

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 24 MAY 2023



Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 24 May 2023
via teleconference
Commencing at 10:00am**

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1.0 APOLOGIES

Nil.

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

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

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 3 MAY 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 3 May 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2022/1153 - 1162 PITTWATER ROAD COLLAROY - CONSTRUCTION OF A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/300083
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 DA2022/1153 for construction of a dwelling house on land at Lot B DP 302895, 1162 Pittwater Road COLLAROY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1153
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot B DP 302895, 1162 Pittwater Road COLLAROY NSW 2097
Proposed Development:	Construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Bruce Frederick William Clement Margot Clare Clement
Applicant:	Complete Thought Studio
Application Lodged:	20/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	29/07/2022 to 12/08/2022
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,120,959.00

EXECUTIVE SUMMARY

This development application seeks consent for construction of a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the receipt of six (6) submissions by way of objection.

Concerns raised in the objections predominantly relate to view loss, privacy, solar access, building bulk, and landscaping.

Critical assessment issues included the impact of the development on iconic headland elements of the

eastern view corridor of northern and southern adjacent dwellings.

To ensure a reasonable level of view sharing between dwellings is maintained, the proposal was amended to improve the level of view sharing through built form and siting adjustments.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the construction of a two-storey dwelling house with associated driveway, landscaping and minor earthworks.

AMENDED PLANS

During assessment, Council requested the applicant to revise the design and siting of the proposed dwelling to ensure acceptable levels of view sharing is able to be maintained between dwellings.

To address this matter, the applicant shifted the siting of the dwelling 1.51m towards the west and revised the design of the rear columns to present as less bulky structures and taper with height to reduce the view impact from adjacent dwellings. The proposed landscaping has been amended to remove reference to trees within the rear setback area, thereby reducing further view impact.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain.

Despite this, all objectors were advised that amended plans had been received and were given the opportunity to provide additional comment.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot B DP 302895 , 1162 Pittwater Road COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Pittwater Road. The site is irregular in shape with a frontage of 10.06m along Pittwater Road and a maximum depth of 58.96m. The site has a surveyed area of 566m². The site is located within the R2 Low Density Residential zone and is mostly vacant, apart from a seawall and boundary fencing. The site is generally flat and does not contain any significant landscaped features. The rear part of the site beyond the seawall forms part of Collaroy Beach. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low and medium density residential buildings, including dwelling houses, semi-detached dwellings and residential flat buildings.

Map:



SITE HISTORY

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

Application **DA2014/0480** for Demolition works and Construction of a new dwelling house was approved on 08/08/2014 by Council staff. Council records indicate that a construction certificate was never issued in relation to this consent and that physical works had not commenced within the operation period and has since lapsed.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/07/2022 to 12/08/2022 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 6 submission/s from:

Name:	Address:
Mr Neil James Esmond Gibson Joan Susanne Gibson	1166 B Pittwater Road COLLAROY NSW 2097
Mr Michael John Worrall Douglas John McGrath BBF Town Planners Lesley McGrath	29 Ennerdale Crescent WHEELER HEIGHTS NSW 2097
Mrs Dianne Dickson	1160 Pittwater Road COLLAROY NSW 2097
Withheld Withheld	COLLARROY NSW 2097
Dr Robert Alexander Orth	9 / 1150 Pittwater Road COLLAROY NSW 2097
Mrs Susan Gay Hart	3 / 7 Brissenden Avenue COLLAROY NSW 2097

The following issues were raised in the submissions:

- View loss
- Building bulk and siting
- Landscaped open space
- Stormwater drainage
- Privacy
- Overshadowing
- Building colours and materials
- Consistency with Resilience & Hazards SEPP

The above issues are addressed as follows:

- **View loss**

The submissions raised concerns that the proposed development and landscaping will result in unreasonable view loss from adjacent and nearby dwellings.

Comment:

While some impact upon existing view corridors enjoyed by adjacent and nearby dwellings is likely as a result of the proposed development, amendments to the building design were requested to ensure adequate view sharing between dwellings is able to be achieved. Based on the amended proposal, the extent of such impact is not considered to be unreasonable in the context of the site and surrounds. The proposed landscaping has also been amended to ensure new vegetation does not impact upon view corridors. A detailed view sharing assessment is included in this report under Part D7 of WDCP.

- **Building bulk and siting**

The submissions raised concerns regarding the bulk and siting of the proposed dwelling and that it will result in undesirable built form and amenity outcomes for future development along the Collaroy beachfront.

Comment:

The bulk and scale of the amended proposal is considered to be generally consistent with other development along the Collaroy beachfront. The beachfront predominantly contains a mix of low and medium density residential buildings with some examples of high density residential development. The proposed development complies with most built form controls, including building height, building envelope, side and rear setbacks and landscaped open space. The proposal does not comply with the front setback requirement, however this is to ensure adequate view sharing is able to be maintained to adjacent dwellings by increasing the rear setback. The proposal demonstrates good design through the incorporation of a range of materials and finishes, facade articulation and innovative roof design. The siting of the dwelling is considered acceptable as it generally follows the prevailing front and rear building lines, responds to the askew front and rear boundaries and is able to achieve reasonable levels of view sharing between dwellings.

- **Landscaped open space**

The submissions raised concerns that the proposed development does not comply with the minimum landscaped open space area requirement.

Comment:

The proposed development incorporates 245m² (43.3%) of landscaped open space with minimum dimensions of 2m, which complies with the minimum 40% requirement.

- **Stormwater drainage**

The submissions raised concerns regarding the impact of stormwater drainage upon adjacent properties.

Comment:

The proposed development is supported by stormwater plans that indicate all stormwater from the dwelling is to be conveyed via an underground rainwater tank to the existing stormwater mains at the rear of the property. Other stormwater is able to be adequately managed onsite as sufficient soft surface landscaped area is provided to allow for stormwater infiltration. The elevated ground floor terrace at the rear of the dwelling will prevent any potential high sea water from flowing along the sides of the dwelling towards Pittwater Road.

- **Privacy**

The submissions raised concerns that the proposed development will result in unreasonable privacy impacts upon adjacent properties.

Comment:

The proposed development is not expected to result in any unreasonable impact upon the privacy of adjacent properties. The development incorporates design elements to reduce overlooking potential with privacy screens along the sides of elevated balconies and offsetting windows from those of adjacent dwellings.

- **Overshadowing**

The submissions raised concerns that the proposed development will result in unreasonable overshadowing of the southern adjacent property.

Comment:

The proposed development demonstrates compliance with the minimum solar access requirements of Part D6 of WDCP. No unreasonable overshadowing of adjacent properties is expected.

- **Building colours and materials**

The submissions raised concerns that the proposed colours and materials are incompatible with the beachfront locality.

Comment:

The proposed building colours and materials are considered to appropriately integrate into the character of the locality. A condition is included to require the roof finish to be a medium-to-dark colour to limit the potential for nuisance glare and reflection.

- **Consistency with Resilience & Hazards SEPP**

The submissions raised concerns that the design of the dwelling is inconsistent with the coastal use area requirements of the Resilience & Hazards SEPP.

Comment:

The proposed development is considered to appropriately address all matters of the Resilience & Hazards SEPP. The design of the proposed dwelling is not expected to unreasonably impact upon the visual amenity and scenic qualities of the coastal environment.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	General Comments The site is designated as potential Acid Sulfate classes 4 and 5. The applicant has provided details that acid sulfate soils are unlikely to be encountered. Environmental Health supports the application subject to conditions.
Landscape Officer	<u>Amended Plans Comment 21/04/2023</u> Amended plans, including Landscape Plan are noted.. The plans indicate removal of taller trees in the rear yard (though I note that whilst the tree graphic has been removed, there is still reference to <i>Banksia integrifolia</i> on the planting plan in the rear yard). As issues of view loss have been raised, no objections to deletion of the rear tree planting is raised, though small trees in the front setback are still supported.

Internal Referral Body	Comments
	Conditions have been amended to reflect to amended planting proposal. <u>Original Comment</u> The application seeks consent for construction of a dwelling house. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): D1 Landscaped Open Space and Bushland Setting E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation The Landscape plan prepared by Volker Klemm are noted. The DA plans indicate that no significant landscape features are affected by the proposed works. No objections are raised with regard to landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	Biodiversity Referral (21 April 2023) The amended plans are noted. Previous biodiversity comments and recommended conditions remain relevant to the amended proposal. Biodiversity Referral (12 August 2022) The proposal has been assessed against the following biodiversity provisions: • SEPP (Resilience and Hazards) - Coastal Environment Area • Warringah DCP Clause E2 Prescribed Vegetation • Warringah DCP Clause E4 Wildlife Corridors • Warringah DCP Clause E6 Retaining unique environmental features Vegetation on the subject site is predominantly exotic/planted vegetation and the proposal is unlikely to result in impacts to significant native vegetation. The submitted Landscape Plan requires minor amendment to improve consistency with the objectives of relevant controls.
NECC (Coast and Catchments)	This response has been prepared based on review of the following documents relevant to the site and application: • Coastal Engineering report prepared by Horton Coastal Engineering Pty Ltd, dated 20 June 2022, submitted with application DA2022/1153. • Statement of Environmental Effects for the proposed new

Internal Referral Body	Comments
	dwelling at 1162 Pittwater Rd, Collaroy, prepared by Complete Thought Studio dated June 2022 submitted with application DA2022/1153. Due to the presence of coastal protection works at this location the matters relevant to the coastal assessment of this application are the location of the building in relation to minimum setbacks for development outlined in the Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fisherman's Beach (2016). The proposal has also been assessed against and is considered to be consistent with the following: • WLEP 2011, Clause 6.5 • WDCP 2011, Part E9 • State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2 Clauses 2.10, 2.12 and 2.13. Based on this assessment the proposal is supported subject to condition. Specifically that it be confirmed that the building is designed and constructed in accordance with the minimum setbacks for properties with new or upgraded coastal protection works outlined on the Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fisherman's Beach (2016).
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent. Second referral Changes to the plans do not impact stormwater and access and as such Development Engineering has no objection to the application subject to the following conditions of consent.
Parks, reserves, beaches, foreshore	The development site adjoins the Collaroy Beach foreshore that is located downslope of the property. The development is not detrimental to the established character of the adjoining residential and beach foreshore and is in keeping with adjoining residential properties, and as such Parks Reserves and Foreshores raise no concerns with the development proposal.
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.

External Referral Body	Comments
Aboriginal Heritage Office	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.

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. 1264988S, dated 01/06/2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	63

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.

Transport for NSW

Section 2.118 - Development with frontage to classified road states:

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

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The site fronts Pittwater Road, which is a classified road. The proposed development maintains the existing vehicle access provision off Pittwater Road. The site does not have a frontage to a secondary road to obtain access. The proposal is consistent with similar residential dwelling development along the eastern side of Pittwater Road. Council is satisfied that the proposal will not adversely affect the safety, efficiency and ongoing operation of the classified road.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

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

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

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

Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse 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

- if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

Division 5 General

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

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

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

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:

All relevant provisions of applicable certified coastal management programs, including the Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fisherman's Beach (2016), have been considered as part of the assessment of the application.

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	8.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.5 Coastline hazards	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	N - 7.2m	5.4m	N/A	Yes
	S - 7.2m	5.4m	N/A	Yes
B3 Side Boundary Envelope	N - 4m	Within envelope	N/A	Yes
	S - 4m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	N - 0.9m	0.9m	N/A	Yes
	S - 0.9m	0.9m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	2.8m to 5.1m	21.5% to 56.9%	No
B9 Rear Boundary Setbacks	6m	Dwelling - 26.8m	N/A	Yes
		Rear terrace - 23.8m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (226.4m ²)	43.3% (245m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	Yes	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
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	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
E7 Development on land adjoining public open space	Yes	Yes
E9 Coastline Hazard	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

The control requires development to be setback a minimum of 6.5m from the front boundary.

The proposed dwelling is sited with a minimum front setback of 2.8m, representing a variation of 56.9%.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

The level of openness along the street frontages is not expected to be unreasonably impacted by the proposed dwelling. The front setbacks of other dwellings along the eastern side of Pittwater Road are highly varied, including some examples of nil setbacks. The front setback of the proposed dwelling is between the setbacks of the two adjacent buildings.

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

Comment:

Visual continuity of the prevailing building pattern is considered to be achieved as the front setback of the proposed dwelling is similar to that of the existing dwelling on the site and those adjoining. Landscaped elements are proposed to front the street with a permeable paved driveway to mitigate visual dominance of the dwelling.

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

Comment:

As above, landscaped elements are proposed in the front setback area to ensure the visual dominance of the development is mitigated and the visual quality of the streetscape is maintained.

- *To achieve reasonable view sharing.*

Comment:

The proposal demonstrates acceptable levels of view sharing between dwellings.

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

Description of non-compliance

Council is in receipt of several submissions on behalf of six properties. All submissions object to the potential view loss that may result of the proposed development.

In order to ascertain the extent of potential view impact, Council requested the applicant install height poles to provide a visual representation of the siting and built form of the proposed dwelling. Site inspections were conducted at 1160 Pittwater Road (southern adjacent property) and 1164 Pittwater Road (northern adjacent property). The height poles in the images below represent the originally proposed dwelling which has been amended during assessment.

Merit consideration

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

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

Most properties on the eastern side of Pittwater Road enjoy panoramic ocean views towards the east with little obstruction. The view corridors toward the northeast and southeast contain headland and coastal interface views. Depending on the location within the property, these views are partial to whole. As they incorporate the most scenic elements, the view corridors containing the headland and coastal interface are considered to be the most iconic. It is this corridor that the proposed development is likely to cause the greatest impact. The proposed development will have no impact upon the ocean view directly to the east.

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:

1164 Pittwater Road

Long Reef Headland towards the southeast is capable of being viewed from the ground floor primary living area from a standing position. Views from a sitting position is not possible due to the existing boundary fence and vegetation. Views of the headland from the first floor are achieved at both standing and sitting positions. The view is obtained across several side boundaries.



Photo 1: Standing view from dining table towards the southeast



Photo 2: Standing view (zoomed) from the kitchen towards the southeast



Photo 3: Standing view from first floor rear balcony towards the southeast

1160 Pittwater Road

Narrabeen Headland and distant headlands towards the northeast are capable of being viewed from the first floor terrace from a standing position and seated. The headland views are not able to be viewed from any room inside the dwelling. The view is obtained across several side boundaries.



Photo 4: Standing view from first floor bedroom towards the east-northeast



Photo 4: Standing view from the eastern edge of the first floor terrace towards the northeast

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:

Despite being obtained across side boundaries, it is likely the iconic elements contained within the northeast and southeast view corridors would be substantially or fully obscured by the development as originally proposed when viewed from living areas of adjacent dwellings, leading to severe view loss. It is noted that these view corridors will not be impacted when viewed from the rear yards of these properties.

Retention of the northeast and southeast view corridors from properties beyond the properties neighbouring the subject site is considered to be unrealistic due to the siting of existing development, vegetation and that the corridors are obtained across more side boundaries. Therefore, the impact from these properties is expected to be minor.

Ocean views towards the east from properties on the eastern side of Pittwater Road will not be impacted by the proposed development. Properties on the western side of Pittwater Road are not expected to be unreasonably impacted. The proposal demonstrates a generally compliant built form that will allow for view corridors between the side setbacks of the dwelling. Therefore, the impact from properties on the western side of Pittwater Road is expected to be 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 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:

In order to address the severe extent of the view impact of the proposed development as outlined above, the applicant has revised the siting and design of the dwelling to help reduce the extent of impact upon existing view corridors, primarily towards the southeast. The revisions include the shifting of the building footprint 1.51m towards the west and redesigning the rear columns to present as less bulky while retaining a visually interesting building design.

1160 Pittwater Road

While the proposal will impact upon the existing northeast view corridor obtained from the first floor terrace at 1160 Pittwater Road, it is considered that this view corridor is highly vulnerable. The rear setback of the dwelling at 1160 Pittwater Road is greater than the prevailing rear setback of existing dwellings along the eastern side of Pittwater Road, meaning that any future development at the subject site will likely impact upon the northeast view corridor. The view

corridor is not accessible from the primary internal living areas of the dwelling. The proposal will not cause any additional impact upon views obtained from the internal living areas of the dwelling. The existing view corridor of the ocean towards the east will not be impacted by the proposed development.

Despite the view from the terrace being significantly impacted by the proposal, the extent of this impact is considered to be reasonable due to the nature of the space where the view is obtained. The terrace is a partially covered space that is most likely used during temperate and generally clear weather. The view corridor is only attainable from the uncovered portion of the terrace, an area unlikely to be used during inclement weather. As the terrace cannot be permanently inhabited, the frequency of access the view corridor is less compared to an internal living room. The requirement to retain the existing northeast view corridor from a space that is likely to be accessed intermittently is considered to place an unreasonable restriction on the development potential of the subject site.

It is noted that 1160 Pittwater Road appears to have future development potential that may result in regaining part of the northeast view corridor.

1164 Pittwater Road

It is considered the view corridor towards the southeast obtained from the dwelling at 1164 Pittwater Road is the most important to retain as it provides for a balanced development potential of the subject site and reasonable view sharing between dwellings.



Figure 1: Mock-up of original dwelling design and siting viewed from first floor rear balcony at 1164 Pittwater Road



Figure 2: Mock-up of amended dwelling design and siting viewed from first floor rear balcony at 1164 Pittwater Road

As depicted in the figures above, the revised siting and design of the proposed dwelling is expected to significantly reduce the extent of impact upon the iconic view corridor towards the southeast when viewed from the ground floor kitchen and dining room and rear first floor balcony.

Long Reef Headland, when viewed from the ground floor living room, will be obscured by the proposal. However, it is unrealistic to expect retention of the view corridor from this area of the dwelling. The view corridor from the ground floor living room is highly vulnerable as it is achieved across several side boundaries and a requirement to retain this corridor would place unreasonable restriction to the development potential of the subject site. Iconic elements of the view corridor, including Long Reef Headland and the coastal interface is able to be retained when viewed from the from the ground floor kitchen and dining room and rear first floor balcony.

Concluding Comment

The revised proposal demonstrates general compliance with the built form controls and objectives and demonstrates a skilful design that satisfactorily addresses concerns raised regarding view sharing. As such, this assessment finds the proposed development allows for the reasonable sharing of views between dwellings.

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

Comment:

The proposal demonstrates adequate design solutions in an attempt to develop a proposal that incorporates modern and contemporary architecture that is responsive to the natural and urban environment of the locality.

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

Comment:

No canopy trees are proposed for removal.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$11,210 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,120,959.

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 construction of a dwelling house has been referred to the Development Determination Panel (DDP) due to the receipt of six (6) submissions by way of objection.

The concerns raised in the objections have been addressed, including building design and siting amendments made to reduce the extent of view impact upon neighbouring dwellings.

The critical assessment issues non-compliance with the front setback control and view sharing between dwellings.

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 DA2022/1153 for Construction of a dwelling house on land at Lot B DP 302895, 1162 Pittwater Road, 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
001_1162PR DA-000 Rev B	06/04/2023	Complete Thought Studio
001_1162PR DA-001 Rev D	06/04/2023	Complete Thought Studio
001_1162PR DA-100 Rev D	06/04/2023	Complete Thought Studio
001_1162PR DA-110 Rev D	04/04/2023	Complete Thought Studio
001_1162PR DA-120 Rev D	06/04/2023	Complete Thought Studio
001_1162PR DA-200 Rev D	06/04/2023	Complete Thought Studio
001_1162PR DA-201 Rev D	06/04/2023	Complete Thought Studio
001_1162PR DA-202 Rev D	06/04/2023	Complete Thought Studio
001_1162PR DA-203 Rev C	24/06/2022	Complete Thought Studio
001_1162PR DA-300 Rev D	06/04/2023	Complete Thought Studio
001_1162PR DA-310 Rev D	06/04/2023	Complete Thought Studio

Engineering Plans		
Drawing No.	Dated	Prepared By
001_1162PR DA-003 Rev B	06/04/2023	Complete Thought Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1264988S	01/06/2022	Complete Thought
Coastal Engineering Advice	20/06/2022	Horton Coastal Engineering

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
DA1 Rev E	April 2023	Volker Klemm Landscape Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	24/06/2022	Complete Design Studio
001_1162PR DA-004 Rev A	24/06/2022	Complete Design Studio

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	03/08/2022

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling*

house, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011.

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 \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

system in sewerage areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$11,209.59 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,120,959.00.

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 \$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

8. Stormwater Disposal

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

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

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

9. Amendment of Landscape Plans

The submitted Landscape Plan is to be amended in accordance with the following:

- Deletion of *Echium candicans* and *Alternanthera 'Little Ruby'*
- A minimum of 60% new landscaping (by total number of plants) is to be selected from native planting guide for the Narrabeen Ward, available on Council's website.

The amended Landscape Plan is to be certified by a qualified landscape architect 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. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

11. Vehicle Crossings Application

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

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

Certificate.

Reason: To facilitate suitable vehicular access to private property.

12. **Certification of Building Setback**

Construction drawings and specifications be prepared and signed by a suitably qualified engineer demonstrating that the proposed development is in accordance with the minimum setbacks for properties with new or upgraded coastal protection works outlined on the Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fisherman's Beach (2016). This certification is to be submitted to the Principle Certifying Authority prior to issue of the Construction Certificate.

Reason: To ensure compliance with the minimum setbacks for properties with new or upgraded coastal protection works outlined on the Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fisherman's Beach (2016).

13. **Compliance with Standards**

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

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

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

14. **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.

15. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Protection of Sites of Significance**

- a) Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should

cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

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

Reason: Preservation of significant environmental features.

17. **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 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), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during

the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

18. **Road Reserve**

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

Reason: Public safety.

19. **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.

20. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

21. **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.

22. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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. **Acid Sulfate Soil**

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further work being carried out.

Reason: Protection of the Environment.

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

25. **Required Tree Planting**

a) Trees shall be planted in accordance with the following:

- i) 2 native trees capable of attaining a minimum height of 4m at maturity; located in the front yard; minimum pot size 200mm

b) Tree planting shall be located to minimise significant impacts on neighbours in terms of

blocking winter sunlight or where the proposed tree location may impact upon significant views.

c) Native tree planting species may be selected from Council's list:

www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

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

Reason: To maintain environmental amenity.

26. **Landscape Completion**

a) Shrub and ground cover planting is to be implemented in accordance with the approved Landscape Plan.

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

Reason: Environmental amenity.

27. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

28. **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.

29. **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.

30. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

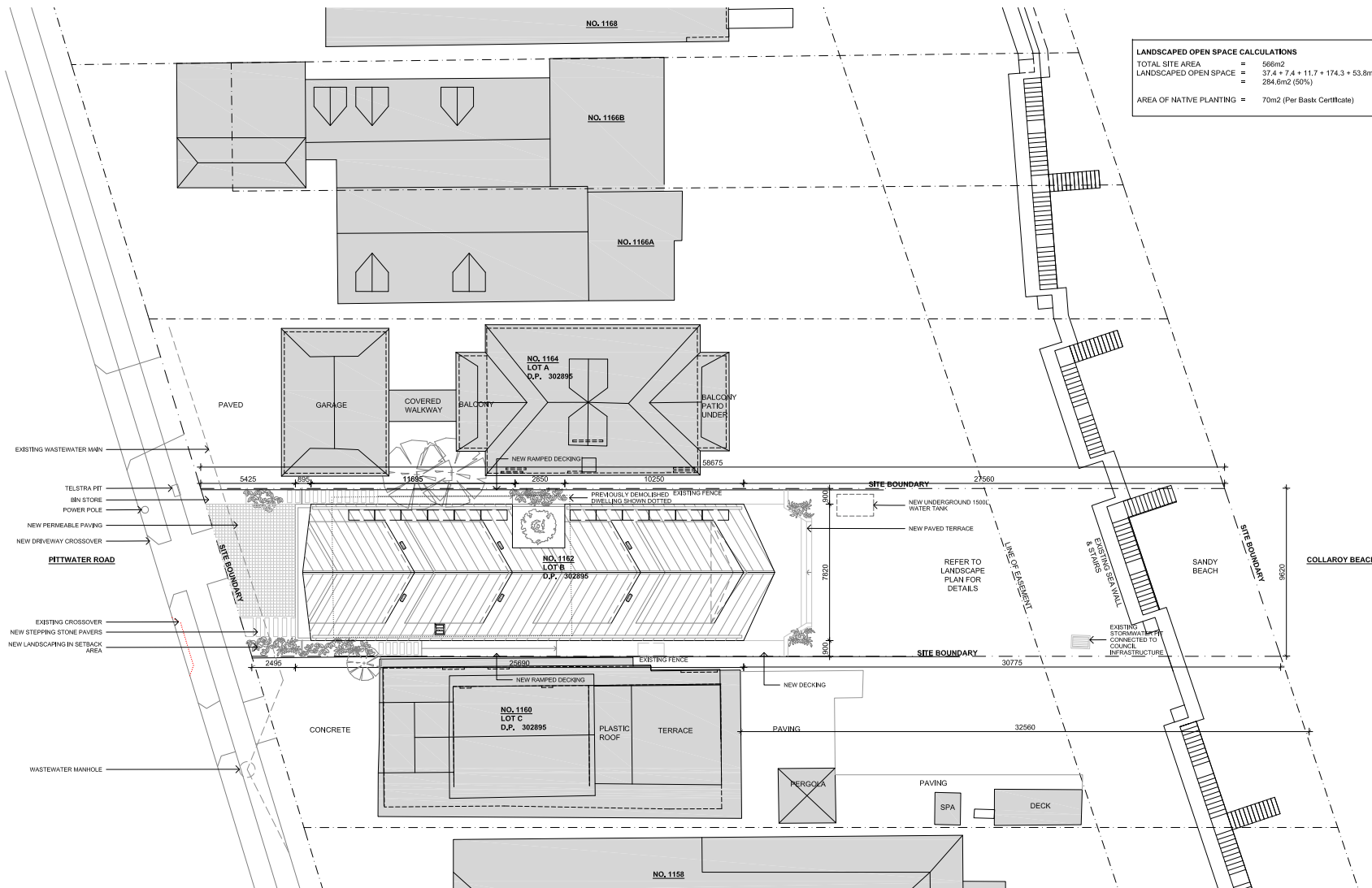
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

31. **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.



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E info@completenessstudio.com
ABN 176 515 561 42
NOM Stephen Clement NSW Reg 10281

No.	Description
A	Preliminary
B	Draft DA
C	Development Application
D	Development Application Amended

Date
18.10.2021
27.01.2022
24.06.2022
06.04.2023

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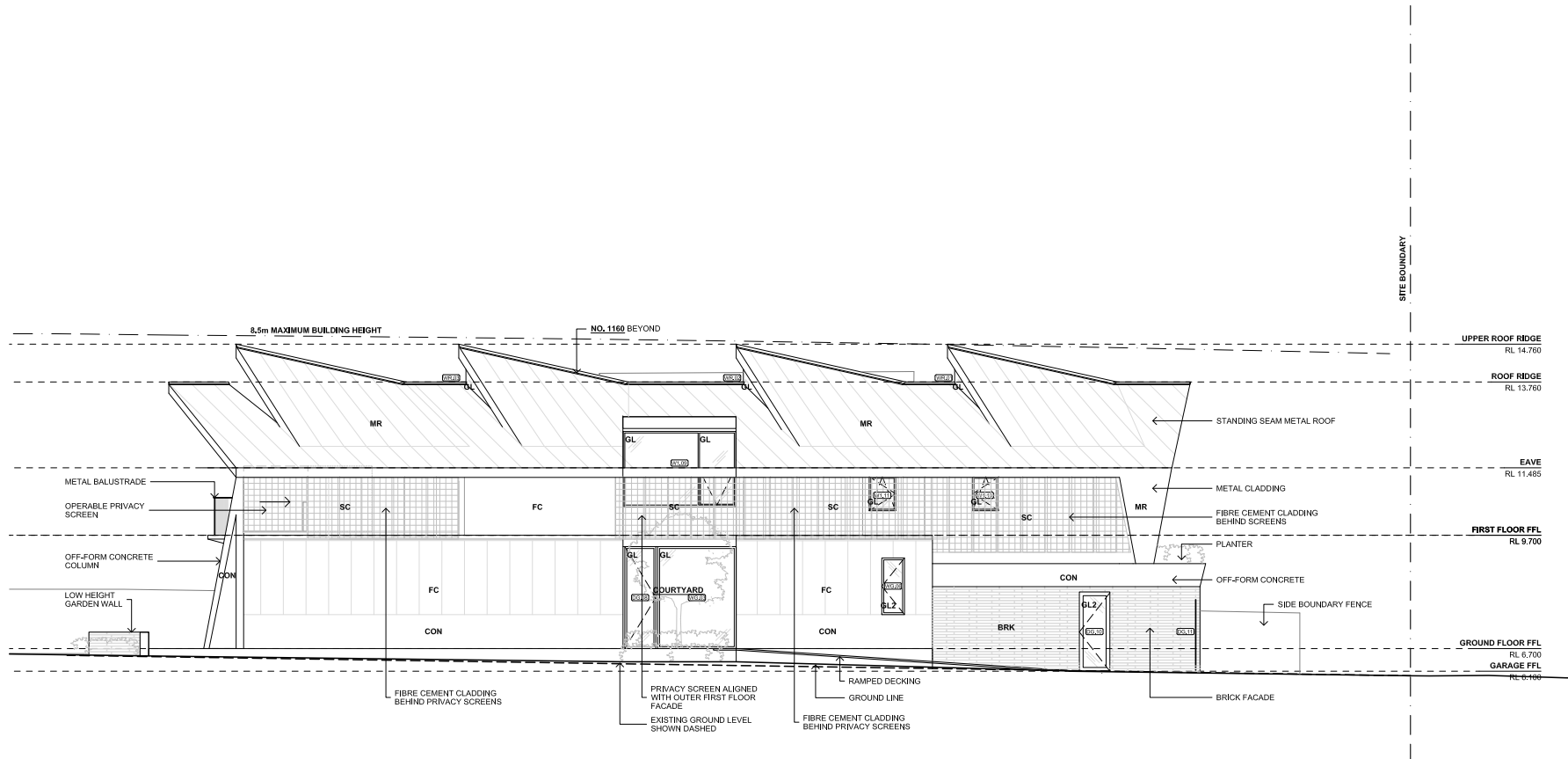
BRK	BRICK
CON	CONCRETE
FC	FIBRE CEMENT
GL	GLAZING
GL2	OPAQUE GLAZING
MR	METAL ROOFING
SC	SCREEN



PROJECT
1162 Pittwater Road, Collaroy
LOT B, DP302895

PROJECT NO.
001_1162PR
DRAWING NAME.
Site Plan
DRAWING NO.
DA-001

DRAWN SC
STATUS DA
DATE 06.04.2023
SCALE 1 : 200 @ A3



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No.	Description	Date
A	Preliminary	18.10.2021
B	Draft DA	27.01.2022
C	Development Application	24.09.2022
D	Development Application Amended	06.04.2023

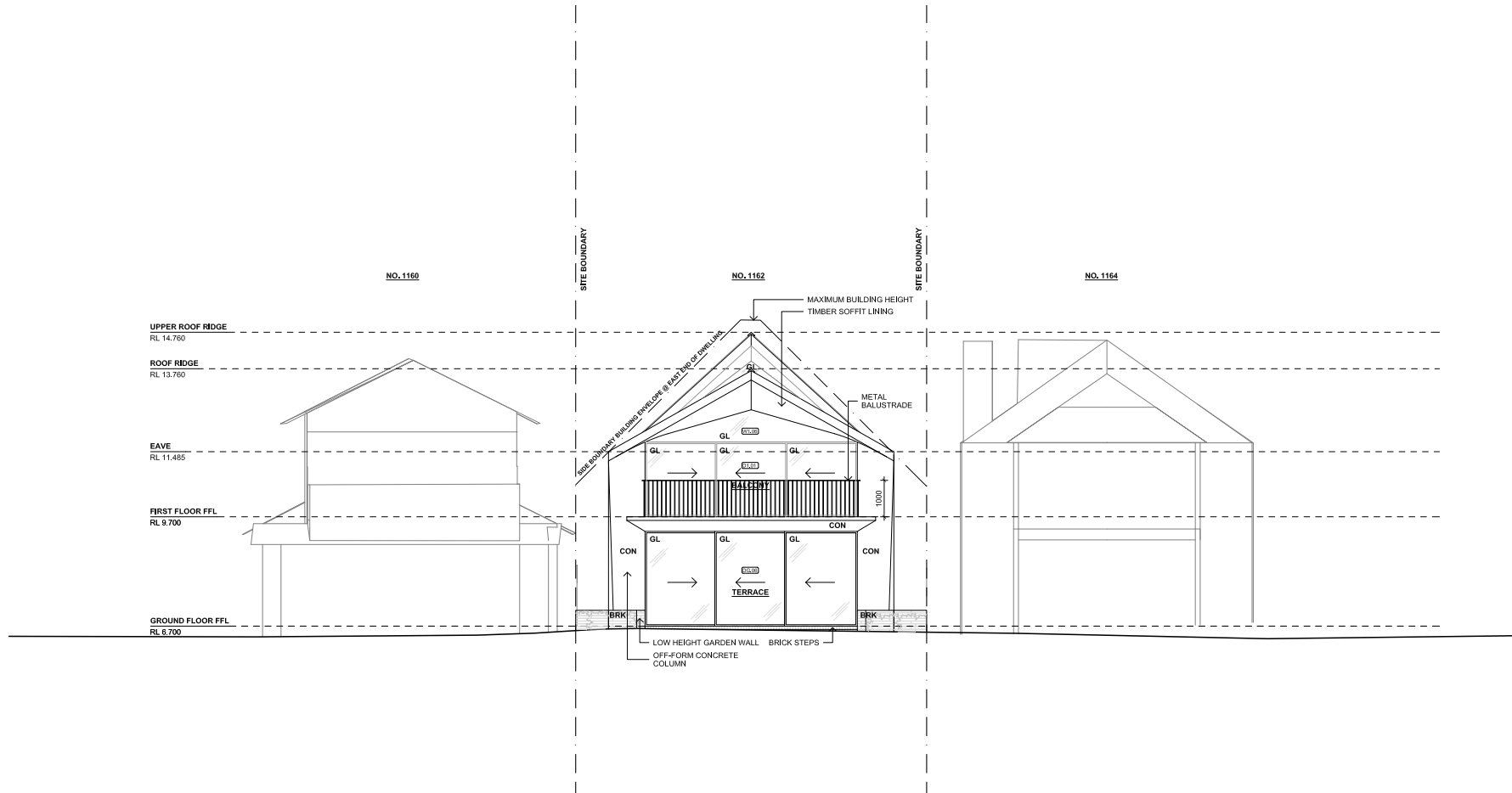
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BRK	BRICK
CON	CONCRETE
FC	FIBRE CEMENT
GL	GLAZING
GL2	OPAQUE GLAZING
MR	METAL ROOFING
SC	SCREEN

PROJECT
1162 Pittwater Road, Collaroy
LOT B, DP302895

PROJECT NO.
001_1162PR
DRAWING NAME.
North Elevation
DRAWING NO.
DA-200

DRAWN SC
STATUS DA
DATE 06.04.2023
REV D
SCALE 1 : 100 @ A3



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No.	Description	Date
A	Preliminary	18.10.2021
B	Draft DA	27.01.2022
C	Development Application	24.09.2022
D	Development Application Amended	06.04.2023

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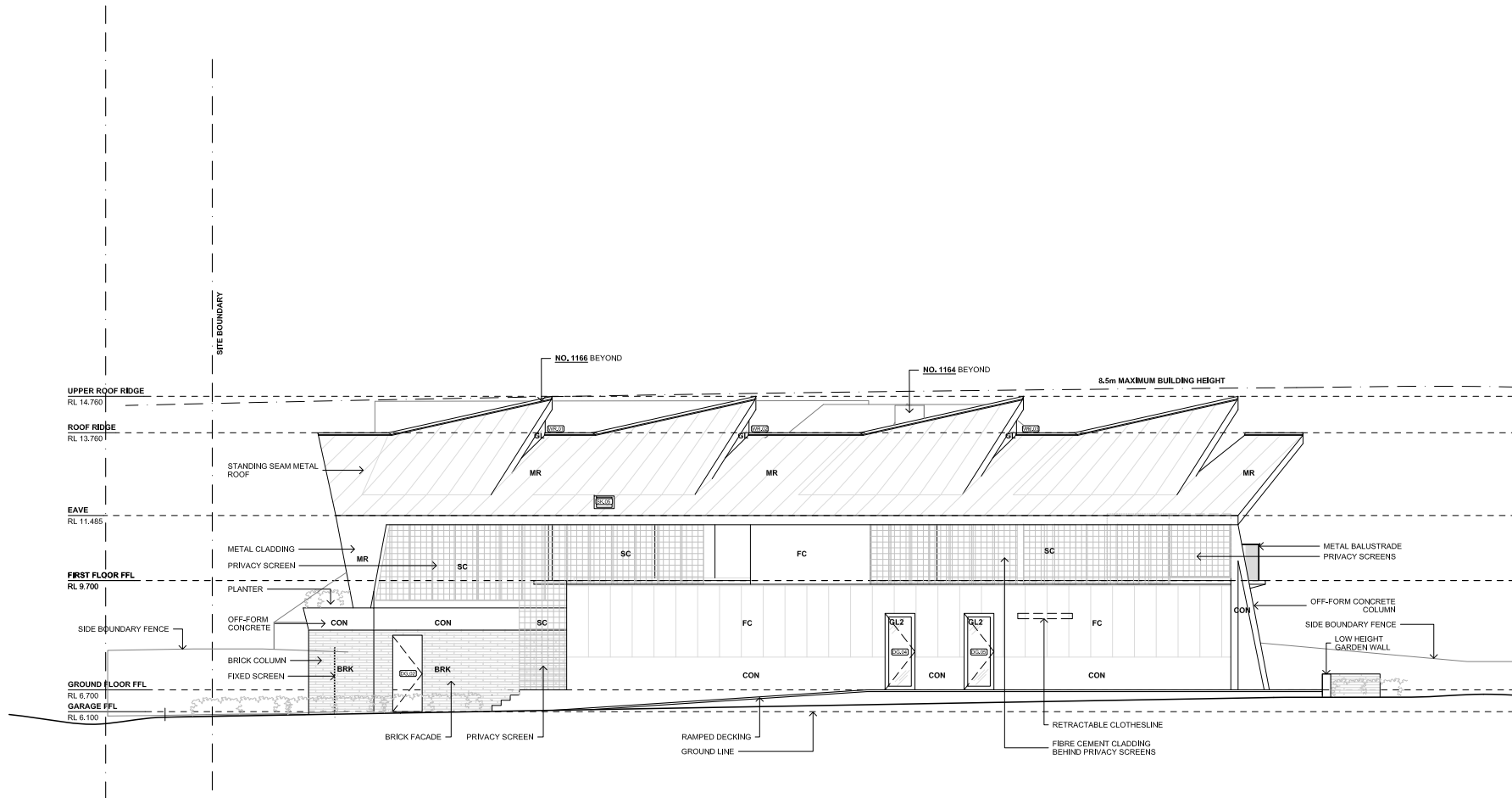
BRK	BRICK
CON	CONCRETE
FC	FIBRE CEMENT
GL	GLAZING
GL2	OPAQUE GLAZING
MR	METAL ROOFING
SC	SCREEN

PROJECT
1162 Pittwater Road, Collaroy
LOT B, DP302895

PROJECT NO.
001_1162PR
DRAWING NAME.
East Elevation
DRAWING NO.
DA-201

DRAWN	SC
STATUS	DA
DATE	06.04.2023
SCALE	1 : 100 @ A3

REV
D



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No.	Description	Date
A	Preliminary	18.10.2021
B	Draft DA	27.01.2022
C	Development Application	24.09.2022
D	Development Application Amended	06.04.2023

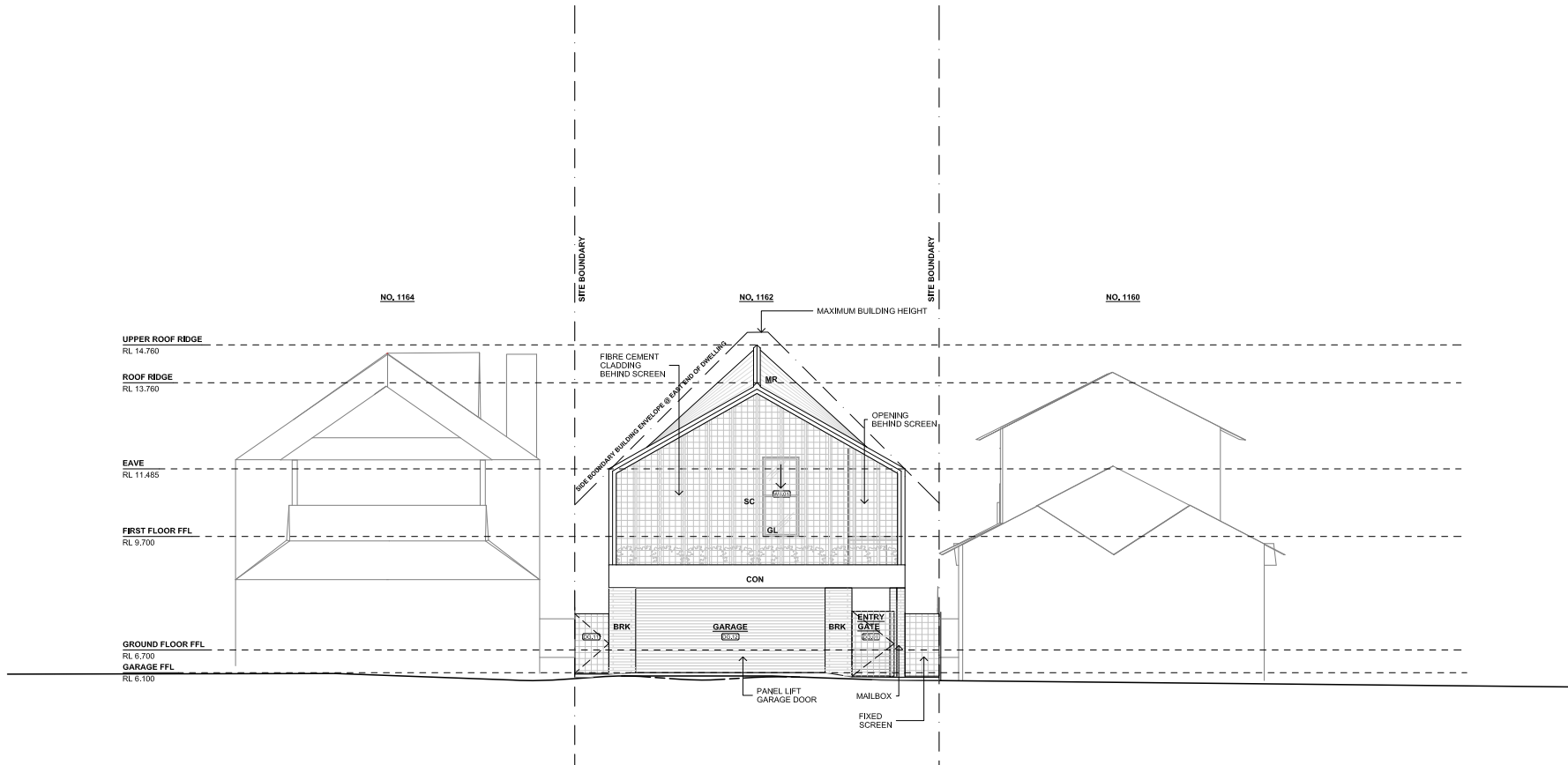
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BRK	BRICK
CON	CONCRETE
FC	FIBRE CEMENT
GL	GLAZING
GL2	OPAQUE GLAZING
MR	METAL ROOFING
SC	SCREEN

PROJECT
1162 Pittwater Road, Collaroy
LOT B, DP302895

PROJECT NO.
001_1162PR
DRAWING NAME.
South Elevation
DRAWING NO.
DA-202

DRAWN SC
STATUS DA
DATE 06.04.2023
SCALE 1 : 100 @ A3



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No. A Preliminary
B Draft DA
C Development Application

Date 18.10.2021
27.01.2022
24.06.2022

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BRK BRICK
CON CONCRETE
FC FIBRE CEMENT
GL GLAZING
GL2 OPAQUE GLAZING
MR METAL ROOFING
SC SCREEN

PROJECT
1162 Pittwater Road, Collaroy
LOT B, DP302895

PROJECT NO.
001_1162PR
DRAWING NAME.
West Elevation
DRAWING NO.
DA-203

DRAWN SC
STATUS DA
DATE 24.06.2022
SCALE 1 : 100 @ A3

REV
C

ITEM 3.2

**MOD2023/0058 - 1 & 2/35 & 35 LAUDERDALE AVENUE
FAIRLIGHT - MODIFICATION OF DEVELOPMENT CONSENT
DA2022/0824 GRANTED FOR ALTERATIONS AND ADDITIONS
TO CREATE DWELLING HOUSE (EXISTING DUAL
OCCUPANCY) AND CONSTRUCTION OF A SWIMMING
POOL**

REPORTING MANAGER Adam Richardson
TRIM FILE REF 2023/296769
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 Mod2023/0058 for Modification of Development Consent DA2022/0824 granted for alterations and additions to create dwelling house (existing dual occupancy) and construction of a swimming pool on land at Lot CP SP 49962 and Lot 3 & 4 SP 78265, 1 & 2/35 & 35 Lauderdale Avenue FAIRLIGHT, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0058
Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 3 SP 78265, 1 / 35 Lauderdale Avenue FAIRLIGHT NSW 2094 Lot 4 SP 78265, 2 / 35 Lauderdale Avenue FAIRLIGHT NSW 2094 Lot CP SP 49962, 35 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2022/0824 granted for alterations and additions to create dwelling house (existing dual occupancy) and construction of a swimming pool
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gillian Vaughan Dryland Proprietors of Strata Plan 49962 Adam Dominic Malet Wheatley
Applicant:	Eugene Du Plessis
Application Lodged:	14/02/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	20/02/2023 to 06/03/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 28.9%
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent to modify DA2022/0824. DA2022/824 was recently approved by Council whereby consent was granted for alterations and additions to an existing dual occupancy, including the dissolution of the strata scheme to create a single residential dwelling, a

detached two (2) vehicle carport and associated landscaping works.

The application is referred to the Development Determination Panel (DDP), as it is a Section 4.55(2) modification application seeking to modify a condition not recommended in the assessment but imposed by the DDP.

The modification application has been notified, with the submissions received raising concerns which relate to the fact that DA2022/0824 should have been refused, unacceptable and unreasonable amenity impacts of the modified development upon adjoining properties and the non-compliant form of the proposal when considered against the Manly Local Environmental Plan 2013 and Manly Development Control Plan, moderate view loss, and inadequate information. The concerns raised in the submissions have been addressed accordingly and are not considered to identify concerns which warrants refusal of this application.

Critical assessment issues include, the height of modified development, stormwater management, foreshore scenic protection area, sunlight access and overshadowing, privacy and security, maintenance of views, setbacks (primarily relating to the front and side setbacks), and swimming pools, spas and water features.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent to modify DA2022/0824 in the following ways:

- Addition of a swimming pool and spa within the front setback area, predominantly beneath the approved elevated carport and pedestrian bridge.
- Amended garden design in the front yard in response to facilitating room for the proposed swimming pool and spa,
- Amendments to the entry path and external stairs, including an adjustment to the eastern side access steps and street entry pathway in response to the changed front garden design,
- Amend the privacy screen (as stipulated under Condition 22. Privacy under the original consent) on the ground level balcony along the western elevation to include the window to Bedroom 1,
- Revised garden design to the rear yard, including levelling out the lawn to match the level of the dwelling house by way of soil retaining walls and terraced planters,
- Include the previous external storeroom and WC on the lower ground floor level as internal habitable room space, indicated as a 'study',
- Change the internal storeroom to a bathroom on the lower ground floor level,
- Deletion of Condition 24. Roof Height (requiring a reduced building height).

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 - Zone R1 General Residential
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 3 SP 78265 , 1 / 35 Lauderdale Avenue FAIRLIGHT NSW 2094 Lot 4 SP 78265 , 2 / 35 Lauderdale Avenue FAIRLIGHT NSW 2094 Lot CP SP 49962 , 35 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Lauderdale Avenue. The site is irregular in shape with a frontage of 17.6 metres along Lauderdale Avenue and a maximum depth of 33.5 metres. The site has a surveyed area of 433.7m². The site is located within the R1 General Residential zone and accommodates a two (2) and three (3) storey residential dual occupancy building. The site has a northerly orientation and is located on a considerable slope which falls almost immediately from the street frontage. The site is not known to have any threatened species. Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of single residential dwellings, dual occupancies and Residential Flat Buildings (RFBs).

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:

- **DA2022/0824.** This development application sought consent for alterations and additions to an existing dual occupancy, including dissolving the Strata Plan of the dual occupancy and the creation of a single residential dwelling. This application was referred to the Development Determination Panel (DDP) for determination due to the proposal resulting in a development standard variation of more than 10%. The DDP approved this application, subject to conditions, on 7 December 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the

applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2022/0824, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0824 for the following reasons: DA2022/0824 sought consent for alterations and additions to a dual occupancy building, including the dissolution of the dual occupancy strata scheme to be replaced with a single residential dwelling, a swimming pool, landscaping works and elevated carport. Amended plans were received for this application which formed the basis of the assessment, and the proposed swimming pool was removed. The proposed modified works seek to modify DA2022/0824 by including a swimming pool and spa within the front setback area, alterations to the landscape plan, alterations to the dwelling, including amendments to a conditioned privacy screen and maximum roof height, reconfiguration of the lower ground floor to include habitable floor space. In this instance, the proposed modified works are considered as substantially the same to that which was approved under DA2022/0824.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body	Development Application DA2022/0824 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(i) the regulations, if the regulations so require, or	
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via an existing condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this

Section 4.15 'Matters for Consideration'	Comments
	application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to requesting a Geotechnical addendum letter and issues relating to the proposed swimming pool. <u>Clause 61</u> 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. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via an existing condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via an existing condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/02/2023 to 06/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Planning Progress Mrs Donna Elizabeth Van Dongen	Po Box 213 AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- DA2022/0824 should have been refused
- Request to remove or vary Conditions 1, 22 and 24 of DA2022/0824 are unacceptable and results in unreasonable impact to neighbouring amenity
- Non-compliant development with MLEP 2013 Clauses
- Non-compliant development with MDCP Controls
- Moderate view loss
- Significant loss of visual privacy and acoustic privacy
- Request for additional information
- Application should be determined by the DDP given DA2022/0842 was determined by the DDP
- Recommended conditions and amendments to the proposal

The above issues are addressed as follows:

- **DA2022/0824 should have been refused**

The submission noted that, for the reasons as previously detailed in the submission for the original development application, DA2022/0824 should have been refused by the Development Determination Panel (DDP).

Comment:

This is not relevant to the consideration of this modification application.

This issue does **not** warrant reason for refusal of this application.

- **Request to remove or vary Conditions 1, 22 and 24 of DA2022/0824 are unacceptable and results in unreasonable impact to neighbouring amenity**

The submission raised concern that removing or amending Conditions 1, 22 and 24 of DA2022/0824, relating to the maximum height and privacy mitigation, would result in unreasonable and unacceptable amenity impacts upon the adjoining property to the west, particularly solar access issues and direct overlooking into the private open space and internal areas of the dwelling at 37 Lauderdale Avenue, Fairlight.

Comment:

As detailed below, and elsewhere in this assessment report, the proposed maximum height under this modification application is the same as that which was recommended for approval within the Council assessment report to the DDP. As such, the assessment report for DA2022/0824 addressed the amenity impacts of the built form. The DDP determination sought to mitigate the height and privacy impacts by way of recommended conditions to alter the design and built form. Where the modified works result in a variation, a detailed assessment has been undertaken within this report.

This issue does **not** warrant reason for refusal of this application.

- **Non-compliant development with MLEP 2013 Clauses**

The submission raised concern that the proposed development sought to vary Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio, which would result in unreasonable impacts upon the adjoining property to the west of the subject site.

Comment:

These concerns were raised in the submission for DA2022/0824, and were subsequently addressed within the assessment report. No material changes are made to the floor space ratio with the proposed modified works, notwithstanding the changed use of some internal rooms to now be habitable floor space (as these rooms were included in the FSR calculation of DA2022/0824). No detail discussion is required, in this instance

A detailed discussion on the proposed height of the building has been undertaken within this modification application, noting that the deletion of Condition 24. would return the maximum height to what was original proposed and recommended for approval to the DPP under DA2022/0824.

This issue does **not** warrant reason for refusal of this application.

- **Non-compliant development with MDCP Controls**

The submission raised concern that the proposal results in multiple MDCP non-compliances (such as 3.4.1 Sunlight Access and Overshadowing, 3.4.2 Visual and Acoustic Privacy, 3.4.3 Maintenance of Views, 4.1.3 Floor Space Ratio, 4.1.4 Setbacks - Front, side and rear setbacks, and 4.1.7 First Floor and Roof Additions), noting that these, collectively, result in an unacceptable built form with severe amenity impacts upon the adjoining property to the west of the subject site.

Comment:

The proposed resultant built form of the dwelling will be the same as what was assessed under DA2022/0824. As such, the extent of overshadowing, extent of view loss, the maximum floor

space ratio, and the first floor and roof addition does not change, and therefore does not require re-assessment (as this was undertaken under DA2022/0824). Where the proposed modified works change the previously approved setbacks, this has been addressed under a detailed assessment within this report.

This issue does **not** warrant reason for refusal of this application.

- **Moderate view loss**

The submission raised concern that the proposed development results in a moderate view loss of iconic views brought on by the non-compliant form of the development.

Comment:

As detailed above, the proposed modified works do not alter the approved built form. Therefore, the view loss assessment undertaken under DA2022/0824 does not change and an additional view loss assessment is not required in this instance.

This issue does **not** warrant reason for refusal of this application.

- **Significant loss of visual privacy and acoustic privacy**

The submission raised concern that the design change to the privacy screen (and subsequent request to delete Condition 22. Privacy of DA2022/0824) along the western elevation of the ground floor balcony and western facing window to Bedroom 1 on the ground floor, will create an unreasonable privacy impact upon the occupants of the property to the west of the subject site, noting that the modification application seeks to completely undermine the determination by DDP. This submission notes the amended design to the privacy screen also adds unreasonable bulk within the western side setback, and does not extend for the entire length of the ground floor balcony. Further, this submission requests that, as previously requested by way of submission, another privacy screen should be conditioned along the full extent of the first floor balcony along the western elevation.

Concern was also raised regarding insufficient information for the location of air conditioning units and the swimming pool and spa pump/filter, noting that such plant/machinery should not be located along the western boundary of the subject site as it would unreasonably impact upon the acoustic privacy of the occupants of the property to the west of the subject site.

Comment:

Due to the levels of the previously approved ground level balcony on the southern elevation of the dwelling and the levels and location of the adjoining dwelling, the proposed design of the privacy screen to the ground floor balcony along the western elevation is considered acceptable. A detailed assessment of this has been undertaken within this report, under section 3.4.2 Privacy and Security.

The concern regarding the location of air conditioning units was addressed under DA2022/0824, noting that Condition 47. Air conditioning Motor Noise restrictions were included to mitigate and manage noise arising from these units when in use. This modification application does not seek to delete or amend this condition.

Finally, the location of the swimming pool and spa pump/filter is located beneath the paving adjacent to the laundry exit, as detailed on drawing no. A.02 Issue H 'Proposed Ground Floor

Plan', dated 30.01.2023, prepared by Du Plessis + Du Plessis Architects. This service box is located approximately 2.15 metres from the western side boundary, and 4.26 metres from the external wall of the dwelling at 37 Lauderdale Avenue. Further, any approval granted for a swimming pool will include a condition related to the appropriate management of noise arising from the pump/filter when in use, including ensuring the pump/filter is in a sound proof box.

This issue does **not** warrant reason for refusal of this application.

- **Request for additional information**

The submission requested the provision of the following information: location of plant and machinery (specifically air conditioning units and swimming pool pump/filter), visual impact statement given the loss of views of Manly Harbour and North Head, certified height poles, amendment to the roof height study, clarification as to whether the lower ground floor level will be used as a secondary dwelling.

Comment:

The location of plant and machinery for the air conditioning units and swimming pool pump/filter has been addressed above. A view impact statement and view loss assessment is not required as the proposed modified works do not alter the dwelling to what was previously approved, as such the view loss assessment under DA2022/0824 remains.

This proposal seeks to reinstate the previously proposed maximum building height, noting that under DA2022/0824, certified height poles were erected in accordance with the proposed maximum height under DA2022/0824. As such, certified height poles are not required again.

It is noted the solar access height study does not show the details of *full solar access* to the first floor level. It is noted acknowledged that there are other areas on the first floor level that can allow for the penetration of sunlight. However, as detailed within the shadow diagrams provided under DA2022/0824, these clerestory windows will allow for the prolonged penetration of sunlight into the first floor level, with no unreasonable impacts upon adjoining properties or the streetscape, as detailed within DA2022/0824. The Applicant will not be requested to update this study, and a detailed discussion on the solar access upon adjoining properties resulting from the proposed maximum building height will not be undertaken again as this was addressed within the report for DA2022/0824.

Internal access from the ground level to the lower ground level has been retained within this modification application. And, by virtue of Condition 3 Approved Land Use within the consent for DA2022/0824, a secondary dwelling was not approved under DA2022/0824. As this modification application does not seek to remove Condition 3 Approved Land Use, the approved land use does not change.

This issue does **not** warrant reason for refusal of this application.

- **Application should be determined by the DDP given DA2022/0842 was determined by the DDP.**

The submission requested that this modification application is referred to the DDP for determination as the DDP determined the original development application.

Comment:

In accordance with Council's Charter, this modification application will be referred to Council's DDP for determination as the application is a Modification Application s4.55(2) which seeks to amend a condition of consent that was not included in the Council assessment report but which was added by the panel.

This issue does **not** warrant reason for refusal of this application.

- **Recommended conditions and amendments to the proposal**

The submission requested the following recommended conditions and changes to the architectural plans, should the modified works be approved (which is contrary to the clear objections raised above): delete the proposed swimming pool and spa, require the installation of privacy screens for the full extent of the ground floor and first floor level balconies along the western elevation, mechanical plant and air conditioning units not be located on the western boundary and be located within an acoustic box, separate consent is required for the use of the lower ground floor level as a secondary dwelling, amend and add to Condition 22 to ensure that a privacy screen is erected that extends along the entire outermost western edge of the first floor balcony, retain Condition 24 but ensure the entire roof is reduced by 800 millimetres, not 500 millimetres as previously conditioned.

Comment:

The assessment of this application has found that the proposed built form is acceptable. Where the application results in a numerical non-compliance, a detailed discussion on the merits of the proposal have been undertaken. Where, and if, necessary, relevant conditions will be recommended to increase amenity between properties. Additionally, if the proposed development is to be approved relevant conditions will be recommended to ensure that the proposed development satisfactorily results in an acceptable amenity impact upon adjoining properties.

This issue does **not** warrant reason for refusal of this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported, subject to conditions The application is for modification to development consent DA2022/0824. The modification proposes design changes to the front and rear yard and as such condition 39 Landscape Completion shall be amended to ensure the proposed planting in the rear setback can appropriately soften the newly proposed retaining walls. Condition 38 Required Tree Planting shall be deleted as the required tree planting is shown on the Landscape Plan. Condition 27 Tree and vegetation Protection shall remain.
NECC (Development Engineering)	Supported, subject to conditions The proposal is for the modification of Development Consent

Internal Referral Body	Comments
	DA2022/0824. Development Engineers have no objection to the proposed modification subject to the following: Condition 13 On-site Stormwater Detention Details is to be amended to reflect new plans as <i>concept drainage plans prepared by NY Civil Engineering, Job No E220140, Issue B, Dated 2/2/2023</i> <i>Note to Planner: The modification includes relocating the pool to the front yard with excavation close to the exiting retaining wall. No updated geotechnical report has been provided. Any potential impacts to the retaining wall should be considered by the geotechnical engineer.</i> Planner Comment On 1 May 2023, a Request for Further Information (RFI) letter was sent to the Applicant requesting a geotechnical addendum letter to ensure a suitably qualified geotechnical engineer has reviewed the amended plans, inclusive of the revised location of the swimming pool to the front setback area and any potential impact this may have upon the existing front retaining wall. The Applicant provided a Preliminary Geotechnical Assessment (Ref: J4147B, dated 21 February 2023), which has been included within Condition 1 of this report.
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. DA2022/0824, dated 7 February 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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.56m (in accordance with Condition 24. Roof Height which reduced proposed height by	10.96m	28.9%	No

		500mm)			
Floor Space Ratio	FSR: 0.5:1 (217.25m ²)	FSR: 0.65:1 (284.9m ²)	Unchanged	30% (approved under DA2022/0824)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

Zone R1 General Residential

- To provide for the housing needs of the community*

Comment:

The proposed development will continue to provide for the housing needs of the community by retaining the residential nature of the existing dwelling. As such, the proposed development will not negatively impact upon the housing needs of the community.

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

Comment:

The proposed development does not seek to alter the zoning of the subject site. As such, the proposed development maintains the housing variety within the residential area.

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

Comment:

The proposed development seeks to convert the existing dual occupancy into one (1) single dwelling. In this instance, the proposed development can enable other land uses that are permissible within the zone, and thus will meet the day to day needs of the residents.

4.3 Height of buildings

Council's Development Determination Panel (DDP) generally concurred with the Assessment Report and Recommendation of DA2022/0824, however the panel agreed that the concerns raised by the objectors were considered to have merit in relation to Privacy and Visual Bulk. As such, the Panel included additional conditions to improve privacy and reduce the height of the proposal by 500mm (which is Condition 24. Roof Height), notwithstanding the well-founded written Clause 4.6 assessment and recommended approval of a maximum height of 10.9 metres within DA2022/0824.

This application seeks to delete Condition 24. Roof Height, and retain the original proposed maximum height of 10.9 metres.

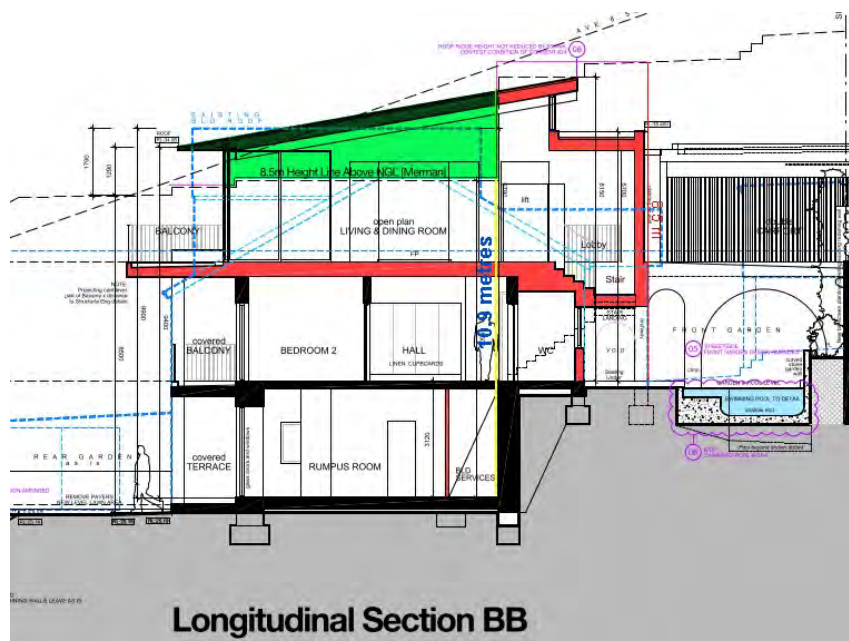


Figure 1. Proposed maximum building height (extent of breach indicated in green).

Visual Bulk

The proposed visual bulk of a dwelling with a maximum height of 10.9 metres will not adversely impact upon the streetscape of Lauderdale Avenue, noting that the maximum height will be compatible with the height and scale of other developments within the visual catchment. The first floor level along the western elevation has been stepped in to create ample spatial separation between dwellings, and to ensure there is not a continuous wall plane which would create an undesirable built form when viewed from the adjoining properties, but particularly the property to the west of the subject site.

With regards to the visual bulk impact upon the streetscape, due to the steep topography and the fact the subject site immediately drops away from the front boundary line, the extent of the built form that can be viewed from Lauderdale Avenue is minimal, comprising the first floor level and clerestory window (which is approximately 760 millimetres above the adjoining buildings' average roof height lines (as indicated on Drawing no. A.05 Issue H dated 30.01.2023 'North and South Elevations'). Further, when viewed from the south, the dwelling house presents as a three (3) storey dwelling which is consistent with the adjoining three (3) storey dwellings. The clerestory window provides visual interest of the built form when viewed from properties to the north, as well as from the public domain of Lauderdale Avenue, while also providing solar access to the internal living areas on the proposed first floor level. As detailed within this report, as well as in the assessment report for DA2022/0824, the steep topography of the land creates difficulty in achieving high and continuous levels of solar access during the Winter Solstice. As such, the clerestory window is not only visually appealing as it breaks up

the building mass, it performs an important role in allowing penetration of solar access to the internal living areas of the first floor level.

In this instance, the maximum building height assessment undertaken for DA2022/0824 remains consistent with this modification application. The proposed breach to the maximum height is found to be acceptable and another building height assessment is not considered necessary, in this instance. The Clause 4.6 assessment under DA2022/0824 remains valid and is supported.

Based on the maximum building height assessment conducted under DA2022/0824, this assessment has found that the proposed deletion of 'Condition 24. Roof Height' can be supported.

6.4 Stormwater management

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment:

On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to the provision of an updated Geotechnical Report (or Geotechnical Addendum letter) addressing the extent of excavation required for the proposed swimming pool. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

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

activities.

Comment:

It is considered that the above underlying matters of this standard and is satisfied that the proposed development is unlikely to unreasonably impact upon the visual amenity of the harbour or coastal foreshore area, particularly as the site is well setback from the foreshore area and that existing built form and vegetation of the surrounding area screens and obscures the site, with it effectively receding into the suburban landscape. Further, the proposed development is suitable in its context - in consideration to it's type (being a single residential dwelling), location (sited within a residential zone) and design (overall contemporary) - and it's relationship with, and impact upon, the foreshore area. The proposed development is unlikely to create conflict between land-based and water-based coastal activities.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 433.7m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	East 8.0m (based on gradient 1.4+:1)	5.9m, 7.1m & 7.58m	No change	Yes
	West 7.7m (based on gradient 1:5)	7.9m, 9.31m & 9.53m	No change	No, as approved
4.1.2.3 Roof Height	Height: 2.5m	1.28m (max.) (as required by Condition 24. Roof height)	1.78m (max.)	Yes
	Parapet Height: 0.6m	0.53m	No change	Yes
	Pitch: maximum 35 degrees	13.3 degrees	No change	Yes
4.1.4.1 Street Front Setbacks	6m	Carport 0.23 - 4.76m	No change	No, as approved
		Dwelling 4.87m - 9.88m	No change	No & Yes, as approved
		Swimming pool & Spa 0.88m - 1.88m		No, 85.33% max. variation
4.1.4.2 Side Setbacks and Secondary Street Frontages	Eastern boundary 2.52m (based on max. proposed wall height)	Dwelling <i>Lower ground floor</i> 0.74m (existing & unchanged)	No change	No, as approved
		<i>Ground floor</i> 0.74m (existing & unchanged)	No change to dwelling.	No, as approved
			Swimming Pool 4.34m	Yes

			<i>First floor</i> 1.0m & 4.5m	No change	Yes & no, as approved
			<i>First floor (balcony)</i> 1.0m - 3.4m	No change	No, as approved
		Western boundary 3.17m (based on max. proposed wall height)	Dwelling <i>Lower ground floor</i> 1.4m (existing & unchanged)	No change	No, as approved
			<i>Ground floor</i> 1.4m (existing & unchanged)	No change to external dwelling wall.	No, as approved
				Privacy Screen 0.44m	No, 86.11% variation
			<i>First floor</i> 1.4m, 1.96m & 4.75m	No change	Yes & no, as approved
			<i>First floor (balcony)</i> 4.13	No change	Yes
			Covered terrace (front) 1.4m	No change	No, as approved
			Deck terrace (rear) Nil	No change	No, as approved
			Carport 0.07m	No change	No, as approved
		Windows: 3m	Western Elevation 4.75m	No change	Yes
			Eastern Elevation 4.73m	No change	Yes
4.1.4.4 Rear Setbacks	8m		Dwelling <i>Lower ground floor:</i> 9.2m - 9.3m	No change	Yes
			<i>Ground floor:</i> 9.2m - 9.3m	No change	Yes
			<i>First floor:</i> 8.0m & 9.15m	No change	Yes
			Deck terrace (rear) 3.86m (existing & unchanged)	No change	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space	Open space 55% (of site area 238.53m ²)		61.17% (265.3m ²)	No change	Yes
	Open space		12.35% (53.6m ²)	No change	Yes

Area: OS3	above ground no more than 25% (108.42m ²) of total open space			
4.1.5.2 Landscaped Area	Landscaped area 35% (83.48m ²) of open space	3.0m dimension: (45.72%) 121.3m ²	46.7% (123.9m ²)	Yes
		<3.0m dimension: 30.2m ²	21.5m ²	N/A
		Total: 57.1% (151.5m ²)	54.8% (145.4m ²)	Yes
	2 native trees	2 trees	No change	Yes
4.1.5.3 Private Open Space	18m.0m ² per dwelling	>18.0m ²	No change	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.13m (40%)	No change	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	N/A	In-ground	Yes
	1m curtilage/1.5m water side/rear setback	N/A	Eastern Boundary Curtilage: 4.34m Water setback: 4.5m	Yes Yes
			Western Boundary Curtilage Spa: 1.4m Swimming Pool: 1.4	Yes Yes
			Water setback Spa: 1.95m Swimming Pool: 3.82m	Yes Yes
			Rear Boundary N/A	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	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
3.7 Stormwater Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	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
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

As the proposed modified works seek to reinstate the previously proposed maximum building height, another detailed assessment on the solar access provided to adjoining and nearby properties is not required as this was undertaken for the original development application, being DA2022/0824.

The assessment under DA2022/0824 found that, while there was additional overshadowing, the proposal was considered acceptable.

3.4.2 Privacy and Security

Description of non-compliance

DA2022/0824 included a condition that required a privacy screen be installed for the entire outermost western edge of the balcony located off Bedroom 1 on the ground floor level and to the western facing window for Bedroom 1. This modification application seeks consent to delete this condition and include amended plans that show a revised and alternative privacy screen to this window and balcony.

The alternative design includes an angled vertical screen affixed to the western facing window of Bedroom 1 and a horizontal screen affixed to the western side of the balcony, as indicated on the architectural plans but specifically the Privacy Screen Plan and Privacy Screen Sectional Elevation (prepared by Duplessis + Duplessis).

The alternative design is considered acceptable, and a detailed merit assessment has been undertaken 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 minimise loss of privacy to adjacent and nearby development by:

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

Comment:

The dwelling at 37 Lauderdale Avenue is closer to the street front than the dwelling on the subject site and thus direct viewing into the living room of 37 Lauderdale Avenue is not easily achievable. Notwithstanding, the proposed alternative privacy screen will mitigate direct viewing into the internal living room of 37 Lauderdale Avenue. The alternative design provides an acceptable privacy outcome for both the occupants of the subject site and those of adjoining properties, noting that it is an improvement to the existing dwelling (which has no privacy mitigation along the western elevation of the subject site).

The proposed modified works **achieve** this underlying objective.

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

Comment:

The alternative privacy screen design provides privacy without comprising access to sunlight and air. Further, the screen is unlikely to impact upon views from habitable rooms and private open space of adjoining properties as the surrounding built and natural environments already obscure such views. Please refer to the view loss assessment undertaken for DA2022/0824 for the view sharing outcome from the proposed development.

The proposed modified works **achieve** this underlying objective.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will not compromise neighbourhood security or casual surveillance of the street frontage.

The proposed modified works **achieve** this underlying objective.

Based on the above assessment and proposed alternative design, this assessment has found the proposed deletion of Condition 22. Privacy can be supported.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.3 Maintenance of Views

The assessment for DA2022/0824 included a comprehensive view loss assessment. The proposed modified development is maintained within the envelope of the approved development, therefore the proposed modifications do not result in any unreasonable impacts upon views and view sharing between properties is achieved.

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

DA2022/0824 granted consent for wall height planes that projected beyond the maximum allowable wall height. Notwithstanding, a detailed assessment of this non-compliance was undertaken under Clause 4.6 against the objectives of Clause 4.3. As the proposed modified works do not seek to vary the proposed wall heights, another detailed assessment of this non-compliance is not required, in this instance.

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

Description of non-compliance

4.1.4.2 Side setbacks and secondary street frontages

Based on the approved wall height under DA2022/0824, the western side setback requirement is 3.17 metres.

The proposed amended design for the privacy screen on the ground floor along the western elevation will be 0.44 metres from the western side boundary. However, this privacy screen is a mix of vertical and horizontal structures. The vertical privacy screen is angled to allow for privacy between properties and continued views westward to the Harbour. As such, the closest point of the vertical structure is 0.44 metres, and gradually aligns with the existing side setback distance to the western boundary.

The horizontal privacy screen, for its full extent, is 0.44 metres from the western side boundary. However, this has a width of 0.06 metres and thus will not cause an unreasonable bulk when viewed from the adjoining property.

The proposed setbacks for the swimming pool have been addressed within this report under section

4.1.9 Swimming Pools, Spas, Water Features.

Notwithstanding, a merit consideration is undertaken 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:

Due to the slope of the land, the proposed alterations to the privacy screen will not be viewed from the street frontage. In this instance, there is no discernible impact upon the streetscape, street edge or the landscape character of the street.

The proposed modified works **achieve** this underlying objective.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed alternative design to the privacy screen will ensure privacy is achieved. Reference is made to the Privacy Screen Plan and Privacy Screen Elevation, prepared by Duplessis + Duplessis Architects within the master set plan, which indicates the lines of sight obtained from the alternative privacy screen design. The privacy screen will not create additional overshadowing, nor will it impact upon air movement due to its location on the existing dwelling. Further, the proposed privacy screen will not impact upon views obtained across the eastern side boundary from the properties to the west, noting that the existing dwelling on the subject site and those on adjoining properties toward the east (including canopy trees) currently obscure views from properties to the west of the subject site. As addressed above, due to the steep topography of the land, the proposed privacy screen will not be discernible from the streetscape. There is no impact upon the traffic conditions.

The proposed modified works **achieve** this underlying objective.

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

Comment:

Notwithstanding the numerical non-compliances to the side setback requirements, adequate spatial separation on either side of the proposed dwelling at each level ensures that there is flexibility in the siting of the building.

The proposed modified works **achieve** this underlying objective.

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:

There is no impact upon the site's natural features.
The proposed modified works **achieve** this underlying objective.

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

Comment:

The subject site is not located within bushfire prone land.

The proposed modified works **achieve** this underlying objective.

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.

4.1.9 Swimming Pools, Spas and Water Features

Detailed description of non-compliance

4.1.9.1 Height above ground

This control stipulates that swimming pools and spas must be built on or in the ground and not elevated more than 1.0 metres above the natural ground level. Consideration of any exception to this must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse that is more than 1.0 metre above natural ground level:

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

Comment:

The existing front yard slopes from the eastern boundary in a south-westerly direction. As approved under DA2022/0824, a degree of fill (approximately up to 1.6 metres) in the western portion of the front yard will level out the front yard to create a more meaningful private open space. The deep end of the proposed swimming pool and spa will be in the western portion of the front yard and will be 'in-ground' once the fill has been completed. In this instance, the swimming pool will not be more than 1.0 metres above the ground level.

4.1.9.2 Location and Setbacks

This control stipulates that '*swimming pools and spas must not be located within the front setback i.e. between the front boundary of the lot and the building line*'. Consideration of any exception to this must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse:

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

This control requires the following setback distances to the side (and rear) boundary lines (the rear setback does not apply for this application):

- outer edge of the pool/spa concourse: at least 1.0 metre

- water line of the pool/spa: at least 1.5 metres

Comment:

The subject site immediately drops steeply from the street frontage, with an approximate fall of 3.54 metres. The original development application included a condition relating to the maximum height for the proposed front fence, requiring a maximum height of 1.5 metres. Additional documentation was provided which indicates that views of the swimming pool from the public footpath cannot easily be obtained by general passers-by, ensuring that privacy is achieved when the swimming pool is in use. Further, because of the steep fall and the fact the swimming pool is in-ground, it will not detract from the amenity or character of the neighbourhood as it will not be discernible from the street frontage or other public places in the vicinity of the subject site.

It shall be noted that the original development application sought consent for a swimming pool within the rear yard. However, the privacy impact and the resultant bulk and scale of this was considered unacceptable. The revised location of the swimming pool has no unreasonable amenity impact upon adjoining residential properties.

The proposed side setbacks are as follows:

Western boundary:

- Concourse: 1.4 metres (spa & pool)
- Water line: 1.9 metres (spa) and 3.82 metres (swimming pool)

Eastern boundary:

- Concourse: 4.34 metres (pool)
- Water line: 4.5 metres (pool)

Based on the above, the swimming pool will not be easily discernible from the street frontage and thus will not detract from the amenity or character of the neighbourhood, nor will it adversely or unreasonably impact upon the amenity of adjoining properties. Further, the proposed pool and spa results in adequate spatial separation between properties.

Merit consideration

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties.

Comment:

Notwithstanding the location of the proposed swimming pool and spa, there will not be opportunities for the direct overlooking into the adjoining properties to the east and west of the subject site. Drawing No. A.02 Proposed Ground Floor Plan (prepared by Du Plessis + Du Plessis, dated 30.01.2023) indicates that the pool equipment and services are located beneath the paving adjacent to the laundry, which is 4.26 metres from the western side boundary. Notwithstanding, a condition will be recommended to limit the noise of sound emanating from the pool equipment box.

As conditioned, the proposed modified works **achieve** this underlying objective.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the

established character of the locality.

Comment:

While the proposed swimming pool is located within the front setback area, it is the most suitable place for it on the site. As detailed above, the original proposal included a swimming pool in the rear yard which would've resulted in an unacceptable and unreasonable amenity impact upon adjoining properties. The proposed location does not create unreasonable amenity impacts upon adjoining properties, nor does it impact upon the character of the street frontage and established character of the Fairlight locality as it cannot be readily viewed from the street frontage due to the steep slope of the land.

The proposed modified works **achieve** this underlying objective.

Objective 3) To integrate landscaping

Comment:

The landscape plan has been amended to facilitate the proposed swimming pool. The proposed development continues to achieve compliance with the landscaped requirement.

The proposed modified works **achieve** this underlying objective.

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

Comment:

The subject site is not located in a bush fire asset protection zone, however the pool may be a viable water resource during bushfire emergencies.

The proposed modified works **achieve** this underlying objective.

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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

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

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

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

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

PLANNING CONCLUSION

This proposal, to modify DA2022/0824 which granted consent for alterations and additions to an existing dual occupancy, including the dissolution of the strata scheme to create a single dwelling house, a detached two (2) vehicle carport and associated landscaping works has been referred to the Development Determination Panel (DDP) as the application is a Section 4.55(2) and seeks to modify a condition not recommended in the assessment but applied by the DDP.

The concerns raised in the objections have been addressed, noting that most of the concerns raised within the submission were raised, addressed and resolved under DA2022/0824. Where the concerns raised in the submission did not warrant changes resulting in amended plans or recommended conditions, these have been addressed as a merit assessment under the relevant controls, where necessary.

The critical assessment issues included the Zone R1 General Residential, height of building, stormwater management, foreshore scenic protection area, sunlight access and overshadowing, privacy and security, maintenance of views, setbacks (primarily relating to the front and side setbacks), and swimming pools, spas and water features.

The assessment has found that, notwithstanding non-compliances, the proposal results in an acceptable and reasonable planning outcome.

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0058 for Modification of Development Consent DA2022/0824 granted for alterations and additions to create dwelling house (existing dual occupancy) and construction of a swimming pool on land at Lot 3 SP 78265,1 / 35 Lauderdale Avenue, FAIRLIGHT, Lot 4 SP 78265,2 / 35 Lauderdale Avenue, FAIRLIGHT, Lot CP SP 49962,35 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A.00 Issue H Title Page & Site/Roof Plan	30.01.2023	Du Plessis + Du Plessis Architects
E.01 Issue H Existing Lower Ground & Demolition Plan	31.01.2023	Du Plessis + Du Plessis Architects
E.02 Issue H Existing Ground Floor & Demolition Plan	30.01.2023	Du Plessis + Du Plessis Architects
E.03 Issue H Existing Level 1 & Demolition Plan	30.01.2023	Du Plessis + Du Plessis Architects
A.01 Issue H Proposed Lower Ground Floor Plan	30.01.2023	Du Plessis + Du Plessis Architects
A.02 Issue H Proposed Ground Floor Plan	30.01.2023	Du Plessis + Du Plessis Architects
A.03 Issue H Proposed First Floor Plan	30.01.2023	Du Plessis + Du Plessis Architects
A.04 Issue H East & West Elevations	30.01.2023	Du Plessis + Du Plessis Architects
A.05 Issue H North & South Elevations	30.01.2023	Du Plessis + Du Plessis Architects
A.06 Issue H Section A-A & Section B-B	30.01.2023	Du Plessis + Du Plessis Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
A.200 Issue H Excavation Plan & Fill Plan	30.01.2023	Du Plessis + Du Plessis

		Architects
D1 Issue B Details, Notes & Legends	02.02.2023	NY Civil Engineering
D2 Issue B Stormwater Management Lower Ground Floor Plan	02.02.2023	NY Civil Engineering
D3 Issue B Stormwater Management Ground Floor Plan	02.02.2023	NY Civil Engineering
D4 Issue B Stormwater Management First Floor Plan	02.02.2023	NY Civil Engineering
D5 Issue B Stormwater Management Roof	02.02.2023	NY Civil Engineering
D6 Issue B Stormwater Details	02.02.2023	NY Civil Engineering
D7 Issue B OSD Details	02.02.2023	NY Civil Engineering
D8 Issue B OSD Calculations	02.02.2023	NY Civil Engineering
D9 Issue B Sediment Control Plan	02.02.2023	NY Civil Engineering
D10 Issue B Sediment Control Details	02.02.2023	NY Civil Engineering

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Assessment (Ref: J4147B)	21.02.2023	White Geotechnical Group
BASIX Certificate A455508_04	07.02.2023	Du Plessis + Du Plessis Architects

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L-01 Rev D Landscape Plan	01.02.2023	Space Landscape Designs

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

B. Delete Condition 22. Privacy to read as follows:

DELETE

C. Delete Condition 24. Roof height to read as follows:

DELETE

D. Delete Condition 38. Require Tree Planting to read as follows:

DELETE

E. Amend Condition 39. Landscape Completion to read as follows:

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing

L-01 by Space Landscape Designs dated 01/02/23), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 25 litres; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1 metre from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan (s),
- d) the 16 x Viburnum odoratissimum 'Dence Fence' shall be replaced with the standard variety (being Viburnum odoratissimum) and maintained at a mature height of at least 3 metres above the new terrace planter level, and shall be a suitable pot size so that plant height is at least 1.5 metres at installation,
- e) 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.

F. Add Condition 43A. Swimming Pool Requirements to read as follows:

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.

G. Add Condition 48. Swimming Pool/Spa Motor Noise to read as follows:

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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





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ITEM 3.3**DA2022/2058 - 63 FRANCIS STREET MANLY - DEMOLITION
WORKS AND CONSTRUCTION OF A DWELLING HOUSE****REPORTING MANAGER**

Adam Richardson

TRIM FILE REF

2023/306641

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 DA2022/2058 for demolition works and construction of a dwelling house on land at Lot 44 DP 4449, 63 Francis Street MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2058
Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 44 DP 4449, 63 Francis Street MANLY NSW 2095
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Colin David Wardle
Applicant:	PCL & APR Pty Ltd
Application Lodged:	01/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	07/12/2022 to 12/01/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 994,510.00

EXECUTIVE SUMMARY

This development application seeks consent for the demolition of the existing dwelling and the construction of a new two storey dwelling.

The application is referred to the Development Determination Panel (DDP) due to five (5) submissions by way of objection being received during the public notification period.

Concerns raised in the objections predominantly relate to stormwater management, visual privacy, permitted use of the site and landscape treatment. The proposal, despite the objections is considered on merit to be acceptable.

Critical assessment issues included numerical non-compliances in relation to side setback and total open space, as well as further information requested by Council in regards stormwater plans and

clarification of the building height. Council's Landscape Officer has also recommended a deferred commencement condition for a suitable landscape plan to be provided.

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 development is for the demolition of the existing dwelling and the construction of a new two storey dwelling at the subject site.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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

SITE DESCRIPTION

Property Description:	Lot 44 DP 4449 , 63 Francis Street MANLY NSW 2095
Detailed Site Description:	The subject site is located on the western side of Francis Street, approximately 5 metres south of its intersection with Balgowlah Road. It is legally described as Lot 44 Sec D DP 4449 and is known as 63 Francis Street, Manly. It is a triangular shaped lot with front boundary of 53 metres and side boundaries of 46.92 metres (south) and 56.51 metres (north). The lot has an area of 743.4m² and is currently occupied by a single storey weatherboard residence. The site has an

east to west fall of approximately seven metres.

The property is surrounded generally by detached dwellings, however residential flat buildings are located in the vicinity including opposite on Francis Street. The site is located in close proximity to Manly Andrew Boy Charlton Pool, and Manly Golf Club.

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 **DA2019/1312** for Subdivision of one lot into two (Withdrawn 13/01/2020 following advice from Council)

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) –	Manly Development Control Plan 2013 applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Provisions of any development control plan	
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to clarification of the building height as well as referral requirements from Council's Landscape Officer and Development Engineer. Updated information provided by the applicant results in a reduced environmental impact and therefore does not require further community notification in accordance with Council's Community Participation Plan. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a 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 Manly Development Control Plan 2013 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact

Section 4.15 Matters for Consideration	Comments
	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 07/12/2022 to 12/01/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Peter Maurice Barham	25 Balgowlah Road MANLY NSW 2095
Mr Michael Justin Bradley Ms Catherine Anne Norbury	29 Balgowlah Road MANLY NSW 2095
Mr Stephen David White Mrs Anne Marie White	21 Balgowlah Road MANLY NSW 2095
Andrew Benedict Madry	27 Balgowlah Road MANLY NSW 2095
Mr Peter Nicholas Vasili	26 Wattle Avenue FAIRLIGHT NSW 2094

5 submissions were received during the community notification period and the following concerns were raised:

- **Stormwater Management**

The submissions raised concerns about stormwater generated by the proposed development and the impact that additional and uncontrolled stormwater will have upon adjoining properties.

Comment:

Concern was raised regarding stormwater overflow from the subject site towards properties downslope to the north-west on Balgowlah Road. Amended stormwater plans have been provided by the applicant during the assessment process in response to advice from Council's Development Engineer relating to the overland flow path and roof discharge to Francis Street. The amended plans have been reviewed by Council's Development Engineer who has raised no objection to approval, subject to recommended conditions of consent.

- **Visual Privacy**

The submissions raised concern with regards to overlooking impacts from the first floor upon the private open space and principal living areas of 21 Balgowlah Road and 25 Balgowlah Road respectively.

Comment:

The privacy impacts of the proposed upper floor of the dwelling have been considered during the assessment process. The proposed ground floor is generally low-lying to the existing ground level and less likely to create overlooking impacts in comparison to the elevated upper floor. The northern elevation of the upper floor which faces the respective objector's properties, consists entirely of bedrooms only, which are considered low-trafficable areas and not conducive to high volumes of pedestrian movement. The highly trafficable rooms of the proposed first floor (rumpus, sitting rooms etc) are not orientated towards the objector's properties. The proposed dwelling in total is considered to be suitably configured in order to limit visual privacy impacts to adjoining private open space areas.

- **Use of Property**

The submissions raised concerns that the layout of the proposed development was conducive to multi-occupancies.

Comment:

Concern was raised in regards to any area of the property being used for the purposes of a secondary dwelling or separate occupancy. A suitable condition of consent has been recommended that no portion of the property shall be used for the purposes of a secondary dwelling. The property shall be used a dwelling house only and no consent is granted for any other use.

- **Vegetation Protection**

The submissions raised concerns that the proposed development will have an unacceptable impact on adjoining trees and result in unacceptable canopy loss.

Comment:

Concern was raised in regards to protection of existing trees and vegetation along the boundaries of the subject site. A deferred commencement condition has been recommended by Council's Landscape Officer requiring a suitable Landscape Plan to be approved by Council prior to activation of this consent. The Landscape Plan shall add sufficient landscape treatment to mitigate the built form and offset canopy loss from the proposed tree removal.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<i>Supported, without Conditions</i> General Comments Environmental Health has reviewed the preliminary ASS assessment that indicates that an Acid Sulfate Soils management plan is not required for the proposed works. In regards to the 'Owners fire place' listed on the Ground Floor Plan Drawing 20359-13 should not be consented to as a solid fuel heater as the Development Application requirements have not been meet. Council has not objection to a gas fire place and flue. Recommendation Supported - no conditions necessary.
Landscape Officer	<i>Supported, subject to Conditions</i> The proposal is not 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, including 4.1.5.2 (c) Minimum Tree Plantings The Arboricultural Impact Assessment identified 24 trees of which 16 trees are located outside the property boundaries and must be retained and protected during works in accordance with the recommendations in the AIA and imposed conditions. Of the eight trees within the property boundary three are prescribed trees located in the south eastern corner of the site. One tree is proposed for removal, tree 7, which can be supported as significant trees 8 and 9 will be retained. No tree replacement is shown on the Landscape Plan and to satisfy MDCP at least on locally native replacement tree shall be installed in the rear setback, subject to the imposed conditions. The Landscape Plan is insufficient to satisfy the objectives outlined in the Manly DCP. The submitted Landscape Plan does not add sufficient landscape treatment to mitigate the built form nor offset canopy loss with native trees, and as advised previously a Landscape Plan should be prepared by a qualified professional such as a Landscape Architect or Landscape Designer. In particular, the Landscape Plan shall include the proposed planting scheme (species selection, location, quantities, mature heights and pot sizes) including boundary screen planting for open space privacy, and native tree

Internal Referral Body	Comments
	replacement to offset the canopy loss from the proposed tree removal. The Landscape Plan shall clearly indicate trees to be removed and trees to be retained and meet the requirements outlined in Northern Beaches Council's Development Application Lodgement Requirements. Should the application be supported by the Assessing Planning Officer, an Amended Landscape Plan prepared by a qualified Landscape Architect or Landscape Designer is required to be approved by Council. <u>Planner's comment:</u> The requirements of a landscape plan through a recommended Condition, forms part of a recommended deferred commencement Condition.
NECC (Development Engineering)	<i>Supported, subject to Conditions</i> <u>Stormwater</u> The proposed method of stormwater disposal via level spreader cannot be assessed until all stages of the Section 5.5 of Council's Water Management for Development Policy are addressed. Prior to other methods of disposal being considered, the viability of an inter allotment easement through the rear properties shall be investigated. Where an inter allotment easement is not viable, refusal of easement letters are to be provided. It is noted that the rear neighbors have raised concerns regarding stormwater flows. As such if an easement is not viable, it is recommended that the roof water be discharged to the kerb in Francis Street via a suitably designed OSD system in accordance with the Council's policy. The surface drainage to be discharged to a level spreader. Additional Information Provided on 8/3/2023 Refusal of easement letters have been provided. However the submitted stormwater plan is unsatisfactory as the proposed OSD basin at the rear of the site is in the overland flowpath and is likely to impede the overland flow through the rear of the site. The stormwater plan is to be amended as follows: • The higher level roofs discharge is to be connected directly to the existing kerb outlet in Francis Street. • The OSD basin at the rear and associated retaining walls to be deleted. The existing levels at the rear of the site is to be maintained with openings in the upstream and downstream fences to maintain the overland flowpath through the rear of the site. • The lower roofs and surface flows are to be discharged to the level spreader via the below ground OSD tank. • The level spreader is to be located outside the overland flow path.

Internal Referral Body	Comments
	Amended plans are to be submitted for assessment. Additional Information Provided on 27/4/2023 Amended stormwater plans are satisfactory subject to conditions. 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.1340141S dated 25 November 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	8.19m	-	Yes
Floor Space Ratio	FSR: 0.6:1 (446.04m ²)	FSR: 0.43:1 (317.96m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes

Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 734.4m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 2 dwellings	1	-	Yes
	Dwelling Size: 134sqm (5 Bedroom, 5 Bathroom)	446.04GFA	-	Yes
4.1.2.1 Wall Height	N: 7.7m (based on gradient 1:5)	5.99m	-	Yes
	S: 7.7m (based on gradient 1:5)	4.79m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	2m	-	Yes
	Parapet Height: 0.6m	Complies	-	Yes
	Pitch: maximum 35 degrees	22.5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	4.5m (dwelling) 3m (verandah), consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 1.98m (based on wall height) S: 1.58m (based on wall height)	N: 1.09m (min.) S: 2m	44.95% -	No Yes
	Windows: 3m	2 windows	-	No
4.1.4.4 Rear Setbacks	8m	N/A (Irregular lot)	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (408m ²)	45.72% (339.9m ²)	16.87%	No
	Open space above ground 25% of total open space	Complies	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (118.97m ²)	76.69% (312.9m ²)	-	Yes
	3 native trees	>3 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	Existing hardstand parking at north-east corner	-	Existing

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

Description of non-compliance

The northern side setback requirement is 1/3 of the proposed wall height or 1.98 metres. The minimum

dwelling setback on the northern elevation of the property is setback 1.09 metres which is a 44.95% variation to the numerical control.

Additionally, Clause 4.1.4.2 of the MDCP 2013 permits no new windows within 3 metres from side boundaries. There is 1 new window on the southern side elevation and 1 new window on the northern side elevation.

It is noted the site is an irregular shaped allotment which limits the ability of development to wholly comply with the numerical control. Despite this, the proposal is predominantly compliant with all setback controls, with the exception of a point encroachment on the northern elevation.

Merit consideration:

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

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

Comment:

The proposal maintains an appropriate visual relationship with the surrounding built environment. The side setback encroachment is a point encroachment due to the irregular configuration of the lot and shall be visually softened by existing and proposed fencing and vegetation to ensure a compatible streetscape outcome. The proposal also incorporates varied wall planes which provides adequate articulation of 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 works will not result in unreasonable additional overshadowing of adjoining properties or privacy concerns. The works are adequately screened and separated from the street frontage and therefore, will not reduce road visibility. Overall, the proposal achieves this objective.

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

Comment:

Flexibility is afforded in this circumstance due to the irregular configuration of the allotment and the non-compliance shall not result in an incompatible visual presence.

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 complies with the landscaped area requirements of the DCP. A deferred commencement condition relating to the requirement for a suitable landscape plan has been recommended by Council's Landscape Officer.

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

Comment:

The site is not bushfire prone.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires the site to consist of 55% total open space. The proposal achieves 45.72% (339.9m²) Landscaped Area which is a 16.87% variation to the control.

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 complies with the landscaped area and vegetative requirements of MDCP 2013.

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:

Although non-compliant the open space area consists of adequate landscaped areas to assist with water filtration and minimising stormwater runoff.

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

the streetscape and the surrounding area.

Comment:

The development is not expected to have any unreasonable impacts on sunlight, privacy and views enjoyed by surrounding properties.

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

Comment:

The proposal will provide for sufficient areas to assist with water filtration to minimise stormwater runoff.

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

Comment:

The proposal is not expected to result in the spread of weeds in private and public open spaces.

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

Comment:

Wildlife habitat and corridors will not be impacted by the proposed non-compliance.

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 \$9,945 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$994,510.

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

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 DA2022/2058 for Demolition works and construction of a dwelling house on land at Lot 44 DP 4449, 63 Francis Street, MANLY, subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS

1. Amended Landscape Plan

An amended landscape plan shall be issued to Council for approval to include the following details:

- a) preparation of the landscape plan by a qualified Landscape Architect or Landscape Designer and as described in Council's DA Lodgement Requirements,
- b) as a minimum, one locally native canopy tree shall be installed in the rear setback as replacement tree planting,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; generally selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, or Council's Tree Guide; to achieve at least 8 metres height at maturity; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,

d) at minimum include perimeter screen planting for privacy to the applicants and neighbours private open space, planting to soften the built form, and landscape treatments for all disturbed areas,

e) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

Reason: Landscape amenity.

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

2. **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
5 (Issue O)	22 February 2023	Accurate Design and Drafting
6 (Issue O)	22 February 2023	Accurate Design and Drafting
9 (Issue O)	22 February 2023	Accurate Design and Drafting
10 (Issue O)	22 February 2023	Accurate Design and Drafting
11 (Issue O)	22 February 2023	Accurate Design and Drafting
12 (Issue O)	22 February 2023	Accurate Design and Drafting
13 (Issue O)	22 February 2023	Accurate Design and Drafting

Engineering Plans		
Drawing No.	Dated	Prepared By
1 (C) Stormwater Drainage Layout Plan - 1	26 April 2023	VNK Consulting Pty Ltd
2 (C) Stormwater Drainage Layout Plan -	26 April 2023	VNK Consulting Pty Ltd

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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (1340141S)	25 November 2022	Abeaut Design t/a Accurate Design and Draft
Site Classification (AWT 65161 Rev: A)	19 May 2021	AW Geotechnics
Arboricultural Impact Assessment	9 November 2022	Hugh the Arborist
Preliminary Assessment: Acid Sulfate (J4507)	12 September 2022	White Geotechnical Group

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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	16 November 2022	Icon Homes

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.

3. 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	12 December 2022

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

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

4. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected

- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

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

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

6. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the

dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,945.10 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 \$994,510.00.

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

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

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

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

8. Security Bond

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

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

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

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE****9. Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- Note 16 on Sheet 3 (Issue O) which states "Plus or minus 200mm to floor level" shall be deleted from the approved plans.

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.

10. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by VNK Consulting, drawing number 261022-01, 261022-02, issue C, dated 26/4/2023. 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 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.

11. Structural Adequacy and Excavation Work

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

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

Reason: To provide public and private safety.

12. Compliance with Standards

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

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

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

13. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (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.

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

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- a) tree protection measures and works under section 10 AMS and Tree Protection Requirements,
- b) section 11 Hold Points.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the 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:

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 existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 7 - *Corymbia citriodora*,
- 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

18. **Tree and Vegetation Protection**

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites,

shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

19. **Condition of Trees**

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

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

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

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

Reason: Protection of trees.

20. **Road Reserve**

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

Reason: Public safety.

21. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002

- (1998);
- 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.

22. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

23. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

24. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor 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.

25. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

26. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved amended Landscape Plan.

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.

27. **Condition of Retained Vegetation - Project Arborist**

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.

28. **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.

29. **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.

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

30. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved amended Landscape Plan(s) and any conditions of consent.

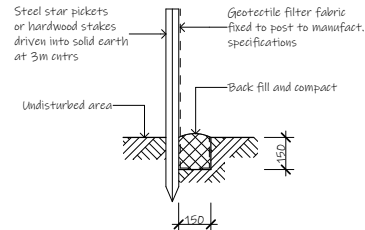
Reason: To maintain local environmental amenity.

31. **Geotechnical Recommendations**

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

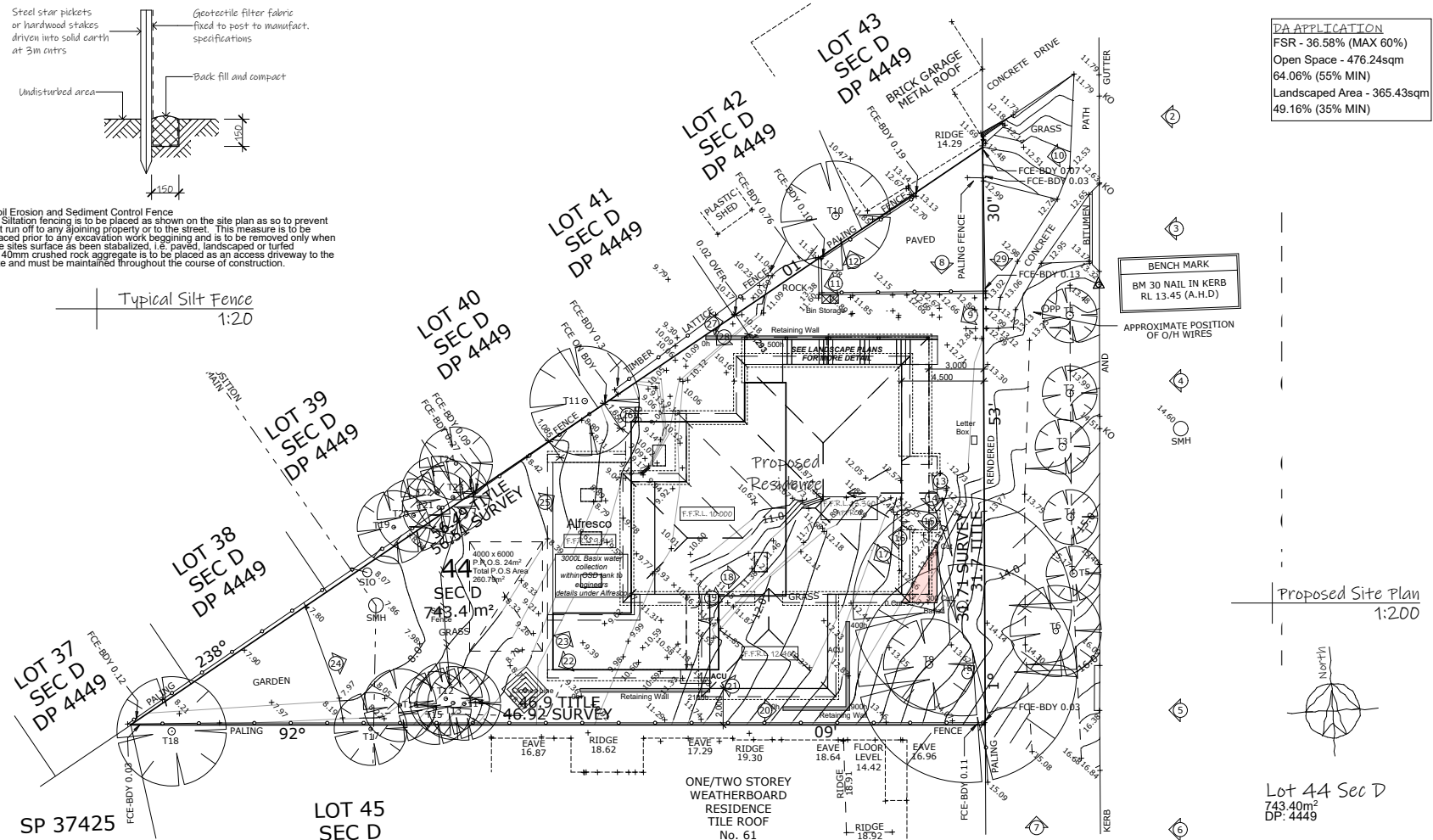
Reason: To ensure geotechnical risk is mitigated appropriately.

Artisan BY ICON HOMES



Soil Erosion and Sediment Control Fence
1. Siltation fencing is to be placed as shown on the site plan as so to prevent silt run off to any adjoining property or to the street. This measure is to be placed prior to any excavation work beginning and is to be removed only when the sites surface has been stabilized, i.e. paved, landscaped or turfed
2. 40mm crushed rock aggregate is to be placed as an access driveway to the site and must be maintained throughout the course of construction.

Typical Silt Fence
1:20

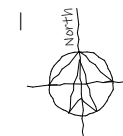


DA APPLICATION
FSR - 36.58% (MAX 60%)
Open Space - 476.24sqm
64.06% (55% MIN)
Landscaped Area - 365.43sqm
49.16% (35% MIN)

BENCH MARK
BM 30 NAIL IN KERB
RL 13.45 (A.H.D.)

APPROXIMATE POSITION
OF O/H WIRES

Proposed Site Plan
1:200



Lot 44 Sec D
743.40m²
DP: 4449

ISSUE: DRAWING: DATE: LOT:
20359-13 22-02-23 44 Sec D
SHEET: PAPER: DP:
6/17 A3 4449

note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Residence
#63 Francis Street, Manly
Icon Job Number: J/0875

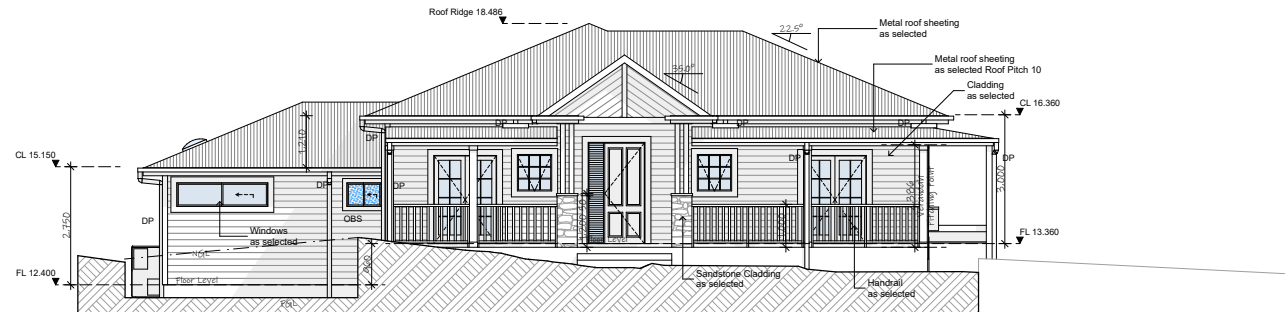
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Legend:
ACU - Air Conditioning Unit
AJ - Articulation Joint
CL - Ceiling Level
FGL - Finish Ground Line
FL - Floor Level
HWS - Hot Water System
NGL - Natural Ground Line
OBS - Obscure
DP - Downpipe
RW - Retaining Wall



Front Elevation
1:100



Rear Elevation
1:100

ISSUE: 0
DRAWING: 20359-13
SHEET: 11/17
DATE: 22-02-23
PAPER: A3
LOT: 44 Sec D
DP: 4449

note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Residence
#63 Francis Street, Manly
Icon Job Number: J/0875

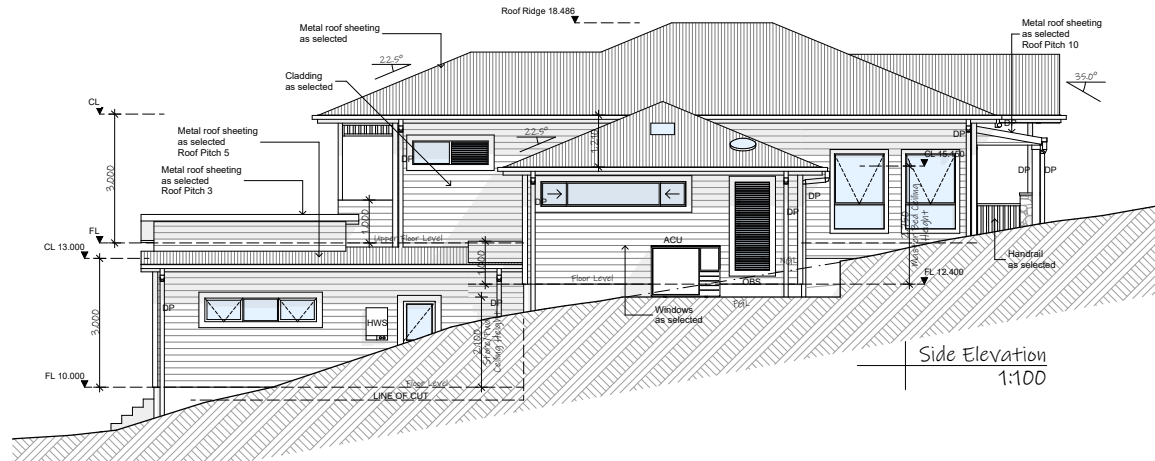
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Legend:
ACU - Air Conditioning Unit
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DP - Downpipe
RW - Retaining Wall



ISSUE: 0
DRAWING: 20359-13
SHEET: 12/17
DATE: 22-02-23
PAPER: A3
LOT: 44 Sec D
DP: 4449

note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Residence
#63 Francis Street, Manly
Icon Job Number: J/0875

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ITEM 3.4	DA2022/1248 - 2191 PITTWATER ROAD CHURCH POINT - CONSTRUCTION OF A DWELLING HOUSE
REPORTING MANAGER	Daniel Milliken
TRIM FILE REF	2023/306689
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 DA2022/1248 for construction of a dwelling house on land at Lot 12 DP 10583, 2191 Pittwater Road CHURCH POINT, subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1248
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 12 DP 10583, 2191 Pittwater Road CHURCH POINT NSW 2105
Proposed Development:	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:	Robert Mouwad
Applicant:	FLDC Architects Pty Ltd
Application Lodged:	18/08/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	31/08/2022 to 14/09/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 16.4%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,498,959.00

EXECUTIVE SUMMARY

This development application seeks consent for the construction of a Dwelling.

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 maximum height of the proposed development has been measured at 9.9m (existing excavation on the site), which represents a variation of 16.4% to the prescribed 8.5m building height limit.

Public exhibition of the proposal resulted in two submissions. The submissions raised concern with illegal works and non-compliance with previous approval and conditions of consent, view loss, non-compliance with built form controls, geotechnical hazards, stormwater, landscape plan and protection of existing trees, amenity impacts, bulk and scale, character of the area and location of the notification sign. The matters raised in the submissions are detailed and addressed in this report.

The 4.6 request for the non-compliance with height standard arises from the site being partially excavated as a result of a previous development application creating a 16.4% variation for a small section of the building. Based on extrapolated natural ground levels the height would only be measured at a maximum of 7.7m. The remainder of the building is under the 8.5m height requirement. The non-compliant elements of the proposal will not impact upon the desired character of the locality or unreasonably impact on the amenity of the adjoining properties. When assessed on its merits, it is concluded that the built form of the proposal will be commensurate with the existing dwelling on the site and the surrounding built environment and that the height breach will not result in unreasonable amenity impacts to adjoining neighbours.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for the construction of a dwelling house. The proposal includes the following:

Garage and Office Level:

- Double garage with timber batten roller shutter;
- Office;
- Entry foyer, lift and stairs to level above,
- Storeroom.

Ground Floor Level:

- Kitchen with butlers pantry and laundry, lounge and dining room and front balcony with BBQ;
- Bedroom 4 with ensuite and WIR;
- Sitting room with w.c.;
- Rear decking.

First Floor Level:

- Master Bedroom 1 with ensuite and WIR.;
- Bedrooms 2 and 3;
- Bathroom;
- Sitting room with balcony;

External Elevations:

- Colorbond roof cladding "Monument";
- Feature sandstone wall cladding;
- Painted Euromix finecoat finish to walls, Dulux Tranquil Retreat and Monument;
- Glass balustrading;
- Aluminium windows and doors.

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 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - A4.4 Church Point and Bayview Locality
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D4.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D4.5 Front building line
Pittwater 21 Development Control Plan - D4.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 12 DP 10583 , 2191 Pittwater Road CHURCH POINT NSW 2105
Detailed Site Description:	The subject site consists of one allotment located on the south western side of Pittwater Road. The site is regular in shape with a frontage of 15.24m along Pittwater Road and a depth of 45.76m. The site has a surveyed area of 697.6m². The site is located within the E4 Environmental Living zone and is currently a vacant lot. The site slopes downwards towards the north-east. The middle of the site has been excavated under the previous development applications with excavation at the northern, south-western and southern boundaries. Ground level at the site grades downwards at approximately 9.5 degrees to the

	north-east. The site has vegetation along the front, rear and north-west boundary. There are no known threatened species on the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by two to three storey dwellings to the north, south and west. To the east of the site is Church Point Reserve Carpark. Site Inspection A site inspection was conducted 4 November 2022.
--	---

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 0592/95

Extensions to existing building, living room, bedroom additions to the dwelling.

Application N0530/16

Alterations and additions to an existing dwelling
Withdrawn - 15 March 2017

The application was withdrawn due to concerns raised with character of the area, height and envelope, landscaped area, views, setbacks, driveway, off-street parking and associated excavation, and C4 Environmental living zone.

Application N0371/17

Alterations and additions to an existing dwelling including new double garage
Determined - 17 July 2018

A review of the application found a number of issues and requested the application be withdrawn. The issues included non-compliance with the landscaped area, building envelope, setback to the side boundary, building colours and materials, inconsistency with the information provided, BCA compliance, extent of the proposed demolition. The applicant lodged a Class 1 appeal. Council entered into a section 34 agreement.

On 12 August 2019, the applicant contacted Council raising concerns with the ability to retain structural elements of the building marked for retention.

Application MOD2020/0600

Modification of Development Consent N0371/17 granted for alterations and additions to a dwelling including new double garage
Refused - 10 February 2021

Council was contacted on 23 July 2020 to report that walls of the dwelling that were to be retained as part of N0371/17 had been demolished and that there had been excessive excavation on the site. An investigation revealed that works had been undertaken contrary to approved development application N0371/17. A stop work order was issued by Council.

The applicant was advised of Council's concerns regarding inconsistency with s4.56 of the EP&A Act and was given the opportunity to respond or withdraw. The application was not withdrawn and subsequently refused.

Reasons for refusal:

- The extent of demolition and new works proposed changes the categorisation of works from 'alterations and additions' to that of a 'new dwelling'.
- The application proposes significant additional excavation and the application has not demonstrated that the development will achieve an acceptable level of risk with regard to the geotechnical hazard affecting the land.
- The modified development is no longer consistent with the desired future character of the Church Point and Bayview locality with regard to the excessive additional excavation proposed and the insufficient information in relation to the geotechnical hazard affecting the site.

PLM2021/0317

The proposed development was subject of a pre-lodgement meeting with council, held 15 December 2021. The meeting recommended the following design amendments:

- Increase the landscaped area on the site to achieve the 60% requirement under this control.
- Design amendments to increase the north-western and south-eastern side setbacks, and lower the height of the building, including the parapet, to be wholly contained within the prescribed building envelope.

The proposed development has made several amendments to the plans based on the pre-lodgement comments. The submitted plans reduce the height of the proposal, increased the side setbacks and increased the LOS. The changes address the concerns raised in the pre-lodgement meeting.

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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to cl. 4.6 due to excavation on the site. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (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

Section 4.15 Matters for Consideration	Comments
	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 31/08/2022 to 14/09/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Christopher John Drummer Mrs Gaye Lorraine Drummer	2193 Pittwater Road CHURCH POINT NSW 2105
Mr Richard Bruce Eggington	PO Box 381 CHURCH POINT NSW 2105

The following issues were raised in the submissions:

- Non-compliance with previous conditions of consent
- Front building line non-compliance
- Geotechnical Hazards and issues
- Stormwater
- Retaining Walls
- Landscape Plan and preservation of trees
- Amenity - privacy, noise and smoke
- Three storey development - bulk and scale and Church Point and Bayview Locality
- View loss
- Location of notification sign

The above issues are addressed as follows:

- **Non-compliance with previous conditions of consent**

The submission raised concerns that the owner of the site had not complied 'with state government and council's regulatory provisions, laws, planning controls, or court-imposed conditions. These breaches, usually requiring NBC intervention'. The objector has also requested that 'NBC needs to impose a significant number of conditions of consent and have an alternative and ongoing supervision and compliance model imposed at every stage of the site management and build process'.

Comment:

While it is noted that the dwelling of the previously approved application was not built in accordance with the conditions of consent, and that there have been several complaints made to Council regarding how the works have been undertaken on the site. These have been investigated by Council's Building Investigation team and resulted in the modification application being refused. The current proposal is for the construction of a new dwelling. If the application was to be approved, it would be subject to all relevant conditions of consent that were applicable to the proposal and site. Council cannot preempt that the application will not be built in accordance with the conditions of consent or building requirements.

- **Front building line non-compliance**

The submissions raised concerns with the non-compliant front building line and the potential impact this will have on views, privacy, amenity and the character of the streetscape.

Comment:

This matter has been addressed under part D4.5 Front Building Line of this report. In summary, the proposed ground floor balcony, located off living and kitchen, extends into the front building line and is inconsistent with the established building line requirement. Furthermore, the balcony will impact on views currently enjoyed from no. 2193 Pittwater Road to the south-west. A condition is recommended, requiring the balcony to be setback 10.7m from the front boundary. The increased setback will be in line with the front north-eastern external walls of the garage and ground floor level of the dwelling. This will allow for the maintenance of views and comply with the front building line requirement of the PDCP.

The submission also raised concern that the ground floor balcony would impact on the privacy of no. 2193 Pittwater Road. The balcony is located at the front of the site and does not provide direct or close views of the adjoining private open space. The proposed screen planting along the boundary will also limit views of the front yard of no. 2193 Pittwater Road. The location of the proposed balcony, along with the existing privacy screen on the north-western elevation of the front balcony of no. 2193 Pittwater Road, will limit views into this balcony area. It is considered that the proposal will not unreasonably impact on the privacy of no. 2193 Pittwater Road.

- **Geotechnical Hazards, issues and over excavation of the site**

The submissions raised concerns with existing geotechnical hazards, landslips and stormwater runoff as a result of previous works and excavation on the site. The Geotechnical report submitted with the application predates a landslip within the road reserve and should be updated and rectification of the landslip within the road reserve. The submission also raised concerns that site had been over excavated and would require backfill to facilitate the building above.

Comment:

Council's Development Engineers reviewed the Geotechnical Report submitted with the application and requested an amended report that meets the requirements of the PDCP. The applicant submitted an amended report along with the Geotechnical Risk Management Policy for Pittwater Form 1 and 1A. Council's Development Engineers have reviewed the report and

forms and have raised no concerns subject to conditions.

Concerns regarding the structural adequacy of the proposal will be covered by the recommended conditions of consent, which include the completion of *Form 2—Declarations and Certification made by Part A - Structural Engineer or Civil Engineer and Part B - Geotechnical Engineer or Engineering Geologist in relation to the design plans and structural plans* and *Form 3—Post Construction Geotechnical Certificate – Declaration and Certification by Geotechnical Engineer or Engineering Geologist in relation to the Occupation Certificate or Subdivision Certificate*.

Form 2 requires evidence be provided showing that the structural documents have been prepared or verified by a structural/civil engineer, and that the structural documents have been prepared in accordance with the recommendations given in the Geotechnical Report and is required prior to the release of the Construction Certificate.

Form 3 ensures that the recommendations made in the Geotechnical Report have been complied with during construction. In most cases the Geotechnical Engineer or Engineering Geologist who prepared and/or verified the design will need to observe foundation materials, and excavation cut and fill retention systems, subsoil drainage etc prior to signing Form 3. This form must be submitted at the completion of the project, prior to occupation of the premises and prior to the issue of an Occupancy Certificate.

The landslip at the front of the site is not within the subject site and does not form part of the application. The landslip at the front of the site was reported to Council, and is being investigated by Councils Transport and infrastructure team. A Council asset manager for the land, is currently working to develop the scope of work to repair the area. This work includes obtaining expert geotechnical investigations and advice sufficient to develop repair specifications for the site. The repair work will involve a variety of treatments such as, slope reinstatement, revegetation and stabilisation measures and/or the construction of retaining structures.

- **Stormwater**

The submission raised concerns that the stormwater design was inadequate. The plans show a retaining wall located in the rear garden and there is concerns that the stormwater will hit the wall and be directed into the neighboring property. There is also concern with the location of an existing brick wall, which is shown on the plans to be in the same location as a stormwater pit and the impact the excavation of stormwater pits may have on existing trees.

Comment:

The proposal has been reviewed by Councils Development Engineers who have raised no objections to the stormwater management plan including OSD, subject to conditions. The concern with the rear retaining wall was discussed with Councils Development Engineer. Councils Development Engineer did not have any concerns that the location and height of the retaining wall will hinder the natural flow of stormwater and redirect it into the adjoining properties.

The location of the brick wall along the north-west boundary with no. 2193 Pittwater Roads was clarified with the applicant. Amended plans have been provided, showing that the wall will be demolished.

Councils Landscape Officer has reviewed the proposed stormwater plans. Landscape has no concerns with the proposal subject to all trees and vegetation on neighbouring properties be protected as per the imposed conditions.

- **Banks and Retaining Walls**

The submissions raised concerns that several retaining walls were removed within the front yard and has requested a retaining wall along the south west boundary due to the difference in levels between the site and adjoining property at no. 2193 Pittwater Road.

Comment:

Councils Development Engineers have reviewed the plans and submitted Geotechnical Report and have raised no concerns with the proposal. The submitted Geotechnical report does not mention the requirement for retaining walls at the front of dwelling. The application is not proposing any changes to levels within the front yard and no retaining wall are proposed or deemed necessary based on the submitted plans.

- **Landscape plan and Preservation of trees**

The submission raised concern that the landscape plan was out of date and inaccurate and does not show the existing trees along the western boundary with no. 2193 Pittwater Road. The submission requested that all existing trees along the western boundary be protected and no replacement tree planting is required.

A submission also requested that trees along the rear boundary with no. 33 Eastview Road be retained to maintain privacy between the sites.

Comment:

The landscape plan has been reviewed by Councils Landscape Officer, who has no concerns with the proposal subject to conditions. The conditions of consent include the protection of all trees and vegetation on neighbouring properties.

The submission raised concern that existing trees along the western boundary would be replaced. However, these trees are located on the neighbouring property and do not form part of the proposal. As mentioned above any trees located on adjoining properties are to be protected.

Councils landscape Officer has imposed conditions requiring the existing mature hedge/vegetation at the rear of the property to be retained and protected during works. This will ensure privacy is maintained between the subject site and the rear adjoining properties. An amended Landscape Plan shall be submitted prior to issuing a Construction Certificate showing the retention of the existing hedge/vegetation.

- **Three storey dwelling - bulk and scale and character of the area**

The submissions raised concerns that proposal did not meet clauses A4.4 Church Point and Bayview Locality and D4.1 Character as viewed from a public place, due to it being three stories and having excessive bulk and scale. The submission noted that a previous application was refused by Council due to it being three stories in height and out of character of the area.

Comment:

The three story nature of the proposal, along with the bulk and scale have been addressed under parts A4.4 Church Point and Bayview Locality and D4.1 Character as viewed from a public place of this report. In summary, the overall design and appearance of the proposed dwellings is consistent with the sloping topography and newer surrounding residential development. The proposal has terraced the floor plates to ensure the overall building height and mass steps down with the slope of the land and will have the appearance of a two storey dwelling when viewed from public places and neighbouring properties. The proposal will be below the required 8.5m height requirement when measured from natural ground level and predominately within the required building envelope. The development is set well below the general tree canopy height, includes building modulation and articulation and open balconies to minimise bulk. The proposed development is not considered to excessive in bulk and scale, nor out of character for the area.

Amenity - noise and smoke

The submissions raised concerns that the BBQ area, toilet, air conditioner, kitchen exhaust and rubbish bin location were located along the north western elevation and would impact on the acoustic privacy and amenity of no. 2193 Pittwater Road.

Comment:

The development is not expected to produce noise above the level of normal residential use and what is consistent with the surrounding residential area. The proposal complies with the relevant objectives of the PDCP.

The BBQ is located at the front of the site on an open balcony. The BBQ is for domestic use and unlikely to cause excessive smoke.

- **View loss**

The submissions raised concerns that proposed development would result in view loss from no. 2193 Pittwater road and No. 33 Eastview Road.

Comment:

View loss has been addressed in detail under part C1.3 View Sharing of this report. In summary, a view loss assessment was undertaken from no. 2193 Pittwater Road. The view loss assessment determined that the location of the first floor balcony would result in view loss from front balcony of no. 2193 Pittwater Road. A condition is recommended requiring the balcony to be setback, to be inline with the garage and ground floor north-eastern wall of the proposed dwelling so that views can be retained.

A view loss assessment from no. 33 Eastview Road was undertaken. The plans show that the current application with an RL18,900, is lower in height than the previously Court approved application N0371/17 with an RL19,200. It was determined and discussed with the occupants of no. 33 Eastview Road, that height poles would not be required to determine the level of view loss. This was due to the proposal being lower than the previously approved application, which had height poles, and below the height of the existing rear screen planting along the shared boundary.



Photo 1: View from the rear balcony of no. 33 Eastview Road over the site, in a standing position

- **Building Height and Clause 4.6**

The submissions raised concerns that a clause 4.6 was provided by the applicant and that the proposal exceeded the height of the previously approved application and the current proposal.

Comment:

Council requested the clause 4.6 request for a variation to the height control, as a result of recent case law, which changed the way building height is measured. The case law - “*Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*”, requires building height to be measured from existing ground level, which in the case of this application is the excavated ground levels, as opposed to the “Bettar” case law method which was measured from the extrapolated natural ground levels.

In the case of this application, when measured from the bottom of the existing excavation to the highest point of the proposed dwelling directly above, the proposal exceeds 8.5m in height, which contravenes the development standard. Due to the change, the applicant was requested to provide a written request, pursuant to Clause 4.6 of PLEP 2014 to justify the variation to the height standard. If the application was measured from natural ground level, the proposed dwelling would be below the 8.5m height requirement of the PLEP.

As mentioned above, the current proposal has a reduced building height of RL18,900 compared

to the Court approved dwelling N0371/17 - RL19,200. The request for the clause 4.6 statement did not result in any change to the building height since the lodgement of the application.

- **Notification**

Concern was raised by the neighbour with the placement of the notification sign on the site.

Comment:

The Northern Beaches Community Participation Plan requires the notification sign to be placed on the main frontage of the site. The site is located on the south-eastern side of Pittwater Road and there is no pedestrian pathway on either side of the road in the immediate vicinity of the site. The road reserve in front of the site has been subject to a landslip and instability. The notification sign was attached to the power pole in the main frontage of the site. This location is considered appropriate for the location, site conditions and meets the requirements of the Community Participation Plan.



Photo 2: Location of notification sign

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is supported with regard to landscape issues. <u>Additional Information Comment 29/03/23:</u> The existing mature hedge/vegetation at the rear of the property shall be retained and protected during works to ensure privacy is maintained between the applicant and neighbour. An amended Landscape Plan shall be submitted prior to issuing a Construction Certificate showing the retention of the existing hedge/vegetation. <u>Original Comment:</u> It is noted majority of the property has been cleared during the demolition of the existing dwelling along with majority of the trees shown for removal on the Landscape Plan. Some exempt palms remain to the front of the property which have been shown to be removed on the Landscape Plan, and do not require consent for removal. All trees and vegetation on neighbouring properties shall be protected as per the imposed conditions. The landscape proposal is supported, and all proposed planting shall be installed as per the requirements outlined in the conditions of consent.
NECC (Bushland and Biodiversity)	As per the pre-lodgement advice the application has addressed Pittwater LEP 2014 Terrestrial Biodiversity, Coastal SEPP cl 13 Coastal Environment area and P21 DCP B4.7 Pittwater Spotted Gum Forest, and no significant impact to the local biodiversity values is considered likely. To mitigate the previous impacts, a Landscape Plan has previously been prepared (iScape 2018) and has been submitted. The site does not currently support the Pittwater Spotted Gum forest vegetation community, and the variation of the control has been applied and the Landscape Plan satisfies the 80% native species requirement.
NECC (Coast and Catchments)	The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment

Internal Referral Body	Comments
	Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Plansight Pty. Ltd. dated July 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.
NECC (Development Engineering)	The submitted Geotechnical report does not appear to reference the submitted Architectural plans that have been submitted with the application. Also the proposed stormwater management plan includes an on-site stormwater detention (OSD) tank which proposes a base level of approximately RL 7.30 which will require an excavation of exceeding 3 metres which appears to be the limit in the submitted report. Also the report does not include Forms 1 and 1A as required by Council's Geotechnical Risk Policy. The Geotechnical report is to be amended to reflect the correct Architectural PLans and Stormwater Management Plans and include forms 1 and 1A. The submitted stormwater management plan including OSD is acceptable subject to conditions. The existing driveway crossing is to remain which is acceptable and the internal driveway grades are also acceptable. The proposed garage level and driveway grades adjacent to the garage appear to be lower than the existing levels on the adjoining property and will require a retaining wall which is not shown on the Architectural plans or sections. The plans are to be amended to include the required retaining walls. Development Engineering cannot support the application due to insufficient information to address Geotechnical Risk in accordance with clause B3 of the DCP. Additional Information Submitted 30/12/22 The revised Geotechnical report addresses the relevant DCP controls. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater. The

Internal Referral Body	Comments
	proposed development, which drains to the Pittwater Estuary, must not significantly impact on the biophysical, hydrological or ecological integrity of these waters, or on the quantity and quality of surface and ground water flows to Pittwater. Therefore , sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished. The proposal, subject to conditions, is supported as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater and its surroundings if conditions are adhered to.

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. 1307359S dated 25 July 2022).

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

Commitment	Required Target	Proposed
Water	40	44
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Transport and Infrastructure) 2021Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021**Chapter 2 – Coastal Management**

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

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

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

Comment:

This clause has been assessed against the subject site and the proposed development and reviewed by Councils Coast and Catchments division. No issues have been raised in the relation to the proposed development and lands being within the coastal environment area.

- 2) Development consent must not be granted to development on land to which this clause applies

unless the consent authority is satisfied that:

- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
- b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The application has been reviewed by Councils Coast and Catchments division and are satisfied that the development is designed, sited and will be managed to avoid an adverse impact to that referred to in subclause 1.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

Council has considered whether the proposed development is likely to cause an adverse impact on that listed in (a) and is satisfied that the development has been designed, sited and will be managed to avoid any adverse impact. Council is also satisfied that the bulk, scale and size of the development is appropriate when considering the surrounding coastal and built environment.

Division 5 General

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

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

Comment:

Council is satisfied that the development is not likely to cause increased risk of coastal hazards on that land or other 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	9.9m	16.4%	No

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
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 underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The proposed development does not give rise to any unreasonable environmental impacts and maintains consistency with both the existing and desired future character of the Church Point

and Bayview Locality and the streetscape. The proposed development will sit harmoniously on the site and in its wider context.

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

Comment:

The proposed development will not have any adverse impacts upon the special values of the site. Specifically, the proposal does not result in any adverse impacts upon the surrounding natural environment, with no significant vegetation removal. Furthermore, the visual impact of the development remains minimal, with appropriate articulation to ensure that the dwelling and swimming pool remains secondary to landscaping.

- ***To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.***

Comment:

The proposal will retain and protect all trees within and adjoining the site and does not require the removal of any significant vegetation. The proposal will not dominate the natural scenic qualities of the foreshore and will be integrated into the natural environment.

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

Comment:

The resultant development remains a single dwelling, consistent with the low density character of the locality.

The proposed alterations and additions are consistent with the objectives of the E4 Environmental Living zone. The development will continue to have the appearance of a "low impact" residential dwelling house in a natural landscaped setting, integrated with the scenic landform and aesthetic values.

Overall, the proposal is consistent with the desired objectives and future character of the E4 Environmental Living zone.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.9m
Percentage variation to requirement:	16.4%

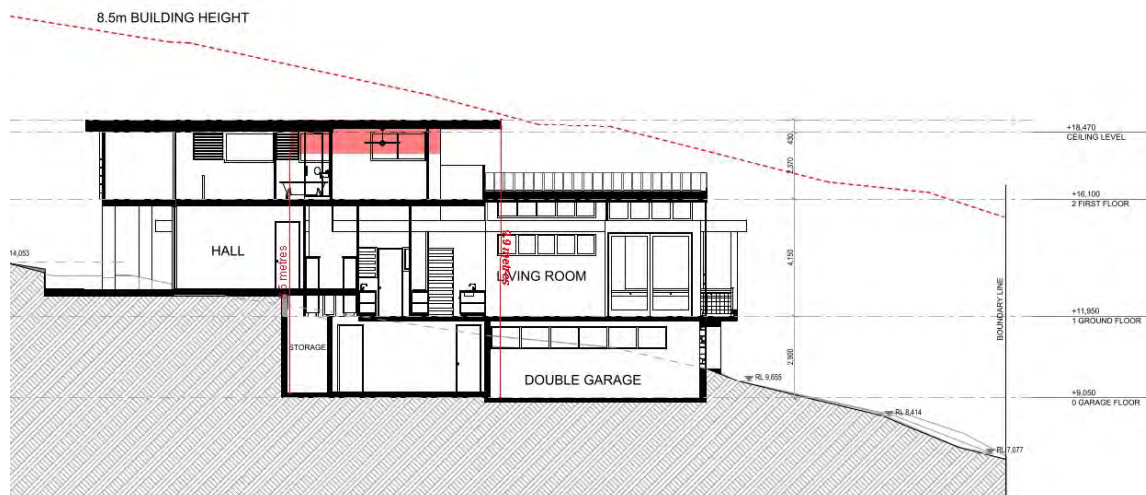


Image 1: Building height non-compliance taken from excavated ground level shown in red.

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).

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *The proposed development produces new built form that is contextual to the locality and of contemporary design that will achieve compatibility with the existing and desired future character of the locality in achievement of objective (a);*
- *Because the proposed building height would be in compliance with the standard if measured from extrapolated original ground level (prior to excavation) it will appear after construction as fully in compliance with the standard and thus compatible with surrounding buildings in achievement of objective (b);*
- *Given the apparent compliance when height is measured from the ground level outside the footprint, at the boundary and from the former site level prior to excavation, the non-complying portion of the building does not cause any adverse overshadowing of neighbouring properties and thus achieves objective (c);*
- *Similarly given the apparent compliance when height is measured from these positions, the non-complying portion of the building does not cause any view impact on neighbouring properties and thus achieves objective (d). Note the accompanying Tenacity v Warringah Council assessment which attests to this fact;*
- *A built form that is consistent with the surrounding built form and which successfully adds to the character of the locality will result. It should be noted that the former house on the site was associated with some degree of cut and fill and that the site had not been in an undeveloped form since approximately the mid-20th Century. Whilst additional excavation was undertaken, this occurred on an already disturbed site. Appropriate geotechnical treatment of the excavated area has subsequently occurred and the resultant development will be appropriate in relation to the surrounding topography.*
- *The part of the building that breaches the height standard does not offend the concerns outlined in objective (f) because that non complying area is below original natural ground level and will not be visually apparent in the completed building. As such the proposal has minimised visual impact;*

It is agreed that the proposal maintains the existing maximum building height, as the proposed development is consistent with the locality and neighbouring developments within the vicinity that are of similar scale. In terms of its strict compliance with this development standard it would not result in a net benefit to the desired future character of the locality, as the proposal is considered to be an appropriate design to preserve the residential low density setting.

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 proposed dwelling is consistent with the existing character of the locality which exhibits hillside developments of similar scale and heights within the canopy of existing trees.

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

Comment:

Surrounding and nearby development located upon similar topographical contours demonstrate similar maximum roof ridge heights. The elevated location of the site above the Pittwater Road ensures it will not result in visual intrusion when viewed from the public domain. Moreover, the proposal's compliant setbacks to the boundaries reduce its visual dominance when viewed from private places.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The application is accompanied by Shadow Diagrams which demonstrate that the private open spaces and windows to the principal living areas of adjoining properties will receive more than 3 hours of sunlight during winter solstice in accordance with the requirements of the PDCP.

d) to allow for the reasonable sharing of views,

Comment:

A detailed merit assessment has been undertaken in regards to View Sharing and the non-compliant height element of the proposal is not anticipated to result in any unreasonable view loss. Properties adjoining the site to the south- west are predominantly located in elevated positions and will retain views over Pittwater.

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

Comment:

The proposed dwelling is articulated in response to the natural topography and the low-profile roof reflects the slope of the land. The accompanying Landscape Plan demonstrates appropriate landscaped areas around the proposed dwelling house which respond sensitively to the landscaped setting of the area.

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

Comment:

The proposed development is not anticipated to have an adverse visual impact on the natural environment given that substantial landscaping and planting is proposed on the site to enhance the scenic qualities of the hillside setting. It is noted that the subject site is not located within a heritage conservation area nor contains any known heritage items.

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 does not give rise to any unreasonable environmental impacts and maintains consistency with both the existing and desired future character of the Church Point and Bayview Locality and the streetscape. The proposed development will sit harmoniously on the site and in its wider context.
- ***To ensure that residential development does not have an adverse effect on those values.***
Comment:
The proposed development will not have any adverse impacts upon the special values of the site. Specifically, the proposal does not result in any adverse impacts upon the surrounding natural environment. Furthermore, the visual impact of the development remains minimal, with appropriate articulation to ensure that the dwelling remains secondary to landscaping.
- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***
Comment:
The resultant development remains a single dwelling, consistent with the low density character of the locality.
- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***
Comment:
The proposed Landscape Plan will enhance vegetation to protect wildlife corridors through the site.

Conclusion:

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

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

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

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

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. The required fill is to come from excavation on the site and a condition has been included in the recommendation of this report requiring any additional 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. The required fill is to come from excavation on the site and a condition has been included in the recommendation of this report requiring any additional 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.

7.6 Biodiversity protection

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

(a) whether the development is likely to have:

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

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

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

Comment:

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

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

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

Comment:

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

7.7 Geotechnical hazards

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

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

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to 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	10 or established building line, which ever is the greater	Garage Floor - 10.7m Ground Floor - 9.6 - 10.7m First floor - 18.5m	N/A 4% N/A	Yes No Yes
Rear building line	6.5m	Garage Floor - 20m Ground Floor - 12.9m First floor - 11.8m	N/A N/A N/A	Yes Yes Yes
Side building line	East - 2.5m	Garage Floor - 2.76m Ground Floor - 2.74m First floor - 3m	N/A N/A N/A	Yes Yes Yes
	West - 1m	Garage Floor - 1.3m Ground Floor - 1m First floor - 2.2m	N/A N/A N/A	Yes Yes Yes
Building envelope	East - 3.5m	Outside envelope	N/A	No
	West - 3.5m	Outside envelope	N/A	No
Landscaped area	50%	60.8% (424.6m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
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
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.23 Eaves	No	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	No	Yes
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	No	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.4 Church Point and Bayview Locality

The Church Point and Bayview Locality Statement notes as follows:

"The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape."

Comment:

The proposed development consists of part two/part three storey dwelling house, where the locality calls for two-storey development.

Notwithstanding the non-compliance, the proposed dwelling will be commensurate with the height, bulk and scale of surrounding development, noting that there are numerous examples of dwelling houses with 3 separate levels. The overall design and appearance of the proposed dwellings will be consistent with the sloping topography and newer surrounding residential development. The proposal has terraced the floor plates to ensure the overall building height and mass steps down with the slope of the land and the resultant dwellings will be below the required 8.5m height requirement when measured from natural ground level and predominately within the required building envelope. The development is set well below the general tree canopy height, includes building modulation and articulation and open balconies to minimise bulk. The proposal has been designed to include native trees on site and proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The application is supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built

form. A substantial vegetated front setback will also assist in the amelioration of the visual impact of the buildings when viewed from Pittwater waterway. The proposed recessive colours and materials will assist to harmonise the proposal with the natural environment. Excavation is proposed in order to facilitate the proposal, however, the subject site has already been modified, with retaining walls and pre-existing excavation currently existing on site. Furthermore, these excavation works will be largely be confined to the building footprint and central and rear portion of the site as the slope increases.

As such, the proposed development achieves the intention of the desired character of the area and is acceptable in this regard.

C1.3 View Sharing

Two submissions were received raising view loss as a concern. One submission was received from the adjoining property to the north-west at no. 2193 Pittwater Road. Another submission was received from the rear adjoining neighbours at no. 33 Eastview Road. No. 33 Eastview Road raised concerns that the proposal may be higher than the previously Court approved application N0371/17 and requested height poles. A site inspection and review of the plans demonstrated that the new proposal is lower in height than the previously approved application, and unlikely to be visible from the rear adjoining property or impact on existing views of no. 33 Eastview Road. After discussions with the owners of no. 33 Eastview Road it was determined that height poles would not be required to determine the level of view loss from their property.

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:

No. 2193 Pittwater Road

The view likely to be impacted by the proposal are obstructed views of Salt Pan Cove to the east including moored boats, the water front reserve and distant Avalon. These views are obtained over the eastern side boundary. The view does not contain any structure(s) that are considered iconic.

No. 33 Eastview Road

Views likely to be impacted by the proposal are filtered waterviews located between the open carpark and the canopy of trees to the north-east. These views are obtained over the rear north-east boundary. The view does not contain any structure(s) that are considered iconic.

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:
No. 2193 Pittwater Road

The views affected are obtained from the ground floor deck which is located directly off the family and the main living area in a sitting and stand position. The views obtained across the side boundary, from both sitting and standing positions.



Photo 3: View from no. 2193 Pittwater Road from the front balcony looking to the south-east in a standing position

No. 33 Eastview Road

The views are obtained from the rear balcony, located off the living area in a sitting and standing position. The views are obtained over the rear boundary shared with the site



Photo 4: View from no. 33 Eastview Road from the rear balcony looking to the north-east in a standing position

3. **Extent of impact**

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

Comment to Principle 3:

No. 2193 Pittwater Road

From the balcony, in a seated and standing position a portion of obstructed water views of Salt Pan Cove will be lost as a result of the development. The site will retain obstructed views of Pittwater including Scotland Island to the north and obstructed water views to the west. View loss is considered minor.



Photo 5: View from no. 2193 Pittwater Road from the front balcony looking to the north-west in a standing position



Photo 6: View from no. 2193 Pittwater Road from the front balcony looking to the north-east in a standing position. Views include obstructed views of Scotland Island

No. 33 Eastview Road

Filtered waterviews located between the open carpark and the canopy of trees to the north-east are likely to be lost. The site will retain views of Scotland Island including the interface between land and water. Obstructed water views to the north-west and south-east will be retained. View loss is considered minor.



Photo 7: View from no. 33 Eastview Road from the rear balcony looking to the north-west in a standing position



Photo 8: View from no. 33 Eastview Road from the rear balcony looking to the south-east in a sitting position

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:

No. 2193 Pittwater Road

The proposed ground floor balcony will obstruct water views to the east of no. 2193 Pittwater Road. The balcony has a small non-compliance with the side boundary envelope along the north-western elevation and does not meet the front building line requirement of meeting the established building line. The balcony is setback 9.5m from the front boundary and does not meet the established building line of the surrounding properties of approximately 10.5m. If the ground floor balcony was setback 10.7m from the front boundary to be inline with the north-east external walls of the garage and ground floor level of the proposed dwelling, the view from no. 2193 Pittwater Road would be retained. The proposal would also fully comply with both the front

building line and minimise side boundary envelope encroachment. Given these factors, the proposed view loss is considered unreasonable and a more skillful design could retain all views. A condition is recommended requiring the ground floor deck to be set back 10.7m from the front boundary.

No. 33 Eastview Road

The proposed development has a non-compliance with the front building line and side boundary envelope on the north west elevation. The element of the proposal causing the view impact is the rear of the proposed dwelling. The non-compliant elements of the proposal do not create unreasonable view impacts from no. 33 Eastview Road.

A more skilful design may retain more of the obstructed view, however this is not considered necessary as the requested screen planting would eventually screen this view from no. 33 Eastview Road. The proposal does not unreasonably impact on the views from nos. 33 Eastview Road and therefore, does not require a redesign or amendments to the plans.

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

Comment:

The proposal is unlikely to impact on any views and vistas from roads and public places to water, headland, beach and/or bush.

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

Comment:

No canopy trees are proposed for removal to gain views.

Having regard to the above assessment, it is concluded that the proposed development is not 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 not supported, in this particular circumstance. However, subject to the condition described above, the development would be acceptable.

C1.23 Eaves

Description of Non-Compliance

Clause C1.23 Eaves requires dwellings to incorporate eaves on all elevations with a minimum width of 450mm. The proposed alteration to the dwelling has eaves of 400mm.

The underlying Outcomes of this clause are as follows:

- ***Housing that reflects the coastal heritage and character of Pittwater.***
- ***Optimise roof forms.***
- ***Appropriate solar access and shading is achieved.***

Merit Assessment

The proposed development is compatible with the contemporary form of development in the locality and reflects the coastal character of the area. The design achieves appropriate solar access and shading and is supported by a BASIX Certificate. The proposal does not generate adverse impacts to surrounding properties.

For the reasons outlined above, it is concluded that the outcomes of the clause are achieved and is supported on merit in this particular circumstance.

D4.1 Character as viewed from a public place

Clause D4.1 Character as viewed from a public place of the PDCP requires the bulk and scale of a development to be minimised. The overall design and appearance of the proposed dwellings is consistent with the sloping topography and newer surrounding residential development. The proposal has terraced the floor plates to ensure the overall building height and mass steps down with the slope of the land and will have the appearance of a two storey dwelling when viewed from public places. The proposal will be below the required 8.5m height requirement when measured from natural ground level and predominately within the required building envelope. The development is set well below the general tree canopy height, includes building modulation and articulation and open balconies to minimise bulk.

D4.5 Front building line

Description of Non-Compliance

Clause D4.5 of the P21DCP requires a 10m or established building line, whichever is the greater setback to Pittwater Road. Whilst the majority of the proposed dwelling complies with this, the ground floor balcony located off the living and dining, encroaches the setback area by 400mm, thus equating to a variation of 4%.

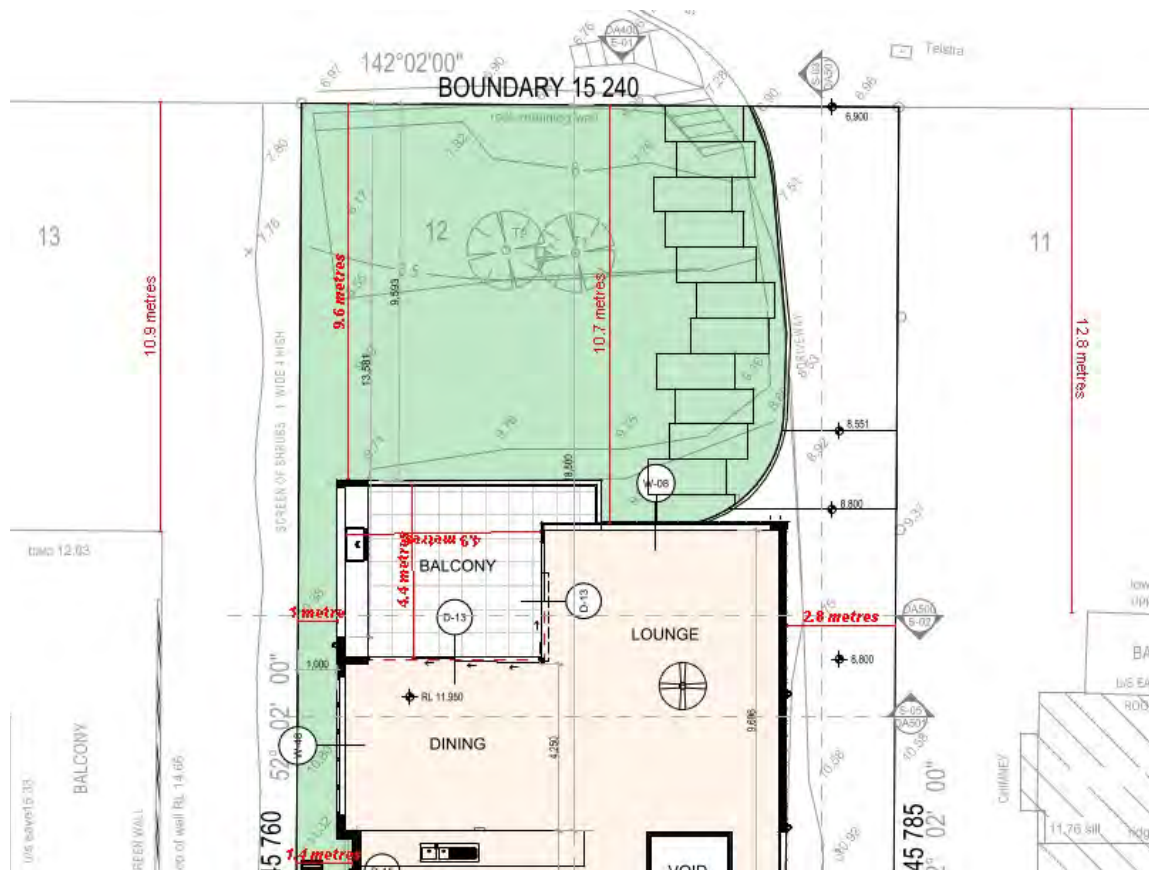


Image 2: Front Building Line non-compliance

Merit Consideration

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

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

Comment:

The extent of variation to the front building line only occurs for a small portion of the width of frontage and is limited to a balcony only. The extent of variation does not inhibit the ability for the development to achieve the desired future character of the locality.

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

Comment:

The encroachment within the front building line impacts on views obtained from the adjoining property to the west at no. 2193 Pittwater Road, and has been addressed in detail under part C1.3 View sharing of this report. A condition is recommended stepping the ground floor balcony back 10.7m, to be in line with the north-east elevation of the garage and ground floor level to retain the views.

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

Comment:

The development is considered to provide an acceptable level of amenity to future occupants, notwithstanding the fact that the building is positioned on the busy Pittwater Road.

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

Comment:

The site is currently a construction site with minimal landscaping. The remaining landscaping in combination with the new landscape plan will visually reduce the built form from viewed from the public domain.

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

Comment:

The proposal will allow for vehicles to enter and exit the site in a forward direction.

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

Comment:

The site is currently a construction site with minimal landscaping. The proposed landscaping will enhance the bushland character of the locality.

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

Comment:

The proposed ground floor balcony located within the front setback area is inconsistent with the existing streetscape, as it is inconsistent with the established building line. Whilst the ground floor balcony is only a small portion of the proposed dwelling, the proposal is inconsistent with the existing streetscape, that largely comprises of dwellings setback 10.5m or more from the front boundary.

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

Comment:

The development provides an attractive street frontage and sits well within the landscape. The proposal maintains the existing driveway to Pittwater Road and the pedestrian experience does not change.

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

Comment:

It is considered that the proposed development negatively responds to the spatial characteristics of the existing urban environment. The proposed ground floor balcony is inconsistent with the established building line of the immediate area. The recommended condition increasing the setback of the balcony will provide consistency of the established building line. It is considered that the reduced balcony area will not impact on the usability of the space or outdoor recreation opportunities for the occupants of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant Outcomes of the Pittwater 21 Development Control plan 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D4.8 Building envelope

Description of non-compliance

The control requires development to be within a building envelope projected at 45 degrees at a height of 3.5m above the side boundary.

The proposed development encroaches into the side boundary envelope on the north west elevation as shown below.

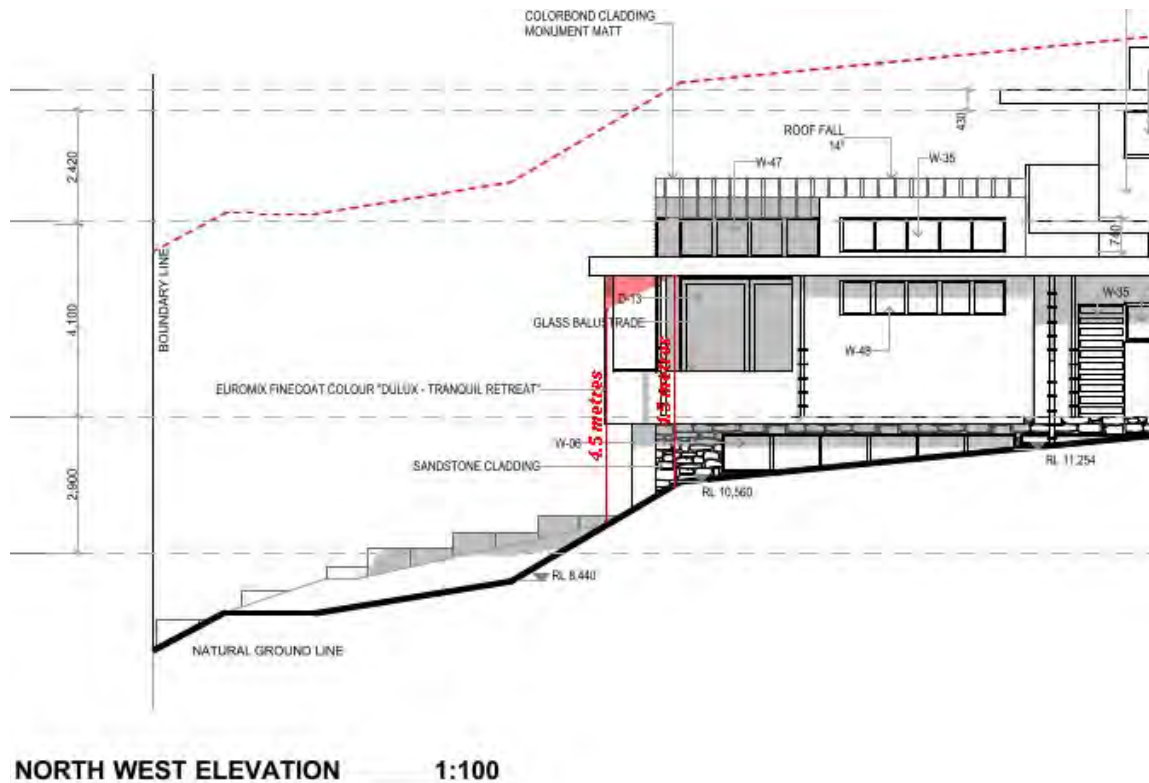


Image 3: Side boundary envelope non-compliance shown in red

Due to concerns with view loss and non-compliance with the front building line, a condition is recommended requiring the ground floor balcony located off the living and dining area to be setback 10.7m from the front boundary, to align with the north-east elevation of the garage and ground floor level of the proposal. The recommended setback will provide compliance with the front building line control, maintain views from the adjoining dwellings and minimise the side boundary envelope non-compliance along the north west elevation. The reduced side boundary envelope will have a height of 0.2m and length of 0.3m.

Merit consideration

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

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

Comment:

The proposed development generally maintains the existing setbacks and height of the dwelling, which sensitively integrates the development within the landform and landscape. It is considered that the proposal is consistent with the desired future character of the Church Point and Bayview 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:

The building envelope non-compliance will not unreasonably impact on the streetscape or result in a building scale or density that is above the height of trees.

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

Comment:

The proposed development responds to the topographical conditions of the site through employing a built form that steps down in height with the slope of the land.

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

Comment:

The proposal is a well-articulated design and involves varied wall plans which adds visual interest and alleviates the perceived bulk. Furthermore, the development incorporates a built form that steps down with the slope of the land, which provides further visual relief. The use of various earthy tones and the provision of native landscape treatment will assist in softening the built form. Overall, it is considered that the bulk and scale of the built form is appropriately minimised.

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

Comment:

As discussed elsewhere in the report the proposed ground floor balcony will block views from no. 2193 Pittwater Road to the west of the site. The recommended condition requiring the balcony to be setback 10.7m from the front boundary will allow the view to be retained from the adjoining property.

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

Comment:

No unreasonable additional impact on the levels of amenity and solar access to adjoining properties are expected.

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

Comment:

No additional vegetation is proposed to be removed. Existing vegetation is considered to adequately reduce the visual bulk of the built form.

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.

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 \$14,990 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,498,959.

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 construction of a new dwelling has been referred to the DDP due to a breach of more than 10% of the building height control of the PLEP.

The concerns raised in the objections have been addressed in the relevant sections of the report. Due to view loss as a result of the non-compliant element of the ground floor front balcony, a condition is recommended to increase the setback of balcony to comply with the requirement of part D4.5 Front building line of the PDCP. The increased setback will maintain views from the adjoining properties, provide full compliance with the front building line requirement and minimise the side boundary envelope encroachment on the north-western elevation.

The submitted clause 4.6 appropriately addresses the requirement of the clause and the noncompliance with the building height is found to be reasonable and well founded within the site constraints, historical excavation of the site and the geographical context.

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 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 DA2022/1248 for Construction of a dwelling house on land at Lot 12 DP 10583, 2191 Pittwater Road, CHURCH POINT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance 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
DA300 - Rev I - Site/Roof Plan	13.04.2023	FLDC Architects
DA301 - Rev I - Proposed Garage Floor Plan	13.04.2023	FLDC Architects
DA302 - Rev I - Proposed Ground Floor Plan	13.04.2023	FLDC Architects
DA303 - Rev I - Proposed First Floor Plan	13.04.2023	FLDC Architects

DA304 - Rev I - Demolition Plan	13.04.2023	FLDC Architects
DA306 - Rev I - Excavation Plan	13.04.2023	FLDC Architects
DA400 - Rev I - Elevations	13.04.2023	FLDC Architects
DA401 - Rev I - Elevations	13.04.2023	FLDC Architects
DA500 - Rev I - Sections	13.04.2023	FLDC Architects
DA501 - Rev I - Driveway Sections	13.04.2023	FLDC Architects
DA205 - Rev I - Section	13.04.2023	FLDC Architects
DA701 - Rev H - Schedule of Materials and Finishes	07.07.2022	FLDC Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
SW001 - Revision A - Stormwater Layout Plan Cover Sheet	27/06/2022	Capital Engineering Consultants
SW010 - Revision A - Stormwater Layout Plan Basement Floor Plan , Notes & Details	27/06/2022	Capital Engineering Consultants
SW011 - Revision A - Stormwater Layout Plan On-site Detention, Notes & Details	27/06/2022	Capital Engineering Consultants
SW020 - Revision A - Stormwater Layout Plan Ground Floor Plan, Notes & Details	27/06/2022	Capital Engineering Consultants
SW030 - Revision A - Stormwater Layout Plan First Floor Plan, Notes & Details	27/06/2022	Capital Engineering Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate Certificate number; 1307359S	15 July 2022	Frys Energywise
Geotechnical Risk Management Report 2191 Pittwater Road, Church Point NSW Ref: P1995_05	20/12/2022	Morrow Geotechnics Pty Ltd

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan - Revision D	13.05.22	iScape Landscape Architecture

Waste Management Plan		

Drawing No/Title.	Dated	Prepared By
Site Waste Minimisation and Management Plan	19.07.2022	FLDC Architects
ER001 - Revision A - Stormwater Layout Plan Erosion & Sediment Control Plan, Notes & Details	27/06/2022	Capital Engineering Consultants

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	01/09/2022

(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 \$14,989.59 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,498,959.00.

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 \$2,000 as security against any damage to Council's stormwater drainage infrastructure 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. **Amended Landscape Plan**

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

- a) the existing vegetation on the high side (south-west side) of the existing rock retaining wall, adjacent to the rear property boundary and as shown on the Survey Plan, shall be shown as retained on the Landscape Plan. Subsequently remove the 12 x *Callistemon linearifolius* in this area from the proposal,
- b) if space does not allow, install the *Banksia integrifolia* on the low side (north-east side) of the existing rock retaining wall.

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

Reason: Landscape amenity.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Morrow Geotechnics Pty Ltd Ref: P1995_05 dated 20/12/2022 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.

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. **Erosion and Sediment Control Plan**

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

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

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

Reason: Protection of the receiving environment.

12. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to

TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

13. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- The Balcony located off the Dining and Lounge on the ground floor level is to be setback 10.7m from the front boundary.

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.

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 Capital Engineering Consultants, drawing number SW22189 SW001, SW010, SW011, SW020, SW030 Revision A, dated 27/06/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. Connection details into the existing Council pit in accordance with the Section 68 Local Government Act approval.

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.

15. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property do not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility.

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

Reason: To ensure suitable vehicular access to private property.

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 Certifier prior to the issue of the

Construction Certificate.

Reason: To provide public and private safety.

17. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include Civil Engineering plans for the design of the stormwater connection from the site into the existing Council stormwater pit adjoining the site which is 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 of stormwater arising from the development.

18. **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.

19. **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.

20. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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: Nos. 2193 and 2189 Pittwater Road and 33 Eastview Road Cottage Point.

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.

22. **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

23. **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 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.

24. **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.

25. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death 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.

26. **Implementation of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plan (iScape 2018) and these conditions of consent.

The new landscaping is to be certified by a qualified landscape architect as being in accordance with the approved Landscape Plans and these conditions of consent

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

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

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Capital Engineering Consultants Pty Ltd prior to commencement of any other works on site.

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

Reason: Protection of the receiving environment.

28. **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.

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. **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**

31. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved amended Landscape Plan, and inclusive of the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, 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 Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

32. **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 Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

33. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (iScape 2018) and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

34. **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.

35. **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.

36. **Waste Management Confirmation**

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

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

37. **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.

38. **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.

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 amended 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.

40. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.




 DENOTES FLOOR SPACE AREA CALCULATED
 DWELLING - SITE AREA : 697.6 m²
 FLOOR AREA = 405.4 m²
 FSR = 0.581

 DENOTES LANDSCAPE AREA CALCULATED
 TOTAL - SITE AREA : 697.6 m²
 LANDSCAPE AREA = 424.6 m² deep Soil
 TOTAL = 60%

Proposed Residential Dwelling
2191 PITTWATER ROAD, CHURCH POINT
Site Area = 697.6m²
Lot 12 in D.P. 10583

PROPOSED DWELLING CALCULATIONS

GARAGE FLOOR AREA =	36.90 m ²
GROUND FLOOR AREA =	170.54 m ²
SECOND FLOOR AREA =	99.96m ²

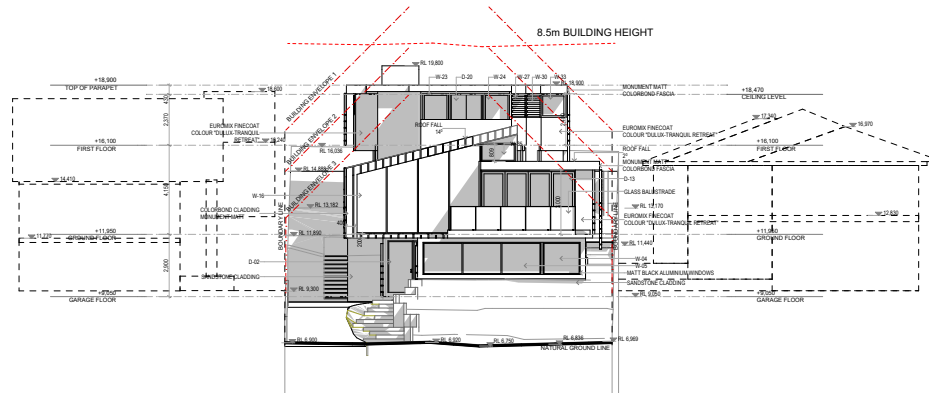
NOTE:
- ALL STAIRS & LIFT (GARAGE & GROUND FLOOR) INCLUDED IN CALCULATION

TOTAL AREA =	307.4m²
PROPOSED FSR =	0
ALLOWABLE FSR =	0

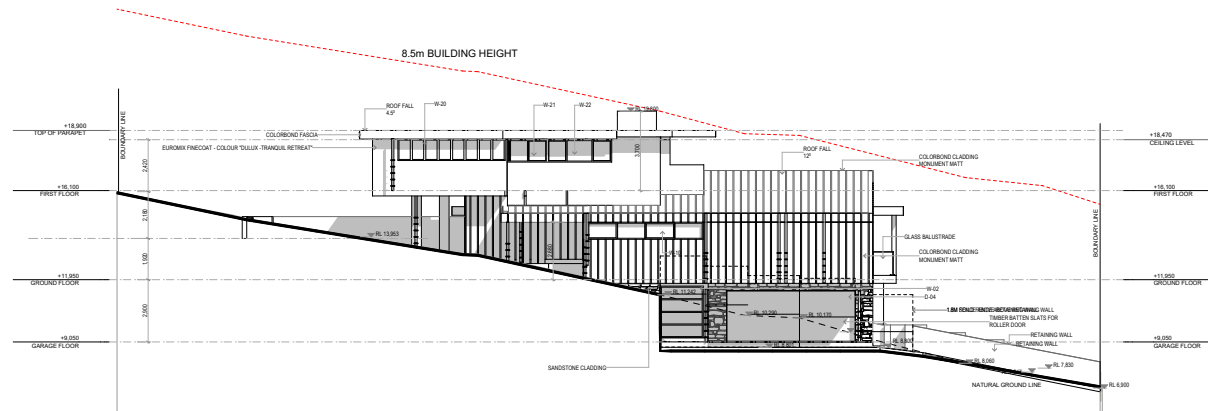
LANDSCAPE AREA = 424.60 m² - 60 %
LANDSCAPE REQUIRED = 418.56 m² - 60%

P.O.S AVAILABLE = 161.90m² (minum 3mx3m)
MINIMUM P.O.S = 80 m² (minum 3mx3m)

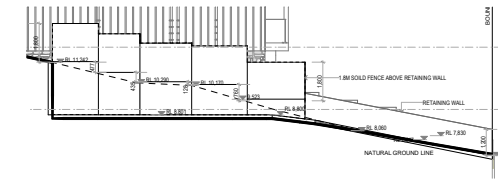
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NORTH EAST ELEVATION 1:100



SOUTH EAST ELEVATION 1:100



FENCE DETAIL - SOUTH EAST ELEVATION 1:100

DENOTES FLOOR SPACE AREA CALCULATED DWELLING - SITE AREA : 697.6 m² FLOOR AREA = 405.4 m² FSR = 0.58:1
DENOTES LANDSCAPE AREA CALCULATED TOTAL - SITE AREA : 697.6 m² LANDSCAPE AREA = 424.6 m² deep Soil TOTAL = 60%

Area Analysis:

Proposed Residential Dwelling
2191 PITTWATER ROAD, CHURCH POINT
Site Area = 697.6m²
Lot 12 in D.P. 10583

PROPOSED DWELLING CALCULATIONS

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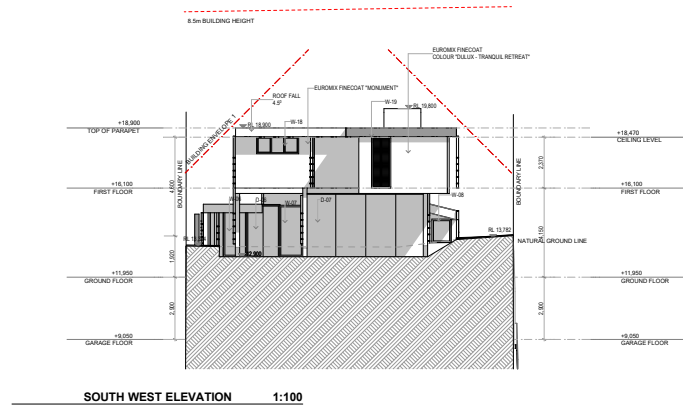
NOTE:
- ALL STAIRS & LIFT (GARAGE & GROUND FLOOR) INCLUDED IN CALCULATION
- GARAGE, STORAGE & EXTERNAL WALLS EXCLUDED FROM CALCULATION

TOTAL AREA = 307.4m²
PROPOSED FSR = 0.44:1
ALLOWABLE FSR = N/A

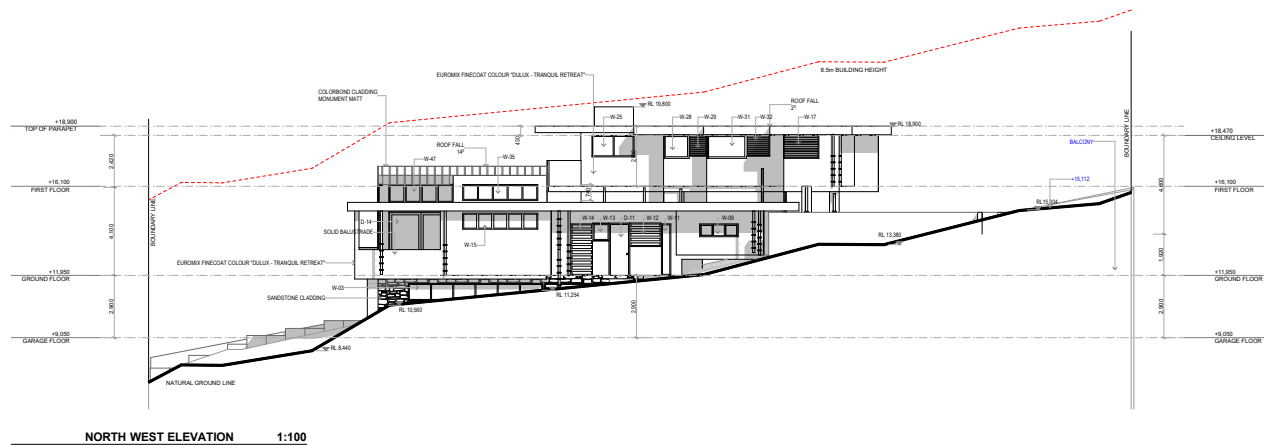
LANDSCAPE AREA = 424.60 m² - 60 %
LANDSCAPE REQUIRED = 418.56 m² - 60%

P.O.S AVAILABLE = 161.90m² (minimum 3mx3m)
MINIMUM P.O.S = 80 m² (minimum 3mx3m)

NORTH	General Notes This Builder shall check all dimensions and levels on site prior to construction. Builders are advised, alterations or omissions to the drawings. Construction shall be in accordance with the approved plans. The drawings shall be used for construction purposes only. Please refer to the relevant codes of practice for all construction work. All boundaries and contours subject to survey.	PROJECT NAME: P1308CHU - CHURCH POINT NEW DWELLING SITE: 2191 Pittwater Road, Church Point NSW	DRAWING TITLE: ELEVATIONS	Project No: P1308CHU Scale: 1:100 (E.A.) 1:200 (S.E.) Start Date: 07.03.2021 Print Date: XX Drawn By: R.N. Checked By: R.T.	Station: DA Drawing No: DA400 Rev: 1	REGISTRATION 840 FLDC ARCHITECTS p) 02 9588 FLDC f) 02 9580 8592 Suite 2D, 322 Kingsgrove Road, Kingsgrove NSW 2218 web: www.fldc.com.au email: info@fldc.com.au



DENOTES FLOOR SPACE AREA CALCULATED	
DWELLING - SITE AREA = 697.6 m ²	
FLOOR AREA = 405.4 m ²	
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DENOTES LANDSCAPE AREA CALCULATED	
TOTAL - SITE AREA = 697.6 m ²	
LANDSCAPE AREA = 424.6 m ² deep Soil	
TOTAL = 60%	



Area Analysis:

Proposed Residential Dwelling
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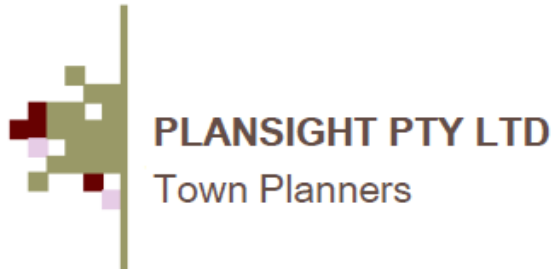
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P.O.S AVAILABLE = 161.90m² (minimum 3mx3m)
MINIMUM P.O.S = 80 m² (minimum 3mx3m)

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CI 4.6 REQUEST TO VARY A DEVELOPMENT STANDARD
2191 Pittwater Road Church Point

Proposed Dwelling House

Prepared for
Mr R Mouwad

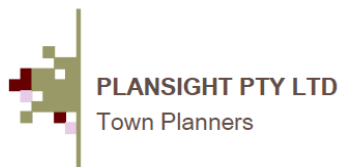
**Request to vary the development standard of building height pursuant to Cl.4.6
of Pittwater LEP 2014**

Proposed Dwelling House

No. 2191 Pittwater Road Church Point

Prepared for
Mr R. Mouwad
C/- FLDC Architects

C.F. Blyth RP, Director



Planning
Institute
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December2022
Docs/Cl.4.61

**No. 2191 Pittwater Road Church Point
Objection pursuant to the provisions
of Cl. 4.6 of Pittwater Local Environmental Plan 2014 (PLEP2014)**

This request for variation to a development standard has been prepared in relation to a Development Application that proposes the erection of a new house on the subject site.

The site has a lengthy history and has been subject to excavation in the past meaning that such excavation has established new site levels in relation to part of the footprint of the new dwelling house.

Whilst the proposal complies with the PLEP 2014 height standard if taken from the former ground levels and from the unexcavated part of the footprint, the decision in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 requires building height to be measured from the existing excavated ground level as opposed to former levels.

As such a request to vary the standard of building height pursuant to Cl.4.6 of PLEP 2014 is necessary. The request has been prepared noting the L & E Court judgment in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

In this instance the PLEP 2014 at Clause 4.3 Height of Buildings states:

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

The maximum building height specified is 8.5m. Height is measured from ground level (existing) which is defined in the dictionary as:

“ground level (existing) means the existing level of a site at any point.”

As such, where the proposed building is located above that part of the site previously excavated, the 8.5m standard is exceeded to a maximum of 9.85m. The rear 1/3rd portion of the proposed building is sited above existing ground level and the standard is complied with. The height standard would also be complied with when viewed outside the footprint and at the boundaries of the site.

1.0 Cl.4.6 Exception to development standards PLEP 2014

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

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

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

This clause would apply to the development standards in Cl4.3 height of buildings.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

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

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

2.0 Zone Objectives

The subject site is zoned C4 Environmental Living pursuant to the provisions of Pittwater Local Environmental Plan 2012 ("PLEP 2012"). The objectives of the C4 zone are as follows:

- *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 is permitted in the zone and achieves the objectives. The proposal will result in a contemporary residential building in context with surrounding development in the locality. Notwithstanding the breach of the height controls, the scale of the proposed development is sympathetic to and consistent with what is found on neighbouring sites when measured outside the building footprint and from ground level at the boundaries.

The proposal will introduce a new landscape regime for the site to enable indigenous plant species to become established thus reinforcing the natural character of the area and achieving the relevant objective.

The proposed development is therefore considered to be consistent with the zone objectives. Accordingly, there is no zone or zone objective impediment to the granting of consent.

3.0 Request to vary development standard of Building height Control

3.1 Compliance is unreasonable or unnecessary

Pursuant to Clause 4.3(2) of PLEP 2014 buildings on the site must not exceed 8.5m. The proposed development will result in a partial building height breach to a maximum of 9.85m measured from the existing excavated level of the site.

The building visually achieves the height control outside the non-complying parts of the footprint while the rear third of the building which is located above existing ground level complies fully with the standard. The objectives of the height control standard are:

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

Having regard to the judgment in *Wehbe v Pittwater Council* (2007) LEC 827 & *Four2Five Pty Ltd v Ashfield* [2015] NSWLEC 90, it is considered that strict compliance with the development standard is both unreasonable and unnecessary and the objectives of the development standard are achieved notwithstanding the non-compliance for the following reasons:

- *The proposed development produces new built form that is contextual to the locality and of contemporary design that will achieve compatibility with the existing and desired future character of the locality in achievement of objective (a);*
- *Because the proposed building height would be in compliance with the standard if measured from extrapolated original ground level (prior to excavation) it will appear after construction as fully in compliance with the standard and thus compatible with surrounding buildings in achievement of objective (b);*
- *Given the apparent compliance when height is measured from the ground level outside the footprint, at the boundary and from the former site level prior to excavation, the non-complying portion of the building does not cause any adverse overshadowing of neighbouring properties and thus achieves objective (c);*
- *Similarly given the apparent compliance when height is measured from these positions, the non-complying portion of the building does not cause any view impact on neighbouring properties and thus achieves objective (d). Note the accompanying Tenacity v Warringah Council assessment which attests to this fact;*
- *A built form that is consistent with the surrounding built form and which successfully adds to the character of the locality will result. It should be noted that the former house on the site was associated with some degree of cut and fill and that the site had not been in an undeveloped form since approximately the mid-20th Century. Whilst additional excavation was undertaken, this occurred on an already disturbed site. Appropriate geotechnical treatment of the excavated area has subsequently occurred and the resultant development will be appropriate in relation to the surrounding topography. The proposal does not offend objective (e);*
- *The part of the building that breaches the height standard does not offend the concerns outlined in objective (f) because that non complying area is below original natural ground level and will not be visually apparent in the completed building. As such the proposal has minimised visual impact;*

3.2 Sufficient environmental planning grounds

In the subject case it is put forward that there are sufficient environmental planning grounds to justify a request to vary the development standard.

The breach of the 8.5m standard is a technical one due to the fact that the site has been excavated and compliance will be apparent when existing ground level at the boundary and outside of the footprint of the building is referenced.

The site excavation, when analysed in conjunction with the overall topography of this part of the hillside creates an anomaly. When applied to the site, a definite discontinuity in the 8.5m height plane would be apparent that that is inconsistent with the surrounding topography. As found by the Court in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, at paragraph 74:

“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..”

Documentation accompanying the application also provides a full environmental planning assessment of the proposed development. It demonstrates that given the nature and form of

the building on the site and the location of that part of the building that breaches the height control that sufficient environmental planning grounds exist to justify the breach including the relevant matters set out in section 1.3 of the Environmental Planning & Assessment Act 1979, Objects of Act specifically:

(c) to promote the orderly and economic use and development of land,

The development achieves this object because the non-complying portion of the building is below original ground level of the site prior to recent excavation and does not unreasonably impact on the amenity of abutting properties, whilst allowing the owners to reasonably and economically develop their property.

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

The non-complying section of the building being below finished ground level and ground level outside the building footprint is not visually apparent and thus does not offend this object.

(g) to promote good design and amenity of the built environment

The non-complying portion of the development represents good design because it is able to be constructed in the manner proposed set well back from the streetscape and being below previous ground level is thus non-obtrusive being completely non visible. The non-compliance causes no impact amenity on abutting or adjacent properties and the surrounding built environment.

3.3 Satisfaction the proposed development will be in the public interest

The preceding analysis of the proposed development has provided justification that achievement of the objectives of the zone and the objectives of the development standard are apparent notwithstanding a breach of the development standard. Accordingly, the proposed development will be in the public interest.

4.0 Conclusions

Having regard to the provisions of Cl. 4.6, I am of the opinion that:

- *the proposed height of the development when measured outside the building footprint and at the boundaries is consistent with development in the locality and achieves the zone objectives;*
- *the non-compliance is caused by previous site excavation and if the standard is applied to this site and viewed in conjunction with the overall topography of this part of the hillside, an anomaly is created. A definite discontinuity in the 8.5m would be apparent that that is inconsistent with the surrounding topography and provides a sound environmental planning ground for variation of the standard;*

- *there are sufficient circumstances to justify the non-compliance with the development standard in this case given the lack of impact and visibility associated with the breach, the location and design of the proposal and the character of the locality;*
- *there are no unreasonable amenity impacts such as overshadowing, overlooking and loss of view caused to surrounding properties by the non-compliance with the development standard;*
- *that having regard to the above that compliance with the building height standard is unreasonable or unnecessary in the circumstances of the case;*
- *that sufficient environmental planning grounds exist to justify the variation;*
- *that given the fact that the objectives of the zone and the development standard have been achieved, approval would be in the public interest;*
- *non-compliance with the development standard does not raise any matter of significance for State or Regional environmental planning;*

As such it is my opinion that the request is well founded and that there is no statutory impediment or planning merit reason to deny the granting of a variation in this case.



C.F. Blyth RP Director
Plansight Pty Ltd
CI4.6V1

ITEM 3.5**REV2023/0008 - 1/3 COLLEGE STREET MANLY - REVIEW OF DETERMINATION OF APPLICATION FOR ALTERATIONS AND ADDITIONS TO A DUAL OCCUPANCY****REPORTING MANAGER**

Adam Richardson

TRIM FILE REF

2023/298194

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 REV2023/0008 for Review of Determination of Application for alterations and additions to a dual occupancy on land at Lot 1 SP 68673, 1/3 College Street MANLY, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0008
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Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 1 SP 68673, 1 / 3 College Street MANLY NSW 2095
Proposed Development:	Review of Determination of Application for alterations and additions to a dual occupancy
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Milano Pellegrini Ekaterina Pellegrini
Applicant:	Milano Pellegrini

Application Lodged:	13/04/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	24/04/2023 to 08/05/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 48,952.53
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EXECUTIVE SUMMARY

This review application seeks to review the determination of Development Application DA2022/0647 which was determined by way of refusal on 22 December 2022.

The application is referred to the Development Determination Panel (DDP) as any Review of Determination under *Section 8.2* of the *Environmental Planning and Assessment Act 1979*, for development previously determined by a Manager is required to be determined by the DDP.

DA2022/0647 was refused by Council for the following seven (7) reasons, detailed below:

1. Pursuant to *Section 4.15(1)(a)(i)* of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Environmental Planning and Assessment Act 1979*, as the proposal will result in adverse view loss impacts in the locality.



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 Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.9 Foreshore Scenic Protection Area of the Manly Local Environmental Plan 2013 due to the absence of measures demonstrated by the applicant to protect the scenic qualities of the coastline.
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 3.4.3 Maintenance of Views of the Manly Development Control Plan as the proposal would result in the total obliteration of the only water view available from the adjoining neighbour.
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 4.1 Residential Development Controls of the Manly Development Control Plan as the proposal will degrade the visual amenity of the adjoining residence.
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 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan, as the proposed non-compliant side setback to the south-western boundary contributes to view loss from the adjoining neighbour.

The applicant has not sought to address the reasons for refusal through the provision of amended information or an alternate design, but rather has provided justification as to why the development should be considered as acceptable development, that is worthy of development consent.

The review of determination was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, which received one (1) separate submission. The submission raised concern with view loss, overshadowing, bulk and scale, aural privacy and a non-complaint side setback to the western boundary.

Critical assessment issues largely relate to Clause 3.4.3 Maintenance of Views and Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan 2013. Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal 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 review the determination and grant **approval** to the development application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The Review Application is for the review of determination of Development Application (DA2022/0647), which sought consent for the alterations and additions to a dual occupancy. The works specifically include the enclosing and conversion of an existing first floor balcony to the rear, into a sunroom, to provide for additional internal floor space.

The Review Application has addressed the reason for refusal of DA2022/0647 as detailed below:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979, as the proposal will result in adverse view loss impacts in the locality.

Comment

The proposal upon review, was found to be consistent with the provisions of the *Environmental Planning and Assessment Act 1979*, with the works are assessed as being of an acceptable view loss impact. This has been discussed in detail under 'Clause 3.4.3 Maintenance of Views' of the Manly Development Control Plan 2013, elsewhere within this report.

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 Manly Local Environmental Plan 2013.

Comment

The proposal upon review, is considered to be consistent with *Clause 1.2 Aims of The Plan* of the *Manly Local Environmental Plan 2013*.

3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.9 Foreshore Scenic Protection Area of the Manly Local Environmental Plan 2013 due to the absence of measures demonstrated by the applicant to protect the scenic qualities of the coastline.

Comment

The proposal upon review, is considered to be consistent with the provisions of *Clause 6.9 Foreshore Scenic Protection Area* of the *Manly Local Environmental Plan 2013*. This being that the works will not result in any detrimental impacts to the visual amenity of the harbor or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore. Nor, impact the scenic qualities of the coastline, as these works will not be easily viewed from the coastline.

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 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) of the Manly Development Control Plan due to the proposed development resulting in adverse impacts to the visual amenity of the neighbouring property.

Comment

The proposal upon review, will not result in any unacceptable impacts to the amenity of neighbouring properties. The works are considered compliant with the requirements for overshadowing and privacy. As mentioned above, views are discussed under 'Clause 3.4.3 Maintenance of Views', elsewhere within this report. It has been determined that the proposal achieves the objectives of Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) of the Manly Development Control Plan 2013.

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 3.4.3 Maintenance of Views of the Manly Development Control Plan as the proposal would result in the total obliteration of the only water view available from the adjoining neighbour.

Comment

The proposal upon review, will not result in the total obliteration of the 'only water view' available from the adjoining neighbour. But rather the loss of view to a bedroom and associated balcony. Further investigations identified that the view is also obtained from a high usage area being an outdoor dining area connected to the ground floor internal living areas of the adjoining neighbour. The view from this location, will not be impacted upon. As mentioned above, views is discussed under 'Clause 3.4.3 Maintenance of Views', elsewhere within this report.

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 4.1 Residential Development



Controls of the Manly Development Control Plan as the proposal will degrade the visual amenity of the adjoining residence.

Comment

The proposal upon review, will not significantly degrade the visual amenity of the adjoining property, as a water view is to be retained. Additionally, screen planting exists on both the subject site and No. 2 College Street along the adjoining western boundary, which will aid in visual softening of the built form. The non-compliant side setback along the western boundary will extend to a length of approximately 3.5 metres. The remainder of the western boundary to the north, will remain as an open outlook for the adjoining neighbours, and will not be blocked by built form. This is considered reasonable in a General Residential (R1) zone.

7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan, as the proposed non-compliant side setback to the south-western boundary contributes to view loss from the adjoining neighbour.

Comment

The proposal upon review, does exhibit a side setback non-compliance to the south-western boundary (noted as the western boundary in this report, so as to be consistent with the proposed architectural plans and their notations). This non-compliance is existing, and has found to achieve the objectives under Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan 2013. The non-compliant side setback does contribute to view loss from one area of the adjoining dwelling, however, this view is to be retained from an alternate location of the dwelling, which is considered to be of more value due to its high usage.

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

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area



Manly Development Control Plan - 3.4.3 Maintenance of Views

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

SITE DESCRIPTION

Property Description:	Lot 1 SP 68673 , 1 / 3 College Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of College Street. The site is legally identified as Lot 1, in Strata Plan 68673 , No. 1/3 College Street, Manly. The site is rectangular in shape with a street frontage of 15.24 metres and a depth of 45.72 metres. The site has a surveyed area of 696.8m². The site is located within the R1 General Residential zone under the provisions of the Manly Local Environmental Plan 2013 and accommodates a dual occupancy. The site has slopes downwards from the north-west to the north-east by approximately 1.0 metres. The site contains lawn areas, garden beds and trees. 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 residential dwellings of varying densities and architectural styles.

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:

DA2022/0647

Development Application for the alterations and additions to a dual occupancy.
Refused on the 22 December 2022, by Delegated Authority.

Application History for DA2022/0647

The applicant was advised that the proposal was inconsistent with the Principles of view sharing as established by *Tenacity Consulting Pty Ltd Vs Warringah Council (2004)*, and that additional floor space could be provided on the subject site elsewhere. In response, the applicant declined the opportunity to prepare amended plans and requested that the current proposal proceed to determination in its current form.

Application History for REV2023/0008

Following an independent assessment of the Review of Determination Application and associated site inspections to both the subject site and western adjoining property (No. 2 College Street, Manly), it was identified that an additional existing view corridor is obtained from the outdoor dining area of No. 2 College Street. This will be discussed in detail under 'Clause 3.4.3 Maintenance of Views', elsewhere with this report.

In addition, given the site constraints and building layout of the existing dwelling of 1/3 College Street, other areas such as the centre courtyard and/or rear ground floor patio area were not considered to be acceptable areas for additional floor space. This being as it would likely result in significant loss of light to the entire ground floor space which includes the living area, dining and kitchen. The centre courtyard and rear windows to the ground floor act as light wells, and are the only light source for the lower ground floor high usage rooms. It is therefore not considered, that amendments were necessary for this application, as discussed throughout this assessment report.

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 22 December 2022 and the notice of determination was issued on 22 December 2022. The review was lodged on 31 March 2023 and is to be considered by the 22 June 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 works under this application remain substantially the same development as no physical amendments have been made.



The works within this proposal are outlined in the 'Detailed Description of Works' section of this report.

Accordingly it is concluded that the scheme under this application, 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 and the determination reviewed.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/04/2023 to 08/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Turnbull Planning International Pty Ltd	5 / 1070 - 1076 Barrenjoey Road PALM BEACH NSW 2108

One (1) submission was received, with the issues raised, discussed below:

- **View loss from Master Bedroom and associated balcony**

Comment

Concern is raised that the proposed works will fail based on the principles established under *Tenacity Consulting v Warringah [2004]*, and would result in the elimination of an existing narrow view corridor from the Master bedroom and associated balcony of No. 2 College Street, Manly. A view loss analysis was undertaken and is discussed in detail under 'Clause 3.4.3 Maintenance of Views', elsewhere within this report.

- **Aural Privacy**

Comment

The submission raises concerns for potential aural privacy impact, affecting No. 2 College Street, Manly. After an assessment of the proposed plans, it is considered unlikely that the proposed works would result in detrimental aural privacy impacts to No. 2 College Street, given that the proposed 'sun room' does not include any openings (i.e. windows or doors) to the western elevation that would front the adjoining concerned property. When compared to the existing open balcony that currently stands on the subject site, it would be considered that the level of aural privacy is somewhat increased rather than reduced, as a result of the proposed enclosed 'sun room'. This concern does not warrant a refusal of the application.

- **Non-compliant side setback under Clause 4.1.2.2 of the MDCP 2013, to western boundary line**

Comment

The submission mentions that the proposed works fail to meet the numerical requirements stipulated under Clause 4.1.2.2 of the MDCP 2013, in particular to the western adjoining boundary. Based on the proposed wall height of the works (5.9m), the required side setback to the western boundary is 1.97 metres. The proposed setback to this boundary follows the established side setback of the existing balcony and pillars, of 1.0 metres. The request of variation to this numerical control will be discussed under 'Clause 4.1.2.2 Side Setbacks and Secondary Street Frontages', elsewhere within this report.

- **Existence of unlawful work on neighbouring property**

Comment

It is identified that the works (i.e. balcony off the Master Bedroom) of No. 2 College Street, Manly has not been built in accordance with Consent No. DA0229/2013. Nevertheless, the view loss analysis will be undertaken from this area with regard to what is currently existing. This element will not impact the view loss assessment outcome.

- **Overdevelopment of the site, which would lead to undermine the desired future character of the locality.**

Comment

The proposed works result in a compliant floor space ratio. It is noted that the floor space calculation within DA2022/0647 was miscalculated in error. The floor space ratio as proposed is 0.5:1 or 348.2m², where the maximum required is 0.6:1 or 418.08m². The subject site is not only under the maximum required FSR, but complies with the minimum residential total open space and landscaped area requirements of the MDCP 2013. In addition, the subject site is situated within the R1 General Residential zone under the provisions of the MLEP 2013, which permits development types such as Residential Flat Buildings, Dual Occupancies and Semi Detached Dwellings. All these types of development evidently exist within the immediate vicinity. The proposed works will not undermine the desired future character of the locality or constitute as over-development. This concern does not warrant a refusal of the application.

- **Bulk and scale of the proposed works**

Comment

As mentioned above, the application exhibits compliance with the relevant minimum residential total open space and landscaped area requirements of the MDCP 2013. Additionally, the works are compliant with the required numerical wall height control of the WDCP 2013 and Building Height Development Standard of the MLEP 2013. It is noted that the development does not meet the required numerical side setback requirement to the western boundary, however this variation is to be discussed elsewhere within this report. It is also evident that screen planting exists on both the subject site and No. 2 College Street along the adjoining western boundary, which will aid in visual softening of the built form. The non-compliant side setback along the western boundary will extend to a length of 3.5 metres. The remainder of the western boundary to the north will remain as an open outlook, and will not be blocked by built form.

- **Overshadowing to No. 2 College Street, Manly**

Comment

Concern has been raised that No. 2 College Street, Manly will be impacted by loss of sunlight, as a result of the development. The additional overshadowing will occur to the south-western portion of the external deck area at 9am, and over the roof of the master bedroom at 12pm, the solar access will remain as existing at 3pm 21st June. It is considered that the solar access to the main living areas will remain substantially similar to the existing. It is determined that the proposed works are compliant with the requirements under Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013. This concern does not warrant a refusal of the application.



REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Supported, subject to conditions. A review of the proposal refused under DA2022/0647 has been undertaken with respect to biodiversity issues. The review concluded that the original biodiversity comments and conditions remain current - specifically, that the proposal is for a minor addition within the existing development footprint and it is therefore considered that the development will not impact upon native vegetation or wildlife habitat.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	Supported, no conditions required. The proposal has been referred to Heritage as the subject site is within the vicinity of heritage items Item I220 - House, “Logan Brae” - 32 Reddall Street Item I131 - St Patrick’s Estate - 151 Darley Road (State Heritage Register)
	Details of heritage items affected
	Item I220 – House “Logan Brae” <u>Statement of Significance:</u> A spectacular and finely detailed example of Inter-War California Bungalow on a corner site. <u>Physical Description:</u> Single storey Inter-War California Bungalow on a corner site, constructed of dark face brick. Features elaborate gable ends to each street frontage, cobbled finish to front verandah base and columns, diamond-pattern leadlight casement windows. Original dark face brick front fence. Diamond - pattern leadlight casement windows. Item I131 - St Patrick’s Estate <u>Statement of significance:</u> St Patrick’s Estate is a site of national heritage significance. The unparalleled grandeur of the cultural landscape, including its setting, buildings and landscape components, as well as the history it embodies, reflects a unique physical manifestation of the Catholic Church in Australia, not seen in any other location in the country. The site exemplifies an important period in the Church’s history in Australia, as well as the vision of Cardinal Moran, and for that reason has great significant to Australian Catholics, as well as the broader community.

Internal Referral Body	Comments		
	<u>Physical description:</u> St Patrick's Estate is a complex cultural landscape comprising many significant components, including buildings, grounds, gardens and landscape elements (including walls, pathways, and significant trees). It is magnificently sited on the northern slopes of North Head, overlooking Manly and Ocean Beach, and it is a prominent and striking landmark in the Manly area.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	St Patrick's Estate is on the State Heritage Register
	National Trust of Aust (NSW) Register	Yes	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	This application seeks a review of a refused application for alterations and additions to a dwelling. It seeks consent for changing an existing balcony at the rear of the property into a sunroom. Heritage raised no objections to the original proposal as the works were to the rear of the property and not readily visible from the street or heritage items. Heritage raises no objections or concerns regarding this review application as once again the works are to the rear and not readily visible and are considered to not impact upon the heritage items or their significance.		
	Consider against the provisions of CL5.10 of MLEP.		
Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No			
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		



External Referral Body	Comments
	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

The cost of works for the proposed works under this application, is estimated at less than \$50,000. Therefore, no BASIX Certificate is required.

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	6.6m	-	Yes
Floor Space Ratio	FSR: 0.6:1 418.08m ²	FSR: 0.5:1* 348.2m ²	-	Yes

*Floor space ratio was miscalculated in DA2022/0647.

Compliance Assessment

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

Detailed Assessment

6.9 Foreshore scenic protection area

Clause 6.9 Foreshore scenic protection area of the MLEP 2013, relates to land within the foreshore scenic protection area. The subject site is identified within this area and is subject to the below assessment.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and i*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal*



Comment

The proposed development will not impact the visual amenity of the harbor or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore. The works will not detrimentally impact the scenic qualities of the coastline, as these works will not be easily viewed from the coastline. The development is considered suitable in relation to its type, location, design and relationship to the foreshore, and will not result in impacting the qualities of the foreshore itself. The proposed works will not affect any land-based and water-based coastal activities. Therefore, this application **complies** with the objectives and requirements of this clause.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 696.8m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 2 dwellings	No change to existing - 2 Dwellings	-	Yes
4.1.2.1 Wall Height	West: 6.5m (based on gradient 0)	5.9m	-	Yes
	East: 6.5m (based on gradient 0)	5.9m	-	Yes
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.6m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	No change to existing (works to rear)	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	West: 1.97m (based on wall height)	1.0m	49.2% 0.97m	No
	East: 1.97m (based on wall height)	> 1.97m	-	Yes
	Windows: 3.0m	No new windows to side elevations	-	Yes
4.1.4.4 Rear Setbacks	8.0m	14.9m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55.0% of site area (383.24m ²)	57.0% (397.2m ²)	-	Yes
	Open space above ground X% of total open space	< 25% of total open space	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35.0% of open space	No change to existing.	N/A	N/A
4.1.5.3 Private Open Space	12sqm per dwelling	12sqm per dwelling	-	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
3.4 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	No	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit Consideration

One (1) submissions was received from the following property which included concerns regarding view loss:

- No. 2 College Street, Manly.

A site inspection was conducted on the 26 April, 4 May and 15 May 2023, the photos taken from the



inspections will be referenced in this assessment. Height poles were not considered necessary as a satisfactory amount of information was available to determine the extent of impact.

The development is considered against the Objectives of the Control:

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

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

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

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

1. Nature of the views affected.

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

Comment

The affected view corridor obtained from No. 2 College Street is toward an easterly direction over the adjoining side boundary of the subject site (No. 1/3 College Street). The view consists of a distant and narrow, partial water view toward Manly and Shelly Beach, which is heavily obstructed by surrounding existing development and established vegetation. This view is partially restricted due to the presence of screens.

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

The view mentioned above, is obtained from the first floor Master Bedroom and associated balcony, predominantly from a standing position. This view is obtained over the side boundary of the subject site and their first floor balcony situated to the rear of the subject site's dwelling house.

Following the site inspections to the affected site (No. 2 College Street), it was identified that a similar view towards the east, also over the side boundary of the subject site, is obtained from the ground floor outdoor dining area, which is connected to the internal living areas of the dwelling. This view can be obtained from both a sitting (on outdoor furniture toward the north) and standing position.



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 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."

Comment

As a result of the proposed development, the water view toward the east from the Master Bedroom and associated balcony will be lost entirely. However, the similar water view towards the east obtained from the ground floor outdoor dining area (connected to the internal living areas of the dwelling), will not be impacted upon and will remain as existing.

As it was identified that the view corridor in question, can also be obtained from another area of the dwelling, in particular a high usage area (i.e. outdoor dining area connected to internal living areas), it is considered more highly valued to preserve the view from this area, than that of a low usage room (i.e. bedroom). The view from the bedroom is likely to only be enjoyed by the bedroom inhabitants, with this room being utilised mostly for sleeping purposes rather than entertaining. By maintaining the view from the ground floor outdoor area, it allows for persons other than just the bedroom inhabitants to enjoy the water views. This is also likely, as the outdoor dining area is connected to living areas, providing for an open alfresco space.

This is consistent with the third Principle noted above. Therefore, it can be considered that overall extent of impact is **moderate**.



(Figure 1: View from No. 2 College Street - Master Bedroom - Standing Position)



(Figure 2: View from No. 2 College Street - Master Bedroom Window - Standing Position)



(Figure 3: View from No. 2 College Street - Master Bedroom Window - Sitting Position)



(Figure 4: View from No. 2 College Street - Outdoor Dining Area - Standing Position)



(Figure 5: View from No. 2 College Street - Outdoor Dining Area - Standing Position)



(Figure 6: View from No. 2 College Street - Outdoor Dining Area - Standing Position)



(Figure 7: View from No. 2 College Street - Outdoor Dining Area - Sitting Position)

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

The development area (i.e. proposed sunroom) that impacts the affected view corridor from the master-bedroom and associated balcony, is compliant with the Development Standards in relation to Building Height and Floor Space Ratio of the MLEP 2013 and the required wall height under the MDCP 2013. The proposal does however, consist of a numerical non-compliance to the side setback requirement to the western adjoining boundary. This non-compliance was found to be acceptable, achieve consistency with the objectives of the control and is subsequently supported.

The side setback non-compliance to the western boundary, is predominantly caused by the retention of the established side setback of the first floor balcony (the area of the proposed sunroom). To further increase the side setback to numerical compliance (1.97 metres) would not result in a significantly improved view loss outcome, but rather result in a similar extent of view loss.

The question of a more skillful design which provides the applicant with a similar development potential and amenity whilst reducing the extent of impact on the views obtained from the affected property, in this case No. 2 College Street, was considered. To maintain the view from the Master Bedroom and associated balcony, the proposed sunroom would need to be deleted, with the existing balcony of the subject site to remain untouched. Alternative locations for additional floor space for the subject site was explored, however, was considered unacceptable, due to the site constraints and building layout of the existing dwelling of No.1/3 College Street.

The subject site relies upon the open centre courtyard of the dwelling, as a light well to obtain solar access to the ground floor and first floor internal spaces. This is due to the dwelling being built close to the western boundary, and attached to the dwelling to the east. Therefore, no additional windows to obtain solar access can be achieved on these elevations, particularly to the ground floor. This courtyard area would not be suitable for additional floor space, and would result in a significant reduction of solar access to the the internal living spaces which is already as existing, quite limited.

Extending the ground floor area towards the rear, to provide further internal floor space, would reduce the outdoor open space area and existing landscaping on site. In addition, the ground floor also relies upon the northern rear windows to provide solar access into the ground floor internal spaces, particularly the kitchen area. By providing an additional room to the rear of the dwelling, would reduce the extent of light to the existing high usage rooms, particularly to the ground floor.

It is concluded that the affected site No. 2 College Street will lose the water view obtained from the first floor Master Bedroom, and associated balcony, but will however retain the water view from the high usage area (outdoor dining area connected to the internal living space). Therefore, the proposed development is considered reasonable in the circumstances of this application and demonstrates a reasonable sharing of views, particularly considering the views are across a side boundary, narrow and distant in existence, heavily obstructed by surrounding development and established vegetation.

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.

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



Description of Non-Compliance

Clause 4.1.4.2 Side setbacks and secondary street frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the height of the building, in this instance a side setback of 1.97 metres (based on the wall height of 5.9 metres) is required to the western boundary line.

The subject site consists of an existing non-compliant side setback of 1.0m when measured from the first floor balcony. The proposed development includes enclosing this balcony space, and converting it into an enclosed sunroom. The side setback to the western boundary, will remain at 1.0 metres, as existing, with a variation of 49.2%.

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 works are located at the rear of the existing dwelling house, and will not be viewed from the street. The existing streetscape will remain unchanged.

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 works will not result in adverse impacts to privacy, provided that no windows are located to the western or eastern (side) elevations. Solar access is considered compliant with the relevant requirements of the sunlight access/overshadowing clause. The works will not impact the existing streetscape, as mentioned above. The proposed building separation, in particular to the west will maintain an existing side setback of 1.0 metres. Despite its non-compliance, this building separation is consistent with that of other buildings within the vicinity, specifically College Street. It is evident that the dwelling houses between No. 1 - 5 College Street, exhibit non-compliant side setbacks and are built in close proximity to each other. Therefore the rhythm of patterns and spaces are not considered to be disrupted as a result. Traffic conditions will not be impacted, as the works will be located to the rear. In relation to view sharing, the development has been assessed elsewhere, under 'Clause 3.4.3 Maintenance of Views', with the impacts determined to be acceptable.

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

Comment

The location of the proposed sunroom is considered acceptable in relation to the layout of the existing building on site. By locating the sunroom to an already existing area to the first floor, will avoid



disruptions to the ground floor layout, solar access and additional built form within undisturbed parts of the site. Therefore, preserving majority of open space areas, and landscaping on site, promoting flexibility. The access through the property will also remain as existing.

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:

Acceptable dimensions of landscaped open space is provided on site to accommodate for plantings, deep soil zones, and vegetation. The works will be located to the first floor, and will not disrupt the natural features of the site.

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

Comment

The subject site is not located within bush fire prone land and therefore this objective is not relevant.

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit 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

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;
- Manly Local Environment Plan;



- Manly Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

This review application seeks to review the determination of Development Application DA2022/0647 which was determined by way of refusal on 22 December 2022. This application has received one (1) submission, with concerns addressed within the assessment report.

On balance, and considering the preceding detailed assessment of the application, including a detailed view loss analysis which resulted in additional discoveries, it is considered that the proposal, subject to recommended conditions will result in a development that is acceptable in design, and will not detrimentally impact the character or unacceptably impact the amenity of the area or adjoining properties.

Therefore, the 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.

RECOMMENDATION

- THAT Council as the consent authority, reviews the determination of DA2022/0647, pursuant to Section 8.2 of the *Environmental Planning and Assessment Act, 1979*.
- THAT Council, as the consent authority in reviewing the determination of DA2022/0647, grants Development Consent to REV2023/0008 for alterations and additions to a dual occupancy on land at Lot 1 SP 68673, 1 / 3 College Street, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

- 1. Approved Plans and Supporting Documentation**
The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:



a) Approved plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01, Proposed Site Plan, Revision B	11 May 2022	Drawn 4 U Building Design
DA02, Proposed Floor Plans, Revision A	8 April 2022	Drawn 4 U Building Design
DA03, Proposed Roof Plan, Revision A	8 April 2022	Drawn 4 U Building Design
DA04, Proposed Elevations, Revision A	8 April 2022	Drawn 4 U Building Design

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	3 April 2023	Milano Pellegrini

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	24 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.

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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished



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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. 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

6. **Stormwater Drainage Disposal**

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

7. **Waste Management Plan**

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

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

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



8. **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.

9. **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.

10. **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:

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

12. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- i Work Health and Safety Act;
- i Work Health and Safety Regulation;
- i Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- i Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];



- i Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- i The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

13. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

14. **Survey Certificate**

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

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

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

15. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

16. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the



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

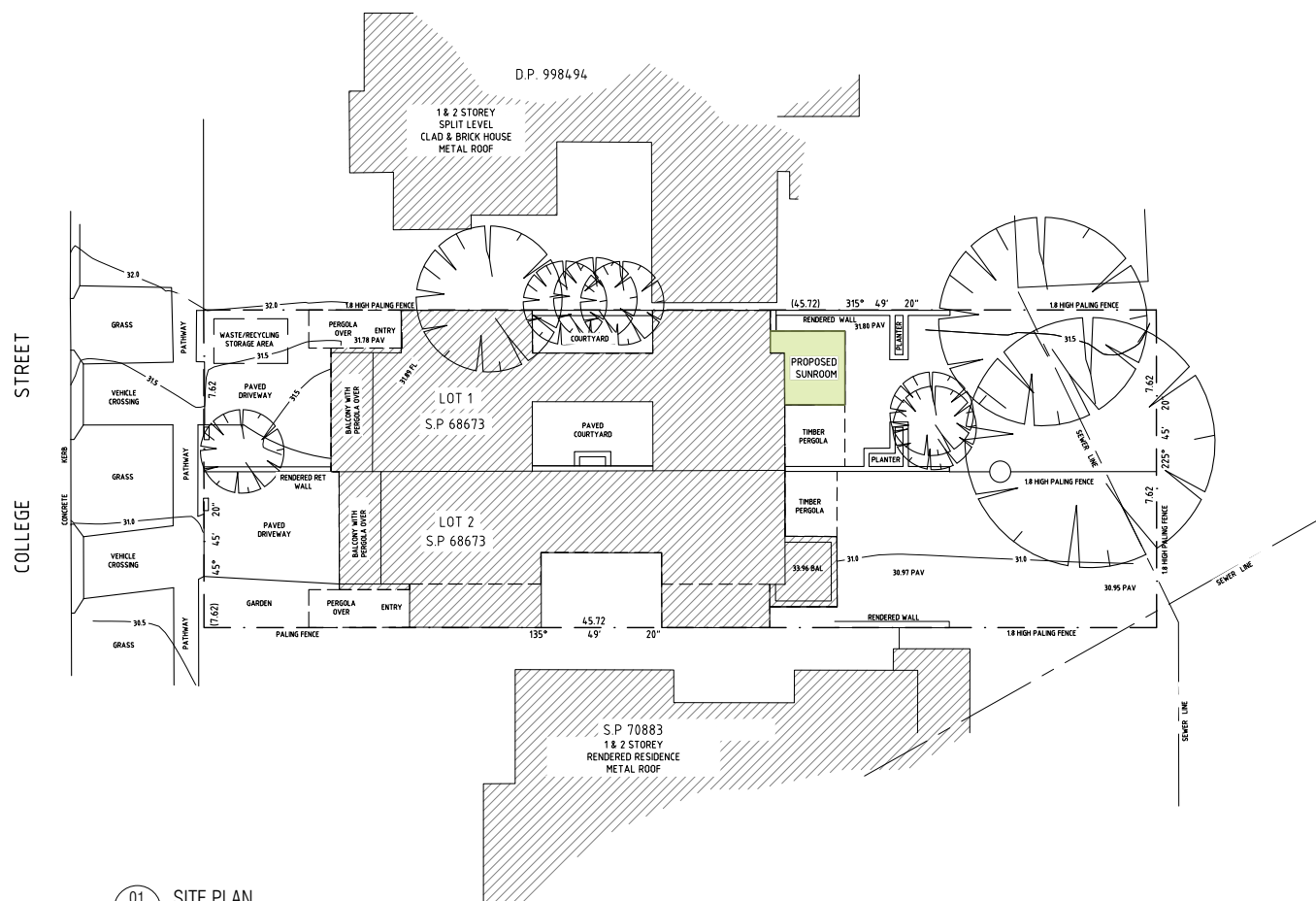
If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

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

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

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

Reason: To ensure satisfactory management of stormwater.



01 SITE PLAN
1:200



ISSUE	AMENDMENT DESCRIPTION	BY	DATE
B	ISSUED FOR DEVELOPMENT APPLICATION	NH	11.05.22
	1. LOT NUMBERS CORRECTED (not clouded)		
A	ISSUED FOR DEVELOPMENT APPLICATION	NH	08.04.22

NOTE:

PROJECT 39 IS THE OWNER OF THE COPYRIGHT SUBSISTING IN THESE DRAWINGS & SCHEDULES WHICH MUST NOT BE REPRODUCED OR COPIED WITHOUT PRIOR WRITTEN CONSENT

DO NOT SCALE DRAWING
VERIFY ALL DIMENSIONS ON THE SITE BEFORE COMMENCING WORK OR PRODUCING SHOP DRAWINGS.
ALL SHOP DRAWINGS MUST BE SUBMITTED AND APPROVED BEFORE MANUFACTURE.
ALL WORK IS TO BE CARRIED OUT IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND ALL CURRENT AND RELEVANT AUSTRALIAN STANDARDS.

DESIGN

Drawn4U
Building Design

Mob: 0403 471 096
d4ubd@gmail.com

CLIENT

MILANO
3 COLLEGE ST, MANLY NSW 2095

PROJECT

ALTERATIONS AND ADDITIONS

PROJECT PHASE

DEVELOPMENT APPLICATION

DRAWING TITLE

**PROPOSED
SITE PLAN**

SCALE

1:200 @ A3

PROJECT No

MAN-01

DRAWN

NH

DRAWING No

DA01

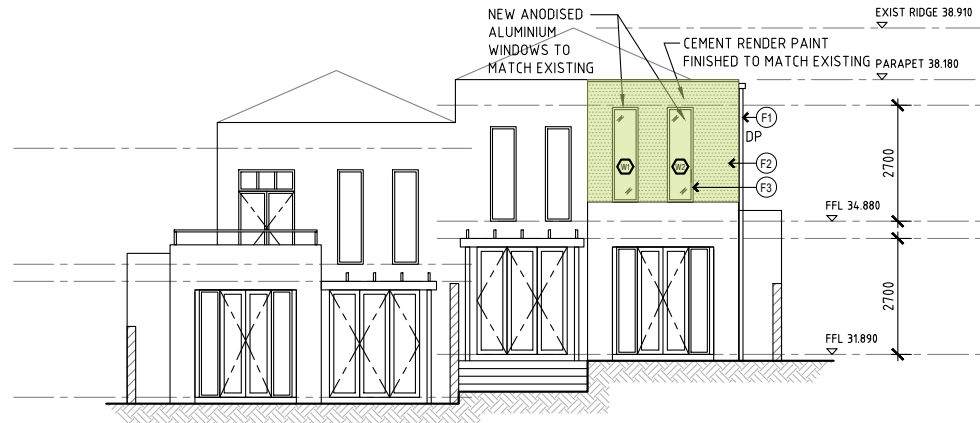
PLOT DATE

**11/05/2022
5:29 AM**

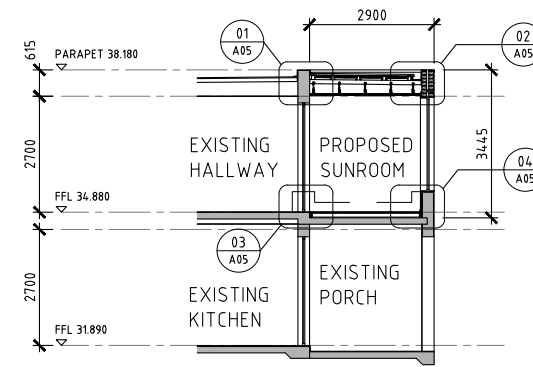
REVISION

B

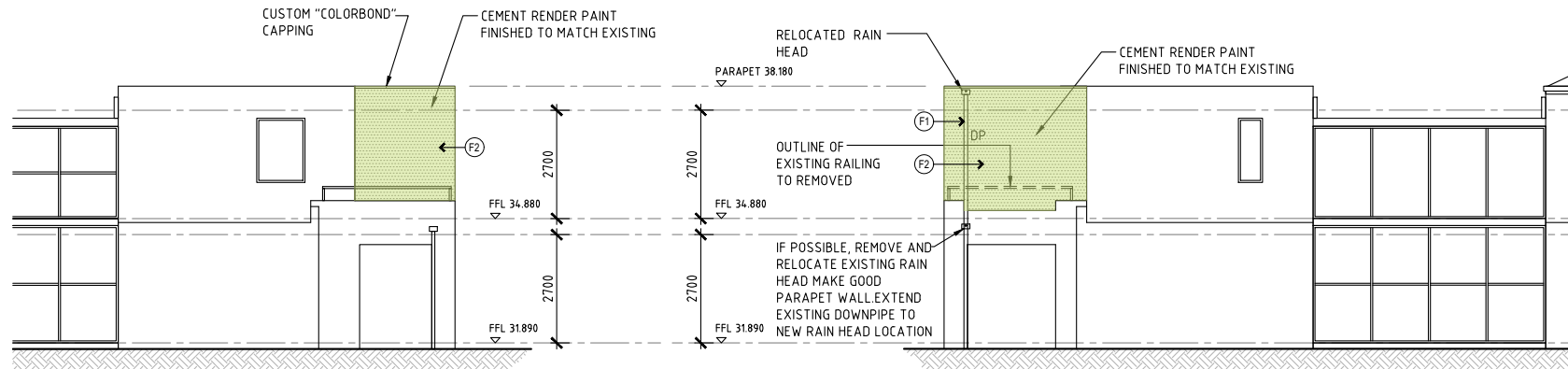
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02 PROPOSED NORTH ELEVATION
A02 1:100



A SECTION
A02 1:100



01 PROPOSED PARTIAL EAST ELEVATION
A02 1:100

03 PROPOSED PARTIAL WEST ELEVATION
A02 1:100

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PROJECT PHASE DEVELOPMENT APPLICATION				PROJECT ALTERATIONS AND ADDITIONS		SCALE 1:100 @ A3		DRAWN NH	
PROJECT No MAN-01				DRAWING No DA31		PLOT DATE 10/04/2022 12:47 PM		REVISION A	

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ITEM 3.6**MOD2023/0149 - 36 GURNEY CRESCENT SEAFORTH -
MODIFICATION OF DEVELOPMENT CONSENT DA2021/2626
GRANTED FOR ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE INCLUDING A GARAGE****REPORTING MANAGER**

Adam Richardson

TRIM FILE REF

2023/306541

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 Mod2023/0149 for Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage on land at Lot 1 DP 1066457, 36 Gurney Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0149
Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 1 DP 1066457, 36 Gurney Crescent SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage
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:	Anders Olof Svensson Kirsty Kristine Svensson
Applicant:	Rapid Plans Pty Ltd
Application Lodged:	27/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	05/04/2023 to 19/04/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 44.71%
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent for the Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage.

The 4.55(2) modification application is referred to the Development Determination Panel (DDP) due the proposed modifications resulting in a variation greater than 10% to the maximum building height control of the Manly Local Environmental Plan 2013. The Development Application was previously considered and determined by way of approval at the DDP on 25 May 2022 due to a variation greater than 10% to the maximum building height control, and a variation greater than 10% to floor space ratio under Manly Local Environmental Plan 2013. There are no increases in gross floor area under this application and

therefore no changes to floor space ratio under this application.

The proposal was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

Critical assessment issues include variation to the height of buildings development standard.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification works to DA2021/2626 comprise of the following:

Lower Level Store/Workshop

- No changes proposed;

Basement/Lower Ground Floor

- Remove handrail and extend masonry wall to enclose to column;

Ground Floor

- New window (W17) in approved laundry;
- Retention of existing windows;

First Floor

- Extension of existing awning to match existing;
- Addition of sheet metal to existing vergola with lining and lighting to underside;
- Remove handrail and extend masonry wall to enclose to column in lieu of approved metal screening;
- New vertical metal screening to eastern front elevation;
- Retention of existing windows;
- Widening of approved window (W7) to provide a corner window (W7a); and

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 - 4.3 Height of buildings

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

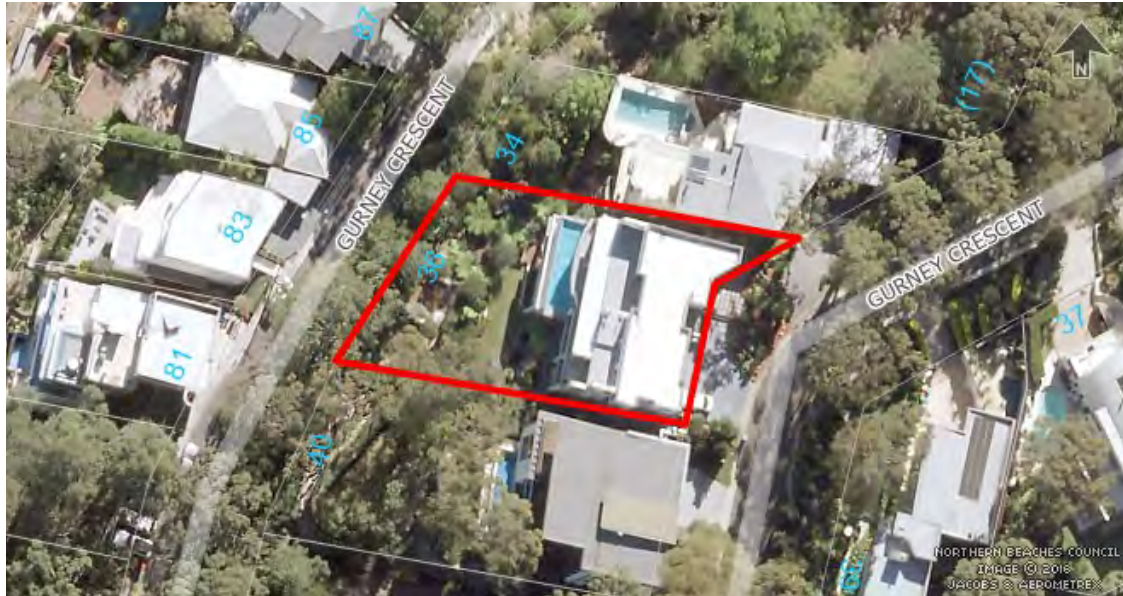
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 1 DP 1066457 , 36 Gurney Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located between the eastern and western sides of Gurney Crescent. The site is irregular in shape with an angular frontage of 8.39m along the western side of Gurney Crescent, 26.16 metres along the eastern side of Gurney Crescent, and a maximum depth of 42.36 metres. The site has a surveyed area of 937.6m². The site is located within the R2 Low Density Residential zone from MLEP 2013 and accommodates a dwelling house, swimming pool and attached garage currently on the site. The site slopes steeply from the eastern front boundary to the western rear boundary over approximately The site contains existing lawn areas, garden beds, rock outcrops, and trees. 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 dwelling houses of similar scale varying in architectural style and design.

Map:



ME2022/00041

Minor Encroachments within Road Reserve.
Encroachment Agreement dated 2 December 2022.

CC2022/1341

Construction Certificate for Alterations and additions to a dwelling house including a garage.
Approved on 6 December 2022 by External Certifier.

NOC2022/1309

Notice of Commencement of Building Work & Appointment of Principal Certifier for Alterations and additions to a dwelling house including a garage.
Dated 8 December 2022.

APPLICATION HISTORY

Following the preliminary assessment of the application, A request for information was made in relation to additional information associated with the extent of proposed modification works. A site visit was conducted on Thursday, 20 April 2023, where it was identified that some of the works which form part of the proposed modification application have commenced. As such amended modification plans were requested to include the prospective works only, and any works that have commenced to be removed from the proposed plans. The works that have commenced include the amendment to the windows include windows already installed (W12, W13, W14, W16), the relocation of door (D10) that has been installed, and internal alterations to the first floor that include the new bathrooms in replacement of the study, and store. Subsequently, the applicant provided amended Master Plans detailing prospective works only. Furthermore, an amended BASIX Certificate was provided to include an additional window (W7a) as detailed on the proposed plans. The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/2626, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/2626 for the following reasons: • It is considered the proposed modification works are amendments that are consistent with the consent that was originally granted under DA2021/2626. • The proposed modification works are considered to be minor alterations and additions that do not significantly alter the development, as approved. • As such, the consent authority cannot be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/2626.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/2626 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any	See discussion on "Notification & Submissions Received" in this report.

Section 4.55 (2) - Other Modifications	Comments
period prescribed by the regulations or provided by the development control plan, as the case may be.	

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via an existing condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the proposed modification works. A site visit was conducted on Thursday, 20 April 2023 and it was noted that some of the works on the proposed modification plans have commenced. As such amended modification plans were requested to include the prospective works only, and any works that have commenced to be removed from the proposed plans. The works that have commenced include the amendment to the windows include windows already installed (W12, W13, W14, W16), the relocation of door (D10) that has been installed, and internal alterations to the first floor that include the new bathrooms in replacement of the study, and

Section 4.15 'Matters for Consideration'	Comments
	store. Subsequently, the applicant provided amended Master Plans detailing prospective works only. Furthermore, an amended BASIX Certificate was provided to include an additional window (W7a) as detailed on the proposed plans. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via an existing condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via an existing condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via an existing condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 that included a certificate (prepared by Bushfire Planning Services Pty Ltd, dated 26 December 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. A Bush Fire Cover Letter was submitted with the Modification Application that included a RFS Pre-DA Advice Summary.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS provided a response on 14 April 2023 and raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent. As such, it is considered that the proposed development has satisfied the matter for considerations required under Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/04/2023 to 19/04/2023 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	<i>Supported, no Conditions required</i> The application is for modification to development consent DA2021/2626. The proposed amendments will not change the landscape outcome approved in DA2021/2626, and as such the original conditions remain. No further conditions are imposed.
NECC (Bushland and Biodiversity)	<i>Supported, no Conditions required</i> The proposal seeks approval for Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage. The comments in this referral relate to the following applicable controls: Manly LEP Clause 6.5 (Terrestrial Biodiversity). The submitted bushfire report has concluded that no additional vegetation removal will have to take place. There are no objections to the modification from a biodiversity perspective (subject to retention of existing biodiversity conditions).

External Referral Body	Comments
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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.
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 14 April 2023 stating that the proposal is acceptable subject to compliance with the recommended conditions. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Supported, no Conditions required Development Application No. Mod2023/0149 Description: Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage Address: 36 Gurney Crescent SEAFORTH 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.A444207_05 dated 11 May 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12.3m (Privacy Screen) 12.0m (Outdoor Kitchen Wall) 11.6m (Awning)	12.3m (Masonry Wall) 10.4m (Awning Extension)	44.71% (3.8m) 22.35% (1.9m)	No
Floor Space Ratio	FSR: 0.4:1 (375.04m ²)	FSR: 0.52:1 (486.60m ²)	unaltered	-	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	N/A
4.5 Calculation of floor space ratio and site area	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	12.3m
Percentage variation to requirement:	44.71% (3.8m)

The proposed variations to the height of buildings development standard are detailed in Figure 1 below:

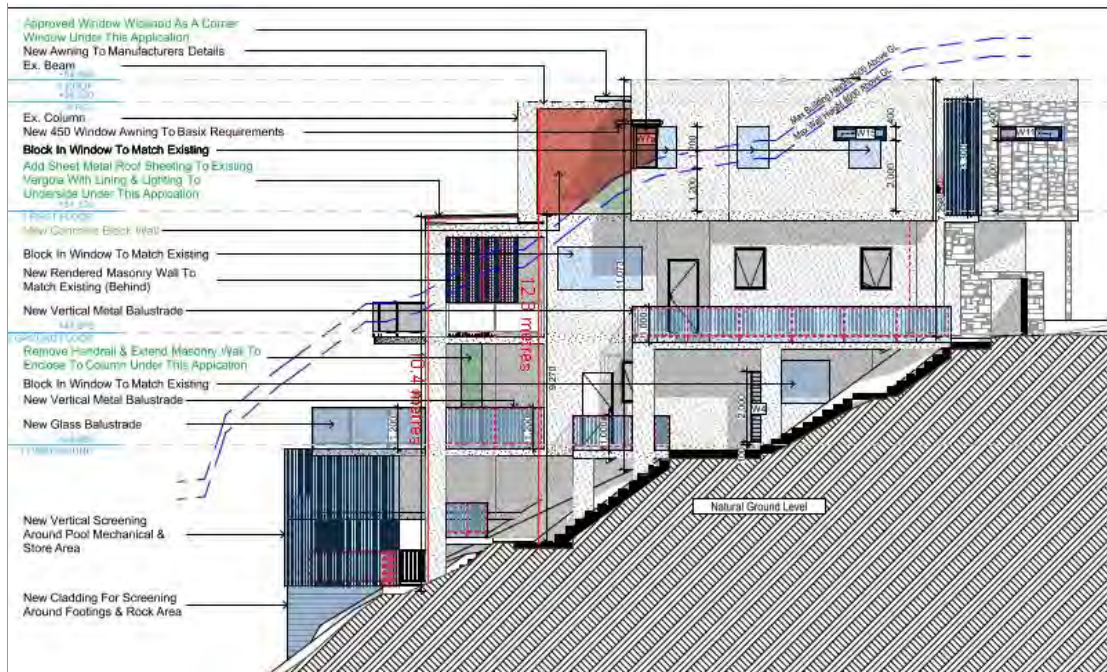


Figure 1. South Elevation (red shading showing height of building non-compliance)

Assessment of request to vary a development standard:

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

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

It is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The proposal presents variations to the height of buildings development standard as a result of the proposed masonry wall in lieu of the approved vertical metal screening. Furthermore, the proposal presents a variation to the development standard as a result of the extension of the existing awning. It is considered that the elements that breach the building height are located beneath the existing maximum height of the dwelling house, and as such strict compliance is unreasonable or unnecessary.

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

Comment:

It is considered that the subject site obtains constraints as a result of the steep topography. The existing dwelling house has been designed to step down the sloping site, and the proposal presents additional encroachments above the maximum height of buildings. It is important to note, the additional breaches of building height are located beneath the existing maximum height of the dwelling house. It is considered that the existing site topography, and retention of the existing dwelling house restrict the proposal from demonstrating compliance with the maximum height of buildings. Notwithstanding, it is considered that sufficient environmental planning grounds justify the contravention in this circumstance.

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

4.3 Height of buildings

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

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

Comment:

The proposal does not alter the maximum building height of the dwelling house, noting that the roof form of the dwelling house is retained. The proposed works are located beneath the maximum ridge line, and therefore the alterations and additions are not visible from the streetscape. The proposal demonstrates consistency with the steep topographic landscape, prevailing building height, and desired future streetscape.

b) to control the bulk and scale of buildings,

Comment:

The bulk and scale of the development has been controlled through the retention of the existing side setbacks. The proposal does not result in any changes to the approved floor space ratio, and as such the scale of the dwelling house is retained. The proposal has been well articulated through varied colours and finishes to mitigate any perceived bulk.

c) to minimise disruption to the following—

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

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

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

Comment:

The maximum ridge line of the dwelling house remains unaltered, and as such the proposal is unlikely to disrupt existing views obtained to and from residential development, and public spaces.

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

Comment:

As demonstrated on the shadow diagrams that accompany the modified proposal, sufficient solar access is provided to private open spaces and adequate sunlight has been maintained to private open spaces and 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,

Comment:

The subject site is not located within a recreation or environmental protection zone and therefore 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 proposal provides for the housing needs of the community within a low density residential environment through the retention of the 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:

The proposal retains the residential use of the site to meet the day to day needs of the residents.

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.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 937.6m²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 8.0m (based on gradient 1:4+)	Lower Ground: 8.6m Ground: 12.1m First: 11.1m to 12.3m	unaltered	N/A
	S: 8.0m (based on gradient 1:4+)	Lower Ground: 6.6m Ground: 7.9m First: 11.1 to 12.3m	unaltered	N/A
4.1.2.2 Number of Storeys	2	3 (unaltered)	unaltered	N/A
4.1.2.3 Roof Height	Height: 2.5m	unaltered	unaltered	N/A
	Pitch: maximum 35 degrees	unaltered	unaltered	N/A
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback	unaltered	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North Lower Ground: 2.87m (based on 1/3 wall height) Ground: 4.03m (based on 1/3 wall height) First: 4.1m (based on 1/3 wall height)	Lower Ground: 2.0m (unaltered) Ground: 2.0m (unaltered) First: 2.0m (unaltered)	unaltered	N/A
	South Lower Ground: 2.2m (based on 1/3 wall height) Ground: 2.63m (based on 1/3 wall height) First: 4.1m (based on 1/3 wall height)	Lower Ground: 2.0m (unaltered) Ground: 2.0m (unaltered) First: 1.0m (unaltered)	unaltered	N/A
	Windows: 3m	1.6m	0.9m	No
4.1.4.4 Rear Setbacks	8m	11.5m	unaltered	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 60% of site area (562.56m ²)	77.99% (731.30m ²)	unaltered	Yes
	Open space above ground 25% of total open space (182.83m ²)	37.40% (273.50m ²)	unaltered	N/A
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	57.30% (419.04m ²)	unaltered	Yes

		(unaltered)		
	4 native trees	5 trees	unaltered	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	unaltered	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	8.7m (unaltered)	unaltered	N/A
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	unaltered	unaltered	N/A
	1m curtilage/1.5m water side/rear setback	unaltered	unaltered	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	3 spaces (unaltered)	unaltered	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
3.5.1 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
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)	N/A	N/A
4.1.3 Floor Space Ratio (FSR)	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	N/A	N/A

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

The varied wall heights approved under DA2021/2626 remain unaltered under this modification application.

Therefore, the outcomes of the original consent are retained under this modification application and a detailed merit assessment is not required in this instance.

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

Description of non-compliance

The proposal presents a new window (W7A) to provide a corner window on the first floor along the southern elevation. The proposed window is located 0.9 metres from the southern side boundary, presenting a variation of 70% (2.1 metres) to the required 3.0 metres.

The proposed new window is replacing an existing window in a similar location, and as such is not likely to result in any unacceptable amenity impacts. It is noted that the new window is smaller than the existing window.

Notwithstanding, an assessment has been undertaken against the objectives of the control, and it is considered that the proposed variation is supportable in this instance.

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 window is located along the southern elevation, and as such will not impact upon the existing streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed window will provide acceptable privacy, access to light, sunshine, and air movement. It is important to note, that the new window is smaller in size than the existing window, and as such will provide acceptable local amenity to the residents, and adjoining residents. The proposed window will not impact upon existing view sharing, and will provide adequate space between buildings, noting the side setback is unaltered. The proposal will not alter the character of the streetscape, and is not viewable from the street. Lastly, there are no changes to the existing traffic conditions as a result of the proposed development.

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

Flexibility is afforded in this circumstance as the window setback variation will not result in unreasonably amenity impacts to the 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 proposal does not alter the existing landscaping on the subject site and subsequently does not result in the removal of existing vegetation or trees. The proposed development 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:

A Bushfire Report was submitted with the application (prepared by Bush Fire Planning Services, dated 6 December 2022). The proposed was referred to NSW Rural Fire Service who provided support of the application, subject to recommendations, and recommended conditions. The recommendations of the Bushfire Report and the recommendations from NSW Rural Fire Service have been included as recommended conditions of consent.

4.1.10 Fencing

The proposed plans detail a front fence and entry gate on the East Elevation (DAMod4001) that was not detailed in the Development Application, or subsequent Stamped Plans from DA2021/2626.

The proposed East Elevation Plan (DAMod4001) details the front fence as existing, and the Ground Floor Plan (DAMod2003) denotes the fence as an existing wall. It is noted, that a site visit that was undertaken for the Development Application in April 2022 and there was an existing front fence, and gate. However, the front fence, and gate detailed on the Modification Plans is of a different style to the front fence, and gate from 2022.

It is unclear if the front fence, and gate as detailed on the Modification Plans is proposed, or previously omitted from the plans. As such, a condition has been recommended to exclude the front fence and entry gate from the application as the front fence, and gate is inconsistent between the Stamped Plans from DA2021/2626, and Proposed Modification Plans.

Therefore, a condition is recommended to exclude the front fence, and gate from the approved plans. As these works appear to be inconsistent with the approved plans and an Occupation Certificate yet to be issued, they are matters for the Certifier to investigate and resolve.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for the Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage has been referred to the Development Determination Panel (DDP) due to variation greater than 10% to height of buildings under Manly Local Environmental Plan 2013.

The proposal was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

The critical assessment issues relate to the proposed variation to the height of buildings development standard.

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, subject to recommended 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 approval to Modification Application No. Mod2023/0149 for Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a garage on land at Lot 1 DP 1066457,36 Gurney Crescent, SEAFORTH, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By

Site Plan - DAMod1004, Rev 1	11 May 2023	Rapid Plans
Demolition Lower Ground Floor Plan - DAMod1008, Rev 1	11 May 2023	Rapid Plans
Demolition Ground Floor Plan - DAMod1009, Rev 1	11 May 2023	Rapid Plans
Demolition First Floor - DAMod1010, Rev 1	11 May 2023	Rapid Plans
Lower Ground Floor - DAMod2002, Rev 1	11 May 2023	Rapid Plans
Ground Floor - DAMod2003, Rev 1	11 May 2023	Rapid Plans
First Floor - DAMod2004, Rev 1	11 May 2023	Rapid Plans
Section 1 - DAMod3000, Rev 1	11 May 2023	Rapid Plans
Section 2 - DAMod3001, Rev 1	11 May 2023	Rapid Plans
Elevation North - DAMod4000, Rev 1	11 May 2023	Rapid Plans
Elevation East - DAMod4001, Rev 1	11 May 2023	Rapid Plans
Elevation South - DAMod4002, Rev 1	11 May 2023	Rapid Plans
Elevation West - DAMod4003, Rev 1	11 May 2023	Rapid Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (No.A444207_05)	11 May 2023	Rapid Plans
Bushfire Report	6 December 2022	Bushfire Planning Services
Materials & Colour Sample Board - DAMod5001, Rev 1	11 May 2023	Rapid 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:

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan - DA1014, Rev 1	11 May 2023	Rapid Plans

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan	n.d.	No Author

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

B. Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements to read as follows:

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

Aboriginal Heritage Office	Referral - Aboriginal Heritage Office - MOD2023/0149 - 36 Gurney Crescent Seaforth	13 April 2023
Ausgrid	Ausgrid Referral Reponse - Overhead cables	14 April 2023
	Ausgrid Referral Response - OH and UG cables	14 April 2023
	Ausgrid Referral Response - Network Standard Cables	14 April 2023
NSW Rural Fire Service	Referral - RFS - 26 Gurney Crescent Seaforth	14 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.

C. Add Condition 9A - Amendments to the approved plans to read as follows:

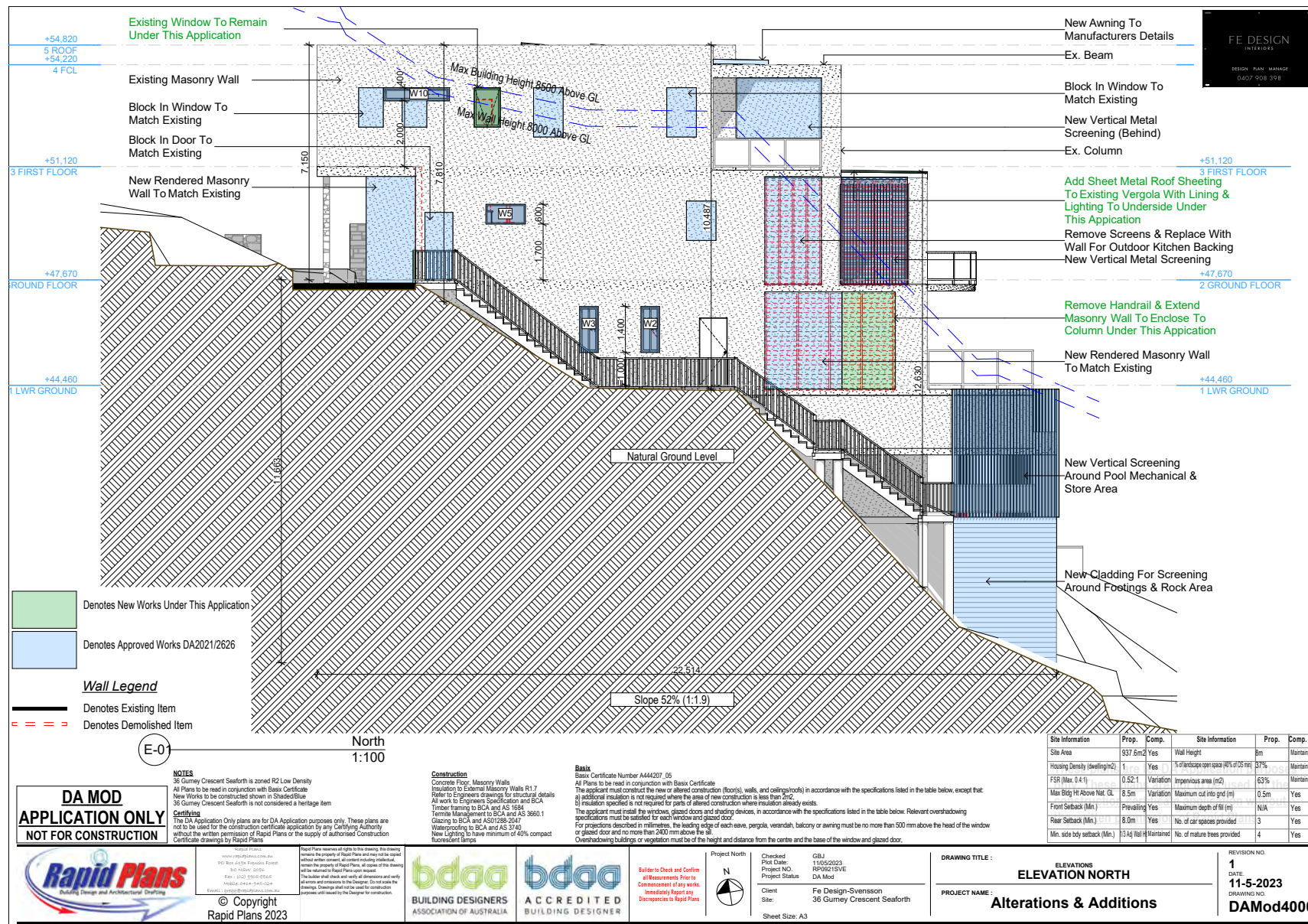
The following amendments are to be made to the approved plans:

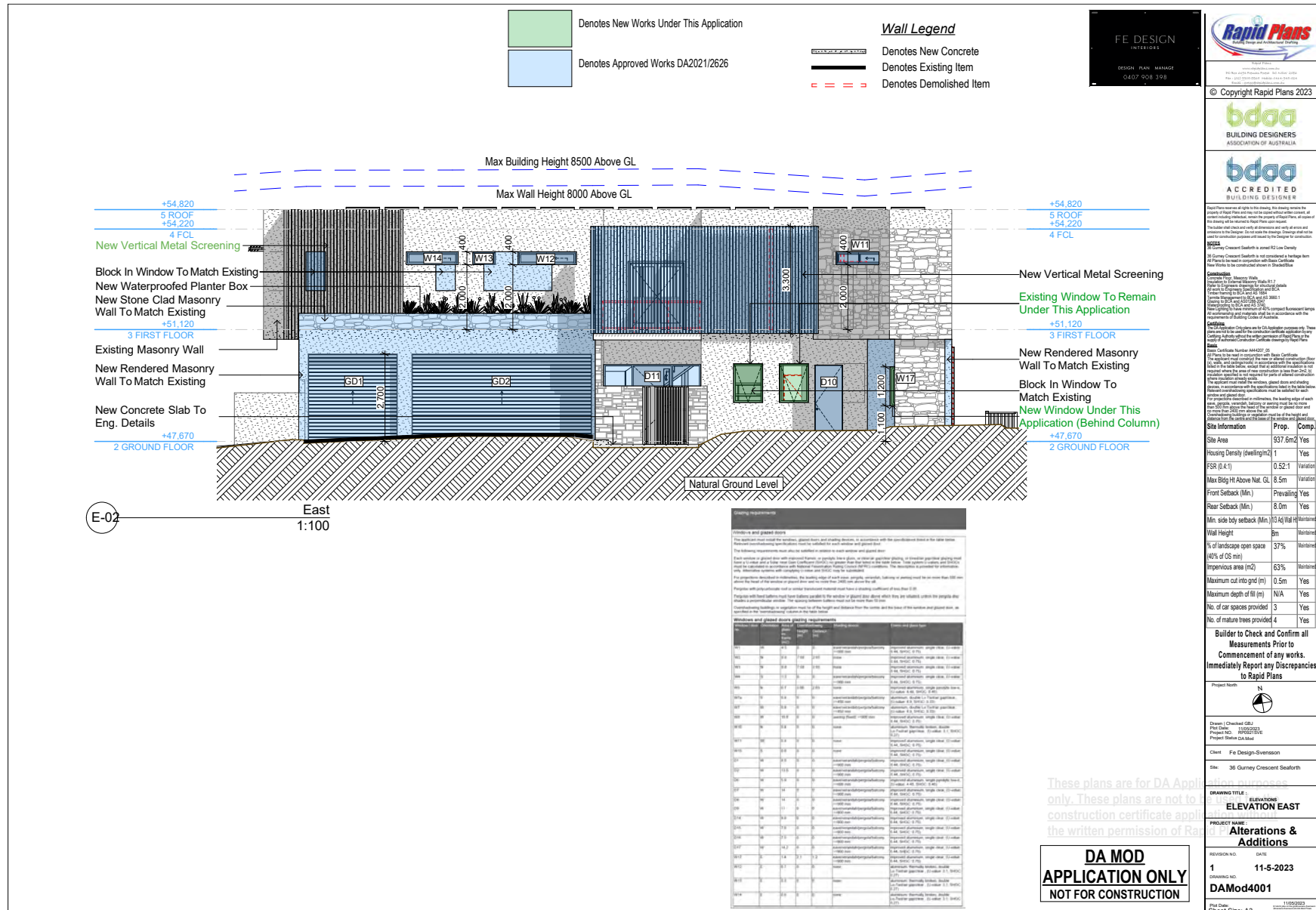
- Deletion of the front fence, and gate with the area adjacent to the entry to be consistent with that originally approved under the DA.

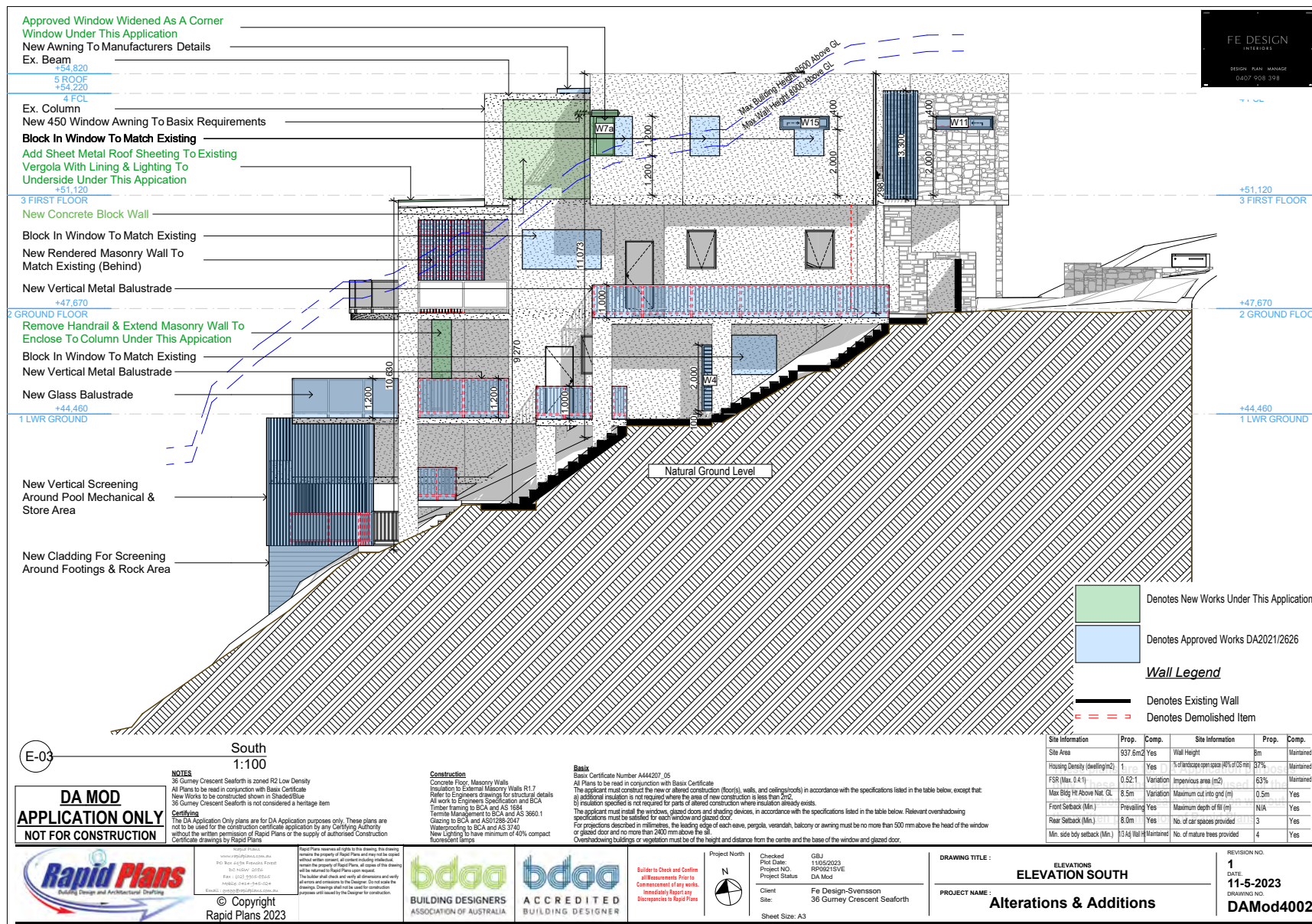
Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

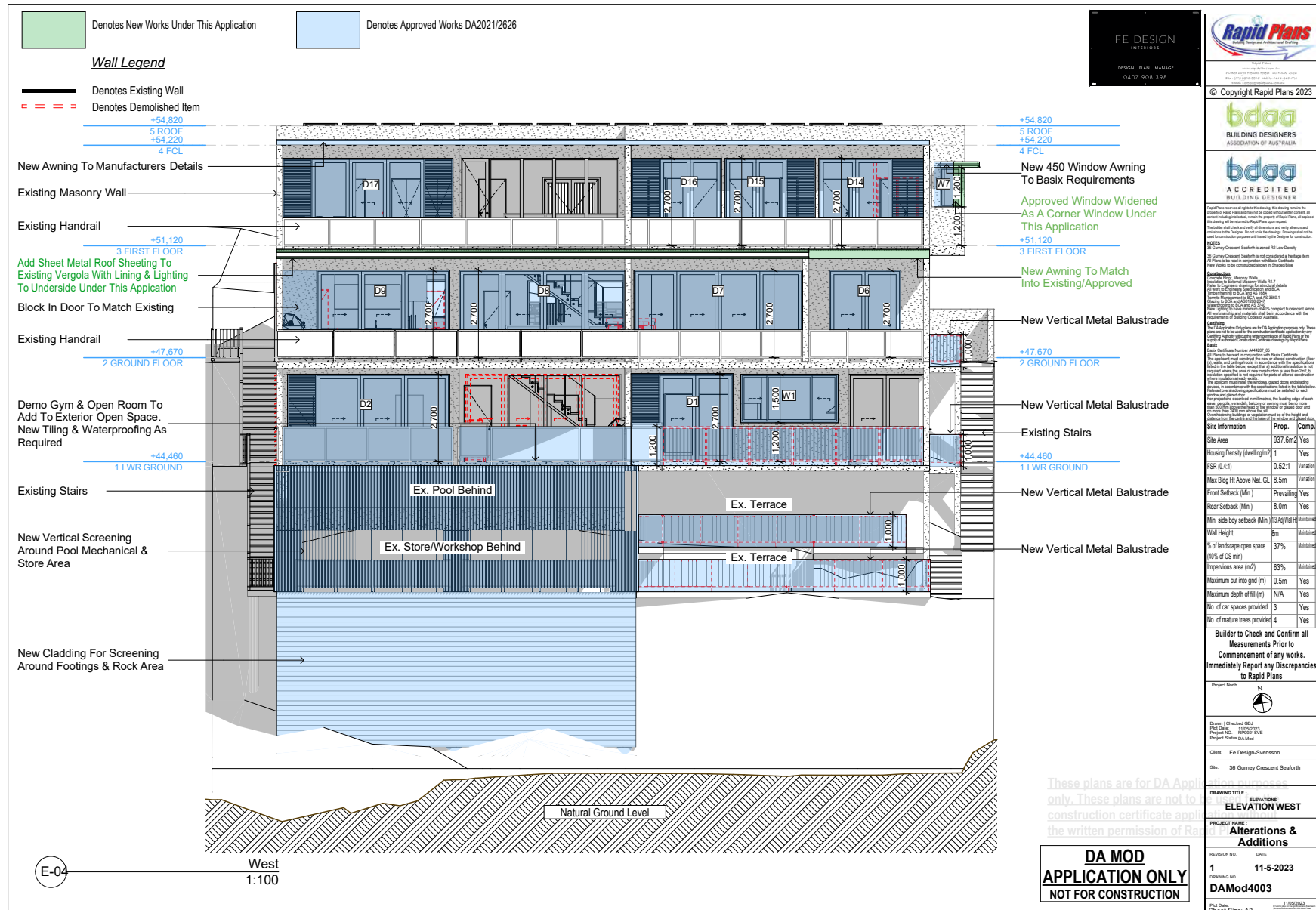
Reason: To ensure development minimises unreasonable impacts upon surrounding land.













**Revised - Clause 4.6 Variation
To Development Application
For
36 Gurney Crescent,
Seaforth
NSW 2096
For
Mr & Mrs Svensson**

RAPID PLANS

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Issue 1.00
Tuesday, march 3rd, 2023
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1 INTRODUCTION

This report pertaining to a Clause 4.6 Variation accompanies the Development Application Modification for the proposed additions at 36 Gurney Crescent Seaforth.

1.1 Site

The residence is located on the western side of Gurney Crescent in the residential neighbourhood of Seaforth.

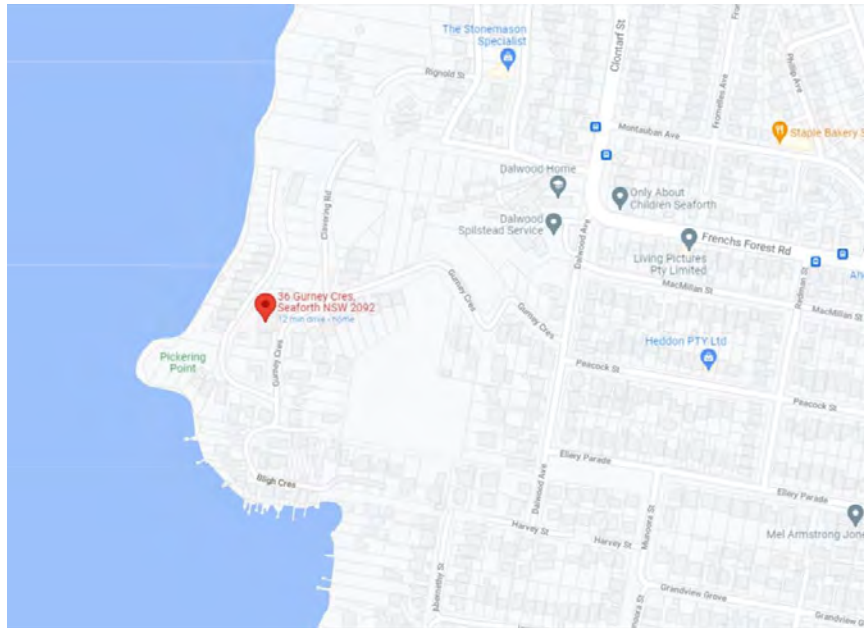


FIGURE 1: LOCATION PLAN 36 Gurney Crescent, Seaforth. ¹ Source Google Maps.

1.2 Local Authority

The local authority for this site is:
Northern Beaches Council (Manly)
Civic Centre, 725 Pittwater Road,
Dee Why NSW 2099
DX 9118 Dee Why
Telephone: 9942 2111

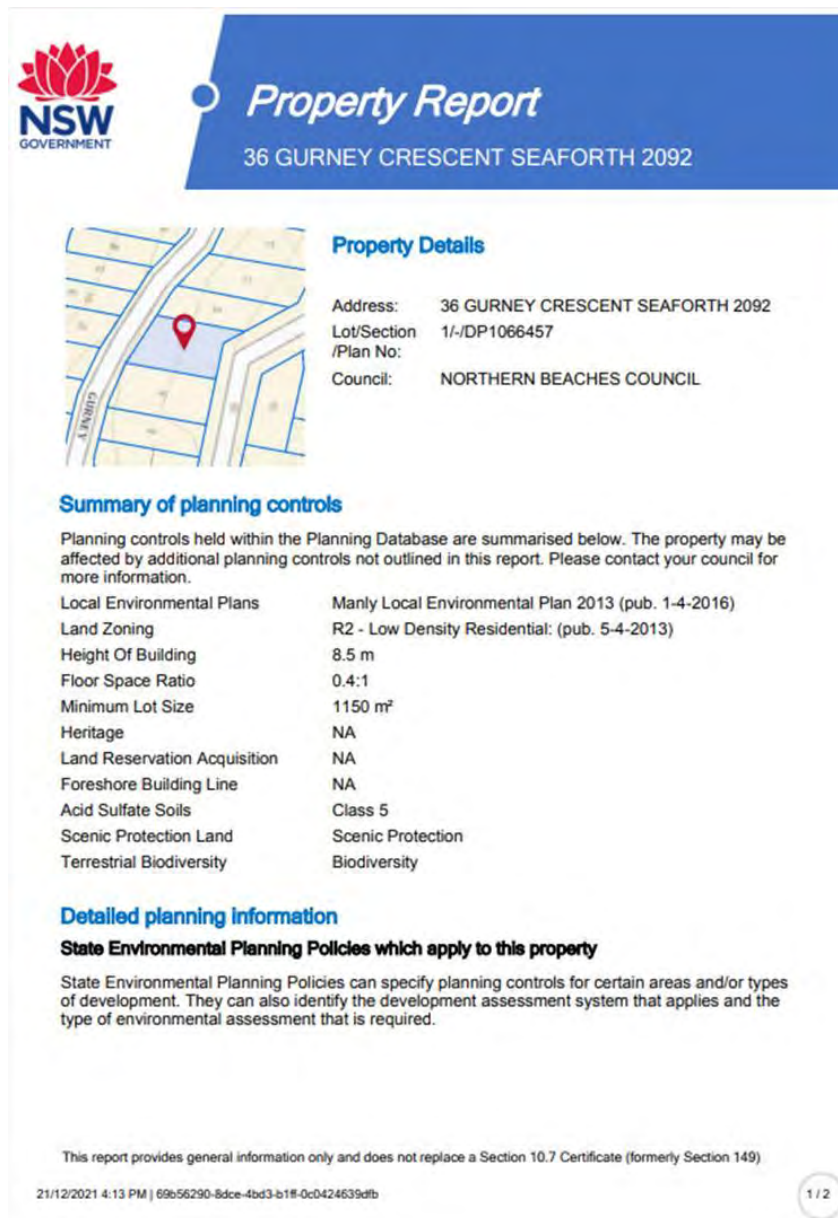
¹ Location Map 36 Gurney Crescent Seaforth;
<<https://www.google.com/maps/place/36+Gurney+Cres,+Seaforth+NSW+2092/@-33.793599,151.2381125,17z/data=!4m5!3m4!1s0x6b12abde2c86c0f3:0x6c88a4664507c70c!8m2!3d-33.7934742!4d151.2366105>>.

1.3 Planning Controls

Planning controls used for the assessment of this Development Application Modification are:

Manly Local Environment Plan 2013

Manly Development Control Plan 2013



Property Report
36 GURNEY CRESCENT SEAFORTH 2092

Property Details

Address: 36 GURNEY CRESCENT SEAFORTH 2092
Lot/Section: 1/-/DP1066457
/Plan No:
Council: NORTHERN BEACHES COUNCIL

Summary of planning controls

Planning controls held within the Planning Database are summarised below. The property may be affected by additional planning controls not outlined in this report. Please contact your council for more information.

Local Environmental Plans	Manly Local Environmental Plan 2013 (pub. 1-4-2016)
Land Zoning	R2 - Low Density Residential: (pub. 5-4-2013)
Height Of Building	8.5 m
Floor Space Ratio	0.4:1
Minimum Lot Size	1150 m ²
Heritage	NA
Land Reservation Acquisition	NA
Foreshore Building Line	NA
Acid Sulfate Soils	Class 5
Scenic Protection Land	Scenic Protection
Terrestrial Biodiversity	Biodiversity

Detailed planning information

State Environmental Planning Policies which apply to this property

State Environmental Planning Policies can specify planning controls for certain areas and/or types of development. They can also identify the development assessment system that applies and the type of environmental assessment that is required.

This report provides general information only and does not replace a Section 10.7 Certificate (formerly Section 149)

21/12/2021 4:13 PM | 69b56290-8dce-4bd3-b1ff-0c0424639dfb

1 / 2

FIGURE 2: Property report, Spatial Viewer DoPIE. Source DoPIE Planning Portal <<https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>>.

1.1 Objectives of the Zone

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

Comment:

It is considered that the proposed development meets the objectives of the Zone R2 Low-Density Residential. This opinion is justified on the basis that this application provides for the owner's housing needs within the low-density area that is consistent with surrounding properties elevated developments. The proposal allows currently unusable areas to be usable for the owners to assist in day to day living without adversely impacting the low-density environmental aspects as no substantial vegetation is proposed for removal. The works proposed will significantly improve the design and aesthetic quality of the site with the built form outcome complimenting newer style properties along Queenscliff Road.

There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.

2 Clause 4.6 Variation to Development Application

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.*

2.1 Background

The application is in regard to alterations & addition with refurbished internal areas, new front entry & stairs, a small front addition by infill to the existing upper floor undercroft, new addition to the existing garage and new entry stairs. Internal works will include reconfiguring internal walls & updating the apartments kitchen, facilities, and storage areas to be more useful for the owners & future tenants proposed for the Gurney Crescent residential dwelling.

2.2 Development Standards Being Varied

After reviewing Manly Council LEP 2013 we advised that a Clause 4.6 Exception to a Development Standard is required due to:

1. This development is classified as a non-complying development due to an encroachment to the Floor Space Ratio (Manly LEP 2013 Part 4 4.4 Floor Space Ratio)
2. This development is classified as a non-complying development due to an encroachment to the Building Height (Manly LEP 2013 Part 4 4.3 Building Height)

The favourable option for Council is a Development Application with a Clause 4.6 Variation for the structures to be considered for approval.

3 Manly LEP 2013 Part 4 4.4 Floor Space Ratio

3.1 Objectives of the Development Standard

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.

Description	Floor Space Ratio (n:1)
MLEP 2013 Sheet FSR_006 Area F	0.4:1 = 375.04m ²
Existing Floor Space Ratio (FSR)	502.55 m ² = 0.54:1
Proposed Floor Space Ratio (FSR)	486.60 m ² = 0.52:1

Streetscape – The visual quality of the streetscape is to be improved with the addition of screening and a planter to the front facade. The front of the building is to remain unchanged apart from the above and an extension to the upper floor undercroft on the northern side and the extension to the garage wall and new garage a door to the front of the Ground Floor. There is an improvement as there is a decrease in the FSR which is mainly located at the rear of the building due to the existing enclosed gym being removed and reinstated as an outdoor deck area. The proposed decrease in FSR provides a generally consistent pattern of development with regard to adjoining front building setbacks, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape.

Bulk & Scale is maintained for the area as the proposal uses the existing footprint with only a slight increase in the rear NE corner & a section of concrete paved area to fit the front additions. Although the bulk & scale of the building is slightly increased with the awning roof at the rear, the overall size & bulk in relation to the surrounding neighbourhood is to be maintained throughout the development.

Site Access & Circulation is maintained, in relation to the decrease in FSR, with access provided around the property. The proposed development will have no detrimental impact on traffic flow.

Landscape Open Space Area has been maintained for the proposed development. The slight decrease in FSR does not affect the landscaped area, in fact, an additional garden bed is proposed to the front with new native planting.

Openness - A sense of openness has been maintained with the front addition complying to the height to Council requirements & maintaining the open look to the front of the property. The proposed design creates flow between the internal & open

space areas for the owners with elements of the proposal to the side & rear to still allow for a sense of openness to support the desired future character of the Manly low-density area.

Planting – There has been generous amount of area allocated for the provision of planting in the rear area of the property with native shrubs planted along the side & front boundaries.

4 Manly LEP 2013 Part 4 4.3 Building Height

4.1 Objectives of the Development Standard

- (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.

Comment:

It is considered that the proposed development meets the objectives of the height of buildings development standard. This opinion is justified on the basis that this application does not propose an addition to the building's height, with the exception of the new rear awning deck to the roof and new privacy screens to the existing decks. This is compatible with surrounding properties that have substantial height & scale to the adjacent properties of similar bulk & scale to the subject site. The visual impacts are minimised as there is existing vegetation to soften the streetscape as well tiering the stories to step back each floor from Gurney Crescent & improved access to the dwelling with the refurbished access stairs provided from the road to

the garage up to the dwelling that assists in maintaining the scenic quality of the Seaforth area. With the existing location of the subject & adjacent dwellings enjoying an elevated position there is no adverse impact of view lines with privacy improved as well as the shadow cast from the proposed works having only a minor impact on the adjacent easterly property roof.

4.2 Numeric value of the development standard in the environmental planning instrument

MLEP2012 Height = 8.5m

4.3 Proposed numeric value of the development standard in your development application

Proposed Height = 12.630m. **NB: EXSITING** (measured at the West roof corner of ground floor)

4.4 Percentage variation between the proposal and the environmental planning instrument

Proposed Height = 48%

5 Reason for the Variations to the controls

5.1 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The variation is considered moderate in comparison to other developments along Gurney Crescent. This application is in keeping with a low-density residential environment desired by Council in this area as well as the objectives of the zone. The development has no negative consequence of significance as a result of this noncompliance as it is predominately existing, further it meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

In this circumstance, it is unreasonable and unnecessary to strictly comply with the building height standard given that the resulting development will be absent of any negative environmental or planning outcomes. The proposal would be indiscernible

to a development that strictly complied with the numerical control. For the reasons stated above, it is argued that a variation be supported as it ultimately results in an improved planning outcome for the streetscape and general locality along Gurney Crescent.

- **Streetscape** – The visual quality of the streetscape is to be enhanced with the alterations to the property improving the bulk in keeping with the adjacent properties with the existing and proposed landscaping improving the streetscape to complement the existing built form along Gurney Crescent. The height encroachment for the upper floor awning roof and privacy screen to the existing decks is more than halfway up the block with the intention for the dwelling is to match the surrounding designs & present a dwelling that is consistent front to back. The proposed roof does not increase the existing overall height and does not detract from the streetscape along Gurney Crescent as a flat pitched roof is used to reduce pitch & height. The proposed additions provide a generally consistent pattern of development with regard to adjoining building setbacks, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape & is not out of character for the neighbourhood. These characteristics for the building height conform to the R2 low density residential requirements for the Seaforth area & modifying the structure would, in our opinion, will comply with the R2 zoning objectives of the streetscape along Gurney Crescent & the desired future character of the area.

- **Bulk & Scale** is maintained for the area. Although the bulk & scale of the building is slightly increased, the overall size & bulk in relation to the surrounding neighbourhood is to be maintained throughout the development as shown by the similar development on the adjacent westerly property below



FIGURE 3: Street View. Source Google Maps.

<<https://www.google.com/maps/place/36+Gurney+Cres,+Seaforth+NSW+2092/@-33.7934702,151.2369868,3a,75y,274.96h,80.56t/data=!3m6!1e1!3m4!1sA4O83Cq9r>

LM1AitCyhpOKA!2e0!7i16384!8i8192!4m5!3m4!1s0x6b12abde2c86c0f3:0x6c88a4664507c70c!8m2!3d-33.7934742!4d151.2366105>.

There is no adverse visual impact with surrounding developments to maintain their existing visual amenity. The flat roof awning has been added to the design to reduce the bulk & scale of the roof line from the existing roof to the dwelling to prevent the design from visually dominating surrounding properties as the roof height is lower than the roof at its highest point. It is in our opinion that to remove the proposed awning roof would be unreasonable with the flat roof pitch design allowing for a more sustainable outcome as it provides shade to the dwelling while maintaining the streetscape with the design in keeping with other properties along Gurney Crescent.



FIGURE 4: Front Facade. Source Google Maps.

<<https://www.google.com/maps/place/36+Gurney+Cres,+Seaforth+NSW+2092/@-33.7934702,151.2369868,3a,75y,274.96h,80.56t/data=!3m6!1e1!3m4!1sA4O83Cq9rLM1AitCyhpOKA!2e0!7i16384!8i8192!4m5!3m4!1s0x6b12abde2c86c0f3:0x6c88a4664507c70c!8m2!3d-33.7934742!4d151.2366105>>.

The existing topography & built form prevents the proposed ridges from adhering to the 8.5m building height. This is largely due to the existing roof ridge having been constructed above the height limit. The proposal is a design option that supports a preferred planning outcome of a modern design, that is prevalent in the Seaforth area, as well as complimenting the existing dwelling & the surrounding neighbourhood.

In addition, the new awning roof and deck privacy screens, are justified as the addition is barely visible from the street as it is set back well behind the roof line below & visually maintains the bulk of the upper portion of the dwelling without adversely affecting the streetscape. The intention is to provide a balance between the proposed additions to the existing built form with the majority of the

improvements to the front of the property.

Openness - A sense of openness has been maintained by the landscaping to the front of the property with tiering & stepping the floors back to integrate in with the exiting topography. The proposed design to the upper portion of the dwelling allows the low levels to create flow between the internal & open space areas for the owners with elements of the proposal over the height limit to continue to allow for a sense of openness to support the desired future character of the Seaforth low density area. The openness to the front of the property is improved with the landscaped area & access to compliment the proposed structures to assist in adequate usable outdoor recreation space & water infiltration.

Public & Private Views - The view lines are maintained for the subject & surrounding dwellings with minimal impact in the vicinity of the height encroachment. The aerial photo below indicates the area of the height encroachment area shown below with substantial separation to the surrounding dwellings & maintained view lines from the dwelling to north with their roof line above the subject properties proposed roof.



FIGURE 5: Aerial View Of 36 Gurney Crescent in relation to surrounding vegetation and Pittwater Waterway,² Source, Six maps.

² Six maps; <<https://maps.six.nsw.gov.au/>>.

Site Access & Circulation is improved with vehicular access provided to Gurney Crescent to allow for parking for at least 2 vehicles & the pedestrian stair access, pathways & a levelled grassed area to the front door. The rear deck on the first floor provides access & circulation to the rear yard for the owners that is currently being utilised. It is anticipated that the proposed development will have no detrimental impact on traffic flow.

Planting – There has been generous amount of area maintained for the provision of planting in the front & rear areas of the property. The proposal enhances the amenity of the site by providing a usable garden space that softens the visual amenity of the front of the property. The proposed works to the front of the property are in keeping with the adjacent properties with this proposal to provide planted areas over the garage. The existing vegetation softens the streetscape & allows the development to blend in with the existing environment along Gurney Crescent.

5.2 *How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?*

The proposal extends the existing built form of the subject property with well-designed additions improving on the ageing dwelling & assists landscaping onsite. The proposed works add to the already renovated & rebuilt dwellings along Gurney Crescent, and as such strict compliance in this regard would limit the objects being fully attained. The proposed works provide a more efficient and orderly development on the steeply sloping land that is of high-quality architectural design which maximises the sites development potential along with providing appropriate housing stock within the locality.

5.3 *Is the development standard a performance-based control?*

The objectives of the development standard provide the controls to allow a performance-based solution. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider “compliance to the standard unreasonable in the circumstances of the development”.

5.4 *Would strict compliance with the standard be unreasonable or unnecessary?*

Yes, please refer to answer preceding.

5.5 *Are there sufficient environmental planning grounds to justify contravening the development standard?*

Yes, Section 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and legislation are put forward to support the variation.

The following environmental planning grounds justify contravening the development standard.

- The proposal provides a more environmentally friendly dwelling.
- The proposal utilizes existing services.
- The proposal provides improved private open space and landscaping.
- The proposal provides onsite parking.
- The proposal provides improved housing in a low-density environment.

The variation to the maximum building height requirements is, in our opinion, acceptable and there are appropriate planning grounds in support of the non-compliance.

6 CONCLUSION

6.1 *Summary*

The resulting development has been designed to enhance the existing residential building by improving the amenity for the residents while maintaining where possible the conditions set out by Manly Local Environment Plan 2013 by achieving the objectives outlined under Part 4.3 Building Height and Part 4.4 Floor Space Ratio. We consider that the proposal will impose minimal impact and maintains the streetscape & character of the neighbourhood & request that council support the Clause 4.6 Variation of the Development Application Modification.

ITEM 3.7	DA2022/1941 - 24A BEATTY STREET BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/298296
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 and floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and 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 DA2022/1941 for alterations and additions to a dwelling house on land at Lot 42 DP 1192691, 24A Beatty Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1941
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 42 DP 1192691, 24 A Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Malcolm John MacLennan Kim Allison Turner
Applicant:	Timothy Hugh West
Application Lodged:	25/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/11/2022 to 14/12/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 59.29% 4.4 Floor space ratio: 25.58%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,672,230.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a variation to the Floor Space Ratio and Building Height development standards both exceeding 10%.

Two submissions were received during the notification of the proposal. One of the submissions sought clarification of the extent of works and the other requested Council review any potential view impacts. It is noted that no specific issues or concerns were raised in relation to the design of the proposal within

the objections and the comments/concerns raised have been addressed within the assessment report.

Critical assessment issues included the building height breach and the FSR breach. Both of which have been addressed within this assessment report in detail in the Clause 4.6 assessment.

The Clause 4.6 request for the non-compliance with FSR standard arises from a 15m² increase in floorspace. The existing building a Floor Space Ratio which is currently 21.7% above compliance with the LEP based on historical approvals. The proposal increases this to 25.5% (or an addition 15m²). A portion of the additional floorspace is a result of a subterranean bathroom on level 3 which adds 5m² to the overall floor space, however does not increase the bulk or scale of the building. The remaining 10m² of addition floor space is located on the fourth level (upper most level) as a result of in-filling and squaring off portions of the existing balconies. However, the application has demonstrated that the upper floor design, bulk and appearance remains consistent with the existing building through 3D montages provided with the application. Council is also satisfied there will be no unreasonable impacts on adjoining properties as a result of the increase to floor space.

The 4.6 request for the non-compliance with height standard arises as the existing upper level balcony is already over the existing height limit and the new works involve portions of the balcony being squared off and infilled, therefore resulting in non-compliance with the building height. It is noted that the extent of the height non-compliance is also a result of the existing excavated nature of the site and excavated lower ground floor level. As stated above, the application demonstrates the overall bulk, scale and visual appearance of the building consistent with the existing situation on the site. Council has undertaken a review of the view sharing, solar access and privacy and is satisfied that residential amenity for the adjoining properties is not compromised as a result of the proposed works.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for additions and alterations to the dwelling house and will comprise of:

Level One

Proposed alterations and additions to existing Level One to provide for an internal passenger lift

Level Two

Proposed alterations and additions to existing Level Two to provide for new bathroom and an internal passenger lift

Level Three

Proposed alterations and additions to existing Level Three to provide for new open plan kitchen, pantry and lounge, reconfigured stair access, pool plant, an internal passenger lift and balcony.

Level Four

Proposed alterations and additions to existing level four to provide for an enlarged master bedroom with new walk-in robe, ensuite and balcony, enlarged bedroom 4, bathroom, void to level below, internal stair access and an internal passenger lift.

External works

Rooftop garden, entrance roof, new planters, replacement garage door, replacement of waterway access stairs, watercraft storage & landscaping.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 42 DP 1192691 , 24 A Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Beatty Street. The site is a battle axe allotment a frontage of 3.45m to Beatty Street, a central width of 18.4m and a depth of 92.6m. The site has a surveyed area of 1001.3m². The site is located within the C3 Environmental Management zone and accommodates a four storey dwelling house, garage and pool. The site has a fall of approximately 20.9m from the upper western boundary at Beatty Street down to the eastern rear boundary, with a slope of approximately 22%.

The site contains low and medium height trees and plantings, there are no significant trees in the vicinity of the proposed works

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached 2, 3 and 4 storey dwelling houses with elevated balconies, swimming pools and garages. The dwellings are all orientated to capture the harbour views.

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:

- DA 32/2015 for Alterations and additions to a dwelling house, approved by Manly Council on 24 July 2015.

History of DA

Following initial assessment, Council requested that the applicant provided updated plans to address the following:

- Clarify the design of the watercraft storage area
- Clarify the existing v proposed FSR on the plans
- Update the Clause 4.6 to address both variations to development standards.

The applicant provided the above changes and these have been included in Council's assessment.

Given that the proposal did not fundamentally change, the application was not required to be re-notified in accordance with the 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	Mainly 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, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to plans to clarify the watercraft storage and extent of works to the existing stairs. Information was requested in regards to a plan showing existing vs proposed FSR. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 Steve Brooks, dated 12 September 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/11/2022 to 14/12/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mrs Valerie Jean Froome	24 B Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mr Robert Semsarian	24 Beatty Street BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- Query from 24B Beatty Street asking what the extent of the proposed works are and the likely timeline of the works (i.e construction length) as construction works may impact upon this property.
- Request from 24 Beatty Street to consider the impact/effect upon harbour views as a result of any roof top changes or additions.
- Comment from 24 Beatty Street recommending a lighter exterior finish to the house to match the surrounding buildings.

The above issues are addressed as follows:

- **Query from 24B Beatty Street asking what the extent of the proposed works are and the likely timeline of the works (i.e construction length) as construction works may impact upon this property.**

Comment: The assessment officer has responded to this enquiry via email advising of the extent of works. It is noted that no specific issues are raised within the submission about the proposal. It is not considered that there will be any unseasonable construction impacts upon 24B Beatty Street that need specific consideration, however, standard conditions regarding construction times and noise have been included in the recommended conditions.

- **Request from 24 Beatty Street to consider the impact/effect upon harbour views as a result of any roof top changes or additions.**

Comment: The assessing officer contacted the property owner at 24 Beatty Street to discuss the concerns with regards to views and offer to undertake a site visit from their property. Council's planner explained the extent of the proposed upper level roof changes, confirming that the upper level roof would project 400mm in an eastward direction (at the same height) and that the roof planting was located at a lower level (at Level 3, not on top of the Level 4 roof). Upon explanation of the plans, the owner indicated they were satisfied the proposal and that Council's assessment officer did not need to undertake a site visit.

Even through the owner of 24 Beatty Street indicated they were satisfied, a view sharing assessment has been undertaken later in this report against the Tenacity Planning Principle. The assessment finds that view sharing is maintained and expansive harbour views will be maintained.

- **Comment from 24 Beatty Street recommending a lighter exterior finish to the house to match the surrounding buildings.**

Comment: There are no DCP controls that would require the house to be painted a lighter colour and this would not be a reason to refuse the DA.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<u>Additional Information/Amended Plans Comment 23/03/2023</u> Additional information confirming 1 exempt tree to be removed in the rear yard (<i>Brachychiton acerifolius</i>) is noted. No objections to removal of the exempt tree is raised. The amended plans indicate that the existing stairs are to be widened, but generally on the same alignment. The widening of the stairs will require some excavation into existing rock outcrops that the stairs are cut into. The proposed boat storage as indicated on the Architectural Plans appears to be located on an existing level grassed area. There is a rock shelf across the rear of the grassed area, however the dimensions indicate that no rock would be required to be excavated to accommodate the boat storage. This should be confirmed with the applicant as no excavation of the shelf would be supported. The widening of the stairs at the rear boundary is indicated to require reconstruction of the inside portion of the wall adjacent to the stairs, with the boundary wall retained. No objections are raised to those works. The Landscape Plans indicate a different location for the boat storage. The plans also propose exotic planting in the rear setback/. As the site is within the C3 Zone, all plants used should be local native species. Conditions have been included to reflect this requirement. The Landscape Plan should therefore not be included in the approved drawings if the proposal is to be approved. Due to the required rock excavation adjacent to the stairs, wall reconstructions and the proximity to recorded sites, it is strongly recommended that the AHO undertake a site inspection to ascertain if potential sites of significance are present/affected by the works. No objections are raised with regard to landscape issues subject to clarification of issues raised above and conditions as recommended. <u>Original Comment</u> The landscape plans indicate removal of one tree to accommodate the new stairs. No details are provided regarding the tree. No details have been provided indicating materials or excavation required for the new stairs. No details are provided regarding the proposed storage shelter at the rear of the site. The airphoto indicates that there is dense vegetation at the rear of the property, which is also adjacent to a public reserve.

Internal Referral Body	Comments
	Additional information is required regarding these aspects to enable assessment to be undertaken. It is also apparent that no referral to Parks Reserves and Foreshores is indicated in Assess. A referral to parks is required.
NECC (Bushland and Biodiversity)	The proposal seeks approval for alterations and additions to a dwelling house. The comments on this referral relate to the following controls and provisions: - SEPP (Resilience and Hazards) 2021 - Development within the coastal environment - Manly LEP 2013 - Clause 6.5 Terrestrial Biodiversity The proposed alterations and additions would take place in previously disturbed areas of the site and would therefore have an unlikely impact on native flora and fauna. No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
Parks, reserves, beaches, foreshore	The plans indicate that no works are proposed on the adjoining Council Reserve. Conditions have been included to address protection of Council assets and public land.

External Referral Body	Comments
Aboriginal Heritage Office	Supported subject to conditions 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. According to the Due Diligence Code of Practice, any land within 200m of water is considered to have Aboriginal heritage sensitivity and the potential to contain Aboriginal sites. Under the <i>National Parks and Wildlife Act 1974</i> (NPW Act) all Aboriginal objects are protected. Should anything thought to be Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office be contacted. In line with our normal advice for sandy areas, the Aboriginal Heritage Office recommends that the development

External Referral Body	Comments
	conditions should provide for stop work provisions (unexpected discovery protocol) in the unlikely event that human remains are uncovered. Should human remains be uncovered, works must cease and the NSW Police must be contacted. 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. A472309 dated 10 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.

SEPP (Biodiversity and Conservation) 2021

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

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 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: 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: 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
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment: Not within 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: The alterations to the dwelling is contained within the existing building footprint and the minor changes to the rear yard involve minor widening to the existing stairs and the inclusion of a lightweight watercraft storage area, therefore, given the nature of the works Council is satisfied the proposal will not have an adverse impact on the matters listed a) to g) above.

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

Comment: Council is satisfied the development has been designed to avoid and minimise 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: The proposal does not impact foreshore access, does not cause unreasonable overshadowing or visual impacts, as the general form and bulk of the building remains unchanged. The proposal has been considered by the Aboriginal Heritage Office who supports the proposal. The proposal will not have adverse impacts on cultural or built heritage. Council is satisfied the proposal has been designed to avoid and minimise impacts. The proposal is consistent with the scale of the surrounding buildings and is consistent with the existing building bulk on the site.

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: 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 program applicable to the site.

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.

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	13.54m (Existing maximum is 13.54m)	59.29%	No
Floor Space Ratio	FSR: 0.4:1 (400.5m ²)	FSR: 0.502:1 (503m ²) *Existing is 488m ² , overall increase is 15sqm	25.6%	No

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	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:	13.54m
Percentage variation to requirement:	59.29%

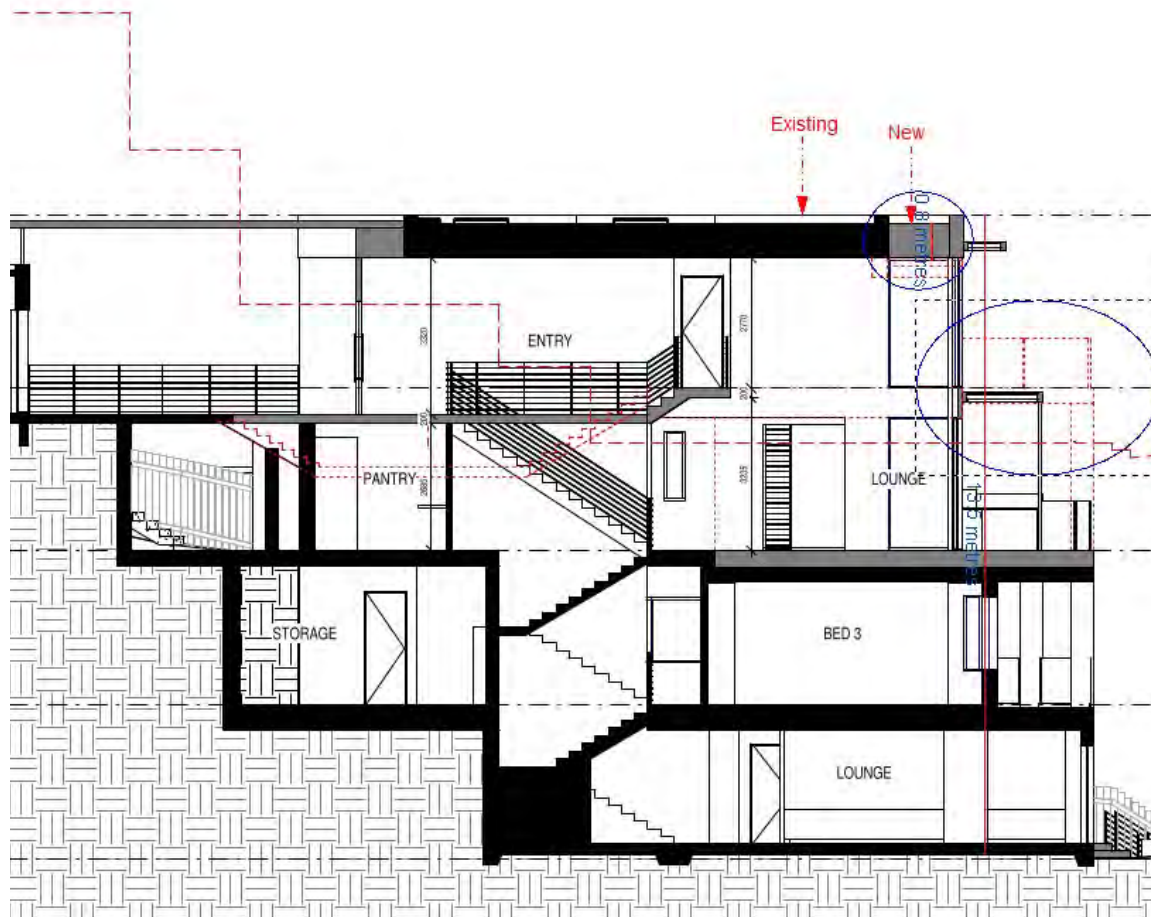


Figure 1 - Extract of section plan for building height.

The additional area of building/wall is a result of squaring off and 'in-filling' portions of an existing balcony on the upper level. The wall height will match the existing height of the building and roof parapet. See the below site photos which provide context of this:





Figure 1 - Corner of balcony on the north-eastern corner to be in-filled.



Figure 2- Corner of balcony to be in-filled on the south-western corner. Note - that the wall southern wall is already 3/4 of the height of the balcony.

The in-filling of the existing balcony will result in additional portions of the building exceeding the building height on the southern and northern portion of the building.

A portion of the new pergola roof over level 3 balcony also encroaches the height limit. However, the balcony off level 4 is proposed to be demolished and replaced with the pergola. The removal of the level 4 balcony results in the removal of balustrades which currently exceed the height limit and will simplify the façade presentation. This is circled in blue in the above extract of the plans.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

circumstances.

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- *The proposed development maintains the general bulk and scale of surrounding contemporary dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land (cl 1.3(c)). The proposed development provides an appropriate contextual response to the design of the existing dwelling, with a proposed reduction to the bulk and scale of the dwelling as a whole.*
- *Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the character of the locality which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed development is considered to promote good design and enhances the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).*
- *The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).*
- *Consistent with the findings of Commissioner O'Neill in Merman Investments Pty Ltd v*

Woollahra Municipal Council [2021] NSWLEC 1582, the prior excavation within the building footprint that distorts the height of buildings development standard plan can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

Council Comment

The application is accompanied by a 3D montage showing the comparison between the existing building and the proposed alterations. Upon review of this montage it can be seen that there is minimal difference as a result of the alterations and overall the building maintains the existing bulk and scale, whilst allowing increased amenity for the occupant through the proposed alterations and additions. It is agreed that the height non-compliance is excused as a result of the prior excavation of the site which has been established as an environmental planning ground in the LEC. It is agreed that the alterations promote good design as the removal of the level 4 balcony and columns result in a more lightweight upper level appearance, with the balcony being replaced with a more minimal pergola and the removal of thick columns from the level 3 façade presenting as lesser building bulk on the upper floor. As discussed later in this report view sharing will be maintained as a result of the development and there are no unreasonable impacts upon views of adjoining sites.

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 4.3 – ‘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 additions maintain the overall scale and appearance of the building and the adjoining two buildings are of a similar scale and height. The alterations are within the existing building footprint and do not alter the landscape. The upper level maintains stepped back appearance, consistent with the topography of the site, the existing building and the form of the surrounding 3 and 4 storey buildings.



Figure 4 - Bulk and scale comparison.

b) to control the bulk and scale of buildings,

Comment:

As demonstrated in the above figure, the upper level bulk and appearance is maintained and is even improved for Level 3 by the removal of the Level 4 balcony, balustrades and solid columns. The minor infilling of the balcony does not add noticeable bulk and scale to the building.

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: There will be no view impacts from the public domain and a detailed view sharing analysis has been undertaken later in this report which finds view sharing to be maintained.

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 adjoining properties will maintain solar access in accordance with the DCP. No unreasonable overshadowing of the public domain.

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

Comment: The general height of the proposal maintained with the addition not conflicting with existing vegetation or topography.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
Comment: The proposal will not result in the removal of any significant trees or aesthetic features of the site. The proposed additions are maintained within the existing footprint and do not result in any significant site disturbance (with the exception of some improved stairs in the rear yard).
- *To provide for a limited range of development that does not have an adverse effect on those values.*
Comment: The use of the site, being a dwelling house is maintained and no further adverse impacts on the environmental values result from the proposal.
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
Comment: The trees and vegetation between the house and the foreshore area is maintained and softens the building as viewed from the foreshore area to the east. No significant trees are proposed to be removed.
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
Comment: The proposal will be obscured by vegetation from the foreshore walkway which runs along the side of the harbour. The significant rock outcrops are maintained in the rear yard and no significant trees are removed.
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
Comment: Council's landscape officer and biodiversity officer support the proposal. Conditions will be recommended for stormwater and sediment control.

- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

Comment: The proposal is consistent with the height and scale of both the existing building and surrounding buildings which present to the harbour. The additional bulk does not impact the vegetation and the top floor maintains an upper level setback.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the 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).

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (400.5m ²)
Proposed:	0.502:1 (503m ²) (Existing floor area is 488m ²)
Percentage variation to requirement:	25.58% (15m ² increase over existing situation)

The existing dwelling currently has 488m² of floor area (0.487:1 FSR). The proposed development will result in 503m² of floor space, or an overall increase of 15m².

The application is accompanied by plans demonstrating the existing FSR calculations of the dwelling and proposed calculations across each level.

In regards to the increase in FSR, the following is noted:

The Floor space of Level 1 and 2 is only changed as a result of the inclusion of an internal lift. The 3m² for the lift is counted on Level 1 and then discounted on level 2. Therefore, the status quo for Level 1 and 2 is maintained.

The floor space of Level 3 is increased by 5m². This is a result of proposed bathroom 3. Proposed bathroom 3 is located within an existing subterranean courtyard area adjacent to the pool and as such,

will not result in additional building bulk as viewed from the adjoining sites or a public place. The roof of the bathroom will include low level roof top planter.



Figure 5 - Area on level 3 to be infilled for bathroom.

The existing quantum of floor space on Level 4 is increased by 10m². This is a result of portions of the existing balconies on the eastern and western elevation being infilled and squared off. Below is an extract identifying the areas to be infilled and squared off:

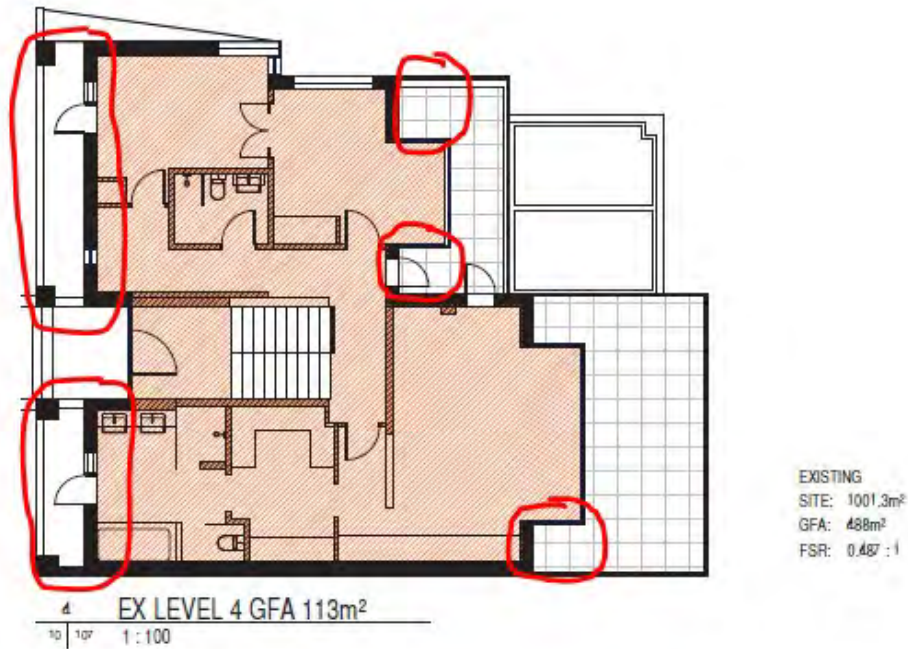


Figure 6 - FSR Drawings and areas to be infilled.

The below photographs show the areas to be infilled:







Figure 7 - Corners of balcony on the eastern balconies to be in-filled.



Figure 8- Balcony's at western elevation to be infilled.

Whilst the proposal results in a departure of 25.58% from the control, the proposal results in a 15m² increase overall which is contained within a subterranean area and within balconies contained within the existing footprint of the building. A large portion of the balcony adjoining the level 4 eastern elevation is proposed to be demolished and replaced with a pergola roof.

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 / has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written

request under cl 4.6 must be “environmental planning grounds” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- *The proposed development maintains the general bulk and scale of surrounding contemporary dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)). The proposed development provides an appropriate contextual response to the design of the existing dwelling, with a proposed reduction to the bulk and scale of the dwelling as a whole.*
- *Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the character of the locality which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The existing dwelling already exceeds the maximum floor space ratio, with a gross floor area of 488m² and a floor space ratio of 0.487:1. The proposed development results in a net increase of only 15m² compared to the floor space of the existing dwelling.*
- *The proposed development is considered to promote good design and enhances the residential amenity of the buildings’ occupants and the immediate area, which is consistent with the Objective 1.3 (g).*
- *The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).*

The above environmental planning grounds are not general propositions. They are unique

circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum floor space ratio control.

Council Comment

The points raised by the applicant are generally agreed with. The infilling of the portions at the eastern elevation result in improved building design by simplifying the facade and making better use of these existing balconies areas, which at present the balcony corners offering little usable space given their small dimension. The infilling of the balconies provide improved amenity without compromising the adjoining properties amenity, in particular, the the majority of the upper floor balcony for level 4 is removed and this will improve privacy from the upper level by removing an elevated balcony (to be replaced with a roof). It is agreed that the proposal has demonstrated good design as there is no noticeable difference between the existing bulk and scale despite the 15m² increase to FSR. This has been demonstrated in the comparative 3D views which show the upper level maintaining a very similar appearance and the removal of the level 4 balcony and replacement of the columns with more lightweight posts and removal of balustrades. At the same time, the alterations will provide improved amenity for the occupant and is an orderly and economic use of land by using the existing footprint of the building to provide improvements.

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 4.4 – '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: As demonstrated comparative 3D drawings, the building bulk and appearance is maintained and in some instances improved by the removal of the Level 4 balcony and balustrades. The infilling of the balconies do not add noticeable bulk and scale to the building. The increase in FSR as a result of the new bathroom on level 3 is within a subterranean area and does not result in additional bulk and visual scale that would impact the character of the area.

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 alterations maintain the overall scale and appearance and does not further obscure landscape features, with the alterations being within the existing footprint of the buildings. The increase in FSR as a result of the new bathroom on level 3 is within a subterranean area and does not result in additional bulk and visual scale that would impact the character of the area.

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

Comment: The building is consistent with the character of the dwellings in the area that consist of three and four storey dwellings of similar heights.

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

Comment: The proposal maintains appropriate view sharing, solar access and privacy outcomes for the adjoining sites. There will be impact on the public domain.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment: Not applicable to this development.

Zone Objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment: The proposal will not result in the removal of any significant trees or aesthetic features of the site.

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

Comment: The use of the site, being a dwelling house is maintained and no further adverse

impacts on the environmental values result from the proposal.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
Comment: The trees and vegetation between the house and the foreshore area is maintained and softens the building as viewed from the foreshore area to the east. No significant trees are proposed to be removed.
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
Comment: The proposal will be obscured by vegetation from the foreshore walkway which runs along the side of the harbour. The significant rock outcrops are maintained in the rear yard and no significant trees are removed.
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
Comment: Council's landscape officer and biodiversity officer support the proposal. Conditions will be recommended for stormwater and sediment control.
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*
Comment: The proposal is consistent with the height and scale of both the existing building and surrounding buildings which present to the harbour. The additional bulk does not impact the vegetation and the top floor maintains an upper level setback.

Conclusion:

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

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

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

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

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

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

(g) the proximity to and potential for adverse impacts on any 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.

(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.

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.

6.4 Stormwater management

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment: Standard conditions are recommended to require stormwater management in accordance with Council's Water Management policy, which require connection to existing stormwater system.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment: Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters and standard conditions for stormwater management are recommended.

6.5 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider:

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

Comment:

The applicant does not involve the removal of any significant vegetation, with the works contained within the existing footprint of the site and the stair works only a minor increase over the existing

situation. The application has been referred to the Landscape Team and Biodiversity Team who both support the DA subject to conditions.

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

Comment:

The development has been sited to avoid impacts on the matters described above.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

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

Comment: The alterations result in a building form that is substantially the same in terms of bulk and scale as viewed from the public foreshore area. The proposal will not result in a loss of public views. The site is suitable for the residential use of the land and does not create any conflicts between land and water based activities. Council considers the control to be met.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1001.3m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	N/A	Yes
4.1.2.1 Wall Height	N: 8m (based on gradient 1 in 3)	11.2m (10.5m existing)	N/A	No
	S: 8m (based on gradient 1 in 3)	11.2m (10.4m existing)	N/A	No
4.1.2.2 Number of Storeys	2	4 (4 Existing)	N/A	No (Unchanged)
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.8m (0.8 existing)	N/A	No (Unchanged)
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North - 3.7m (based on wall height)	North - 1.8m South - 0.9m	N/A	No

	South - 3.7m (based on wall height)			
	Windows: 3m	0.9m minimum	N/A	No
4.1.4.4 Rear Setbacks	8m	8.2m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 60% of site area	48.2% (Existing 48.2%)	N/A	No (Unchanged)
	Open space above ground 25% of total open space	15% (76m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	49%	N/A	Yes
	3 native trees	3 trees existing	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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

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

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

Comment:

The view that is subject to this assessment are water views of the Harbour which adjoin Manly Cove. The portion of the view that would be subject to a minor impact is the body of water within the harbour, no iconic features or land water interface would be impacted.

In the worst case, there will be a very slight encroachment of water views from the upper level bedrooms and mid level dining room as a result of the 400mm eastward projection of the southern half of the roof, see below figure:

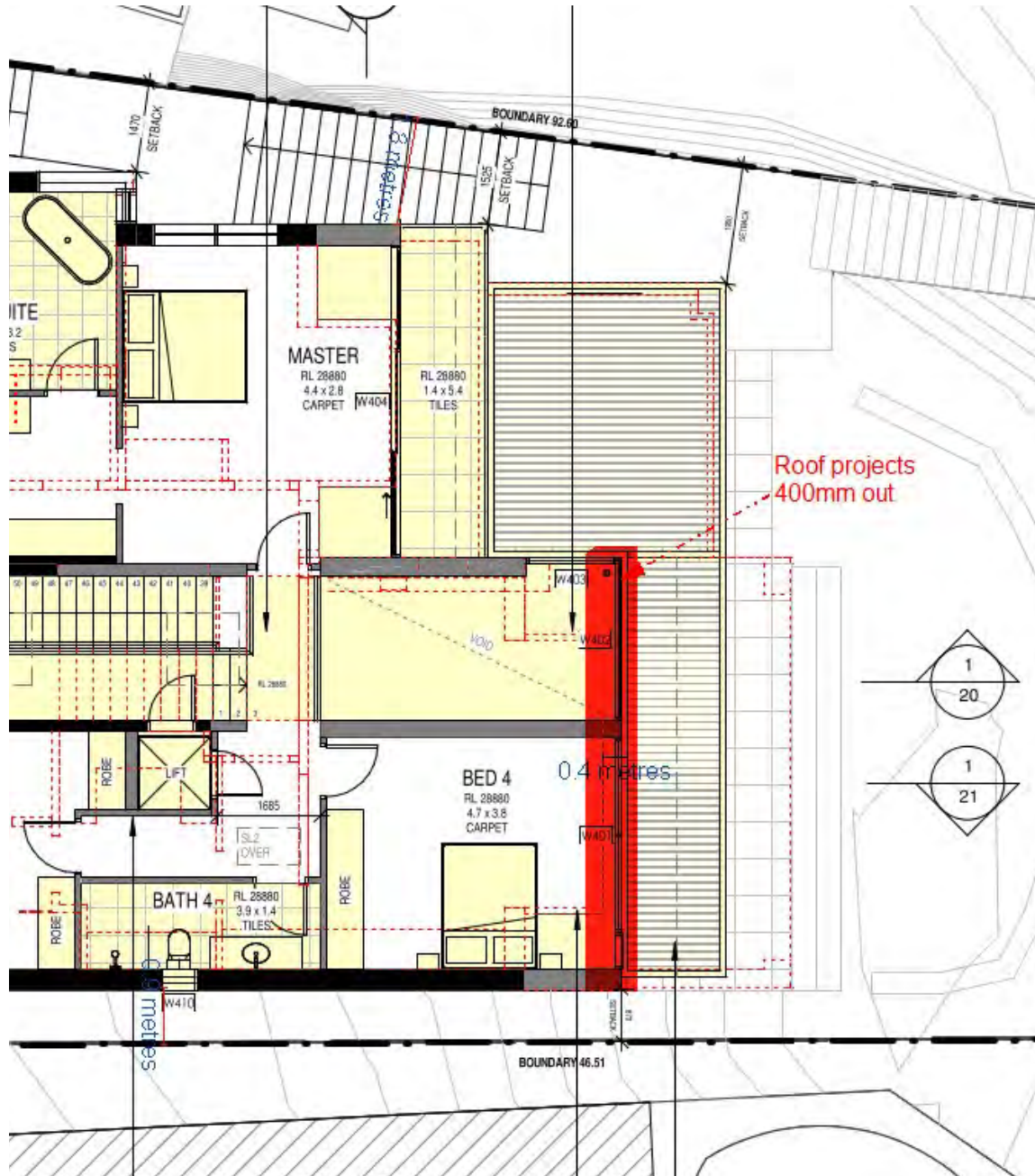


Figure 1 - Extract of proposed plan showing upper level roof projection.

However, this is insignificant in the scheme of views to be retained which are a whole view of the Harbour and Manly Wharf, Fairlight Beach and the land/water interface. The owner of the property indicated they did not feel a site visit was necessary when Council's assessment officer contacted them to discuss the concerns relating to views. Therefore, images have been used from Domain.com which include the sale pictures showing the view in question from each room to complete this assessment.



Figure 2 - Image taken from Domain.com of the sales photos, upper level bedroom of 24 Beatty Street.



Figure 3 - Image taken from Domain.com of the sales photos, upper level master bedroom of 24 Beatty Street.



Figure 4 - Image taken from Domain.com of the sales photos, middle level living room/dining room of 24 Beatty Street.

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

Comment:

The view is from two upper level bedrooms and the middle level living room/dining room. The views are over the rear boundary and can be obtained from a seated and standing position, see above figures.

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

Comment:

The proposed development involves the projection of the upper level roof by 400mm in an easterly direction, see figure 1 above. The extent of impact from each of the rooms is considered to be very minor. Although a small section of water may be impacted, the substantial, whole and panoramic view will be retained.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one

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

Comment:

The portion of roof which results in a small view impact is over the 8.5m height limit. However, this existing portion of the building is already over the height limit and the additional works are essentially an in-fill of the existing balcony to rationalise some of the internal floor planning. The projection of 400mm is in real terms insignificant on the views enjoyed from the rear property. By using the existing footprint of the building and undertaken alterations to this portion of the dwelling, view sharing is maintained for the property to the west over the top of the roof. The rationalisation of the existing building floor space is a skillful design to enhance the existing dwelling amenity for the occupants, whilst not having unreasonable impacts upon views, with a high quality view maintained for the rear property. Given the minor nature of the impact and high quality views maintained, the proposal still maintains an acceptable view sharing outcome despite the non-compliance with the building height (the variation to building height discussed earlier in this report).

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.

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

Description of non-compliance

The additional area of building /wall is a result of squaring off and 'in-filling' minor portions of an existing balcony on the upper level. The wall height will match the existing height of the building. See the below site photos which provide an understanding this:





Figure 1 - Corner of balcony on the north-eastern corner to be in-filled.



Figure 2- Corner of balcony to be in-filled on the south-western corner. Note - that the wall southern wall is already 3/4 of the height of the balcony.

The in-filling of the existing balcony will result in an additional section of wall being up to 11.2m in height on the southern and northern portion of the building. The additional length of non-compliant wall is 1.4m at the northern edge and 1.6m at the southern edge. The wall will match the existing height of the building and is in keeping with the overall scale.

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. In summary, the design of the additions is in keeping of the overall scale and bulk of the building and does not contribute to unreasonable amenity impacts or visual impacts for adjoining properties.

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

Description of non-compliance

It is noted that the DCP contains the following clause for alterations and additions under Clause 4.1.7:

a) First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing

ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.

The maximum wall height of the South and North wall is 11.2m measured to the ground below, requiring a 3.7m setback. The additional length of wall resulting from infilling the balcony is 1.4m north and 1.6m south. These portions of wall are located directly above the walls below, resulting in the same setbacks as the existing building being 0.9m south and 1.8m north, non-compliant with the numerical control. However, as described above, these sections of wall can be considered on merit of alterations and additions.

Window Setbacks - The proposal introduces a small window on the southern elevation with a 0.9m setback which services a bathroom. A window is replaced on the northern elevation at level 3 kitchen and has setback of 1.5m.

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 additions are at the rear of the building and do not impact the streetscape presentation.

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 infilling of the balcony section does not increase privacy impacts and there are no unreasonable overshadowing impacts as a result. View sharing is discussed elsewhere within this report, with it concluded that view sharing is maintained. View sharing is considered to be maintained for the two adjoining properties to the north and south who will maintain harbour views.

The window on the southern elevation is small and only services a bathroom, no privacy impacts will arise. The kitchen window is 1.5m from the boundary however replaced an existing window, therefore there is no new impact.

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

Comment:

The infilling of the balcony maintains the overall siting of the building and the footprint of the building does not encroach within the ground floor setbacks. The proposed setbacks are a flexible solution to increased amenity for the dwelling, whilst not having an impact on adjoining properties.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal does not impact upon native vegetation and a quality area of deep soil is maintained for the site.

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

Comment: Not applicable to the development.

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

The alterations to the dwelling are located within the existing building footprint and do not result in a further reduction in open space.

It is noted that the watercraft storage structure is an open style structure, that consists of a single wall and racks for watercraft. In this regard, it does not detract from the open space calculation as it is an 'open' style structure, like a roofed balcony or terrace (that can be included in the calculation). The proposal will maintain compliance with the landscaped area 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 \$16,722 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,672,230.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a breach of FSR and building height that is in excess of 10%.

The concerns raised in the objections have been addressed within this assessment report and standard conditions regarding construction hours and noise are included in the recommended conditions. As discussed within this report, the concerns relating to view impacts have been assessed and expansive views from the adjoining properties will be maintained.

The critical assessment issues the FSR and Building height breach, both of which have been discussed

within this report and are considered reasonable given the existing situation on the site and compatibility with the surrounding buildings.

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

Accordingly Council as the consent authority grant Development Consent to DA2022/1941 for Alterations and additions to a dwelling house on land at Lot 42 DP 1192691, 24 A Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 00 - B	7/03/2023	THW Architects
DA 01 - B	7/03/2023	THW Architects
DA 02 - B	7/03/2023	THW Architects
DA 03 - B	7/03/2023	THW Architects
DA 04 - B	7/03/2023	THW Architects
DA 05 - B	7/03/2023	THW Architects
DA 10 - B	7/03/2023	THW Architects
DA 11 - B	7/03/2023	THW Architects
DA 12 - B	7/03/2023	THW Architects
DA 13 - B	7/03/2023	THW Architects
DA 20 - B	7/03/2023	THW Architects
DA 21 - B	7/03/2023	THW Architects
DA 22 - B	7/03/2023	THW Architects
DA 23 - B	7/03/2023	THW Architects

DA 103 - B	7/03/2023	THW Architects
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Engineering Plans		
Drawing No.	Dated	Prepared By
SW1 DA	09/11/2022	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A472309	10/10/2022	THW Architects
Bushfire Risk Assessment	12/09/2022	Steve Brooks
Geotechnical Report AG22349	31/10/2022	Ascent Geotechnical
Sediment and Erosion Control Plan	09/11/2022	Barrenjoey Consulting Engineers

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 01 Issue B	October 2022	Volker Klemm Landscape Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	8/11/2022	Tim West

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working

- hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
- A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
- A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$16,722.30 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,672,230.00.

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.

5. **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

6. **Amended Landscape Plan**

a) An Amended Landscape Plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

Any new planting proposed in the rear yard (below the existing artificial grass terrace) i

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

Reason: Landscape amenity.

7. **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.

8. **Stormwater Drainage Disposal**

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Works on Land Owned or Managed By Council**

No works are to be carried out on land owned or managed by Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.) and landscaping works on land owned or managed by Council.

Reason: To protect the land owned or managed by Council.

12. **Installation and Maintenance of Sediment and Erosion Control**

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

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.

13. **Dilapidation Report of Land Owned or Managed by Council**

A Pre-Construction Dilapidation Report shall contain a survey of pre-existing land features including photographic record of the land under Council's care control and management adjoining the development, detailing the physical condition of items such as, but not exclusively limited to, physical assets such as crossovers, driveways, footpaths, utilities, furniture, play equipment, trees, gardens, lawn areas, bushland and any rock outcrops.

This Pre-Construction Dilapidation Report shall be submitted to Council and the Principal Certifier prior to commencement of works.

Any damage to these assets during the works must be replaced like for like to the satisfaction of Council and the Principal Certifier.

The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition. In this regard, where required, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

Reason: Protection of Council's assets.

14. **Protection of Trees Within Land Owned or Managed by Council**

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

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

Reason: Tree protection and management.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Protection of Rock and Sites of Significance

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

Reason: Preservation of significant environmental features.

16. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site not indicated for removal on the approved plans, 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), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture

- shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

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.

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. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

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

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

Reason: Public safety and environmental protection.

20. **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.

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. **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**

23. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) 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.

24. **Removal of All Temporary Structures/Materials and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences/bunds 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 protect reserve amenity and public safety.

25. **Post-Construction Dilapidation Report of Land Owned or Managed by Council**

Post-Construction Dilapidation Report of the land under Council's care control, 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, the evidence of like for like replacement to the satisfaction of Council.

Copies must also be lodged with Council.

The applicant may be held liable to any damage to public infrastructures in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition. In this regard, where required, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issuing of an Occupation Certificate.

Reason: Protection of Council's assets.

26. **Stormwater Drainage Disposal Certification**

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

27. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

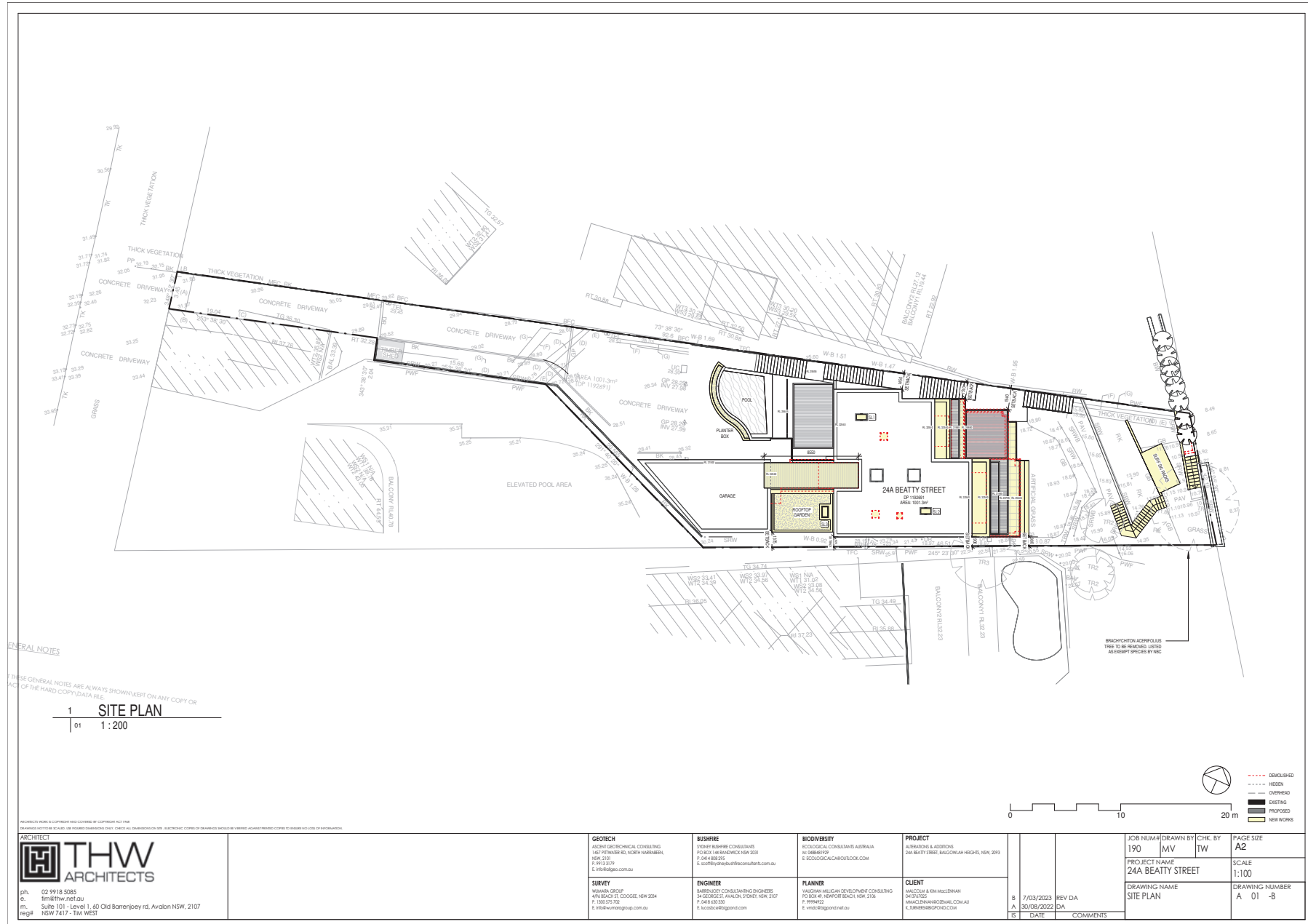
Reason: To ensure geotechnical risk is mitigated appropriately.

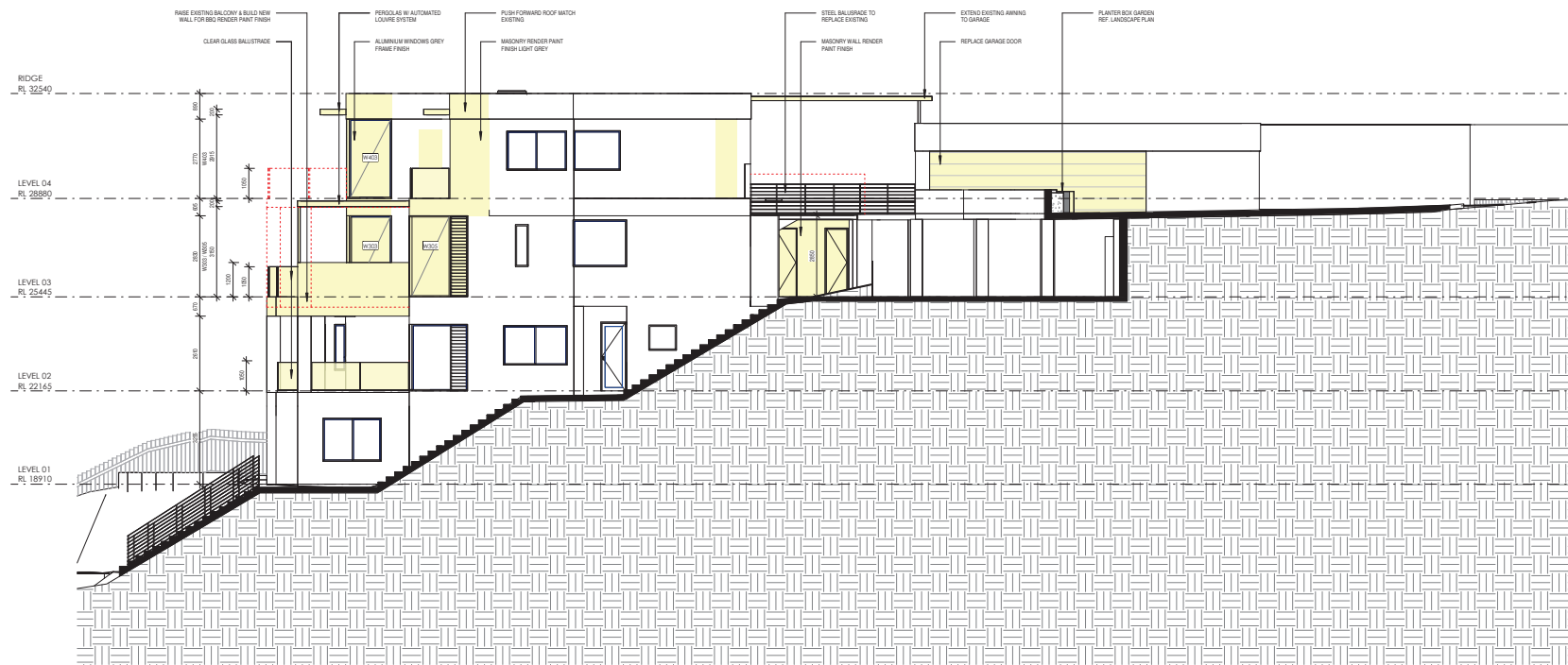
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

28. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.





1 NORTH ELEVATION
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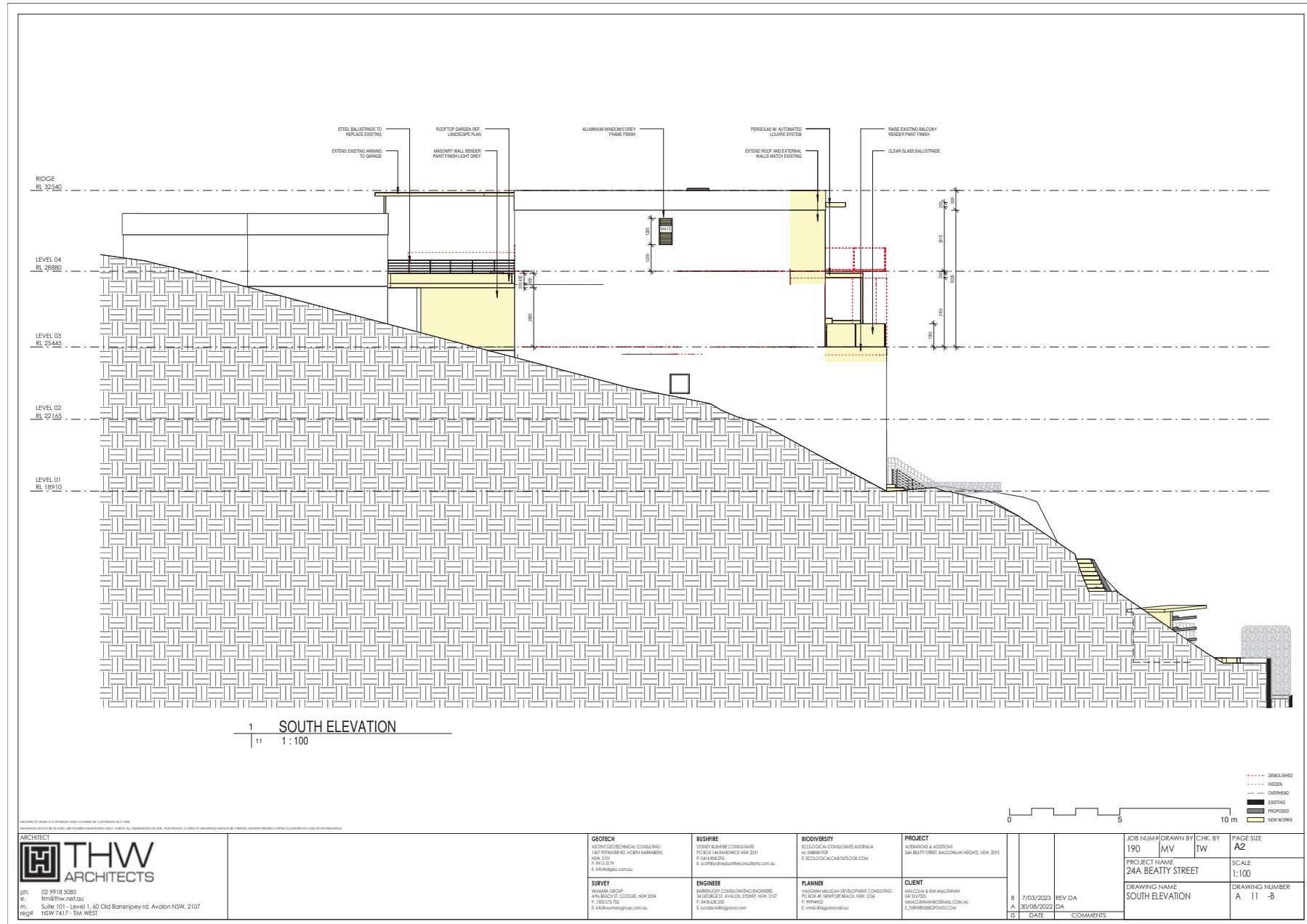
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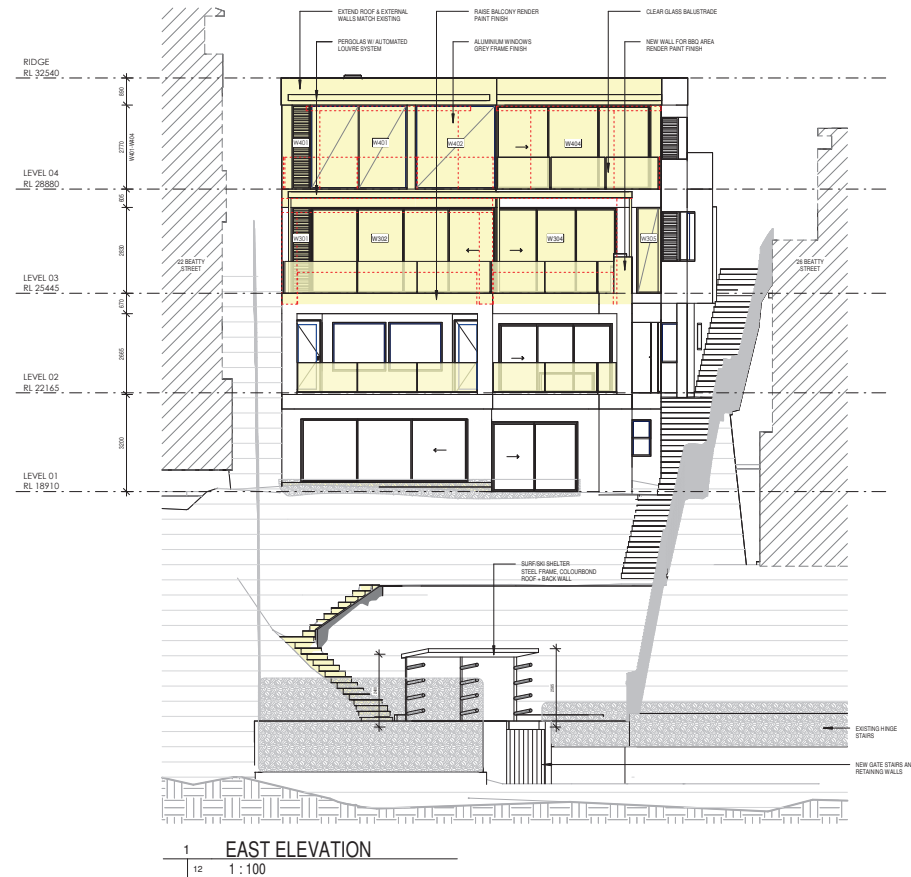
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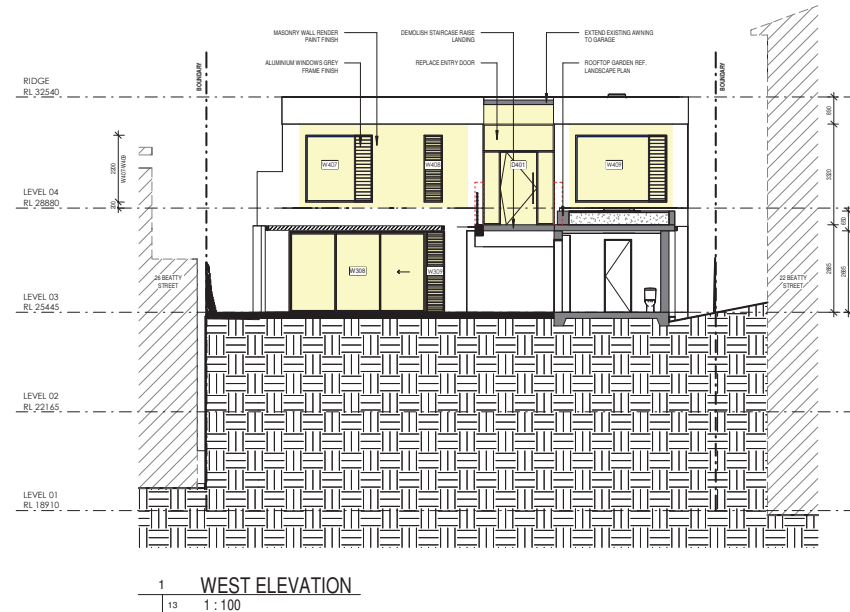
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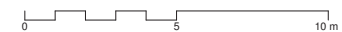
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APPENDIX 2
CLAUSE 4.6 – FLOOR SPACE RATIO
(As revised March 2023)

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

24A BEATTY STREET, BALGOWLAH HEIGHTS

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE FLOOR SPACE RATIO CONTROL
AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING

For: Construction of alterations and additions to an existing dwelling
At: 24a Beatty Street, Balgowlah Heights
Owner: Malcolm & Kim MacLennan
Applicant: Malcolm & Kim MacLennan
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard it is requested Council support a variation with respect to compliance with the maximum floor space ratio as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 of MLEP 2013 restricts the floor space ratio of a building at the subject site to a maximum of 0.4:1, as shown on the Floor Space Ratio Map of MLEP 2013. The proposal provides a gross floor area of 503m² or a floor space ratio of 0.502:1, representative of a 102.48m² or 25.58% variation to the maximum floor space ratio prescribed.

However, it is important to note that the existing dwelling already exceeds the maximum floor space ratio, with a gross floor area of 488m² and a floor space ratio of 0.487:1. The proposed development seeks to increase the existing floor area by only 15m².

Is Clause 4.4 of the LEP a development standard?

The definition of "development standard" in clause 1.4 of the EP&A Act includes:

(d) the cubic content or floor space of a building,

Clause 4.4 relates to the maximum floor space of a building. Accordingly, Clause 4.4 is a development standard.

24A Beatty Street, Balgowlah Heights

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3.0 Purpose of Clause 4.6

MLEP 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor 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 Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

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

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 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.

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Clause 4.6(2) of the LEP 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.*

Clause 4.4 of MLEP 2013 is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP 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 maximum floor space ratio development standard pursuant to Clause 4.4 of MLEP which specifies a maximum floor space ratio of 0.4:1 in relation to the subject site.

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 MLEP 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 Planning Secretary 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

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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 the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

In accordance with Council's website, the Development Determination Panel can assume the concurrence of the Secretary with regards to this clause 4.6 variation, as the application relates to a dwelling house and the variation is greater than 10%.

Clause 4.6(5) of the LEP provides:

- (5) *In deciding whether to grant concurrence, the 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 Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

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 4.4 of the LEP from the operation of clause 4.6.

The specific 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 construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the C3 Environmental Management Zone, which are noted as:

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- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

5.0 The Nature and Extent of the Variation

This request seeks a variation to the maximum floor space ratio standard contained in Clause 4.4 of MLEP.

Clause 4.4 of MLEP 2013 restricts the floor space ratio of a building at the subject site to a maximum of 0.4:1 or in this instance, 400.52m², as shown on the Floor Space Ratio Map of MLEP 2013. The proposal provides a gross floor area of 503m² or a floor space ratio of 0.502:1, representative of a 102.48m² or 25.58% variation to the maximum floor space ratio prescribed.

6.0 Relevant Caselaw

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:

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].

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].

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].

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

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from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

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.

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 4.4 of MLEP 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 4.4 and the objectives for development for in the C3 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 4.4 of MLEP?

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7.0. Request for Variation

7.1 Is Clause 4.4 of MLEP a development standard?

The definition of “development standard” in clause 1.4 of the EP&A Act includes:

(d) the cubic content or floor space of a building,

Clause 4.4 relates to the maximum floor space of a building. Accordingly, Clause 4.4 is a development standard.

7.2 Is compliance with Clause 4.4 unreasonable or unnecessary?

This request relies upon the first way identified by Preston CJ in *Wehbe*.

The first way in *Wehbe* is to establish that the objectives of the standard are achieved.

Each objective of the maximum floor space ratio standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

Comment: The proposed works are largely sited to the rear of the existing dwelling, and the works will not be prominently viewed within the streetscape. Due to the battle-axe nature of the lot, the dwelling is not readily visible from the streetscape.

Nonetheless, the development remains consistent with the bulk and scale of the existing dwelling and surrounding development, as shown in the perspective images provided to support the application (**Figure 1 over**).

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Fig 1: Perspective of proposed built form

The new works are complementary to the existing locality and the surrounding development and will continue to present a compatible bulk and scale as viewed from the streetscape and neighbouring properties.

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

Comment: The proposed works are largely contained within the existing building footprint. The proposal will not require the removal of any significant vegetation, and maintains a generous area of soft landscaping.

The proposal will not obscure any important natural or built features.

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

Comment: The proposal provides for alterations and additions to an existing dwelling, which generally follow the siting of the existing dwelling and will not exceed the existing maximum ridge height.

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The proposed new works maintain consistency with the character of the existing development and wider locality, and as discussed above, are in keeping with the landscaped character of the locality.

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

Comment: The proposed works are largely contained within the existing building footprint and will not require the removal of any significant vegetation. The site maintains a generous area of soft landscaping.

Runoff from the new roof areas will be connected to the existing stormwater system.

No environmental impacts are therefore anticipated.

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment: Not applicable.

7.3 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*

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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].

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed development maintains the general bulk and scale of surrounding contemporary dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)). The proposed development provides an appropriate contextual response to the design of the existing dwelling, with a proposed reduction to the bulk and scale of the dwelling as a whole.
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the character of the locality which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The existing dwelling already exceeds the maximum floor space ratio, with a gross floor area of 488m² and a floor space ratio of 0.487:1. The proposed development results in a net increase of only 15m² compared to the floor space of the existing dwelling.
- The proposed development is considered to promote good design and enhances the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum floor space ratio control.

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

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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.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.4 and the objectives of the C3 Environmental Management Zone?

Section 4.2 of this written request suggests the first test in Wehbe is made good by the development.

Each of the objectives of the C3 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the breach of the maximum building height, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the C3 Environmental Management Zone for the following reasons:

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

Comment: The proposed development does not detract from the visual significance of the area, but rather enhances the visual appearance and reduces the apparent size of the dwelling as seen from the waterway.

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

Comment: The continued use of the site for residential purposes is one of the limited land uses that is permissible in the zone.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

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Comment: The proposed development does not result in any impacts to existing vegetation and will not dominant the scenic qualities of the area.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment: The proposed development is sufficiently setback from the foreshore, is not within the foreshore area, and will not result in any adverse impacts upon the foreshore.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment: The application does not involve works in the immediate foreshore. The proposal will result in an enhancement of landscaping on the site, inclusive of roof gardens and integrated planters, to maximise soft surfaces on the site.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment: The proposed works are generally maintained within the volume/footprint of the existing dwelling. The proposed development results in enhanced articulation and stepping of the rear of the dwelling, in response to the fall of the land.

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

7.5 Has council obtained the concurrence of the Secretary?

In accordance with Council's website, the Development Determination Panel can assume the concurrence of the Secretary with regards to this clause 4.6 variation, as the application relates to a dwelling house and the variation is greater than 10%.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP 2013?

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

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There are no other matters required to be taken into account by the Secretary before granting concurrence.

8.0 Conclusion

This development proposed a departure from the maximum floor space ratio development standard, with the proposed alterations and additions to the existing dwelling to provide a maximum floor space ratio of 0.502:1.

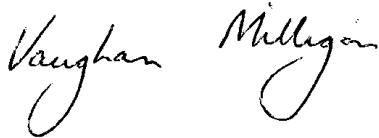
The proposal provides a gross floor area of 503m² or a floor space ratio of 0.502:1, representative of a 102.48m² or 25.58% variation to the maximum floor space ratio prescribed.

However, it is important to note that the existing dwelling already exceeds the maximum floor space ratio, with a gross floor area of 488m² and a floor space ratio of 0.487:1. The proposed development seeks to increase the existing floor area by only 15m².

This written request to vary to the maximum floor space ratio specified in Clause 4.4 of the Manly LEP 2013 adequately demonstrates 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 control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

Vaughan Milligan Development Consulting Pty Ltd

APPENDIX 1
CLAUSE 4.6 – BUILDING HEIGHT

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

24A BEATTY STREET, BALGOWLAH HEIGHTS

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT
CONTROL AS DETAILED IN CLAUSE 4.3 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

FOR THE CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING

For: Construction of alterations and additions to an existing dwelling
At: 24A Beatty Street, Balgowlah Heights
Owner: Malcolm & Kim MacLennan
Applicant: Malcolm & Kim MacLennan
C/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013 (**MLEP 2013**). In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of MLEP 2013.

2.0 Background

Clause 4.3 of MLEP 2013 prescribes that the height of buildings at the subject site shall not exceed the height nominated on the Height of Buildings Map, being 8.5m with respect to the subject site.

The proposed works reach a maximum height of 13.54m above existing ground level, representative of a 5.04m or 59.29% variation to the maximum height prescribed.

Is clause 4.3 of MLEP 2013 a development standard?

The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

24A Beatty Street, Balgowlah Heights

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3.0 Purpose of Clause 4.6

MLEP 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor 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. These cases are taken into consideration in this request for variation.

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 standard.

4.0 Objectives of Clause 4.6

Clause 4.6(1) of MLEP 2013 provides:

(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.*

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.”

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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 the LEP 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.*

Clause 4.3 (the Maximum Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of MLEP 2013 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 maximum building height control development standard pursuant to clause 4.3 of MLEP 2013 which specifies a maximum building height of 8.5m for this site.

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 MLEP 2013 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*

24A Beatty Street, Balgowlah Heights

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(b) the concurrence of the Planning Secretary 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 the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

In accordance with Council's website, the Development Determination Panel can assume the concurrence of the Secretary with regards to this clause 4.6 variation, as the application relates to a dwelling house and the variation is greater than 10%.

Clause 4.6(5) of MLEP 2013 provides:

- (5) In deciding whether to grant concurrence, the 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 Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

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 MLEP 2013 from the operation of clause 4.6.

The specific 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.*

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The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the C3 Environmental Management Zone, which are noted as:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

5.0 The Nature and Extent of the Variation

This request seeks a variation to the maximum building height standard contained in clause 4.3 of MLEP 2013. The proposed works reach a maximum height of 13.54m above existing ground level, representative of a 5.04m or 59.29% variation to the maximum height development standard. The extent of non-compliance is highlighted in **Figure 1**, below.

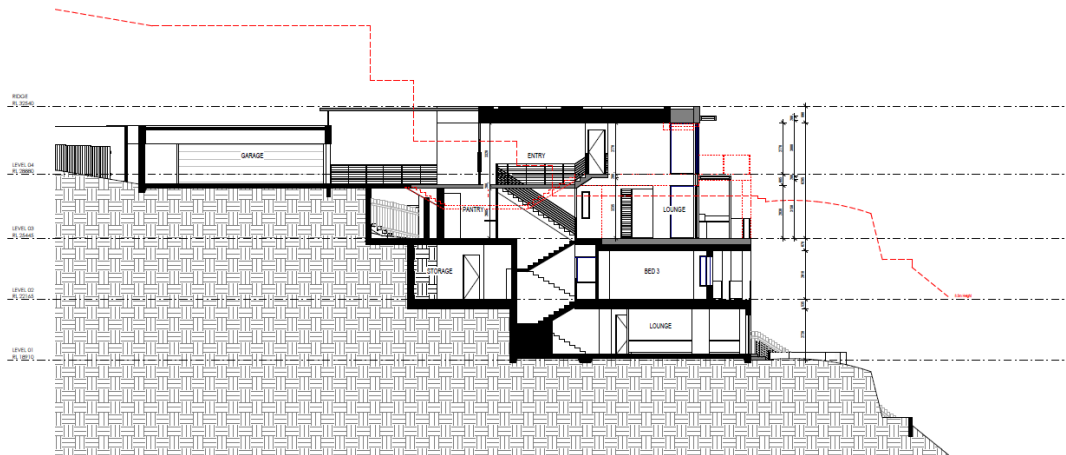


Fig 1: Section demonstrating the extent of building height non-compliance, as measured to existing ground levels

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6.0 Relevant Caselaw

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:

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].

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].

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].

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].

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.

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 (over):

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1. Is clause 4.3 of MLEP 2013 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
1. 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 C3 zone?
2. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
3. 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 MLEP 2013?

7.0. Request for Variation

7.1 Is clause 4.3 of MLEP 2013 a development standard?

The definition of “development standard” in clause 1.4 of the EP&A Act includes:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Clause 4.3 relates to the maximum building height of a building. Accordingly, clause 4.3 is a development standard.

7.2 Is compliance with clause 4.3 unreasonable or unnecessary?

This request relies upon the 1st way identified by Preston CJ in Wehbe.

The first way in Wehbe is to establish that the objectives of the standard are achieved.

Each objective of the maximum building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

- (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,*

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Comment: The proposed development seeks consent for minor extensions to Level 4, with the continuation of the existing roof form. As such, the maximum ridge height and the overall maximum building height remains the same as that which currently exists.

Furthermore, the development remains consistent with the height of surrounding development, providing an appropriate transition between the higher dwelling to the south at 22 Beatty Street to the slightly lower dwelling to the north at 26 Beatty Street in response to the fall of the land, as shown in the East Elevation (**Figure 2**) and the perspective images provided to support the application (**Figure 3**).



Fig 2: Extract of East Elevation

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Fig 3: Perspective of proposed built form

The proposed development also seeks to reduce the bulk of the rear façade, with enhanced stepping at the rear of the building resulting from the removal of the large columns and dominant roof form over the Level 3 rear balcony, and a reduction in the depth of the Level 3 roof and the Level 4 balcony above, as demonstrated in the perspectives below (**Figure 4**).



Fig 4: Perspective view comparing existing rear façade to proposed works and demonstrating the demolition of the solid roof form and supporting columns over the Level 3 balcony and demolition of the existing balcony above.

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

Comment: The development remains a four storey dwelling, consistent with the scale of the existing dwelling and other dwellings within the visual catchment of the site. The new elements above the height plane do not attribute to excessive bulk and scale. Rather, the proposed development proposes to refine the rear façade and lessen the scale of the building as seen from the east.

At present, the development has a continual three storey façade presenting to the east, with a setback to the fourth floor. The application seeks to reduce the bulk associated with the third floor, with setbacks at both the third and fourth floor, to achieve a stepped rear façade (See **Figure 4**).

The comparison of the existing development and proposed development is highlighted in the perspective images provided to support the application and demonstrate a clear reduction to the overall bulk and scale of the development.

(c) to minimise disruption to the following—

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

Comment: The proposed development is largely maintained within the volume of the existing dwelling, with only minor additional floor space proposed at the extremities of the rear facade. Based upon an inspection of the subject site and review of available images of the views obtained from neighbouring and nearby dwellings, it appears unlikely that the minor additions will result in any adverse impacts upon views currently enjoyed.

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

Comment: The proposal is accompanied by Shadow Diagrams which demonstrate the current and proposed levels of solar access received by the subject and neighbouring properties throughout the day. The proposal will result in minor areas of additional overshadowing of the Level 2 deck (middle level) of the adjoining dwelling at midday, which are offset by greater reductions to the extent of overshadowing of the pool area at midday. The adjoining dwelling maintains in excess of 2 hours of sunlight to large expanses of decking throughout the day in midwinter, consistent with the provisions of this control. The proposed alterations and additions will also result in enhanced solar access to the primary decks and living spaces of the dwelling at the subject site, by virtue of the removal of the upper level deck and the incorporation of an automated louvred pergola roof.

(d) 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.

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Comment: Not applicable.

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

7.3 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].*

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed development maintains the general bulk and scale of surrounding contemporary dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly and economic use of the land (cl 1.3(c)). The proposed development provides an appropriate contextual response to the design of the existing dwelling, with a proposed reduction to the bulk and scale of the dwelling as a whole.
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the character of the locality which also promotes the orderly and economic use of the land (cl 1.3(c)).

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- The proposed development is considered to promote good design and enhances the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).
- Consistent with the findings of Commissioner O'Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation within the building footprint that distorts the height of buildings development standard plan can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

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.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the C4 Environmental Living Zone?

Section 7.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.

Each of the objectives of the C4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

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I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the breach of the maximum building height, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the C4 Environmental Living Zone for the following reasons:

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

Comment: The proposed development does not detract from the visual significance of the area, but rather enhances the visual appearance and reduces the apparent size of the dwelling as seen from the waterway.

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

Comment: The continued use of the site for residential purposes is one of the limited land uses that is permissible in the zone.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment: The proposed development does not result in any impacts to existing vegetation and the portion of the development that protrudes above the height plane will not dominate the scenic qualities of the area.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment: The proposed development is sufficiently setback from the foreshore, is not within the foreshore area, and will not result in any adverse impacts upon the foreshore.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

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Comment: The application does not involve works in the immediate foreshore. The proposal will result in an enhancement of landscaping on the site, inclusive of roof gardens and integrated planters, to maximise soft surfaces on the site.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment: The proposed height of the development does not result in any adverse impacts upon vegetation. The proposed development results in enhanced articulation and stepping of the rear of the dwelling, in response to the fall of the land.

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

7.5 Has Council obtained the concurrence of the Secretary?

In accordance with Council's website, the Development Determination Panel can assume the concurrence of the Secretary with regards to this clause 4.6 variation, as the application relates to a dwelling house and the variation is greater than 10%.

7.6 Has the Council considered the matters in clause 4.6(5) of MLEP 2013?

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

There are no other matters required to be taken into account by the Secretary before granting concurrence.

8.0 Conclusion

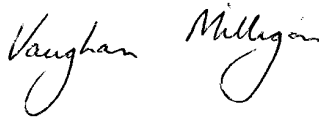
This development proposes a departure from the maximum building height control, with the proposed development reaching a maximum height of 13.54m above existing ground level, representative of a 5.04m or 59.29% variation to the maximum height development standard.

This variation occurs as a result of the sloping topography of the site and siting of existing development.

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This objection to the maximum building height control specified in Clause 4.3 of the MLEP 2013 adequately demonstrates 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 building height is unreasonable and unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.8**MOD2023/0063 - 9 PRINCE EDWARD ROAD SEAFORTH -
MODIFICATION OF DEVELOPMENT CONSENT DA2022/1421
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION
OF A DWELLING HOUSE INCLUDING SWIMMING POOL**

REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/300007
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

- A. To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.
- B. 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 Mod2023/0063 for Modification of Development Consent DA2022/1421 granted for Demolition works and construction of a dwelling house including swimming pool on land at Lot 156 DP 11162, 9 Prince Edward Road SEAFORTH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0063
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 156 DP 11162, 9 Prince Edward Road SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2022/1421 granted for Demolition works and construction of a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	James Phillip Smart Robyn Karina Smart
Applicant:	Minto Planning Services Pty Ltd
Application Lodged:	24/02/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	02/03/2023 to 16/03/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 25.1%
Recommendation:	Approval

EXECUTIVE SUMMARY

This application seeks approval for modification of Development Consent DA2022/1421 granted for Demolition works and construction of a dwelling house including swimming pool. The modification seeks to enclose the carport to form a garage and add habitable floor area to the lower ground floor and first floor.

The application is referred to the Development Determination Panel (DDP) under discretion of the Executive Manager Development Assessment due to the development exceeding the floor space ratio development standard by more than 10%. The modified development increases the floor space ratio of the approved development from 0.445:1 to 0.563:1, which represents a variation of 25.1% to the

prescribed 0.45:1 floor space ratio.

Whilst this is a modification application where Clause 4.6 does not legally apply the DA Executive Managers discretion has been used to refer the application to DDP due to the floor space non compliance.

No submissions were received during the notification period.

The critical assessment issue includes the alteration of the approved development from compliance to non-compliance with the floor space ratio development standard and the resultant amenity impact upon adjacent properties and the public domain.

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 to modify development consent DA2022/1421 granted for demolition works and construction of a dwelling house including swimming pool.

The modification involves the following elements:

Lower Ground Floor

- New doors and windows to northern and eastern elevation
- New internal walls proposed to create rumpus room, bathroom, bedroom, plant room and sub floor void
- No change in footprint or external aesthetics other than the addition of two low level windows

Ground Floor

- Carport converted to garage
- Provision of garage door
- Glazing added to timber screen (Northern side of garage)
- Infill timber screen added to opening (southern side of garage)

First Floor

- Existing void above ground floor entry in-filled to create sitting room

AMENDED PLANS

During assessment, Council raised concern regarding the significant FSR increase as a result of the proposed modification. Council requested the applicant amend the design to reduce the extent of FSR non-compliance.

In response to Council's concern, the applicant provided amended plans to delete the proposed media room and storage area on the lower ground floor and revert the space to dwelling undercroft as approved in the original development consent. This alteration reduces the proposed FSR from 0.605:1 to 0.563:1. The proposed windows at the lower ground floor on the northern and southern elevations are also deleted.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)

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

SITE DESCRIPTION

Property Description:	Lot 156 DP 11162 , 9 Prince Edward Road SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Prince Edward Road. The site is regular in shape with a frontage of 12.19m along Prince Edward Road and a depth of 42.72m. The site has a surveyed area of 518.5m². The site is located within the R2 Low Density Residential zone and accommodates a part two-storey residential dwelling and a double carport. The site falls approx. 5m from the west towards the east. The site contains a large landscaped rear setback area with

grass and some trees along the northern boundary. The front setback area contains grassed areas, a small tree and shrubs. A large tree is located at the front of the site within the street verge.

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 **DA2022/1421** for Demolition works and construction of a dwelling house including swimming pool was approved on 14/12/2022 by Council staff.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the

- development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2022/1421, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 where His Honour states: <i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i> <i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i> <i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i> The applicant has provided the following justification to support their argument that the modifications are substantially the same:

Section 4.55 (2) - Other Modifications	Comments
	<u>Quantitative Comparison</u> The following quantitative comparison is provided: • The proposal does not result in any change to the front setback. • The proposal does not result in any change to the northern side boundary setback. • The proposal does not result in any change to the southern side boundary setback. • The proposal does not result in any change in the rear setback. • The proposal does not result in any change in the wall height. • The proposal does not result in any change in the height of building. • The proposal does not result in an increase in the number of storeys. • The proposal will result in a change in the number of bedrooms from 3 bedrooms to 4 bedrooms. • The proposal will result in an increase in the number of living spaces by 3 [two under amended design]. • The proposal will result in an increase in the gross floor area from 230.57m² (0.445:1) to 319.6m² (0.616:1) [amended design revised down to 291.9m² (0.563:1)]. <u>Qualitative Comparison</u> From a qualitative perspective it is my opinion that the proposal will not result in any increased adverse amenity impacts upon the adjoining properties. The proposal will not result in any increased streetscape impacts or impacts upon the character of the surrounding area. The proposal will continue to present in a near identical manner to that approved by the Council when viewed from both the street and the adjoining properties. The main differences associated with the proposal relate to the provision of an additional bedroom and 3 x additional living spaces [two under amended design] within the approved building envelope. It is not considered that there will be any unreasonable impacts associated with the introduction of these spaces.

Section 4.55 (2) - Other Modifications	Comments
	Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is substantially the same as the development for which the consent was originally granted and can be considered under Section 4.55 of the Act.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2022/1421 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
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Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans and a more detailed justification for the variation to the floor space ratio development standard. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/03/2023 to 16/03/2023 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is to modify development consent DA2022/1421, with proposed changes to the approved dwelling. There are no changes to the landscape outcome and Landscape Referral conditions 15, 16, 24, 25 and 29 under development consent DA2022/1421 remain unaltered.
NECC (Development Engineering)	The proposed modifications do not alter the original assessment of the application. Development Engineering support the proposal with no additional or modified conditions of consent 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. 1293102S_04, dated 05/05/2023).

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

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	55

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.95m	Unaltered	N/A	As approved
Floor Space Ratio:	0.45:1 (233.3m ²)	0.445:1 (230.6m ²)	0.563:1 (291.9m ²)	25.1%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1

Proposed:	0.563:1
Percentage variation to requirement:	25.1%

Assessment of request to vary a development standard:

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the floor space ratio development standard and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

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

In doing so, the Applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case.

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

Comment:

The applicant argues, in part:

It is considered that a contravention of the development standard is justified on the basis of the following environmental planning grounds:

- *The proposed additional gross floor area is wholly contained within the approved building envelope.*
- *The proposed additional gross floor area does not result in any change to the size of the approved building envelope including its height or building setbacks.*

- *The proposed additional gross floor area will not result in any impacts upon the amenity of the adjoining properties.*
- *The proposed additional gross floor area will not result in any streetscape or character impacts.*
- *The proposed additional gross floor area will not result in any environmental impacts with the proposal not requiring any additional excavation of the site.*

Despite the proposed modification increasing the FSR to a non-compliant state, the additional floor space is contained within an area beneath the existing dwelling that is currently used as habitable floor area and the approved building envelope of the first floor. The proposed additional floor space does not alter the approved building envelope and footprint and is not expected to cause any additional amenity impacts upon adjacent properties or the public domain.

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

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

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

4.4 Floor space ratio

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

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

Comment:

The proposal does not alter the bulk and scale of the approved dwelling. No change to the streetscape character is expected.

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 does not change the approved dwelling density and does not alter the building bulk relative to the site area. Adequate landscaping is maintained on the site.

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

Comment:

The proposal does not alter the visual relationship between the existing character and landscape of the locality.

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

Comment:

The proposed development is not expected to cause any change in environmental impact of the approved development upon adjoining land or the public domain.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres,

Comment:

Not applicable.

Zone objectives

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

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

Comment:

The proposal improves upon the functionality of the approved development without alteration to the building height, bulk and scale.

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 change the approved residential land use.

Conclusion:

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

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

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

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 518.5m ²	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 500m ²	1 dwelling	Unaltered	Yes
	Dwelling Size: 100m ²	230.6m ²	291.9m ²	Yes
4.1.2.1 Wall Height	N: 7.3m (based on gradient 1:7.5)	8.4m	Unaltered	As approved
	S: 7.3m (based on gradient 1:7.5)	8.5m	Unaltered	As approved
4.1.2.2 Number of Storeys	2	3	Unaltered	As approved
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.3m	Unaltered	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	4m, consistent with prevailing setback	Unaltered	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.77m (based on wall height)	1.5m	Unaltered	As approved
	S: 2.81m (based on wall height)	1.2m	Unaltered	As approved
	Windows: 3m	1.2m	Unaltered	As approved
4.1.4.4 Rear Setbacks	8m	Dwelling - 14.1m	Unaltered	Yes
		Rear deck - 1.7m	Unaltered	As approved
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (285.2m ²)	55.3% (286.7m ²)	Unaltered	Yes
	Open space above ground 25% of total open space (71.7m ²)	12% (34.5m ²)	Unaltered	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (100.3m ²)	39.4% (113m ²)	Unaltered	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	Unaltered	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.2m	Unaltered	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.5m	Unaltered	Yes
	1m curtilage side/rear setback	0.6m	Unaltered	As approved
	1.5m water side/rear setback	1m	Unaltered	As approved
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	Unaltered	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
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

The proposed modification does not alter the non-compliant wall height and number of storeys approved under the original development application. Therefore, the outcomes of the original consent are maintained under this modification application and a detailed merit assessment is not required in this instance.

4.1.3 Floor Space Ratio (FSR)

The proposed development has a floor space ratio of 0.563:1 (291.9m²), which represents a variation of 25.1% to the prescribed 0.45:1 (233.3m²) FSR requirement.

Refer to Clause 4.4 Floor space ratio of MLEP 2013 for a detailed assessment.

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

The modification does not alter the approved setbacks. As such, the outcomes of the original assessment are maintained under the modification.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for modification of Development Consent DA2022/1421 granted for Demolition works and construction of a dwelling house including swimming pool has been referred to the Development Determination Panel (DDP) under discretion of the Executive Manager Development Assessment due to the development exceeding the floor space ratio development standard by more than 10%.

The critical assessment issue includes the alteration of the approved development from compliance to non-compliance with the floor space ratio development standard and the resultant amenity impact upon adjacent properties and the public domain.

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0063 for Modification of Development Consent DA2022/1421 granted for Demolition works and construction of a dwelling house including swimming pool on land at Lot 156 DP 11162,9 Prince Edward Road, SEAFORTH, subject to the conditions printed below:

A. Add Condition No. 1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
C2 Rev I	04/05/2023	Contour Landscape Architecture
C3 Rev I	04/05/2023	Contour Landscape Architecture
C4 Rev I	04/05/2023	Contour Landscape Architecture
C5 Rev I	04/05/2023	Contour Landscape Architecture
C6 Rev I	04/05/2023	Contour Landscape Architecture
C7 Rev I	04/05/2023	Contour Landscape Architecture
C8 Rev I	04/05/2023	Contour Landscape Architecture
C9 Rev I	04/05/2023	Contour Landscape Architecture
C10 Rev I	04/05/2023	Contour Landscape Architecture

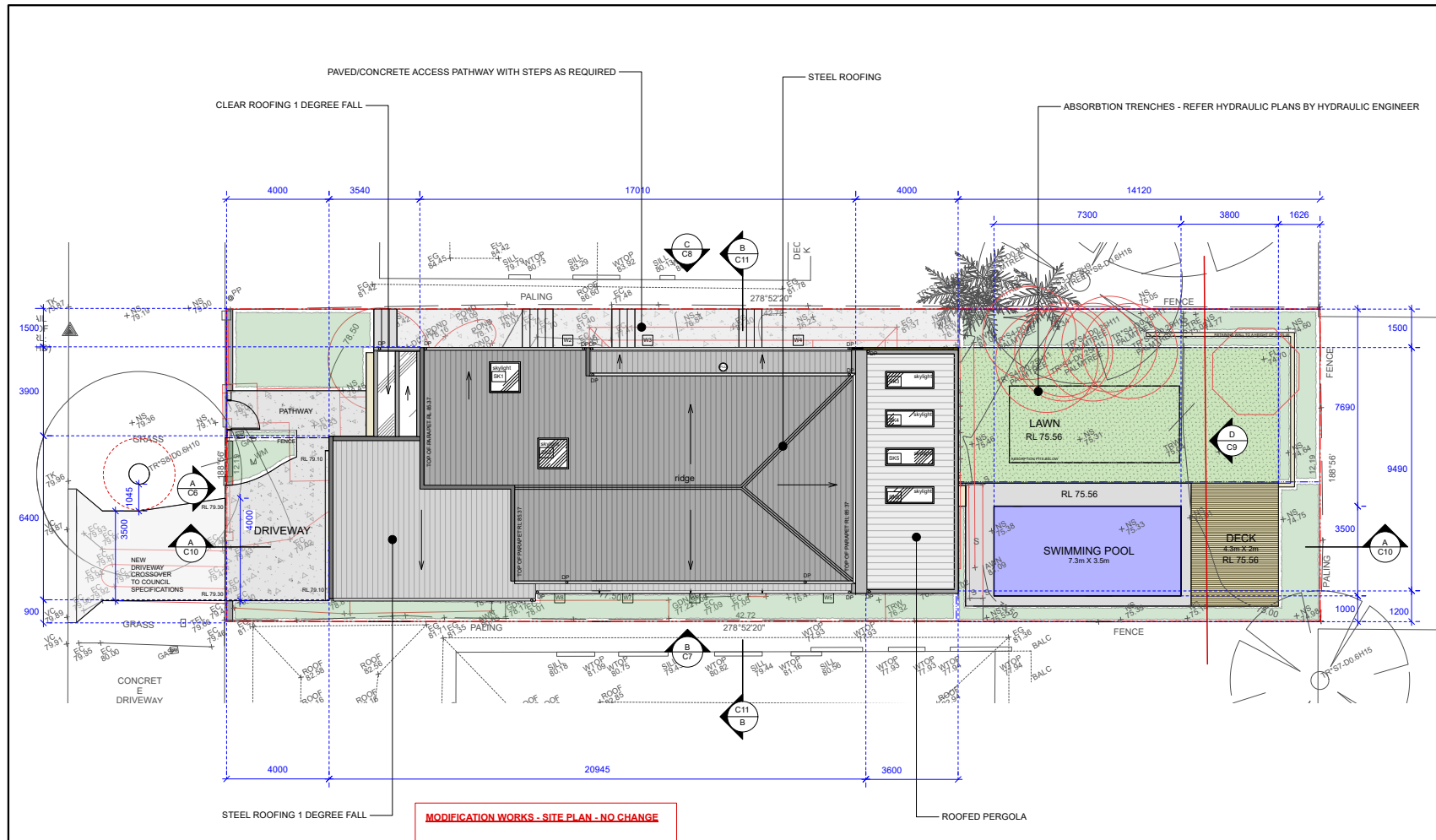
C11 Rev I	04/05/2023	Contour Landscape Architecture
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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1293102S_04	05/05/2023	Frys Energywise
Sec. 4.55 Modification Letter (Ref: AG22075.01)	22/02/2023	Ascent Geo

b) 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.



MODIFICATION WORKS - SITE PLAN - NO CHANGE

REAL CONSTRUCTIONS
GROWN GRASS FORM

CONTOUR
LANDSCAPE ARCHITECTURE

PO Box 698 MONA VALE NSW 1660
Tel: 0434 500 705 - AIDLIM

PROJECT
Smart Residence
9 Prince Edward Road,
Seaforth NSW 2092

NOTES

comply with building code of australia and all relevant australian standards
all works shall be in accordance with development application and construction certificate conditions of consent
all levels to and
refer to survey information relating to existing site data
verify all dimensions prior to works
do not scale from drawings
use figured dimensions in preference to scaling
refer all discrepancies to landscape architect for determination
this drawing is copyright and must not be released, copied, used or reproduced in any way without prior written permission of
contour landscape architects.

DATE	REV	ISSUE
26/10/22	G	DA REVISION
12/12/22	H	MOD REVISION
04/05/23	I	MOD REVISION

DATE: 04/05/23

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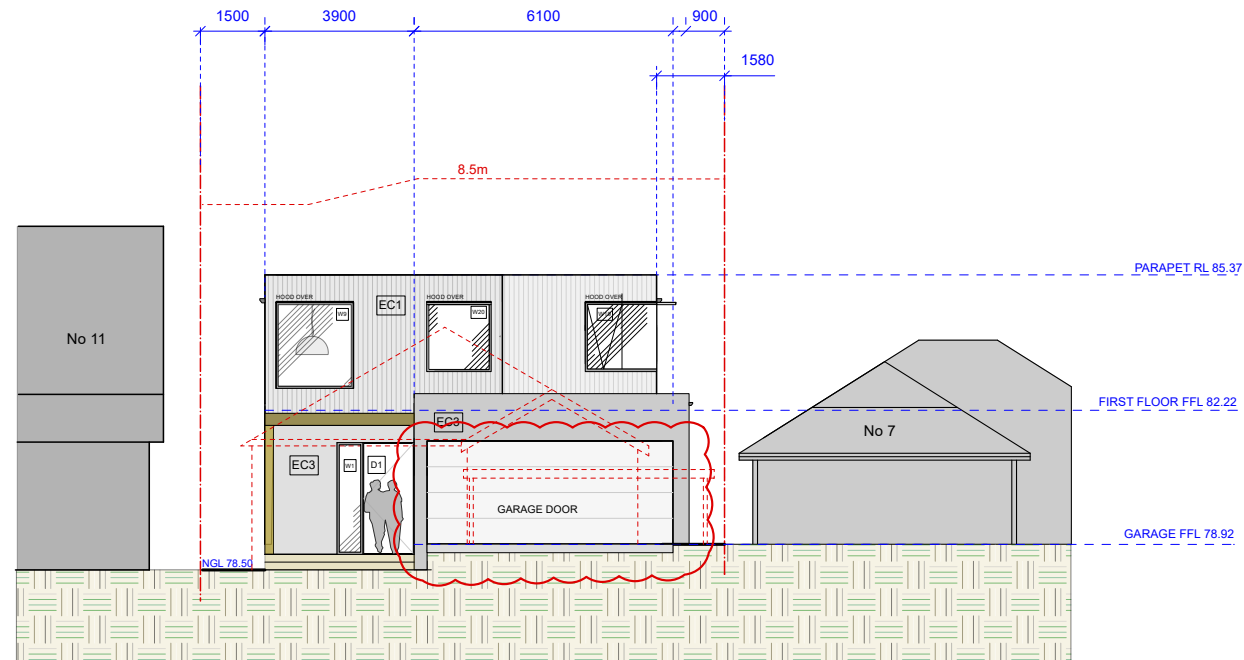
DRAWN: LH

DRAWING
SITE PLAN

DRAWING NO:
C2

REV:





A
C6 WESTERN ELEVATION
ELEVATION A / Scale 1:100

MODIFICATION WORKS - WESTERN ELEVATION - REFER RED CLOUD
- CARPORT CONVERTED TO GARAGE NO CHANGE IN FOOTPRINT
- GARAGE DOOR INSTALLED



CONTOUR
LANDSCAPE ARCHITECTURE

PO Box 698 MONA VALE NSW 1660
Tel: 0434 500 705 - AIDLM

PROJECT
Smart Residence
9 Prince Edward Road,
Seaforth NSW 2092

NOTES

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contour landscape architects.

DATE	REV	ISSUE
26/10/22	G	DA REVISION
12/12/22	H	MOD REVISION
04/05/23	I	MOD Revision

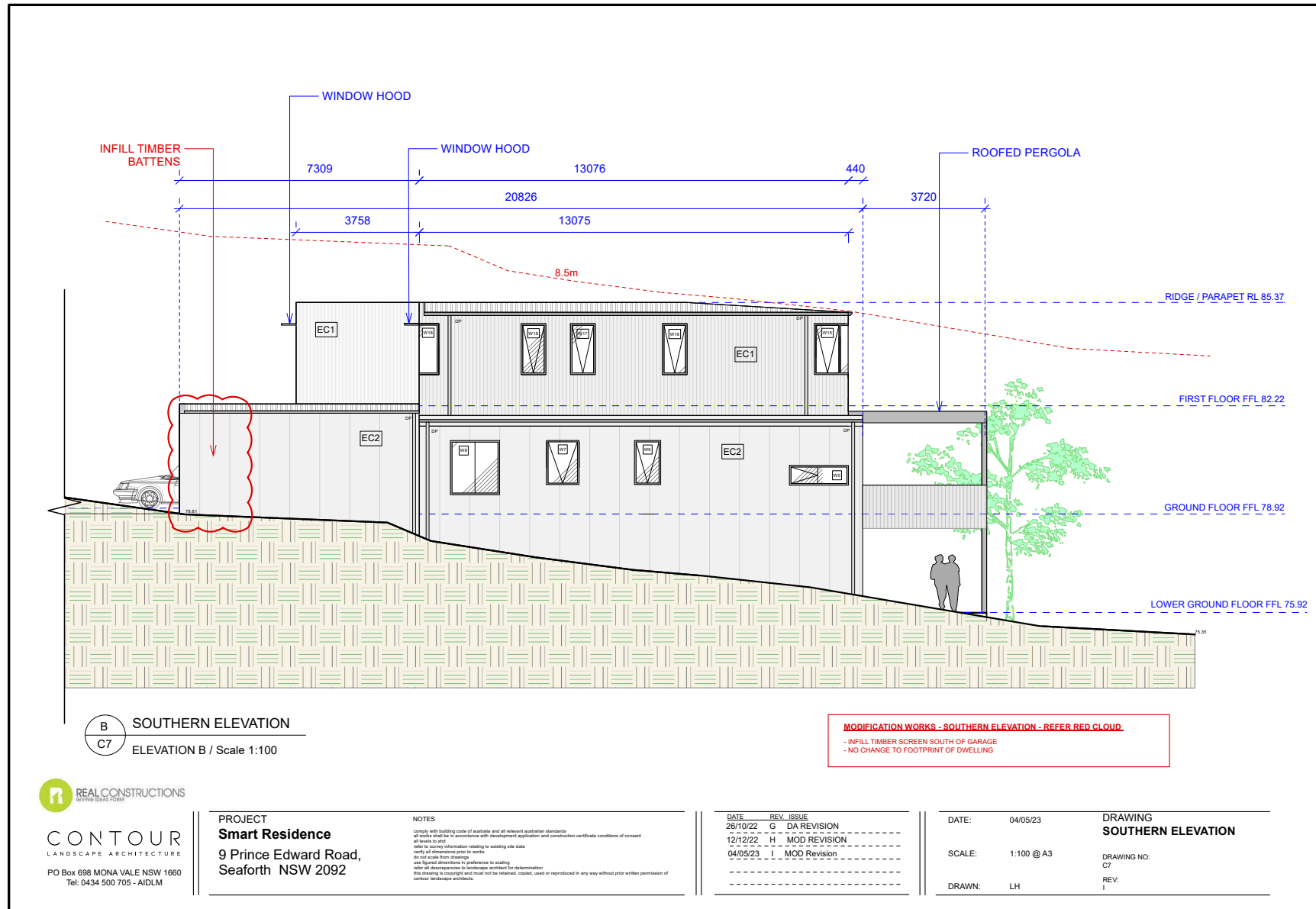
DATE: 04/05/23

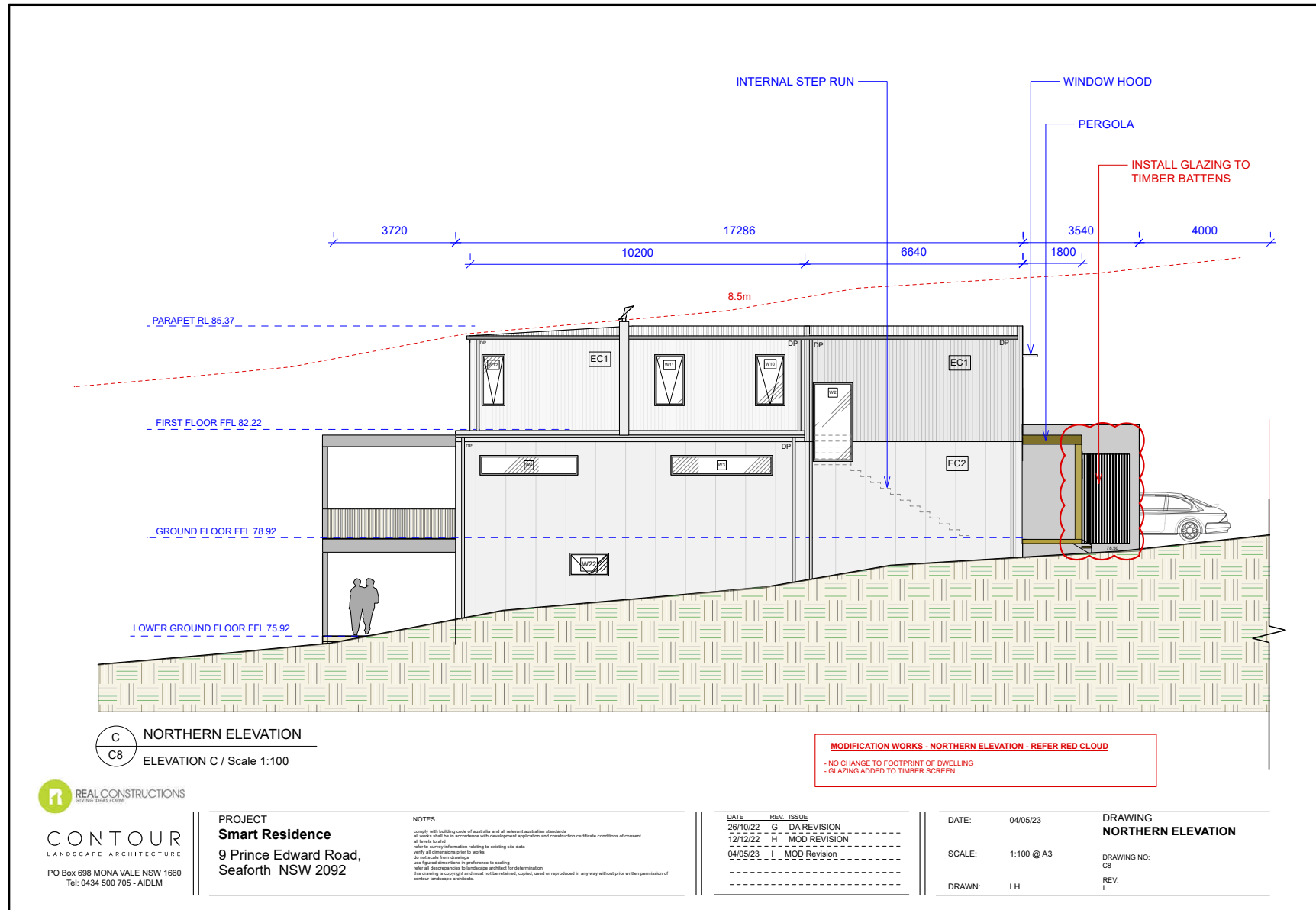
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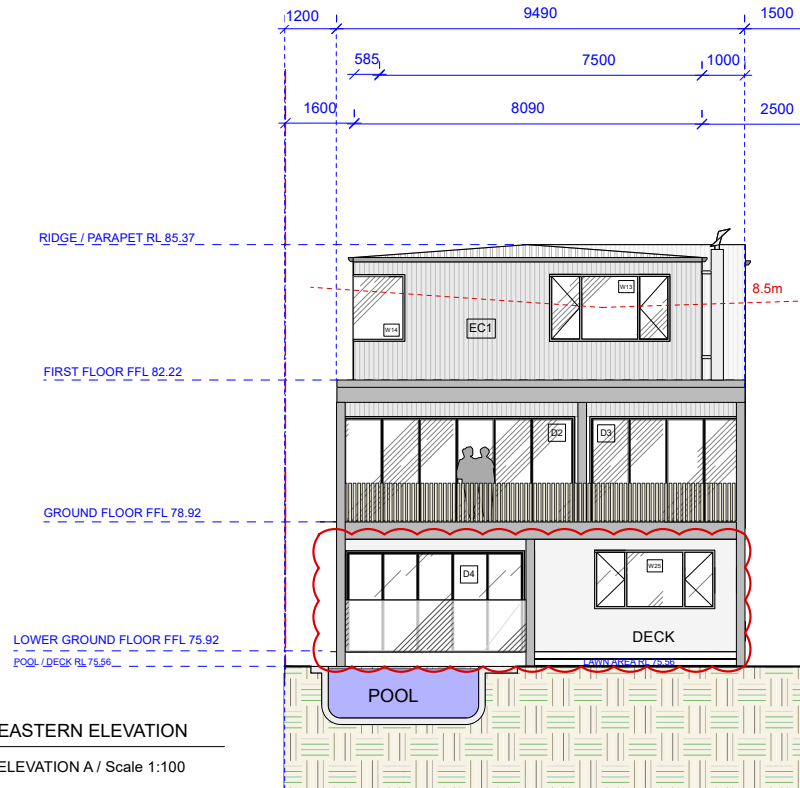
DRAWN: LH

DRAWING
WESTERN ELEVATION

DRAWING NO:
C6
REV:
I







MODIFICATION WORKS - EASTERN ELEVATION - REFER RED CLOUD.
- NEW DOORS AND WINDOWS TO EASTERN ELEVATION
- NO CHANGE IN FOOTPRINT OR EXTERNAL AESTHETIC

REAL CONSTRUCTIONS
LANDSCAPE ARCHITECTURE
PO Box 698 MONA VALE NSW 1660
Tel: 0434 500 705 - AIDLM

PROJECT
Smart Residence
9 Prince Edward Road,
Seaforth NSW 2092

NOTES
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DATE	REV	ISSUE
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12/12/22	H	MOD REVISION
04/05/23	I	MOD Revision

DATE: 04/05/23
SCALE: 1:100 @ A3
DRAWN: LH

DRAWING
EASTERN ELEVATION
DRAWING NO:
C9
REV:
I