cross-section and longitudinal sections) have been submitted to ensure that the adjoining property access is not compromised by the proposed changes to pavement levels. The proposed management for access to the adjoining property during construction phase is also an issue. Engineering details in support of the proposed development is required for Council's consideration addressing all the driveway issues raised above.. DATED 26/04/2022 Review of the amended plans provided in trim dated 26/04/2022 does not appears to have addressed the above mentioned matters raised. The proposal therefore cannot supported. **Amended Plans Provided 22/7/2022** <u>Driveway Access</u> The amended plans proposes changes to the existing shared driveway levels to accommodate the proposed garage. However, the proposed changes to the existing driveway levels make the existing driveway non complaint with current standards and is not supported. The design shall be amended to provide access to the proposed garage without altering the existing common driveway levels. <u>Stormwater</u> Refusal of easement letters have not been provided as previously requested.

Internal Referral Body	Comments
	Amended Plans Provided 18/8/2022 *Stormwater* Refusal of easement letters have been provided. *Driveway Access* The amended plans proposes changes to the common driveway but insufficient details have been provided for assessment. Additional information required for assessment are as follows: • Engineering longsections at both edges and centerline of the entire length of the common driveway up to the adjacent property garage. The sections are to include dimensions and existing and proposed levels for the entire length. • Survey of the common driveway • Plans are to clearly show which sections of the common driveway are to be reconstructed. Any proposed changes to the existing levels of the common driveway must not make the existing driveway non complaint or inaccessible for the adjacent property. *Note to Planner: If changes are proposed to the common driveway, the adjacent property will need to be notified once amended plans are received.* **Review 15/9/2022** *Note to Planner: Owners consent or amended plans required for the proposed works on the shared driveway prior to assessment* **Amended Plans Submitted 19/9/2022** Amended driveway plans showing no encroachment to the adjacent property are satisfactory subject to conditions. No objections to approval subject to conditions as recommended.
Road Reserve	**Supported** No objection to the proposed works on road reserve. The driveway crossing and adjacent retaining wall on inside curve does not appear to be compliant with Council's low level skew driveway standards requiring provision of a 1.4m width for future footpath provision. Development Engineering team to review or ensure Civil Works application addresses this aspect.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	**Supported, 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.

External Referral Body	Comments
Rural Fire Service - Local Branch - EP&A Act, s4.14	**Supported, subject to conditions** The site is mapped as vegetation buffer and was referred to NSW Rural Fire Service who offered no objections to the proposal subject to conditions including the need for the entire property to be managed as an Asset Protection Zone (APZ).

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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1223515S dated 29 September 2021).
The BASIX Certificate indicates that the development will achieve the following:

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

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

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

SEPP (Coastal Management) 2018

The site is classified as land within the coastal environment area / land within the coastal use area under the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

13 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 approximately 130m to the west of Whale Beach. Given the location of the site Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any adverse impact on the ecological coastal environment, coastal values or processes, water

quality, marine vegetation, heritage, use of the surf zone or impacts on access to the beach.

(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 subclause (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:

As discussed above, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid adverse impacts in regards to the matters listed under sub-clause (1).

14 Development on land within the coastal use area

(1) (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
(iv) Aboriginal cultural heritage, practices and places,
(v) 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 can be satisfied that the proposed development has been designed, sited, and will be managed to avoid adverse impact on public access to the beach, overshadowing and loss of view from public places to the foreshore. The proposal will not have an adverse impact on the visual amenity and scenic quality of the coast or impact on cultural or built heritage.

15 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 can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any an increase risk of coastal hazards.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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	8.8m	4.2% or 357mm	**No**

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

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 proposed development replaces the existing dwelling to help provide for a low impact residential development. The design of the dwelling, as amended, respects the scenic quality of the Palm Beach Locality. Subject to conditions, Council's Biodiversity and Landscape Officer have no objections to the

proposal which will have no unreasonable impacts on the special ecological value of the area.

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

Comment:

As discussed below, the design of the development, as amended, will not have an adverse effect on the ecological or aesthetic values of the area.

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

Comment:

The proposed dwelling generally sits on the footprint of the existing dwelling to reduce the extent of excavation. The height, bulk and scale of the dwelling has been reduced and the dwelling steps down the site to respect the topography. The dark recessive colours and retained and replacement planting will help ensure that the dwelling is integrated with the landform and landscape.

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

Comment:

Subject to conditions, Council's Biodiversity Officer has no objections to the proposal which will not negatively impact wildlife corridors.

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	8.8m
Percentage variation to requirement:	4.2%

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).

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 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:

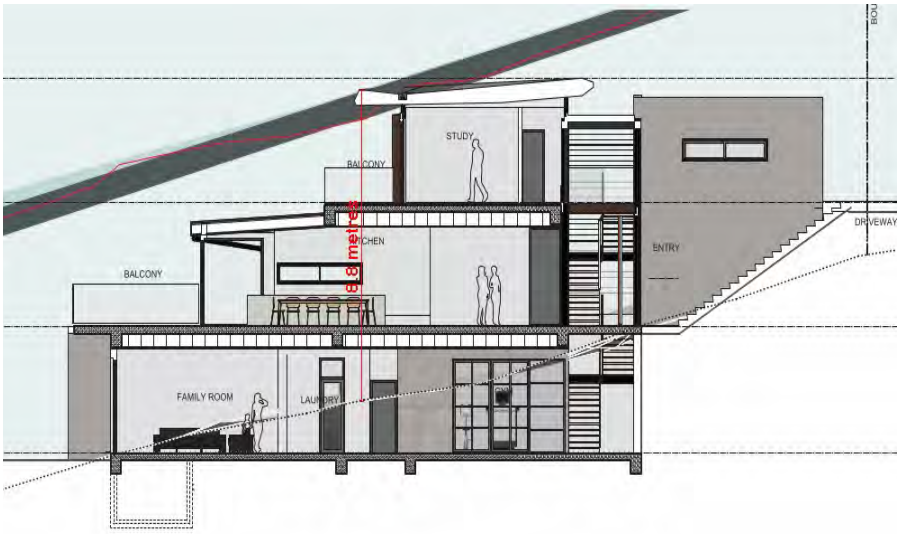
- *Notwithstanding the building height breaching roof element, the Palm Beach Locality will remain primarily a low-density residential area with the dwelling housing, the subject of this document, continuing to present as a 1 and 2 storey dwelling as viewed from Morella Road before stepping down the site in response to topography. The building height breaching elements will not be discernible as viewed from Morella Road.*
- *The building height breaching roof element does not itself require excavation or modification of the landform with the building sitting within a landscaped setting and free from hazards.*
- *The non-compliant building element utilises metal roof sheeting the colours and materials of which will not prevent the building as whole from blending into the escarpment which forms a backdrop to the site.*
- *The building height breaching element will not require the removal of any vegetation and will not*

impact on any public or private views.

Comment

The applicant's justification is generally supported. The design has been amended to reduced the floor levels by 1m and the overall height of buildings by 1.3m which in turn has reduced the 8.5m height breach to a 357mm corner of the roof to the upper floor study at the southern corner, refer to height breach diagram below.

Height breach diagram (source BBF Planners)



Section showing the height breach (source Quattro Architects)

The proposed dwelling is proposed to be sited generally in the same position as the existing dwelling which sits approximately 10m lower than the level of Morella Road. Given the topography of the site it is agreed that the minor height breach, which relates to a small corner of a roof element, will be discernible as viewed from Morella Road and will not result in unreasonable visual impacts on the character or the scenic quality of the area or the streetscape.

The placement of the dwelling, on the platform of the existing building, will help reduce the extent of excavation and the dwelling is stepped down the slope to respond to the landform. Existing and

additional tree planting will help reduce the visual impact of the built form and the materials and dark recessive colours will ensure that the dwelling integrates into the escarpment.

The proposal, as amended, and subject to conditions, will not result in unreasonable impacts on neighbouring amenity and the small portion of the roof that breaches the height limit will not impact on solar access or view loss impacts to neighbours.

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

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

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

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

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

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

Comment:

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

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

The desired character of the Palm Beach locality requires dwelling to be a maximum of two storeys in one place and integrated with the landscape.

The height and scale of the proposed dwelling, as amended, is consistent with the desired character of the locality and only a minor 357mm corner of the upper floor roof projects above the 8.5m height plane. The site sits on the low side of Morella Road and the dwelling will not be discernible as viewed from the public road. The upper third storey portion of the dwelling is

stepped back on all side and the dwelling with retained and replacement planting integrates with the landscape to ensure that there is no visual impact on the scenic quality of the area. Refer to detailed discussion under Clause A.12 (Palm Beach Locality) above.

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

Comment:

The proposed dwelling is compatible with the height and scale of surrounding dwellings which comprise a mix of one, two and three storey dwellings.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The site is constrained in terms of solar access being on the low side of the escarpment. Despite this, the reduction in the height and increase in side setbacks will ensure that there is no unreasonable impacts on solar access to neighbouring properties. Refer to detailed discussion under Clause C1.4.

d) to allow for the reasonable sharing of views,

Comment:

Given the topography and the spatial separation of the proposed dwelling to neighburing properties there will be no unreasonable impacts on view sharing. Refer to detailed discussion under Clause C1.3.

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

Comment:

The proposed dwelling generally sits on the platform of the existing dwelling which helps to minimise the extent of excavation. The dwelling is stepped down the site to respond to the topography and existing and new planting and the dark recessive external materials will help ensure that the dwelling integrates with the natural environment.

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 dwelling is positioned on the existing building footprint to reduce excavation, the dwelling is stepped down the site to respond to the topography and the external materials and colours are dark to ensure that the development recedes into the landscape to ensure that there are no visual impacts on the scenic quality of the area.

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 proposed development replaces the existing dwelling and the design of the dwelling, as amended, steps down the site and the dark recessive external colours and natural materials will ensure that it recedes into the landscape to respects the scenic quality of the Palm Beach Locality. Subject to conditions, Council's Biodiversity and Landscape Officer have no objections to the proposal which will have no unreasonable impacts on the special ecological value of the area. The amended proposal will have no unreasonable impacts on neighbouring amenity subject to conditions.

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

  Comment:

  As discussed above and below, the design of the development, as amended, will not have an adverse effect on the ecological or aesthetic values of the area.

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

  Comment:

  The proposed dwelling generally sits on the footprint of the existing dwelling to reduce the extent of excavation. The height, bulk and scale of the dwelling has been reduced and the dwelling steps down the site to respect the topography. The dark recessive colours and retained and replacement planting will help ensure that the dwelling is integrated with the landform and landscape.

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

  Comment:

  Subject to conditions, Council's Biodiversity Officer has no objections to the proposal which will not negatively impact wildlife corridors.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the Zone 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, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as

the development contravenes a numerical standard by less than or equal to 10%.

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: The proposal is generally constructed on the footprint of the existing dwelling and it is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(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. Conditions have been included in the recommendation of this report 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. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

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

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

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

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

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

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

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

7.7 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, 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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	0.8m	N/A	**No**
Rear building line	6.5m	9.7m to external wall	N/A	Yes
Side building line	2.5m	North 2.5m *Note: the edge of the roof, above ground floor, has a 1.8m setback	N/A	Yes
	1m	South 1.4m	N/A	Yes
Building envelope	3.5m	North Outside envelope	Refer to details	**No**
	3.5m	South Outside envelope	Refer to details	**No**
Landscaped area	60%	383.64sqm (inclusive of 6% variation) or 53.7% (calculated from the landscape plan) Existing LOS (calculated from the survey) 391.4sqm (inclusive of 6% variation) or 54.8% **Net loss of 7.7sqm or 1.1% compared to the existing LOS.**	7.4%	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	Yes
C1.5 Visual Privacy	No	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
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
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	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The relevant sections of the Desired Future Character of the Palm Beach locality ae as follows:

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.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Comment:

The proposal has been amended to reduce the height of the dwelling and increase the side setbacks so as to minimise the bulk and scale of the dwelling to ensure that it integrated with the landform and landscaping. Although the dwelling is three storeys it is not be readily visible from the street as the site sits at a significantly lower level than Morella Road and reads as a one / two storey dwelling from the public domain. The dwelling is stepped down to integrate with the landform and excavation is assessed as acceptable. Vehicular access is upgraded and the design and construction of the road will not result in unreasonable impacts on the environment. In summary, the proposal is generally consistent with the desired future character of Palm Beach.

B4.6 Wildlife Corridors

The site is mapped as having biodiversity value and is part of a wildlife corridor. The amended proposal has been assessed by Council's Bushland and Biodiversity Officer as acceptable, subject to conditions including tree protection measures and a requirements for replacement planting. Refer to comments above in the referral section of this report.

B4.22 Preservation of Trees and Bushland Vegetation

The proposal includes the removal of two prescribed trees and transplanting two prescribed trees. The application has been referred to Council's Landscape Officer who offers no objections to the amended design subject to conditions, refer to comments above in the referral section of this report.

B6.1 Access driveways and Works on the Public Road Reserve

Clause B6.1 requires:

Shared Access Driveways shared between adjoining private properties and Access Driveways located in front of adjoining properties will be considered on merit, based on Council's consideration of the site constraints.

Merit assessment:

The applicant has submitted a driveway plan which provides details of the demolition of the existing shared driveway (with No. 27) and the construction of a new driveway and associated retaining walls. The driveway design has been reviewed by Council's Engineer and Roads Reserve Unit who offers no objection to the proposal subject to conditions.

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

- ***Safe and convenient access.***

  Comment:

  The existing driveway is in a poor condition and the design of the new driveway complies with Council's controls and will allow for safe and convenient access to the subject site and No. 27 Morella Road to the south. A preliminary construction management plan has been submitted which provides details of the order in which the work will take place and steps required for the works to ensure vehicular access to No. 27 is minimsed during construction.

- ***Adverse visual impact of driveways is reduced.***

  Comment:

  The shared driveway sits on the low side of Morella Road and the work will have limited visual impact on the public street. A condition requires the associated retaining walls to be sandstone cladding to the retaining wall to ensure there is no visual impact on the character of the loacily imediately adjacent to the subject site and No. 27 Morella Road.

- ***Pedestrian safety.***

  Comment:

  There is no footpath along the side of the existing shared driveway. The proposal does not propose a footpath but given that the wide of the carriageway has increased pedestrian safety will be improved.

- ***An effective road drainage system.***

  Comment:

  Council's Development Engineer offers no objections to the design of the driveway in respect of drainage issues.

- ***Maximise the retention of trees and native vegetation in the road reserve.***

  Comment:

  Council's Landscape and Biodiversity Officers offers no objections to the design of the driveway in respect of landscaping issues.

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

Submissions have been received from 33 and 40 Morella Road which raised an issues with respect of impacts on views towards the ocean and the headland.

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

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

Comment to Principle 2:

View loss issues have been raised from the neighbouring properties at 33 Morella Road and 40 Morella Road.

33 Morella Road
The submission references views from the south facing bedroom windows in the upper floor.

*40 Morella Roa*d
The submission does not reference what part of the property the view loss will be impacted by the development. A search of the internet, (domain website), suggests that the primary views are obtained the level 1 and 2 east facing windows including a window to the dining room, in addition to views from the east facing balconies.

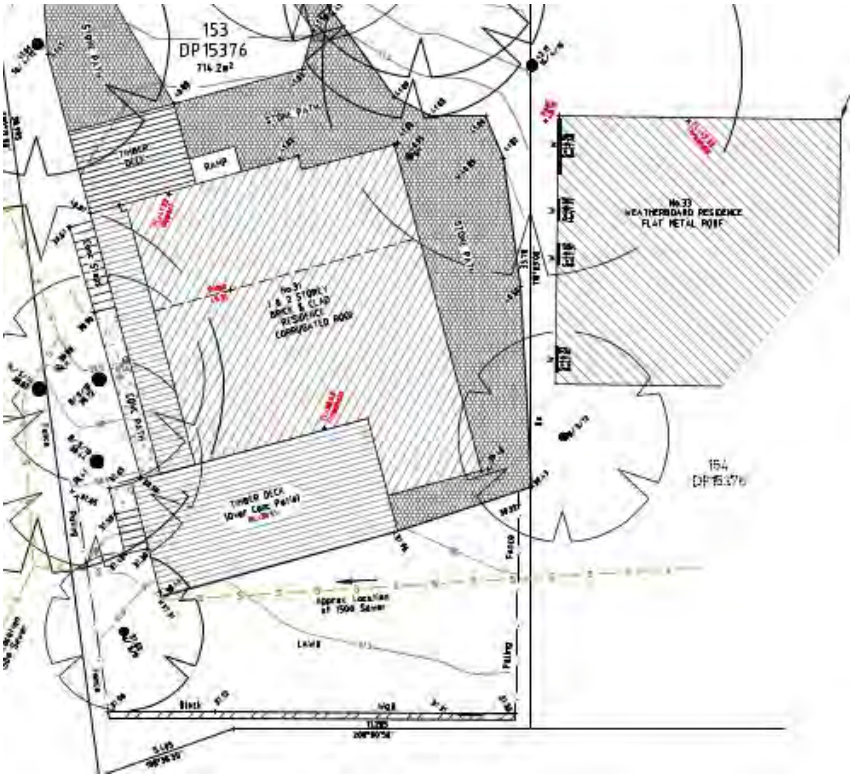
3. Extent of impact

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

Comment to Principle 3:

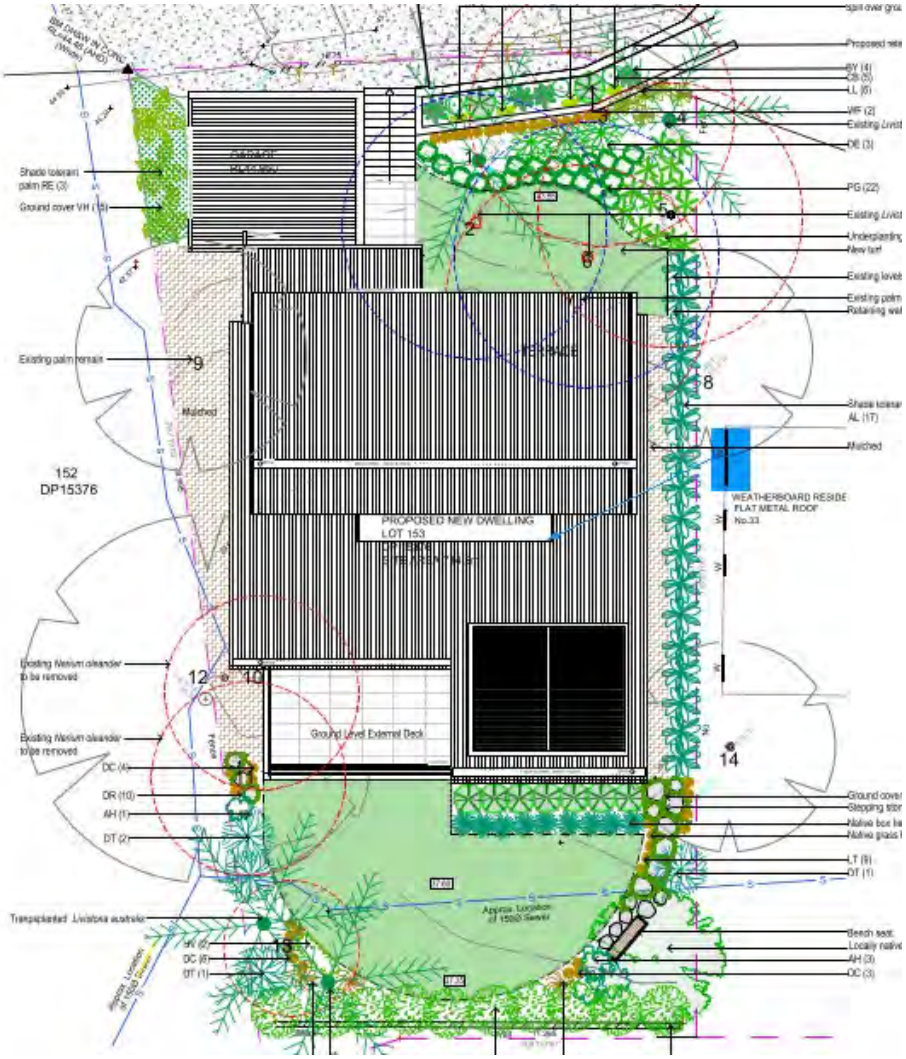
33 Morella Road

33 Morella Road is located to the immediate north of the subject site and is setback from the the existing dwelling and the proposed new dwelling, refer to plan below.



The survey confirms that the upper level south facing bedroom windows to No. 33 are positioned at sill level RL46.36. The location and size of the existing dwelling and the mature vegetation impacts on the quality of the views from the south facing windows to 33 Morella Road.

Ground level of the proposed dwelling sits at RL 42.6, therefore there will be no view impact to the south as a result of this level.
Level 1 of the proposed dwelling sits at RL 46.1, therefore it is agreed that there will be some loss of view from the one upper floor bedroom window located within the rear of the neighbouring dwelling, refer to image below.



Landscape Plan showing the bedroom window to 33 Morella Road (in blue) which will be impacted by view loss

The southern view will however be retained from the three remaining upper floor windows located along the south-eastern elevation of no 33 and the primary significant eastern and northern ocean and headland view from the primary habitable room windows will be retained. In summary, the view loss is assessed a minor to moderate.

40 Morella Road

No. 40 Morella Road is positioned to the western side of Morella Road and to the south of the subject site. Council's SEA mapping software confirms that the property sits approximately 16m higher than the position of the proposed dwelling on the subject site, see map extract below.

Map showing the line of views from No. 40 Morella Road (source SEA maps)

The primary eastern ocean view will not be impacted by the development or the view towards the headland to the south-east. Furthermore, given the location of No. 40 and the level difference it is not expected that any significant views will be impacts by the development, as amended, on north-eastern views to the headland.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The development has been amended to reduce the height and increase the side setbacks. The minor 2.3% breach of the height limit and breach in the side envelope will not give rise to unreasonable impacts on views. The development as amended is considered to be a skilful design.

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

Comment:

Due to the significant level difference between the subject site and Morella Road there will be no unreasonable impacts on views towards the ocean and headland.

- *Canopy trees take priority over views.*

Comment:

Canopy trees remain to take priority over views.

Having regard to the above assessment, it is concluded that the proposed development is consistent 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 supported, in this particular circumstance.

C1.4 Solar Access

Clause C1.4 requires:

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

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

Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.

Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.

The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.

Variations
General

Where the following constraints apply to a site, reasonable solar access to the main private open space and to windows to the principal living area will be assessed on a merit basis:

- *where the orientation or shape of a lot precludes northerly orientation (20o west to 30o east of north),*
- *where there is adverse slope or topography,*
- *where there is existing vegetation, obstruction, development or fences that overshadow, or*
- *where other controls have priority, e.g. heritage and landscaping considerations.*

Subject to a merit assessment, consent may be granted where a proposal does not comply with the standard, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State Environmental Planning Policy.

Comment:

A merit assessment of the proposal against the outcomes of the control is provided below:

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

Comment:

Solar access to private open space - Additional shadow diagrams have been submitted and a search of Council's records in respect of No. 27 Morella Road confirm that the proposal, as amended, solar access will be retained to the main private open space to the neighbouring property between 9am and 12am in accordance with the control.

Solar access to living area - The primary living room to 27 Morella Road is located within the centre of the first floor and faces east. Solar diagrams in elevation show that solar access is maintained to the east facing level 1 living room window for a 2 hours period between 8.00am and 10.00am on June 21st (that is, to at least 50% of the glazed area of those windows). The control requires 3 hours of solar access to be retained between 9am and 12.00 noon as such a merit assessment of the proposal against the outcomes of the control is provided below.

Merit assessment:

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

Comment:

The subject site and the neighbouring site at No. 27 Morella Road are located on the low side of Morella Road and impacted by shadow from the steep slope to the west in the afternoon. In addition, it is noted that a large mature hedge has been planted along the northern boundary of No. 27 Morella Road which currently overshadows No. 27.

The development has been amended to reduce the height and bulk which minimises solar access impacts to the southern neighbour.

Given the orientation of the lot, which precludes northerly orientation, the adverse slope to the west / topography and existing landscaping / hedge which overshadows No. 27 a variation of the control in respect of solar access to principle windows is assessed as acceptable.

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

Comment:

Despite the breach of the solar access control with respect to solar access to the primary windows of No. 27 Morella Road a reasonable level of solar access (2 hours from 81m - 10am) is maintained to these windows mid-Winter.

Reduce usage and/dependence for artificial lighting.

Comment:

The proposal is not expected to require a dependence for artificial lighting.

In summary, on merit the proposal is assessed as being consistent with the outcomes of the control and the minor breach in respect of solar access to the main living room window for a full 3 hours is assessed as acceptable.

C1.5 Visual Privacy

Clause C1.5 requires:

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

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

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

Comment:

Ground level deck

The ground level (elevated) deck adjoins the open plan kitchen, living and dining room is positioned 2.5m from the northern boundary and a minimum of 1.4m from the southern boundary. A privacy screen is located along the northern edge of the ground level deck and a solid wall along the southern edge.

The ground level deck is positioned a minimum of 9.9m from the rear (eastern) boundary and it is not expected that the proposal will give rise to any unreasonable privacy impacts to the adjoining eastern neighbour at No. 218 Whale Beach Road. It is noted that the the existing elevated deck has a setback of between 5.8m and 7.5m from the rear eastern boundary as such the proposal will not result in any intensification of amenity impacts.

Ground level kitchen window

A ground level kitchen window W09 is proposed in the southern elevation which is setback between 1.6m - 2m from the boundary. The proposal incudes the removal of a number of trees from the within the southern setback which have the potential to open up view lines from the kitchen window. In order to protect privacy to the neighbouring property a condition requires the window to be a high level window positioned 1.7m from the finished floor level (FFL).

Level 1 deck to bedroom / study

The level 1 deck is located 5.4m from the northern boundary and 6.4m from the existing window in the southern elevation of No. 33 Morella Road. The proposal has been amended to include a 2.5m high privacy screen along the northern edge of the deck. It is noted that the neighbour at 33 Morella Road has requested that the screen be replaced with a solid wall. The 2.5m height of the screen is excessive and adds to the visual bulk. A condition requires the 2.5m timber screen to be replaced with a 1.8m high wall which will address the excessive height issue and the concern from the northern neighbour in respect of visual and acoustic privacy.

The level 1 deck to the study / master bedroom is positioned 6.3m - 6.6m from the southern boundary. The level 1 deck to the study / master bedroom sits forward of the dwelling at No. 27 Morella Road and the primary view from the proposed deck will be the eastern view of the ocean. It is not anticipated that the deck will given rise to unreasonable impacts on visual privacy given the spatial separation to the proposed dwelling and the dwelling at No. 27. It is further noted that the deck will be used less

infrequently compared to a living room or kitchen and the alternative solution to install a privacy screen along the southern edge of the deck will add further to impacts on solar access and bulk.

The level 1 deck to the bedroom and study is positioned in 19m from the rear (eastern) boundary and the spatial separation will ensure that there is no privacy impacts to the neighbour to the rear.

In summary, the proposal, as amended and subject to conditions, will ensure consistency with the control and the following outcomes.

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.
A sense of territory and safety is provided for residents.

D12.1 Character as viewed from a public place

The dwelling generally sits on the footprint of the existing dwelling which sits at a lower level than Morella Road. The height bulk and scale of the dwelling has been reduced and given of the topography of the site it is not anticipated that the built form will not result in adverse visual impacts on the streetscape. The design of the new driveway includes sandstone retaining walls and new planting which will ensure impacts on the public domain as a result of these works is minimised, refer to discussion under Clause A4.12 above.

D12.5 Front building line

Clause D12.5 requires:

A minimum 6.5m front setback or established building line, whichever is the greater.

Comment:

The site is unusual as it fronts a shared right of carriageway that provides access to the subject site and No. 27 Morella Road. Morella Road is positioned 8.5m to the west of the subject site and sits approximately 3-8m lower than the Morella Road. Given the context of the site the established building line is taken to be the building line along the shared right of carriageway.

The existing carport is setback between 1.4m and 2m from the front setback and extends to the south into the neighbouring site. The garage to No. 27 Morella Road to the immediate south also breaches the 6.5m front setback to the shared driveway. The proposed garage is generally located on the footprint of the existing carport, although it is fully contained within the boundaries of the subject site. As such, the proposal maintains the established building line and the proposal is consistent with the outcomes of the control.

The proposal will ensure compliant safe access is provided to the site and as the garage sit below the public street there will be no adverse visual impacts on the streetscape or the character of the locality as a result of excessive bulk. The proposal will not result in unreasonable impacts to neighbours by virtue of view loss or overshadowing. The siting of the garage will not require tree removal or impact on the ecological values of the site.

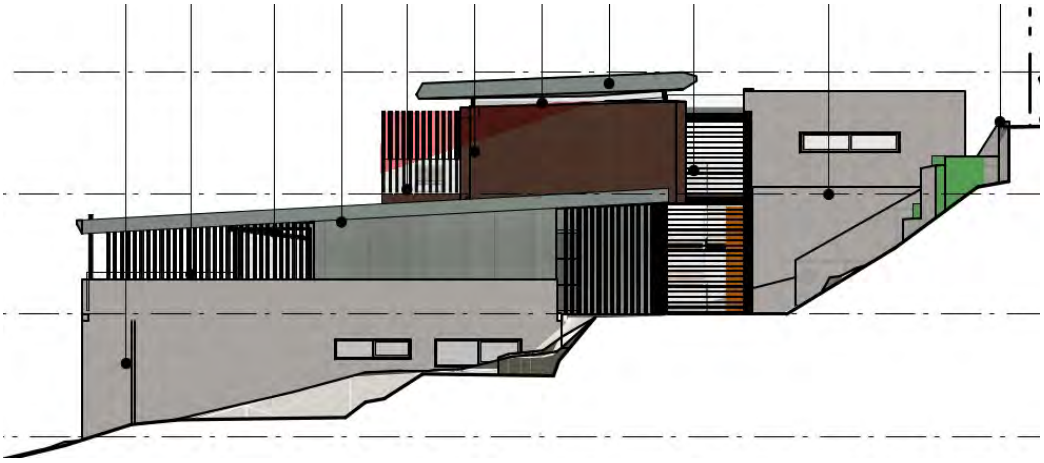
D12.8 Building envelope

The control requires developments to be contained within an envelope that measures 3.5m in height from the boundary and 45 degrees.

The proposal results in a breach of the building envelope to the north and south elevation as detailed below:

North elevation

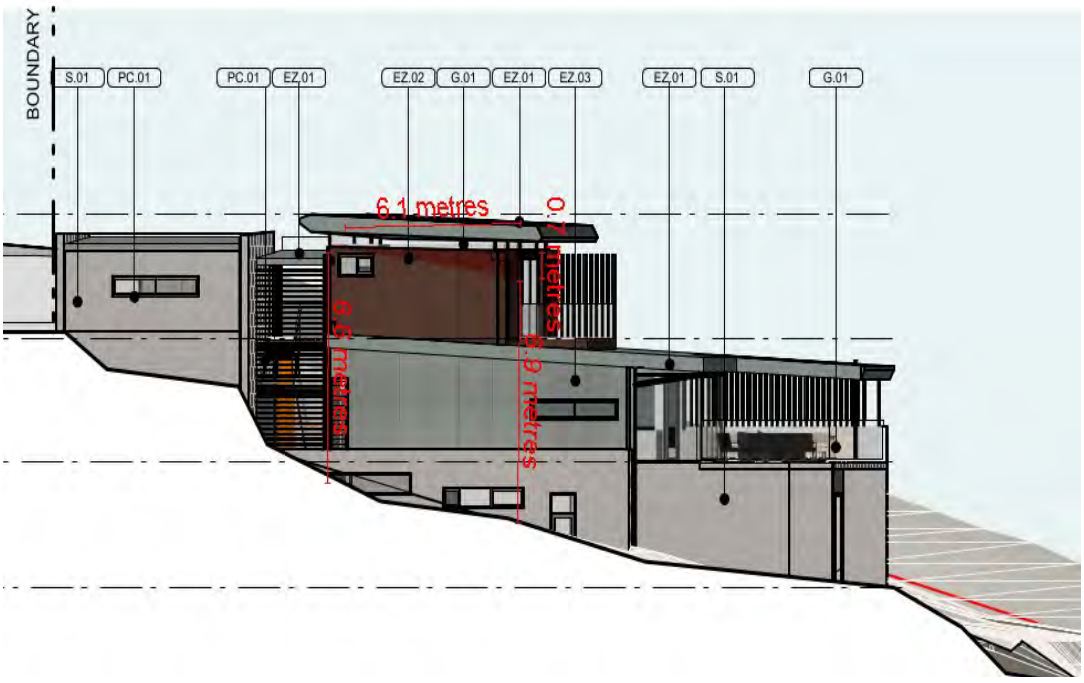
1.7m - 0m in height x 5.7m in length , refer to image below.



Northern elevation showing the building envelope breach in black

South Elevation

0.7m - 0 in height x 6.1m in length, refer to image below.



Southern elevation showing the building envelope breach in black

A merit assessment of the application against the outcomes of the controls is provided below:

To achieve the desired future character of the Locality.

Comment:

The breaching elements are not readily discernible from the public street given the levels of the site in relation to Morella Road and will not have an adverse visual impact on the future character of the Locality.

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:

As noted above, the breaching elements are not readily discernible in the streetscape and the building scale and density remains to sit below the height of canopy trees.

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

Comment:

The dwelling steps down the site to respond to the topography. The upper floor is setback from the side boundaries to sensitively relate to the spatial characteristics of the site and neighbouring properties.

The bulk and scale of the built form is minimised.

Comment:

Amended plans reduce the building height which in turn reduces the extent of the envelope breach. As noted above, the upper floor is set back from the side boundaries in order to minimise the the bulk and scale of the dwelling. In addition, the canopy trees will be retained to the frontage and supplemented with additional planting which will help soften the perceived visual bulk of the dwelling.

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

Comment:

The proposal generally sits on the same footprint as the existing dwelling which is noted to sit forward of the neighbouring dwellings 27 and 33 Morella Road. The proposal will not impact on the primary eastern ocean view and south-eastern views to the headland to No. 27 Morella Road to the immediate south. Likewise the proposal will not impact on the eastern and north-eastern ocean and headland views from No. 33 Morella Road. The site is located at a considerably lower level than the dwelling located on the high side of Morella Road to the west. As such, the proposal is not expected to give rise to any unreasonable view loss issues to these properties, refer to detailed discussion under clause C1.3 of this report.

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

Comment:

The level 1 balcony to the master-bedroom 6.3m - 6.6m from the southern boundary and 5.5m to the northern boundary. The proposal has been amended to include a 2.5m high privacy to the northern edge of the level 1 balcony. The height of the screen is excessive and in part contributes to an envelope breach. A condition requires the timber privacy screen to be replaced with a solid 1.8m high wall which will address the envelope breach as well as addressing concerns raised by the neighbour at 33 Morella Road in respect of visual and acoustic privacy in relation to the use of the balcony. On balance, subject to conditions, a modified screen is supported as it will ensure that there is no unreasonable impact on neighbouring privacy. Refer to detailed discussion under Clause C1.5 of this report.

Additional shadow diagrams have been submitted which confirm that the proposal will not result in unreasonable impacts on neighbouring amenity in terms of solar access despite the non-compliance with solar access in respect of solar access to primary windows. Refer to detailed discussion under Clause C1.4 of this report.

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

Comment:

The proposal requires the removal of two prescribed trees, T3 and T7, the transplanting of two prescribed trees, T2 and T6 and replacement planting of one (1) native replacement tree. Council's Landscape Officer has no objections to the proposal subject to conditions requiring suitable replanting to ensure that the visual bulk of the dwelling is reduced.

D12.10 Landscaped Area - Environmentally Sensitive Land

Clause D12.10 requires 60% of the site to be retained as landscaped area.

Comment:

The proposal provides an area of 383.64sqm landscaped open space (LOS) (inclusive of 6% variation) or 53.7%, as calculated from the landscape plan. The existing LOS, as calculated from the survey is 391.4sqm (inclusive of 6% variation) or 54.8%. The proposal represents a 7.4% breach of the LOS requirement which equates to a 7.7sqm or 1.1% reduction compared to the existing site.

*It is noted that the applicant has calculated a LOS at 426.4sqm. The LOS as calculated by the assessing officer excludes area's less than 1m in width and retaining walls.

A merit assessment of the application against the outcomes of the control is provided below:

Achieve the desired future character of the Locality.

Comment:

The proposal as amended, and subject to conditions, will achieve the desired future character of the Locality

The bulk and scale of the built form is minimised.

Comment:

The proposal has been amended to reduce the height bulk and scale of the dwelling.

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

Comment:

The proposal has been amended to include privacy screens to the northern side of the upper floor balcony to the master bedroom. The site is constrained given the steepness of the slope and orientation of the site. Despite this the spatial separation of the dwelling will ensure that a reasonable level of amenity in terms of solar access is maintained to neighbouring dwellings.

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

Comment:

The proposal retains a number of trees and seeks consent to replant two prescribed trees. Council's Landscape Officer has no objections subject to conditions includes compliance with tree protection measures, transplanting methodology and suitable replanting. Subject to these conditions the the existing and new planting will help reduce the visual impacts of the built form.

Conservation of natural vegetation and biodiversity.

Comment:

The application was referred to Council's Biodiversity Officer who offers no objections to the proposal subject to conditions, refer to comments above.

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

Comment:

Despite the minor 1.1% net loss of LOS sufficient landscape open space is retained to ensure that stormwater runoff is reduced. Council's Development Engineer offers no objections to the proposal in respect of stormwater subject to conditions.

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

Comment:

Conditions require suitable replanting to ensure that the landscape character of the area is maintained.

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

Comment:

As discussed above, despite the minor 1.1% net loss of LOS sufficient landscaping is retained to provide for water infiltration and assist in stormwater management.

In summary, on merit, the minor 1.1% net loss of LOS is assessed as acceptable as the proposal is consistent with the outcomes of the control.

D12.13 Construction, Retaining walls, terracing and undercroft areas

Clause D12.13 requires:

Where retaining walls and terracing are visible from a public place, preference is given to the use of sandstone or sandstone like materials.

Comment:

The retaining walls associated with the shared driveway are propose to be clad in sandstone in compliance with the control .

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 $23,970 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,397,005.

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
- Inconsistent 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 application has been referred to the Development Determination Panel (DDP) due to there being five (5) unique submissions.

The concerns raised in the objections have been addressed and resolved by amended plans which reduce the height, bulk and scale of the dwelling, increase the amount of landscape open space and in turn reduce the extent of envelope breach. In addition, conditions require the privacy screen to the Level 1 balcony to be replaced with a solid wall to protect privacy to No. 33 Morella Road and tree replacement planting and protection measures.

The critical assessment issues include the breach in the 8.5m height limit. On merit, the minor 2.4% breach (357mm) of the height limit, which relates to the corner of the roof to the upper floor bedroom/study, is assessed as accepted, given that there are no unreasonable impacts on neighbouring amenity in respect of view loss, solar access or privacy. The balance of the dwelling sits comfortably below the 8.5m height limit and there are no unreasonable impacts on the streetscape or Palm Beach Locality noting that the dwelling generally sits on the footprint of the existing dwelling and will be discernible as viewed from Morella Road.

The proposal includes the construction of a new shared driveway. Additional details have been submitted in respect of this work including a construction access management report. The additional information was assessed as acceptable by Council's Development Engineer and Landscape Officer subject to conditions. In addition, the application was re-notified to the affected neighbours again and no further issues were raised in respect of access.

On balance, the amended 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 PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/2231 for Demolition works and construction of a dwelling house on land at Lot 153 DP 15376, 31 Morella 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-A-000 Rev H Cover Sheet	01.11.2022	Quattro Architecture
DA-A-030 Rev G Demolition and Excavation Plan	01.11.2022	Quattro Architecture
DA-A-050 Rev H Site Plan	01.11.2022	Quattro Architecture
DA-A-100 Rev I Lower Ground Floor Plan	01.11.2022	Quattro Architecture
DA-A-101 Rev I Ground Floor Plan	01.11.2022	Quattro Architecture
DA-A-102 Rev I Level 1 Plan	01.11.2022	Quattro Architecture
DA-A-103 Rev G Roof Plan	01.11.2022	Quattro Architecture
DA-A-200 Rev H Elevations - Sheet 1	01.11.2022	Quattro Architecture
DA-A-201 Rev H Elevations - Sheet 2	01.11.2022	Quattro Architecture
DA-A-250 Rev H Sections - Sheet 1	01.11.2022	Quattro Architecture
DA-A-251 Rev I Section - Sheet 2	16.11.2022	Quattro Architecture
DA-A-252 Rev I Section - Sheet 3	16.11.2022	Quattro Architecture
DA-A-253 Rev E Driveway Detail	01.11.2022	Quattro Architecture
DA-A-900 Rev G Window Schedule Sheet 1	22.08.2022	Quattro Architecture
DA-A-901 Rev G Window Schedule Sheet 2	22.08.2022	Quattro Architecture
DA-A-902 Rev G Window Schedule Sheet 3	22.08.2022	Quattro Architecture
DA-A-903 Rev G Window Schedule Sheet 4	22.08.2022	Quattro Architecture
DA-A-904 Rev G Window Schedule Sheet	22.08.2022	Quattro Architecture

5		
DA-A-905 Rev G Window Schedule Sheet 6	22.08.2022	Quattro Architecture
DA-A-906 Rev G Window Schedule Sheet 7	22.08.2022	Quattro Architecture
DA-A-907 Rev G Window Schedule Sheet 8	22.08.2022	Quattro Architecture
DA-A-1000 Rev G External Finishes	01.11.2022	Quattro Architecture

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
D01 Rev B Site and Driveway Access Plan	14.09.2022	Bekker Engineering Pty Ltd
D02 Rev B Driveway Long Sections	14.09.2022	Bekker Engineering Pty Ltd
21021 SW-1 Site Drainage Concept Plan and sections	20.08.2021	Michal Korecky
21021 SW-2 Roof Catchment and Sections	20.08.2021	Michal Korecky

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Bushfire Assessment Report Ref 211620	25.08.2021	Building Code and Bushfire Hazards Solutions Pty Ltd
BASIX Certificate and Report Rev 2	29.09.2021	Stantec
Arboricultural Assessment	22.09.2021	Rain Tree Consulting
Geotechnical Report J3559A	01.11.2022	White Geotechnical Group
Construction Access Management Plan (shared driveway)	November 2022	Quattro Architecture

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
L-01 Landscape Plan Rev D	01.08.2022	Space Landscape Design

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	05.07.2021	J Woodhill

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. **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

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

A monetary contribution of $23,970.05 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 $2,397,005.00.

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.

4. **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

5. **Tree Root Investigation and Tree Root Map**
Prior to the issue of a Construction Certificate, a tree root mapping investigation for neighbouring tree 12 shall be undertaken, and a Tree Root Map shall be documented that will be the basis for determining construction methodology near existing tree 12.

An Arborist with minimum AQF Level 5 in arboriculture shall supervise the works to verify tree root locations. A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.

The root investigation shall map existing roots of significance that must not be impacted by construction works. The tree root investigation shall be conducted to confirm the following data to be used for the location/alignment of any new proposed works:
i) confirmation of the location of any tree roots at or >25mm (Ø) diameter to areas that require excavation for proposed works. Alternative alignment of proposed works shall be provided as necessary to avoid major roots, and
ii) mapping of the suitable location/alignment of proposed works.

The Tree Root Map shall be issued to a qualified Structural Engineer as a basis for structural design, and for determining the final location/alignment and construction methodology of proposed works within the tree protection zone (TPZ).

Prior to the issue of a Construction Certificate, the Arborist shall provide certification to the Certifying Authority that the tree root investigation and clear distance recommendations have been adequately addressed in the Construction Certificate plans.

Reason: To ensure protection of vegetation proposed for retention or adjacent to the site.

6. **Footing Design Near Trees to be Retained**
Footing structural layout plans for the north-west boundary retaining walls shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a tree root mapping investigation near existing tree(s) identified in the Arboricultural Impact Assessment as tree numbers 1 and 4, to locate critical tree roots and recommend footing locations for the construction of the retaining walls. The Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.

A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.

The Arborist shall submit certification to the Certifying Authority, that the locations of the footings are accepted. The agreed footing structural layout plans shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

7. **Transplanting Methodology Plan**
A Transplanting Methodology Plan, prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture, shall be documented to demonstrate the requirement for transplanting the proposed 2 x *Livistona australis* (trees 2 and 6), including:
i) preparation of the transplantation site,

ii) preparation of the trees/palms to be transplanted,
iii) transplanting methodology and installation works,
iv) post-transplanting care and duration,
v) ongoing maintenance program,
vi) replacement strategy if transplanting fails in the long term.

The Transplanting Methodology is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate

Reason: Tree protection.

8. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 12/7/2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Amendment of Landscape Plan**
The submitted Landscape Plan (Space Landscape Designs, L-01, Revision D) is to be amended in accordance with the following:
   - Provision of at least one additional locally native canopy tree species (in addition to the proposed Banksia serrata), selected from the Native Gardening Guide 'Trees' list for the Pittwater Ward as published on the Northern Beaches Council website.
   - The two new locally native canopy tree specimens are to be of the natural species type and must not be cultivated varieties ('cultivars').

The Landscape Plan is to amended by a qualified landscape architect in accordance with these conditions of consent and provided to the Certifying Authority prior to issue of the Construction Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

10. **Traffic Management and Control**
The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

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

   - The timber privacy screen to the Level 1 balcony to the bedroom shall be replaced with a

1.8m high solid wall.

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

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

12. **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 Principal Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

13. **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 Principal 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.

14. **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 Michal Korecky, drawing number 21021, sheet SW-1, SW-2, dated 20/8/2021. 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.

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.

15. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of vehicular crossing and retaining walls in the road reserve which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. A vehicular crossing 5 metres wide should be constructed in accordance with driveway plans by Bekker Engineers Design Buro, drawing number 64240-D01, 64240-D02, issue B, dated 14/9/2022 and Council specifications.
2. Structural details for the retaining walls supporting the driveway along both edges.
3. Safety barriers and sight distances are to be in accordance with AS/NZS 2890.1:2004.
4. Structural Engineer's certification of the design of all retaining walls, driveway and safety barriers.
5. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided.

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

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

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

16. **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.

17. **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.

18. **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 Principal 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.

19. **Construction Traffic Management Plan**
As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite for staff and contractor parking
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and

consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

All fees and charges associated with the review of this plan is to be in accordance with Council' Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **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.

a) 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 2.3 General tree protection requirements,
ii) works under section 2.3 General tree protection requirements clauses h), i), j), k),
iii) additionally, the Project Arborist shall be in attendance and supervise any landscaping works within the TPZ of all existing trees to be retained.

b) Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

c) All tree protection measures specified 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 Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

d) 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.

21. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) within the property (as recommended and identified by tree number in the Arboricultural Impact Assessment):
i) trees 3 and 7 - *Livistona australis*,
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised building works.

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

Reason: To protect wildlife habitat.

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

27 Morella Road, Whale Beach
33 Morella Road Whale Beach

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

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

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

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

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

24. **Public Liability Insurance - Works on Public Land**
Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of $20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

25. **Installation of nest boxes**
A minimum of two nest boxes suitable for local microbat fauna species are to be installed in retained trees on the site.

Nest boxes must be attached in accordance with industry best practice (e.g. expandable tree sensitive methods).

Written certification of compliance is to be submitted to the Certifying Authority prior to issue of any Occupation Certificate.

Reason: To maintain wildlife habitat.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a

protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:
c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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.

27. **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 the Project Arborist during the works. In this regard all protected trees shall not exhibit:
i) a general decline in health and vigour,
ii) damaged, crushed or dying roots due to poor pruning techniques,
iii) more than 10% loss or dieback of roots, branches and foliage,
iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
v) yellowing of foliage or a thinning of the canopy untypical of its species,
vi) an increase in the amount of deadwood not associated with normal growth,
vii) an increase in kino or gum exudation,
viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the 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.

28. **Wildlife Protection**
All trees approved for removal or relocation are to be inspected for native wildlife prior to their removal. If native wildlife is found within habitat to be removed, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded,

in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifying Authority.

Reason: To protect native wildlife.

29. **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.

30. **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.

31. **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.

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

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

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

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

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

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

33. **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.

34. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

35. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

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

36. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan (drawing L-101 by Space Landscape Designs Revision D), and inclusive of the following conditions:
i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained,

and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
iii) mass planting shall be installed at minimum 1 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,
iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

37. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:
i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

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

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

Reason: To protect wildlife habitat.

39. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

40. **Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

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

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

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

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

43. **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.

44. **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.

45. **Certification Elevated Parking Facility Work**
The Applicant shall submit a Structural Engineers' certificate certifiying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation.

Reason: Compliance with this consent.

46. **Retaining wall**
The retaining wall works in the road reserve shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

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

Reason: To ensure geotechnical risk is mitigated appropriately.

48. **Environmental Reports Certification**
Written certification from a suitably qualified person(s) shall submit to the Principal Certifier and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

Bushfire Assessment Report Ref 211620	25.08.2021
BASIX Certificate and Report Rev 2	29.09.2021
Arboricultural Assessment	22.09.2021
Geotechnical Report J3559A	01.11.2022
Construction Access Management Plan (shared driveway)	November 2022

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

Reason: To ensure compliance with standards.

49. **House / Building Number**
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

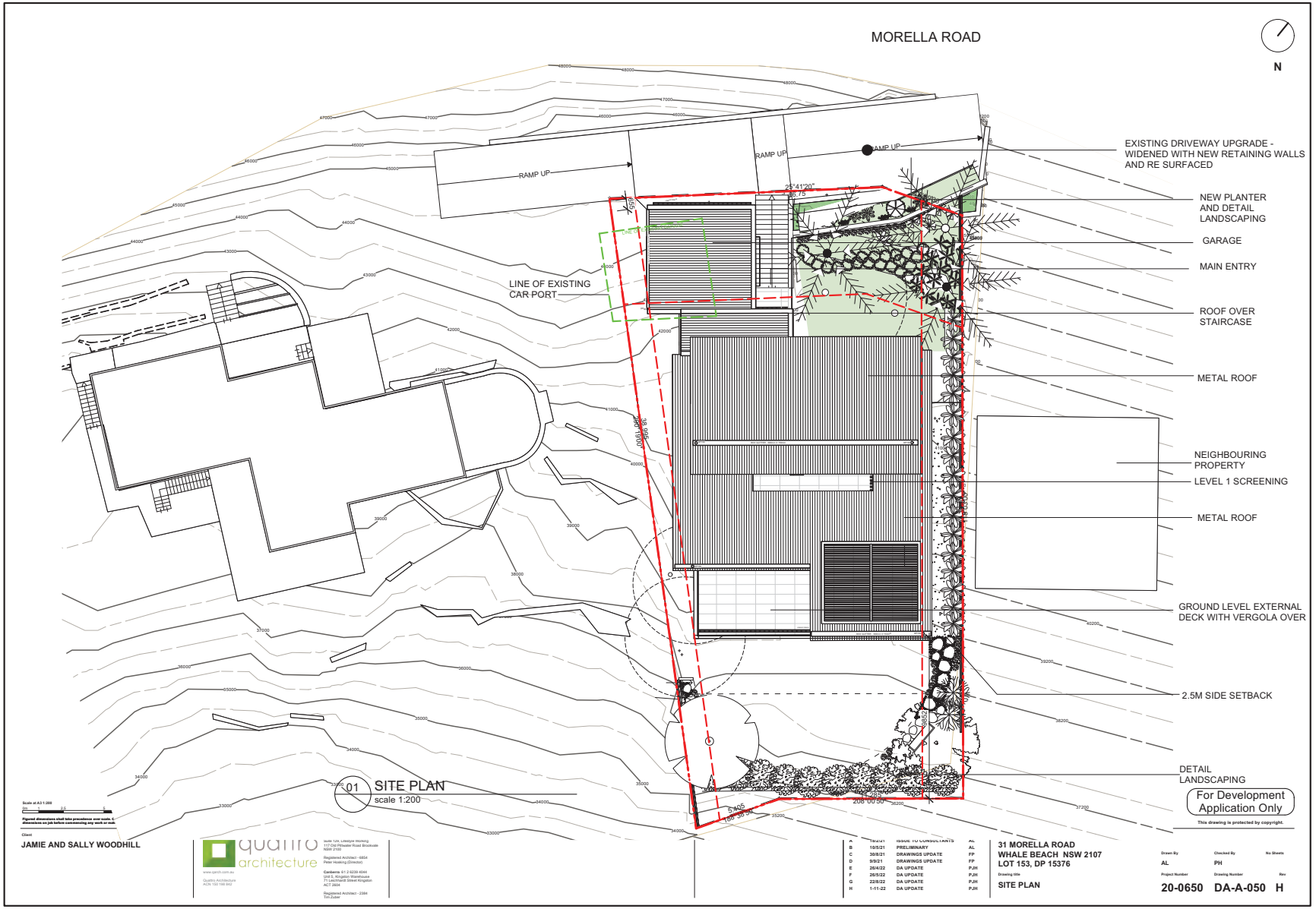
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

50. **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.


MORELLA ROAD
N
RAMP UP
RAMP UP
RAMP UP
EXISTING DRIVEWAY UPGRADE - WIDENED WITH NEW RETAINING WALLS AND RE SURFACED
NEW PLANTER AND DETAIL LANDSCAPING
GARAGE
MAIN ENTRY
ROOF OVER STAIRCASE
METAL ROOF
LINE OF EXISTING CAR PORT
NEIGHBOURING PROPERTY
LEVEL 1 SCREENING
METAL ROOF
GROUND LEVEL EXTERNAL DECK WITH VERGOLA OVER
2.5M SIDE SETBACK
DETAIL LANDSCAPING
01 SITE PLAN
scale 1:200
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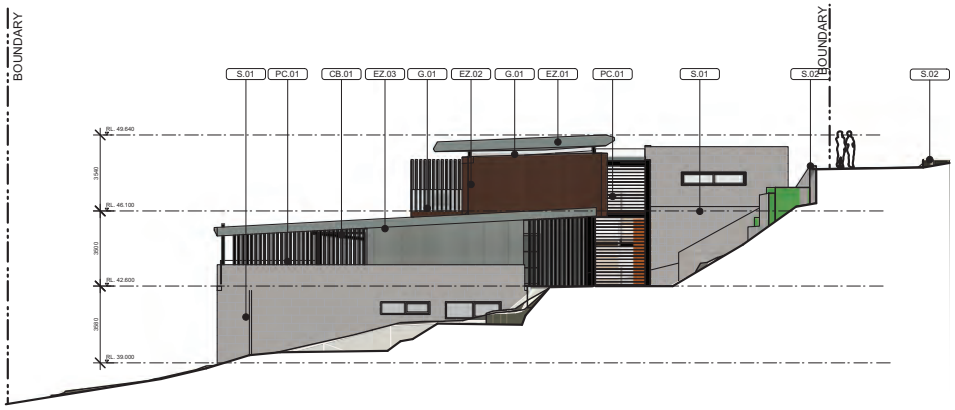
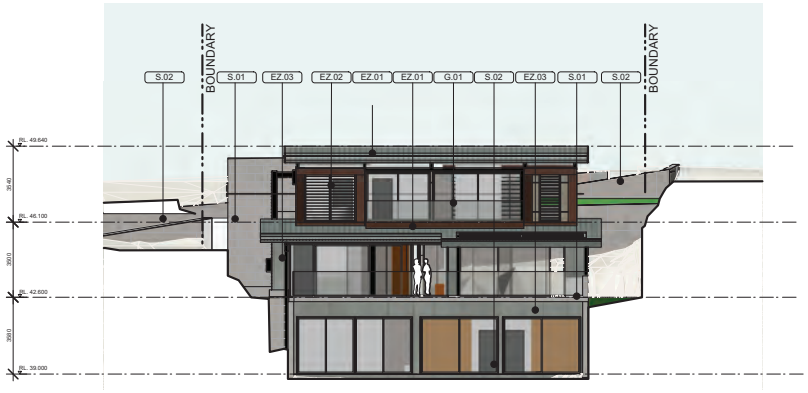
JAMIE AND SALLY WOODHILL
quattro architecture
31 MORELLA ROAD
WHALE BEACH NSW 2107
LOT 153, DP 15376
SITE PLAN
20-0650 DA-A-050 H



01 NORTH ELEVATION
scale 1:200



02 EAST ELEVATION
scale 1:200

FINISHES SCHEDULE

EZ.01 ELZINC **Slate** DOUBLE STANDING SEAM TITANIUM ZINC ROOF SHEETING	EZ.02 elZinc **Rainbow® brown** FACADE PANEL VERTICAL TITANIUM ZINC WALL CLADDING
EZ.03 elZinc **Slate** FACADE PANEL VERTICAL TITANIUM ZINC WALL CLADDING, GUTTERS, DOWNPIPES AND ASSOCIATED FITTINGS	T.01 **HARDWOOD** TIMBER POSTS, BEAMS AND SCREENS
S.01 ARTEDOMUS **Urban White**	S.02 **SANDSTONE** NATURAL SANDSTONE EXTERNAL WALL
G.01 **GLASS** WINDOW AND BALUSTRADE	PC.01 POWDERCOAT **MONUMNET** ALUMINIUM FRAMED WINDOWS, LOURVES AND DOORS

Scale at A3 1:200
0m 1 2.5 5 8
Figured dimensions shall take precedence over scale. Contractors must verify all dimensions on job before commencing any work or making shop drawings.

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71 Leichhardt Street Kingston
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Registered Architect - 2384
Tim Zuber

Notes

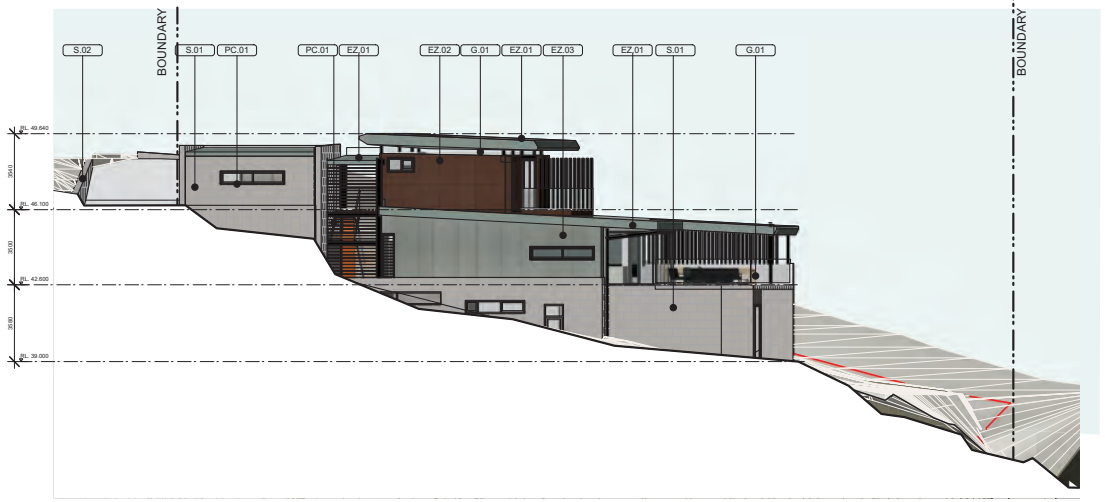
Rev. No.	Date	Revision	Auth'd
A	18/2/21	ISSUE TO CONSULTANTS	AL
B	10/5/21	PRELIMINARY	AL
C	30/8/21	DRAWINGS UPDATE	FP
D	9/9/21	DRAWINGS UPDATE	FP
E	26/4/22	DA UPDATE	PJH
F	26/5/22	DA UPDATE	PJH
G	22/8/22	DA UPDATE	PJH
H	1-11-22	DA UPDATE	PJH

Project
31 MORELLA ROAD
WHALE BEACH NSW 2107
LOT 153, DP 15376

Drawing title
ELEVATION - SHEET 1

Drawn By	Checked By	No Sheets
AL	PH	

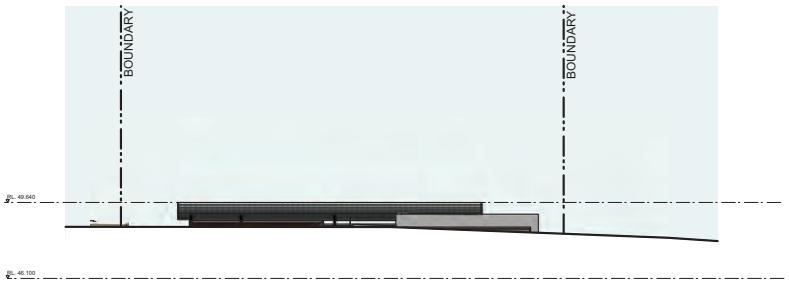
Project Number	Drawing Number	Rev
20-0650	DA-A-200	H



01 SOUTH ELEVATION
scale 1:200

FINISHES SCHEDULE

EZ.01 ELZINC **Slate®** DOUBLE STANDING SEAM TITANIUM ZINC ROOF SHEETING	EZ.02 elZinc **Rainbow® brown** FACADE PANEL VERTICAL TITANIUM ZINC WALL CLADDING
EZ.03 elZinc **Slate®** FACADE PANEL VERTICAL TITANIUM ZINC WALL CLADDING, GUTTERS, DOWNPIPES AND ASSOCIATED FITTINGS	T.01 **HARDWOOD** TIMBER POSTS, BEAMS AND SCREENS
S.01 ARTEDOMUS **Urban White**	S.02 **SANDSTONE** NATURAL SANDSTONE EXTERNAL WALL
G.01 **GLASS** WINDOW AND BALUSTRADE	PC.01 POWDERCOAT **MONUMNET** ALUMINIUM FRAMED WINDOWS, LOURVES AND DOORS



02 WEST STREET ELEVATION
scale 1:200

03 WEST ELEVATION
scale 1:200

Scale at A3 1:200
0m 1 2.5 5 8

Figured dimensions shall take precedence over scale. Contractors must verify all dimensions on job before commencing any work or making shop drawings.

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H	1-11-22	DA UPDATE	PJH

Project
31 MORELLA ROAD
WHALE BEACH NSW 2107
LOT 153, DP 15376

Drawing title
ELEVATION - SHEET 2

Drawn By	Checked By	No Sheets
AL	PH	

Project Number	Drawing Number	Rev
20-0650	DA-A-201	H

UPDATED CLAUSE 4.6 REQUEST TO VARY HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

31 Morella Road,
Whale Beach

Suite 1, 9 Narabang Way Belrose NSW 2085
Phone: (02) 9986 2535 | Fax: (02) 9986 3050 |

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4.6 Request to Vary Development Standard

Proposed New Dwelling

31 Morella Road, Whale Beach

Greg Boston

B Urb & Reg Plan (UNE) MPIA

Suite 1/9 Narabang Way
Belrose NSW 2085

Tel: (02) 99862535

March 2023

1.0 Introduction

This updated clause 4.6 variation request has been prepared in support of a building height breach associated with a development application proposing the construction of a new dwelling house on the subject allotment. In the preparation of this variation request consideration has been given to the following documents:

- Amended Architectural plans DA-A-000(H), DA-A-010(G), DA-A-020(I), DA-A-030(G), DA-A-050(H), DA-A-051(C), DA-A-070(H), DA-A-071(A), DA-A-072(A), DA-A-073(H), DA-A-074(A), DA-A-075(A), DA-A-076(A), DA-A-077(A), DA-A-100(I), DA-A-101(I), DA-A-102(I), DA-A-103(G), DA-A-104(E), DA-A-105(D), DA-A-106(C), DA-A-200(H), DA-A-201(H), DA-A-250(I) to DA-A-252(H), DA-A-253(E), DA-A-900(G), DA-A-901(G), DA-A-902(G), DA-A-903(G), DA-A-904(G), DA-A-905(G), DA-A-906(G), DA-A-907(G), DA-A-1000(G) prepared by Quattro Architecture.

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

2.0 Pittwater Local Environmental Plan 2014 (PLEP)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of PLEP the height of a buildings permissible on the site is a maximum of 8.5m. The objectives of this control are as follows:

(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,

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

(c) to minimise any overshadowing of neighbouring properties,

(d) to allow for the reasonable sharing of views,

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

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

Building height is defined as follows:

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

Ground level existing is defined as follows:

> ***ground level (existing)*** means the existing level of a site at any point.

We note that Council has adopted the interpretation of ground level (existing) as that established in the matter of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* where at paragraphs 73 and 74 O'Neill C found:

> *73. The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site and the proposal exceeds the height of buildings development standard in those locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.*
>
> *74. The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.*

It has been determined that the south-eastern edge of the upper-level roof form breaches the 8.5 metre height standard by up to 357mm as depicted in the height blanket diagram at Figures 1 and 2 over page. This represents a maximum building height variation of 4.2%. The balance of the development sits comfortably below the prescribed height standard.

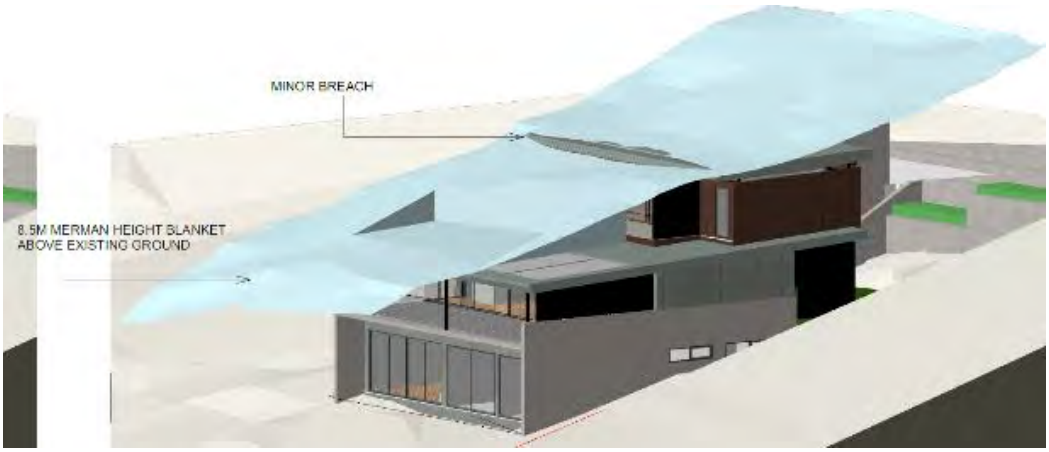


Figure 1 - Height blanket diagram showing minor building height breaching elements

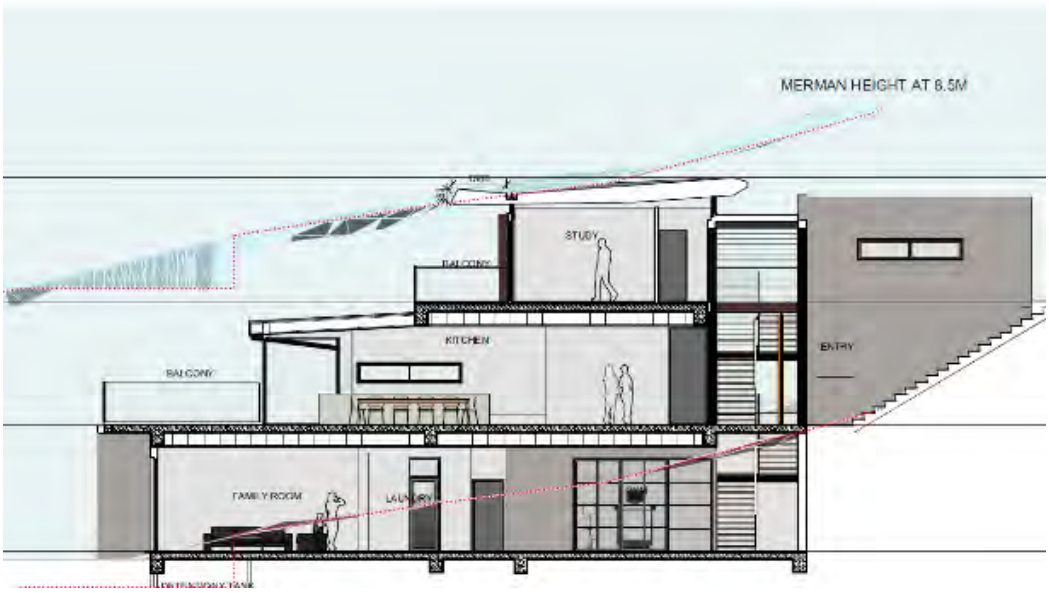


Figure 2 – Section extract showing the maximum extent of building height breach

We confirm that the height blanket diagram has been produced using CAD and available survey information in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582.*

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

(1) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal *in RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

> *"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP provides:

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

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

Clause 4.6(3) of PLEP provides:

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

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

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

The proposed development does not comply with the height of buildings provision at 4.3 of PLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

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

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Director-General has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

(5) In deciding whether to grant concurrence, the Director-General must consider:

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

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3 of PLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

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

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP?

4.0 Request for variation

4.1 Is clause 4.3 of PLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

> *(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 PLEP Prescribes a fixed building height provision that seeks to control the height of certain development. Accordingly, clause 4.3 PLEP is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

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

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

Response: The subject property is located within the Palm Beach Locality. The Desired Future Character (DFC) statement within Pittwater 21 Development Control (P21DCP) plan is as follows:

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.

Having regard to the DFC statement, I am satisfied that that the building, by virtue of its height and scale, is consistent with the desired character of the locality notwithstanding the building height breaching elements proposed. In forming this opinion, I note:

- Notwithstanding the building height breaching roof element, the Palm Beach Locality will remain primarily a low-density residential area with the dwelling housing, the subject of this document, continuing to present as a 1 and 2 storey dwelling as viewed from Morella Road before stepping down the site in response to topography. The building height breaching elements will not be discernible as viewed from Morella Road.
- The building height breaching roof element does not itself require excavation or modification of the landform with the building sitting within a landscaped setting and free from hazards.
- The non-compliant building element utilises metal roof sheeting the colours and materials of which will not prevent the building as whole from blending into the escarpment which forms a backdrop to the site.
- The building height breaching element will not require the removal of any vegetation and will not impact on any public or private views.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the proposed development by virtue of its height and scale, in particular the building height breaching roof element, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: The dwelling has a stepped building form that responds to the topography of the area. Development along Morella Road is characterised by multi-level dwellings that respond to the sloping topography. The majority of the proposed dwelling will sit well below the 8.5m development standard. In this regard, it is considered that the building height breaching elements do not unreasonable contribute to visual bulk to the extent that the building would be considered incompatible with nearby development.

As mentioned previously, the area of non-compliance will not be readily discernible from the public domain as the dwelling slopes down from street level. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the proposed development by virtue of its height and scale, in particular the building height breaching element, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

(c) to minimise any overshadowing of neighbouring properties,

Response: The shadow diagrams prepared by Quattro Architecture demonstrate that the building height breaching elements will not contribute to non-compliant shadow impact on neighbouring properties. The side boundary setbacks maintained to the first floor master bedroom and its associated building height breaching elements minimises overshadowing. A copy of these plans is at Attachment 1.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

(d) to allow for the reasonable sharing of views,

Response: Having inspected the site and identified available public and private view lines over and across the site, I am satisfied that the building height breaching elements will not give rise to any unacceptable view loss with a view sharing outcome maintained in accordance with the planning principle established in the matter of *Tenacity vs Warringah Council (2004) NSWLEC 140.*

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: As previously indicated, the building height breaching elements do not themselves require excavation or modification of the landform.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

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

Response: The minor area of non-compliance with not adversely impact on the natural environment with site disturbance directly attributed to the building height breaching elements proposed. The site is not listed as a heritage item or within a heritage conservation area.

Notwithstanding the building height breaching elements, the proposal is consistent with this objective.

Consistency with zone objectives

The subject site is zoned E4 Environmental Living pursuant to PLEP 2014 with secondary dwellings permissible in the zone with consent. The stated objectives of the zone are as follows:

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

Response: The works relate to the construction of a new dwelling house. The proposal will not require the removal of any significant trees or any natural features having ecological and/or aesthetic values. Development will continue to be subservient to the natural environment and sited below the tree canopy notwithstanding the building height breaching element proposed.
This objective is achieved.

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

Response: The proposal will not adversely impact on the environmental values of the area. The proposal will maintain the environmental and aesthetic value when viewed from neighbouring properties and the public domain notwithstanding the building height breaching element proposed.
.
This objective is achieved.

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

Response: The relatively minor breach to the 8.5 metre standard do not give rise to any unreasonable bulk and scale concerns, nor are they inconsistent with the scale of development both existing and reasonably anticipated on steeply sloping sites along the foreshore. Significant landscape features on the site will be largely preserved and the dwelling will integrate with that landscape character.

This objective is achieved.

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the E4 Environmental Living zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. 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.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land which makes strict compliance difficult to achieve whilst appropriately distributing height and floor space in a contextually appropriate manner on this particular site. The orientation of the site, and its susceptibility to overshadowing impact from adjoining development to the north and the escarpment to the west of the site, is also an environmental planning ground in support of the variation with the building height breaching element, being the south eastern corner of the upper most roof form, contributing to the design quality and amenity of the dwelling by providing appropriate weather protection in a visually consistent and cohesive roof form manner.

Whilst strict compliance could be achieved by reducing ceiling heights and reducing building height, such outcome would not represent good design and would result in an inferior amenity outcome for occupants. Such outcome would compliance with objectives 1.3(g) of the Act. Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should struct compliance be enforced and to that extent would thwart compliance with objective 1.3(c) of the Act.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, residential amenity or foreshore scenic outcomes. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and environmental constraints on the site. Such outcome is achieved whilst realising the reasonable development potential of the land.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).

- The development represents good design (1.3(g)).

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the E4 Environmental Living Zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

> *"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."*

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.
Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

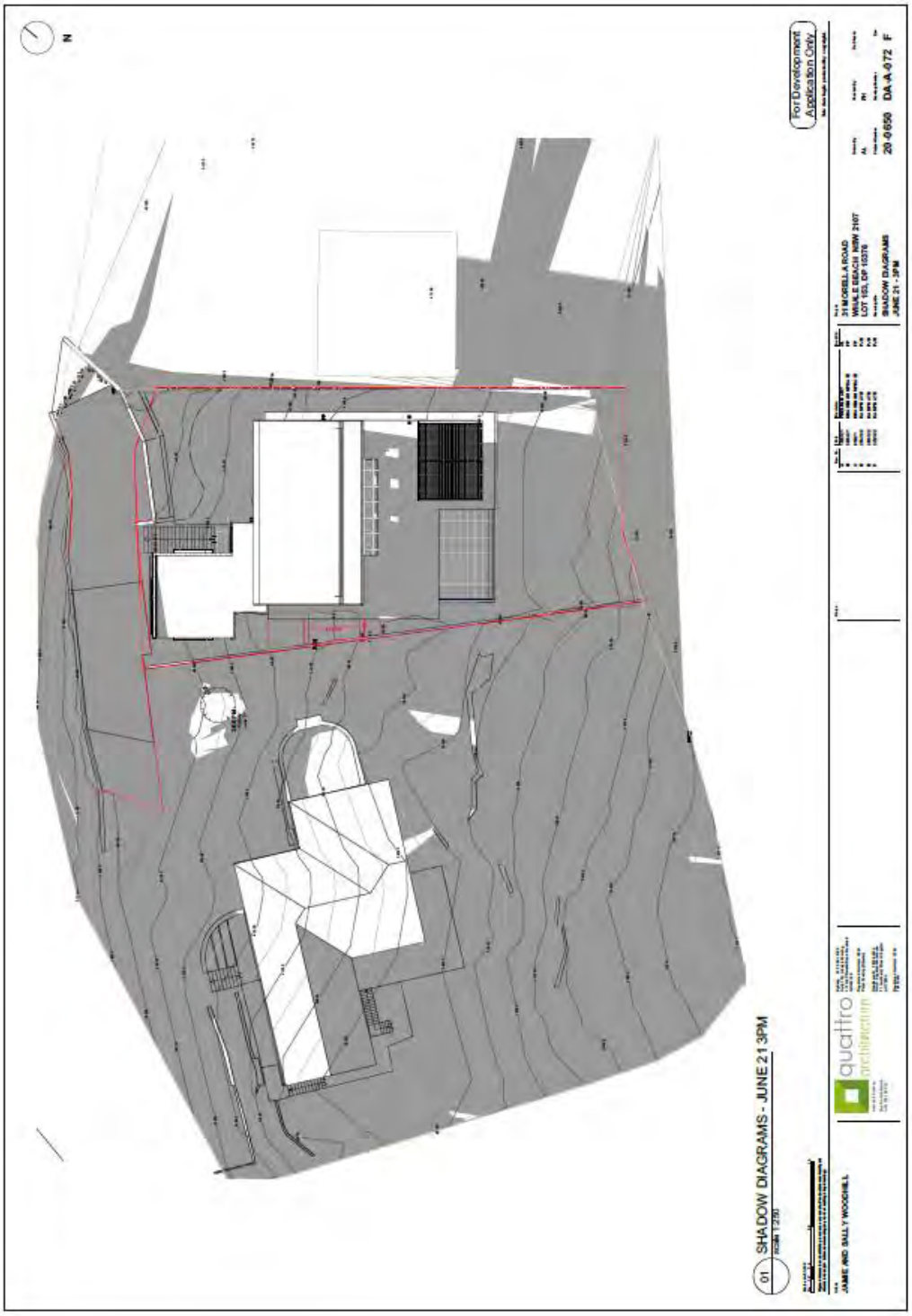
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

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

Attachment 1 – Shadow diagrams

N
For Development Application Only
01 SHADOW DIAGRAMS - JUNE 21 12PM
JAMIE AND SALLY WOODHILL
quattro architecture
21 MORELLA ROAD
WHALE BEACH NSW 2107
LOT 153, DP 15376
SHADOW DIAGRAMS
JUNE 21 - 12PM
20-0650 DA-A 071 F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For Development Application Only
01 SHADOW DIAGRAMS - JUNE 21 3PM
quattro architecture
31 MORELLA ROAD
SHADOW DIAGRAMS
JUNE 21 - 3PM
20-0650
DA-A-072
F

ITEM 3.6	**DA2022/2087 - 19 BIRDWOOD AVENUE COLLAROY - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2023/245934**
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 DA2022/2087 for demolition works and construction of a dwelling house including swimming pool on land at Lot 9 DP 9667, 19 Birdwood Avenue COLLAROY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2087

Responsible Officer:	Adam Susko
Land to be developed (Address):	Lot 9 DP 9667, 19 Birdwood Avenue COLLAROY NSW 2097
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Michael John Grant Susan Grant
Applicant:	Michael John Grant

Application Lodged:	06/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	12/12/2022 to 17/01/2023
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 4,794,509.00

EXECUTIVE SUMMARY

This Development Application is seeking consent for demolition works, excavation and the construction of a multi-level detached dwelling house with a swimming pool and associated landscape works.

The public exhibition of the application attracted submissions from the southern-adjoining dwelling house at 3 Brissenden Avenue, and from a number of units in the residential apartment complex at 7 Brissenden Avenue to the south-west. As more than five (5) submissions have been received, the application is referred to the Development Determination Panel (**DDP**) for determination.

As lodged, the application sought approval for a three-storey dwelling-house with roof terrace and swimming pool. These plans were notified and significant concerns were raised by adjoining and nearby property owners, primarily in relation to impacts associated with the proposed roof terrace, including a loss of visual and acoustic privacy, and impacts caused to their northerly views from the roof terrace and the building height and envelope generally.

Consequent of these concerns and Council's initial assessment, the Applicant was requested to make a number of amendments to the plans, including the deletion of the roof terrace in its entirety. Other changes made included an increase to the side and rear setbacks and an increase in landscaped area. These plans demonstrate a lesser environmental impact than the initial proposal and as such, in accordance with the adopted Community Participation Plan, did not trigger re-notification. However, Council did contact all objectors advising them of the changes and provided a period of two weeks to provide comments. The outcome of that consultation has not changed any submissions, and therefore all submissions received in response to the initial application remain valid and relevant to the assessment of the revised scheme.

This report seeks to reasonably balance the development rights of the property owner with respects to the applicable development controls against the expectations of neighbouring property owners. This balancing act finds that the proposal, as amended, results in no unreasonable impacts on neighbouring land, but does not disregard the fact that there will be a level of impact.

This Assessment Report concludes with a Recommendation that the DDP, as the consent authority, **APPROVES** the Development Application, as amended, subject to conditions as recommended.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for demolition works and the redevelopment of the property to provide a detached dwelling house with associated excavation and landscaping.

During the assessment of this application, the plans were modified in response to concerns raised by Council and through public submissions (this is discussed in greater detail under the Site History component of this report).

The application, as amended, involves the following works:

- Demolition of all existing improvements on the site.
- Excavation to depths of up to 5m with an estimated volume of 1,203m^3.
- Construction of a building across three levels including:
    - Four car garage.
    - Gymnasium, hot plunge pool, cold plunge pool, steam room and sauna.
    - Cellar.
    - Open plan living, kitchen and dining room with attached rumpus and bar.
    - Two secondary bedrooms including ensuite.
    - One master bedroom including an ensuite, walk in robe and library.
- Construction of an in-ground swimming pool along the southern boundary.
- Landscaping throughout, including at-grade, in planter boxes and on the roof of the building.

The building adopts a Spanish/Mediterranean typology of architecture with pigmented roughcast concrete render, patina copper sheeting and timber paneling. The design adopts deep recesses throughout, arched windows and has a barrel vaulted ceiling.

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 - 6.2 Earthworks
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C7 Excavation and Landfill
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 9 DP 9667 , 19 Birdwood Avenue COLLAROY NSW 2097
Detailed Site Description:	The subject site is legally identified as Lot 9 in Deposited Plan 9667 and is known as 19 Birdwood Avenue, Collaroy. The site falls within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011 and falls to the southern side of the road. The site is rectangular in shape with a width of 12.19m and a depth of 40.235m resulting in an overall surveyed area of 490.5m^2. The site presently accommodates an elevated single storey

	cottage and a detached double garage on the front (northern) boundary. The remainder of the site consists of pathways, decking, retaining walls and landscaping. The cottage is circa. 90 - 100 years old. Topographically the site inclines from front to rear (north to south) by approximately 5-6m via a generally gradual slope. Surrounding properties consist of detached dwelling houses to the south and west; the *Sargood* rehabilitation centre to the east; and Collaroy Basin to the north. Further south of the site there are other dwelling houses, apartment buildings and townhouses.

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.

APPLICATION HISTORY

There was no prelodgement meeting held with Council in relation to this development proposal.

In relation to the assessment of the DA, after public consultation and a preliminary assessment, Council wrote to the applicant on 21 February 2023, advising that the design could not be supported in its current form. Specific concerns were raised with regard to numerical non-compliances to the side boundary envelope, front building setback, and quantum of landscaped open space.

Concerns raised by neighbours were echoed with regards to potential visual privacy and view sharing impacts.

Council met with the applicant shortly after the issuance of the letter to discuss design options to ameliorate these concerns.

On 17 March 202, the applicant submitted a revised proposal to address the concerns raised in Council's letter, and the changes made included:

- Deletion of the entire roof terrace
- Enlargement of side boundary setbacks from 900mm to 1500mm to the east and west elevations (generally)
- Enlargement of the rear boundary setback from 6.6m to 7.3m
- Realignment of the swimming pool and associated modifications to the excavated levels
- Realignment of front stairway to accommodate a new mature tree
- Modifications to the landscaping plan

The amendments made to the plans are of a lesser environmental impact commensurate to the original proposal, and therefore in accordance with Council's adopted Community Participation Plan, the re-notification of the application was not not required. Notwithstanding that, Council wrote to all objectors on 20 March 2023 advising them that amended plans were received and available for review online

Objectors were afforded the opportunity to submit revised comments should they wish, and Council requested this be done by 31 March 2023. In that correspondence to the objectors, Council noted that *if you do not respond, I will assume that nothing has changed, and that your submission will remain valid as is*. In response to this email, Council received a response from one neighbour confirming that their submission remains valid and they maintain their concerns.

Submissions received are addressed elsewhere in this report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 aplies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. During the course of this application Council requested amendments to the design as detailed earlier in this

Section 4.15 Matters for Consideration	Comments
	report. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 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 12/12/2022 to 17/01/2023 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 8 submission/s from:

Name:	Address:
Mr Geoffrey Roger Brookes	4 / 7 Brissenden Avenue COLLAROY NSW 2097
Planning Progress	Po Box 213 AVALON BEACH NSW 2107
Mrs Julie Anne Martz David George Martz	2 / 7 Brissenden Avenue COLLAROY NSW 2097
Mr Raymond John Brown	6 / 7 Brissenden Avenue COLLAROY NSW 2097
Mr Graeme Kenneth Bennett Glenda June Bennett	24 Duncan Crescent COLLAROY PLATEAU NSW 2097
Ms Elizabeth Edmonds	3 Brissenden Avenue COLLAROY NSW 2097
Mr Graham Keith Hart	3 / 7 Brissenden Avenue COLLAROY NSW 2097
Mrs Susan Gay Hart	3 / 7 Brissenden Avenue COLLAROY NSW 2097

During the course of the assessment of this application, submissions were received from a number of units in the residential apartment complex at 7 Brissenden Avenue, and the dwelling-house at 3 Brissenden Avenue.

The following issues were raised in the submissions:

- View Loss
- Privacy - Visual and Acoustic
- Overshadowing / Loss of Solar Access
- Built Form Non-Compliance
- Building Bulk
- Geotechnical - Request for Dilapidation Report

The above issues are addressed as follows:

- **View Loss**

  All submissions received raised concern that the building would impact on their available views. A number of those submissions specifically raised concern with the proposed roof terrace and future impacts that could be caused from the use of this space - i.e., the erection of umbrellas and other shade devices. Submissions also requested height poles be erected so that an accurate depiction of view loss could be ascertained.

  Comment:
  At Council's request, height poles were erected on the site on 9 February 2023, and certification

from a surveyor was received shortly after confirming that the locations and heights of those poles are consistent with Council's request. On the same day, Council visited four (4) objecting properties and undertook a site visit.

During the course of the application, the Applicant amended the plans to, inter alia, remove the roof terrace from the building. The uppermost parapet level along the edges of the building remain the same (at RL 16.25). The removal of the roof terrace correspondingly resulted in the removal of elevated planter boxes, privacy screening and fencing and in doing so, negated the future potential for ancillary temporary structures to be erected on the roof.

View loss/sharing is discussed in detail under Part D7 *Views* of this report. However, on balance, whilst this report acknowledges that the development will have an impact on the current provision of views, it does not find that the impact is excessive or unreasonable.

- **Privacy - Visual and Acoustic**

  The submissions raised concerns that the amenity of neighbouring properties may be impacted by way of the use of the roof terrace and the proportions of south-facing windows from the master bedroom.

  Comment:

  The removal of the roof terrace effectively negates the concerns raised in relation to the roof terrace element. The master bedroom has a juliet balcony to its southern elevation incorporating full height glazing. That elevation sits 2.0m below the maximum building height and has a rear setback of 7.33m (in excess of the 6.0m requirement).

  The privacy of the space is heavily prejudiced by the design of neighbouring buildings which provide a primary outlook towards the subject site. The Applicant asserts that it is unreasonable that they be burdened with resolving privacy concerns when the objecting properties have not undertaken works to protect their own privacy (i.e., screening, obscure balustrading etc.). The windows are from a living space attached to the master bedroom which is considered likely to be a low-use room, particularly when having regard to the views available to the other side of the house.

  The windows in question are situated between 20m to 30m from the windows / balconies of objecting properties, and this spatial separation is acceptable under the requirements of Part D8 *Privacy* which require a 9.0m separation before any privacy protection measures should be employed.

  This concern has largely been addressed by the removal of the roof terrace. Impacts from the rear bedroom windows are assessed as acceptable and the impact of such is not tantamount to warranting a redesign, special conditions or refusal of the application.

- **Overshadowing / Loss of Solar Access**

  The submissions raised concerns that the proposal would result in unreasonable overshadowing / loss of solar access to neighbouring properties.

  Comment:

  The Applicant has provided shadow diagrams which detail that the proposal would have no

unreasonable overshadowing impacts on neighbouring properties. For the most part, the development would self-shadow its rear garden, the roof of the outbuilding at 3 Brissenden Avenue, and the western side elevation of the Sargood Centre.

This matter does not warrant a redesign or refusal of the application.

- **Built Form Non-Compliance**

  *The submissions raised concerns that the development seeks to vary a number of built form controls under the Warringah Development Control Plan 2011 (**WDCP 2011**) including landscape area, wall height, and side boundary envelope controls. The submissions assert that these non-compliances contribute to amenity impacts and excessive building bulk.*

  Comment:

  The proposal does seek a variation to a number of built form controls. Where a non-compliance does occur, it is assessed under the relevant section of this report against the underlying control objectives. In summary, the non-compliances have been comprehensively reviewed and are supported.

- **Building Bulk**

  The submissions raised concerns that the building is too bulky for the site.

  Comment:

  Notwithstanding the aforementioned variations to the built form controls, the building is not considered to be excessive in terms of bulk and scale. It is accepted that the architectural typology is different to neighbouring houses, however difference does not equate to an inconsistency with adjoining properties. In this circumstance, the difference comes from the simple fact that the project architect is using a different design vernacular to what is inherent in neighbouring properties.

  In considering the building bulk of a development, one must be cognisant of the findings of judicial precedent in this area, relevant to this is a judgement by Senior Commissioner Moore of the Land and Environment Court of NSW in the case of *Ausling v Willoughby City Council [2015] NSWLEC 1226,* in that the consent authority must find a development *acceptable* and is need not be assessed against the *yardstick of design nirvana* [105].

  In this instance, the building bulk is considered acceptable.

- **Geotechnical - Request for Dilapidation Report**

  The submissions received requested that should any consent be granted, that a dilapidation report be prepared for neighbouring properties.

  Comment:

  This request is standard to all approvals involving significant excavation near to boundaries, and is to be reflected by a condition of consent is consent is to be granted. The condition will apply to adjoining properties - being the Sargood Centre, 3 Brissenden Avenue, and 15-17 Birdwood Avenue. Excavation for the basement level ends some 13.0m from the rear boundary and the site is offset from the apartment complex at 7 Brissenden Avenue. It is considered unnecessary to require the Applicant to prepare a dilapidation report for this complex given this level of spatial separation.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	***Supported, without conditions***
Landscape Officer	***Supported, with conditions*** The application is assessed by Landscape Referral against Warringah Local Environmental Plan (WLEP) 2011 and the following Warringah Development Control Plan (WDCP) 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation The submitted amended Landscape Plans provides a landscape solution to the remaining landscape areas, and the planting design accords with the available landscape areas. Generally no concerns are raised with the exception of the large area at the rear of the property nominated as landscape area and occupied by paverslabs and groundcover planting in between. In the majority the area is paverslabs such that this area is viewed as hard paved area, and contrary to the meaning and intent of 'landscape area' in WLEP ie. " .. a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area'. Landscape Referral consider that the extensive area of paverslabs shall be reduced to promote greening to the area nominated as landscape area by either installation of lawn or installation of mass planted garden with paverslabs limited to a single row to provide access to the pool and across the dwelling facade only, and conditions shall be imposed. An Arborist Report is submitted and the recommendations are noted and no concerns are raised. All but one tree are exempt species that are able to be managed or removed without Council consent.
NECC (Bushland and Biodiversity)	***Supported, with conditions*** The proposal seeks approval for demolition and construction of a new dwelling house. The proposal has been assessed against the following provisions: • SEPP (Resilience and Hazards) 2021 - Chapter 2 Development within the coastal environment area • Warringah DCP - Clause E2 Prescribed Vegetation • Warringah DCP - Clause E4 Wildlife Corridors • Warringah DCP - Clause E6 Retaining unique environmental features The submitted plans show that works undertaken will require the removal of a range of exempt trees and vegetation and will retain trees 8, 9, 9A, 9B and 9C. No objections are raised. Conditions shall

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>be placed to manage potential impacts to remnant native flora and fauna.</td></tr>
<tr><td>NECC (Coast and Catchments)</td><td>Supported, without conditions</td></tr>
<tr><td>NECC (Development Engineering)</td><td>Supported, with conditions
No objections to approval subject to conditions as recommended.</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>Supported, without conditions
This application has been referred as it adjoins a heritage listed archaeological site, being Item A1 - Former Collaroy Hospital site - Development Disability Services Building and the Beach House, listed in Schedule 5 of Warringah Local Environmental Plan 2011.

This land once housed a representative example of an inter-war institutional building in the mediterranean revival style that was historically & socially significant as part of the former Collaroy Hospital. It Indicated the popularity of this area near the sea for health related institutions. However, as a result of a DA approved by Council in 2004 the building was demolished.

Therefore, the heritage significance of the site is now only archaeological, and since the demolition of the original buildings, the site has been completely redeveloped as the Sargood on Collaroy health services facility.

HERITAGE COMMENTS
Discussion of reason for referral
This application has been referred as it adjoins a heritage listed archaeological site, being Item A1 - Former Collaroy Hospital site - Development Disability Services Building and the Beach House, listed in Schedule 5 of Warringah Local Environmental Plan 2011.

Details of heritage items affected
Details of this archaeological heritage item in the vicinity, as contained within the heritage inventory, are:
Item A1 - Former Collaroy Hospital site
This land once housed a representative example of an inter-war institutional building in the mediterranean revival style that was historically & socially significant as part of the former Collaroy Hospital. It Indicated the popularity of this area near the sea for health related institutions. However, as a result of a DA approved by Council in 2004 the building was demolished.

Therefore, the heritage significance of the site is now only archaeological, and since the demolition of the original buildings, the site has been completely redeveloped as the Sargood on Collaroy health services facility.

Other relevant heritage listings
SEPP (Conservation | No | Comment if applicable</td></tr>
</table>

Internal Referral Body	Comments
	and Biodiversity) 2021 | | | Australian Heritage Register | No | NSW State Heritage Register | No | National Trust of Aust (NSW) Register | No | RAIA Register of 20th Century Buildings of Significance | No | Other | No | **Consideration of Application** This application proposes demolition of the existing dwelling and construction of a new 2 storey dwelling with a below ground/basement level and landscaping. The site adjoins the *Sargood on Collaroy* development (1 Brissenden Ave), which provides resort facilities for people with a spinal cord injury. The heritage significance of this site is now archaeological, being the site of the former Beach House (c.1921) and associated Collaroy Hospital (1939) which provided similar services on site since the1920's. This proposal at 19 Birdwood Ave will not impact upon any archaeological significance which may remain on the adjoining site. **Therefore, no objections are raised on heritage grounds and no conditions required.** **Further Comments** Consider against the provisions of CL5.10 of WLEP 2011: Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, with conditions***
Aboriginal Heritage Office	***Supported, with conditions*** The proposal was referred to the Aboriginal Heritage Office who raised no objections to the proposal, subject to the imposition of standard conditions as recommended.

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. 1353731S_02 dated 31 March 2023). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. HR-CW316Q-02 dated 31 March 2023).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Transport and Infrastructure) 2021

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP (Resilience and Hazards) 2021. Accordingly, an assessment under Chapter 2 has been carried out as follows:

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:
Northwards of the site and across Birdwood Avenue is the Bruce Bartlett Reserve Playground, open recreational area and the Collaroy Beach. The site is located within an established street with an existing alignment of buildings. The redevelopment of the site to provide a new dwelling house would not change the existing relationship that the house has with the coastal use area. To this extent, the consent authority can be satisfied that the proposed development is not likely to cause an adverse impact on the criterion listed in subclause (a). Correspondingly, the consent authority may be satisfied that the development is designed, sited and will be managed to avoid an adverse impacts on the coastal use area.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment:
The proposal is seeking to demolish an existing house and reconstruct a new house. From a coastal perspective the changes caused by this development are reasonably minor commensurate to the existing development, and therefore the consent authority can be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on the site, the coastal use area, or

any neighbouring land.

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

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

Comment:
This assessment has had regard to the *Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fishermans Beach* dated December 2016. There are no provisions is that document that are pertinent to this assessment or specifically applicable to the land.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential 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	Roof parapet: 7.9m Chimney: 8.5m	- -	Yes Yes (exempt)*

*Note: The definition of *Building Height* specifically excludes 'chimneys,' essentially meaning that they can exceed the prescribed height. In the above table, the chimney is included to depict what the highest portion of the total building is.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.2 Earthworks

Clause *Earthworks* of the LEP provides the following objectives:

(a) 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, and
(b) to allow earthworks of a minor nature without requiring separate development consent.

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report 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.

(f) the likelihood of disturbing relics

Comment:

The site is not mapped as having a high potential for Aboriginal or other relics. Should such be uncovered during demolition and excavation, conditions are imposed to ensure they are appropriately dealt with.

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

Comment:

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

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 s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Max. 7.5m	4.1%	**No**
B3 Side Boundary Envelope	(east) 4.0m	Encroachment to a maximum height of 0.3m	7.5%	**No**
	(west) 4.0m	Encroachment to a maximum height of 1.6m	40%	**No**
B5 Side Boundary Setbacks	(east) 0.9m	Basement and Garden Terrace: Nil Ground: 1.5- 4m Pool: 3.6m First: 1.5 - 4.7m	100% - - -	**No** Yes Yes Yes
	(west) 0.9m	Basement: 1.5m Ground: 0.9 - 1.5m Pool: 1.5m First: 0.9 - 2.5m	- - - -	Yes Yes Yes Yes
B7 Front Boundary Setbacks	(north) 6.5m	Basement: Nil - 6.5m Ground: 6.5m First: 13 - 16m	100% - -	**No** Yes Yes
B9 Rear Boundary Setbacks	(south) 6.0m	Basement: 12.8m Ground: 7.33m Pool: 1.7m* First: 7.33m	- - - -	Yes Yes Yes Yes
D1 Landscaped Open Space	40% (196.2m^2)	23.6% (116m^2)*	41%	**No**

*** Note:** WDCP 2011 Part B9 - permits swimming pools to encroach within the rear setback area, however they must not exceed 50% of the rear setback area. Further discussion on this matter can be found later in this report.

****Note**: WDCP 2011 Part D1 (1)(c) - requires that all landscaped areas must be at ground level (finished). Additional discussion regarding calculable landscaped open space in addition to alternate landscaped areas can be found later in this report.

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	No	Yes
B7 Front Boundary Setbacks	No	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
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Part B1 *Wall Heights* requires that continuous horizontal wall planes do not exceed a height of 7.2m, which is understood to be in place to regulate the bulk of a building relative to its height. In this instance, the proposal breaches the maximum wall height control, and that variation is assessed on its merits against the objectives.

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

  Comment:

  The proposed development is not anticipated to have any unreasonable visual impact consequent of the variations sought to the wall height control. The building sits below the height limit prescribed by the LEP. The building is articulated and stepped from the front and sides to minimise visual bulk. On balance and notwithstanding the variation, the visual impact of the building is acceptable.

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

  Comment:

  The height of the building will comfortably sit below the height of existing canopy trees, both existing on surrounding sites and to be planted as a part of this proposal.

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

  Comment:

  View sharing is discussed in detail under Part D7 *View Sharing* of this report.

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

  Comment:

  The variations sought to wall height are not found to be attributable to any unreasonable impacts on adjoining or nearby properties. Where an impact may exist, it is addressed under the relevant clauses within this report.

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

  Comment:

  The proposal does necessitate excavation into the site to match the levels of the adjoining road reserve. The excavation is not casual of the variations to the wall height control.

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

  Comment:

  The roof is flat and incorporates on structure plantings. The height of the building sits below the prescribed limitation and and considered acceptable.

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

Part B3 *Side Boundary Envelope* prescribes a spatial envelope a building is to be contained within. That envelope is measured on each side boundary to a height of 4.0m before turning inwards at 45 degrees. Any portion of the building (excluding roof) that projects outside of this, is deemed to be '*outside*' of the envelope.

In this proposal, the building is outside the prescribed envelope on both the eastern and western elevations, up to a maximum height of 1.6m.

The extent of breach is shown in the following diagrams prepared by the assessment officer (in elevational form) and the architect (in 3D form).

(Note: - the 3D form shows the now deleted roof terrace - however for the purpose of the building envelope, the encroachment remains the same)

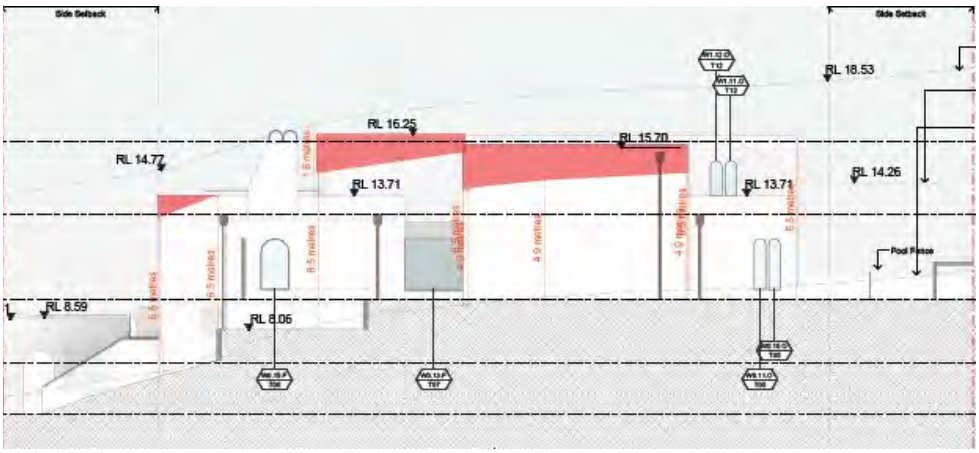


Figure 1: Working plan of western elevation, prepared by assessment officer

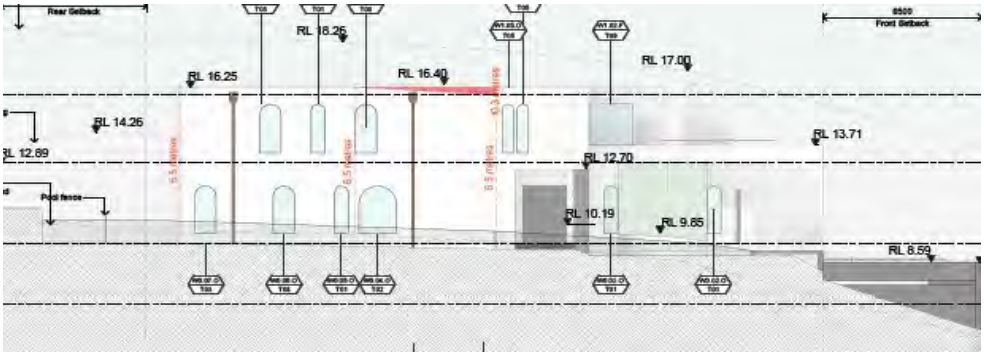


Figure 2: Working plan of eastern elevation, prepared by assessment officer

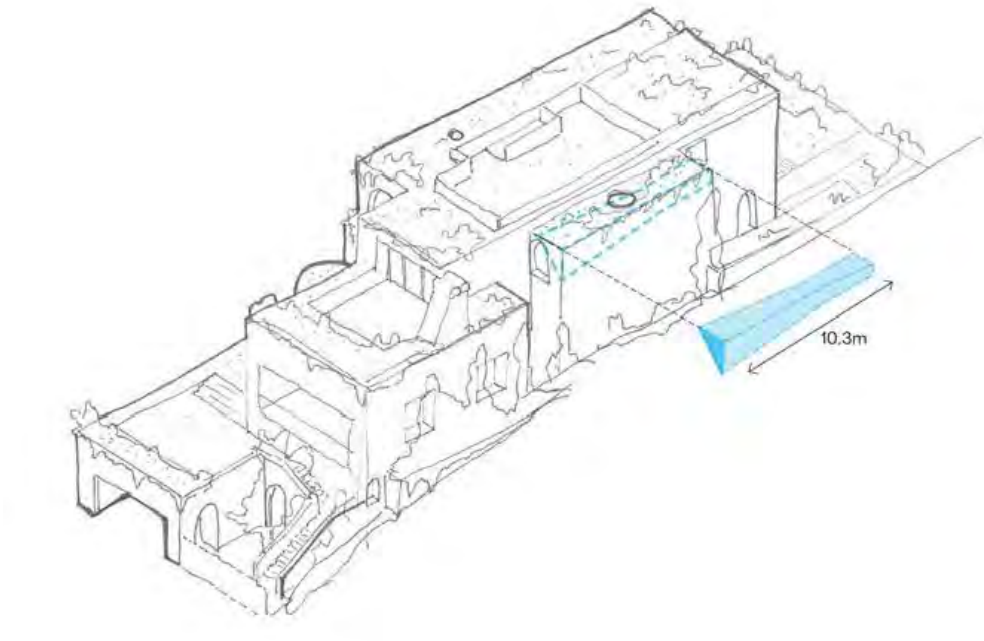


Figure 3: 3D axonometric envelope drawing, prepared by the architect (SJB)

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

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

  Comment:

  The portions of the building that encroach the envelope are compliant with the prescribed height of buildings control, and display setbacks greater than those required under the DCP. Enforcing strict compliance with the control would not manifestly reduce the height and bulk of the development. In consideration of the building as a whole, it is well articulated and stepped to present as a visually interesting building, as depicted in the above 3D massing model.

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

  Comment:

  The encroachment to the side boundary envelope is not attributable to any unreasonable loss of light, solar access or visual and acoustic privacy.

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

  Comment:

  The building is sunken/excavated into the site in order to reduce its height and impacts on the views enjoyed by neighbours to the rear. The building is stepped up the slope (above ground) in a manner responsive to the natural topography.

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.

B5 Side Boundary Setbacks

Part B5 *Side Boundary Setbacks* requires that structures be setback 0.9m from the side boundaries. The garage and garden terrace atop the garage encroach within this setback area and provide a nil setback to the eastern boundary. The remainder of the dwelling house and swimming pool achieve compliance with the setback requirements.

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

- *To provide opportunities for deep soil landscape areas.*

  Comment:

  Under the requirements of Part D1 *Landscaped Open Space* of the DCP, areas must be at least 2.0m in width in order to constitute as deep soil areas, and this requirement is in excess of the setback requirements. On that basis, the variation sought is not attributable to any shortfall in deep soil landscaped areas. Enforcing strict compliance with the control requirements would not correspondingly increase landscaping, but may in fact do the opposite by requiring the garage to shift inwards of the site into landscaped areas (further noting that the width of the garage, being 5.3m, is not excessive).

- *To ensure that development does not become visually dominant.*

  Comment:

  An assessment provided below under Part B7 *Front Boundary Setbacks* details the buildings relationship to the public domain and the street which should be read in conjunction with this objective. The encroachment into the side setback area is not considered to be causal of any

excessive visual dominance as the interface it shares with the Sargood site is blank. The encroachment into the side setback negates the need for an undesirable 'cavity' to be created between the two properties.

- *To ensure that the scale and bulk of buildings is minimised.*

  Comment:

  This matter is discussed in detail throughout this report, but with regards to the side setback variation specifically, there is no unreasonable bulk or scale.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

  Comment:

  As mentioned above, the interface to the *Sargood Centre* building is blank, and therefore the building would not cause any harmful impacts to this interface.

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

  Comment:

  View sharing is discussed under Part D7 *Views* of this report. The variation proposed to the side boundary setback does not contribute to any view loss.

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.

B7 Front Boundary Setbacks

Part B7 *Front Boundary Setbacks* requires that structures are to be setback 6.5m from the front boundary, and that the front setback area (that is, the space between the boundary and the building) should be landscaped.

The proposal breaches numerical compliance with the control as the garage structure has a nil setback to the front boundary. The remainder of the building achieves compliance with the control (or is setback greater than what the control requires).

Two extracts of the architectural package are provided below; one being a marked-up version of the longitudinal section which shows the encroaching portion of the building (into the front setback area) highlighted in red; and the other being a photomontage showing the garage.

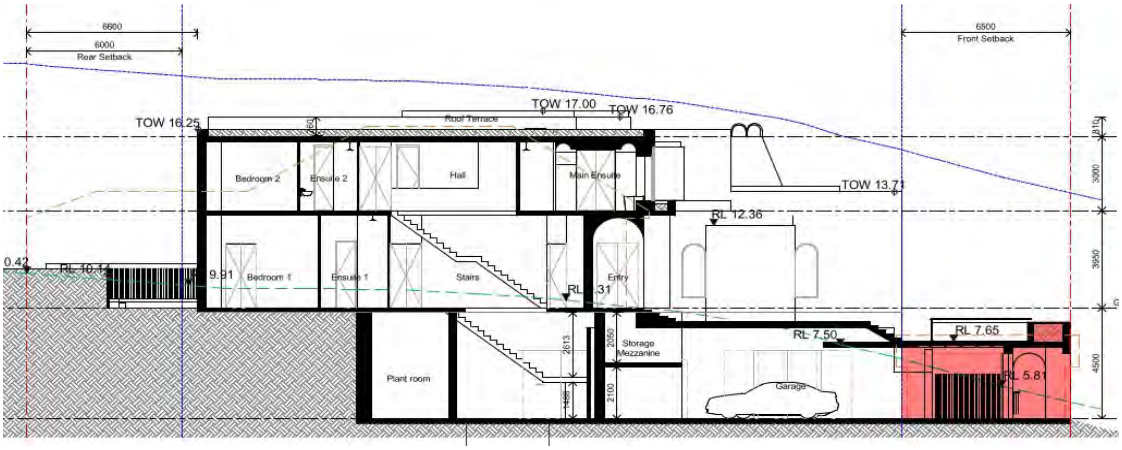


Figure 4: Longitudinal section of proposal with encroaching elements highlighted in red

Figure 5: Photomontage of the front of the proposed dwelling

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

To create a sense of openness.

Comment:

Generally a solid structure built hard-up to a front boundary, particularly in a coastal setting, would be considered excessively bulky and detrimental to the streetscape. However, such a consideration must give thought to what the alternative (i.e., compliant proposal) might achieve. A photograph is copied below showing the current garage which is built to the front boundary, generally in the same location as the proposed garage.

Figure 6 : Existing streetscape showing double garage

The following levels are relevant:

	Existing garage	Proposed garage
Slab	RL 5.20	RL 4.50
Top of door	RL 7.33	(approx) RL 7.10
Ridge	RL 8.59	RL 8.40

The proposed garage is of a similar width and lesser in height than the existing garage, and therefore the proportionality of the structure does not alter the existing sense of openness. Further, as evidenced in the above photograph, were strict compliance to be required, a pedestrian would be confronted with a planar western side elevation of the Sargood building which, arguably, has less articulation and visual interest than the proposed garage.

The proposed garage within the front setback is well designed with interesting materials, visual relief in the form of timber reliefs, and a good selection of landscaping that 'spills' over the edges of the structure.

On balance of these factors, the proposal is considered to result in a superior front setback outcome commensurate to the existing scenario, and to a compliant scenario.

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

  Comment:

  There is not a uniform pattern of development along Birdwood Avenue. The building is different in its architecture to surrounding buildings but remains compatible. The proportions of the

building and landscape treatment are consistent with the expectations of an R2 zone.

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

  Comment:

  For the reasons described above, the development is found to enhance the visual quality of the streetscape and adjacent beach reserve, and will generate visual interest.

- *To achieve reasonable view sharing.*

  Comment:

  The variation proposed to Part B7 is not attributable to any view sharing impacts form the public or private properties. The garage is not visible from the dwellings to the south, and is lesser in height than the levels of the balconies at no. 15 Birdwood Avenue. In any event, the primary views of that property are in a due-south orientation and not across the subject site.

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

B9 Rear Boundary Setbacks

Part B9 *Rear Boundary Setbacks* requires that structures be setback at least 6.0m from the rear boundary, but permits the rear area to accommodate a swimming pool, if the pool is less than half of the total setback area defined by the 6.0m control.

The proposed dwelling-house complies, by providing a 7.3m setback to the rear boundary.

The swimming pool is setback 1.5m from the rear boundary. The pool measures approximately 14m^2 which equates to 19% of the rear setback area, and therefore complies with the provisions of Part B9.

No further assessment is required in this instance.

C7 Excavation and Landfill

The proposal seeks to excavate approximately 1,203m^3 to continue the natural ground level at the street edge to provide level access to the basement and beyond.

Part C7 *Excavation and Landfill* of the DCP provides the following objectives:

- *To ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.*
- *To require that excavation and landfill does not create airborne pollution.*
- *To preserve the integrity of the physical environment.*
- *To maintain and enhance visual and scenic quality.*

Comment:

The relevant planning instruments do not set any upper limits to the level of excavation, but rather seek to ensure that excavation does not have an adverse environmental effect; visual effect from the streetscape; or an adverse visual or amenity effect to neighbouring properties. The level of excavation is not incongruent with other basement level excavations within the area.

In this instance, the level of excavation is not considered to be contrary to any of the listed objectives and is therefore deemed to be acceptable.

D1 Landscaped Open Space and Bushland Setting

Part D1 *Landscaped Open Space* requires that 40% of the site be landscaped, and that the areas which make up that 40% be provided at grade; with a minimum soil depth of 1.0m; and have minimum dimensions of 2.0m.

The proposal does not comply with the standard, and instead provides an calculable landscaped area of 116m^2, equivalent to 23.6% of the total site area.

It is worth noting that the development does provide landscaping in addition to the above, described as 'at grade' plantings, in the form of plantings down the side setbacks of the house with minimum widths of 1.5m (providing an additional 46.4m^2) and planter boxes at Level 1 and the roof with an additional area of 74.4m^2. Were all these elements included in the landscaped area calculation (which they are not to ensure correct assessment), the ratio of landscape coverage would be a compliant 48.3% or 236.8m^2.

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:

  Commensurate to the existing situation on site, the proposal provides a greater provision of at-grade landscaped area which in turn is enhancing to the streetscape. Additionally, the proposal includes a planter box atop of the garage which, upon maturity, would allow for the 'spilling' of landscaping over the front facade and soften the built form. On balance, the landscape solution in conjunction with the architectural form is considered enhancing to the streetscape.

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

  Comment:

  The site does not presently provide any significant landscape features and is largely developed. The proposal will provide for significantly more plantings than the existing situation and, by way of having landscaping interspersed around the house and on various levels, could provide for habitats for different forms of wildlife whilst being free from predators (i.e., nesting for birds in the roof garden areas).

- *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 proposed landscaped areas are sufficient in scale to accommodate plantings. Whilst Part D1 requires landscaped areas to have minimum widths of 2.0m, that minimum is not considered a requirement in order for landscaping to succeed.

- *To enhance privacy between buildings.*

  Comment:

  The development provides greater than required side and rear setbacks, and those setback areas are all landscaped. The landscape solution provided by the development is satisfactory to ensure that a reasonable degree of privacy is afforded to neighbours and future occupants.

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

  Comment:

  The site retains sufficient areas to accommodate outdoor recreational opportunities to meet the needs of occupants.

- *To provide space for service functions, including clothes drying.*

  Comment:

  The site retains sufficient areas to accommodate service functions like clothes drying.

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

  Comment:

  The proposal has been reviewed by Council's Development Engineer who is satisfied with the proposed stormwater solution.

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

D7 Views

The public exhibition of the application attracted submissions from the residents of 3 Brissenden Avenue to the south, and from several residents in the unit block at 7 Brissenden Avenue to the south-west. This assessment finds that the impact on each of the units in 7 Brissenden Avenue is similar (but not the same) and therefore for clarity, herein this view loss assessment the impact will be assessed from 7 Brissenden Avenue collectively, and 3 Brissenden Avenue independently.

To assist in this assessment, Council requested that height poles be erected which occurred on 8-9 February 2023, whereby Council's assessment officer visited a number of the objecting properties to observe the potential impact. Photographs used in the following assessment were taken by the assessment officer on those site visits.

The relationship between the three properties is diagrammatically depicted on the below image:

Figure 7 : Location of Key Properties for View Sharing Assessment

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

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

  Comment:

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

  1. Nature of the views affected

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

  Comment to Principle 1:

  The current views from all objecting properties is similar, albeit the quality of view varies from property to property. That view is generally in a northerly or north-easterly direction looking towards the Pacific Ocean, the land-water interface of Narrabeen Beach (generally north of South Narrabeen SLSC), and distant headlands in both the Northern Beaches and Central Coast.

  By virtue of the objecting properties already sitting behind a row of established buildings, the views from the objecting properties cannot be described as 'complete' or 'whole' views, as each of the views is intersected by at least one (if not several) existing buildings.

  By way of what the view is, and the fact that they are not complete or whole, the views available are not "*iconic*" as termed by Roseth SC in Principle 1.

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

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

Comment to Principle 2:

From each of the objecting properties, the views are available from the upper levels in those buildings, which generally comprise of living spaces. There may be a degree of view impact from the ground level of the objecting properties, however that impact is difficult and impractical to avoid and therefore, the assessment shall focus on the upper levels. Several photographs of the views observed are copied below:

Photograph 1: Taken from the northern edge of the first floor primary balcony of 3 Brissenden Avenue in a standing position. Note the outbuilding of 3 Brissenden Avenue in foreground, and red pitched roof in background which depicts the existing dwelling at the subject site, 19 Birdwood Avenue. The view is over a rear boundary.

Photograph 2: Taken from the northern edge of the first floor balcony of Townhouse 4/7 Brissenden Avenue in a standing position. View is from a balcony, master bedroom which leads to the balcony, and a living space which also leads to the balcony (Note: there is a separate living space on the level below which includes a kitchen). The view is over a side boundary.

Photograph 3: Taken from the north-eastern edge of the first floor balcony of Townhouse 5/7 Brissenden Avenue in an elevated seating position (evidenced by the height of the handrail) accessible from a living space. The subject site, 19 Birdwood Avenue is in the foreground with the red tile roof, and the Sargood Centre is in the background with a flat roof and photovoltaic cells. The view is over a side boundary.

Photograph 4: Taken from the northern edge of the eastern first floor balcony of townhouse 6/7 Brissenden Avenue, accessible from the primary living area. The view depicted is only available from the balcony and not the internal living areas. The view is over a side boundary.

3. Extent of impact

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

Comment to Principle 3:

At no point is the proposed development removing all views available from any individual property, but rather it is acknowledged that the building will have an impact on a portion or percentage of the available views.

The loss of views from 3 Brissenden Avenue is considered to be the most significant out of the objecting properties. That view is due north over a rear boundary and is focal to the primary living spaces and balcony. From a seated position, it is anticipated that the proposal would

remove the land-water interface of North Narrabeen Beach. District views of Elanora Heights in the distance would remain. From a standing position, a portion of the water views would be impacted, but it is anticipated that the land-water interface would remain available. As seen in Photograph 1 above, the view is partially obscured by a large Norfolk Island Pine tree that sits on public land.

The views from the uppermost level of 3 Brissenden Avenue (understood to be the master bedroom) would be largely unaffected by the proposal. That bedroom has a balcony looking north. The height of the proposed dwelling is lesser than the ridge height of the existing dwelling, however it is the squaring off or broadening of the built form (rather than a triangular-pitched roof form) that contributes to the impact, and this is discussed in detail.

On balance of the levels of impact described by Roseth SC, from 3 Brissenden Avenue, the impact on 3 Brissenden could be described as ***moderate***.

From the townhouses in 7 Brissenden Avenue, each of the views to be affected are available over a side boundary (of the development site). For each of the townhouses, the proposal would reduce a portion of their arc of view, but would not impact on the view entirely. The townhouses have a much wider arc of view compared to 3 Brissenden Avenue (largely because 3 Brissenden Avenue has mature vegetation throughout the rear garden), and the views that are available are obstructed by a series of roofs already. The development would impact on available water views atop of and around the apex of the existing roof, but will not impact on any land-water interface views.

In the totality of views available from these townhouses, and having regard to the quality and level of intactness of the view, the impact is considered to be 'one tier' lower than the impact to 3 Brissenden Avenue, thereby being appropriately described as ***minor***.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

From the outset, it is first necessary to establish several facts about the existing dwelling on the subject site. The existing dwelling is an elevated single storey cottage with a pitched roof. That cottage has a surveyed ridge height of RL16.40 and chimney of RL16.62.

The proposal provides for a three-storey dwelling house with a roof slab height of RL15.95 (0.45m lower than the existing ridge) and a rooftop planter structure with a parapet height of RL16.25 (0.15m lower). The building is lower than the existing building and, along its southern edge, is 2.0m below the maximum prescribed 8.5m height. To keep the height down, the building has been excavated into the slope of the land.

It is therefore considered that the overall numerical height of the building does not cause any

unreasonable impact.

What does cause the impact is the 'squaring' of the roof or the broadening of the built form - that is, replacing the existing pitched roof with a full floor of the building, the flank edges of which do sit (in part) outside of the prescribed side boundary envelope. Enforcing strict compliance with the side boundary envelope would do little to benefit the views from 7 Brissenden Avenue, as the primary elements impacting on those views are the forward projection of the building, which is compliant. From 3 Brissenden Avenue, enforcing strict compliance may improve the view corridor alongside the western edge of the building, as it would need to be stepped in further in order to comply. That stepping could open up another metre of view corridor, however the area gained by that corridor would be heavily filtered by the smaller Norfolk Island Pine tree in the distance.

Therefore, the envelope breach does not cause an unreasonable level of impact to the view corridor from 3 Brissenden Avenue.

Concerns have been raised by objectors regarding the proposed planting schedule and that those plants may impact on views. Vegetation has priority over view corridors, as is consistent with the zone objectives. It is also noted that vegetation can be planted on a site without Council consent. Consideration has been given as to whether the rooftop planter structures would cause an unreasonable impact and whether they should be deleted. These elements are compliant with the building height control and have a maximum depth of 300mm. The plants within the rooftop garden are all generally low lying (*Carpobrotus glaucescens*, *Lampranthus* 'Pink Explosion', *Gazania rigens* 'New Day Pink', *Eremophila glabra* 'Blue Horizon', *Myoporum parvifolia*, Lomandra 'Lime Tuff') which vary in height between 100mm and 500mm. The alternative to this garden is a flat concrete roof which, whilst marginally lower than the planter box parapets, would have an worse visual impact on neighbouring properties than overlooking a rooftop garden.

There are alternate compliant designs that could be built on the site that may have a significantly worse impact on the views enjoyed by neighbours, particularly when considering the overall height of the proposed building. It is also noted that, given the R2 Low Density Residential zoning of the land, a dwelling house could be constructed on the site with a greater height and no consideration of views, under the provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes)*. Whilst that is not the case here, it is an option that could be pursued by the landowner.

The proposed dwelling is considered to be well designed, visually interesting, and has had due regard to neighbouring amenity, despite there being some non-compliance and a level of impact. The level of impact has been reduced throughout this assessment process, through the deletion of the roof terrace and the increase to the side boundary setbacks. The proposal is now in such a form that enforcing stricter compliance with the envelope controls would not manifest into any materially different view sharing outcome, and has progressed to such a state that it is the opinion of the assessing officer that a more skillful design would not yield a better outcome.

The building is reasonable for the site. There must be a reasonable expectation for all parties that the redevelopment of a single storey cottage into a more contemporary scaled dwelling house would have an additional level of impact beyond the existing situation. In this instance, that level of impact is deemed to be acceptable and that the view sharing outcome is reasonable.

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

Comment:

For the reasons described above and throughout this report, the proposal is considered to be an innovative design that improves the urban environment.

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

  Comment:

  The proposal is not seeking to remove any canopy trees.

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

D8 Privacy

Concern has been raised by properties to the south that the first floor south facing windows from the master bedroom would detract from the level of visual privacy currently enjoyed by those dwellings.

The windows in question create a Juliet-style balcony and consist of four panes of glazing measuring 905mm (w) by 2600mm (h) each. The windows are setback 7.33m from the rear boundary.

The distance between the windows and the northern edge of the primary deck from 3 Brissenden Avenue is in the vicinity of 29 - 30m, which is more than double the width of the site. The distance between the windows and the north-eastern corner of the apartment complex at 7 Brissenden Avenue is approximately 20m.

The spatial separation is more than double the 9.0m requirement under the DCP. The windows are from a bedroom only and and outlook from the windows is not the primary aspect from the room (which would be northerly towards the beach).

The impact is reasonable and is consistent with what could reasonably be expected to be constructed on the site.

D9 Building Bulk

This report acknowledges that the building projects outside of the prescribed building envelope, however in this particular instance that variation is not attributable to any excessive building bulk or loss of views. The proposal is an interesting and high quality design which is different in style and vernacular to other buildings on Birdwood Avenue. The architectural typology is reflective of a seaside environment and, upon the maturity of the landscaping throughout the site, will blend in well with the environment and will be a positive addition to the street and to the Collaroy Beach environs.

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 $47,945 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $4,794,509.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSIONS

This assessment report acknowledges that the development will have an impact on the amenity of neighbouring properties, particularly through a change to their current available views.

The site currently accommodates a modest scale single storey cottage which affords neighbouring properties views over and around the pitched roof. The proposed development is considered to be a well designed dwelling-house with regard to its impacts on neighbouring amenity, streetscape and the character of the area, particularly in that it is providing a new three-storey house, but at a height less than that of the existing single storey cottage. The view sharing outcomes of the proposal have been interrogated carefully and on balance are deemed to be acceptable, and enforcing strict compliance with the development controls would not manifest in a materially different outcome.

The architecture of the proposal is different to its surroundings and, in part, this vernacular is attributable to several of the built form non-compliances. Most notably is the variation to landscaped

area, whereby non-compliance is largely caused by the requirement for landscaped areas to be a minimum of 2.0m in width. The proposal provides several areas with these dimensions, however the bulk of landscaping is less than that, at 1.5m in width. Council's Landscape Officer has advised that the ability to plant shrubs and trees does not materially change in areas with widths of 1.5m vs. 2.0m. The provision of on-structure landscaping will also contribute to softening of the building. Upon completion, maturation of the landscaping and "settling-in" of the building, the site will look significantly greened appearance, and vegetation will dominate the facades. At street level, every horizontal surface is topped by planter boxes that will spill over the facade. To the causal observer, the house will appear well landscaped and the shortfall in calculable landscaped open space will not be discernible or have any deleterious effects on the final outcome.

The variation to the front boundary setback would also not give rise to any adverse streetscape impacts, largely because the structure proposed is in the same location, and of a lesser height than the existing building. Contrary to the usual position, it is assessed that enforcing strict compliance with the control would result in an inferior streetscape outcome, as the 'end' of Birdwood Avenue would be dominated by a large blank concrete wall of the Sargood facility. The proposed garage is considered an improved visual outcome commensurate to that, which is free of any amenity impact to neighbours, and is therefore supported.

Concerns have also been raised regarding the potential for overlooking from the rear bedroom windows. Visual privacy is always a concern for homeowners during the application phase of one of their neighbours, and rightly so. In this instance, the neighbouring buildings display a significant setback, well in excess of the control requirements (proposed is 30m v required is 9m). The offending portion is from the master bedroom suite and the potential privacy impacts of that are not tantamount to refusal.

Throughout the course of the assessment of this application, the applicant has been cooperative and responsive to Council's requests and has sought to discuss their proposal with neighbouring property owners. Significant concessions to the amenity of the home have been made (i.e., deletion of the roof terrace) even though those elements complied with the DCP. Changes aside from that might all appear minor, however when viewed holistically they result in a superior building with better landscaping, less bulk, and a better streetscape presentation.

On balance, the proposed development will be a positive addition to the street and the character of the area, and is worthy of 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 DA2022/2087 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 9 DP 9667, 19 Birdwood Avenue, COLLAROY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA-0101 Rev. 8 - Site Plan	16 March 2023	SJB
DA-0105 Rev. 8 - Landscape Area Diagram	16 March 2023	SJB
DA-0301 Rev. 8 - Demolition Plan	16 March 2023	SJB
DA-0401 Rev. 8 - Excavation Plan	16 March 2023	SJB
DA-1001 Rev. 8 - Basement Floor Plan	16 March 2023	SJB
DA-1002 Rev. 8 - Ground Floor Plan	16 March 2023	SJB
DA-1003 Rev. 8 - First Floor Plan	16 March 2023	SJB
DA-1004 Rev. 8 - Roof Plan	16 March 2023	SJB
DA-1401 Rev. 8 - Elevations	16 March 2023	SJB
DA-1501 Rev. 8 - Sections	16 March 2023	SJB
DA-1502 Rev. 8 - Sections Sheet 2	16 March 2023	SJB
DA-2001 Rev. 8 - Schedule Windows	16 March 2023	SJB
DA-0202 Rev. 8 - Materials Sheet	16 March 2023	SJB

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Arboricultural Impact Assessment Report	23 November 2022	Jacksons Nature Works
BASIX Certificate no. 1353731S_02	31 March 2023	Efficient Living
Construction Management Plan Issue 1	28 November 2022	Unspecified
Geotechnical Investigation Report (ref: 2022-256)	25 November 2022	Crozier Geotechnical Consultants
NatHERS Certificate no. #HR-CW316Q-02	31 March 2023	Efficient Living

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**
LA LP 01/03 - Landscape Plan - Basement	17 March 2023	Black Beetle
LA LP 02/04 - Landscape Plan - Ground	17 March 2023	Black Beetle
LA LP 03/03 - Landscape Plan - Level 01	17 March 2023	Black Beetle
LA LP 04/03 - Landscape Plan - Rooftop	17 March 2023	Black Beetle
LA LP 05/03 - Notes / Plant Schedule / Legend	17 March 2023	Black Beetle

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

(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 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 $47,945.09 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 $4,794,509.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

7. **Construction, Excavation and Associated Works Bond (Drainage works)**
The applicant is to lodge a bond of $2000.00 as security against any damage to Council pit while connecting site stormwtaer connection to it or failure to complete the construction of stormwater drainage works as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

8. **On Slab Landscape Works**
Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. Soil depths to planters shall be as shown on the Landscape Plans.

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

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

9. **Stormwater Disposal**
The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings,

paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Council pit in Birdwood Avenue.

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

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

10. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

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

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.

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. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

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

Reason: To provide public and private safety.

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

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

Reason: To facilitate suitable vehicular access to private property.

15. **Stormwater Drainage Application**
The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the site stormwtaer connection to Council pit along frontage of site in Birdwood Avenue which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

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

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

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

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

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

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

18. **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.

19. **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 THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Tree Removal Within the Property**
This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:
a) tree ID number 9B
b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

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

Properties:

- 15-17 Birdwood Avenue, Collaroy
- 1 Brissenden Avenue, Collaroy
- 3 Brissenden Avenue, Collaroy

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

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

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

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

22. **Public Liability Insurance - Works on Public Land**
Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of $20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

23. **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

24. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation located on adjoining properties,
ii) 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/Project 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 complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

25. **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.

26. **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.

27. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

28. **Geotechnical Requirements**
All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

29. **Demolition Works - Asbestos**
Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

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

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

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

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

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

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

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

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

32. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 68] are supervised by an

appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier and/or Roads Authority.

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

33. **Notification of Inspections (infrastructure works to be handed over to Council)**
Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:
(a) Installation of Silt and Sediment control devices
(b) Prior to connection of pipe to pit
(c) Prior to backfilling of pipelines

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

34. **Vehicle Crossings**
The Applicant is to construct one vehicle crossin 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 1N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

35. **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.

36. **Aboriginal Heritage**
If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning and Environment.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

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

37. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Landscape Plan(s), and inclusive of the following conditions:
a) landscape works are to be contained within the legal property boundaries,
b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
c) the paverslabs at the rear of the property shall be limited to single row alignment across the dwelling and to provide access to the pool, with the remaining area to be either lawn or mass planted garden bed,
d) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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.

38. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

39. **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.

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

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

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

Details demonstrating compliance with this condition are to be submitted to the Principal

Certifier prior to the issue of an Occupation Certificate.

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

41. **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.

42. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

43. **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.

44. **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

45. **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(s) and any conditions of consent.

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

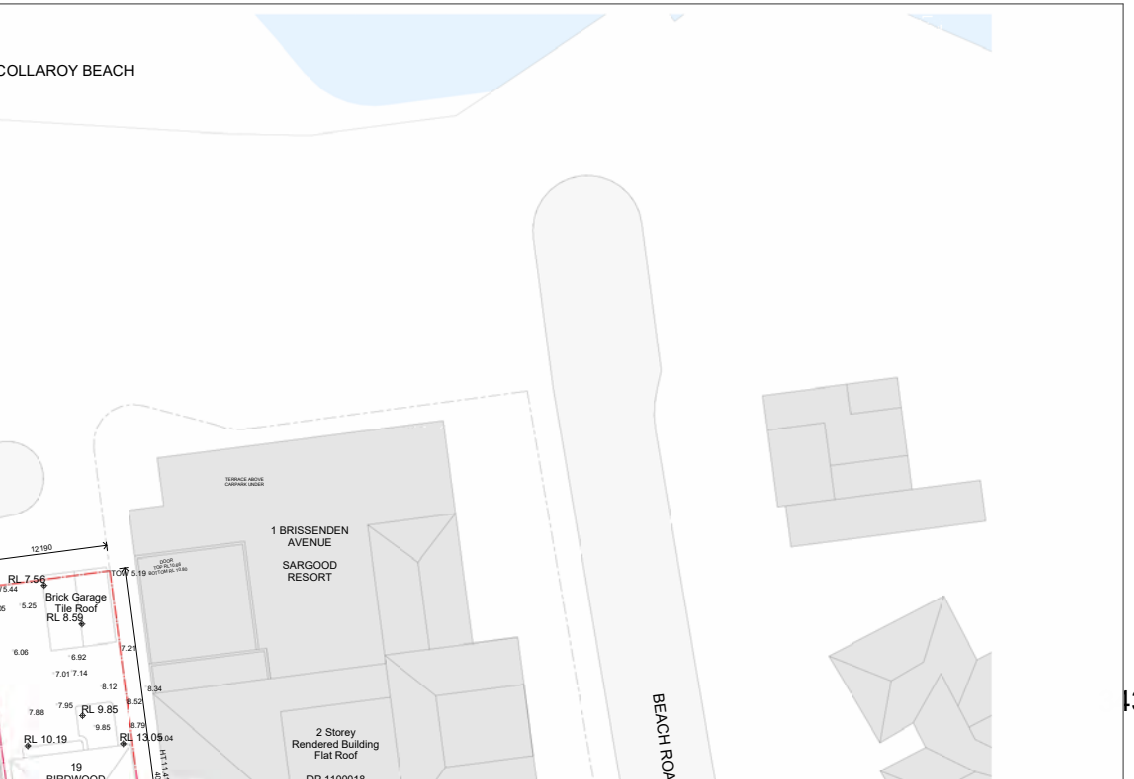
Reason: To maintain local environmental amenity.

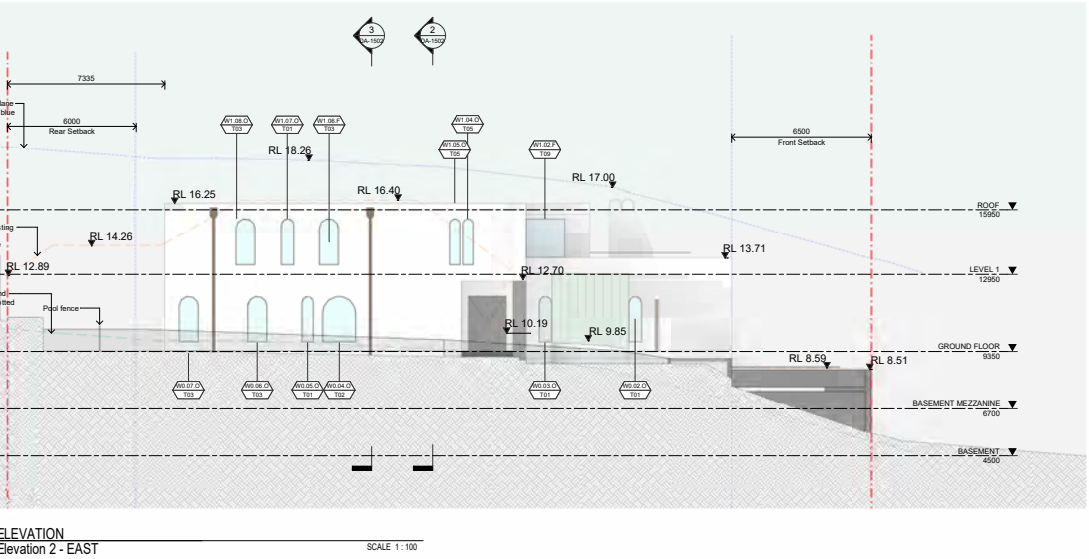
46. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

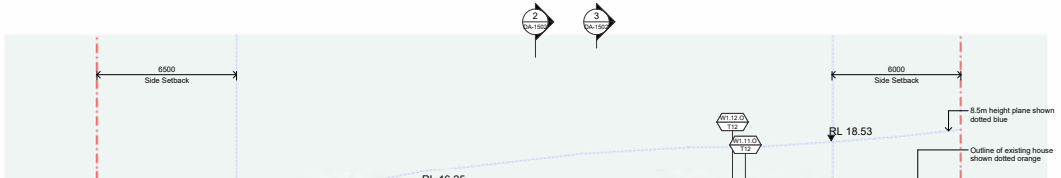
47. **Swimming Pool/Spa Motor Noise**
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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


COLLAROY BEACH
1 BRISSENDEN AVENUE
SARGOOD RESORT
Brick Garage Tile Roof
RL 7.56
RL 8.59
RL 9.85
RL 10.19
RL 13.05
2 Storey Rendered Building Flat Roof
BEACH ROA



ELEVATION
Elevation 2 - EAST
SCALE 1 : 100



ITEM 3.7	**DA2022/1460 - 3 KAMILAROI ROAD BAYVIEW - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE AND SECONDARY DWELLING**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2023/246314**
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 DA2022/1460 for demolition works and construction of a dwelling house and secondary dwelling on land at Lot 3 DP 26331, 3 Kamilaroi Road BAYVIEW, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1460

Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 3 DP 26331, 3 Kamilaroi Road BAYVIEW NSW 2104
Proposed Development:	Demolition works and construction of a dwelling house and secondary dwelling
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:	Kiran Deep Kaur Nau Nihal Singh
Applicant:	Claudia Daher

Application Lodged:	16/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	26/09/2022 to 10/10/2022
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 2,144,777.00

EXECUTIVE SUMMARY

The application involves the demolition of the existing dwelling and the construction of a new dwelling with a secondary dwelling incorporated within the primary structure.

The application is referred to the Development Determination Panel (DDP) as there are 8 submissions, each raising objection to the proposal.

The eight submissions raise issues with regard to non-compliance with the planning controls, impact on character, view (outlook) impacts, residential amenity impact and the visual impact of the development. These submissions are addressed in the report and do not warrant the refusal of the application.

Amended plans were submitted in response to Council's and the neighbours concerns relating to non-compliance with planning controls and building bulk.

Specifically, the amended plans provided a scheme that complied with all relevant built form controls under the Pittwater DCP, and the Building height Development Standard under the Pittwater LEP.

Further, the amended plans provided screening to be integrated in to the wall at the southern elevation to reduce visual impact caused by the continuous wall plane.

Overall, the compliance with all planning controls and the well articulated built form provides a reasonable design for the site.

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 demolition works and the construction of a part 2-3 storey dwelling house with an attached secondary dwelling including earthworks, tree removal and landscaping.

Key components of the proposed building are as follows:

Lower Ground Floor

- Basement garage for the dwelling house.
- Attached secondary dwelling with two bedrooms, a bathroom, a laundry and kitchen.

Ground Floor

- Open plan kitchen, living and dining with access to an east facing balcony.
- Second living room and bedroom.
- Entry portico.
- Bathroom, laundry and WC.

First Floor

- Main bedroom with ensuite and WIR.
- Three additional bedrooms with ensuites.
- Living room.
- West facing balcony.

Amended Plans

Amended plans were submitted on 5 December 2022, which included a greater setback to the southern elevation. Further amended plans were submitted on 6 March 2023 to replace part of the southern elevation wall with lightweight screening to reduce the visual bulk.

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 - 5.4 Controls relating to miscellaneous permissible uses
Pittwater 21 Development Control Plan - A4.4 Church Point and Bayview Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy

SITE DESCRIPTION

Property Description:	Lot 3 DP 26331 , 3 Kamilaroi Road BAYVIEW NSW 2104
Detailed Site Description:	The subject site consists of an allotment located on the eastern side of Kamilaroi Road. The site is irregular in shape with a frontage of 17.22m along Kamilaroi Road and a depth of 49-53m. The site has a surveyed area of 864.1m². The site is located within the C4 Environmental Living zone and accommodates a dwelling house. The site is on a corner allotment, having a secondary frontage at Vista Avenue. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development.

Map:

SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 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 26/09/2022 to 10/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Withheld	BAYVIEW NSW 2104
Jane Gamson	9 Kamilaroi Road BAYVIEW NSW 2104
Ms Yvonne Annemarie Lang	2 Vista Avenue BAYVIEW NSW 2104
Mr Robert Graeme Jones	10 Kamilaroi Road BAYVIEW NSW 2104

Name:	Address:
Withheld Withheld	BAYVIEW NSW 2104
Mrs Deborah Kay Benefield	22 Bayview Place BAYVIEW NSW 2104
Mrs Frances Parker	5 Vista Avenue BAYVIEW NSW 2104
Pierre Retief Steyn	19 Bayview Place BAYVIEW NSW 2104

The above issues are addressed as follows:

- **Inconsistent with character**

  The submissions raised concerns that the proposal does not fit in to the existing or desired character of the area.

  Comment:

  The proposal involves a dwelling that is well setback from the street, generally provides a two storey presentation and complies with all relevant build form controls. Along with the articulation and stepping of the built form, this provides a situation in which the proposal is consistent with the desired future character.

- **Height, bulk and scale**

  The submissions raised concerns with regard to building height, wall height, number of stories and overall bulk.

  Comment:

  The plans, as amended, comply with the development standard for Building height, Building Envelope, Landscaped area and wall height. Along with sufficient articulation, this provides a situation in which the height bulk and scale is reasonable and to be expected given the controls for the area.

- **Inadequate Clause 4.6 variation/application**

  Comment:

  The plans were amended plans provide a Building height that complies with the development standard. As such, no "Clause 4.6' application is required.
- **View Loss (Loss of outlook)**

  The submissions raised concerns that there would be loss of views (outlook). A submission also raises concern that a view impact analysis has not been submitted.

  Comment:

  The proposal maintains a large eastern setback, and complies with the development standard for Building height. These features contribute to a situation in which a reasonable outcome is provided for outlook from neighbouring properties.
- **Unacceptable building separation/setbacks**

Comment:

The proposal complies with the control for setbacks and side boundary envelope under the DCP. Further, the proposal provides suitable separation for privacy with a screen to the southern elevation of the rear outdoor area.

- **Excavation and Geotechnical concerns**

The submissions raised concerns that the proposal does not minimise excavation, and adequate Geotechnical protection has not been provided.

Requests have been made for additional requirements to be added to the Geotechnical report and conditions of consent.

Comment:

The Geotechnical report sufficiently addresses the matters for Geotechnical requirements under Clause 7.7 Geotechnical Hazards of the Pittwater LEP.

The proposal involves less than a storey of excavation which is a reasonable minimisation of excavation for a dwelling house, noting that basements are a common feature of development in the area.

Council's Development Engineer has also confirmed that the submitted Geotechnical report addresses the requirements of the Pittwater DCP.

Conditions have been imposed to ensure compliance with the recommendations of the Geotechnical report.

A condition has also been imposed to require a Dilapidation report.

- **Overshadowing**

The submissions raised concerns with regard to Overshadowing.

Comment:

The proposal complies with the requirements for Solar access under the Pittwater DCP. The proposal also provides a large open corridor through the eastern side of the site to allow for this access to sunlight.

- **Privacy impact**

The submissions raised concern with privacy impact including overlooking.

Comment:

The proposal provides compliant setbacks and sufficient separation including through privacy screening. This ensures suitable design to minimise privacy impact.

- **Parking**

The submissions raised concerns that the house will cater for 12 people and that there will not be enough off-street parking.

Comment:

The proposal complies with the requirements for parking under the Pittwater DCP, noting the proposed use if for a dwelling and Secondary dwelling. Any use of the site not in accordance with the consent (such as for a higher density) should be reported to Council's Building Control team.

- **Concern with removal of spotted gum**

  The submissions raised concern with the removal of the Spotted gum.

  Comment:

  Council's Landscape officer supports removal of the tree due to it's conditions, and requires the planting of a new Spotted gum as a replacement (by condition).

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Landscape Officer	The development application is for demolition of existing structures and construction of a new dwelling and attached secondary dwelling and associated structures and works, as described and illustrated in the Reports and Plans. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) 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 • D4 Church Point and Bayview 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. The Landscape Plan includes hard and soft landscape design proposals to enhance the landscape setting of the locality and the

Internal Referral Body	Comments
	zoning principles including small tree planting, shrub and other mixed planting and no objections are raised, except to satisfy the C4 zoning principles and locality character with tall canopy trees at least one Spotted Gum shall be installed within the property as a replacement for the Spotted Gum to be removed due to development impacts and existing tree condition. The Arboricultural Impact Assessment report recommends the removal of one native tree identified as T5 - Spotted Gum due to arboricultural decline and impact from the proposed development works for a driveway along the Vista Avenue frontage, and removal is subject to replacement within the Landscape Plan. At the rear of the property the existing multi-trunked Turpentine identified as T6 shall be protected in accordance with the recommendations of the report, and additionally all street trees within the Kamilaro Road frontage identified as T1, T2, T3 and T4 likewise shall be protected, and conditions shall be imposed.
NECC (Bushland and Biodiversity)	The proposal has been assessed against the following applicable biodiversity controls: • Pittwater LEP Clause 7.6 Biodiversity Protection • Pittwater DCP Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community The development will result in the removal of one Spotted Gum tree which has been assessed as in decline and as having a short useful life expectancy. There are no objections to removal of this tree, based on the arborist's assessment that it is decline. Conditions recommended by the Landscape referrals section require appropriate replacement planting to compensate for the loss of this tree. In addition, amendments to the submitted landscape plan are required to achieve consistency with PDCP Clause B4.7.
NECC (Development Engineering)	The proposal is for demolitions works and construction of a new dwelling and attached secondary dwelling. The proposal involves significant excavation for the lower ground floor however no geotechnical report has been provided. Proposed excavations greater than 1.5m are required to be supported with a geotechnical report and certified forms in accordance with Pittwater 21 DCP. Additionally the stormwater plan proposes to discharge subsoil seepage to the kerb. In accordance with Council's policy subsoil drainage is to be discharged via a suitable silt arrester pit directly to Council’s nearest stormwater system or the basement must be tanked. The geotechnical report must address the extent of seepage to be expected from the proposed excavations. **Additional Information Provided on 16/1/2023** The submitted geotechnical report by GCA Geotechnical Consultants and certified forms addresses the DCP requirements. 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. 1299566M).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who 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.

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:	Dwelling House: 8.5m Secondary Dwelling: 5.5m	Dwelling House: 8.5m Secondary Dwelling: 2.95m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The proposal is consistent with the objectives of the zone 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 proposal complies with all relevant built form controls, provides stepping and articulation, and provides varied colours and finishes. These features ensure a low-impact residential development in the zone.

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

Comment:
The proposal steps with the topography of the land, and also involves landscaped area to surround the site. As such, the built form will appropriately intergrade with landform and landscape.

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

Comment:
The proposal is not within the foreshore area. However, the proposal provides compliant setbacks to all boundaries to ensure suitable wildlife corridors are maintained.

5.4 Controls relating to miscellaneous permissible uses

Clause 5.4(9) of Pittwater LEP 2014 limits the total floor area of secondary dwellings to 60sqm. The total floor area of the proposed secondary dwelling measures at 52.4sqm, which complies with this provision.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Primary Frontage (Kamilaroi Road Bayview): 6.5m	9.97m	-	Yes
	Secondary Frontage (Vista Avenue): 3.25m	4m-5.5m	-	Yes
Side building line	2.5m (east)	12.95m	-	Yes
	1m (south)	1.5m	-	Yes
Building envelope	3.5m x 45 degrees (east)	Within Envelope	-	Yes
	3.5m x 45 degrees (south)	Within Envelope	-	Yes
Landscaped area	60% (518.46sqm)	60.57% (523.4sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	Yes	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.11 Fences - General	Yes	Yes

Detailed Assessment

A4.4 Church Point and Bayview Locality

Assessment of Desired Character Statement

The proposal involves a low density style of development being for a single dwelling and secondary dwelling. The proposed building is generally one to two storeys in height, and is surrounded by landscaped area (compliant with the control for landscaped area). Along with the articulation and stepping, this ensures that the proposed building will be well integrated into the streetscape, the landform and landscaped setting.

The secondary dwelling also complies with all built form controls and is suitably separated from neighbours and the street. In conjunction with the dwelling, the secondary dwelling provides additional opportunity for more compact and affordable housing with minimal environmental impact.

C1.3 View Sharing

There will be no substantial water or iconic views affected from the surrounding properties. There will be some impact on outlook. However, the compliance with the controls for building height, setbacks, and side boundary envelope, ensures there will be reasonable outlooks through and over the site.

C1.5 Visual Privacy

The proposal complies with all controls for privacy in this clause. This includes that:

- A privacy screen is provided to the south of the rear balcony.
- Private open space (of adjoining property) is protected by physical separation and appropriate building layout.

The proposal is therefore deemed to satisfy the outcomes of the clause.

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 $21,448 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $2,144,777.

CONCLUSION

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

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

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

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

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

Conclusion

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

The proposal complies with all relevant built form planning controls. Further, the design is well stepped and articulated to minimise the presentation of bulk.

The proposed stepping also relates to the topography of the site. There is also adequate spatial separation from the street and neighbours to minimise amenity impacts.

The resultant development is a reasonable, justified and balanced approach to developing this site in line with the applicable built form controls, whilst minimising the presentation of building bulk through appropriate colours, materials, screening and finishes.

The amended design, coupled with the recommended conditions, addresses the issues raised in the residents submissions and the applicable planning controls.

It is recommended that the Development Determination Panel APPROVE the application subject to conditions.
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 DA2022/1460 for Demolition works and construction of a dwelling house and secondary dwelling on land at Lot 3 DP 26331, 3 Kamilaroi Road, BAYVIEW, 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**
Site/Roof Plan - Rev 10	03/03/2023	Design Formation Architecture Studio
Site/ Lower Ground Level - Rev 10	03/03/2023	Design Formation Architecture Studio
Site/Ground Floor - Rev 10	03/03/2023	Design Formation Architecture Studio
Site/First Floor - Rev 10	03/03/2023	Design Formation Architecture Studio
L Ground Floor - Rev 10	03/03/2023	Design Formation Architecture Studio
Ground Floor - Rev 10	03/03/2023	Design Formation Architecture Studio
First Floor - Rev 10	03/03/2023	Design Formation Architecture Studio
Elevations 1 - Rev 10	03/03/2023	Design Formation Architecture Studio
Elevations 2 - Rev 10	03/03/2023	Design Formation Architecture Studio
Sections - Rev 10	03/03/2023	Design Formation Architecture Studio
Schedule of Colours and Materials	03/03/2023	Design Formation Architecture Studio
Cut/Fill Plan	03/03/2023	Design Formation

		Architecture Studio
Demolition Plan	03/03/2023	Design Formation Architecture Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Waste Management Plan	21/07/2022	Applicant
Arboricultural Impact Assessment	30/05/2022	Graham Brooks
Geotechnical Investigation Report	16 January 2023	GCA (Geotechnical Consultants 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:

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
Landscape Concept Plan	14/7/2022	Vision Dynamics landscape design

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	27/09/2022

(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 $21,447.77 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 $2,144,777.00.

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. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Principal Certifier prior to the issue of a Construction Certificate to include the following additional details over and above the landscape concept plan as documented in drawing number 22074 prepared by Vision Dynamics:
i) one (1) replacement Corymbia maculata (Spotted Gum) shall be installed, and all other trees as proposed on the Landscape Plan are required to be planted within the property,
ii) 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 5.0 metres from buildings, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn.

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

Reason: Landscape amenity.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by GCA Geotechnical Consultants dated 16/1/2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

9. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following requirements and any other conditions of consent:

- The planting schedule must be amended to include a minimum 80% locally native species (by total number of plants). Locally native species must be selected from the Pittwater Ward native plant species guide, the Rolling Hills & Lower Shale Slops section of the Pittwater Native Gardening Booklet (both available on Council's website), or the Pittwater Spotted Gum Forest Endangered Ecological Community Scientific Determination.
- The Landscape Plan must show species, sizes and locations of proposed plantings.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifier prior to issue of the Construction Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

10. **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.

11. **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.

12. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Deboke Engineering Consultants, project number 20220163-DA-SW-DWG-03, drawing number S200, S201, S202, S203, S300, dated 29/11/2022. 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 9.3.1. 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.

13. **Tanking of Basement Level**
The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the Water NSW are to be complied with and a copy of the approval must be submitted to the Certifier.

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

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

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

Engineer.

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

Reason: To provide public and private safety.

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

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

Reason: To facilitate suitable vehicular access to private property.

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

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Tree Removal Within the Property**
This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):
i) Corymbia maculata - Spotted Gum, identified as T5, subject to tree replacement,
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

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

Property : 5 Kamilaroi Road, Bayview

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **Protection of Existing Street Trees**
All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, as well as Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites, and the Tree Protection Plan in the Arboricultural Impact Assessment indicating the location of tree protection fencing. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees. Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

20. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to

be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, and in particular:
i) section 9 Recommendations
ii) section 10 Tree Protection Specification
iii) page 24 Tree Protection Plan

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

Reason: Tree and vegetation protection.

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

Reason: Public safety.

22. **Impacts to Protected Native Wildlife**
The tree approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a qualified ecologist or licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded,

in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier.

Reason: To protect native wildlife.

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

Reason: To protect wildlife habitat.

24. **Relocation of Logs and Coarse Woody Debris**
All logs and branches are to be salvaged from trees prior to any vegetation clearing and reused as fauna habitat within areas of retained native vegetation on the site.

Reason: To protect wildlife habitat.

25. **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.

26. **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.

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

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

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

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

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

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

28. **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.

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

30. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

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

31. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Amended Landscape Plan.

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

Reason: Environmental amenity.

32. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained 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 and vegetation protection.

33. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) are to be imported on to the site prior to or during construction works.

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

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

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

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

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

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

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

35. **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.

36. **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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

38. **Sydney Water**
A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <http://www.sydneywater.com.au> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

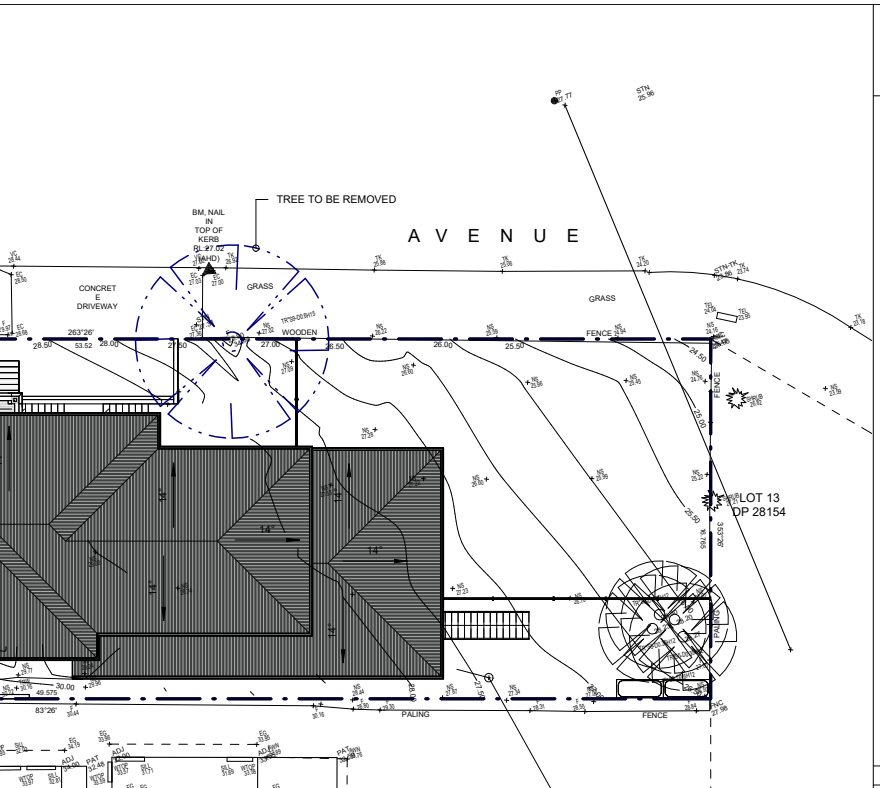
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

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

Reason: To maintain local environmental amenity.

40. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

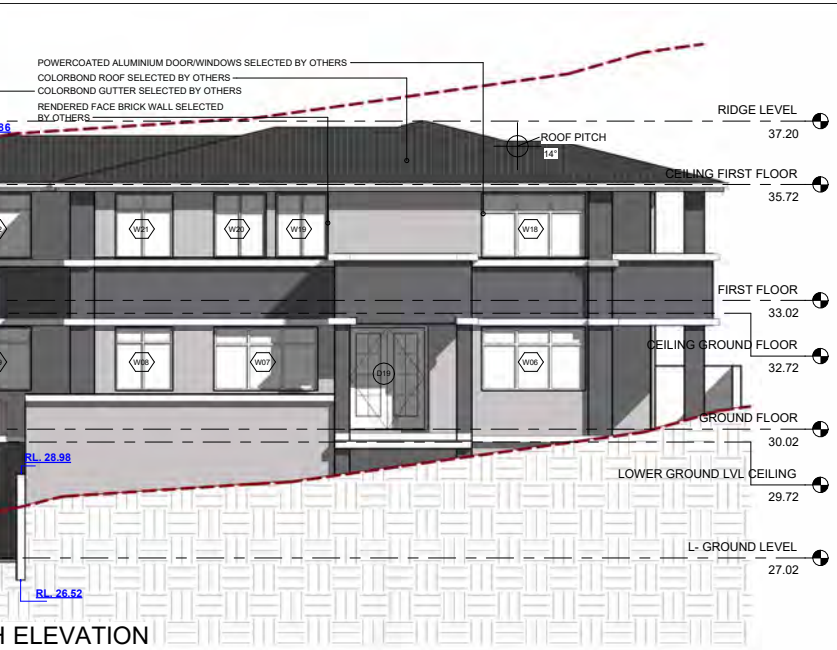
Reason: To ensure geotechnical risk is mitigated appropriately.



TRUE NORTH

DESIGN FORMATION
ARCHITECTURE STUDIO

NSW Rego No.11535



H ELEVATION

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ARCHITECTURE STUDIO

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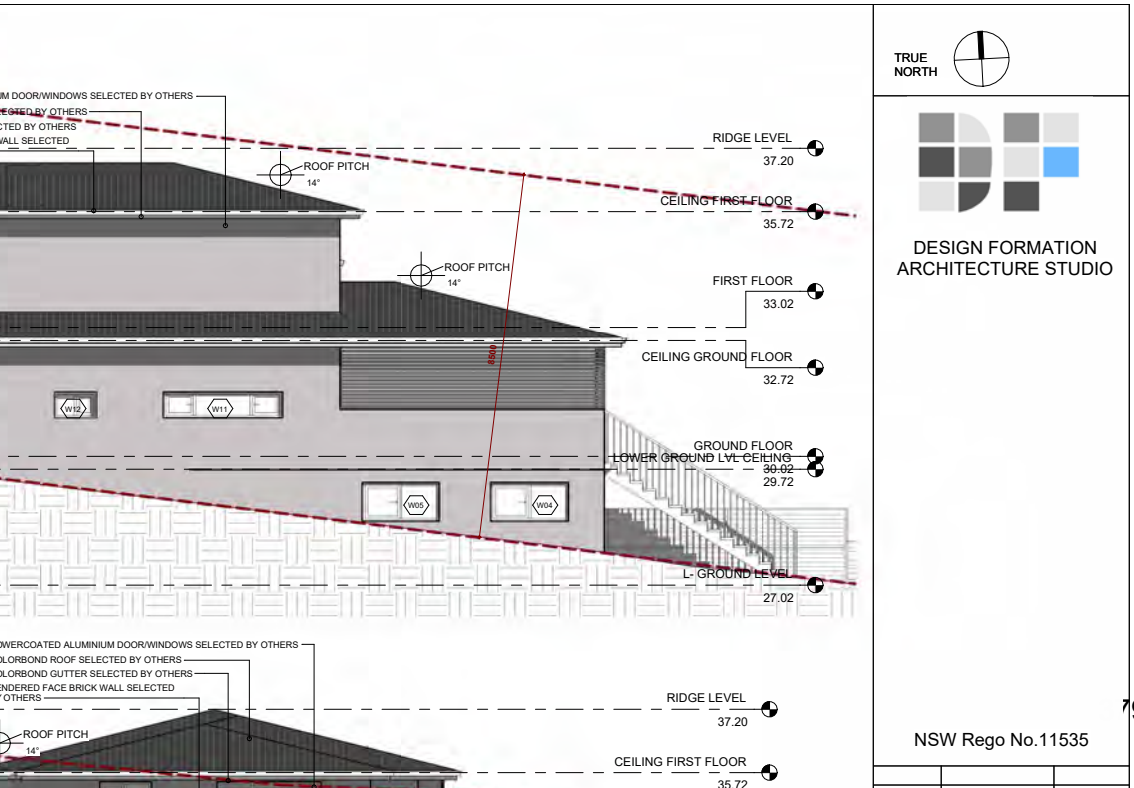


TRUE NORTH

DESIGN FORMATION
ARCHITECTURE STUDIO

NSW Rego No.11535

ITEM 3.8	**DA2023/0071 - 15 PRINCES PROMENADE SEAFORTH - ALTERATIONS AND ADDITIONS TO AN APPROVED DWELLING HOUSE**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/245250**
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 DA2023/0071 for alterations and additions to an approved dwelling house on land at Lot 139 DP 4889, 15 Princes Promenade SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0071

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 139 DP 4889, 15 Princes Promenade SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to an approved dwelling house
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:	Sinan Kaya Jane Erica Kaya
Applicant:	Sinan Kaya

Application Lodged:	01/02/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/02/2023 to 21/02/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 11.8%
Recommendation:	Approval

Estimated Cost of Works:	$ 365,200.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a new dwelling house approved under a complying development certificate.

The application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling. The building height of the proposed development has been measured at 9.5m which represents a variation of 11.8% to the maximum prescribed building height of 8.5m.

The clause 4.6 variation request for the non-compliance with height standard arises from the site being partially excavated underneath the approved building. Based on extrapolated natural ground levels the

height would only be measured at a maximum of approx. 7m. The remainder of the building is under the 8.5m building height limit. The proposed elements that have the greatest non-compliance with the building height are internal walls of the upper floor and will therefore not be visible externally.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. No submissions have been received.

Despite being technically non-compliant with the prescribed building height requirement, the proposal represents a negligible change in built form and would not be discernible from the street or result in unreasonable amenity impacts to neighbouring properties. The non-compliant elements of the proposal are contained within the approved building footprint and will be commensurate with the approved built form. Potential amenity issues to surrounding neighbours have been reviewed and have been determined to be reasonable having regard to the context and spatial relationships.

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 a new dwelling house approved under a complying development certificate (CDC) that is currently under construction.

The proposal includes the following elements:

- A new operable vergola roof at upper floor
- A new green roof to new carport addition
- A new window to CDC approved opening (south elevation).
- A new door to CDC approved opening (north elevation).
- Internal reconfiguration of the WIR and ensuite to Bed 1 located at Level 1.
- Conversion of the CDC approved membrane roof to a balcony (Balcony 2) and installation of new glass balustrade.
- Extension of the garage by 1m to front.
- Enclosure of the open sub-floor area located on the Hall & Pool Level to provide for cellar/pool storage, pool change room, laundry, gym and rumpus.
- An outdoor cooking area to the Hall & Pool Level.
- Extended tiled pool deck surrounds.
- A pool plant room and access stairs & path beneath the CDC approved swimming pool.
- Retaining walls to provide access to Princes Promenade.
- A metal fence to rear northern portion of the site adjoining the stone retaining wall.
- An outdoor fireplace located upon Balcony 2.
- New windows and doors to the proposed enclosed sub-floor area located at the Hall & Pool Level.

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

SITE DESCRIPTION

Property Description:	Lot 139 DP 4889 , 15 Princes Promenade SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the southwestern side of Princes Promenade. The site is irregular in shape with a splayed primary frontage of 31.545m along Princes Promenade, a secondary frontage of 7.01m along Sunset Lane and a maximum depth of 73.685m. The site has a surveyed area of 1,353m². The site is located within the R2 Low Density Residential zone and is currently a construction site for the purpose of building the approved CDC dwelling house. The site falls approx. 11m from the southwest towards the northeast. A steep embankment is located adjacent to the Princes Promenade frontage. As the site is currently a construction site, much of the existing landscaping has been altered or removed. However, some canopy trees remain in the Princes Promenade frontage. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.

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 **DA2020/0862** for Construction of a secondary dwelling was approved on 04/09/2020 by Council staff.

Application **Mod2020/0583** for Modification of Development Consent DA2020/0862 granted for Construction of a secondary dwelling was approved on 16/12/2020 by Council staff.

Application **CDC2022/1200** for Demolition of Existing Structures and Construction of a Two Storey Dwelling House and Inground Swimming Pool was approved on 18/11/2022 by a private building certifier.

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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a clause 4.6 variation request regarding the proposed building height. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 07/02/2023 to 21/02/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for approval for modification of an existing CDC approved new dwelling and associated works, as described and illustrated in reports and plans. A Landscape Plan and a Arboricultural Impact Assessment are submitted for consideration by Landscape Referral. The Landscape Plan submitted is noted and no concerns are raised. Existing trees under the CDC are reported as protected as part of the CDC requirements. The Arboricultural Impact Assessment includes existing trees specific for works under this development application, including trees numbered 1 to 7 inclusive that are all proposed for retention and protection, in accordance with the recommendations of the Arborist Report, and conditions shall be imposed.
NECC (Development Engineering)	The proposal includes alterations to a currently approved CDC for a new dwelling upon the site. A review of the CDC indicates that the stormwater design approved includes OSD which is acceptable. Conditions to ensure a positive covenant and restriction as to user for this system in accordance with Council's Water Management for Development Policy have been included. The proposal did not include the reconstruction of the driveway crossing which is currently

Internal Referral Body	Comments
	unformed. As there are amendments to the garage, a condition to provide a new driveway crossing have been included. 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 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. A480044_02, dated 24/01/2023). 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.

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.5m	11.8%	No
Floor Space Ratio:	0.4:1 (541.2m^2)	0.328:1 (444m^2)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements

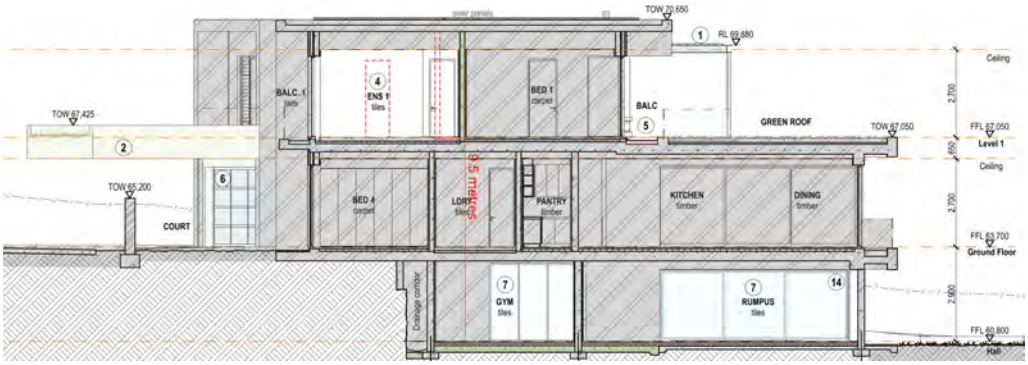
Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

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:	11.8%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

The applicants written request argues, in part:

The non-compliance with the Height of Buildings development standard is a direct result of the carrying out of works associated with the construction of the approved new dwelling and which have resulted in the alteration (excavation) of the existing ground level.

It is noted that had the site not recently been excavated that the proposal would comply with the requirements of Clause 4.3 of the LEP.

The proposed development promotes the objectives identified in the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for "good design and amenity of the built environment" and "the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants."

Council generally concurs with the applicant's justification that the height breach is caused by the area of excavation that was approved under the original CDC for the dwelling. The proposed development does not increase the overall height of the approved CDC dwelling and is therefore not expected to cause any additional built form impact or unreasonable amenity impact upon adjacent properties and 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 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 proposed development does not exceed the upper roof ridge level of the approved CDC dwelling and the roof form is consistent with that of the dwelling and other dwellings 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:

No views or vistas are expected to be unreasonably impacted as a result of the development.

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

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 residential land use of the site.

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: 1,353m^2	**Requirement**	**Proposed**	**% Variation**	**Complies**
4.1.2.1 Wall Height	NW: 7.4m (based on gradient 1:6.8)	Approved under CDC	N/A	Approved under CDC
	SE: 7.4m (based on gradient 1:6.8)			
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	Approved under CDC	N/A	Approved under CDC
4.1.4.1 Street Front Setbacks	Prevailing building line	Approved under CDC	N/A	Approved under CDC
4.1.4.2 Side Setbacks and Secondary Street Frontages	NW: 2.44m (based on wall height)	Approved under CDC	N/A	Approved under CDC
	SE: 2.44m (based on wall height)			
	Windows: 3m	Approved under CDC	N/A	Approved under CDC
	Secondary street frontage: Prevailing setback	Carport roof - 32m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (811.8m^2)	76.8% (1,039.7m^2)	N/A	Yes
	Open space above ground 25% of total open space (260m^2)	17.2% (179.7m^2)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (415.9m^2)	60% (624.5m^2)	N/A	Yes
4.1.5.3 Private Open Space	18m^2	112.5m^2	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 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)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	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

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

Description of non-compliance

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.

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 $3,652 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $365,200.

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 an approved dwelling house has been referred to the Development Determination Panel (DDP) due to the development exceeding the building height development standard by more than 10%.

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 DA2023/0071 for Alterations and additions to an approved dwelling house on land at Lot 139 DP 4889, 15 Princes Promenade, 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 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.03 Issue C	23/01/2023	All Australian Architecture
DA.04 Issue C	23/01/2023	All Australian Architecture
DA.05 Issue C	23/01/2023	All Australian Architecture
DA.06 Issue C	23/01/2023	All Australian Architecture
DA.07 Issue C	23/01/2023	All Australian Architecture
DA.08 Issue C	23/01/2023	All Australian Architecture
DA.09 Issue C	23/01/2023	All Australian Architecture
DA.10 Issue C	23/01/2023	All Australian Architecture
DA.11 Issue C	23/01/2023	All Australian Architecture
DA.12 Issue C	23/01/2023	All Australian Architecture
DA.13 Issue C	23/01/2023	All Australian Architecture

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
022022 C02 Rev A	18/12/2022	Aidan Hogan

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A480044_02	24/01/2023	All Australian Architecture
Arboricultural Impact Assessment	23/01/2023	Arbor Logix
Geotechnical Investigation (Ref: J4701)	23/12/2022	White Geotechnical Group

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
DA.74 Issue B	23/01/2023	All Australian Architecture

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	Undated	Unnamed

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	14/02/2023

(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 *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 $3,652.00 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 $365,200.00.

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. **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.

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 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.

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

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

Reason: To provide public and private safety.

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

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

Reason: To facilitate suitable vehicular access to private property.

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

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

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

13. **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.

14. **Complying Development Certificate**
Complying Development Certificate 22-044-CDC issued by Prince Certifiers, dated 18/11/2022 ("the CDC") is modified as coloured to enable the development shown in the approved plans of this development consent to be constructed and integrated with the development approved by the CDC.

The building construction details for the modified CDC are to be provided to the Certifying Authority with the construction certificate plans and details for this consent prior to the issue of a Construction Certificate.

Reason: To ensure the development is constructed in accordance with this consent.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **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 and Reports,
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 complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment including sections 9 and 10.

Reason: Tree and vegetation protection.

16. **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.

17. **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.

18. **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.

19. **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.

20. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing Normal Low Profile and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

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

21. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:
a) landscape works are to be contained within the legal property boundaries,
b) planting shall be installed as indicated on the approved Landscape Plan(s),
c) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Prior to the issue of an Occupation Certificate, details 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.

22. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:
a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

23. **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.

24. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**
The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

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

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

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

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

25. **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(s) and any conditions of consent.

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

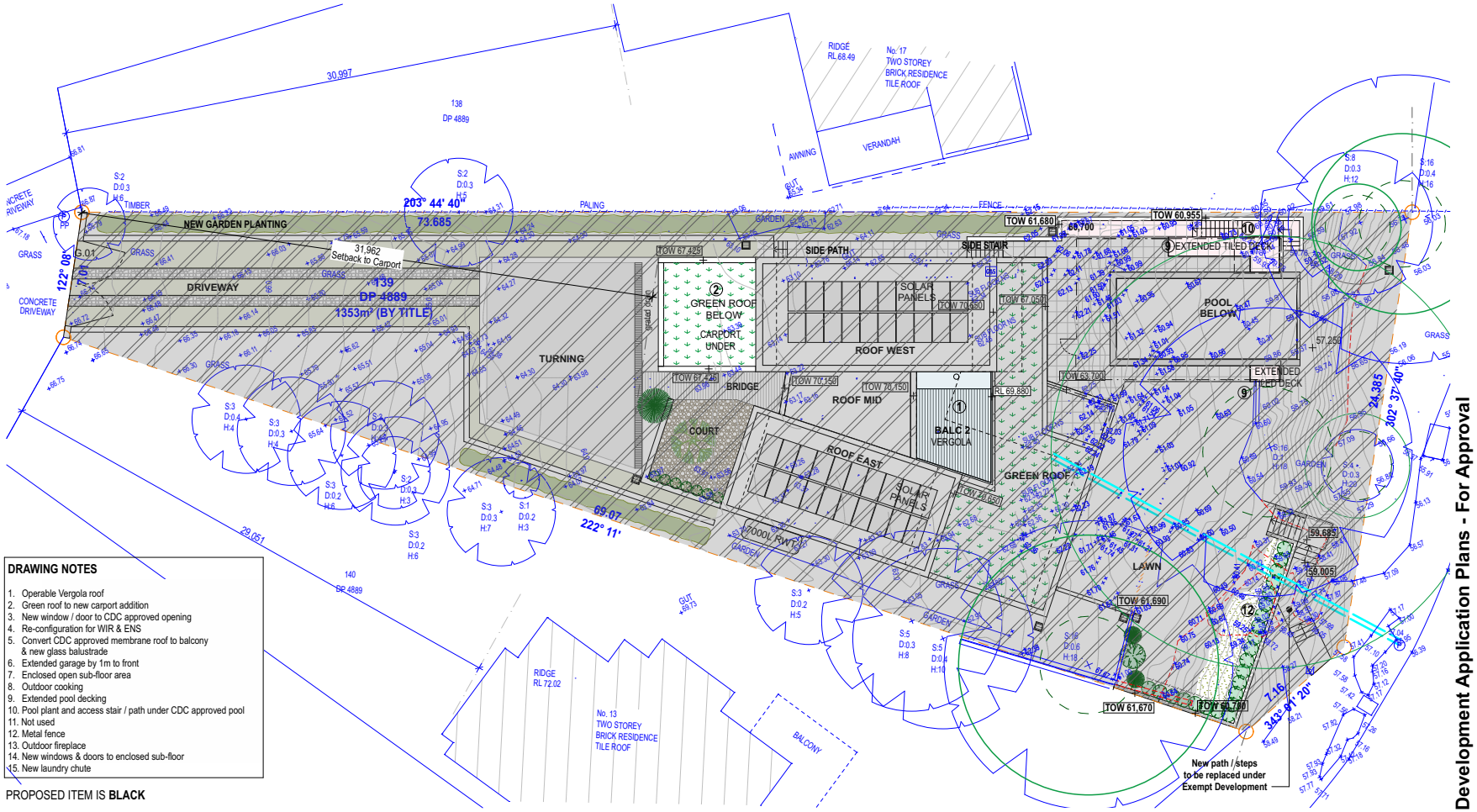
Reason: To maintain local environmental amenity.

26. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

27. **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.



DRAWING NOTES

1. Operable Vergola roof
2. Green roof to new carport addition
3. New window / door to CDC approved opening
4. Re-configuration for WIR & ENS
5. Convert CDC approved membrane roof to balcony & new glass balustrade
6. Extended garage by 1m to front
7. Enclosed open sub-floor area
8. Outdoor cooking
9. Extended pool decking
10. Pool plant and access stair / path under CDC approved pool
11. Not used
12. Metal fence
13. Outdoor fireplace
14. New windows & doors to enclosed sub-floor
15. New laundry chute

PROPOSED ITEM IS **BLACK**

EXISTING ITEM IS **BLUE** / BLUE

DEMOLISHED ITEM IS **RED**

DA COLOURS TO:
AS 1100.301-1985 & AS2700S-1996

CDC APPROVAL WORKS SHOWN HATCHED
CDC REFERENCE NO. CDC-114663

Development Application Plans - For Approval

ALL AUSTRALIAN ARCHITECTURE

Address:
Suite 206, 20 Dale Street
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info@aaarchitect.com.au
www.aaarchitect.com.au
Mobile: 0412 348 575

Architect:
Adam Pressley FRAIA
Principal & Nominated Architect
NSW No.6007

ABN 95 492 673 232

MEMBER THE ROYAL AUSTRALIAN INSTITUTE OF ARCHITECTS

Project:
Modifications to a new CDC dwelling

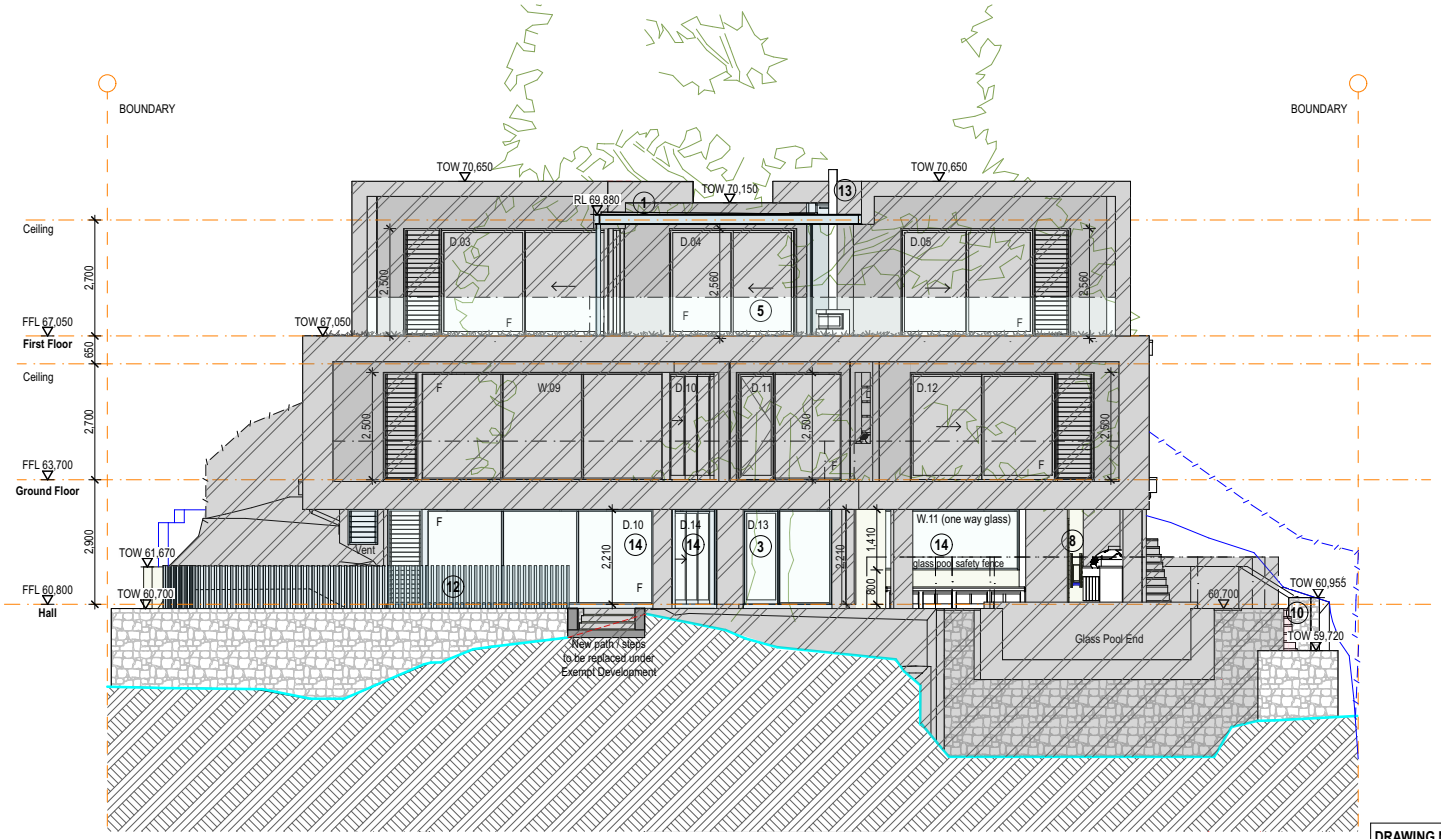
Printed: Monday, 23 January 2023
/System/Volumes/Data/Projects/AAA/15Prince/02 Models/15Prince_Model_DA.pln

Client:
Sinan Kaya

15 Princes Promenade Seaforth NSW 2092
Lot 139 D.P.4889

Title:
Site Plan
0 1 2 3 4 5
SCALE 1:200

15Prince
DA.03
Issue:
C



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DEMOLISHED ITEM IS **RED**

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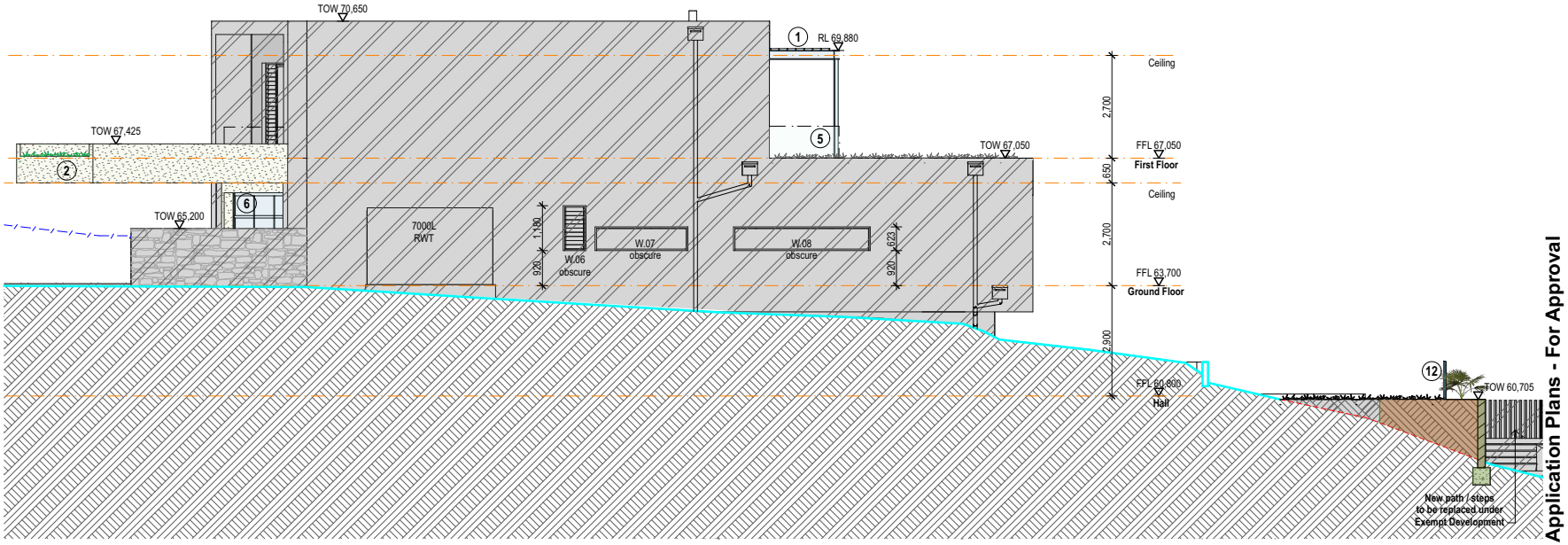
Client:
Sinan Kaya

15 Princes Promenade Seaforth NSW 2092
Lot 139 D.P.4889

Title:
North Elevation
0 1 2 3 4 5
SCALE 1:100

15Prince
DA.08
Issue:
C



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EXISTING ITEM IS **BLUE** / BLUE

DEMOLISHED ITEM IS **RED**

DA COLOURS TO:
AS 1100.301-1985 & AS2700S-1996

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CDC REFERENCE NO. CDC-114663

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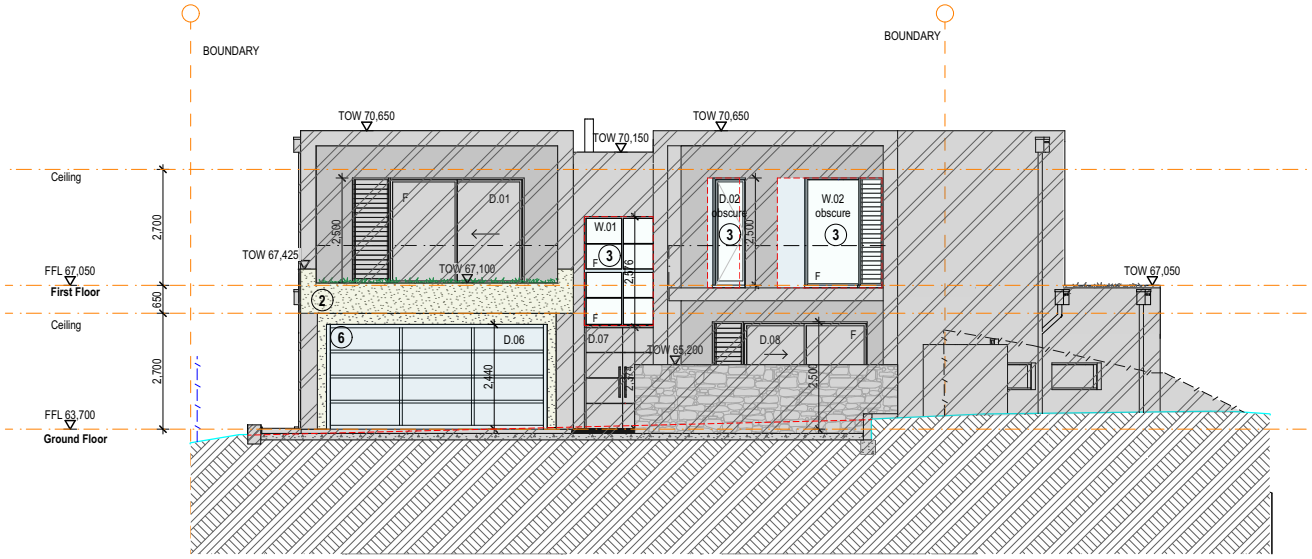
Client:
Sinan Kaya

15 Princes Promenade Seaforth NSW 2092
Lot 139 D.P.4889

Title:
East Elevation
0 1 2 3 4 5
SCALE 1:100

15Prince
DA.09
Issue:
C



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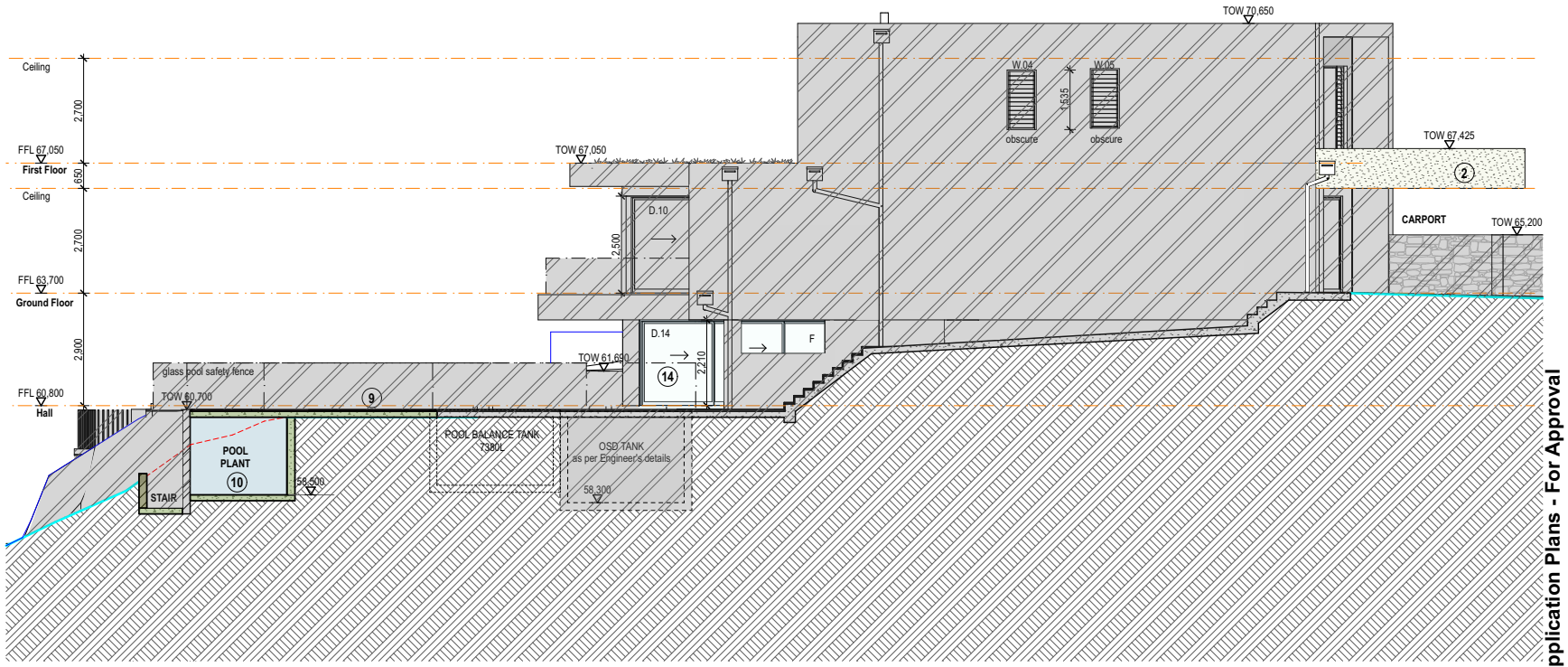
Client:
Sinan Kaya

15 Princes Promenade Seaforth NSW 2092
Lot 139 D.P.4889

Title:
South Elevation
0 1 2 3 4 5
SCALE 1:100

15Prince
DA.10
Issue:
C



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Client:
Sinan Kaya

15 Princes Promenade Seaforth NSW 2092
Lot 139 D.P.4889

Title:
West Elevation
0 1 2 3 4 5
SCALE 1:100

15Prince
DA.11
Issue:
C

Minto Planning Services
Town Planning Consultants

Clause 4.6 – Exception to Maximum Height of Building Development Standard
Proposed Modifications to CDC Approved Dwelling House and Associated Works
15 Princess Promenade, Seaforth

The subject development application seeks approval for the modification of a new dwelling house and associated works approved via a Complying Development Certificate (CDC) upon land at 15 Princess, Promenade, Seaforth (**Site**). The subject property, which has a total lot size of 1,353m^2, is zoned R2 – Low Density Residential under the Manly Local Environmental Plan 2013.

By way of background, it is advised that Complying Development Certificate 22-044-CDC was previously issued in relation to the site by Prince Certifiers on the 18th November 2022. That CDC approved the Demolition of Existing Structures and Construction of a Two Storey Dwelling House and Inground Swimming Pool. It is understood that the demolition and building works associated with the CDC approved new dwelling have commenced upon the site.

Relevant to this application it is advised that the carrying out of works associated with the construction of the new dwelling have resulted in the alteration (excavation) of the existing ground level. In accordance with the provisions of the Manly LEP, for the purposes of this application, the new excavated ground level becomes the existing ground level and results in the height of building of the proposed modification exceeding the 8.5m height control required by Clause 4.3 of the LEP.

This application does not seek to raise or lower the CDC approved building envelope.

It is noted that had the site not recently been excavated that the proposal would comply with the requirements of Clause 4.3 of the LEP.

It is advised that by definition the application proposes a maximum building height of 10.47m which represents a 1.97m or 23.18% variation. This is on the basis of a new excavated ground level of RL 60.18 and a maximum building height of RL 70.65.

It is therefore submitted that a technical non-compliance exists in relation to Clause 4.3 of the Manly LEP and as such a Clause 4.6 submission is required.

www.mintoplanning.com.au
postal address: po box 424 berowra 2081
telephone: 9875 4788 email: planning@mintoplanning.com.au
abn 68 091 465 271

It is noted that in ordinary (if original development was approved via a Development Application) circumstances that this amending DA would be regarded as a S4.55 Modification and a Clause 4.6 variation would not be required.

This Clause 4.6 written request is prepared on the basis of the architectural plans prepared by All Australian Architecture.

Clause 4.3 of the Manly LEP states that:

4.3 Height of Buildings

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

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

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

(c) to minimise disruption to the following—

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

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

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

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

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

(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 indicates that the maximum height of buildings that applies to the Site and therefore to the proposal is **8.5m.**

The following Clause 4.6 written request has been prepared having regard to Clauses 4.3 and 4.6 of the Manly Local Environmental Plan 2013 and recent judgments of the Land & Environment Court.

It is submitted that the variation is well founded and is worthy of the support of the Council.

1. Objectives of Clause 4.6

The objectives of Clause 4.6 of the LEP are:

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

It is submitted that the circumstances of this matter warrant the application of a degree of flexibility having regard to the matters detailed below.

2. The standard to be varied is a Development Standard to which Clause 4.6 applies

Clause 4.3 of the Manly Local Environmental Plan 2013 is contained within Part 4 which is titled Development Standards to be complied with. It is also considered that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

It is also noted that Clause 4.3 does not contain a provision which specifically excludes the application of Clause 4.6 and vice a versa.

On this basis it is considered that Clause 4.3 is a development standard for which Clause 4.6 applies.

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 under Manly Local Environmental Plan 2013):

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

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

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

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications to demonstrate that compliance with a development standard is unreasonable or unnecessary. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The first reason is considered to be relevant to this application.

The objectives of the Height of Buildings standard are set out in clause 4.3(1) of Manly Local Environmental Plan 2013 and are as follows:

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

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

(c) to minimise disruption to the following—

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

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

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

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

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

Firstly, compliance with the Height of Buildings standard is unreasonable or unnecessary in the circumstances because the objectives of the standard are achieved notwithstanding the non-compliance, in light of the following:

a. The proposal will not result the loss of any significant public or private views.
b. The dwelling will not be visible from the harbour or the surrounding foreshores.
c. The proposal is compatible with the desired character of the area. The proposed dwelling sits comfortably within the streetscape in terms of height and roof form.
d. With respect to bulk and scale, the proposal provides for a new part two and three storey dwelling which is compatible with the existing surrounding development. The dwelling is well articulated through the use of varied setbacks, balconies and architectural relief.
e. The proposed new dwelling is consistent with the maximum FSR control under clause 4.4 of Manly Local Environmental Plan 2013.
f. The proposal will not result in any unreasonable impacts upon the amenity of the adjoining properties particularly in relation to visual and acoustic privacy and overshadowing as a result of the proposed building height or the resultant development.
g. It is submitted that whilst the proposal does not comply with the numerical requirements of this clause, that the proposal will nevertheless provide for a compatible form of development and will present to the street in a manner consistent with the existing streetscape.

4. There are sufficient environmental planning grounds to justify contravening the development standard

The non-compliance with the Height of Buildings development standard is a direct result of the carrying out of works associated with the construction of the approved new dwelling and which have resulted in the alteration (excavation) of the existing ground level. In accordance with the provisions of the Manly LEP, for the purposes of this application, the new excavated ground level becomes the existing ground level and results in the height of building of the proposed modification exceeding the 8.5m height control required by Clause 4.3 of the LEP.

It is noted that had the site not recently been excavated that the proposal would comply with the requirements of Clause 4.3 of the LEP.

The proposed development promotes the objectives identified in the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for "good design and amenity of the built environment" and "the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants."

Accordingly, the proposal promotes the objectives of the Environmental Planning and Assessment Act 1979 and there are also sufficient environmental planning grounds to justify the contravention of the Height of Building standard, which include:

- The proposed non-compliance is a direct result of the recent excavation of the site as part of the erection of a new dwelling in accordance with CDC 22-044-CDC.
- The proposal is compatible with the desired character of the area. The proposed dwelling sits comfortably within the streetscape in terms of height and roof form.

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

The proposed development is consistent with the objectives of the Height of Building development standard, which is demonstrated in the analysis in section 3, above.

The proposed development is also consistent with the R2 Low Density Residential Zone objectives in Manly Local Environmental Plan 2013.

The objectives for the R2 – Low Density Residential 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.*

In relation to the above objectives for the R2 – Low Density Residential zone the proposal is consistent with those objectives given that the proposal provides for the housing needs of the community within a low density residential environment. The proposal provides for a detached dwelling house that is compatible with the existing low density residential development.

As the proposal is consistent with the objectives of the Height of buildings development standard and the objectives of the R2 Low Density Residential Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

7. Conclusion

This written request justifies the proposed variation to Clause 4.3 - the Height of Buildings development standard in the terms required under clause 4.6 of Manly Local Environmental Plan 2013. In summary, the proposed variation in relation to the non-compliant building height is justified for the following reasons:

- The proposal will not result in any adverse streetscape impacts.
- The proposal will not result in any unreasonable visual or acoustic impacts and overshadowing upon adjoining properties.
- The proposal will not result in an unreasonable loss of outlook for any adjoining properties.
- The proposal will provide for a built form which is compatible with the surrounding locality.

Andrew Minto
Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.
MINTO PLANNING SERVICES PTY LTD
30th March 2023

ITEM 3.9	**DA2022/0932 - 146 FOREST WAY BELROSE - BELROSE BOWLING CLUB - REGISTERED CLUB - USE OF A PORTION OF THE SITE FOR OUTDOOR SEATING AND A CHILDREN'S PLAYGROUND**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/246622**
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 DA2022/0932 for Belrose Bowling Club - Registered Club - Use of a portion of the site for outdoor seating and a children's playground on land at Lot 2 DP 851739, 146 Forest Way BELROSE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0932

Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 851739, 146 Forest Way BELROSE NSW 2085
Proposed Development:	Belrose Bowling Club - Registered Club - Use of a portion of the site for outdoor seating and a children's playground
Zoning:	Warringah LEP2011 - Land zoned RE2 Private Recreation
Development Permissible:	Yes, under Existing Use Rights
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Belrose Bowling Club Ltd
Applicant:	Belrose Bowling Club Ltd

Application Lodged:	09/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	21/06/2022 to 05/07/2022
Advertised:	Not Advertised
Submissions Received:	39
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 0.00

EXECUTIVE SUMMARY

This development application seeks consent for use of part of the site (Registered Club - Belrose Bowling Club) for outdoor seating and a children’s playground.

The application is referred to the Development Determination Panel (DDP) due to the application receiving more than 5 objections to the proposal. The public exhibition of the application resulted in 39 submissions being recieved by Council, 6 in objection and 33 in support.

Concerns raised in the objections predominantly relate to noise and general impact upon amenity to neighbours.

Critical assessment issues included noise.

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

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for use of an existing bowling green for the purpose of an outdoor seating area and childrens playground. The proposed playground and outdoor seating area will be ancillary to the existing ***registered club*** (Belrose Bowling Club).

The proposed operational details are as follows:

- Hours of Operation (Seating area)
  - Monday - Tuesday: 11:00am - 8:30pm
  - Wednesday - Sunday: 11:00am - 10:00pm
- Hours of Operation (Playground)
  - Monday - Sunday: 11:00am - 8:30pm
- Patrons
  - Seating area: 100
  - Playground: 15

No phyiscal works are proposed under this application.

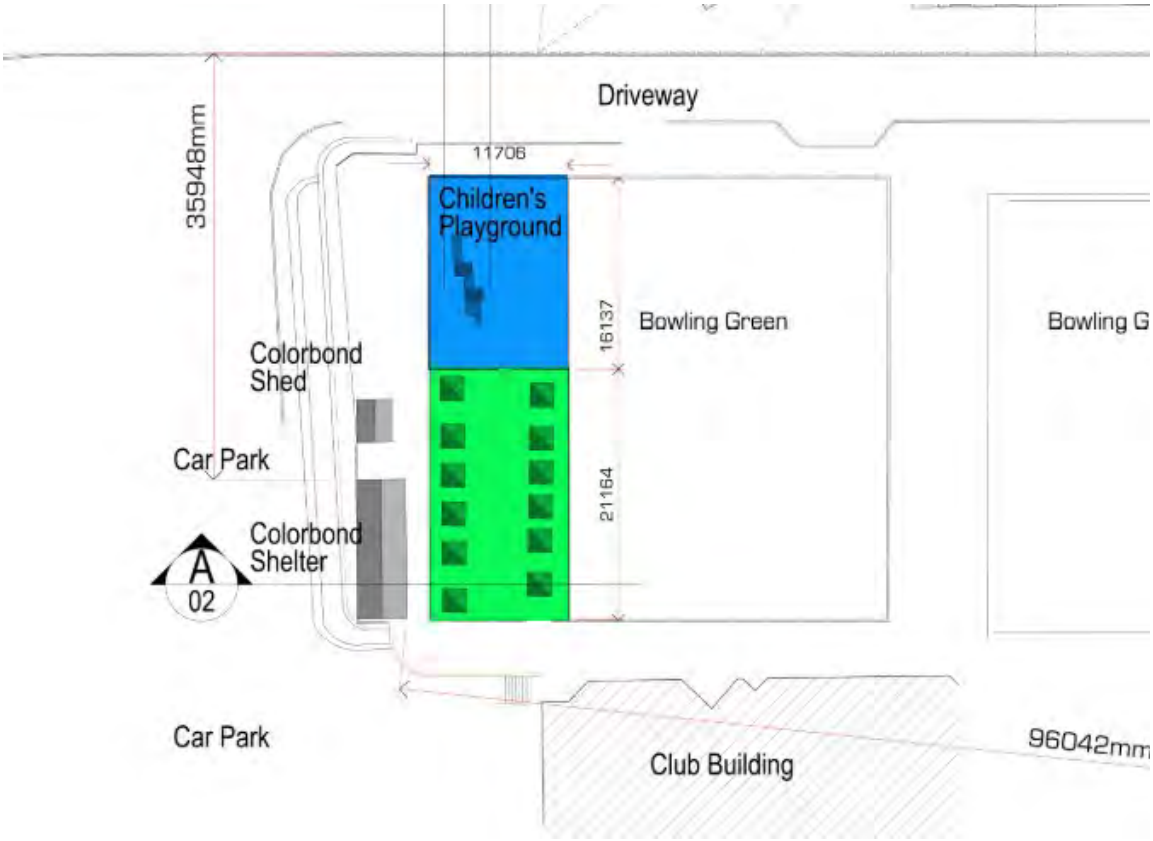


Image 1 - Proposed outdoor seating (green) and children's playground (blue).

The appplication seeks consent for the use only. While consent for works undertaken cannot be given retrospectively, the use and location of the outdoor seating and playground can be assessed.

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 - Zone RE2 Private Recreation
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D23 Signs

SITE DESCRIPTION

Property Description:	Lot 2 DP 851739 , 146 Forest Way BELROSE NSW 2085
Detailed Site Description:	The subject site consists of one (1) allotment located between Forest Way on its eastern boundary and Andove Street on its western boundary . The site is legally known as Lot 2 in DP 851739, No.146 Forest Way, Belrose. The site is irregular in shape with a frontage of 101m along Forest Way and a frontage of 10m on Andove Street and a depth of 223m on the northern boundary. The site has a surveyed area of 17,950m². An easement to drain water 3m wide is located on the north-western boundary of the site. The site is located within the RE2 Private Recreation zone under WLEP 2011 and accommodates three (3) bowling greens, a building used as a registered club and ancillary parking area located to the west of the bowling greens and club building.

	Surrounding development consists predominantly of detached residential dwellings. Adjacent the site's northern boundary is the Belrose Hotel. The site has a gentle slope with a westerly aspect. Vegetation on the site is sparse, with no significant areas of native vegetation or landforms.

Map:

SITE HISTORY

EPA2022/0066
The site is currently under invesigation for unathorised use of the site. The assessment of the subject application is for the use of the outdoor area and playground only. Any authorised physical works is subject to a Building Information Certificate (BIC). The assessment of this BIC will need to be undertaken under a seperate process.

MOD2016/0194 - Modification of Development Consent DA2015/0815 granted for Alterations and additions to a recreational facility outdoor and registered club. (Approved 8 March 2017)

DA2015/0815 - Alterations and additions to a recreational facility (outdoor) and registered club. (Approved 13 April 2016)

DA2006/1032 - Construction of a Smokers Terrace to Existing Bowling Club. (Approved 19 December 2006)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to noise (acoustic report). Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control

Section 4.15 Matters for Consideration	Comments
	Plan section in this report. (ii) **Social Impact** The proposed development will / will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will / 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

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

Section 4.65 of the Act defines an existing use as:

> *"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
>
> *(b) the use of a building, work or land:*
> *(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
> *(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

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

Comment:

Evidence has been provided in the form of historic consents, prior to the coming into force of Warringah

Local Environmental Plan 2011 on 9 December 2011. Development consent reference B212/57 and DA2003/1121 (Extensions to Existing Club Building (& Minor Demolition Work for Belrose Bowling Club) was approved on 7 July 2004. This provides evidence that confirms that the use of the site as a registered club commenced as a lawful purpose, prior to the coming into force of the Warringah Local Environmental Plan 2011 on 9 December 2011.

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

Comment:

As noted above, the use of the land was lawfully approved as a registered club in 1957 with the more recent consent in 2004 and 2006 (DA2006/1032). All previous consents were approved under different LEPs, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011. It is noted that consent were also given for alterations to the club in both 2012 (DA2012/0848) and 2016 (DA2015/0815).

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

Comment:

Evidence in the form of historic consent B212/57, DA2006/1032, DA2003/1121 which reveals that the use of the land was carried out before 2011. The use has therefore been carried out in accordance with the terms of the consent and there is no evidence to suggest that the various consents have lapsed.

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

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

Comment:

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

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

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

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

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

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

Comment:

The proposed development is for the use only. No physcial work are proposed.

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

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

Comment:

The existing regisetered club building is not proposed to be demolished or altered.

3. What are the impacts on adjoining land?

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

Comment:

While there are no proposed works undert his application, the approval of the outdoor area and playground will have an increased acoustic impactson neighbouring residential properties. Subject to condition in relation to operation the proposed intensifiation of the club is deemed to be reasonable.

4. What is the internal amenity?

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

Comment:

This principle is not considered relevant to the subject application.

Conclusion

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

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/06/2022 to 05/07/2022 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 39 submission/s from:

Name:	Address:
Samantha O'Connor	Address Unknown
John Gibb	247 / 207 Forest Way BELROSE NSW 2085
Mr Guy Dunbar Wentworth Ward	20 Morgan Road BELROSE NSW 2085
Luke O'Connor	Address Unknown
Mr Andrew William Little	237 / 2 Dawes Road BELROSE NSW 2085
Mr Janusz Stepien	6 Kokoda Crescent BEACON HILL NSW 2100
Mr Neville Thomas Cleary	22 / 2 Dawes Road BELROSE NSW 2085
Heidi Hughes	Address Unknown
Mrs Stephanie McLafferty	9 Wyatt Avenue BELROSE NSW 2085
Sunil Patel	22 Chiltern Road WILLOUGHBY NSW 2068
Mrs Janice Margaret Johnson	24 / 2 Dawes Road BELROSE NSW 2085
Mr Simon Albert Ashton	52 Dundilla Road FRENCHS FOREST NSW 2086
Mr Kim Anthony Jephcott	15 Londonderry Drive KILLARNEY HEIGHTS NSW 2087
Kim McDougall	34 Nandi Avenue FRENCHS FOREST NSW 2086
Mr Carl Robert Baker	40 Sir Thomas Mitchell Drive DAVIDSON NSW 2085
Mr Noel Lynton Martin	78 Haigh Avenue BELROSE NSW 2085
Kevin Michael Pryor	8 Beltana Avenue TERREY HILLS NSW 2084
Mr Glen Tawharu	1 Kentwell Road ALLAMBIE HEIGHTS NSW 2100
Mr Raymond Leslie Freeth	70 Consul Road North NARRAWEENA NSW 2099
Mr Philip Alan Hurditch	19 Willow Tree Crescent BELROSE NSW 2085
Gail Stewart	Address Unknown
Andrew Otes	2 High Valley Place BELROSE NSW 2085
Mr Eric John Galloway	5 Turella Close BELROSE NSW 2085
Mr Charles Whit Chapman	21 Willow Tree Crescent BELROSE NSW 2085
Mrs Melanie Dale Cleary	1031 Pittwater Road COLLAROY NSW 2097
Mr Daniel Grant Page Mrs Samantha Jane Page	12 Lowanna Street BELROSE NSW 2085
Lorena Otes	Address Unknown

Name:	Address:
Mr Timothy Francis Costello	13 Cambage Court DAVIDSON NSW 2085
Mr Mark Alexander Kerr	C/- Nolan Planning Consultants 75 Oliver Street FRESHWATER NSW 2096
Withheld	BELROSE NSW 2085
Withheld	BELROSE NSW 2085
Mr Alexandar John Greig	31 Knightsbridge Avenue BELROSE NSW 2085
Michael Laurance Gullick	20 C Charleroi Road BELROSE NSW 2085
Mr Matthew Ian Brown	13 Sorlie Road FRENCHS FOREST NSW 2086
Rachel Sian Butterly	43 Cotentin Road BELROSE NSW 2085
Mrs Jeanette Suzanne Baptista	42 Jindabyne Street FRENCHS FOREST NSW 2086
Withheld	BELROSE NSW 2085
Mr Alistair Ian Morrison	146 Prahran Avenue DAVIDSON NSW 2085
Mr Ross William Downie	11 Isla Place BELROSE NSW 2085

The following issues were raised in the submissions:

- **Noise impacts (amenity) and anti-social behaviour**
- **Support of Development Application**

The above issues are addressed as follows:

- **Noise impact (amenity) and anti-social behaviour**

  The submissions against the proposal raised concerns with regards to the noise impacts resulting from the development, specifically due to the proposed outdoor area and playground and its proximity to residential development. The submission suggests that the proposal be refused, due to the impact of the proposed intensification of use of the site.

  Comment:

  This issue of noise is addressed under *Clause D3 - Noise* (Warringah DCP 2011) later in this report and was referred to Environmental Health for comment. In summary, both standard and reviewable conditions have been recommended to be imposed to mitigate potential noise impacts. The following meansures are conditioned to be employed:

  - Hours of Operation retricted to 8:30pm Sunday - Tursday, and 10:00pm Friday - Saturday.
  - Submisison and implementation of a management plan.
  - Incorporation of recommendation imposed by the Acoustic Report (Prepared by Pulse White Noise Acoustic, dated 8 December 2022).
  - Reviewable conditions to determine if 'offensive noise' emantes from the proposed use.

  It is considered that adherence to the imposed conditions would effectively reduce unreasonable impacts upon the amenity of the neighbouring residential area and address the issues raised.

This issue does not warrant the refusal of the application.

- **Support of Development Application**

  Comment:

  A number of submissions were received in support of the development application noting the positive social impact. The letters of support have been noted.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	***Supported, subject to conditions*** Environmental Health has been requested to review the application following the submission of additional information, an acoustic assessment (amended by Pulse White Noise Acoustics Pty Ltd Dated 8 December 2022) and a request from Environmental Health for additional information. It is considered that the use of the outdoor areas has high potential to create noise nuisance unless reasonable mitigation measures are put in place. Measures proposed such as reducing child play numbers and signage may not be sufficient in prevention of “offensive noise”. Accordingly Environmental Health recommends that, if consent is granted, that it be initially granted for a 12 month “trial period” only with periodic acoustic assessments undertaken by a qualified acoustic consultant to determine whether "offensive noise" is emanating from the site. Should any acoustic assessment reveal that "offensive noise" is occurring, Council may require additional control measures as recommended by the acoustic report in relation to hours of operation, number of patrons and use of the playground equipment and the like. Environmental Health also recommends conditions of consent that require: • the provision of a management plan (to minimise noise impacts that may arise from the use of the outdoor areas) • the management of potential smoke and odour issues • restriction of hours of use of the outdoor areas
Traffic Engineer	***Supported, subject to conditions*** There are no traffic engineering objections to the proposal. The

Internal Referral Body	Comments
	proposed outdoor seating area and children's playground support the existing use of the site and are not considered to result in any additional parking or traffic demands.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, 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.
NSW Police - Licensing (Clubs, Hotels, Pubs)	***Supported without conditions*** The application was referred to NSW Police with reference to the licensed premises. The police raise no concern with the proposed development, subject to the imposition of the acoustic report. Planner comment: Acoustic recommendations included as part of condition No. 1.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 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 commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

Warringah Local Environmental Plan 2011

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

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.20 Standards that cannot be used to refuse consent – playing and performing music	Yes
5.21 Flood planning	Yes

Detailed Assessment

Zone RE2 Private Recreation

A "Registered club" is not a permissble use in this zone. A discussion of this matter is included elsewhere in the report in the section titled "Existing Use Rights". In summary, the registered club is considered to enjoy the benefit of existing use rights and the development is therefore permissible with consent.

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D18 Accessibility and Adaptability	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
D23 Signs	Yes	Yes

Detailed Assessment

D3 Noise

Submissions received wtih the proposal, raised concern that the proposed use, (noting it previously operated without consent) would create unreasonable noise impacts generated by patrons both inside and outside the premise.

As noted previously within the assessment report the application seeks consent for the following hours of operation for the outdoor seating area and playground:

Seating area

- Monday - Tuesday: 11:00am - 8:30pm
- Wednesday - Sunday: 11:00am - 10:00pm

Playground

- Monday - Sunday: 11:00am - 8:30pm

Merit consideration:

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

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

  Comment:

  The application was supported by a detailed acoustic report and revised hours of operations to mitigate potential noise impacts that may result from the proposed intensification of use of the site. The proposed club has been in operation under existing licence arrangements and now

seeks the to extend the use of the club to the existing bowling green. The applicant has addressed the concerns of Council in terms of the Internal Referral sections (Environmental Health) to ensure the proposal does not unreasonably detract from the safety and security or amenity of nearby residential development. Conditions of consent include a Plan of Management, limiting hours of operation and ongoing review of the operation of the site.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

  Comment:

  The proposed hours are likely to result in the disturbance of the amenity of neighbouring properties in relation to noise. Furthermore, the statement provides no reasonable justification that demonstrates such hours are required. As such it is recommended the hours of operation be limited by way of condition to to not permit use of the outdoor deating area beyond the hours of 8:30pm Sunday to Thurdays (School and work nights). These hours will ensure the premises is consistent with the nearby residential premises and does not result in any unreasonable impacts on the safety and security of the area.

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.

D23 Signs

No signage is proposed.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

CONCLUSION

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

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for use of an existing bowling green for the purpose of an outdoor seating area and childrens playground has been referred to the Development Determination Panel (DDP) as the proposal attracted more than 5 submissions by way of objection.

The concerns raised in the objections have been addressed through the recommendation of conditions requiring the implementation of appropriate acoustic mitigation measures.

The critical assessment issues relate to the noise impacts of the proposal.

Overall, the development performs appropriately against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties. 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 DA2022/0932 for Belrose Bowling Club - Registered Club - Use of a portion of the site for outdoor seating and a children's playground on land at Lot 2 DP 851739, 146 Forest Way, BELROSE, 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**
CC-00.1	April 2022	Projects TT
CC-00.2	April 2022	Projects TT
MD-02.1	April 2022	Projects TT

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
DA Acoustic Assessment	8 December 2022	Pulse White Noise Acoustics

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

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	N/A

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

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

3. **Approved Land Use**
Nothing in this consent shall authorise the use of on site structures as detailed on the approved plans for any land use of the site beyond the definition of a ***registered club.***

A ***registered club*** is defined as:

> "***registered club*** means a club that holds a club licence under the Liquor Act 2007."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **No Approval for Land Use**
No approval is granted under this Development Consent for any land use outside of the nominated seating and playground area nominated on the approved plans.

Reason: To ensure compliance with the relevant Local Environmental Plan.

5. **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.

6. **Extent of consent**
No approval is granted or implied under this Development Consent for any physical works. Approval is given for the use of the site only.

Reason: To ensure compliance with the terms of this consent.

7. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments

Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

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

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

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

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

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

i) Building/s that are to be erected

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

iii) Building/s that are to be demolished

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

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

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

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

8. **Patrons**
The maximum number of patrons within the outdoor seating area shall not exeed one hundered (100) at any time.

The maximum number of patrons utilising the playground area shall not exceed ffifteen (15) at any time.

Reason: To ensure compliance with the terms of this consent.

9. **Amplified Noise**
The use of amplified sound equipment is not permitted.

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

10. **Management Plan**
1. A management plan shall be prepared and submitted to Council's Environmental Health Team for consideration and approval before being adopted.
2. The management plans must describe measures be implemented to control visitor numbers ; use of external areas, behaviour of children and adults and general noise
3. The management plan is to include a complaints register that is to be kept on site and is to the detail date and time any complaint received and the measures undertaken to address any noise concerns.
4. The management plan shall incorporate recommendations by Pulse White Noise Acoustic (Report 220147) and any subsequent noise control measures to be complied with.
Reason: To minimise any noise nuisance to residential receivers.

11. **BBQ Area- Smoke and odour**
Smoke and odour from the BBQ area is to be monitored and adjustments made to processes necessary to minimise any nuisance form smoke and odour emissions to residential receivers.

Reason: To minimise any nuisance from smoke and odour to neighbouring residential receivers.

12. **Hours of Operation**

The hours of operation are to be restricted to:

Outdoor seating area
- Sunday to Thursday – 11:00am - 8:30pm
- Friday and Saturdays and Public Holidays – 11:00am - 10:00pm

Playground area
- Sunday - Satuday (including public holidays) - 11:00am - 8:30pm

Both the Outdoor Family Area and Playground Area are not to be used by patrons after the above times on any day.

These approved hours are limited to a review period of a maximum of 12 months from the date of this consent, subject to the following:

Review of Approved Hours of Operation

1. Throughout the initial “review period”, in addition to the implementation of recommendations as outlined in the above acoustic report, periodic acoustic assessments are to be undertaken by a qualified acoustic consultant at no more than 3-month intervals, to determine whether "offensive noise" is emanating from the site.

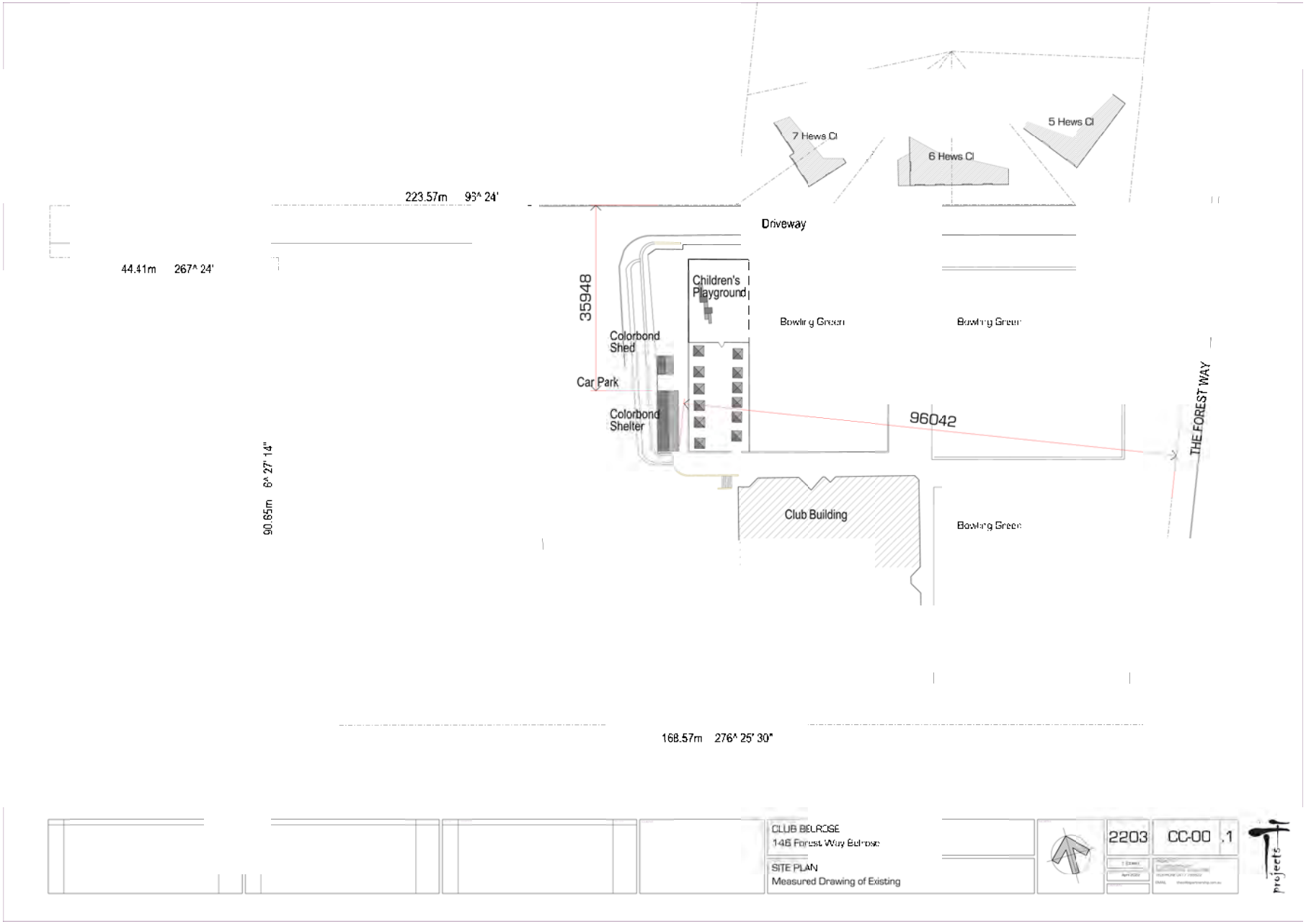
2. Each periodic assessment is to include data from attendance at the site on at least five occasions within the previous period with at least three weeknights included in the assessment period.

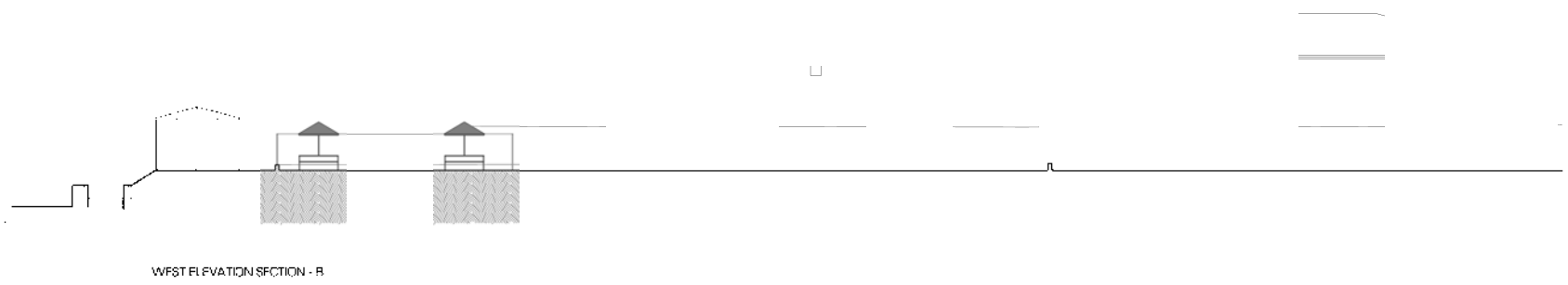
3. Written evidence by way of an acoustic report is to be submitted Council within seven days of the completion of each periodic assessment.

4. Should any acoustic assessment reveal that "offensive noise" is occurring, Council may require additional control measures as recommended by the acoustic report in relation to hours of operation, number of patrons and use of the playground equipment and the like.

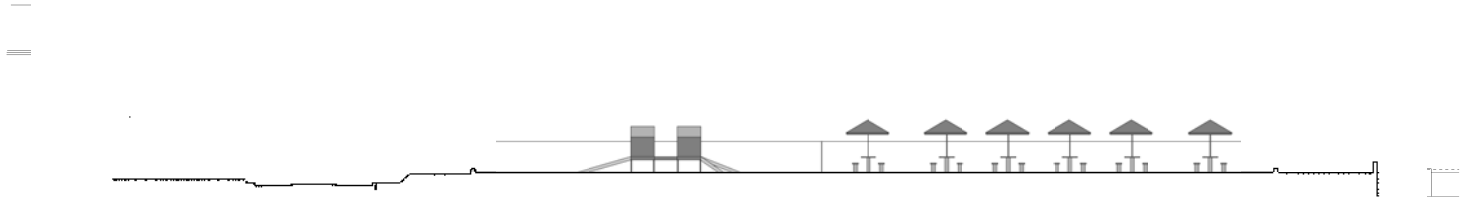
5. At the completion of the review period and after reviewing reports and actions Council shall advise the site operator of any ongoing required changes to operations to be implemented.

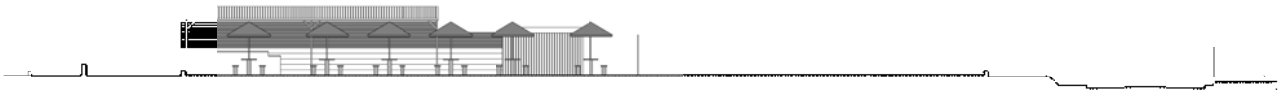
Reason: To ensure that amenity of the surrounding locality is maintained and to review any potential noise related issues, to residential receivers.


7 Hews Cl
6 Hews Cl
5 Hews Cl
223.57m 93^ 24'
Driveway
44.41m 267^ 24'
35948
Children's Playground
Bowling Green
Bowling Green
Colorbond Shed
Car Park
Colorbond Shelter
96042
THE FOREST WAY
90.65m 6^ 27' 14"
Club Building
Bowling Green
168.57m 276^ 25' 30"
CLUB BELROSE
148 Forest Way Belrose
SITE PLAN
Measured Drawing of Existing
2203
CC-00
.1
projects



WEST ELEVATION SECTION - B

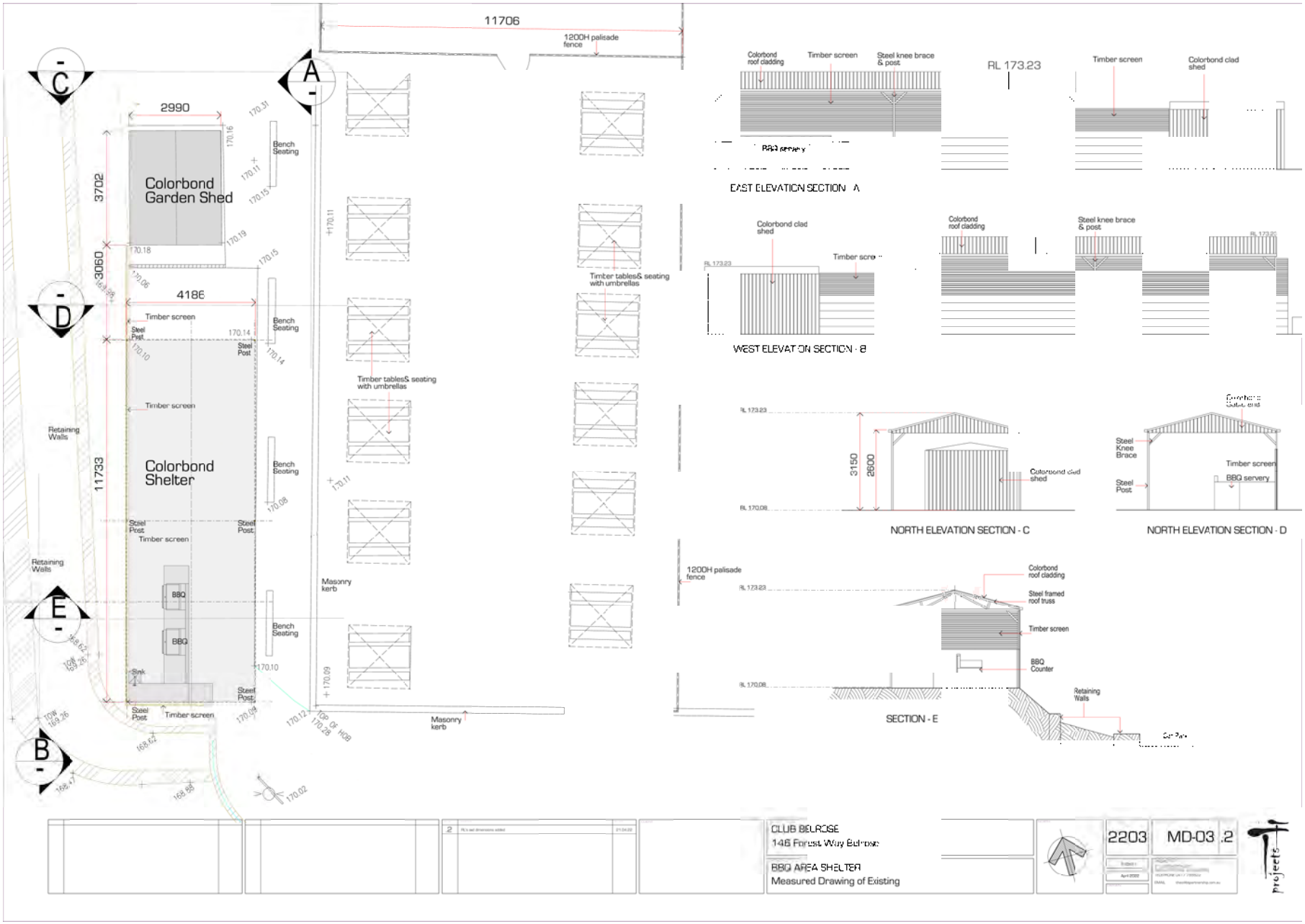




CLUB BELROSE
146 Forest Way Belrose

SITE PLAN SECTIONS
Measured Drawing of Existing

2203 MD-02 .1


11706
1200H palisade fence
2990
3702
3060
4186
11733
Colorbond Garden Shed
Colorbond Shelter
Bench Seating
Timber screen
Steel Post
Retaining Walls
Timber tables& seating with umbrellas
Masonry kerb
BBQ
Sink
Top Of Hob
Colorbond roof cladding
Steel knee brace & post
RL 173.23
Colorbond clad shed
EAST ELEVATION SECTION - A
WEST ELEVATION SECTION - B
3150
2600
NORTH ELEVATION SECTION - C
Steel Knee Brace
BBQ servery
NORTH ELEVATION SECTION - D
Steel framed roof truss
BBQ Counter
SECTION - E
CLUB BELROSE
146 Forest Way Belrose
BBQ AREA SHELTER
Measured Drawing of Existing
2203
MD-03 .2
projects