



northern
beaches
council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 10 MAY 2023

Ashleigh Sherry
Manager Business System and Administration

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

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1.0 APOLOGIES

Nil

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

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

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 12 APRIL 2023

RECOMMENDATION

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

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2022/1783 - 49 COLLAROY STREET COLLAROY -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

REPORTING MANAGER Steve Findlay

TRIM FILE REF 2023/275396

ATTACHMENTS 1 [↓](#) Assessment Report
 2 [↓](#) Site Plan and Elevations
 3 [↓](#) Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/1783 for alterations and additions to a dwelling house on land Lot 1 DP 1014916, 49 Collaroy Street COLLAROY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1783
Responsible Officer:	Grace Facer
Land to be developed (Address):	Lot 1 DP 1014916, 49 Collaroy Street COLLAROY NSW 2097
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Frederick George McKenzie Jill Maureen McKenzie
Applicant:	Frederick George McKenzie
Application Lodged:	03/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/11/2022 to 24/11/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 16.35%
Recommendation:	Approval
Estimated Cost of Works:	\$ 560,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing dwelling house including a first floor addition.

The application is referred to the Development Determination Panel (DDP) as the proposed application seeks a variation to the Height of Buildings development standard pursuant to WLEP 2011 of more than 10% (1.3m or 16.35%).

The Clause 4.6 variation request for the non-compliance with the height standard arises due to the steep site topography and the existing dwelling being raised on piers. The variation is well founded and

is supported.

One (1) submission was received in objection to the development raising concerns regarding damage to the driveway adjacent to No.47 Collaroy Street.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Alterations and additions to the ground floor including:
 - Lift access and reconfiguration of stairway
 - Living room off the existing dining room
 - Deck extension and new deck to the east, north and west elevations off existing decks
 - New deck to extend off the existing deck along the southern elevation
- Construction of a first floor addition over the existing single storey dwelling consisting of:
 - 3 bedrooms (2 with ensuites)
 - Shower room
 - Wet bar and family room
 - Lift access and stairway
 - New balcony off the living area

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land

Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat

SITE DESCRIPTION

Property Description:	Lot 1 DP 1014916 , 49 Collaroy Street COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one (1) allotment located off a private driveway on the northern side of Collaroy Street. As such, the subject site does not front a public road. The private driveway running along the front of the site also serves No.49A Collaroy Street, which is a battleaxe allotment. The site is irregular in shape with a surveyed area of 422.7m² and is located within the R2 Low Density Residential zone from WLEP 2011. The site accommodates a single storey dwelling house built on poles due to the steep gradient of the land and rock outcrops. Parking is provided on the site via a detached double garage. The elevation of the site varies between a high of approximately RL58.0m within a portion of the Collaroy escarpment within the southwest corner and a low of RL44.3m near the east boundary of the site. The site contains rock outcrops, garden beds, trees and a lawn area. The rear of the site contains a significant rock face which abuts the Collaroy Escarpment Reserve. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one and two storey dwelling houses. Expansive views to Collaroy Beach are obtained from the site towards the east.

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:

DA2004/0801

Addition of Cabana in Rear Yard
Refused on 10 January 2005

Application History

Following the preliminary assessment of the application, the applicant was requested to provide a Landscape Plan in order to accurately calculate the proposed area of landscaped open space (as defined under the WDCP) and provide an updated Clause 4.6 variation request. Additionally, it was requested that the applicant amend the architectural plans to comply with the rear boundary setback control.

Subsequently, the applicant provided further information and amended plans.

The amended plans did not alter the environmental impacts 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:

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	There are no current draft environmental planning instruments.

Section 4.15 Matters for Consideration	Comments
any draft environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(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 amendments to the Plans - Master Set and Clause 4.6 variation request. Subsequently, the applicant provided the requested information. <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 Warringah Development Control Plan 2011 section in this report. (ii) Social Impact The proposed development will not have a detrimental social

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/11/2022 to 24/11/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mrs Margaret Joan Simpson Maggie Simpson	47 Collaroy Street COLLAROY NSW 2097

One (1) submission was received from the neighbouring property to the east with concerns in relation to the suspended driveway which borders the western side of No.47 Collaroy Street. The submitter raised concerns that potential damage to the driveway during construction could adversely impact their home.

The above issues are addressed as follows:

Comment:

Due to the close proximity of No.47 Collaroy Street to the subject site, and the steeply sloping nature of the site, conditions of consent will be included requiring pre and post dilapidation reports to be carried out for this adjoining property. The recommendations included in the accompanying Geotechnical Report will also be included as a condition of consent to ensure any geotechnical risks associated with construction works are mitigated appropriately.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is supported with regard to landscape issues. 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 • E6 Retaining unique environmental features Landscape Referral raises concern that the proposed development does not achieve the 40% landscaped area under the WDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. It is noted the significant non-compliance is existing. The alterations and additions are mainly contained to the existing dwelling footprint and no trees are proposed to be removed. Should the application be approved, all trees and vegetation shown to be retained shall be protected as per the requirements outlined in the conditions of consent. All natural rock outcrops shall be protected during works. Existing physical encroachment within Collaroy Escarpment Reserve are noted, including retaining walls, stairs, lawn area, decking, and paving, as shown on the Survey Plan. No prior application nor approval to encroach upon public land is found and any approval of this development application does not grant approval for the existing encroachment. Council reserves the future right to seek removal of any encroachment for public safety or for any other public capital works.
NECC (Bushland and Biodiversity)	The proposal has been assessed against the following applicable biodiversity-related controls: • Warringah DCP E2 Prescribed Vegetation • Warringah DCP E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat • Warringah DCP E4 Wildlife Corridors • Warringah DCP E5 Native vegetation • Warringah DCP E6 Retaining unique environmental features The south-western portion of the site includes cliff face and rock overhang features associated with the Collaroy escarpment, which is identified as an area of high conservation value. The proposal seeks approval for minor excavation into the cliff face for installation of new footings for the upper level extension. Desktop analysis and a site inspection indicate that the area proposed for new footings contains

Internal Referral Body	Comments
	planted vegetation and exotic species, thus there are no objections to these works. Recommendations of the submitted geotechnical risk report should be complied with to mitigate potential impacts to the adjoining reserve.
NECC (Development Engineering)	No objection subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	Supported. This application was assessed in consideration of: • Supplied plans and reports; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy On assessment the application meets the requirements of the relevant Environmental Planning Instruments and policies. Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.
Parks, reserves, beaches, foreshore	The property adjoins Collaroy Escarpment Reserve downslope. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.

External Referral Body	Comments						
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable and there are no Ausgrid assets present near the proposed development.						
Aboriginal Heritage Office	Conclusion / General Comments 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. <table border="1"> <tr> <th colspan="2">Recommendation</th></tr> <tr> <td>☒</td><td>APPROVAL</td></tr> <tr> <td>☐</td><td>Subject to Conditions</td></tr> </table>	Recommendation		☒	APPROVAL	☐	Subject to Conditions
Recommendation							
☒	APPROVAL						
☐	Subject to Conditions						

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.A473544 dated 11 September 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
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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	9.89m	16.35% (1.3m)	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.89m
Percentage variation to requirement:	16.35%

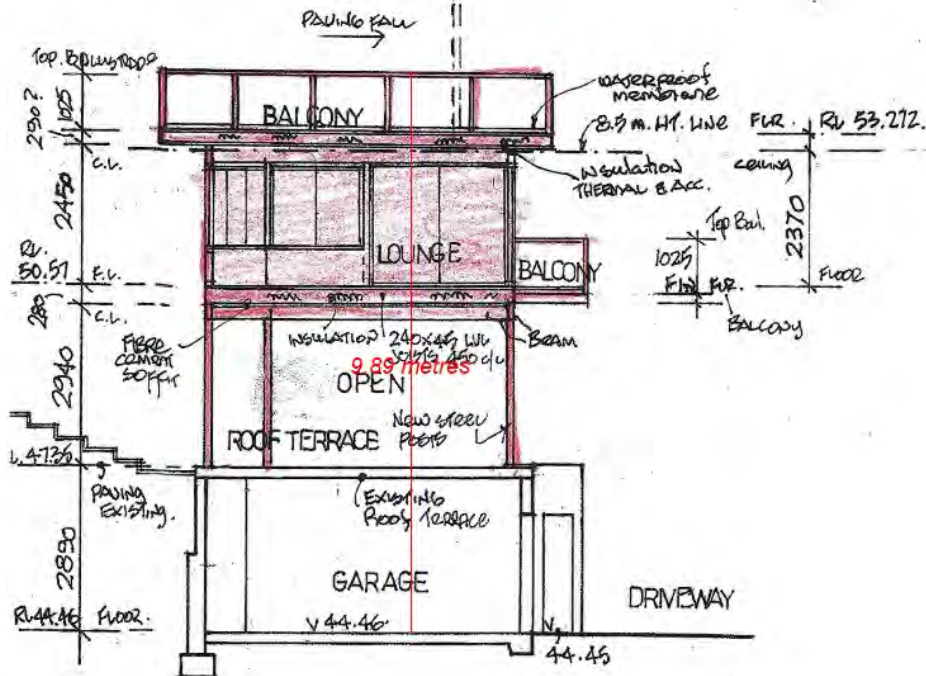


Figure 1 - Building Height Non-Compliance over garage to balustrade

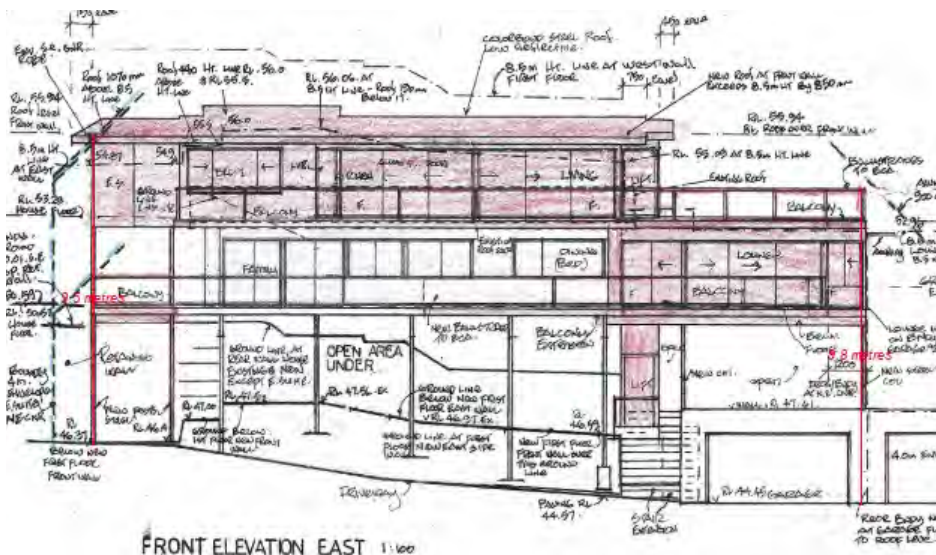


Figure 1A - Building Height Non-Compliance in relation to development as a whole

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney*

[2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The degree of variation is due to the topography of the land which includes a steep escarpment and continuing fall in the land from a west to east direction*
- *The relatively modest non-compliance would not be viewed as out of character in the surrounding residential environment.*
- *The siting, orientation and design of the proposed development and view corridors of surrounding development prevents any view loss, loss of privacy or loss of solar access to neighbouring occupiers.*
- *The siting is not easily visible from either the reserve or the street.*

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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposal does not exceed the maximum prescribed building height across the entirety of the proposed development and the point of greatest non-compliance arises due to existing excavation into the site to accommodate a garage. The height and scale of the proposal is consistent with surrounding two and three storey dwelling houses on similar sites that are constrained by the steep topography of the land. Due to the slope of the site and existing dwelling being raised on piers, the height breach is considered to be reasonable in this instance and an alternative design would be unlikely to result in full compliance with the building height development standard. Furthermore, the proposed skillion roof of the first floor addition which has

been designed to slope with the landform minimises the bulk of the proposal, whilst the open balcony and deck assist in providing visual relief.

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

Comment:

Ocean views towards the east are obtained from surrounding properties. Given the topography of the site, no view corridors are anticipated to be affected as a result of the proposed development. There is sufficient spatial separation between the subject site and adjoining dwellings to preserve privacy. Moreover, Shadow Diagrams accompanying the application demonstrate that a compliant level of solar access will be maintained to surrounding properties.

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

Comment:

The proposal will not adversely impact the scenic quality of the coastal and bushland environment. It is noted that the rock escarpment located along the western side of the site will be protected.

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

Comment:

The subject site is accessed via a private driveway located at the termination of Collaroy Street and does not front a public road. It is also sited significantly lower than Collaroy Escarpment Reserve located along the western boundary. As such, the proposed dwelling will not be readily visible from the public domain.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

- ***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, providing for additional floor space on the site whilst maintaining the landscaped character of the locality.

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 and therefore this objective is not relevant.

It is considered that the development satisfies this objective.

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

Comment:

As the proposal comprises of a first floor addition and additions to the ground floor over existing impervious areas, existing landscaping on the site will be retained.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

6.4 Development on sloping land

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) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	10.8m	50% (3.6m)	No
B3 Side Boundary Envelope	4m (East)	Outside Envelope	Vertical heights of between 0.2m - 1.2m for a horizontal length of 1.2m	No
	4m (West)	Outside Envelope	Vertical heights of between 0.4m - 3.5m for a horizontal length of 23.3m	No
B5 Side Boundary Setbacks	0.9m (East)	Ground Floor: 3.8m First Floor: 2.4m	-	Yes
	0.9m (West)	Ground Floor: 0.9m First Floor: 1.1m	-	Yes
B7 Front Boundary Setbacks	6.5m (South)	1.2m	85.48% (5.3m)	No
B9 Rear Boundary Setbacks	6m (North)	5.9m	1.67% (0.1m)	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (169.08m ²)	6.3% (26.7m ²)	84.2% (142.38m ²)	No, as existing

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Clause B1 Wall Heights stipulates that walls are not to exceed 7.2m from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space). The proposal results in a maximum wall height of 10.8m on the development's north-eastern corner, resulting in a variation of 50% (3.6m) to the control. It is noted that along some portions of the development on the western and southern elevations, the proposal complies with the wall height control.

The Clause provides an exception to the control on sites with slopes greater than 20% within the building footprint (measured at the base of the external walls), provided the building does not exceed

the 8.5m height development standard, is designed and located to minimise bulk and scale, and has a minimal visual impact when viewed from the downslope of the land. Whilst the proposal exceeds the 8.5m height control, it is considered that the bulk and scale of the proposal is reasonable and its visual impact when viewed from the downslope sides of the land is minimal.

Merit consideration:

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

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

Comment:

The proposed development is not anticipated to be perceptible from Collaroy Street or from the public reserve which adjoins the site to the west. As adjoining and surrounding properties are oriented towards the east to capitalise on water views, the proposal's visual impact will be minimal.

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

Comment:

The subject site is located below the Collaroy Escarpment Reserve which exhibits significant mature trees and vegetation along the rockface which adjoins the site. As such, the development will be sited below the visually dominant tree canopy level of the locality.

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

Comment:

Due to the siting of surrounding development, view sharing to and from public and private properties will be maintained.

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

Comment:

Privacy, view corridors and access to sunlight will all maintained by virtue of the orientation and design of the proposed development and siting.

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

Comment:

As the proposed development is on a slope greater than 20% within the building footprint, the numerically non-compliant wall height is considered reasonable in this instance. There are limited areas on the site where additional floorspace could be provided without requiring significant excavation or resulting in a reduction in the site's small remaining landscaped open space. Excavation for the proposal will be limited to the footings for the pole construction of the first floor addition thereby preserving the natural landform.

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

Comment:

The proposed skillion roof reduces the first floor addition's visual dominance and is an innovative design solution that is compatible with the sloping topography.

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

B3 Side Boundary Envelope

Description of non-compliance

Clause B3 of the DCP requires buildings to be sited within a building envelope determined by projecting places at 45 degrees from 4m above ground level at the side boundaries. The proposed development encroaches into the side boundary envelope along both the eastern and western elevations. As demonstrated in Figure 2 and 3 below, the envelope non-compliance along the eastern elevation occurs along a horizontal length of 1.2m for vertical heights of between 0.2m - 1.2m, whilst the encroachment along the southern elevation occurs along a length of 23.3m over maximum vertical heights of 0.4m - 3.5m.

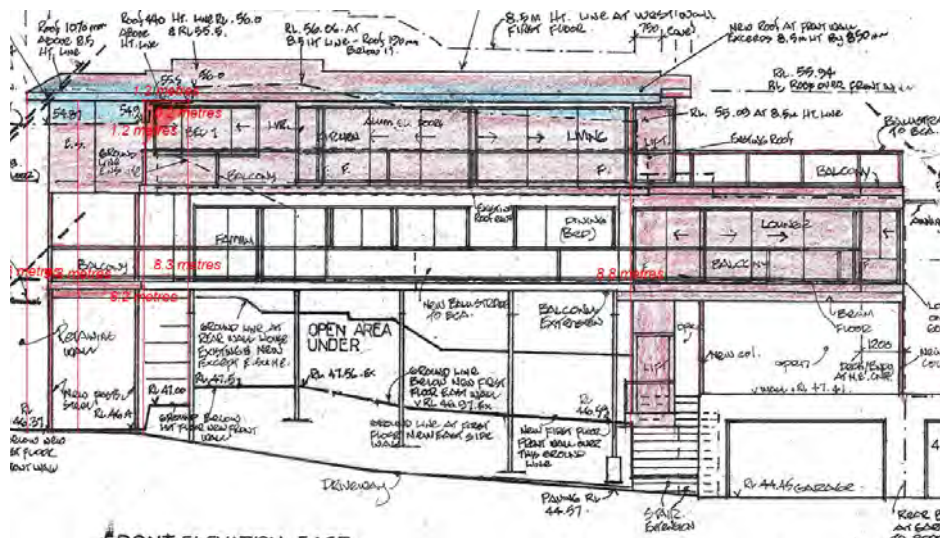


Figure 2 - Envelope Encroachment along the eastern elevation

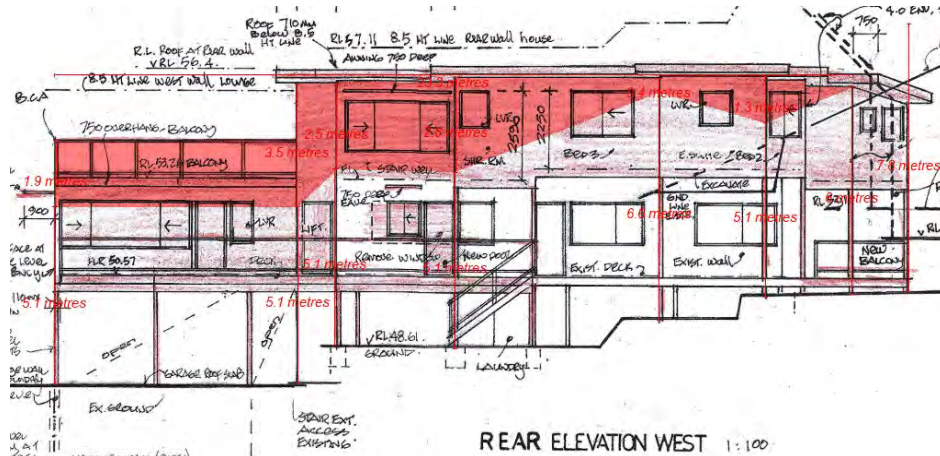


Figure 3 - Envelope Encroachment along the western elevation

Merit consideration

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

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

Comment:

Due to the steeply sloping topography and surrounding vegetation, the proposal will not be visually dominant when viewed from the public domain or surrounding properties. The proposal incorporates articulation through varied setbacks and open decks and balconies along the eastern and western elevations. Furthermore, the skillion roof which slopes with the landform assists in mitigating the proposal's height and bulk.

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

Comment:

Adequate light, solar access and privacy will be retained between the subject site and neighbouring buildings. There is sufficient spatial separation between the subject site and the adjoining dwelling to the east (No.47 Collaroy Street), noting that this dwelling exhibits minimal windows along its western elevation. This ensures any impacts on solar access and privacy arising from the eastern envelope encroachment are negligible. The western envelope encroachment faces rock outcrops on Council-owned land and raises no concerns in relation to adverse amenity impacts.

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

Comment:

The proposed development is constrained by the siting of the existing single storey dwelling which is raised on piers and adjoins a significant rock face which abuts the Collaroy Escarpment

Reserve. Moreover, the narrow nature of the site and gradient of the land makes strict compliance with the building envelope control difficult to achieve. It is noted that given the existing dwelling's irregular setbacks to the side boundaries, the envelope encroachment is reduced as the site widens towards the frontage.

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

B7 Front Boundary Setbacks

Description of non-compliance

Clause B7 of the DCP requires new development to be setback 6.5m from the front boundary. The proposed new deck at the ground level and ensuite and robe on the first floor level are setback 1.2m from the front boundary line, resulting in a variation to the control of 85.48% (5.3m). The existing single storey dwelling house is setback 2.3m from the front boundary and as such, the proposal results in further encroachment in the front setback area by 1.1m.

Merit consideration:

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

- ***To create a sense of openness.***

Comment:

The proposal exhibits varying setbacks to the front boundary, demonstrating adequate articulation to reduce the development's visual dominance. Due to the site's location off a private driveway, there is substantial distance between the front of the site and the public domain which further maintains a sense of openness.

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

Comment:

Structures that encroach into the front setback area are observed along Collaroy Street and the proposed development at No.49 Collaroy Street is not out of character for the locality nor the existing pattern of buildings. Furthermore, given the existing dwelling's numerically non-compliant front setback, the proposal generally maintains the visual continuity of buildings and landscape elements.

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

Comment:

Landscaping between the front of the site and Collaroy Street will preserve the visual quality of the streetscape.

- ***To achieve reasonable view sharing.***

Comment:

The proposal will maintain opportunities for view sharing from the site and surrounding properties.

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

B9 Rear Boundary Setbacks

Description of non-compliance

Clause B9 of the DCP requires development to be setback a minimum of 6m from the rear boundary. The proposed northern side wall of the ground floor lounge room exhibits a setback of 5.9m to the rear boundary resulting in a variation to the control of 1.67% (0.1m). The proposed first floor balcony demonstrates full compliance with the rear boundary setback requirement.

It should be noted that the existing garage is numerically non-compliant with the rear boundary setback control.

Merit consideration:

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

- ***To ensure opportunities for deep soil landscape areas are maintained.***

Comment:

Although there are minimal opportunities for deep soil landscape areas on the site, due to the siting of existing development and irregular subdivision pattern, the existing landscaped areas to be retained are considered adequate in this instance.

- ***To create a sense of openness in rear yards.***

Comment:

A sense of openness will be maintained in the rear yard as the first floor open balcony will assist in providing visual relief when the proposal is viewed from the rear adjoining dwelling (No.49A Collaroy Street). The yard area to the north of the dwelling is devoid of any ancillary structures which avoids a 'walled in' development on the site.

- ***To preserve the amenity of adjacent land, particularly relating to privacy between buildings.***

Comment:

The proposal is not anticipated to have any adverse impacts on neighbouring amenity or the surrounding environment.

- ***To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.***

Comment:

The minor numerical non-compliance with the rear setback control arises due to the siting of the lounge room wall's supporting posts directly over the existing masonry garage. The property boundary runs along the centre of the garage wall and positioning the lounge room in this location has been dictated by the applicant's Engineer's recommendations to enhance the proposal's structural integrity. As such, the existing pattern of the built form will be maintained.

- ***To provide opportunities to maintain privacy between dwellings.***

Comment:

Privacy will be maintained due to the siting of the proposed development, topography of the site and surrounding land and orientation of adjoining dwellings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Under Clause D1 of the DCP, a minimum of 40% (169.08m²) of the subject site is required to be landscaped open space (LOS). The proposal results in a landscaped open space of 6.3% (26.7m²), which presents an 84.2% (142.38m²) variation to the control. The existing structures and pervious areas on the site result in numerically non-compliant landscaped open space and it is noted that the additions on the ground floor level will occur over existing pervious areas, thereby resulting in no net loss in LOS.

Merit consideration

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

- ***To enable planting to maintain and enhance the streetscape.***

Comment:

The subject site is not visible from Collaroy Street, nonetheless existing planting within the road reserve adjoining the site's private driveway will be maintained to preserve the visual quality of the streetscape.

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

Comment:

The proposal will not adversely impact on any indigenous vegetation, topographical features or

habitat for wildlife. Council's Bushland and Biodiversity Officer is supportive of the application in line with the biodiversity-related controls of the DCP.

- ***To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.***

Comment:

All trees, vegetation and rock outcrops shown to be retained shall be protected as per the requirements outlined in the conditions of consent imposed by Council's Landscape Officer. Collaroy Escarpment Reserve which adjoins the site provides for the establishment and maintenance of shrubs and canopy trees of a size and density to mitigate the bulk and scale of the built form. The site's location in close proximity to the Council reserve assists in offsetting the visual impacts of the site's deficient landscaped areas.

- ***To enhance privacy between buildings.***

Comment:

There is sufficient vegetation between the proposed development and adjoining properties to maintain privacy between buildings.

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

Comment:

The proposed new balcony is anticipated to enhance outdoor recreational opportunities on the site to meet the needs of the occupants.

- ***To provide space for service functions, including clothes drying.***

Comment:

The subject site will retain space for service functions, including clothes drying in the area at the north (rear) of the site.

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

Comment:

Council's Development Engineer has reviewed the application in relation to stormwater and found that the proposal is not likely to result in any adverse impacts or effects on the infiltration of stormwater.

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

D8 Privacy

Description

Clause D8 of the DCP requires that building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties. Due to the proposed first floor

balcony on the northern side of the dwelling, privacy impacts to the adjoining dwellings at No.49A Collaroy Street and No.47 Collaroy Street have been considered.

Merit consideration

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

- ***To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.***

Comment:

The proposed first floor balcony optimises privacy through demonstrating a compliant setback to the rear northern boundary, which provides sufficient spatial separation to mitigate overlooking. It is noted that due to the irregular subdivision pattern, the majority of overlooking will occur over undeveloped Council-owned land, rather than directly into the private open space of No.49A Collaroy Street. Furthermore, the balcony will be oriented to face the east to capitalise on water views obtained from this side, therefore overlooking to the north will be minimal.

Due to No.47 Collaroy Street being located significantly lower than the subject site with their balcony and windows facing the east, any potential overlooking to this property as a result of the proposed balcony is considered acceptable within the low density residential setting. It is also noted that there is an existing deck on the ground floor level facing this adjoining property.

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

Comment:

The proposed first floor balcony will ensure the residential amenity of the neighbouring properties is achieved while maintaining a functional outdoor area. Given the building height non-compliance that arises due to the proposed balcony's location over the excavated portion of the site where the garage is located, conditioning a privacy screen along the northern elevation would add unnecessary bulk and additional height, and is not considered necessary in this instance. If a privacy screen were to be constructed along the eastern elevation, it would result in view loss from the site and result in a poor design outcome.

- ***To provide personal and property security for occupants and visitors.***

Comment:

The proposal will provide personal and property security for occupants and visitors.

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

E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat

The south-western portion of the site includes cliff face and rock overhang features associated with the Collaroy escarpment, which is mapped as an area of high conservation value. The proposal seeks approval for minor excavation into the cliff face for installation of new footings for the upper level extension.

Merit consideration:

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

- ***To protect and promote the recovery of threatened species, populations and endangered ecological communities.***

Comment:

The majority of the proposed works are located above the footprint of the existing dwelling or within the northern portion of the site, therefore the protection of threatened species will be maintained.

- ***To protect and enhance the habitat of plants, animals and vegetation communities with high conservation significance.***

Comment:

Council's Bushland and Biodiversity Officer has assessed the application and found that there will be no adverse impacts to the portion of the site identified as of high conservation significance.

- ***To preserve and enhance the area's amenity, whilst protecting human life and property.***

Comment:

The proposed development will not have any detrimental impacts on neighbouring amenity.

- ***To improve air quality, prevent soil erosion, assist in improving water quality, carbon sequestration, storm water retention, energy conservation and noise reduction.***

Comment:

The application has been reviewed by Council's Development Engineer in respect to stormwater and the proposal was found to be supportable, subject to conditions. The proposed lift has been located away from the boundaries to reduce noise impacts to adjoining dwellings. Additionally, the proposed development meets BASIX standards required for appropriate energy conservation.

- ***To provide natural habitat for local wildlife, maintain natural shade profiles and provide psychological & social benefits.***

Comment:

The proposal will not detrimentally impact natural habitat for wildlife located on the subject site or on the adjoining Collaroy Escarpment Reserve.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$5,600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$560,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

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

PLANNING CONCLUSION

This proposal for alterations and additions to the existing dwelling house has been referred to the Development Determination Panel (DDP) due to the application proposing a variation to the Height of Buildings development standard of more than 10% (1.3m or 16.35%).

When assessed against the WLEP 2011 and WDCP 2011 objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.

The development is sympathetic of the character of the site and will maintain an appropriate visual relationship with the surrounding environment.

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

The Clause 4.6 variation is assessed as being well founded and is supported.

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 WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/1783 for Alterations and additions to a dwelling house on land at Lot 1 DP 1014916, 49 Collaroy Street, COLLAROY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan - Drawing No.374-1A Revision A	1 March 2023	Newbuild Design and Drafting

Ground Floor Plan, First Floor Plan, East and North Elevations - Drawing No.374-2B Revision B	1 March 2023	Newbuild Design and Drafting
Section A-A and Section B-B, South and West Elevations - Drawing No.374-3B Revision B	1 March 2023	Newbuild Design and Drafting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	16 March 2022	Crozier Geotechnical Consultants
BASIX Certificate No.A473544	11 September 2022	Robert Geoghegan

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	13 September 2022	Frederick McKenzie

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. Limitations of this Consent

Existing physical encroachment within Collaroy Escarpment Reserve are noted, including retaining walls, stairs, lawn area, decking, and paving, as shown on the Survey Plan. No prior application nor approval to encroach upon public land is found. This consent is only for the works on the Approved Architectural Plans and no approval is granted under this Development Consent for any pre-existing structures on site or any other works shown (or omitted) on the plans. Council reserves the future right to seek removal of any encroachment for public safety or for any other public capital works.

Reason: To ensure compliance with the terms of this consent

3. 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.

4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$5,600.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$560,000.00.

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

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

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

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

7. Security Bond

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

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

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

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

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

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

8. **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 be connected to excising inter-allotment easement that benefits the site.

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

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

9. **Erosion and Sediment Control Plan**

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

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

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

Reason: To protect the receiving environment.

10. **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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Compliance with Standards**

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

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

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

13. **External Finishes to Roof**

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

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

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

14. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members

and other similar items.

- o No.47 Collaroy Street, Collaroy

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **Protection of Landscape Features and Sites of Significance**

All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed during demolition, excavation and construction works, except where affected by works detailed on approved plans.

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.

17. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist

with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Principal Certifier must ensure that:

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

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

Reason: Tree and vegetation protection.

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

Council proactively regulates construction sites for sediment management.

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

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development

activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: To protect the receiving environment.

21. **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.

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

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

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

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

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

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

23. **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.

24. **Survey Certificate**

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

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

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

25. **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.

26. **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**

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 Certifier prior to the issue of an Occupation Certificate.

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

28. **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.

29. **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.

30. **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.

31. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

32. **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.

33. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition

and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

34. **Geotechnical Recommendations**

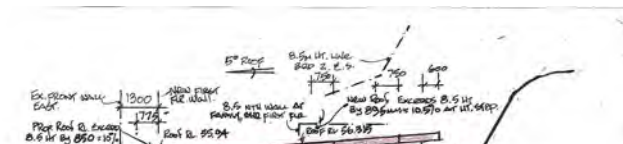
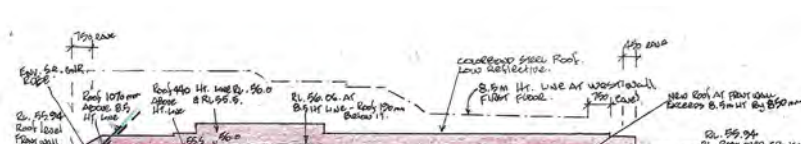
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

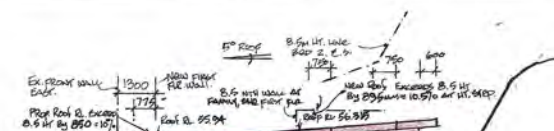
Reason: To ensure geotechnical risk is mitigated appropriately.

ENDY: 30' Rock Escarpment

REAR DECK/ENDY
6000

1000 1000 1000









planning
progress

**CLAUSE 4.6 VARIATION REQUEST
FOR
HEIGHT OF BUILDING DEVELOPMENT STANDARD
CLAUSE 4.3 OF WARRINGAH LEP
AT
49 COLLAROY STREET, COLLAROY**

**Prepared for
Frederick McKenzie
September 2022
(Updated April 2023)**

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INTRODUCTION

This Clause 4.6 (cl.4.6) Variation Request is prepared in support of a Development Application (DA) for alterations and additions to the existing dwelling house at 49 Collaroy Street, Collaroy and seeks to vary Clause 4.3 of the Warringah Local Environmental Plan 2011(LEP) with regard to the Height of Building Development Standard.

This written cl. 4.6 Variation Request has been prepared in accordance with cl.4.6 – Exception to Development Standards of the LEP, and the NSW Department of Planning and Infrastructure (now DPIE), ‘Varying development standards: A Guide’, August 2011 (NSW guide to varying development standards).

Written cl.4.6 Variation Request has been updated to include the height of building and justification for variation for the breach at ‘balcony balustrade above the garage’. Key updates are at Table 1, Figures 1 and 2 and Parts 8 and 9 of this Variation Request.

DEVELOPMENT STANDARD TO BE VARIED

Clause 4.3 Height of buildings

Comment: An 8.5 metre height control applies to the subject site as shown on the LEP Height of Buildings Map.

PROPOSED DEVELOPMENT

The proposed development, as set out in the Statement of Environmental Effect, seeks alterations and additions to the existing dwelling house for an:

- Additional storey over the existing single storey dwelling to include:
 - o 3 bedrooms – 2 with ensuites (first floor)
 - o Shower room
 - o Wet bar and family room (first floor)
 - o New balcony off living area (first floor)
 - o Lift access and stairway
- Addition to ground floor accommodation to include:

- o Lift access and reconfiguration of stairway
 - o Living room off existing dining room
 - o Deck extension and new deck to east, north and west off existing decks and new living room
 - o New deck to extend off existing deck to south elevation.
- Retain existing open undercroft area below dwelling as per pole construction with addition of lift access

CLAUSE 4.6 VARIATION REQUEST TO VARY CLAUSE 4.3 OF THE SYDNEY LEP – HEIGHT OF BUILDINGS

Clause 4.3 of the LEP provides a degree of flexibility in applying development standards to development proposed to achieve better outcomes for and from the development.

The NSW guide to varying development standards includes a template at appendix 3. This Clause 4.6 Variation Request has been prepared in accordance with this guide:

1. What is the name of the environmental planning instrument that applies to the land?

Warringah Local Environmental Plan 2011.

2. What is the zoning of the land and what are the objectives of the zone?

Zone R2 Low Density Residential

1 Objectives of 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 Warringah.*

3. Identify the Development Standard to which this Clause 4.6 Variation applies?

The development standard sought to be varied by this cl.4.6 Variation Request is Height of Buildings (cl. 4.3 of the LEP).

4. What are the objectives of the development standard?

Clause 4.3 Height of buildings

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
 - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
 - (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
 - (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
- (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](#).*
- (2A) *If the [Height of Buildings Map](#) specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

5. What is the numeric value of the development standard in the environmental planning instrument?

The development standard is 8.5 metres in accordance with Clause 4.3(2).

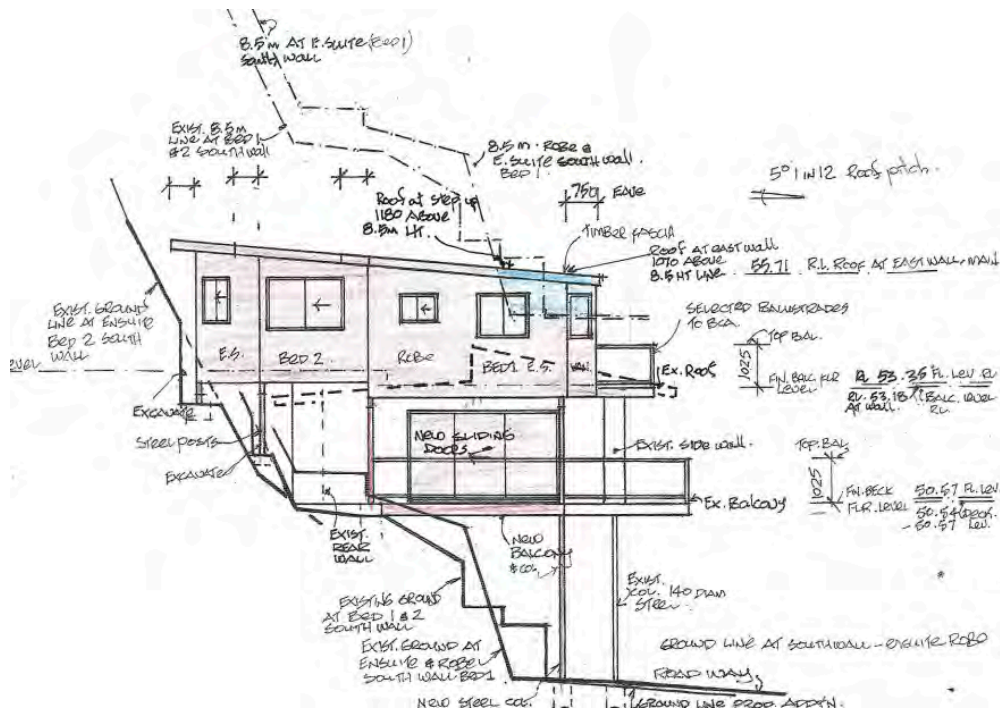
6. How do the existing and proposed numeric values relate to the development standard and what is the percentage variation?

Table 1 – Height of Building numeric variation

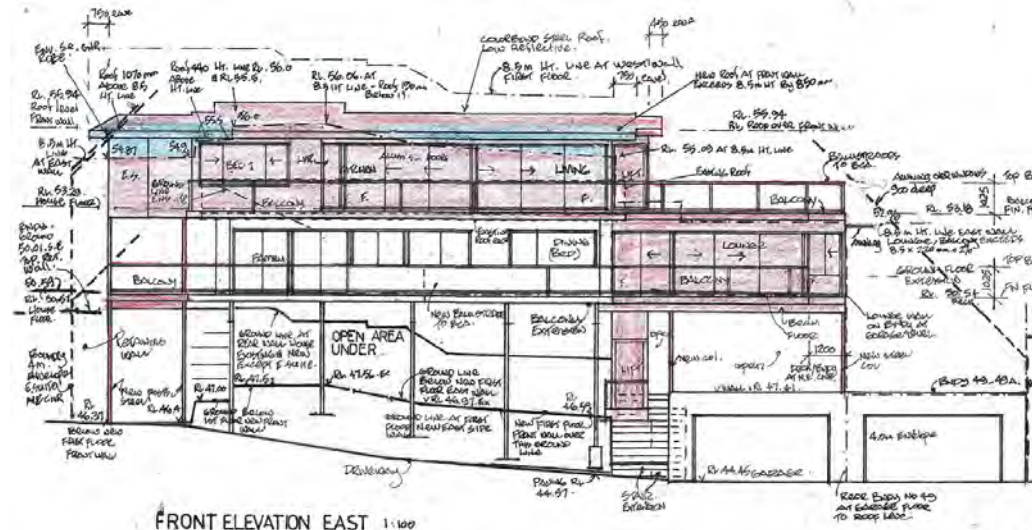
Height of Building			
Current Height of Building (m)	Maximum Height of Building under LEP	Level of non-compliance	Percentage Variation
7.35m	8.5 m	9.57m – Southeast section as shown on plans (dwg no 374-2B - front elevation east)– exceeds by 1070mm	12.5%
		9.35m - Northwest section as shown on plans (dwg no 374-2B - side elevation north)– exceeds by 850mm	10%
		9.875m – balcony balustrade above garage (dwg no 374-3B – Section B-B) – exceeds by 1375mm	16%

Extent of Variation as shown on submitted plans

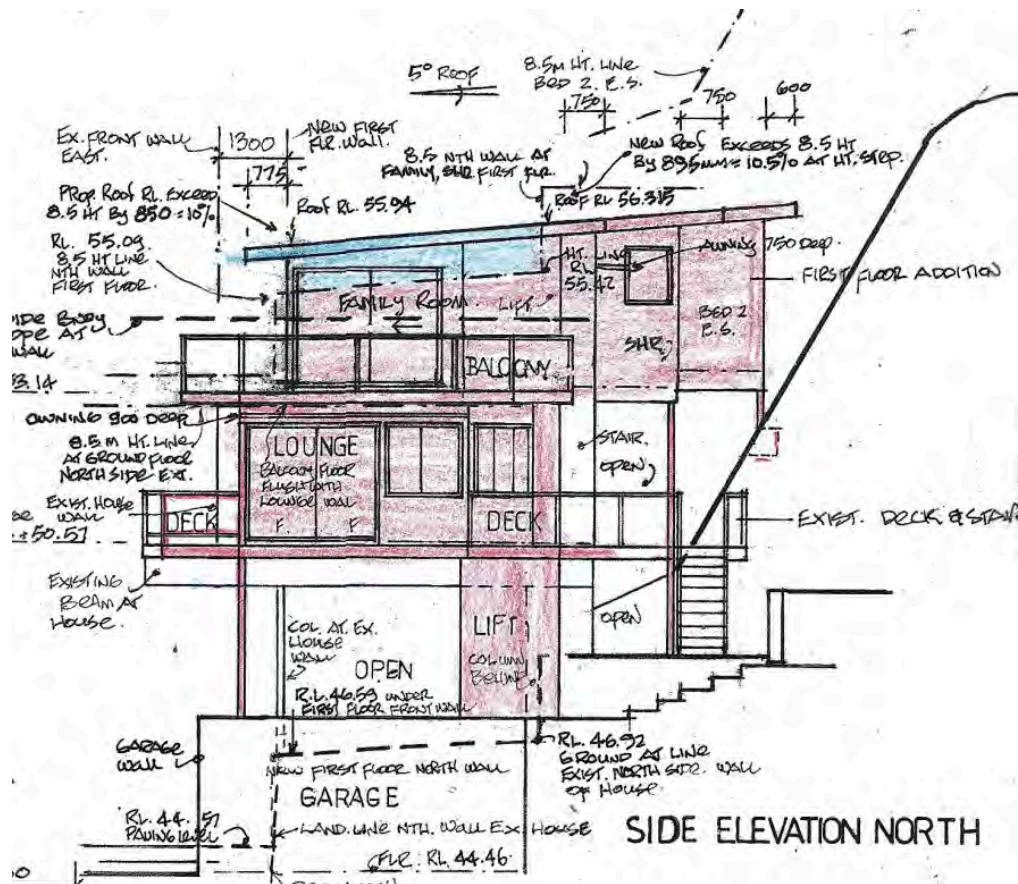
Figure 1 – Extent of variation shown in blue



Source: Extract from Drw. No. 374-2B - Side elevation south

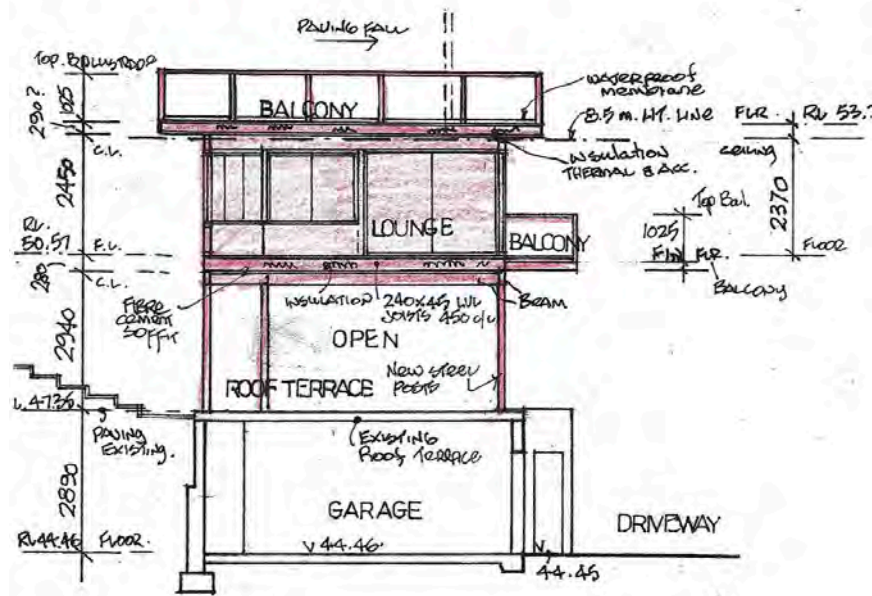


Source: Extract from Drw. No. 374-2B - Front elevation east – Amended Elevations



Source: Extract from Drw. No.374-2B - Side elevation north – Amended Elevations

Figure 2 – Extent of variation of balcony balustrade above the garage – updated as requested. The extent of variation to balcony floor is 350mm and top of balustrade 1375mm



SECTION B-B

Source: Extract from Drw.No.374-3B – Section B-B

7. Application of Clause 4.6 of the LEP

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

Comment: This cl.4.6 Variation Request is applying on these grounds, in accordance with the following five requirements:

1. Subject to a written request from the applicant that seeks to justify the contravention of the development standard (clause 4.6(3)).

Comment: This cl.4.6 Variation Request meets the requirements for a written request.

2. That written request must seek to justify contravention of the standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in particular circumstances of the case (clause 4.6(3)(a)); and
- That there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)).

Comment: Appropriately addressed in Parts 8 and 9 of this Request.

3. The consent authority must consider the written request.

Comment: This is the responsibility of the consent authority in considering this Request.

4. The consent authority must be satisfied that:

- The written request has adequately addressed the matters that are required to be demonstrated, i.e. compliance is unreasonable and unnecessary and sufficient environmental planning grounds (clause 4.6(4)(a)(i)).
- The development is 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 grounds (clause 4.6(4)(a)(ii)).

Comment: This is the responsibility of the consent authority to assess the information in Parts 8, 9 and 10 of this Request.

5. Concurrence to the variation must have been obtained from the Director-General grounds (clause 4.6(4)(b)).

Comment: The Director-General has issued a blanket concurrence to variations to development standards where the variation is made pursuant to an environmental planning instrument which contains clause 4.6 in the form contained in the standard template or in similar terms.

8. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The court provided five tests that can be applied to establish whether compliance with the development standard is unreasonable or unnecessary.

Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard.

As outlined below, the proposed development will achieve the objectives of the development standard notwithstanding non-compliance with the numerical requirements.

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

Comment: The proposed development does not exceed the maximum height limit across the entire development. The degree of variation is due to the topography of the land which includes a steep escarpment and continuing fall in the land from a west to east direction, resulting in the non-compliance with Cl. 4.3.

The relatively modest non-compliance would not be viewed as out of character in the surrounding residential environment. A two-storey dwelling on the site is in keeping with neighbouring built form and the height and scale of the proposed development would be compatible with the surrounding and nearby development, meeting objective (a) of Cl. 4.3 of the LEP.

The greatest numerical extent of variation is to the top of the glazed balustrade above the garage. Visual bulk amounts to only a 350mm exceedance to the balcony floor. The remaining breach of 1025mm (overall 9875mm-16% breach) relates to fully glazed balustrade and remains compatible with the height and scale of surrounding development.

There are other examples of height exceedance within the immediate vicinity of the site including the approved and accepted variation request at no. 50 Collaroy Street which is 11.15 metres, a 31% breach.

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

Comment: As set out in the Statement of Environmental Effects, the new proposed additions, alterations and skillion roof design slopes in accordance with the gradient of the land. Further to this, the siting, orientation and design of the proposed development and view corridors of surrounding development prevents any view loss, loss of privacy or loss of solar access to neighbouring occupiers.

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

Comment: The design of the proposed development is sympathetic to the character of the surrounding environment as detailed under objectives (a) and (b) and is not easily visible from the public realm, including the reserve to the rear and the public street.

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

Comment: As above, the siting is not easily visible from either the reserve or the street. Further to this, the design of the proposed development is sympathetic to the character of the surrounding environment as detailed under objectives (a) and (b).

Test 2: The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary

Comment: The underlying purpose of the standard is to control the height of dwellings in this location to ensure that new development is appropriate in its context. However, this test is not strictly applicable to the proposed development as the development meets the objectives of the standard notwithstanding the minor non-compliance.

Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Comment: Not applicable to the proposal.

Test 4: The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Comment: Not applicable to the proposal.

Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Comment: Not applicable to the proposal.

9. Are there sufficient environmental planning grounds to justify contravening the development standard?

Comment: There are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The development proposed is permissible with consent within the R2 Zone and is consistent with the relevant objectives.
- The siting, bulk, scale and massing of the proposed development is appropriate in the setting of the subject site. The degree of variation is modest and expected due to the steep topography of the site. The greatest degree of variation is with regard to a fully glazed balustrade which would have no impact in terms of bulk, scale and massing.
- The proposed development would not give rise to any harmful impacts on neighbouring amenity.
- The proposed development would not be viewed as out of character from the streetscape or surrounding environment. There are other examples of greater exceedance of the maximum height of buildings within the vicinity of the site.

10. Is the proposed development, despite the contravention to the development standard, in the public interest?

Comment: As outlined in Parts 8 and 9 of this Report, the proposed development meets the objectives of the zone and the development standard in accordance with Cl.4.6 (4) (a) (ii). For these reasons, the proposed development is in the public interest.

11. Is there any other relevant information to be considered in order to justify varying the development standard?

Comment: The proposed development meets all the other relevant development standards of the LEP.

CONCLUSION

It is requested that council support the proposed variation to Clause 4.3 of the Warringah LEP 2011 for the reasons set out in this report.

ITEM 3.2**DA2022/2263 - 2A GOLF PARADE MANLY - ALTERATIONS
AND ADDITIONS TO AN EXISTING BUILDING FOR USE AS A
RESIDENTIAL DWELLING HOUSE****REPORTING MANAGER** Rod Piggott**TRIM FILE REF** 2023/275480**ATTACHMENTS**
1 [↓](#) **Assessment Report**
2 [↓](#) **Site Plan and Elevations**
3 [↓](#) **Clause 4.6****PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/2263 for alterations and additions to an existing building for use as a residential dwelling house on land at Lot 2 DP 829523, 2A Golf Parade MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2263
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 2 DP 829523, 2 A Golf Parade MANLY NSW 2095
Proposed Development:	Alterations and additions to an existing building for use as a residential 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:	Manly Central Pty Ltd
Applicant:	The Trustee For Manly Central Unit Trust
Application Lodged:	04/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/01/2023 to 25/01/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 36.7%
Recommendation:	Approval
Estimated Cost of Works:	\$ 975,260.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing building for use as a residential dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the development exceeding the floor space ratio development standard by more than 10%. The floor space ratio of the proposed development has been calculated at 0.82:1 (229m²), which represents a variation of 36.7% to the prescribed 0.6:1 floor space ratio.

The clause 4.6 variation request regarding the non-compliance with FSR development standard arises from the existing building having a non-compliant FSR, which is 50% above compliance with the LEP. The proposal significantly decreases the extent of FSR non-compliance to 36.7% and does not

unreasonably increase the bulk or scale of the building or lead to adverse amenity impacts upon adjacent properties or the public domain.

Two submissions were received during the notification period that raised objection with matters relating to the side setback of the new building additions and the siting of the driveway crossover impacting the availability of on street parking spaces.

Critical assessment issues include non-compliance with the floor space ratio development standard, side setbacks, total open space and the siting of the parking spaces.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing commercial building and change of use to a residential dwelling house. The proposal includes partial demolition of existing structures, an extension at the front of the building, internal layout changes and residential fit-out, front fence and 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 Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 2 DP 829523 , 2 A Golf Parade MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Golf Parade. The site is irregular in shape with a frontage of 9.667m along Golf Parade and a maximum depth of 40.481m. The site has a surveyed area of 279.6m². The site is located within the R1 General Residential zone and accommodates a two-storey commercial building. The site is generally flat and without any significant landscape features. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low and medium density residential buildings to the south and west and commercial land uses to the north and east.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are

Section 4.15 Matters for Consideration	Comments
and social and economic impacts in the locality	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 11/01/2023 to 25/01/2023 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 2 submission/s from:

Name:	Address:
Mr Timothy John Evans	4 Golf Parade MANLY NSW 2095
Ms Sarah Louise Paine	2 Golf Parade MANLY NSW 2095

The following issues were raised in the submissions:

- Side setbacks
- Air conditioning noise
- Impact upon on-street parking

The above issues are addressed as follows:

- **Side setbacks**

The submissions raised concerns that the new building additions are not sufficiently setback from the side boundaries.

Comment:

The side setbacks of the proposed development are considered acceptable and are not expected to result in any adverse built form or amenity impact upon adjacent properties. Appropriate levels of privacy and solar access is maintained to adjacent properties. The narrow width of the site limits the ability for new development to comply with the side setback control requirement.

- **Air conditioning noise**

The submissions raised concerns regarding the siting of the proposed outdoor air conditioning unit and potential noise impacts upon adjacent properties.

Comment:

Council's development controls do not specify where outdoor air conditioning units can be sited. A condition is recommended to ensure noise from the air conditioning unit does not exceed 5dBA above background levels from the nearest property boundary.

- **Impact upon on-street parking**

The submissions raised concerns that the siting of the proposed driveway crossover will reduce the amount of available on-street parking.

Comment:

The siting of the proposed driveway crossover is not considered to unreasonably impact upon the availability of on-street parking. A condition is recommended to taper the width of the crossover from 4.5m from the boundary to 3.5m at the kerb. The relocation of the proposed hardstand parking area is not recommended due to the provision of landscaping along the eastern boundary. This landscaped area provides an appropriate distribution of landscaped area within the front setback area.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as

Internal Referral Body	Comments
	this however may be determined at Construction Certificate Stage.
Environmental Health (Contaminated Lands)	General Comments A detailed site investigation has been undertaken by Harwood Environmental Consults which revealed the site is suitable for residential use with no remedial action required Recommendation APPROVAL - no conditions
Landscape Officer	The proposal is supported with regard to landscape issues. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings The site is currently all hard surface and the proposed works will dramatically improve the landscaped area and amenity, which is supported. The landscape proposal is generally supported and all on slab landscaping shall meet Council's minimum soil depth requirements.
NECC (Development Engineering)	The subject site meets the OSD exemption and connection of stormwater to the kerb is acceptable. The proposed driveway relocation and widening is acceptable subject to conditions limiting the width to ensure off-street parking is maintained. Development Engineering support the proposal, subject to conditions as recommended.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many

provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1325820S_02, dated 09/12/2022). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0008274060-02, dated 09/12/2022).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	52

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

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 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 program 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.

In response to the above requirements of Chapter 4, the applicant has submitted a Detailed Environmental Site Investigation dated 01/12/2022 and prepared by Harwood Environmental Consultants (HEC). In its conclusion, the investigation states:

The results of soil sampling indicated that the site soils are likely to be suitable for residential use with accessible soils, with no requirement for remediation. One detection of PAHs (benzo(a)pyrene) at levels above the applicable criteria for this site use are considered to be representative of a heterogeneous sample containing bitumen from the drilling, rather than a contamination hotspot.

The groundwater investigation determined that copper and zinc were present in groundwater beneath the site in concentrations above the applied groundwater criteria. HEC consider that given the long history of residential use of the surrounding area and the very marginal exceedances detected, that there is not likely to be a meaningful risk to ecological receptors.

The following limitations are inherent in this conclusion:

Asbestos has not been identified in site soils, and no asbestos has been identified visually on site surfaces. Soil sampling was completed using soil borings rather than larger test pits as the site was operational at the time of investigation. The potential exists that asbestos may exist undetected in uncontrolled FILL soils underlying the site, however based on the age of the building (extant prior to the earliest photographs in 1943) and the fact that the slab appears to have been intact from this time until the present day, HEC consider it unlikely that asbestos is present in soils beneath the slab. Any future redevelopment of the site should however be accompanied by an Unexpected Finds Protocol detailing the measures to be taken in the event of detection of asbestos during site works.

HEC therefore recommends that the site is likely to be suitable for the proposed residential land use with no further investigation or remediation required.

In this regard it is considered that the site poses no risk of contamination and therefore, no further

consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.83m	N/A	Yes
Floor Space Ratio:	0.6:1 (167.5m ²)	0.82:1 (229m ²)	36.7%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (167.5m ²)
Proposed:	0.82:1 (229m ²)
Percentage variation to requirement:	36.7%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra*

Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are

achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The proposed departure to the standard comes in the context of the adaptive re-use of a nonconforming, prohibited use and the removal of the non-conforming use from the residential zone;*
- *The proposed development results in a reduction to FSR [0.9:1 down to 0.82:1];*
- *FSR is often used as a numeric indication of the bulk and scale of a building. In light of the proposal being for alterations and additions to an existing building (in accordance with Part 4.4.2 of Manly DCP 2013), and on the assumption that the site/development is the subject of existing*

use rights, in our opinion, then upon consideration of the second planning principle in Fodor Investments v Hornsby Shire Council [2005] 71 ... the bulk and scale (by following the logic of FSR being related to bulk and scale) is considered to be acceptable. In this case however, we do not consider the proposal to be "out of scale".

- *The departure to the FSR standard will not introduce any significant adverse environmental or amenity related impacts on neighbouring properties.*

Council generally concurs with the applicant's justification to vary the floor space ratio development standard. The proposed development results in a decreased FSR from 0.9:1 to 0.82:1. The proposal appropriately promotes good design and amenity of the built environment through the adaptive re-use of an existing commercial building within a residential zone. The additions to the front of the building are expected to provide a greater relation to the residential character of the locality while demonstrating a height, bulk and scale that limits unreasonable amenity impacts upon adjacent properties and the public domain.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed development is not considered to unreasonably increase the bulk and scale of the existing buildings. The extension to the front is considered to improve the visual quality of the building and provide a greater level of visual interest when viewed from the street.

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

Comment:

The proposed development is in keeping with the existing building scale and addresses the public domain more sympathetically than the existing building. The streetscape character of the locality is not expected to be unreasonably impacted.

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

Comment:

The proposed development improves the visual relationship of the building between existing development and the public domain. The proposed building additions and landscaped elements in the front setback area are expected to improve the site's residential character.

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

Comment:

The proposed development is considered to reasonably respond to the spatial constraints of the site to ensure adverse environmental impacts to adjoining land and the public domain are limited.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development changes the non-conforming commercial land use to a residential land use and adds to the housing stock of the locality.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development provides additional low density housing to the locality.

It is considered that the development satisfies this objective.

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

Comment:

The proposed change is land use from commercial to residential will not impact the needs of 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 R1 General Residential zone.

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 279.2m ²	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 105m ²	229m ²	N/A	Yes
4.1.2.1 Wall Height	E: 6.5m (based on nil gradient)	6.5m	N/A	Yes
	W: 6.5m (based on nil gradient)	6.5m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.1m	N/A	Yes
	Pitch: maximum 35	18 degrees	N/A	Yes

	degrees			
4.1.4.1 Street Front Setbacks	Prevailing building line	6.7m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.15m (based on wall height)	Nil	100%	No
	W: 2.15m (based on wall height)	0.9m	58.1%	No
4.1.4.4 Rear Setbacks	8m	5.2m	35%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (153.6m ²)	25% (69.8m ²)	54.6% (83.8m ²)	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (24.4m ²)	73.1% (51m ²)	N/A	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.1m	5.6%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	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)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Description of non-compliance

3.1.1.2 Front Fences and Gates

The control requires the following for front fences and gates:

- a) Notwithstanding maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.*
- b) Boundary fences or walls must not be erected where they would conflict with the local character.*
- c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.*
- d) Gates must not encroach on public land when opening or closing.*

The proposed development incorporates a 1.5m high fence along the front boundary.

3.1.1.4 Garages, Carports and Hardstand Areas

The control requires garages, carports and hardstand areas be designed and sited in a manner that does not to dominate the street frontage. Exceptions may be considered where parking structures are a positive element of the streetscape.

The proposed development incorporates a hardstand parking area that is to be sited within the front setback area.

Merit consideration

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

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

Comment:

The proposed fence is not expected to cause unreasonable visual impact to the streetscape. The fence incorporates open elements at the pedestrian and vehicle gates. The height of the fence is not considered to result in unreasonable visual dominance within the streetscape. The fence will provide for some screening of vehicles parked upon the hardstand areas in the front setback.

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

Comment:

The design of the proposed fence is considered to positively complement the streetscape.

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

Comment:

Landscaping and vegetation is proposed within the front setback area to provide for an attractive streetscape. The hardstand parking area is to utilise permeable paving to soften the built form of the structure and incorporate more landscaping treatments in the front setback area.

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

4.1.3 Floor Space Ratio (FSR)

The proposed development has a floor space ratio of 0.82:1 (229m²), which represents a variation of 36.7% to the prescribed 0.6:1 (167.5m²) FSR requirement.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

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

Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

The proposed front building extension has a wall height of 6.5m and is setback 0.9m from the western boundary and a nil setback to the eastern boundary, representing a variation of 58.1% and 100%, respectively.

Merit consideration:

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

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

Comment:

The proposed development is consistent with the bulk and scale of the existing building and surrounding development. No adverse impact to adjacent properties or the streetscape is expected.

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 western adjacent building has a nil setback to the common boundary with no windows and a parking area is located adjacent to the eastern boundary. The proposed development will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

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

Comment:

The proposed development is considered to be appropriately sited and integrates well into the existing building.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal provides sufficient deep soil areas and planting on the site.

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

Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

4.1.5.1 Minimum Residential Total Open Space Requirements

The site is located in the OS3 area, which requires a minimum 55% of site area (153.6m²) to be classified as Total Open Space (TOS).

The proposed development incorporates of 25% site area (69.8m²) as TOS, representing a variation of 54.6% (83.8m²).

The proposed development demonstrates compliance with the landscape area requirements.

Merit consideration:

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

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

Comment:

The proposed development does not result in the removal of any significant or native vegetation.

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

Comment:

The site is compliant in terms of landscaped area.

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

Comment:

The proposed development is not expected to result in unreasonable amenity impact to adjacent properties by way of solar access, privacy and view loss.

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

Comment:

The proposed landscaped area is sufficient and will assist in water infiltration, thereby decreasing stormwater runoff.

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

Comment:

The proposal will not lead to a spread of weeds.

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

Comment:

The proposal will not compromise potential wildlife habitat within the locality.

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

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

Description of non-compliance

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas

The control requires the design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.

The proposed development includes two hardstand parking spaces in the front setback area of the dwelling.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed development provides sufficient onsite parking spaces.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The provision of two onsite parking spaces will reduce the demand for on street parking by occupants of the dwelling.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

Despite being in the front setback area, the hardstand parking spaces are not expected to unreasonably impact upon the visual quality of the streetscape. The spaces are designed to integrate into the landscaping of the front setback area by providing permeable paving. Safe and efficient vehicle access to the site is provided by the parking spaces.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

Limits landform alteration is required to facilitate the proposed hardstand parking spaces.

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

Comment:

No change to existing.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

As discussed, the proposed hardstand parking spaces appropriately integrate into the landscaping and limit the amount of impervious surface on the site.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

Not applicable.

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

4.1.10 Fencing

The proposal involves a 1.5m high front fence.

Despite the fence not strictly complying with the numerical control of 1m, the proposal is acceptable for

the following reasons:

- The fence is generally consistent with the height of nearby fences along the street.
- The fence has partially transparent portions to ensure built form does not dominate.
- The fence will not cause any unreasonable amenity impact (such as impact on view or overshadowing).

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 \$9,753 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$975,260.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to an existing building for use as a residential dwelling house has been referred to the Development Determination Panel (DDP) due to the development exceeding the floor space ratio development standard by more than 10%.

The concerns raised in the objections have been considered. No alteration to the proposal is recommended in relation to the concerns raised.

The critical assessment issues include non-compliance with the floor space ratio development standard, side setbacks, total open space and the siting of the parking spaces.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/2263 for Alterations and additions to an existing building for use as a residential dwelling house on land at Lot 2 DP 829523, 2 A Golf Parade, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
21055 A-DA-003 Rev 01	07/12/2022	CHROFI
21055 A-DA-004 Rev 01	07/12/2022	CHROFI
21055 A-DA-005 Rev 01	07/12/2022	CHROFI
21055 A-DA-101 Rev 01	07/12/2022	CHROFI
21055 A-DA-102 Rev 01	07/12/2022	CHROFI
21055 A-DA-103 Rev 01	07/12/2022	CHROFI
21055 A-DA-201 Rev 01	07/12/2022	CHROFI
21055 A-DA-301 Rev 01	07/12/2022	CHROFI

Engineering Plans		
Drawing No.	Dated	Prepared By
22257 C03.01 Rev B	25/10/2022	Wallace Infrastructure Design
22257 C03.02 Rev B	25/10/2022	Wallace Infrastructure Design
22257 C04.01 Rev B	25/10/2022	Wallace Infrastructure Design
22257 C05.01 Rev B	25/10/2022	Wallace Infrastructure Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1325820S_02	09/12/2022	Gradwell Consulting
NatHERS Certificate No. 0008274060-02	09/12/2022	Gradwell Consulting

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
220702 L102 Rev D	22/11/2022	Outdoor Establishments
220702 L103 Rev D	22/11/2022	Outdoor Establishments
220702 L104 Rev D	22/11/2022	Outdoor Establishments
220702 L201 Rev D	22/11/2022	Outdoor Establishments
220702 L202 Rev D	22/11/2022	Outdoor Establishments

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	22/12/2022	Chris Athas

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	17/01/2023

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Manly Local Environmental Plan 2013.

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

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

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent

unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,752.60 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 \$975,260.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

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

8. **On Slab Landscape Works**

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

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

The following soil depths are required to support landscaping: 300mm for groundcovers and climbers; and 600mm for shrubs.

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

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

9. **Stormwater Disposal**

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

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

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

10. **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. **Fire Separation of External Walls**

The external walls of the proposed Class 1a single dwelling where less than 900mm from an allotment boundary and any openings within these walls is required to comply with Part 3.7.2.2 of the Building Code of Australia –‘Construction of external walls’. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

12. **Natural Light and Ventilation**

Natural Light and Ventilation is to be provided to the proposed single dwelling in accordance with Parts 3.8.4 and 3.8.5 of the Building Code of Australia.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant health and amenity

13. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with

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

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

Reason: To facilitate suitable vehicular access to private property.

14. **Compliance with Standards**

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

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

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

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 Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

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

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

17. **Tree and Vegetation Protection**

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) 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,
- ix) 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.

Reason: Tree and vegetation protection.

18. **Road Reserve**

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

Reason: Public safety.

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

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

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

- (1998);
- 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.

20. **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.

21. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

22. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide at the kerb and 4.5 metres wide at the boundary in accordance with Northern Beaches Council Drawing Normal Profile and the driveway levels application approval. The new layback is to be constructed to ensure a vehicle can park between the new layback and the existing layback to 199-205 Pittwater Road. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

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.

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

24. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan's (drawing L102, L103, L104 by Outdoor Establishments dated 22/11/22), and inclusive of the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres or as otherwise scheduled if greater in size, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all native trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 2.5 metres from buildings, and at least 800mm from common boundaries, and located either within garden bed or within a prepared bed within lawn.

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

Reason: Environmental amenity.

25. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

26. **Waste Management Confirmation**

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

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

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

27. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

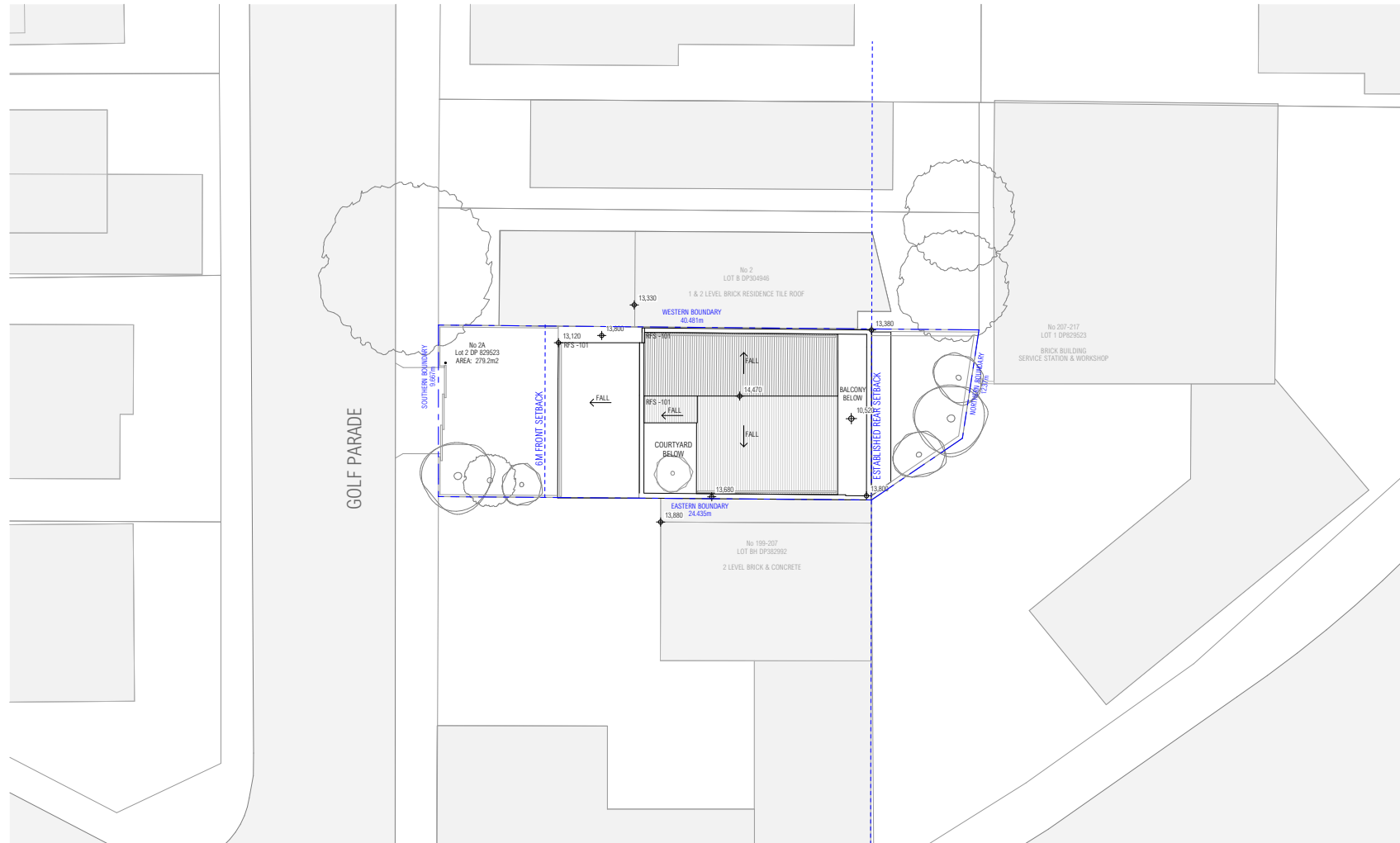
All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

28. **Air Conditioning Unit Noise**

The outdoor air conditioning unit 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.



2. SITE PLAN 1:200



ARCHITECT

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REV	DATE	ISSUE
01	1/12/2022	Issue

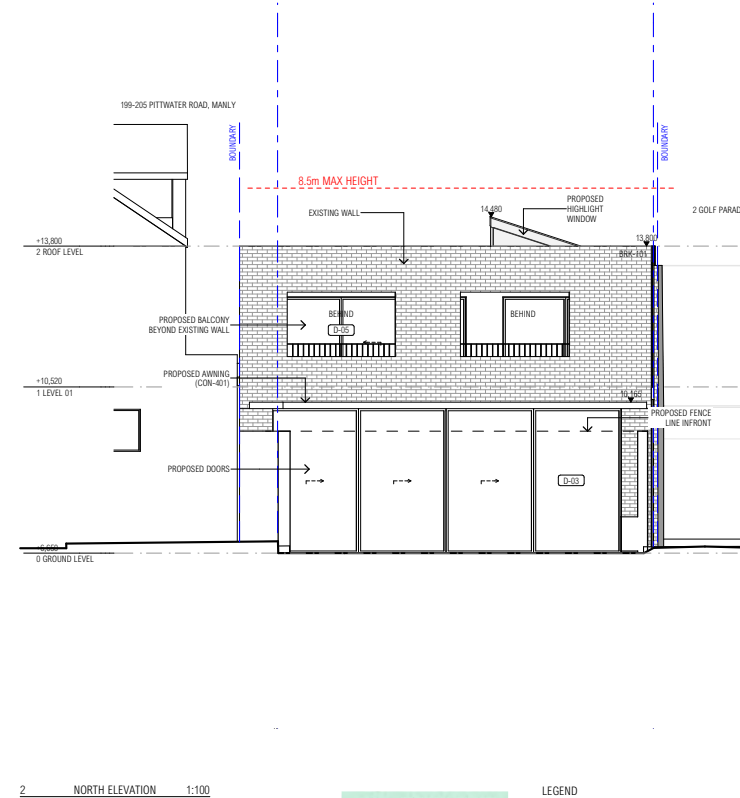
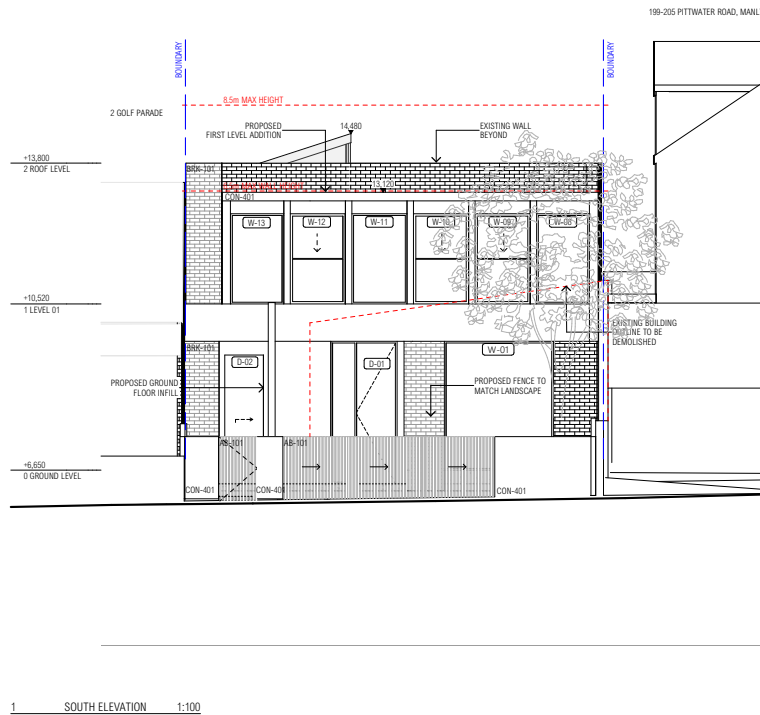
REV	DATE	ISSUE

PROJECT
2A Golf Parade, Manly

PROJECT NUMBER	PLOT DATE	DRAWN	CHECKED	SHEET SCALE	SHEET SIZE	NORTH
21055	7/12/2022	GB	MG	1:200	A3	⊙

SHEET TITLE
SITE PLAN

SHEET NUMBER	REVISION
A-DA-003	01



LEGEND

CON - 401	CONCRETE
BRK - 101	MASONRY
ST - 101	PAINTED STEEL
PT - 101	POWDER COATED WINDOW AND DOOR FRAMES

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REV	DATE	ISSUE
01	1/12/22	Issue

REV	DATE	ISSUE

PROJECT	2A Golf Parade, Manly					
PROJECT NUMBER	PLOT DATE	DRAWN	CHECKED	SHEET SCALE	SHEET SIZE	NORTH
21055	7/12/2022	GB	MG	1:100	A3	

SHEET TITLE	ELEVATIONS - SHEET 1	
SHEET NUMBER	A-DA-201	REVISION
		01

EVOLUTION PLANNING

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7 December 2022

The General Manager
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

Dear Sir or Madam:

RE: DA - 2A Golf Parade, Manly – Adaptative Re-Use of Warehouse/Commercial Building as a Dwelling - Clause 4.6 Variation Request - FSR

FSR

A development standard related to FSR of 0.6:1 applies to the land.

As shown at Drawing DA-601, the total GFA of the proposal is 229.04sq.m equating to an FSR of 0.82:1 which represents a variation of 36%.

The proposed development relates to alterations and additions to an existing non-conforming prohibited development and its replacement with a permitted form of development and as a result of the proposed works the FSR is reduced from 0.9:1 to 0.82:1.

Clause 4.6 - Exceptions to Development Standards – FSR

This clause 4.6 variation request has been prepared having regard to the NSW Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

The Objectives of Clause 4.6 of Manly Local Environmental Plan 2013 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.*

At sub clause (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."

Sub-clause (3) includes the requirement that a written request is provided by the applicant that seeks to justify the contravention of the standard.

The written request needs to demonstrate that:

- i. *compliance with standard is unreasonable or unnecessary in the circumstances of the case;*
- ii. *there are sufficient environmental planning grounds to justify contravening the development standard.*

Before granting consent, the consent authority needs to be satisfied:

- a. that the request made by the applicant adequately addresses those matters at sub clause (3), (items (i) and (ii) above);
- b. that the proposal is within the public interest because:
 - i. it is consistent with the objectives of the particular standard; and,
 - ii. the objectives for development within the zone in which the development is proposed to be carried out.
- c. Concurrence has been obtained from the Secretary.

In deciding whether to grant concurrence, the Secretary must consider:

- i. *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- ii. *the public benefit of maintaining the development standard, and*
- iii. *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are considered below with respect to a proposed contravention to *Clause 4.4 Floor Space Ratio* under Manly LEP 2013.

This statement (or request) satisfies the first provision of Clause 4.6 in terms of the applicant making a written request to vary a development standard.

The consent authority, the Northern Beaches Local Planning Panel, has delegation from the Secretary to determine this DA.

Relevant Standard

The development standard to which this Clause 4.6 request seeks to vary is *Clause 4.4 Floor Space Ratio* under Manly LEP 2013.



Clause 4.4 (2) states: “The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map”

The map identifies the site as having a maximum FSR of 0.6:1.

Is the requirement a development standard?

A development standard is defined at Section 4 of the Act as:

“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

...

“(d) the cubic content or floor space of a building”

Clause 4.4 of the LEP is considered to be a development standard.

1. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In *NSWLEC Four2Five Pty Ltd v Ashfield Council 2015*, Pearson C found that due to the consistency in language used in SEPP 1 Development Standards and Clause 4.6 that when determining whether compliance with a development standard is unreasonable or unnecessary under Clause 4.6 that the consideration provided in *NSWLEC Wehbe v Pittwater 2007* (typically applied to SEPP 1) may be of assistance.

As to whether or not compliance with the standard is unreasonable and unnecessary, *Wehbe* sets out five means for consideration as follows:

- a) the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- b) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- c) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- d) the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;



- e) the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

With respect to the tests outlined above from *Wehbe*, we submit that it is unreasonable and unnecessary to strictly comply with Clause 40(4)(a) for reasons related to (a) above, in terms of the consistency of the proposed development with the objectives of the development standard.

(a) Consistency with the objectives of the standard

The objectives of the FSR standard 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*

The proposed development is considered to be consistent with the objectives of the standard for the following reasons:

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

Comment: The bulk and scale of the proposed development is consistent with the existing streetscape character because the existing building forms part of the streetscape and whilst visually the proposed development will result in a far superior outcome, the actual bulk and scale of the proposal does not change significantly despite the reduction in FSR.

The proposed development better aligns with the desired streetscape character in terms of bulk and scale due to the far superior streetscape presentation and building articulation achieved by the replacement of the defensive front boundary treatment with a lower scale fence and part transparent gates, the



architectural articulation of the front building façade, the landscaping in the front setback zone and ultimately, the change of use from the existing non-conforming warehouse/commercial use to a permitted residential use.

- (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: No important landscape or townscape features will be obscured as a result of the proposed development.

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

Comment: The visual relationship of the proposed development and existing character and landscape of the area will be much improved for reasons outlined above in response to Objective (a).

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

Comment: The proposed exceedance to the FSR standard does not introduce any additional adverse impacts on neighbouring properties 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: N/A

The proposed development is considered to be consistent with, and would not hinder, the objectives of the FSR standard, and therefore it is submitted that compliance with the standard is both unreasonable and unnecessary in the circumstances of this case.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed variation under Clause 4.6 is considered to be justified on the following environmental planning grounds:

- The proposed departure to the standard comes in the context of the adaptive re-use of a non-conforming, prohibited use and the removal of the non-conforming use from the residential zone;
- The proposed development results in a reduction to FSR;
- FSR is often used as a numeric indication of the bulk and scale of a building. In light of the proposal being for alterations and additions to an existing building (in accordance with Part 4.4.2 of Manly DCP 2013), and on the assumption that the site/development is the subject of existing use rights, in our opinion, then upon consideration of the second planning principle in *Fodor Investments v Hornsby Shire Council [2005] 71* as extracted below:



“Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.”

[emphasis added]

... the bulk and scale (by following the logic of FSR being related to bulk and scale) is considered to be acceptable. In this case however, we do not consider the proposal to be “out of scale”.

- The departure to the FSR standard will not introduce any significant adverse environmental or amenity related impacts on neighbouring properties.

The Public Interest

Under Clause 4.6 the public interest is considered to be satisfied where it can be demonstrated that the proposed development is consistent with the objectives of the development standard and the zone within which the site is located.

The objectives of the R1 zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents*

In comparison to the existing development which is entirely inconsistent with the zone objectives, the proposed development is consistent with the related zone objectives since it meets the housing needs of the community, and it contributes to the variety of housing available in the General Housing zone.

The proposed development promotes the objectives of the zone and the development standard for FSR and therefore is considered to be in the public interest.

Matters of significance for State or regional environmental planning

No matters of significance for State or regional environmental planning arise as a result of the non-compliance with Clause 4.4.

The public benefit of maintaining the development standard

It would not be in the public benefit to strictly maintain the standard in the particular circumstances of this case since it would entail a significant reduction to existing floor space and remove any incentive for the non-conforming use to be replaced with a conforming residential use.

Conclusion

Strict compliance with Clause 4.4 of the LEP is considered to be unreasonable and unnecessary in the circumstances of this case and there are satisfactory environmental planning grounds to justify the departure to the standard.



Please contact the undersigned directly on 0430007725 should you wish to discuss the proposal further.

Yours sincerely,



Tony Robb
BA (Hons) UPS, Grad.Dip.TP (Westminster) RPIA
Principal



ITEM 3.3**DA2022/1760 - 82 SEAFORTH CRESCENT SEAFORTH -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE****REPORTING MANAGER** Rod Piggott**TRIM FILE REF** 2023/275699**ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Site Plan and Elevations](#)
3 [↓ Clause 4.6](#)**PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/1760 for demolition works and construction of a dwelling house on land at Lot 137 DP 4889, 82 Seaforth Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1760
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 137 DP 4889, 82 Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jean Susanna Gamble
Applicant:	Jean Susanna Gamble
Application Lodged:	27/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	02/11/2022 to 16/11/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 15.6%
Recommendation:	Approval
Estimated Cost of Works:	\$ 4,768,129.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a building height breach of more than 10%. The maximum height of the building is 9.83m or 15.6% variation to the control.

Concerns raised in the objections predominantly relate building height, privacy and view impacts. Each of the submission issues has been addressed within this report including a view sharing assessment against the Tenacity Planning Principle. Where appropriate, conditions have been recommended to further mitigate privacy impacts. The height of the building is considered in detail within the assessment

of the Clause 4.6 Variation request.

Critical assessment issues included the building height breach, view sharing and privacy, as raised within the submissions.

The 4.6 request for the non-compliance with height standard arises due to the proposed building being located over a partially excavated portion of the site, with this portion of the site also having a 1 in 4 gradient. The height breach results from a roof form which sits central to the building and results in a maximum 15.6% variation for portion of the roof form. This portion of the roof form sits directly over the pre-excavated portion of the site, exacerbating the height breach. The majority of the building is under the 8.5m height. The new building has been designed to sit in the approximate location of the existing building to maintain the existing spatial relationship between the adjoining properties and maximum view sharing, particularly for the adjoining property at 17 Princes Promenade.

The proposed development performs well against the remainder of the built form controls, with the proposal compliant with setbacks, floor space ratio, landscaping and open space and largely wall height (with a minor exceedance of wall height at the western elevation which is discussed within this report). The proposal has been well designed to retain privacy to the adjoining properties, whilst capturing the views available to the north-west.

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 demolition of the existing dwelling and construction of a new dwelling house, including retention of the existing swimming pool.

Specifically, the proposal comprises of:

- Demolition of existing dwelling , retention of the swimming pool.
- Lower Ground Floor consisting of study, store and plant room, bathroom and rumpus room.
- Ground floor consisting of garage, laundry, four bedrooms with ensuites and entrance.
- First floor consisting of main living area, kitchen, study and rumpus and balcony.
- Landscape planting to compliment the development and associated stormwater drainage works.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

- groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.4.2 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

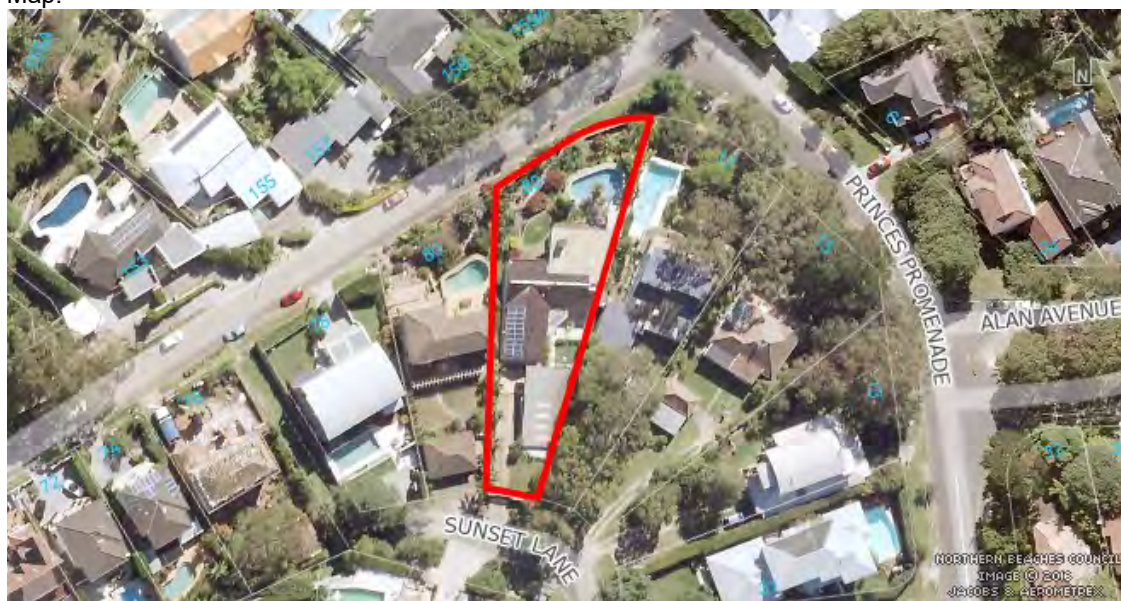
SITE DESCRIPTION

Property Description:	Lot 137 DP 4889 , 82 Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Seaforth Crescent. The site has pedestrian access off Seaforth Crescent and vehicular access of a secondary frontage from Sunset Lane. The site is irregular in shape with a curved frontage of 33m along Seaforth Crescent, and a secondary frontage width of 10m to sunset lane and a depth of 75m. The site has a surveyed area of 1277m². The site is located within the R2 Low Density Residential zone and accommodates an existing split level dwelling and carport. The site also has a swimming pool. The southern portion of the site has a gentle gradient falling from south to north. The location in which the existing building is situated has a more moderate slope of between 1 in 6 and 1 in 5 gradient. Vehicular access to the site is via Sunset Lane The site has low and medium height trees, with no tall significant locally native canopy trees. The area of land adjoining Seaforth Crescent contains some rock outcrops and is vegetated, sloping down towards the road. Detailed Description of Adjoining/Surrounding

Development

Adjoining and surrounding development is characterised by detached one, two and three storey dwelling houses. Immediately to the east and west are two storey dwellings. Across the road to the north and south are two storey dwellings.

Map:



SITE HISTORY

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

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

History of Application

Council requested that two (2) height poles were erected to represent the most north-eastern corner of the ground floor and first floor wall. This was to enable a view impact assessment to be undertaken from 17 Princes Promenade. Following consideration of the three (3) submissions received, assessment of the plans and the inspection of height poles, Council wrote to the applicant requesting changes and additional information. In particular, Council requested compliance with the wall height at the north-eastern elevation/corner as this directly impacted a view corridor from 17 Princes Promenade. It was requested the overall building height be lowered and increased setback provided to the ground floor pergola (to a compliant 0.9m). Council requested further information as to how the proposed floor levels were arrived at and an updated Clause 4.6 variation request.

Following Council's request, the applicant provided an amended set of plans pulling back the north-eastern wall to further open up the view corridor and comply with wall height, an overall decrease in the building height by 650mm, increased setback to ground floor pergola and an updated Clause 4.6 variation request. A letter responding to Council's RFI was also submitted in response to Council's queries regarding floor levels.

The updated information was provided to all persons who made a submission and Council has now made an assessment of the amended plans.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>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 building height and design of aspects of the development in relation to provide. Amended plans were provided which form part of this assessment. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter 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.

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 02/11/2022 to 16/11/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Kenneth Arthur Swain Mrs June Gladys Swain	80 Seaforth Crescent SEAFORTH NSW 2092
Mr Gregory Bennett Little Mrs Elizabeth Eva Little	17 Princes Promenade SEAFORTH NSW 2092
Mr Ian Ronald Parker	13 Princes Promenade SEAFORTH NSW 2092

Name:	Address:
Mrs Katherine Anne Parker	

Following the initial notification period where three (3) submissions were received, the application was amended and an updated set of plans was submitted to Council. The changes reduced the development in height and increased setbacks to certain elements of the proposal. As such, the application was not formally re notified. However, a copy of the updated plans and documents were provided to the three (3) properties who made an objection and they were provided 2 weeks to provide further comments.

It is noted that a submission regarding the amended plans were received from 80 Seaforth Crescent which maintained concerns with building bulk/scale and privacy to their pool/deck area.

It is noted that the property 17 Princes Promenade (directly to the east of the subject site) wrote to Council advising that they support the now amended proposal. Therefore, their submissions are considered to be resolved. However, the property at 17 Princes Promenade is still considered within the view impact assessment later within this report for completeness.

No further response was received from 13 Princess Promenade, however their original submission is considered as part of the assessment of the amended plans.

The following issues were raised in the submissions:

- *The proposal is too bulky/too large for the site.*
- *The effect of a massive over height 3 story development facing Seaforth Crescent is out of scale with adjacent residences which follow Council's LEP intention to step down the slope following the site slope.*
- *The erected height pole, we understand, is the wall height at the NE corner. This height continues around the third story roof, being 10.89m above the ground at the northern façade. Above this wall the roof rises another metre, on top of which will be a Photovoltaic array (solar panels) of unknown height, a raised Stairwell Ventilation Roof and Gas boosted split system solar Hot Water Plant, also of unknown height, are shown.*
- *Concerns with privacy impact to the pool and deck area at 80 Seaforth Crescent.*
- *Request for the privacy screens to be a minimum 2m height and maintained for the life of the development. Request for privacy on the western edge of the upper floor balcony.*
- *The combined effect of excessive building height, reduced boundary setbacks and disregard of surrounding neighbours will completely obliterate our view (from 13 Princes Promenade) down to Peach Tree Bay, Fig Tree Cove and the tree-lined slopes across the bay to Killarney Heights and Castle Cove.*
- *Impact the amenity of the neighbourhood by further limiting water glimpses between houses when walking along Sunset Lane.*
- *We also note the large quantity of filling between Sunset Lane and beneath the southern section of the proposed Dwelling which is required to raise the height of the building.*

The above issues are addressed as follows:

- ***The proposal is too bulky/too large for the site.***

- ***The effect of a massive over height 3 story development facing Seaforth Crescent is out of scale with adjacent residences which follow Council's LEP intention to step down the slope following the site slope.***

Comment: A detailed assessment is undertaken under the Clause 4.6 assessment within this report regarding the height of the proposal, the non-compliance partially caused by prior excavation of the site. It is noted that the plans have been amended from the original submission and have dropped the building overall by 650mm. This has been achieved through dropping the floor to ceiling heights and a minor reduction of the ground floor level.

The proposal is compliant with FSR, setbacks, open space and landscaping, with only a minor exceedance of the wall height on the western side. Overall, the proposal is largely compliant with the built form controls and the height non-compliance due to a portion of the central roof has found to be reasonable in the circumstances as discussed within the Clause 4.6 assessment.

- **The erected height pole, we understand, is the wall height at the NE corner. This height continues around the third story roof, being 10.89m above the ground at the northern façade. Above this wall the roof rises another metre, on top of which will be a Photovoltaic array (solar panels) of unknown height, a raised Stairwell Ventilation Roof and Gas boosted split system solar Hot Water Plant, also of unknown height, are shown.**

Comment: The height pole represents the NE corner of the building to assist with view impact assessment from the adjoining property at 17 Princes Promenade. The height breach of the central roof form does not have a direct impact on water views, rather, it is the portions of the building that sit within the height limit.

As noted above, the maximum height of the proposal has been lowered 650mm with the height of the central roof being 9.83m at the maximum point. Conditions have been recommended that the photovoltaic cells and solar pool heating be mounted flush to the roof. It is noted that the "Gas boosted split system solar Hot Water Plant" will be well within the height limit, with this portion of the roof being 1.3m beneath the height limit. The plant is centrally located on the flat roof and as such will not cause unacceptable visual impacts for the surrounding sites. It is noted some of this infrastructure could be installed as 'exempt development' without consent from Council.

- **Concerns with privacy impact to the pool and deck area at 80 Seaforth Crescent. Request for the privacy screens to be a minimum 2m height and maintained for the life of the development. Request for privacy on the south-western edge of the upper floor balcony.**

Comment: Privacy is discussed in detail later within this report. The privacy screens proposed are the full height of the windows/balconies at 2.5m. A condition has been recommended to extend the privacy screen along the south-western edge of the upper floor balcony to further resolve overlooking to the adjoining property. A condition has been recommended for a privacy screen on the south-western edge of the ground floor balcony. A condition has been recommended for the privacy screening to be maintained for the life of the development.

- **The combined effect of excessive building height, reduced boundary setbacks and disregard of surrounding neighbours will completely obliterate our view (from 13 Princes Promenade) down to Peach Tree Bay, Fig Tree Cove and the tree-lined slopes across the bay to Killarney Heights and Castle Cove.**

Comment: A view impact assessment has been undertaken later within this report for 13 Princes Promenade in accordance with the Tenacity Planning Principle. In summary, whilst it is acknowledged there will be an impact upon water views from this property, the views are in a

vulnerable location (across the side boundary through the middle of the site) and the water view impact is not caused by the non-compliant roof element. Some views of the tree lined slopes will be retained. The existing views will likely be impacted by the new approved dwelling at 17 Princes Promenade (yet to be constructed) and also impacted partially by the dwelling under construction at 15 Princes Promenade. Overall, the proposal meets the Tenacity Planning Principle and can be supported.

- **Impact the amenity of the neighbourhood by further limiting water glimpses between houses when walking along Sunset Lane.**

Comment: The proposed development maintains compliant side setbacks to maintain view corridors down the side boundaries from Sunset Lane. The non-compliant height does not cause impacts upon water views from Sunset lane and there are no significant impacts upon public views from the development.

- **We also note the large quantity of filling between Sunset Lane and beneath the southern section of the proposed Dwelling which is required to raise the height of the building.**

Comment: The original plans indicated the 'assumed rock level' beneath the existing dwelling. This made the proposal appear as through there would be additional significant filling for the site. However, this has been clarified in the amended plans to show that the ground level of the proposal is 900mm above the existing ground level. The applicant has provided the following explanation in regards the proposed levels:

The considerations and setting of building floor levels included some of the following. Note, we have reduced the ground floor and upper floor levels to better suit the reduced height of the building.

- *The existing pool and lower ground floor have an existing relationship which we intend to maintain and believe is a reasonable and expected solution to the dwelling. Note: the current lower ground floor is excavated out of the rock on the site, meaning the natural ground level is lower than the average natural slope of the site.*
- *The existing lower ground floor level has a very low and uncomfortable ceiling height currently, and there is scope to raise the ceiling level which we have done to a reasonable 2600mm. This sets the bedroom level floor level.*
- *When cars drive into the existing driveway it is very steep and difficult to drive down and reverse out of. We have tried to improve the slope of the driveway from the gate to the garage making it safer and provide better access. This sets the garage level, which is slightly higher than the Bedroom level, so we have provided a step down to the bedroom level to accommodate the change in level and allow the bedroom level to better follow the slope of the site towards the northern side of the site.*
- *The entry level ceiling height was set to a reasonable 2600mm, and this determined the upper floor level. The main lower roof of the first floor is set again at a reasonable 2600mm with a flat roof over, keeping the roof level low and with minimal impact. Facing away from the neighbours is a curved roof slightly raised from the lower concrete roof to provide optimum views, but only have a small part of the building higher.*

Therefore, based on the above explanation the raised 900mm ground floor level is considered a reasonable response and way to deal with the existing site conditions.

REFERRALS

Internal Referral Body	Comments
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Internal Referral Body	Comments
Landscape Officer	The proposal is supported with regard to landscape issues. <u>Additional Information Comment 16/03/23:</u> The amended plans are noted. The amended Stormwater Concept Plan shows an underground OSD and rainwater tank in a suitable location which helps to satisfy MDCP 4.4.5.1. No further concerns are raised regarding stormwater management. An Arboricultural Impact Assessment (AIA) and Landscape Plan is included in the application and will be assessed as part of the Landscape Referral. No significant trees are proposed to be removed to enable the works and all neighbouring trees can be retained as required, and supported by the findings in the AIA. All trees and vegetation shown to be retained shall be protected as per the recommendations in the AIA and the requirements outlined in the conditions of consent. The landscape proposal is generally supported and all natural rock outcrops, outside the construction footprint, shall be retained protected during works. All on slab landscaping shall meet Council's minimum soil depth requirements. Substitute all <i>Rhaphiolepis</i> species with a suitable alternative as outlined in the conditions of consent. <u>Original Comment Summary:</u> • concern was raised with the location of the OSD basin as a large amount of natural rock outcropping required removal.
NECC (Development Engineering)	The submitted drainage design including OSD is acceptable. The proposed new crossing and internal driveway grades are also acceptable. Development Engineering support the proposal, subject to conditions as recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1296832S_02 dated 28 March 2023).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	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) 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 works a referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.25m to 9.83m	15.6%	No
Floor Space Ratio	FSR: 0.4:1 (510.8m ²)	FSR: 0.375:1 (480m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings

Requirement:	8.5m
Proposed:	9.83m maximum
Percentage variation to requirement:	15.6%

The maximum building height has been assessed taking into consideration the existing ground level RL's beneath the existing house (which is a partially excavated area/subfloor). The highest point of the building (relative to the existing ground level) is 9.83m, which is the top of eastern portion of the roof form at RL69.94 and this is situated over the existing ground level of RL60.11. The applicant has provided a detailed description of the building heights relative to the survey levels within the Clause 4.6 submission. The below figure has also been provided to show the varies heights of the roof above the existing ground level (portions of which sit within an existing excavated portion of the dwelling).

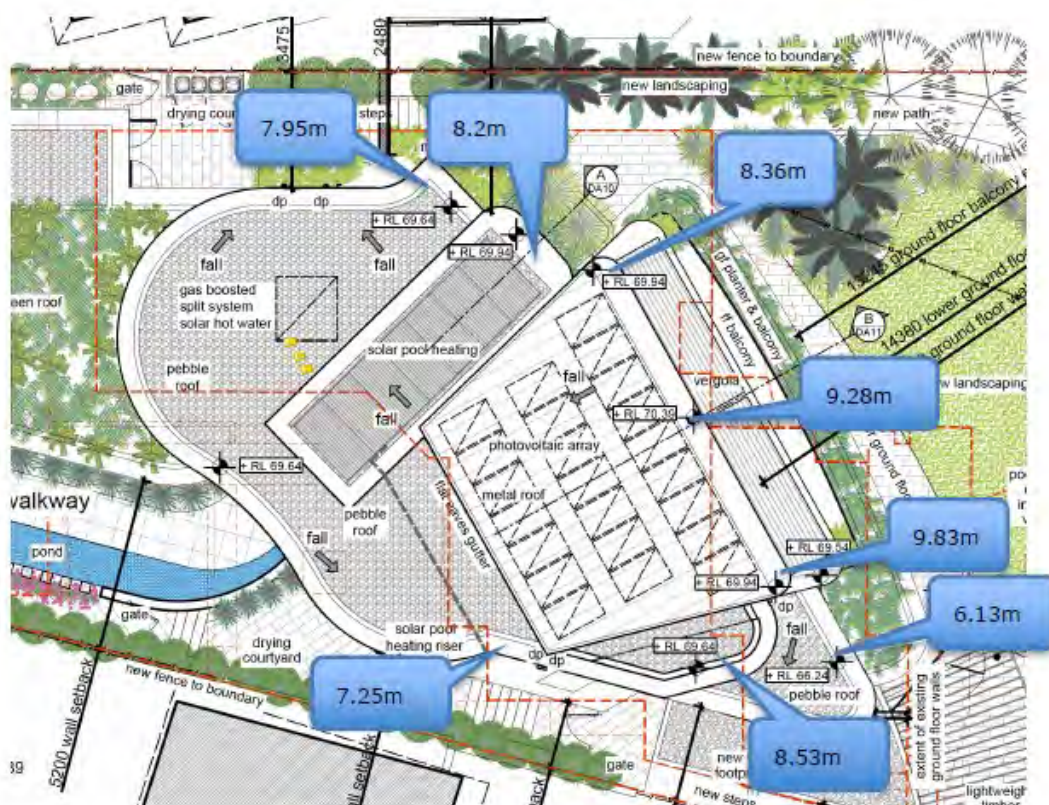


Figure 1 - Maximum height of building based on the existing ground level RL's. Prepared by Applicant.

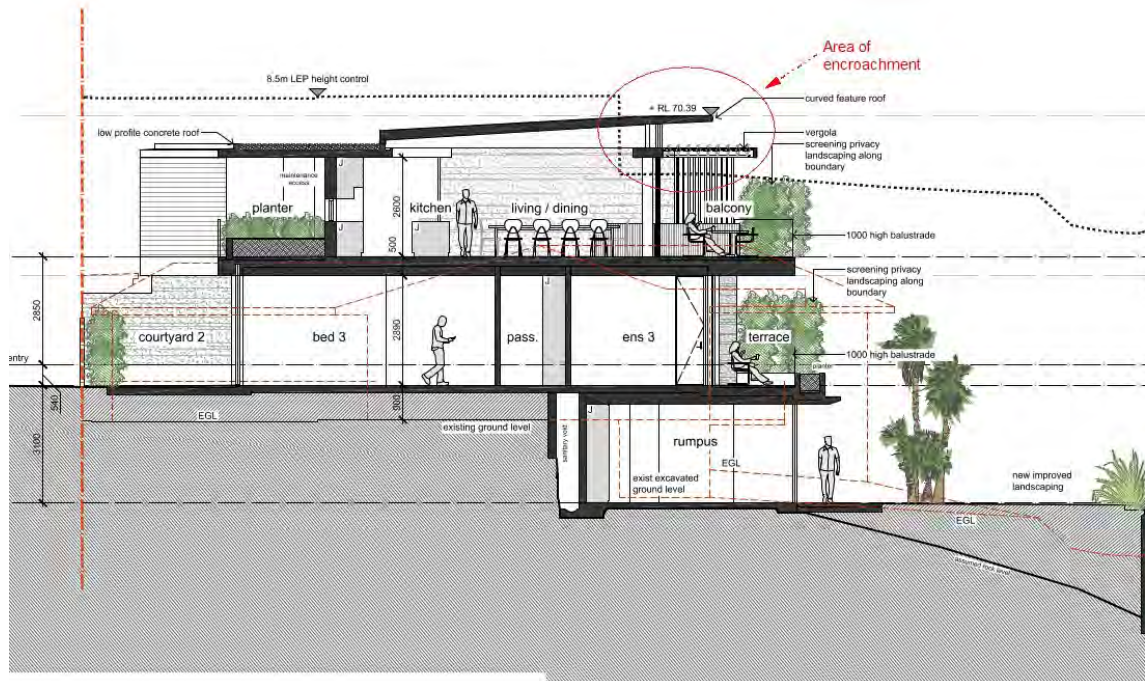


Figure 2 - Area of roof and pergola encroachment of 8.5m height control

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

(3) Development consent must not be granted for development that contravenes a development

standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The environmental planning grounds particular to this site and to this proposal relates to the steep slope of the site from south to north and the difference in level towards the rear of the existing house where the site has been previously excavated to accommodate the existing lower ground floor, partly in the foundation area/undercroft under the existing house. It is in this area where the ground level existing is taken to be the ground under the existing lower ground floor where the breach of the standard occurs to varying degrees.

Also of relevance is the judgment in the Land and Environment Court of NSW, Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582. This was an appeal against the deemed refusal by Woollahra Municipal Council, of a Development Application for the demolition of all existing structures, removal of existing vegetation, excavation to accommodate two levels of basement parking and construction of a three and four storey residential flat building comprising four apartments, a plunge pool for one apartment and associated landscaping, at 3 Wiston Gardens, Double Bay.

At paragraph 74 of the judgement, the Commissioner accepted that the prior excavation of the site within the footprint of the existing building can properly be described as an environmental planning ground within the meaning of Clause 4.6(3)(b) of LEP 2014, because it distorts the height of buildings development standard height plane when overlaid over the site, compared to the topography of the hill.

As outlined, the subject site has been previously excavated to achieve the lower ground floor level of the existing house and the building height has been measured from the irregular ground levels across the site and under the existing building.

The new house has a stepped form and appearance and a layered, low profile roof design. The contemporary design and appearance with curved and tapered walls provide good separation between buildings for privacy and landscaping and the articulation along the sides actually reduces the visible bulk and scale of the building along the sides and at the rear, compared to a building that had the side walls parallel to the side boundaries.

The absence or lack of environmental harm in this case is also a relevant environmental planning

ground particularly having regard to the elements of the building and the roof where the breach of the standard occurs, and there are no adverse physical impacts on the existing levels of privacy, solar access and views of adjoining and adjacent properties.

The contention that an environmental planning ground could include establishing a lack of environmental harm was supported in a recent case in the Land and Environment Court of NSW in Initial Action v Woollahra Council (2018) NSWLEC 118.

This was also an appeal against a Commissioner's decision on questions of law. This case related to the Commissioner's refusal to grant development consent for a residential flat building that contravened the height of buildings development standard of the Woollahra LEP 2014, and the Commissioner was not satisfied that contravention of the development standard was justified in the Clause 4.6 exception to a development standard.

In his Principal judgment Preston CJ made a similar finding as he did in Randwick City Council v Micaul Holdings Pty Ltd at [34], in relation to consistency of a development with the objectives of a development standard and consideration that a lack of adverse amenity impacts on adjoining properties is a sufficient ground justifying a development contravening the development standard.

Of particular relevance is objective c) and objective d) of the height of buildings standard.

There will be no adverse effects on the amenity on the adjoining and adjacent properties or the locality. Views from neighbouring properties and solar access will be retained to an acceptable degree.

For the reasons outlined, there are sufficient environmental planning grounds particular to the circumstances of this sloping and previously excavated site and the design of the proposed dwelling house, to justify the departure from the height of buildings standard.

In terms of the Objects of the EP&AA Act, the proposal will be consistent with the objectives of the Act, particularly in relation to ecologically sustainable development, the orderly and economic use and development of the land, sustainable management of built and cultural heritage and good design and amenity of the built environment.

Council Comment on Planning Grounds

Council generally agrees with the points raised by the applicant. In particular, the previous excavation of the site beneath the existing building footprint has resulted in the 8.5m height plane being distorted when measured from that existing level. The previous excavation of the site contributes to the non-compliance and is an environmental planning ground, as established in case law. It is also agreed that the non-compliance does not directly cause unreasonable amenity impacts of the adjoining properties, given the central location of the breaching element within the site and the fact the proposal has been designed to retain a large amount of the view corridor for the adjoining property to the east. The upper roof level does not directly contribute to any impacts upon water views for properties around the site. It is agreed that the proposal is of good design despite the non-compliance. The design intent of concentrating the proposed building form in the general footprint of the existing building allows views and solar access to be maximised for adjoining properties. An alternate strategy of having the floor area spread along the site in a north to south direction would not necessarily be a better outcome for the site.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

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

Comment:

The prevailing building heights in the locality are mixed due to the varied topography. However, of relevance is the recent approval at 17 Princes Promenade (directly to the east) of the site which was recently approved with the upper roof level RL of 69.65, which is not dissimilar to the proposed level at 69.94 for the north-eastern corner of the roof (the highest point of the building at 9.83m) and centrally RL 70.39 (height of 9.28m from existing ground level). The building at 80 Seaforth Crescent has a gutter line of RL69.12 and maximum pitched roof of RL70.41. Therefore, when read in context of the two adjoining sites, the maximum height of the proposed development will be similar to the two adjoining properties. The central curved roof feature is the main area of non-compliance, with the remainder of the building being beneath the 8.5m height limit and stepping with the slope of the site, along with compliant setbacks and a good amount of spatial separation. The curved roof element is centrally located and adds visual interest to the development and allows solar access, without impacting on the amenity of the adjoining properties. The vast majority of the building is within the 8.5m height limit.

b) to control the bulk and scale of buildings,

Comment:

The building overall is well articulated, provides a high range of architectural interest and provide a side setbacks above the requirements of the DCP. Whilst the central curved roof encroaches the height limit, this is concentrated within the centre of the site to limit the visual impact and visual scale to the adjoining properties. Overall, the building is well designed to mitigate bulk and scale. The building as viewed from the side elevation steps down the site, responding to the topography at the boundary.

The design intent of concentrating the proposed building form in the general footprint of the existing building allows views and solar access to be maximised for adjoining properties. An alternate strategy of having the floor area spread along the site in a north to south direction would not necessarily be a better outcome for the site and could result in a more bulk/longer 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:

The breaching roof element does not have a direct impact on any important harbour/water views for the surrounding properties. Whilst some additional district/sky views may be impacted to a minor degree, the harbour/water views will not be impacted by the curved roof. Views of the harbour will not be impacted from public places. A view sharing assessment is undertaken later in this report.

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

Comment:

The two adjoining properties will maintain at least 4 hours solar access to the north facing living rooms and north facing private open space situated on the northern side of each building. There will be no impacts upon public places such as parks or the road reserve due to the orientation of the land.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

Not applicable to this development.

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 a new dwelling house within a landscape setting, which is consistent with the character of the R2 Zone and provides additional new housing.

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

Comment: Not applicable to this development.

Conclusion:

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

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

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

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

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

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

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

The proposal involves no more than 2m excavation and therefore does not trigger a ASS report.

Council is satisfied the proposal meets the requirements of the clause.

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 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 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: 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 conditions. 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: The proposal is consistent with the scale of surrounding buildings and will not have an acceptable impact on the visual quality of the area.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1227m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 950sqm	1 dwelling	N/A	Yes
4.1.2.1 Wall Height	East: 6.8m (based on gradient 1 in 20) East: 7.5m (based on	6m 7.9m	N/A	Yes

	gradient 1 in 6)			
	West: 7.5m (based on gradient 1 in 6)	6.3m to 8.1m	8%	No
4.1.2.2 Number of Storeys	2	3	N/A	No
4.1.2.3 Roof Height	Height: 2.5m	1m	N/A	Yes
	Parapet Height: 0.6m	0.3m	N/A	Yes
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	(Based on wall height) East Lower 1m	1m	N/A	Yes
	East Ground 1.1m - 2m	2m-2.85m	N/A	Yes
	East Upper 2.2m - 2.83m	2.2m - 2.9m	N/A	Yes
	(Based on wall height) West Lower 1m	3.5m	N/A	Yes
	West Ground 1.06m - 2.13m	1.1m - 4.6m	N/A	Yes
	West Upper 2.3m - 3.03m	2.6m - 4.6m	N/A	Yes
	Windows: 3m	2.2m minimum	N/A	No
4.1.4.4 Rear Setbacks	8m (Sunset Lane)	20m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (766m ²)	63% (807.1m ²)	N/A	Yes
	Open space above ground 25% of total open space	8% (63.3m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	63% (481m ²)	N/A	Yes
	4 native trees	4 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes
4.1.6 Garage door width	6.2m	8.3m	33%	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Pool existing	N/A	Yes
	1m curtilage/1.5m water side/rear setback	Pool existing	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	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
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	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
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The proposed development (as amended) has been well designed to resolve privacy and minimise overlooking for the two immediately adjoining properties.

Privacy to 17 Princes Promenade (east)

Window openings upon the ground and upper floor have been limited along the eastern elevation to restrict overlooking towards 17 Princes Promenade. The location of the ground and first level balcony

has been placed as such to limit overlooking towards the eastern property and included privacy screens along the side elevations for added privacy measures.

Privacy to 80 Seaforth Crescent (west)

Concerns have been raised with regards to potential for overlooking of the adjoining property at 80 Seaforth Crescent. In particular, the pool and pool terrace of 80 Seaforth Crescent.

The proposal has mitigated direct overlooking of the pool area through strategically placed, full height fixed privacy screens at a 45 degree angle which restrict views from the ground level Bedroom 1 and Bedroom 1 Balcony, as well as the upper level rumpus room. Both Bedroom 1 and the Rumpus Room have been provided with full height fixed privacy screens, the angle of which have been nominated on the plans to allow privacy to be maintained to the pool area of 80 Seaforth Crescent, whilst still allowing light, ventilation and views towards the Harbour. In addition to the privacy screen, the rumpus room has been provided with a 1.4m wide planter box to further restrict any downward views, whilst also soften the outlook from the rumpus room. The privacy screening and the planter allow Council to be satisfied that there will be no direct views of the pool area. A condition of consent is recommended that the privacy screens be maintained for the life of the development.

The upper floor balcony adjoining the living room is centrally located and orientated to capture the Harbour views. Privacy screen has been provided along the western edge of the upper floor balcony to restrict views towards the pool area. A condition has been recommended to require the privacy screen at the south-western edge to extend for the full length of the balcony. Furthermore, the closet trafficable area of the balcony is 5m from the western boundary, which is considered a reasonable setback to limit direct overlooking when combined with a privacy screen and planter along the western edge. The balcony design will enable views towards the harbour whilst restricting any views beyond 45 degrees towards the adjoining properties pool area.

The ground floor balcony adjoins bedrooms and is proposed at RL 63.25, which is slightly lower than the pool terrace area at 80 Seaforth Crescent (which is RL 63.32). The proposed ground floor balcony directly adjoins bedrooms, is setback 4.6m from the western boundary to the trafficable area and is surrounded by a landscape planter. This balcony has also been designed to restrict direct views beyond 45 degrees to the adjoining property. A condition will be recommended that the south-western edge of the ground floor balcony will consist of a fixed privacy screen up to 2m high to further restrict views between properties.

Overall Privacy

Overall, the proposal has been well designed to maintain privacy to the adjoining properties, yet still afford a high level of amenity for the owner of 82 Seaforth Crescent in optimising the outlook towards the harbour by strategically placed privacy screening, landscaping, orientation and spatial separation to the adjoining property boundaries.

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.

There are two (2) properties which raised concerns regarding views. Both property is considered separately against the 4 steps of the Tenacity Planning Principle.

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:

17 Princes Promenade

As shown in Figure 1 below, a minor portion of water views consisting of Middle Harbour will be impacted from the upper floor bathroom window (however this area would become a living room/sitting room under DA2021/1633). This results from the proposed ground floor level. The upper floor level impacts sky and district views.

Figure 2 shows that only views of the sky will be impacted, with no impact on the Harbour views.

Figure 3 shows that the view corridor will be improved as a result of the new ground floor being setback further than the existing building.



Figure 1 - Looking north-west, standing position, photo taken from Bathroom window on the upper floor (however, under recently approved DA2021/1633 will be a retreat/living room).



Figure 2 - Looking north-west, standing position, taken from main dining room window on the ground floor, adjoining deck can be seen with similar aspect.



Figure 3 - Looking north-west, standing position, taken from kitchen window on the ground floor.

13 Princes Promenade

As seen in below Figure 4, a portion of harbour views will be impacted as a result of the proposal. This view is considered to be a partial view, as the view is obscured by existing buildings and potentially will be further obscured by the current construction upon 15 Princes Promenade and future construction of 17 Princes Promenade (as approved under DA2021/1633).

As seen in Figure 5, there are some filtered harbour views through the trees looking over the two adjoining properties. However, this view is obscured by existing vegetation and will be further obscured upon construction of dwellings upon 15 and 17 Princes Promenade.



Figure 4 - Looking north-west from bedroom window, upper floor, standing position.



Figure 5A - Close up of figure 5.



Figure 5 - Looking north from ground floor terrace, adjoining living room, standing position.

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:

17 Princes Promenade

The views are obtained over a side boundary for the upper floor bathroom. The views are obtained over the side boundary from the ground floor kitchen. The views are obtained over both the side and front property boundary from the ground floor dining room and deck. Each view is available from a seated and standing position.

13 Princes Promenade

The views are obtained from an upper floor bedroom over a side boundary and over the side boundary from the ground floor terrace. Each view is available from a seated and standing position.

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

sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

17 Princes Promenade

The view from the upper floor bathroom will be impacted a minor amount, with a small portion of the water view impacted, however a substantial amount retained. Water views will not be impacted from the ground floor dining room, kitchen and deck. Some minor district and sky views will be impacted. Overall, given the extent of views retained and the minor amount lost, the overall impact is considered to be minor. It is noted that some water views will be gained due to the increased setback to the new ground floor when compared to the existing ground floor of the building.

13 Princes Promenade

The view of the water from the upper floor bedroom will be lost entirely. The view of the water from the terrace will also be lost (although at present is already heavily obscured). There will be some district views of the escarpment behind harbour retained. Overall, due to the water views being lost this impact is best described as severe. However, it is important to note that these views will likely be impacted by the current construction of a two storey dwelling on 15 Princes Promenade and also the approved two storey dwelling at 17 Princes Promenade under DA2021/1633 (which will be extended further to the south).

The third step is an assessment of 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:

17 Princes Promenade

It is observed that the impact upon water views from the upper level bathroom is not caused by any non-compliant element of the proposal. The north-eastern wall of the ground floor has been designed to comply with the maximum wall height of 7.9m and exceeds the side setback control. Overall, the proposal presents a high level of compliance with the numerical controls, the exception being the top floor curved roof form which is centrally located and does not contribute to any impact upon water views or any significant landscape feature. The proposal has demonstrated a skillful design and in fact improves the view corridor from the ground floor, with the proposed ground floor being setback further than the existing situation to open up a view corridor towards the harbour for the ground floor. Given view sharing is improved from the ground floor living areas, this proposal is considered to have demonstrated skillful design.

13 Princes Promenade

The breaching curved roof element does not contribute to any impact upon water views. A fully compliant development would still result in the view corridor between houses consisting of the water being lost. It is also noted that this view corridor is highly susceptible to impact given it is across a side boundary and the development site is three (3) properties away. Recent approvals at 15 and 17 Princes Promenade will likely result in the water views being impacted upon completion of these new buildings. It would be considered unreasonable to require redesign of the proposal to retain this small portion of water view when it will likely be lost anyway and the view corridor is obtained over a side

boundary, through the centre of the site.

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 western elevation has a breach of the maximum wall height for a portion of the building facing the western boundary. The requirement is 7.5m and there is a portion of the western façade up to 8.1m. It is noted that the western elevation shows an oblique elevation which makes the western elevation seem longer than it will be in reality. The area of encroachment is setback between 2.6m and 4.3m and includes a curved wall to provide articulation and softening of this element. The side setback of this portion of the building is compliant. The encroachments to the 8.5m building height located central of the building footprint and result from the curved roof form and is considered in detail in the Clause 4.6 assessment earlier in this report.

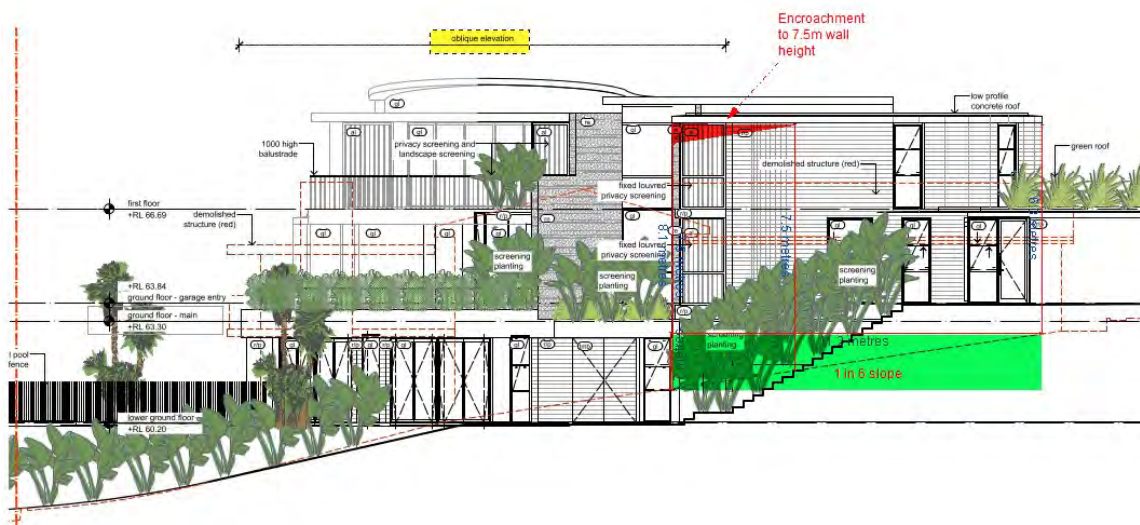


Figure 1 - Western elevation marked up by assessing officer.

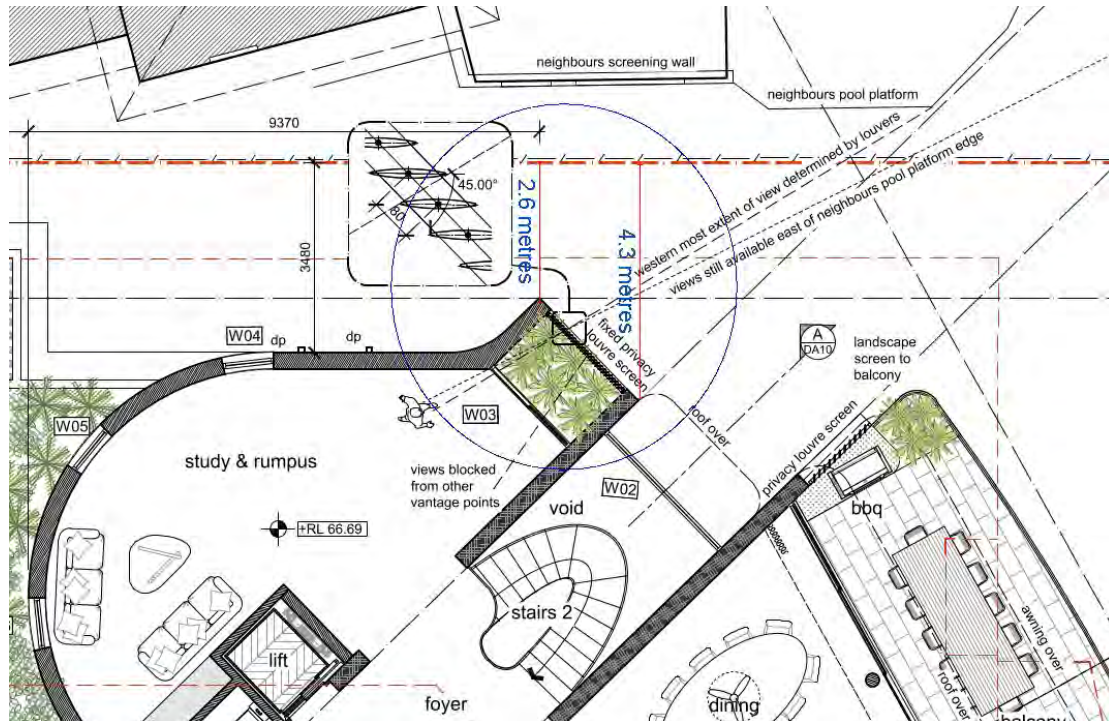


Figure 2 - Upper floor plan showing area of encroaching wall.

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, portion of wall which encroaches the 7.5m wall height is for a minor length and does not cause unreasonable impacts in terms of views or overshadowing. Full height privacy screens which have been angled away from the adjoining properties pool have been used to mitigate privacy impacts. Overall, the building is well articulated to break down the bulk and scale of the building and minimise the length of wall facing directly the western boundary.

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

Description of non-compliance

The DCP requires that "c) All new windows from habitable dwellings of dwellings that face the side boundary are to be setback at least 3m from side boundaries".

The following windows are within 3m of the side boundary:

- 1) Bedroom 3 window - Ground floor - Setback 2.2m - 3.9m.
- 2) W10 Kitchen window - Upper floor - Setback 2.8m

In regards to the above, bedroom window 3 is located at the ground level and is skewed from the boundary, therefore not having any privacy impacts.

W10 is shown on the upper level floor plan, however is not shown on the eastern elevation. Therefore, a condition is recommended that W10 Kitchen window on the upper floor is deleted from the floor plan

as it has not been detailed on the 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.

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.*

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

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.*

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

Comment: Council is satisfied that the above objectives have been met, of most relevance that the minor encroachment to bedroom 3 window will not result in privacy impacts due to the orientation, level and location of this window.

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

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

Control 4.1.6.1 requires garage doors to be a maximum width of 6.2m.

The proposed garage door width is 8.3m, inconsistent with the control. A merit assessment of the variation is undertaken below.

Merit Assessment

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment: The parking arrangement is safe for all users.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment: More than compliant amounts of parking will be available within the site.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment: Although the garage door is wider than the control, the garage is setback 20m from the southern property boundary and will not be visually dominant due to the setback and embellishment of landscaping between the street boundary and the garage. The garage door will use materials to blend into the remainder of the development and will use high quality finishes. The garage is not considered to cause a visual impact on the street for these reasons.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

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

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment: The above objectives are either achieved or are irrelevant to the proposal.

Council is satisfied the objectives of the control are achieved and therefore a variation may be granted in the circumstances.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$47,681 is required for the provision of new and augmented public

infrastructure. The contribution is calculated as 1% of the total development cost of \$4,768,129.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of a dwelling house has been referred to the Development Determination Panel (DDP) due to a building height breach of more than 10% (in this case 15.6%).

The concerns raised in the objections have been addressed and resolved by conditions where appropriate, with the issues raised in the submissions addressed within this report including a view sharing assessment. The issues raised within the submissions do not warrant refusal of the application

and Council is satisfied with the building height, privacy and view sharing outcomes of the proposal.

The critical assessment issues the assessment of building height under Clause 4.6, view sharing and privacy. The height breach is partially caused by the prior excavation of the site and the 1 in 4 gradient of the land on which the portion of the roof form sits over.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/1760 for Demolition works and construction of a dwelling house on land at Lot 137 DP 4889, 82 Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA000 Rev B	09/09/22	Carl Rutherford Designs
DA01 Rev B	09/09/22	Carl Rutherford Designs
DA02 Rev B	09/09/22	Carl Rutherford Designs
DA03 Rev B	09/09/22	Carl Rutherford Designs
DA04 Rev B	09/09/22	Carl Rutherford Designs
DA05 Rev B	09/09/22	Carl Rutherford Designs
DA06 Rev B	09/09/22	Carl Rutherford Designs
DA07 Rev B	09/09/22	Carl Rutherford Designs
DA08 Rev B	09/09/22	Carl Rutherford Designs
DA09 Rev B	09/09/22	Carl Rutherford Designs
DA10 Rev B	09/09/22	Carl Rutherford Designs
DA11 Rev B	09/09/22	Carl Rutherford Designs

DA15 Rev B	09/09/22	Carl Rutherford Designs
DA17 Rev B	09/09/22	Carl Rutherford Designs
DA18 Rev B	09/09/22	Carl Rutherford Designs

Engineering Plans		
Drawing No.	Dated	Prepared By
Stormwater Engineering Plans - Dwg 000, 101, 102, 103, 104, 105, 108 Rev B	2/12/2022	MBR Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No.1296832S_02	28 March 2023	Gradwell Consulting
Geotechnical Investigation 6808-G1	18 February 2022	Assetgeoenviro
Arboricultural Impact Assessment	5 October 2022	Jackson Nature Works

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 C001 to C012, Rev B	25/08/2022	Bates Landscape

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Jean Gamble	6/09/2022

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 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

4. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$47,681.29 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$4,768,129.00.

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. **On Slab Landscape Works**

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

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

The following soil depths are required to support landscaping: 300mm for groundcovers, grasses and lawn; 600mm for shrubs.

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

established planting).

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

7. 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.

8. Amendments to the approved plans

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

- Window 10 servicing the kitchen located on the upper floor is to be deleted from the plans (as this window is not shown on the eastern elevation).
- A privacy screen measuring 2m high (measured from the floor level of the terrace) shall be provided along the south-western edge of the ground level terrace. The privacy screen shall consist of fixed louves with 80mm spacing and fixed at a 45 degree angle.
- The privacy screen along the south-western edge of the first floor balcony shall be extended along the full length of this edge of the balcony to the north-western corner of the balcony.

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.

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. 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 MBR Consulting Engineers Pty Ltd, drawing number 22017 - 00, 101, 102, 103, 104 and 106 Issue B dated 02/12/22. 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. Step irons within the detention tank under each access grate.
2. An overflow pipe above the top water level in the detention tank connected directly to the

- outlet pipe
3. Non-return valve between the rainwater tank and detention tank.

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. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **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: 80 Seaforth Crescent and 17 Princes Promenade Seaforth

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. **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.

16. **Protection of Existing Street Trees**

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

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

17. **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.

18. **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.

19. **Road Reserve**

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

Reason: Public safety.

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

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

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

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

21. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

22. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor 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.

23. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

24. **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.

25. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing Normal Low Profile and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

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

26. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawings C001, C008, C009, C010, C011 by Bates Landscape dated 25/08/22), 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 75 litres or as otherwise scheduled if greater in size; 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 (where practicable); 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) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum

200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,

e) 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,

f) 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,

g) substitute all *Rhaphiolepis* with a suitable alternative (although a cultivar is proposed, Council deems this species an environmental threat).

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. **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.

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 the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

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

30. **Landscape Maintenance**

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

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

Reason: To maintain local environmental amenity.

31. **Maintenance of Privacy Screens**

The privacy screening as shown on the approved plans and as required by the conditions of consent shall be maintained for the life of the development.

Reason: To ensure ongoing maintenance of privacy for adjoining properties.

32. **Swimming Pool/Spa Motor Noise**

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

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

33. **Mechanical plant and solar panels on roof**

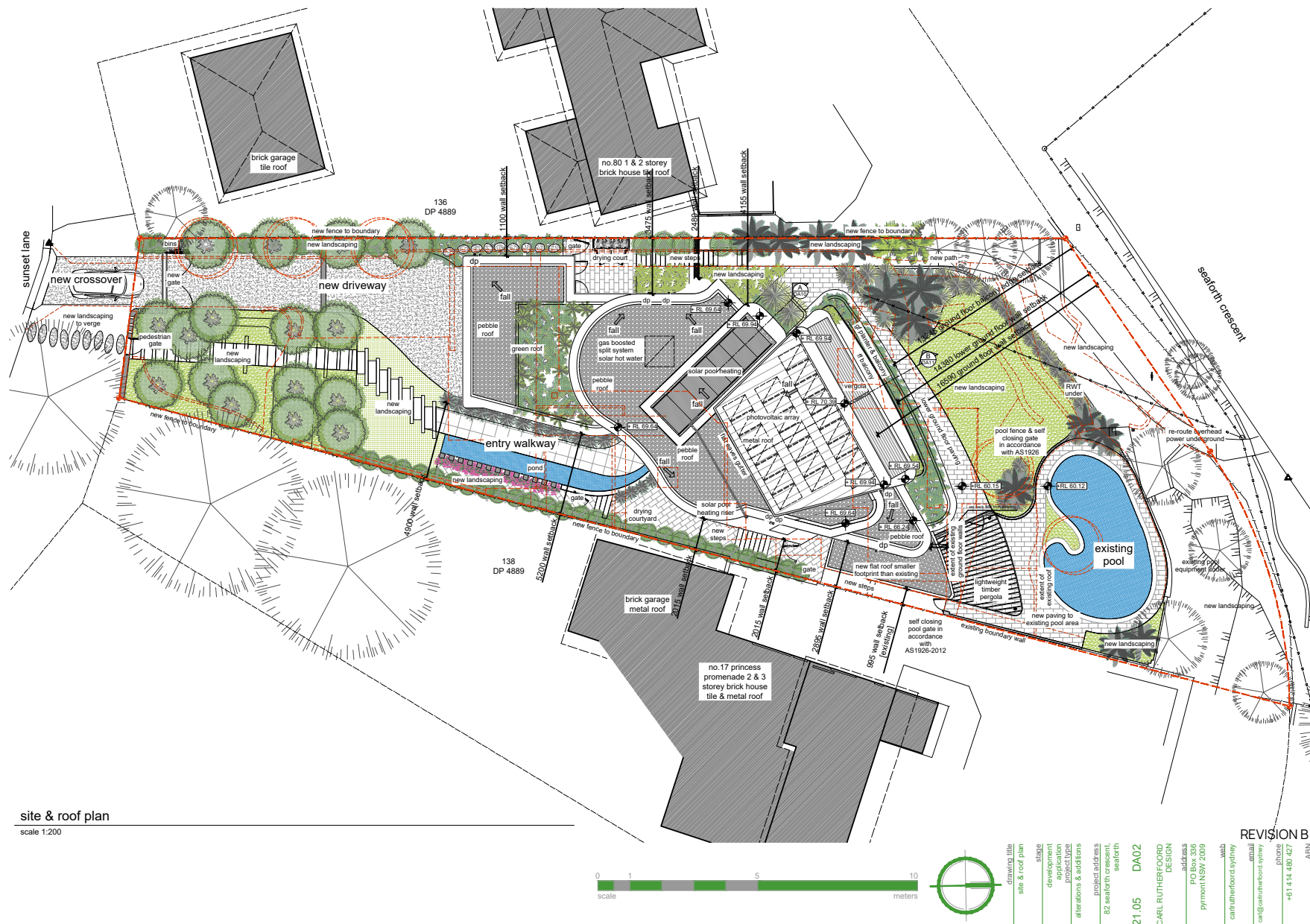
The photovoltaic panels proposed to be located on the central roof shall be mounted flush to the roof surface.

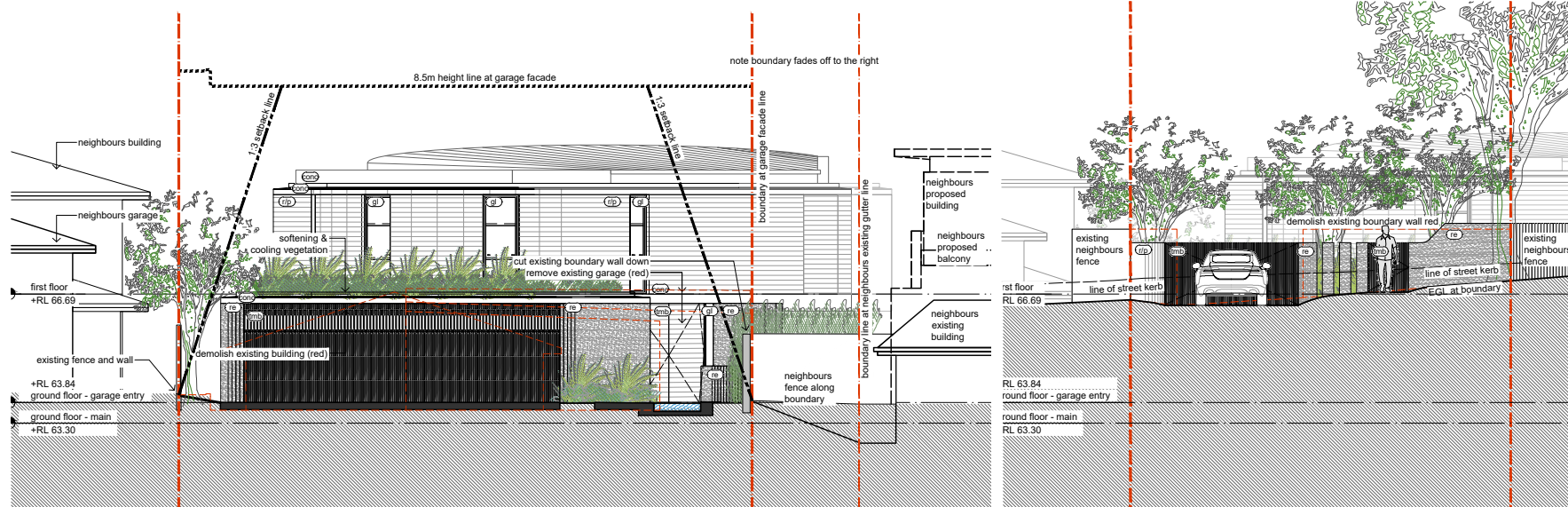
The solar pool heating is to be mounted flush to the roof surface.

The placement of the photovoltaic panels and solar pool heating is to remain as above for the life of the development.

Reason: Information to ensure that amenity of the surrounding locality is maintained and

building height is minimised. .



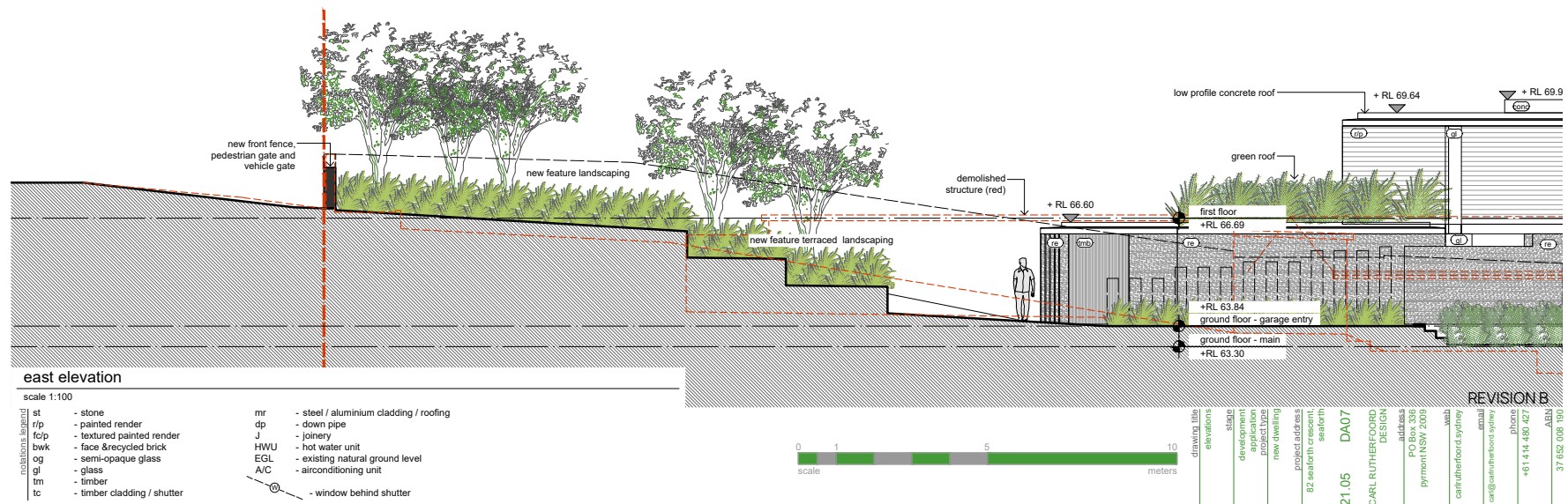
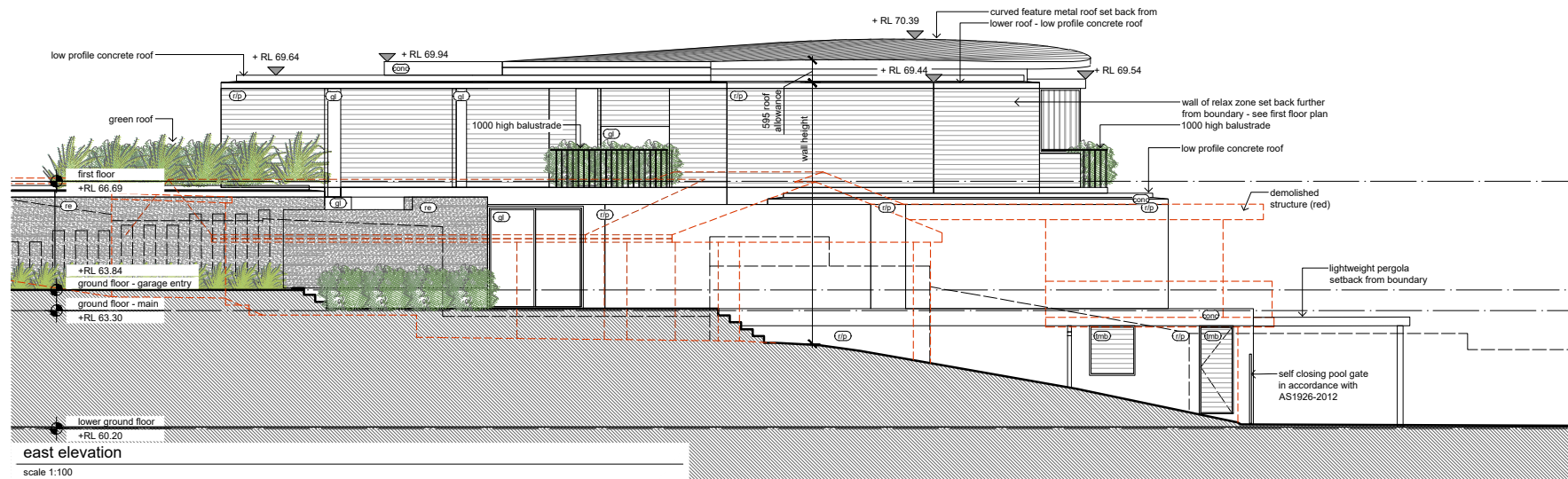


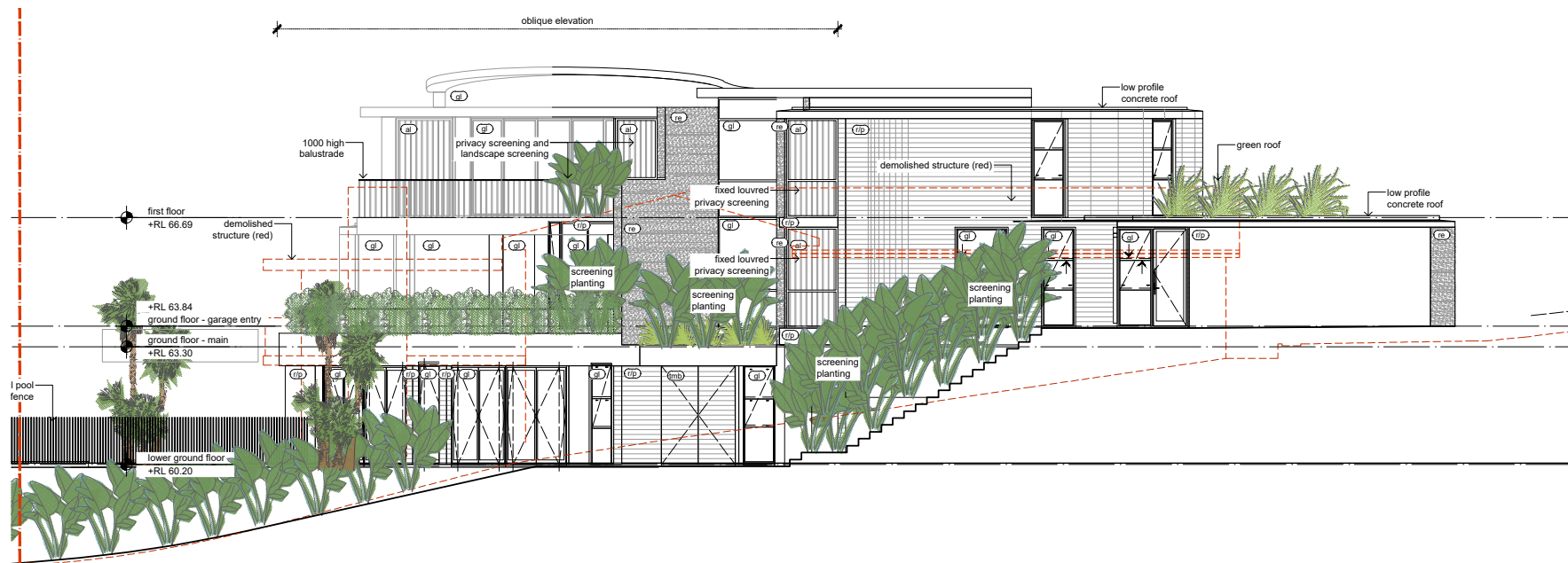
- | | | | |
|------|-----------------------------|-----|--|
| st | - stone | mr | - steel / aluminium cladding / roofing |
| r/p | - painted render | dp | - down pipe |
| fc/p | - textured painted render | J | - joinery |
| bwk | - face & recycled brick | HWU | - hot water unit |
| og | - semi-opaque glass | EGL | - existing natural ground level |
| gl | - glass | A/C | - airconditioning unit |
| tm | - timber | | |
| tc | - timber cladding / shutter | | |
- window behind shutter
 - window behind shutter



- | | |
|------------------|----------------------------|
| drawing title | elevations |
| stage | development |
| development | project type |
| project type | new dwelling |
| project address | 82 warforn crescent |
| suburb | seaforth |
| 21.05 | DA06 |
| CARL RUTHERFORD | DESIGN |
| address | PO Box 506 |
| pyrmont NSW 2009 | |
| web | carlrutherford.com.au |
| email | carl@carlrutherford.com.au |
| phone | +61 4 14 480 427 |
| ALN | 37 652 008 190 |

REVISION B





west elevation

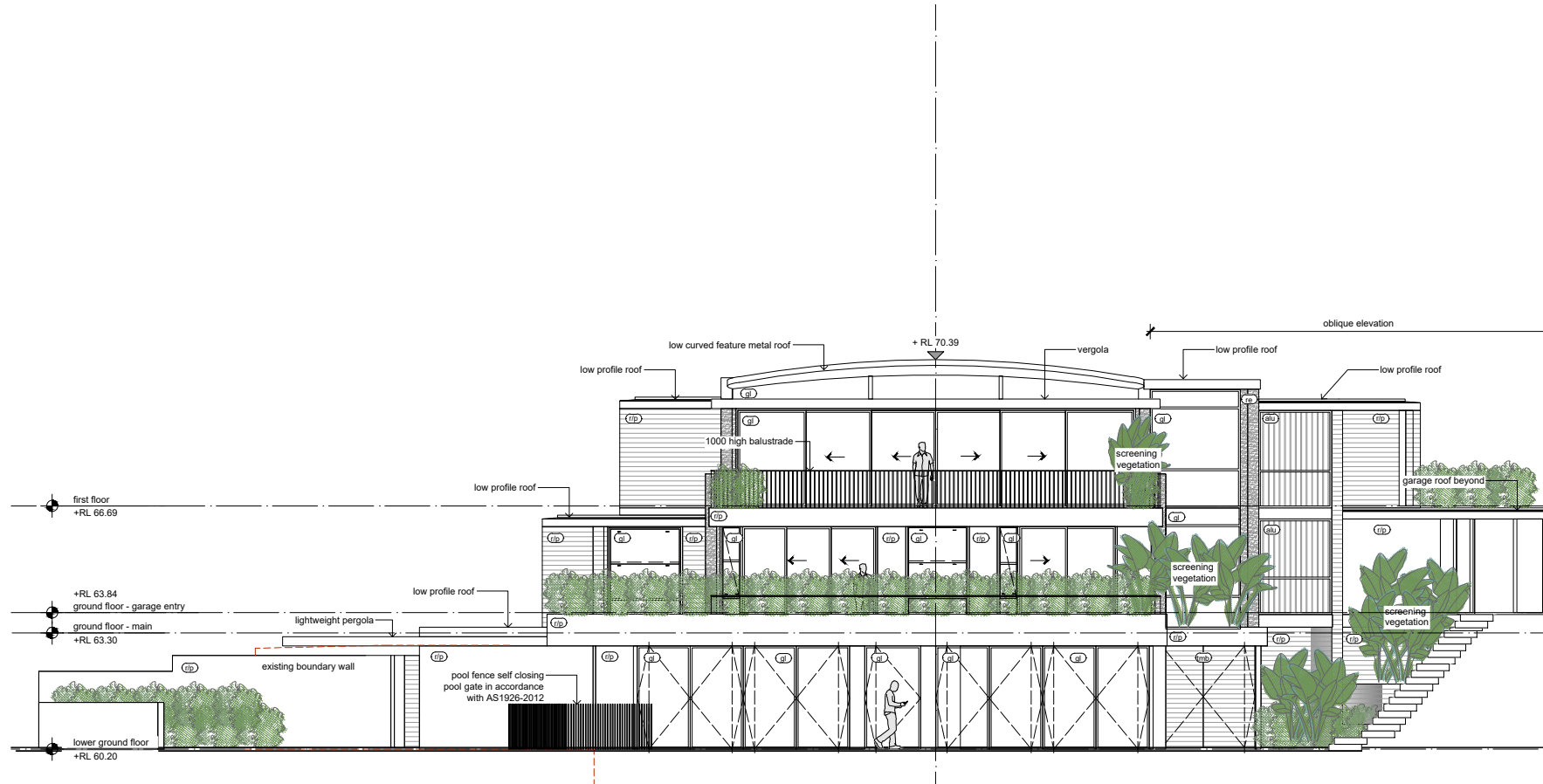
scale 1:100

st	- stone	mr	- steel / aluminium cladding / roofing
r/p	- painted render	dp	- down pipe
fc/p	- textured painted render	J	- joinery
bwk	- face & recycled brick	HWU	- hot water unit
og	- semi-opaque glass	EGL	- existing natural ground level
gl	- glass	A/C	- airconditioning unit
tm	- timber		
tc	- timber cladding / shutter		
			- window behind shutter



drawing title	elevations
stage	development
development	new dwelling
project type	new dwelling
project address	82 warford crescent, warford, nsw 2060
21.05	DA08
CARL RUTHERFORD	DESIGN
address	P.O. Box 336, pyrmont NSW 2009
web	carlrutherford.com.au
email	carl@carlrutherford.com.au
phone	+61 4 14 480 427
ABN	37 652 008 190

REVISION B



north west elevation

scale 1:100

st	- stone	mr	- steel / aluminium cladding / roofing
r/p	- painted render	dp	- down pipe
fc/p	- textured painted render	J	- joinery
bwk	- face & recycled brick	HWU	- hot water unit
og	- semi-opaque glass	EGL	- existing natural ground level
gl	- glass	A/C	- airconditioning unit
tm	- timber		
tc	- timber cladding / shutter		

- window behind shutter



drawing title	elevations
stage	development
development	project type
new dwelling	project address
82 warford crescent	seaforth
21.05	DA09
CARL RUTHERFORD	DESIGN
address	PO Box 506
pyrmont NSW 2009	web
carlrutherforddesign.com.au	email
carlrutherforddesign.com.au	phone
+61 4 44 480 427	ASN
37 652 008 190	

REVISION B

longitude_{planning} pty ltd

Clause 4.6 Exceptions to development standards.

In respect of the height of buildings development standard of Clause 4.3(2) of the Manly LEP 2013, in relation to amended plans for a new dwelling house, at 82 Seaforth Crescent, Seaforth.

Prepared by Warren Long MPIA Registered Planner.

17 March 2023

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Urban and Regional Planning, Urban Design and Development Assessment Consultants

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exception statement

82 Seaforth Crescent, Seaforth

Amended Clause 4.6 – Exceptions to Development Standards in relation to Clause 4.3(2) – Height of buildings of the Manly Local Environmental Plan 2013.**1. Introduction.**

This written request is made pursuant to the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP). A variation is sought to the height of buildings development standard of Clause 4.3(2) of the LEP, in relation to amended plans for a new dwelling house, at 82 Seaforth Crescent, Seaforth.

This exception statement has also been prepared having regard to the Land and Environment Court judgments in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115, *Tenacity Consulting Consulting v Warringah* [2004] NSWLEC 140 and *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

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.*

(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*

exception statement

82 Seaforth Crescent, Seaforth

- (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.*
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note—**

When this Plan was made, it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4,*
 - (ca) clause 6.15,*
 - (cb) a development standard on land to which clause 6.19 applies.*

Clause 4.6(1) provides:

- (1) The objectives of this clause are:*
 - (a) to provide an appropriate degree of flexibility in applying certain*

exception statement

82 Seaforth Crescent, Seaforth

*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 *Rebel MH 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.

In *Initial Action* Justice Preston considered the proper interpretation of Clause 4.6 and found that:

- *Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial effect relative to a compliant development (at [87]);*
- *There is no requirement for a clause 4.6 request to show that the proposed development would have a 'better environmental planning outcome for the site' relative to a development that complies with the standard (at [88]); and*
- *One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]). That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.*

At [90] of Initial Action the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in Initial Action is that Clause 4.6(1) is not an operational provision and that the remaining clauses of Clause 4.6 constitute the operational provisions.

Clause 4.6(2) 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

exception statement82 Seaforth Crescent, Seaforth

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

This clause applies to Clause 4.3(2) Height of buildings development standard of the Manly LEP 2013.

2. Is the provision a development standard? If so, is the operation of the flexibility provision excluded in the LEP?

Clause 4.3 of the Manly LEP sits within Part 4, which is titled 'Principal Development Standards'. Clause 4.3(2) is a development standard in relation to height of buildings and the relevant standard is as follows:

The relevant provision as follows:

Clause 4.3 Height of buildings

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

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

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

(c) to minimise disruption to the following:

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

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

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

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

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

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

The site is located in area 'I' on the Height of Buildings Map of the LEP. In accordance with the height of buildings map a maximum building height of 8.5m applies to the site.

The amended proposal includes the lowering of the building by between 450mm to 650mm in part. The highest part of the building will be the middle of the north end of the curved roof over the living and dining room, which as amended will

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be at RL70.39 above the existing ground level at RL61.11 in the sub floor and will be 9.28m in height and the north east corner of the roof at RL69.94 will be 9.83m in height above RL60.11 (under the lower ground floor) on this end of the roof and therefore exceeds the 8.5m height of buildings standard. The corresponding north west end and corner of the roof also at RL69.94 will comply and will be 8.36m in height above the higher existing ground level of RL62.38 under the house.

The concrete frame to the vergola roof at RL69.54 will be 9.43m in height above RL60.11. The height of the building at various locations is shown on the following extract from the roof plan.

Note, that RL60.11 is the previously excavated ground level 150mm (assumed slab thickness) under the existing lower ground floor under the north east corner of the existing house.

The proposed house will not be excessive in height and the breach of the 8.5m height of building standard on the north side of the building is a function of the slope of the site from south to north and the excavation that previously occurred on the site to accommodate the existing lower ground floor level, partly in the foundation area under the north side of the existing house.

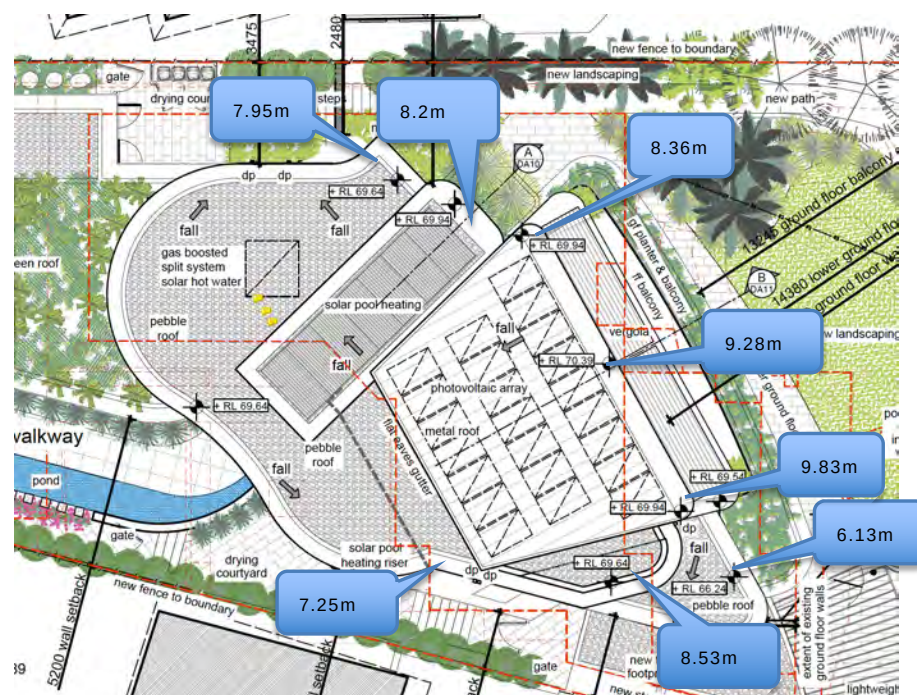


Figure 1: Extract from Drawing DA02 – Site and Roof Plan Amended showing the building height at various locations.

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3. Is compliance with the development standard unreasonable or unnecessary?

Clause 4.6(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

As found by Justice Preston in *Initial Action*, compliance with the development standard will prima facie be unnecessary if it can be shown that there is an absence of environmental harm/adverse amenity impacts from the proposed development. The breach of the height of buildings standard does not have adverse amenity impacts for the reasons outlined in this written request.

Furthermore, the submission and consideration of Objections under State Environmental Planning Policy No. 1 and the issue of compliance being "unreasonable or unnecessary" was summarised in the Land and Environment Court judgment *Wehbe v Pittwater Council* [2007] NSWLEC 827. While that judgment applied to SEPP 1 Objections and not Clause 4.6 variation requests, the approach in that case has been accepted in subsequent court cases related to Clause 4.6 variation requests.

The onus lies upon the applicant to demonstrate this in a written request that requiring compliance with the particular standard would be unnecessary or unreasonable. In this regard, the Wehbe case outlined 5 possible ways to demonstrate whether compliance would be unnecessary or unreasonable, by establishing:

- i. Compliance with the underlying objectives of the standard being breached, notwithstanding the numerical non-compliance; or*
- ii. That the objectives of the standard are not relevant to the proposal; or*
- or*
- iii. Requiring compliance with the development standard would "thwart" the achievement of the objectives of that standard; or*
- iv. The development standard in question has been "virtually abandoned" by the Council; or*
- v. The zoning of the land is not appropriate for the site and therefore the associated standards are not appropriate (with some qualifications).*

This written request does not rely on pathways ii, iii, iv and v above.

Point i. is of primary relevance in this case, that is, that the objectives of the standard are achieved, notwithstanding the non-compliance and there would be no purpose served by requiring strict compliance with the standard.

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The objectives of the height of buildings standard are as follows:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

The proposed development will be in the public interest because it is consistent with the objectives of the height of buildings standard for the following reasons:

- (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,*

The height and bulk and scale of the new house will maintain compatibility with the varied building height and roof forms in the locality. The house will not be highly visible from Seaforth Crescent and it is only the upper level of the building that will be visible from some vantage points due to the dense landscaping along the curved boundary on the north side and below the house.

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

The bulk and scale of the building is acceptable and is minimised by the siting of the new house in a similar location to the existing house but with curved wall elements that provide wide setbacks to boundaries and a deep setback from Seaforth Crescent. The low profile flat and sloping roofs and natural materials and finishes also assist in controlling bulk and scale.

- (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),*

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

The elements of the new house and the roof, where the breach of the height of buildings standard occurs will not affect views to and from Middle Harbour from the adjoining properties. The ground floor level of the new house has also been positioned so that wide side setbacks are maintained and the projection to the north and north east and north west is contained within and in some areas setback further from the rear and the outer corners of the existing building, to maintain view lines and reduce visual bulk from neighbouring properties.

There are no public views over the site or the proposed house.

(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,

The site has a north to south orientation similar to the adjoining properties. Shadow diagrams were prepared for 9am, 12noon and 3pm, on 21 June and submitted with the development application. The analysis confirms that the proposal will involve only a minor increase in overshadowing of the adjoining houses in the morning and afternoon period and solar access will be maintained to north facing living rooms and private open space areas in accordance with the solar access criteria of the DCP.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The site is not located in a recreation zone or environmental protection zone.

There would be no purpose served by requiring strict compliance with the standard because the height of the dwelling where the breach the height of buildings standard occurs does not contribute to the house being excessive in height and bulk and scale when viewed from adjoining properties, from the street and from a distance from Middle Harbour. There will also be no adverse impact on the amenity of the adjoining and adjacent properties and the environmental quality and scenic amenity of the locality.

For the reasons outlined, the proposal will be consistent with the objectives of the standard and strict compliance with the 8.5m height of buildings standard is unreasonable and unnecessary.

Objectives of the zone

Zone R2 Low Density Residential Zone

The objectives of the R2 Low Density Residential Zone are:

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

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

The following comments address the objectives of the R2 Low Density Residential Zone:

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

The proposal for a new two storey and part three storey dwelling house is consistent with this objective of the zone because it provides for the ongoing needs of the community for a new single dwelling house in this low density residential zone.

The height and bulk and scale of the building also has regard for the topography and the amenity of the adjoining dwelling houses.

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

The proposal is neutral to this objective.

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

Of relevance is the judgment in the Land and Environment Court of NSW, *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009, NSWLEC 90, NSWLEC 248*, which raised the issue that the grounds should ideally relate to a site specific proposal, rather than generic reasons.

Also, given the term "environmental planning grounds" is wide in its nature, context and understanding, and given the Objects of the EPA Act 1979 give effect to all other planning instruments, DCPs and wide assessment criteria, a wide appreciation of the term is warranted.

The Clause 4.6 variation establishes sufficient environmental planning grounds to justify contravening the height of buildings development standard.

The environmental planning grounds particular to this site and to this proposal relates to the steep slope of the site from south to north and the difference in level towards the rear of the existing house where the site has been previously excavated to accommodate the existing lower ground floor, partly in the foundation area/undercroft under the existing house. It is in this area where the ground level existing is taken to be the ground under the existing lower ground floor where the breach of the standard occurs to varying degrees.

Also of relevance is the judgment in the Land and Environment Court of NSW, *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. This was an appeal against the deemed refusal by Woollahra Municipal Council, of a Development Application for the demolition of all existing structures, removal of existing vegetation, excavation to accommodate two levels of basement parking and construction of a three and four storey residential flat

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building comprising four apartments, a plunge pool for one apartment and associated landscaping, at 3 Wiston Gardens, Double Bay

At paragraph 74 of the judgement, the Commissioner accepted that the prior excavation of the site within the footprint of the existing building can properly be described as an environmental planning ground within the meaning of Clause 4.6(3)(b) of LEP 2014, because it distorts the height of buildings development standard height plane when overlaid over the site, compared to the topography of the hill.

As outlined, the subject site has been previously excavated to achieve the lower ground floor level of the existing house and the building height has been measured from the irregular ground levels across the site and under the existing building

The new house has a stepped form and appearance and a layered, low profile roof design. The contemporary design and appearance with curved and tapered walls provide good separation between buildings for privacy and landscaping and the articulation along the sides actually reduces the visible bulk and scale of the building along the sides and at the rear, compared to a building that had the side walls parallel to the side boundaries.

The absence or lack of environmental harm in this case is also a relevant environmental planning ground particularly having regard to the elements of the building and the roof where the breach of the standard occurs, and there are no adverse physical impacts on the existing levels of privacy, solar access and views of adjoining and adjacent properties.

The contention that an environmental planning ground could include establishing a lack of environmental harm was supported in a recent case in the Land and Environment Court of NSW in *Initial Action v Woollahra Council (2018) NSWLEC 118*.

This was also an appeal against a Commissioner's decision on questions of law. This case related to the Commissioner's refusal to grant development consent for a residential flat building that contravened the height of buildings development standard of the Woollahra LEP 2014, and the Commissioner was not satisfied that contravention of the development standard was justified in the Clause 4.6 exception to a development standard.

In his Principal judgment Preston CJ made a similar finding as he did in *Randwick City Council v Micaul Holdings Pty Ltd at [34]*, in relation to consistency of a development with the objectives of a development standard and consideration that a lack of adverse amenity impacts on adjoining properties is a sufficient ground justifying a development contravening the development standard.

Of particular relevance is objective c) and objective d) of the height of buildings standard.

There will be no adverse effects on the amenity on the adjoining and adjacent properties or the locality. Views from neighbouring properties and solar access will be retained to an acceptable degree.

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For the reasons outlined, there are sufficient environmental planning grounds particular to the circumstances of this sloping and previously excavated site and the design of the proposed dwelling house, to justify the departure from the height of buildings standard.

In terms of the Objects of the EP&AA Act, the proposal will be consistent with the objectives of the Act, particularly in relation to ecologically sustainable development, the orderly and economic use and development of the land, sustainable management of built and cultural heritage and good design and amenity of the built environment.

4. Is the proposed development in the public interest because it is consistent with the underlying purpose or object of the standard and the objectives for development in the zone in which it is proposed to be carried out?

In accordance with Clause 4.6(4)(a), development consent must not be granted to a development that contravenes a development standard unless Council is satisfied in relation to certain matters as follows:

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

(a) the consent authority is satisfied that:

- (i) the 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(4)(a)(i) has been addressed in the previous section of this written request. The objectives of the standard (4.6(4)(a)(ii)) as well as the objectives of the R2 Low Density Residential Zone have been previously addressed and are adopted (rather than repeated) for the purposes of this section of the written request.

The proposed development will be in the public interest because the development achieves each of the relevant objectives of the height of buildings standard and the objectives of the zone and is therefore consistent with them.

The proposal for a dwelling house is permissible in the zone with development consent. The requirement in Clause 4.6(4)(b) is also met, as outlined as follows in relation to the concurrence of the Director-General.

Clause 4.6(4)(b) Concurrence of the Director-General

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent

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authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice.

In accordance with Clause 4.6(4)(b) the concurrence of the Director-General is assumed.

5. Conclusions

The height and bulk and scale of the proposed dwelling house is acceptable, notwithstanding the departure from the numerical height of buildings standard.

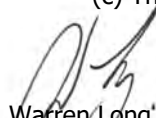
The proposal will not involve any adverse visual impacts in the streetscape, because the height, appearance and overall size of the building will be compatible with the height and scale of the surrounding residential development. The contemporary style and character of the house and the layered and stepped building form will not be a prominent or foreign element of streetscape of either Seaforth Crescent, Sunset Lane or Princes Promenade. It will also not be a visually dominant built element of the slope when viewed from a distance from Middle Harbour and surrounding foreshores.

The curvature of the building is an appropriate design response to the alignment of neighbouring dwellings and the curved northern frontage to Seaforth Crescent. The design and siting of the new dwelling also achieves a meaningful outcome in terms of minimising visual bulk and scale, maximising separation between buildings and maintaining view corridors. In this way it will not result in adverse impacts on the present amenity of neighbouring properties particularly in relation to views, privacy and solar access.

This exception request to the height of buildings standard is considered to be well founded and Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

This written request pursuant to Clause 4.6(3) of the Manly LEP 2013 is acceptable for the following reasons:

- (a) The written request adequately addresses the matters required to be demonstrated by sub-clauses 4.6(3)(a) and
- (b) The proposal will be in the public interest because it is consistent with the objectives of the height of buildings development standard and the objectives for development within the R2 Low Density Residential Zone; and
- (c) The concurrence of the Director General is assumed.



Warren Long
MPIA Registered Planner
Principal of Longitude Planning Pty Limited

Dated: 17 March 2023

ITEM 3.4	DA2022/1046 - 8 BLIGH CRESCENT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/261828
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/1046 for alterations and additions to a dwelling house on land at Lot 101 DP 838216, 8 Bligh Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1046
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 101 DP 838216, 8 Bligh Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Kim Rhona Tracey
Applicant:	Kim Rhona Tracey
Application Lodged:	20/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/07/2022 to 11/08/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 11.14%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,992,620.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to the application proposing a greater than 10% variation to the Height of Buildings development standard.

Concerns raised in the objection predominantly relate to building height non compliance, building bulk, stormwater and amenity (solar access, privacy and view loss). This reports includes detailed assessment of the objections, and finds that the totality of impact does not warrant the refusal of the application.

The 4.6 request for the non-compliance with the height of buildings development standard arises from

the site being previously excavated to allow for the existing basement. The variation arises from the topography of the site and the existing variation that has occurred on site.

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 consent for alterations and additions to the existing dwelling house.

The works comprise of the following:

- Demolition works
- Construction of an extension to the existing garage
- Installation of a new garage door.
- Construction of a new plant room located at Level 1.
- Installation of new lift to providing access to all levels.
- Adjust configuration of existing entrance stairs and relocation of existing wall/door/window adjacent to entrance door.
- Construction of external wall to Level 1 to support the library floor extension.
- Construction of floor extension involving a bay window to Study 1 located at Level 2 including new windows.
- Internal reconfiguration and construction of partition walls and doors to suit new layout on Levels 2 & 3.
- Construction of new windows to library extension.
- Replace existing windows to formal dining.
- Construction of new bench seat, stairs and pool deck to the rear of dwelling.
- Construction of new internal stairs.
- Construction of rear extension to Level 3 consisting of WIR, lift, laundry and ensuite to Bed 1.
- Construction of new awning to Terrace 1 and adjustments to existing deck to Bed 1 including new windows and skylights.
- Construction of a Level 4 addition consisting of a two bedrooms, bathroom, linen and laundry room, hall, bar and roof terrace.
- Construction of a new metal roof including fire rated skylights to replace existing and construction of a projecting frame around window to Bed 3.
- Provision of new privacy screens adjacent to terrace 1 and terrace adjoining study 1.
- Provision of new external finishes as per schedule of materials and finishes.
- Construction of new balustrade to terrace 1 and balcony 2 to Bed 5.

AMENDED PLANS

Following a preliminary assessment of the application and site inspection of the subject site and adjoining properties Council wrote to the applicant on 29 August 2022 outlining concerns that would not allow for Council to support the application in its current form. The concerns related to view loss and the proposed building height. The applicant lodged additional information 14 September 2022 to address the concerns raised. The proposed amendments will not have an increased environmental impact on the adjoining properties and public open space than the original proposal. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

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 Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 101 DP 838216 , 8 Bligh Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Bligh Crescent, Seaforth. The site is irregular in shape with a frontage of 20.10m along Bligh Crescent and an average depth of 56m. The site has a surveyed area of 1190.5m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. A right of carriageway consisting of a bitumen access roadway (being an extension of Bligh Crescent) bisects the front (southern) portion of the site. The subject site slopes from the site's rear northern portion towards the front south western corner approximately 8.64m.

The site is located within the Northern Beaches Bushfire prone area.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development to the east and west. Gurney Crescent Reserve adjoins to the property to the north.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to building height and view loss. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 Matters for Consideration	Comments
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 (prepared by David Peterson, dated 24 March 2022). The report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/07/2022 to 11/08/2022 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 3 submission/s from:

Name:	Address:
Mr Francois Marcel Vazille	10 Bligh Crescent SEAFORTH NSW 2092
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093
Mr Pascal Grant Mrs Diane Edwards Grant	6 Bligh Crescent SEAFORTH NSW 2092

The following issues were raised in the submissions:

- **Building Height non-compliance**
- **View loss**
- **Building bulk**
- **Floor Space Ratio**

- **Solar Access**
- **DCP built form non-compliance**
- **Stormwater**
- **Insufficient information**

The above issues are addressed as follows:

- **Building Height non-compliance**

Comment:

A number of submissions have received raise concerns with the height of the proposed development. As discussed with regard to clause 4.3 of MLEP 2013, the application seeks consent for a maximum height of 10.5m, representative of a 23.5% departure from the 8.5m height prescribed by MLEP 2013. The maximum height non-compliance is limited to the front facade of the upper floor, with the extent of non-compliance decreasing towards the rear of the site. The non-compliant portion of the development does not attribute to any unreasonable impacts upon the amenity of adjoining properties and the height of the development as a whole is compatible with surrounding built form. The non-compliant height of the proposal is supported in this instance.

- **View Loss**

Comment:

Concern was raised in regards to loss of water views from private open space from the adjoining eastern property. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of '*Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report. In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces (No. 6 Bligh Crescent, Seaforth).

- **Building bulk**

Comment:

Concern is raised in regards to the overall bulk of the dwelling house. This matter is discussed in detail throughout the report. In summary, the bulk and scale of the proposed development is satisfactory given the constraints of the site, the level of impact on adjoining properties and size and scale of neighbouring properties. The proposed built form non-compliance and resultant bulk and scale are considered to be appropriate in this residential context and satisfies the requirements and objectives of the Manly DCP 2013. All relevant provisions of MDCP 2013 have been assessed in this report, with the bulk and scale of the proposed dwelling house deemed satisfactory.

- **Floor Space Ratio**

Comment:

Concern is raised in regards to the proposed non-compliance with the Floor Space Ratio development standard under clause 4.4 of the MLEP 2013. The amended proposed proposal is consistent with the Floor space ratio development standard.

- **Solar Access**

Comment:

Concerns have been raised in relation to the potential overshadowing created by the proposed development. The site has a north-south orientation. The revised shadow diagrams, detail the shadowing impacts upon neighbouring properties. The proposal complies with the requisite provisions of CI 3.4.1 of the Manly DCP.

- **DCP built form non-compliance**

Comment:

Concern is raised in regards to the extent of built form (setbacks, open space) non-compliance proposed under this application. This matter is addressed in detail elsewhere within this report (refer 4.1 of Manly DCP 2013 section of this report). Where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken.

- **Stormwater**

Comment:

The application was referred to Council's Development Engineers for comment in regards to stormwater management. Suitable conditions have been imposed as part of this recommendation to ensure adequate stormwater management for the proposed dwelling and adjoining properties.

- **Insufficient information**

Comment:

The documentation and plans submitted are sufficient for the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The development application is for alterations and additions to the existing dwelling and associated works, as described and illustrated in the Reports and Plans. A Landscape Plan and a Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral. Council's Landscape Referral 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 where applicable The Arboricultural Impact Assessment report submitted includes the recommendations to remove one species that is an exempt Dwarf Phoenix Palm and thus Council consent is not required. The report

Internal Referral Body	Comments
	includes tree protection measures for existing trees in proximity to the proposed development works and conditions shall be imposed. The Landscape Plan submitted includes an indication of existing landscape features retained including planting and natural rock outcrops, and provides additional planting as proposed to enhance the existing landscape character, and subject to conditions, is able to satisfy the above listed DCP controls including landscaped area and number of trees. The property contains many exotic exempt species noted in the Arboricultural Impact Assessment. It is considered by Landscape Referral that one additional native tree is required within the existing garden between the right of way and the garage driveway or otherwise elsewhere within the frontage to soften the built form to the frontage as proposed with an additional building level.
NECC (Bushland and Biodiversity)	The proposed development has been assessed against Manly LEP Clause 6.5 - Terrestrial Biodiversity. Trees proposed to be removed are exotic/exempt species and therefore, there is no objection to their removal. Conditions for tree planting recommended by the Landscape Referrals Team are supported.
NECC (Development Engineering)	1st Development Engineering referral response The impervious areas exceed the 60% of the total site areas. In accordance with Council Water Management For Development Policy, an on site stormwater detention system is required in this development. The applicant must provide a design of the OSD for assessment. As such, Development Engineering cannot support the application due to clause 3.7 of Council's Manly DCP 2013. 2nd Development Engineering Referral Response A calculation from Waterplan Pty Ltd showed the proposed paved areas is less than 60% of the total site areas. Development Engineering has no objection to the application subject to the following conditions of consent.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	There are no Aboriginal heritage issues for the proposed development.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many

provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A437410_02 dated 4 May 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 (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 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	5.85m - 9.47m	11.14% (0.97m)	No
Floor Space Ratio	FSR:0.4:1 (476.2m ²)	FSR: 0.37:1 (443.4m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	5.85m - 9.47m
Percentage variation to requirement:	11.14% (0.97m)

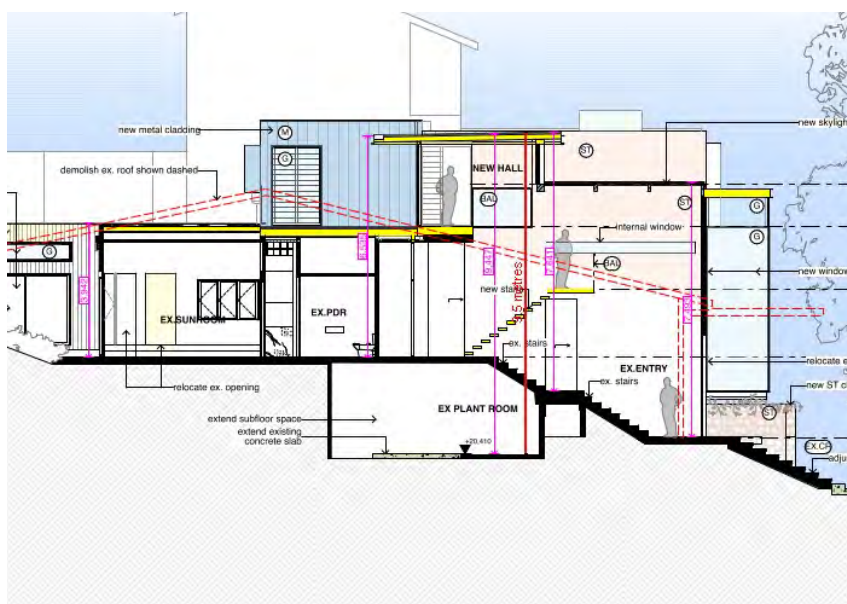


Figure 1- Building Height non-compliance

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not

defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"It is considered that a contravention of the development standard is justified in the circumstances of this case for the following reasons:

1. *The non-compliance results from the sites steep topography together with the previous areas of excavation undertaken upon the site so as to create the existing garage, workshop and store area.*
2. *The proposal will not result in any additional negative impacts on the privacy or amenity of the adjoining properties to the east and west.*
3. *The adjoining properties will continue to receive compliant solar access to private open space areas.*
4. *The proposal will not result in any view loss impacts upon the adjoining properties.*
5. *The proposal is of a height that is below the height of the adjoining property to the east being No. 6 Bligh Crescent."*

Council's Comment on Planning Grounds

The applicant has satisfactorily demonstrated that the works are consistent with the objectives of the EP&A Act, specifically the following objectives of the EP&A Act:

- The development promotes good design and amenity of the built environment, noting that the development will not have any unreasonable impacts on the amenity of the surrounding properties with regards to privacy, solar access or view impacts. The proposal achieves objective (g) *to promote good design and amenity of the built environment* of the EP&A Act 1979.
- It is agreed that current design that non-compliance is a result of existing excavation on site and that proposed development is an orderly response to the existing site constraint. The proposal achieves objective (c) *to promote the orderly and economic use and development of land*, of the EP&A Act 1979.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

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

Comment:

The overall height and scale of the development is not found to be incongruent with other surrounding developments. The quality of the architecture, efforts to retain trees and the uniqueness of the proposal all contribute to the developments ability to achieve consistency with the desired character of the locality.

b) to control the bulk and scale of buildings,

Comment:

In consideration of the proportions of a building, it is relevant to considered the proportions of the site. To that extent, the proposal is considered to be compatible with the heights and scale of nearby 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 development is not found to result in any unreasonable view loss from either the public or private domain.

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 development is not found to result in any unreasonable or non-compliant overshadowing of neighbouring properties.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The development is not found to have any unreasonable or adverse visual impacts on the natural environment.

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 is for residential use.

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 retains its residential use.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1190.5m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	-	Yes
4.1.2.1 Wall Height	East: 7.0m (based on gradient 1:12)	7.66m	9.4% (0.66m)	No
	West: 7.3m (based on gradient 1:7.5)	10.3m	41% (3m)	No
4.1.2.2 Number of Storeys	2	4	100%	No
4.1.2.3 Roof Height	Height: 2.5m	0.4m	-	Yes
	Pitch: maximum 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	22.1m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.33m (based on level 4 wall height)	Level 4 - 2.9m Level 3 - 8.7m Level 2 - 2.9m (terrace) Level 1 - 1.7m	Level 1 - 27% (0.63m)	As existing
	West: 2.43m (based on	Level 4 - 5.7m	Level 1 - 38%	Level 1 - as

	level 4 wall height)	Level 3 - 2.5m Level 2 - 1.7m Level 1 - 1.5m	(0.93m) Level 2 - 30% (0.73m)	existing Level 2 - No
	Windows: 3m	East: Level 2 - 0.9m West: Level 2 - 2.8m	East: Level 2 - 70% (2.1m) West: Level 2 - 6% (0.2m)	No
4.1.4.4 Rear Setbacks	8m	7m - 11.124m	12.5% (1m)	As existing
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (714.3m ²)	47% (557.8m ²)	22% (156.5m ²)	No
	Open space above ground <25% of total open space (139.45m ²)	10% (56.8m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (223.12m ²)	59% (329.6m ²)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	> 18sqm	-	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	7m	12.9% (0.8m)	As existing
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

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:

Pool deck

The provisions of this development control prescribe that balconies and terraces are to limit overlooking and maintain privacy. The proposed pool deck is setback 3.5m - 3.77m from the western side boundary and generally located at ground level. Given the compliant setback and limited useability of the proposed deck, reducing the size or incorporating screening along the western side of the deck is not deemed to be warranted. Adequate visual privacy will be retained from the pool deck.

Level 4 "Alcove Terrace"

The proposed alcove terrace at level 4 is to be utilised as a outdoor living area for occupants of the dwelling house. While suitable physical separation is proposed to both the western and eastern properties, the development would still cause an adverse visual privacy impact to the adjoining western property, given the usability and sightlines to the adjoining western property. In response to this privacy issue and having regard to MLEP 2013 and the MDCP 2013, the following recommendation is made to address the concerns raised:

A privacy screen is to be provided across the extent of western side of the alcove terrace at level 4 to a height of 1.6m above finished floor level. The privacy screen is to be fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: to protect the visual privacy of adjoining residences.

With regard to the property to the east, a wall adjoins the alcove terrace, which will offset direct sightlines to the east. While it is noted that there may be some sightlines from the very rear of the terrace, the 8.8m of physical separation will ensure suitable visual privacy is maintained.

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:

Subject to the above condition, the proposal will achieve this objective.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Existing levels of neighbourhood security are maintained.

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

As a result of the public exhibition of the development application Council received a number one submissions raising view loss as a concern.



Image 1 - Location of objecting property and proximity to subject site.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.

Comment:

The proposed development will result in a minor loss of views from neighbouring properties. The loss of views is not unreasonable and will maintain adequate view sharing between properties.

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).

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. 6 Bligh Crescent, Seaforth**

A view sharing analysis was undertaken from the adjoining property to the east of the subject site at (No. 6 Bligh Crescent, Seaforth). The nature of the view affected from this property would be Middle Harbour. The views of the harbour are considered to be highly valuable, having regard to this principle.

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. 6 Bligh Crescent, Seaforth**

Harbour views are obtained from the ground floor living rooms and balcony off the living room, first floor bedrooms and balcony as well as the rear courtyard and swimming pool area. Existing views are

taken over the front and side boundary.

3. Extent of impact

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

Comment to Principle 3:



Photo 1 - Ground floor balcony



Photo 2 - Ground floor living room



Photo 3 - Backyard courtyard



Photo 4 - Swimming pool area

No. 6 Bligh Crescent, Seaforth

The proposed dwelling house will retain views from the internal rooms and balcony at ground and first floor levels. These areas are high use living areas and as such are highly valued. Views from the existing swimming pool and rear courtyard area will be impacted to a moderate extent as a result of the proposed works. While there may be loss of some harbour (water) views as a result of the height of the dwelling house, from the rear, it is noted that views from the rear backyard are severely susceptible to any development on site.

Qualitatively and in consideration of all existing views available from No. 6 Bligh Crescent, the extent of view loss is minor. The view impact is not considered overall "moderate" given that views from other areas of the dwelling house will be retained.

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 considering the totality of impact it is noted that the dwelling house is non-complaint with the Height of buildings development standard under MLEP 2013. The proposed development ensures highly valued views of Middle Harbour will be largely retained from No. 6 Bligh Crescent from the ground floor and first floor living rooms, bedrooms and balconies. While it acknowledges that views from the rear courtyard and swimming pool will be impacted to a moderate

extent, the view in question is severely vulnerable to development on the subject site. Further, the current view is partially obstructed by well-established canopy trees and other types of existing vegetation.

The proposal, as amended, responds appropriately to the available views through the provision of appropriate view corridors, setbacks and building articulation to ensure highly valued views are retained and the impact on properties in terms of view loss is at worst minor. The total severity of impacts upon water views is not considered to be unreasonable. A more skilful design is not likely to be able to achieve the same development potential and amenity while reducing view impacts to neighbouring properties.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved.

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.

Comment:

The proposed works will not cause unreasonable loss of view. In regards to 'view creep' the proposal does not include any unreasonable bulk which could result in unreasonable future view loss.

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.

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

Description of non-compliance

4.1.2.2 Number of Storeys

The control requires that buildings must not exceed two storeys.

The proposed dwelling contains a maximum of four storeys.

Clause 4.1.2 of the MDCP stipulates that walls are not to exceed 7.3m (based on gradient 1:7.5) for the western elevation.

The proposal exhibits a western elevation wall height of 10.3m, representing a variation of 41% to the control.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.96m from the south-western property boundary and 3.46m from the north-eastern property boundary.

The development proposes the following:

Western setback - 2.75m

Eastern setback - Level 1 - 1.7m (27% variation to the numeric 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 maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed development will maintain and enhance the existing streetscape by being commensurate with the spatial proportions of the existing streetscape and the street edge. The front setback area will be appropriately landscaped to contribute to the landscape character of 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 development is not considered to adversely impact privacy to and from the subject site, and surrounding and adjacent sites. The development does not introduce excessive opportunity for overlooking, with the bulk and height of the development considered reasonable in its context.

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.

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:

No significant vegetation is proposed to be removed to facilitate the proposed modifications.

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

Comment:

The land is located in a bushfire mapped area and a report recommended appropriate asset protection zones.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 of the MDCP requires at 60% of the site being total open space. The application proposes 47% (557.8sqm) of the site as total open space, non-compliant with the numeric control. This represents a 12.5% variation to the numeric 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 application does not propose the removal of any important landscape features (Trees, plants or rock formations).

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

Comment:

The proposed development provides suitable landscape open space on site, compliant with the numeric control.

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

Comment:

Amenity considerations including sunlight, privacy and views have been suitably mitigated to a reasonable standard as part of this application, despite the non-compliance with the numeric control.

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

Comment:

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

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

Comment:

The proposal is not likely to lead to a significant spread of weeds.

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

Comment:

The development will not affect any existing wildlife habitat and potential for wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported / is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$19,926 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,992,620.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the variation to the height of building development standard non-compliance.

The concerns raised in the objections have been addressed in detail within this report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/1046 for Alterations and additions to a dwelling house on land at Lot 101 DP 838216, 8 Bligh Crescent, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-02.B Site Plan	14.9.2022	Corben Architects
DA-03.B Level 1 Plan	14.9.2022	Corben Architects
DA-04.B Level 2 Plan	14.9.2022	Corben Architects
DA-05.B Level 3 Plan	14.9.2022	Corben Architects
DA-06.B Level 4 Plan	14.9.2022	Corben Architects
DA-07.B Roof Plan	14.9.2022	Corben Architects
DA-08.B South Elevation	14.9.2022	Corben Architects
DA-08.B North Elevation	14.9.2022	Corben Architects
DA-10.B East Elevation	14.9.2022	Corben Architects
DA-11.B West Elevation	14.9.2022	Corben Architects
DA-12.B Section AA	14.9.2022	Corben Architects
DA-13.B Section BB	14.9.2022	Corben Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
SBLI8-DA-2 Sediment and Erosion	December 2021	Waterplan Pty Ltd
SBLI8-DA-1 Stormwater	December	Waterplan Pty Ltd

Reports / Documentation – All recommendations and requirements contained

within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Basix Certificate	4.4.2022	Corben Architects
Arboricultural Impact Assessment	18.10.2022	Micheal Shaw
Acid Sulfate Soil Assessment	29.10.2022	Corben Architects
Bushfire Assessment	24.3.2022	Peterson Bushfire

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
LDA-01 Landscape DA Plan	8.11.2022	Grindstone

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
DA-21.B Waste Management	14.9.2022	Corben Architects
Waste Management Plan	31.5.2022	Kim Tracey

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	25.7.2022
Aboriginal Heritage Office	AHO Referral Response	24.8.2022
NSW Rural Fire service	CNR-42977	4 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**

- 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.

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 \$19,926.20 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 \$1,992,620.00.

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction

Certificate.

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

8. **Privacy**

A privacy screen is to be provided across the extent of western side of the alcove terrace at level 4 to a height of 1.6m above finished floor level. The privacy screen is to be fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: to protect the visual privacy of adjoining residences.

9. **Compliance with Standards**

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

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

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

10. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.
- c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, including:
- i) protection to existing trees 24 and 25 under section 8.6,
 - ii) section 9 and 10,
 - iii) appendix 4 - Tree Protection Plan.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

13. **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.

14. **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.

15. **Traffic Control During 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 TfNSW Traffic Control At Work Sites Manual 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.

16. **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**

17. Landscape Completion

Landscaping is to be implemented in accordance with the approved Landscape Plans, inclusive of the following conditions:

- i) one (1) native tree shall be planted within the existing garden between the right of way and the garage driveway or otherwise elsewhere within the frontage, selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, Manly DCP Schedule 4 - Part B - Native Tree Selection, or Council's Tree Guide, planted at a pre-ordered minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees, 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, and shall be no taller at maturity than the height of the approved building,
- ii) 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 any Occupation Certificate details (from a landscape architect or landscape designer) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

18. Condition of Retained Vegetation

Prior to the issue of any Occupation Certificate a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained as shown on the Landscape Plans including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

19. 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.

20. 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.

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

21. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent. All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

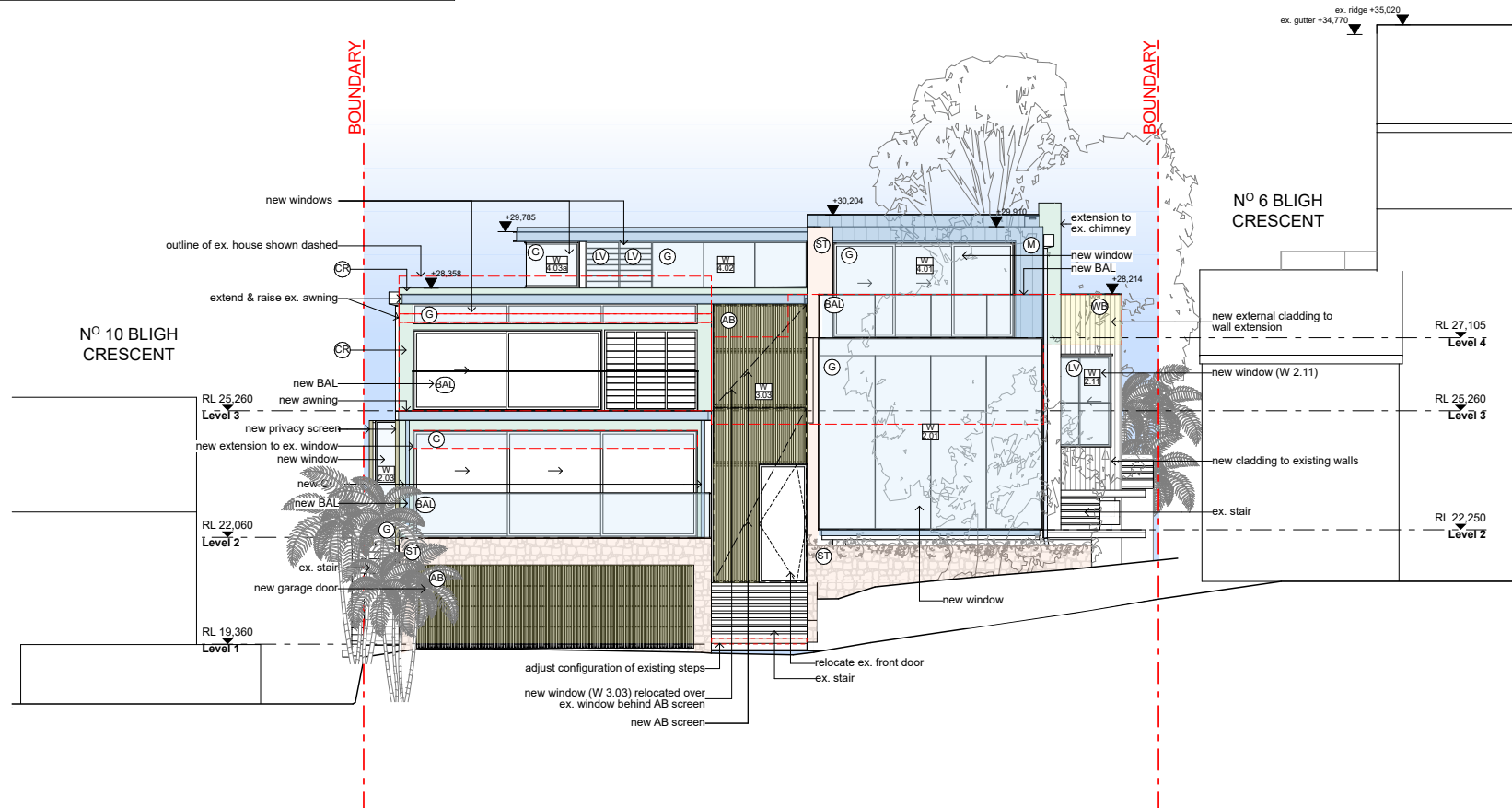
Reason: To maintain local environmental amenity.

22. **Swimming Pool/Spa Motor Noise**

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

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

**NOTE: SOUTH ELEVATION
CONSTRUCTION TO COMPLY WITH AS 3969-2018 AND
MATERIALS TO SATISFY REQUIREMENTS FOR BAL-19 AS
PER REPORT COMPLETED BY DAVID PETERSON 24.03.2022
(REF: 22017)**



• Any discrepancies to be brought to Architect's attention
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• Only scale under direction from Architect
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revisions		description
rev	date	
A	4/5/22	Development Application
B	14/9/22	Development Application (Additional Information)

notes

See JONAB 2-220912 - DA Review.ppt
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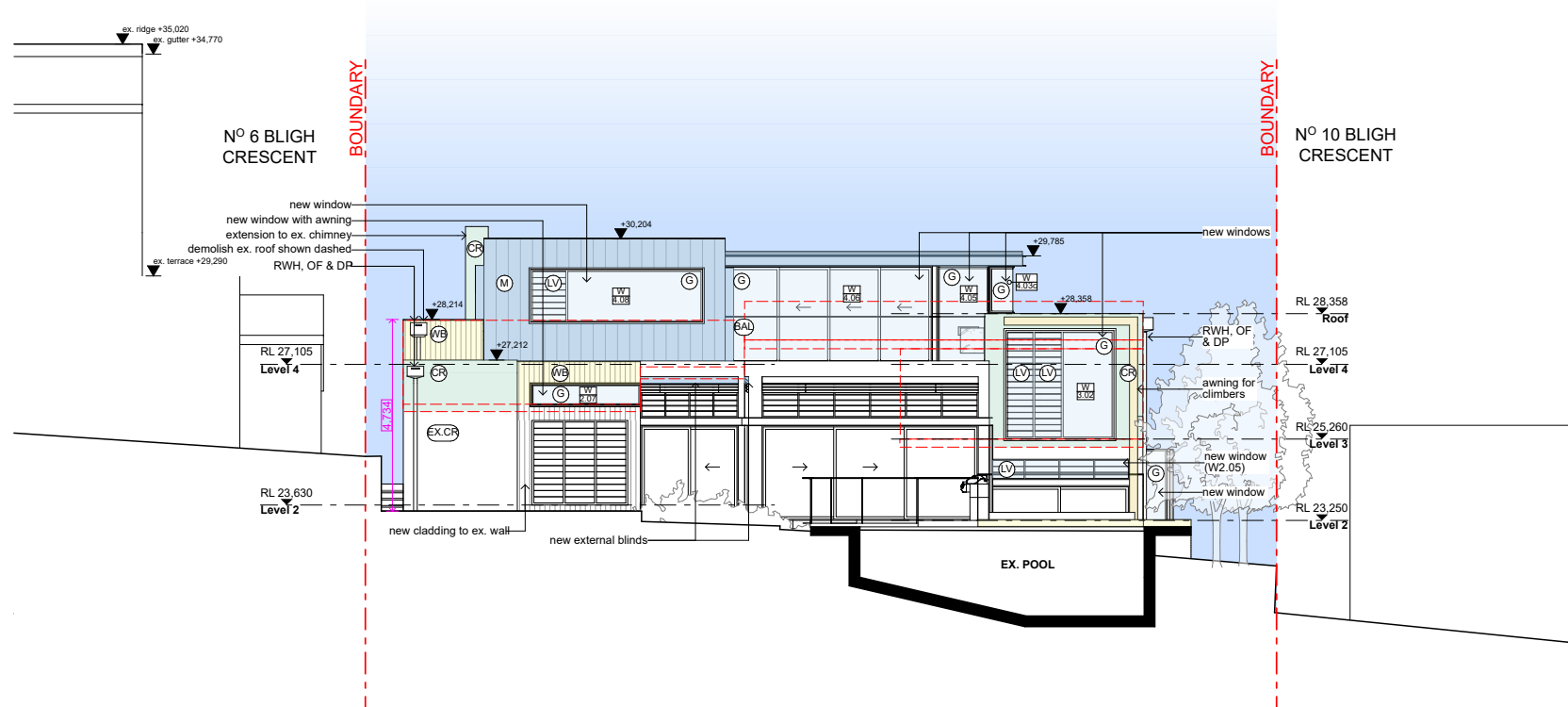
**CORBEN
ARCHITECTS**
PO Box 1021 Neutral Bay NSW 2089 Australia
(02) 9104 1844
mail@corben.com.au
corben.com.au
Honorary Architect Philip Corben (Reg No. 4616)

project Alterations & Additions
address 8 Bligh Crescent, Seaforth
client Alan Jones & Kim Tracey

title South Elevation
issue Development Application

job no. JONA
drawn PH
checked AE
scale 1:100
dwg no. DA08
revision B

**NOTE: EAST, WEST AND NORTH ELEVATIONS
CONSTRUCTION TO COMPLY WITH AS 3969-2018 AND
MATERIALS TO SATISFY REQUIREMENTS FOR BAL-29 AS
PER REPORT COMPLETED BY DAVID PETERSON 24.03.2022
(REF: 22017)**



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A	4/5/22	Development Application
B	14/9/22	Development Application (Additional Information)

notes

Ref: JONAB 2-220912 - DA Review.pn
print date & time: 14/02/2023 05:05 pm

**CORBEN
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Not a valid Architect: Philip Corben (Reg No: 4616)

project Alterations & Additions
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client Alan Jones & Kim Tracey

title North Elevation
issue Development Application

job no. JONA	dwg no. DA09
drawn PH	revision
checked AE	B
scale 1:100	

file: JONA6.2-220912 - DA Review.ppt
print date & time: 14/9/22@4:05 pm

Nominated Architect: Philip Carbon (Reg No. 4616)

client	Alan Jones & Kim Tracey
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issue	Development Application
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n	scale	1:100
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B

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print date & time: 1/4/22/2014 06:06 pm

job no.	JONA	dwg no.
drawn	PH	DA11
checked	AE	revision
scale	1:100	B



Clause 4.6 - Exceptions to Development Standards

Proposed Dwelling Alterations & Additions 8 Bligh Crescent, Seaforth

Variation to Clause 4.3 - Height of Buildings

The proposed development will result in a built form which has a height in excess of the maximum 8.5m height of building control as required by Clause 4.3 of the Manly Local Environmental Plan 2013.

The proposed alterations and additions have a maximum building height of 9.447m resulting in a non-compliance.

The proposed non-compliance is a maximum of 947mm or 11.14%.

Given that the proposal does not comply with the maximum height control of 8.5m as required by Clause 4.3 of the Manly LEP 2013 and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the LEP is required.

This Clause 4.6 variation has been prepared having regard to the recent decisions of the Land & Environment Court.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following is an assessment of the proposed variation against the requirements of Clause 4.6.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

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

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

Clause 4.3 is contained within Part 4 of the LEP and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that Clause 4.3 does not contain a provision which specifically excludes the application of Clause 4.6.

On this basis, it is considered that Clause 4.3 is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard (that is not expressly excluded from the operation of clause 4.6 under Warringah Local Environmental Plan 2011):

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

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ set out five justifications that may be used to demonstrate that compliance with a development standard is unreasonable or unnecessary:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or

- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

It is submitted that the first justification is applicable in this instance.

The following assessment of the proposal is provided against the objectives of Clause 4.3 of the LEP.

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

It is my opinion that the proposal has been designed so as to be compatible with the height and scale of surrounding and nearby development.

The proposal is considered to provide for an appropriate relationship to the adjoining properties and has been designed so as to step down the site consistent with the fall of the land so as to provide for an appropriate transition between the adjoining dwellings.

The proposal is considered to have a height of building which is compatible with the surrounding dwellings.

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

It is my opinion that the proposal will not result in any unreasonable visual impact, disruption of views, loss of privacy or loss of solar access to any of the adjoining properties.

The proposal has been sensitively designed so as to ensure that the amenity of all of the adjoining properties is not unreasonably impacted upon.

In response to potential view loss I am of the strong opinion that the proposal as detailed on the accompanying plans satisfies the requirements of Section 3.4.3 of the Manly DCP in relation to the maintenance of views.

In forming this opinion, it is noted that:

- a. The view which it is alleged is impacted by the proposal from No. 6 Bligh Crescent is not that property's primary view of the adjacent waterway and is achieved by looking over the subject property.
- b. In accordance with the notation contained after sub-clause (c) of Objective 3 of Section 3.4.3 of the DCP, *DA assessment is to determine the extent of, and impact on views at eye height in a standing position (eye height is 1.6m above floor level) from within the main living areas (and associated terraces/balconies)*

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of the proposed and existing, adjacent and nearby developments, as well as public spaces.

- c. It is apparent from the images below that the main living area and its associated balcony/terrace area are located on the southern (front) side of the dwelling at No. 6 and the views from these areas will be unaffected by the proposal.



Sales Photo No.1



Sales Photo No.2

- d. The area alleged to be impacted is a secondary terrace area located to the rear of the dwelling at No.6 and which does not adjoin the main living area. As previously identified the view from this area is achieved by looking over the top of the dwelling at No.8.
- e. As evidenced from the view impact montage contained at Drawing No. DA24, the area of the proposed addition which impacts the view from the rear pool terrace of No. 6 is the portion of the upper level addition comprising the new Bed 4, Linen press, New bath 3 and New Bed 5. The lift and associated lobby area do not impact upon this view.
- f. Relevant to the assessment of the reasonableness of the proposed view loss it is submitted that this portion of the building is provided with a height of building which is less than 8.5 metres (Refer to Drawing No. DA22).
- g. It is also noted that the dwelling as a whole is provided with a compliant FSR as is discussed in response to the issue below.
- h. It is also submitted that the proposal does adopt a skilful design in that the ceiling height of the front portion of the upper level addition is reduced to the minimum permissible height of 2400mm. A higher ceiling height and which complied with the 8.5m height control could have been provided however in an effort to minimise view loss from the secondary terrace area of No. 6 the ceiling height has been kept to a minimum. The proposal is also provided with a flat roof which assists in minimising view loss.

Whilst it is noted that proposed Bed 4 does have a ceiling height of 2600mm, it is submitted that the view impact montage contained at DA24 demonstrates that that by reducing the ceiling height of this room to 2400mm provides no meaningful benefit in that it does not provide any additional water views.

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For the reasons as described above, it is my opinion that:

- (a) The proposal complies with the maximum height of building control as required by Clause 4.3 of the Manly LEP 2013.
- (b) The proposal satisfies the prescriptive requirements and objectives of Section 3.4.3 of the Manly DCP.
- (c) The proposal satisfies the requirements of *Tenacity Consulting v Warringah Council* in so far as it is relevant to this proposal having regard to the position adopted by Council via their DCP whereby *DA assessment is to determine the extent of, and impact on views at eye height in a standing position (eye height is 1.6m above floor level) from within the main living areas (and associated terraces/balconies) of the proposed and existing, adjacent and nearby developments, as well as public spaces.*

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

It is my opinion that the proposal will not result in any unreasonable adverse impact of development on the scenic quality of Warringah's coastal and bush environments. It is my opinion that the proposal will fit comfortably with the adjoining and surrounding development when viewed from the adjoining waterway.

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

It is my opinion that the proposal will not result in any unreasonable visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

It is my opinion that the proposal will fit comfortably with the adjoining and surrounding development when viewed from the nearby reserve areas.

On this basis, it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard is justified in the circumstances of this case for the following reasons:

1. The non-compliance results from the sites steep topography together with the previous areas of excavation undertaken upon the site so as to create the existing garage, workshop and store area.

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2. The proposal will not result in any additional negative impacts on the privacy or amenity of the adjoining properties to the east and west.
3. The adjoining properties will continue to receive compliant solar access to private open space areas.
4. The proposal will not result in any view loss impacts upon the adjoining properties.
5. The proposal is of a height that is below the height of the adjoining property to the east being No. 6 Bligh Crescent.

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

The proposed development is in my opinion in the public interest because it will provide for the carrying out of high quality alterations and additions to the existing dwelling in a manner which will make a positive contribution to the built form character of the locality. Furthermore, it is considered that the provision of improved privacy screening will result in increased amenity and privacy to the adjoining properties. The proposal is considered to be otherwise compliant with the requirements of the LEP, the applicable zone objectives and the objectives of the particular standard.

The following assessment is provided in relation to the proposal's relationship to the objectives for the R2 – Low Density Residential zone and which are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment

The proposal seeks to provide for alterations and additions to the existing dwelling house currently erected upon the subject site. The proposal is, therefore considered to be consistent with this objective.

The proposal as detailed in response to Question 3 of this variation is considered to be consistent with the objectives of Clause 4.3 – Height of Buildings.

The proposal is therefore considered to be in the public interest.

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6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the high quality of the proposal and the absence of any unreasonable detrimental impacts.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the height requirements of Clause 4.3 of the Manly LEP 2013 is appropriate in this instance.



Andrew Minto
Graduate Diploma (Urban & Regional Planning), Associate Diploma (Health & Building Surveying). MPIA.
MINTO PLANNING SERVICES PTY LTD
14th September 2022

ITEM 3.5	DA2022/1929 - 11 BEATTY STREET BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/275785
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/1929 for alterations and additions to a dwelling house on land at Lot A DP 373783, 11 Beatty Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1929
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot A DP 373783, 11 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Renae Betty Gallen Daniel Joseph Gallen
Applicant:	Daniel Joseph Gallen
Application Lodged:	21/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/11/2022 to 09/12/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 40%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,745,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to the greater than 10% variation to the Floor Space Ratio development standard, pursuant to the Manly Local Environmental Plan (MLEP) 2013. The non-compliance forms the critical assessment issue for this application.

No submissions were received as part of the public exhibition of the application.

The 4.6 request for the non-compliance with FSR standard arises from a 60sqm increase in floorspace at basement level. The existing approved building has an existing floorspace which is at 0.4:1 which is

compliant with the LEP. The additional floorspace does not increase the bulk or scale of the building.

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

PROPOSED DEVELOPMENT IN DETAIL

The applications seeks consent for alterations and additions to a dwelling house.

Specifically, the proposal is for the following:

- Use of the approved plant room as a rumpus room.
- Extension and alterations of the basement level for the proposed rumpus room and relocation of plant room.

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 Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot A DP 373783 , 11 Beatty Street BALGOWLAH HEIGHTS NSW 2093
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Detailed Site Description:	The subject site consists of a single allotment located on the south west side of Beatty Street. The site is regular in shape with a frontage of 16.765m along Beatty Street and a depth of 39.625m. The site has a surveyed area of 684.8m². The site is located within the R2 Low Density Residential zone. The site is currently vacant as a result of recent demolition works. The site slopes from the street frontage to the rear boundary with an approximate rise of 2.76m. The site is located within a landscaped setting comprising established lawn areas and garden beds. There are no known threatened flora or fauna species present on site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one, two and three storey dwellings set within a low density residential and landscaped setting.
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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:

- **MOD2022/0629** - Modification of Development Consent DA2021/2393 granted for Construction of a dwelling house including a swimming pool - Currently under assessment.

- **DA2021/2393** - Construction of a dwelling house including a swimming pool. Approved 30 May 2022
- **DA0253/2017** - On 29 March 2018, Council approved alterations and additions to an existing dwelling house.
- **MOD2020/0329** - On 21 August 2020, Council approved modification of DA0253/2017.
- **MOD1029/0296** - On 23 September 2019, Council approved modification DA0253/2017.

Current Application

As noted above, Council is currently assessing another application on the subject site MOD2022/0629. The modification relates to the consent DA2021/2393. The works proposed under this modification application, were not considered 'substantially the same development', and therefore required consent through a new development application, rather than a Section 4.55 modification. A condition has been imposed within this recommendation linking the two applicants (Original DA and subsequent modification application) to ensure the orderly development of the site.

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)	<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 stormwater management. <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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney

Bushfire Consultants, dated 15 August 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 25/11/2022 to 09/12/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	Supported, without conditions The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2022, the DA satisfies requirements under clause 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. Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021

Internal Referral Body	Comments
	Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28. On internal assessment, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed. Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005 The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2022, it is determined that the proposed development satisfies the requirements of the DCP. <u>Landscape character Assessment</u> The subject site is located within the Landscape Character Type "Urban Development with Scattered Trees." On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2022, it is determined that the proposed development within the landscape satisfies the relevant criteria. Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2022, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic

Internal Referral Body	Comments
	Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. MOD2022/0629 Page 2 of 3 As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.
NECC (Development Engineering)	Supported, without conditions The information submitted satisfies the outstanding requirements. The proposal relies upon the construction of the dwelling under DA2021/2393 as modified by MOD2022/0629. It is considered that this consent be deferred subject to the issue of the construction certificate for the above mentioned DA and Mod applications to ensure all conditions relating to the protection of Council's stormwater infrastructure, stormwater management and driveway crossing applications are satisfied prior to the activation of this consent. Provided a suitable condition for the above is provided, Development Engineering support the proposal with no conditions of consent.
NECC (Riparian Lands and Creeks)	Supported, without conditions This application has been assessed under: State Environmental Planning Policy (Biodiversity & Conservation) 2021 Manly DCP 5.3.8 Water Sensitive Design The proposal is near Sydney Harbour and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Sydney Harbour, or the quantity and quality of surface and ground water flows that it receives. On assessment the application meets the requirements of the relevant Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater.
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. 1333989S dated 7 November 2022).

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

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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	N/A No change to the height as approved under DA2021/2393.	N/A	N/A
Floor Space Ratio	FSR: 0.4:1 (273.9sqm)	Proposed FSR: 0.563:1 (386.1sqm) Approved under DA2021/2393 FSR: 0.4:1 (273.9sqm) Proposed under Mod2022/0629 0.476:1 (326.1sqm)	40%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes

Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (273.9sqm)
Proposed:	Proposed FSR: 0.563:1 (386.1sqm) Approved under DA2021/2393 FSR: 0.4:1 (273.9sqm) Proposed under Mod2022/0629 0.476:1 (326.1sqm)
Percentage variation to requirement:	40%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written

request under cl 4.6 must be “environmental planning grounds” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

“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 alterations and additions are wholly within the basement level of the building and do not see any change the approved configuration the building and its relationship to the street neighbouring properties. By locating the additional floor area at the basement level, without any change to the approved external configuration, the design is considered to result in approved amenity of the building without any change to the anticipated outcome within Council’s consideration of DA2021/2393 (cl 1.3(g)).*
- *The proposed addition will maintain the approved bulk and scale of the approved dwelling which is compatible with the surrounding development which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Beatty Street which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed new works which exceed the gross floor area control and FSR standard of 0.4:1 are considered to promote good design and enhance the residential amenity of the buildings’ occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.*

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of the additional floor area within

the basement level which does not result in any change the approved configuration of the dwelling and its impact to the local streetscape and neighbouring to properties, as was anticipated by Council and in support of DA2021/2393.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control."

Comment on Planning Grounds

The applicant has satisfactorily demonstrated that the works are consistent with the objectives of the EP&A Act, specifically the following objectives of the EP&A Act:

- It is agreed that utilising the existing basement to allow for an additional living area, the approved external general configuration remains generally unchanged and as approved by DA2021/2393. The proposal achieves objective (c) *to promote the orderly and economic use and development of land*, of the EP&A Act 1979
- The development promotes good design and amenity of the built environment, noting that the development will not have any unreasonable impacts on the amenity of the surrounding properties with regards to privacy, solar access or view impacts. The proposal achieves objective (g) *to promote good design and amenity of the built environment* of the EP&A Act 1979.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the 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:

The proposed development will not give rise any bulk and scale issues when viewed from the street noting that all works proposed under this application are basement level, and will not be visible from the street. The character of the development when views from the street is not impacted.

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 will not obscure important landscape and townscape features.

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

Comment:

The proposed works are contained within the approved footprint of the approved dwelling house and therefore will maintain the visual relationship between the 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,

Comment:

The increase in gross floor area will not significantly increase visual and aural impacts on adjoining development, nor will it lead to unreasonable levels of overshadowing to adjoining properties. No significant views to or from the harbour or foreshores and neighbouring properties will be unreasonably impacted by the proposed development.

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 maintains the existing low density residential use.

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 is for residential use.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

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.

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

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

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 684.8sqm	Requirement	Proposed	% Variation*	Complies
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	12.6m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N/A	North-west: 3.9m - 5m	-	Yes
4.1.4.4 Rear Setbacks	8m	5.4m	32.5%	No

		(Measured from tear rumpus room wall)		
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Note: Side setback requirement is based on wall height. Given no works are proposed above ground level. A minimum 0.9m setback is applied in this circumstance.

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
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	N/A	N/A
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	N/A
4.1.7 First Floor and Roof Additions	N/A	N/A
4.1.8 Development on Sloping Sites	N/A	N/A
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

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013). In summary, the

applicant has adequately justified that compliance with the Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene the development standard.

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

Description of non-compliance

Clause 4.1.4.4 of the MDCP 2013, requires any part of the building be no less than 8m from the rear property boundary. The proposed extension of the basement is setback 5.4m from the rear property boundary, non-compliant with the numeric control. This represents a 32.5% variation to the numeric 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 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 works are sited at the rear of the dwelling and will not be discernible from the street frontage. Furthermore, the proposal does not result in a further reduction of landscaping. Overall, the proposal achieves this 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 excavated basement will not be readily visible from the street or neighbouring properties. The proposed works will not have an unreasonable impact upon the amenity (solar, privacy, views) of neighbouring properties.

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

Comment:

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

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:

No significant vegetation is proposed to be removed to facilitate the proposed extension to the basement.

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

Comment:

The recommendations provided within the bushfire report have been incorporated as recommended conditions of consent.

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

No change to open space proposed under this application.

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

No change to the approved parking arrangement proposed under this application.

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 \$17,450 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,745,000.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the variation to the Floor Space Ratio development standard, pursuant to Clause 4.4 of the MLEP 2013.

No submissions were received as a result of the public exhibition of the application.

The critical assessment issue for this application was Floor Space Ratio, non-compliance.

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

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2022/1929 for Alterations and additions to a dwelling house on land at Lot A DP 373783, 11 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 201/ Issue A	November 2022	LawtonHurley
DA202/ Issue A	November 2022	LawtonHurley
DA205/ Issue A	November 2022	LawtonHurley
DA206/ Issue A	November 2022	LawtonHurley

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	8 November 2022	Grozier Geotechnical Consultants
BASIX Certificate No. 1333989S	7 November 2022	Sustain Build Projects
Bushfire Report	15 August 2022	Sydney Bushfire Consultants
Overland Flood	19 August 2022	Diversi

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	N/A	Vuaughan Milligan

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	N/A

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

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

3. **Approved Land Use**

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

dwelling house means a building containing only one dwelling

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

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

4. **Extent of Consent**

Consent is given for works highlighted in yellow on the architectural plans.

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

5. **Prescribed Conditions**

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

6. **Amending consent**

DA2021/2393 and subsequent modifications (including Mod2022/0629) shall be undertaken in conjunction with this consent.

Reason: To ensure all consents for this property can be undertaken in a orderly matter.

7. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of 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

8. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$17,450.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,745,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with

the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

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

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

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

9. **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

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.

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

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

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

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>

- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **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.

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

13. **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

14. **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.

15. **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.



LEGEND	
Alw	Aluminium framed window Note: Operable windows to have screens in accordance with the Building Consultant Report
B	Brick
Bal	Black metal balustrade
Conc	Formed concrete wall
DP	Downpipe
GD	Grated drains
MF	Black metal fence
R	Render and painted
RWO	Rainwater outlet
RWT	Rainwater tank
St	Stone cladding
T	Timber cladding

DRAWING	DESCRIPTION
DA 201	ROOF, SITE + SITE ANALYSIS PLAN
DA 202	BASEMENT FLOOR PLAN
DA 203	GROUND FLOOR PLAN
DA 204	FIRST FLOOR PLAN
DA 205	SECTIONS + ELEVATIONS
DA 206	SECTIONS + ELEVATIONS
AR 201	FLOOR SPACE RATIO DIAGRAM
AR 202	TOTAL OPEN SPACE & LANDSCAPED AREA DIAGRAM

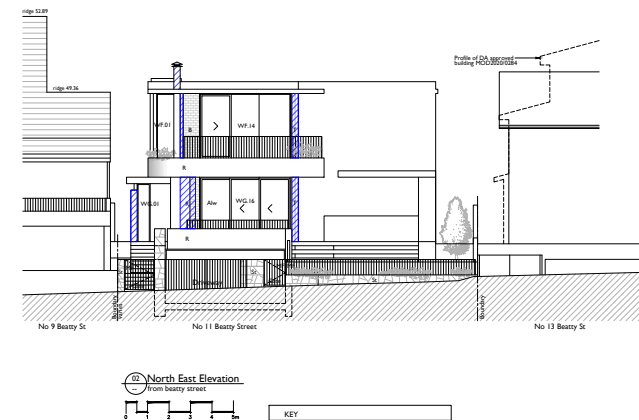
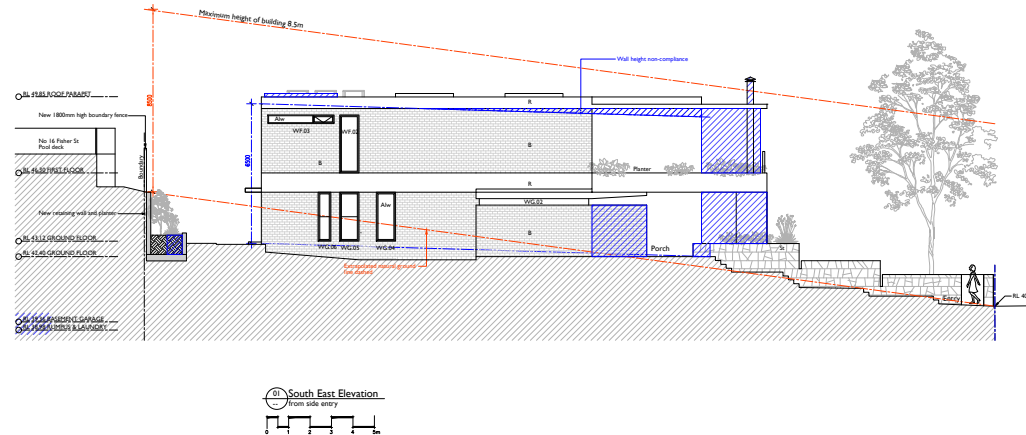
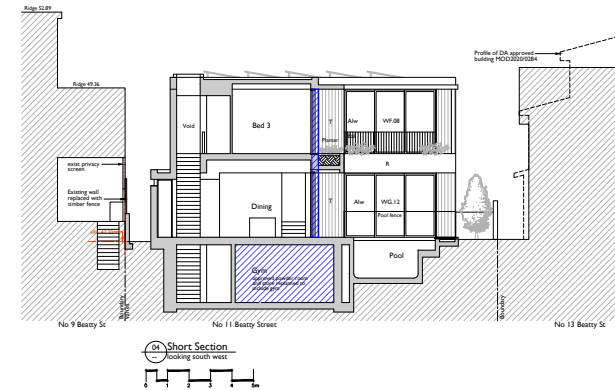
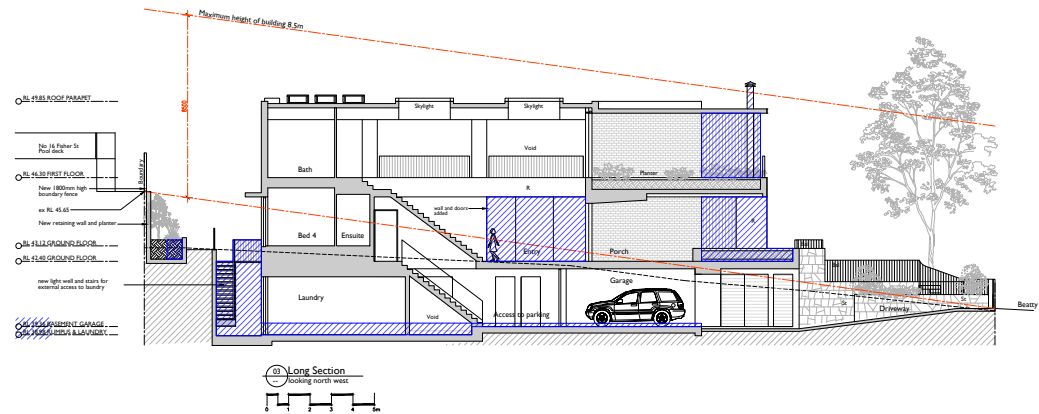
DATES	ISSUE AMENDMENT	DAYS ISSUED
do not scale off this drawing use legal dimensions only vary dimensions on site include discrepancies with architect before proceeding copyright of this drawing held by Lawson Hurley Pty Ltd revised with Lawson Hurley Pty Ltd	A DEVELOPMENT APPLICATION	NOV 2022

11 Beatty Street Balgowlah Heights

LawtonHurley
Architecture Interiors Planning

Shed 101, 80-90 Ave Rd
Dundas NSW 2058
Tel 0 2 955 5722
HQ: Queensland Hwy 10 km N
Balgowlah NSW 1585
A/NZ 101 120 011 220
Dundas NSW 2058

PROJECT	PROPOSED ALTERATIONS AND ADDITIONS	SERIES	1:100 @ A1	FRAME	CPL	JOB NO.
ADDRESS	11 BEATTY STREET BALGOWLAH HEIGHTS, 2093	DWG NO.				ISSUES
DRAWING	ROOF, SITE + SITE ANALYSIS PLAN	DA 201			A	



KEY	
	WORKS NOT COLOURED OR HATCHED ARE AS APPROVED DA201-1373
	WORKS SUBJECT TO APPROVAL UNDER SEPARATE SECTION 433 APPLICATION
	NEW WORK PROPOSED FOR THIS DEVELOPMENT APPLICATION

DATE	ISSUE	DESCRIPTION	DATE ISSUED
11/11/2022	1	DEVELOPMENT APPLICATION	NOV 2022

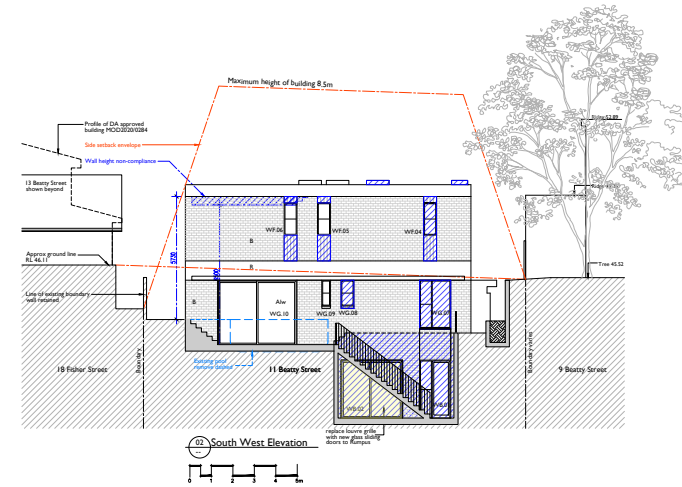
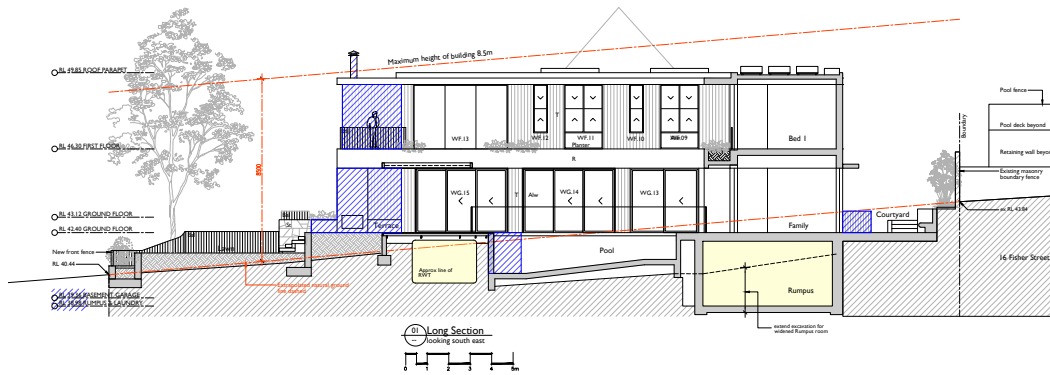
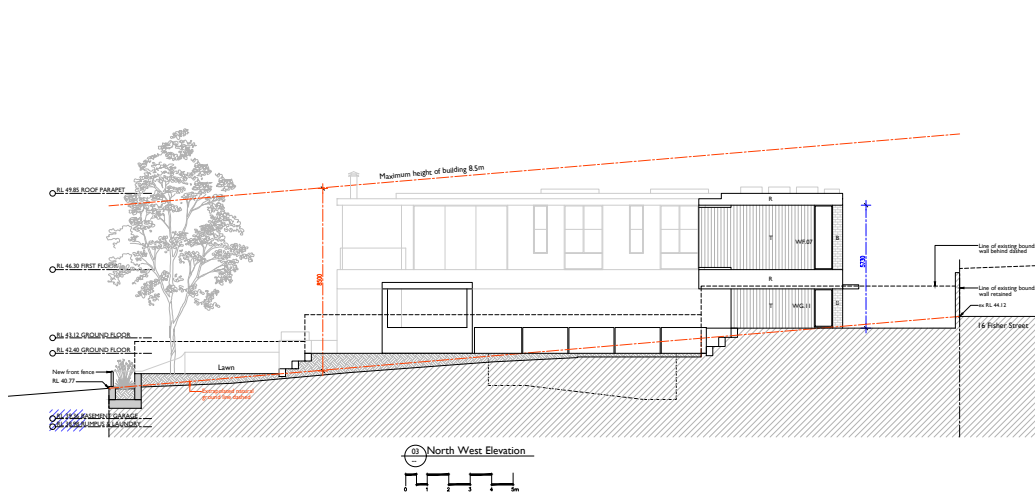
11 Beatty Street Balgowlah Heights

LawtonHurley
Architecture Interiors Planning

11 Beatty Street
Balgowlah Heights
2093

PROPOSED ALTERATIONS
AND ADDITIONS
11 BEATTY STREET
BALGOWLAH HEIGHTS 2093
SECTIONS & ELEVATIONS

Scale: 1:100 @ A1
Date: 11/11/2022
DA 205
A



KEY	
	WORKS NOT COLOURED OR HATCHED ARE AS APPROVED DA201-1373
	WORKS SUBJECT TO APPROVAL UNDER SEPARATE SECTION 433 APPLICATION
	NEW WORK PROPOSED FOR THIS DEVELOPMENT APPLICATION

DATE	ISSUE	DESCRIPTION	DATE ISSUED
11 NOV 2022	A	DEVELOPMENT APPLICATION	NOV 2022

11 Beatty Street Balgowlah Heights

LawtonHurley
Architecture Interiors Planning

11 Beatty Street
Balgowlah Heights 2093

PROJECT	PROPOSED ALTERATIONS AND ADDITIONS	SCALE	1:100 @ A1	DATE	01	ISSUE	137
ADDRESS	11 BEATTY STREET BALGOWLAH HEIGHTS 2093	DATE	DA 206	ISSUE	A		
DESCRIPTION	SECTIONS & ELEVATIONS						

Vaughan Milligan Development Consulting Pty Ltd

APPENDIX 1
CLAUSE 4.6 – FLOOR SPACE RATIO

11 Beatty Street, Balgowlah Heights

1

Vaughan Milligan Development Consulting Pty Ltd

**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

11 BEATTY STREET, BALGOWLAH HEIGHTS

**FOR A PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS
TO AN APPROVED DWELLING**

**VARIATION OF A DEVELOPMENT STANDARD RELATING TO COUNCIL'S FLOOR SPACE RATIO
CONTROL AS DETAILED IN CLAUSE 4.4 OF THE
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Proposed construction of additions and alterations to an existing dwelling
At: 11 Beatty Street, Balgowlah Heights
Owner: Dan & Renae Gallen
Applicant: Dan & Renae Gallen
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 development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the maximum floor space area control within this area of the Balgowlah Heights locality and refers to the floor space ratio noted within the "*Floor Space Ratio Map*."

The relevant maximum floor space control in this locality is 0.4:1 or for this site with an area of 684.8m², the permissible gross floor area is 273.9m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The approved dwelling on the site provides for a gross floor area of 277.3m² or 0.405:1.

The proposed development will see an increase in the total floor area of 59.3m² when compared to the existing floor area, to a maximum of floor area of 336.6m² or 0.49:1, and therefore presents a variation of 62.7m² or 22.89% to the control.

Notably, the additional area within the basement level (59.3m² of the proposed new floor area) will be wholly within the basement level and there will be no change to the external configuration of the building as viewed from the neighbouring properties or from the surrounding public areas.

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The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is clause 4.4 of MLEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standard is fixed in respect of an aspect of a development and include:

“(d) the cubic content of floor space of a building.”

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument 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.

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At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP 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 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP 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 FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.4:1 however as the proposal will only result in an increase in the floor area of 59.3m² in total with the new floor area at the lowest floor level and within the basement level, with no substantial change to the approved external configuration of the building, 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.

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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 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.

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021* the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP 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.*

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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 MLEP 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 R2 Low Density Residential Zone, which are noted as:

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will provide for the construction of alterations and additions to an approved new dwelling to provide for increased amenity for the site's occupants.

The new works maintain the approved bulk and scale anticipated by Council in its determination of DA2021/2393, which was considered to be in keeping with the extent of surrounding development. The approved palette of materials and finishes which provide for high quality development will be unchanged and continue to complement the locality. The proposed works will maintain the approved height limit.

Notwithstanding the non-compliance with the maximum floor space ratio, the works are wholly within the basement level of the approved dwelling and will not see any change to the external configuration of the approved dwelling.

The proposed additions and alterations will see a modest total increase in the gross floor area of 59.3m² at the basement level, however the new works will not alter the relationship of the approved dwelling to the neighbouring properties in the street and the developable continue to add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed works will not see any change to the height or setbacks of the approved dwelling and therefore there will be no further impacts on the views enjoyed by neighbouring properties.

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Similarly, with the building's bulk and form unchanged, there will be no further adverse impacts on the extent of the solar access enjoyed by neighbouring properties.

The general bulk and scale of the dwelling as viewed from the public areas in Beatty Street from the surrounding private properties will be largely maintained.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Balgowlah Heights of 0.4:1 or for this site with an area of 684.8m², the allowable gross floor area is 273.9m².
- 5.3 The approved dwelling (and as sought under a separate Modification Application under S4.55(2) of the Environmental Planning and Assessment Act 1979) has a gross floor area of 277.8m² or FSR of 0.405:1. The proposal has a calculable gross floor area of 336.6m² or FSR of 0.49:1. The proposal will see an increase in the floor area of 59.3m², which is within the building basement level and is not visible from Beatty Street.
- 5.4 The total non-compliance with the FSR control is 62.7m² or 22.89%.

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6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are*

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applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

6.2 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?

7.0. Request for Variation

7.1 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the FSR 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,

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to the basement level of the approved dwelling, with no external change to the approved configuration of the new dwelling. The approved bulk and scale of the building will remain consistent with the original

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determination issued by Council which was assessed as being 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,

The proposal will not alter the external form of the dwelling and the approved bulk and scale of the building and will retain the approved landscaped area.

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

The works are wholly within the basement level of the approved dwelling and as there is no change to the external configuration, the building will maintain its approved relationship with the existing surrounding development and the landscape character of the locality.

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

The proposed works are wholly contained within the basement level of the dwelling and will not result in any adverse environmental impacts on the use of the land or the 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.

The site is not located within a business zone and by providing for the construction of alterations and additions to an approved dwelling, is not contrary to the viability of any local business activity.

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7.2 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 alterations and additions are wholly within the basement level of the building and do not see any change the approved configuration the building and its relationship to the street neighbouring properties. By locating the additional floor area at the basement level, without any change to the approved external configuration, the design is considered to result in approved amenity of the building without any change to the anticipated outcome within Council’s consideration of DA2021/2393 (cl 1.3(g)).
- The proposed addition will maintain the approved bulk and scale of the approved dwelling which is compatible with the surrounding development which promotes the orderly & economic use of the land (cl 1.3(c)).

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- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Beatty Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.4:1 are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of the additional floor area within the basement level which does not result in any change the approved configuration of the dwelling and its impact to the local streetscape and neighbouring to properties, as was anticipated by Council and in support of DA2021/2393.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the 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 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.

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7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential 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 compatible form of the proposed additions which see an increase in the gross floor area of 59.3m², the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

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

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an approved dwelling which will provide for an appropriate level of amenity and in a form, and respect the predominant bulk and scale of the surrounding dwellings.

The development will see a modest increase in the total floor area of 59.3m², which is located within the approved basement level and is provided through further excavation beneath the dwelling. The proposal will maintain the approved external consideration of the building.

The non-compliance, which results from the extent of the approved floor areas and the provision of new additional floor area within the basement level to meet the requirements of the owners will improve the amenity for the buildings'

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owners by providing new living spaces in an area of the building which does not result in any change to the approved external configuration of the dwelling.

The approved dwelling will continue to retain a compatible form and scale to the surrounding development and will meet the housing needs of the community within a single dwelling house which is a permissible use in this environmentally sensitive zone.

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

Not applicable to the subject residential development.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of MLEP?

- (a) 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 approved 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.
- (b) 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.
- (c) There are no other matters required to be taken into account by the secretary before granting concurrence.

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8.0 Conclusion

This development proposes additions and alterations to an approved new dwelling. The proposal comprises additional excavation at the basement level to provide for a rumpus room and improved residential amenity of the building's occupants.

The works are being located in an area of the building which does not result in any change to the approved external configuration including the building height, bulk and scale, setbacks and the extent of the approved landscaped area.

Notwithstanding the proposal includes a departure from the maximum floor space ratio control, with the proposed additions to the existing dwelling to provide a maximum floor space ratio of 0.49:1, the proposed relevant is considered to satisfy the LEP Objectives and the DCP provisions.

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 3.6

**MOD2022/0629 - 11 BEATTY STREET BALGOWLAH HEIGHTS
- MODIFICATION OF DEVELOPMENT CONSENT DA2021/2393
GRANTED FOR CONSTRUCTION OF A DWELLING HOUSE
INCLUDING A SWIMMING POOL**

REPORTING MANAGER

Rod Piggott

TRIM FILE REF

2023/275869

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to Mod2022/0629 for modification of Development Consent DA2021/2393 granted for Construction of a dwelling house including a swimming pool on land at Lot A DP 373783, 11 Beatty Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0629
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot A DP 373783, 11 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Modification of Development Consent DA2021/2393 granted for Construction of a dwelling house including a 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:	Renae Betty Gallen Daniel Joseph Gallen
Applicant:	Daniel Joseph Gallen
Application Lodged:	18/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	24/11/2022 to 08/12/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seek approval for a modification of the built form approved under MOD2022/0629 including basement, ground and first floor level alterations.

The application is referred to the Development Determination Panel (DDP) as the development proposes a greater than 10% variation to the Floor Space Ratio development standard, pursuant to the Manly Local Environmental Plan (MLEP) 2013.

No submissions were received as part of public exhibition of the application.

Critical assessment issues included floor space non-compliance

The request for the non-compliance with FSR standard arises from a 52.2sqm increase in floorspace. The existing building has an approved floorspace of 0.4:1 (273.9sqm) above compliance with the LEP based on historical approvals with the proposal increasing this to FSR: 0.476:1 (326.1sqm). The additional floorspace does not substantially increase the bulk or scale of the building, with the additional gross floor proposed largely within the existing building envelope.

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

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act* 1979 seeks to modify the built form approved under Development Consent DA2021/2393.

The changes are as follows:

Basement Floor Level

- Proposed new powder room, gym, light well and stairs for external access to laundry, ventilation grilles provided for plant area
- Modification to storage and bin area adjacent garage
- Maintenance void for drainage noted between pool and house walls
- Proposed widening of kitchen, dining & living room towards the pool

Ground Floor Level

- Proposed wider windows from kitchen, living and dining towards pool
- Proposed new wall and doors between entry and dining
- Entry wall cladding changed from stone to brick

First Floor Level

- Removal of dressing room window and addition of circular skylight
- Bathroom skylight reoriented to above bath and shower
- High level bathroom window amended
- Addition of window in bathroom, bedroom 2 and 3
- New privacy screen added to the side of balcony
- Outdoor fireplace flue noted

External

- Proposed pool length increased, and width of operable shade structure decreased
- Rear paved area adjacent bed 4 lowered to provide for proposed lightwell and stairs to basement laundry
- AC units relocated away from bed 4 outlook to rear garden
- Outdoor fireplace on front balcony
- Construction of a new garden bed and privacy screen between entry path and front balcony

- Proposed new perforated brick screen wall adjacent to entry

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 Local Environmental Plan 2013 - 6.2 Earthworks

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.10 Fencing

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot A DP 373783 , 11 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of a single allotment located on the south west side of Beatty Street. The site is regular in shape with a frontage of 16.765m along Beatty Street and a depth of 39.625m. The site has a surveyed area of 684.8m². The site is located within the R2 Low Density Residential zone. The site is currently vacant as a result of recent demolition works.

	The site slopes from the street frontage to the rear boundary with an approximate rise of 2.76m. The site is located within a landscaped setting comprising established lawn areas and garden beds. There are no known threatened flora or fauna species present on site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one, two and three storey dwellings set within a low density residential and landscaped setting.
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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:

- **DA2022/1929** - Alterations and addition to a dwelling house (Currently under assessment).
- **DA2021/2393** - (Consent proposed to be modified) - Construction of a dwelling house including a swimming pool. Approved 30 May 2022
- **DA0253/2017** - On 29 March 2018, Council approved alterations and additions to an existing dwelling house.
- **MOD2020/0329** - On 21 August 2020, Council approved modification of DA0253/2017.
- **MOD1029/0296** - On 23 September 2019, Council approved modification DA0253/2017.

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 DA2021/2393, 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 DA2021/2393 for the following reasons: • The proposed development does change the proposed use or increase density. • The proposed development does not lead to a substantial increase to bulk and scale.
(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 DA2021/2393 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment
(i) the regulations, if the regulations so require,	

Section 4.55 (2) - Other Modifications	Comments
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	Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to stormwater management. <u>Clause 61</u> of the EP&A Regulation 2021 requires the

Section 4.15 'Matters for Consideration'	Comments
	consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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 original development application that included a certificate (prepared by Sydney Bushfire Consultants, dated 19 November 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. A certificate from the Sydney Bushfire Consultants dated 15 August 2022, confirms the original bushfire assessment and recommendations remain relevant and current.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/11/2022 to 08/12/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	Supported, without conditions The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA.

Internal Referral Body	Comments
	Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2022, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 Foreshores & Waterways Area The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28. On internal assessment, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed. Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005 The subject site is located within a foreshore area identified on the map and therefore the DCP applies to the proposed development. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2022, it is determined that the proposed development satisfies the requirements of the DCP. Manly LEP 2013 and Manly DCP Foreshores Scenic Protection Area Management The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed

Internal Referral Body	Comments
	development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2022, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Manly DCP 2013.
NECC (Development Engineering)	Supported, subject to conditions Additional Information Submitted 1/02/2023 The submitted information accurately locates the Council pipeline burdening the site and also confirms the site is not impacted by overland flow. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	Supported, without conditions This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy The proposal is near Sydney Harbour and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Sydney Harbour, or the quantity and quality of surface and ground water flows that it receives. On assessment the application meets the requirements of the relevant Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater.
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. 1335802S dated 7 November 2022).

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

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	52

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

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 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	8.3m (previously measured from extrapolated ground level)	8.5m (measured from excavated ground level)	-	Yes
Floor Space Ratio	FSR: 0.4:1 (273.9sqm)	FSR: 0.4:1 (273.9sqm)	0.476:1 (326.1sqm)	19.05%	No

Note: Flues are excluded from the building height calculation

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (273.9sqm)
Proposed:	0.476:1 (326.1sqm)
Percentage variation to requirement:	21.97%

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 objectives of the development standard are achieved, notwithstanding the non-compliance with the

development standard (As detailed below). Demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

4.4 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 will not significantly alter the existing bulk and scale of the development, with the increase in gross floor area contained mostly within the approved footprint of the building and to the rear section of the existing dwelling. The increased bulk will not impact upon the appearance of the existing dwelling as viewed from the street. The dwelling house remains consistent with the desired character of the streetscape.

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 will not obscure important landscape and townscape features. Important existing landscape features both to the front and rear of the site will be retained. No other important landscape features are proposed for removal as part of these works

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

Comment:

The proposed new works maintain a built form consistent with the identified streetscape. The increase to floor space does not unreasonably impact on the visual relationship between new development and the existing character and landscape of the area. The proposed works are contained mostly within the approved footprint of the dwelling house and therefore will maintain the visual relationship between the 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,

Comment:

The increase in gross floor area will not significantly increase visual and aural impacts on adjoining development, nor will it lead to unreasonable levels of overshadowing to adjoining properties. No significant views to or from the harbour or foreshores and neighbouring properties will be unreasonably impacted by the proposed development.

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 proposed development seeks to alter the existing dwelling house and is considered to comply with the above objective. The house remains for residential use.

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 is for residential use

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.

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 were included within the parent consent to limit impacts during excavation/construction.

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (f) the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

- (g) the proximity to and potential for adverse impacts on any 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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 684.8m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	S/E: 7.2m (based on gradient 1:9)	7.4m	Top of privacy screen: 8.3m Masonry wall - 2.8m - 3.7m	No Yes
4.1.2.2 Number of Storeys	2	3	no change to approved	No
4.1.2.3 Roof Height	Height: 2.5m	0.6m	no change to approved	Yes
	Parapet Height: 0.6m	<0.6m	no change to approved	Yes
	Pitch: maximum 35 degrees	Flat roof	no change to approved	Yes
4.1.4.1 Street Front Setbacks	6m	BL: 9.1m GFL: 9.1m FFL: 13.7m	BL: 9.1m GFL: 9.4m FFL: 13.9m	Yes Yes Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.76m (based on privacy screen height)	First floor: 2.025m - 2.41m	Setback to privacy screen: 3.2m	Yes
	0.9m 1.23,(masonry wall)		Setback to southern masonry wall: 0.3m - 0.6m	No
	2m - 2.46m (based on first floor N/W wall height)	First floor: 2m - 7.1m	Setback to privacy screen:	Yes
	Windows: 3m	2.3m	2.3m	No
4.1.4.4 Rear Setbacks	8m	5.4m (ground and first floor wall) 1m (Retaining wall)	no change to approved	No No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	49.6% or 339.5m ²	46.7% or 320m ²	No
	Open space above ground 25% of total open space	<25%	No change	Yes

4.1.5.2 Landscaped Area	Landscaped area 40% of open space	91.2m ²	23.5% or 80m ²	No
	2 native trees	3 trees (including replacement planting)	no change to approved	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	>18m ²	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	5.6m	no change to approved	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.3m	0.3m	Yes
	1m curtilage/1.5m water side/rear setback	2.7m (water side) 1.9m (curtilage)	3m 2m	Yes Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	no change to approved	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

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
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 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	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
4.1.10 Fencing	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

Detailed Assessment

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

Description of non-compliance

Clause 4.1.2 of Manly DCP permits a maximum wall height permitted by this control is determined by the slope of the land. The slope of the land along the northern and southern elevations is as follows:

- South-eastern elevation: 1:9 gradient, which permits a maximum wall height of 7.2m wall height.

The maximum wall height of the proposed dwelling house is as follows:

- South-eastern 8.3m (Measured to top of privacy screen).

Clause 4.1.2 of the MDCP 2013 also limits building to 2 storeys in height. The proposal is 3 storeys in height, which does not satisfy this requirement.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

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

Comment:

The development is predominantly beneath the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwellings on the western side of Beatty Street.

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

Comment:

The proposed bulk and scale is satisfactory in this circumstance. The predominant compliance achieved by the building demonstrating a considered built form that is compatible with any future development on surrounding lands.

(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 does not cause unreasonable view loss to and from public and private open spaces.

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

Comment:

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

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The subject site is not located in a protection zone.

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.

4.1.3 Floor Space Ratio (FSR)

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires the masonry wall be setback at least 0.9 - 1.23m from the southern side boundary. The proposed wall is setback 0.3m - 0.6m, non-compliant with the numeric control.

Clause 4.1.4.2 also requires windows from habitable rooms of dwellings that face the side boundary to be setback at least 3m from side boundaries. The proposed windows along the southern elevation are setback 2.3m from the side property boundary, non-compliant with the numeric 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 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 modification is consistent with the spatial proportions of the street and the street edge. As such, the proposed development maintained the existing desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant side and front setbacks. The proposed window alterations are located on the approved southern wall. The window alterations are consistent with the streetscape,

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will not lead to any loss of significant view. There is no significant impact on the streetscape, subject to conditions.

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

Comment:

Flexibility is provided in this circumstance as the proposed dwelling house will not result in any unreasonable impacts upon 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:

There are adequate deep soil zones in the front and rear setbacks to provide suitable planting as shown in the landscape plan.

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

Comment:

Adequate access can be provided in a bushfire emergency.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 of the MDCP requires at 60% of the site being total open space. The application proposes 46.7% (320sqm) of the site as total open space, non-compliant with the numeric control. This represents a 22% variation to the numeric control.

Clause 4.1.5.2 of the Manly DCP requires at least 40% of total open space being landscaped area. The proposed landscaped open space is 23.5% (80sqm), non-compliant with the numeric control. This represents a 42% variation to the numeric 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 development does not result in the removal of significant canopy trees, which would result in the character of the site being compromised or impact populations of flora and fauna.

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

Comment:

The proposed works proposes a suitable level of landscaped open space, given the sloping nature of the site and approved dwelling house.

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

Comment:

Amenity considerations including sunlight access, privacy and views have all been considered as part of this application, with no unreasonable impacts upon the subject site or neighbouring properties. The established streetscape character is not likely to be impacted by the proposed works.

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

Comment:

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

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

Comment:

The proposal is not likely to lead to a significant spread of weeds.

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

Comment:

The development will not affect any existing wildlife habitat and potential for wildlife corridors.

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

4.1.10 Fencing

The development application proposes a masonry wall off the southern side boundary. The proposed fence will sit to the top of the proposed 1.2m retaining wall proposed along the southern side of the swimming pool. The wall is consistent with the height of the approved retaining wall to the rear of the property. The proposed wall is not unreasonable with regards to height and scale and is supported.

The proposed boundary wall along the southern side of the subject site is located wholly within the subject site and as such does not require consent from the neighbouring property. Any works to the existing boundary fence is subject to the *Dividing Fences Act 1991*. A condition of consent has been imposed to ensure all works are located entirely within the subject site.

4.4.5 Earthworks (Excavation and Filling)

The proposed modification application does not substantially alter the amount of excavation approved under DA2021/2393. Therefore, the outcomes of the original development consent are maintained and a detailed merit assessment is not required in this instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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 the built form approved under Development Consent DA2021/2393 has been referred to the Development Determination Panel (DDP) due to exceedance of the Floor Space Ratio by more than 10%

The critical assessment issue for this application was the Floor Space non-compliance.

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0629 for Modification of Development Consent DA2021/2393 granted for Construction of a dwelling house including a swimming pool on land at Lot A DP 373783, 11 Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01/ Issue C	November 2022	Lawton Hurley
DA02/ Issue C	November 2022	Lawton Hurley
DA03/ Issue D	December 2022	Lawton Hurley
DA04/ Issue C	November 2022	Lawton Hurley
DA05/ Issue D	December 2022	Lawton Hurley
DA06/ Issue D	December 2022	Lawton Hurley
DA07/ Issue D	December 2022	Lawton Hurley

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate NO. A1335802S	7 November 2022	Sustain build Projects

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
PLT-01	9 August 2022	Fifth Season
PLT-02	9 August 2022	Fifth Season
PLT-03	9 August 2022	Fifth Season

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

approved plans.

B. Add Condition - Solid Fuel Heater - to read as follows:

No approval is given for the installation of any solid wood fired heater which would need a separate application for consideration.

Reason: To ensure compliance with Section 68 of The Local Government Act

C. Add Condition - Stormwater Disposal - to read as follows:

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 kerb in Beatty Street.

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

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

D. Add Condition -Structures Located Adjacent to Council Pipeline or Council Easement - to read as follows:

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Structural details prepared by a suitably qualified Structural Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) demonstrating compliance are to be submitted to Council for acceptance and the acceptance in writing is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

E. Add Condition - Structural Adequacy and Excavation Work - to read as follows:

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.

F. Add Condition - Vehicle Crossings Application - to read as follows:

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

to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

G. Add Condition - Pre-Construction Stormwater Assets Dilapidation Report - to read as follows:

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:
<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The pre-construction / demolition dilapidation report must be submitted to Council for acceptance and the acceptance in writing is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

H. Add Condition - Road Reserve - to read as follows:

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.

I. Add Condition - Vehicle Crossings - to read as follows:

The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing Normal Profile and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. The redundant layback and crossing are to be restored to kerb and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

J. Add Condition - Stormwater Disposal - to read as follows:

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

K. Add Condition - Certification of Structures Located Adjacent to Council Pipeline or Council Easement - to read as follows:

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans.

Details demonstrating compliance are to be submitted to Council for acceptance and the acceptance in writing is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

L. Add Condition - Post-Construction Stormwater Assets Dilapidation Report (Council stormwater assets) - to read as follows:

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/generalinformation/engineeringspecifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure security against possible damage to Council property.

M. Add Condition - Post-Construction Stormwater Assets Dilapidation Report (Council stormwater assets) - to read as follows:

The applicant is to lodge a bond of \$35,000 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.

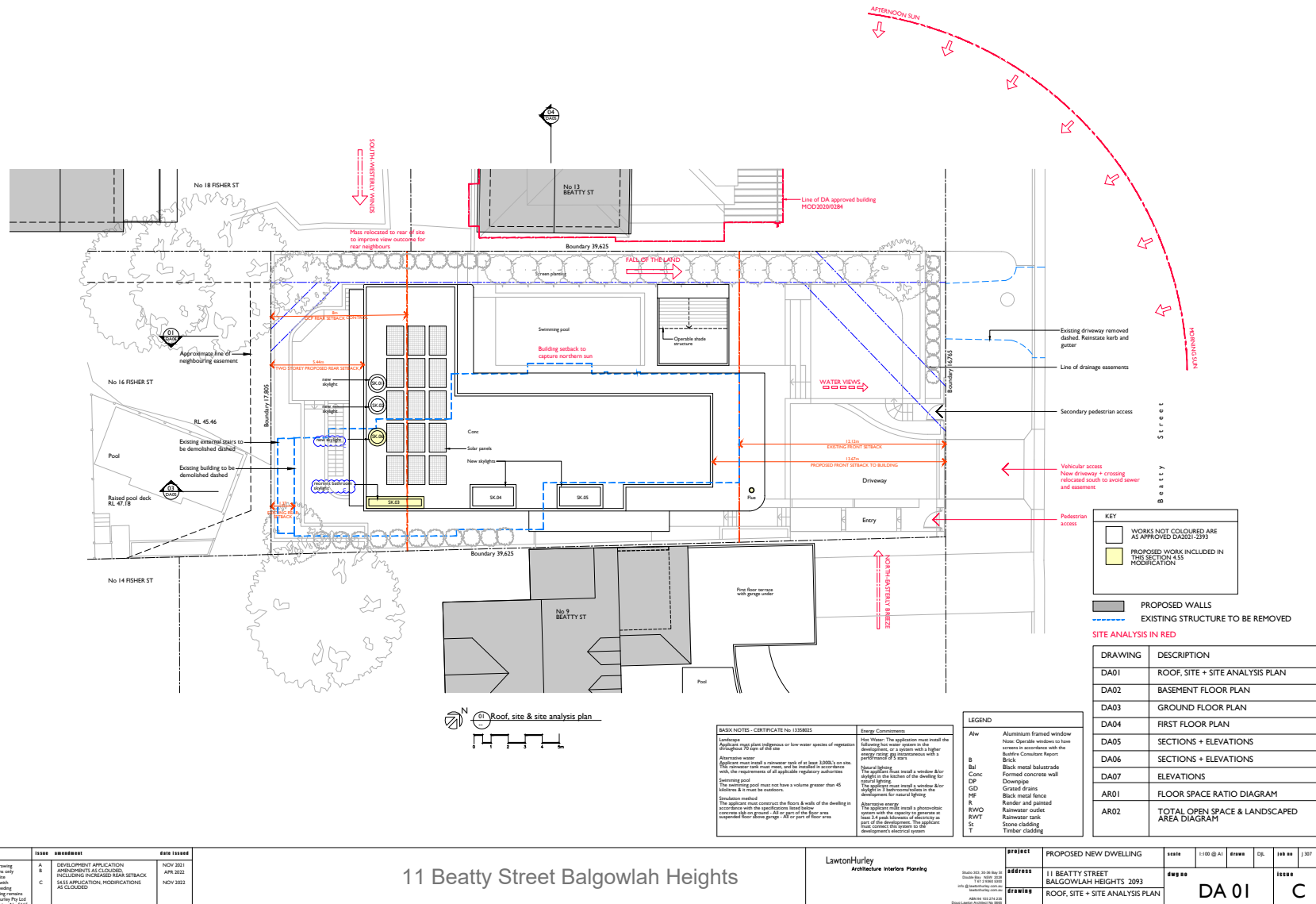
Reason: Protection of Council's infrastructure.

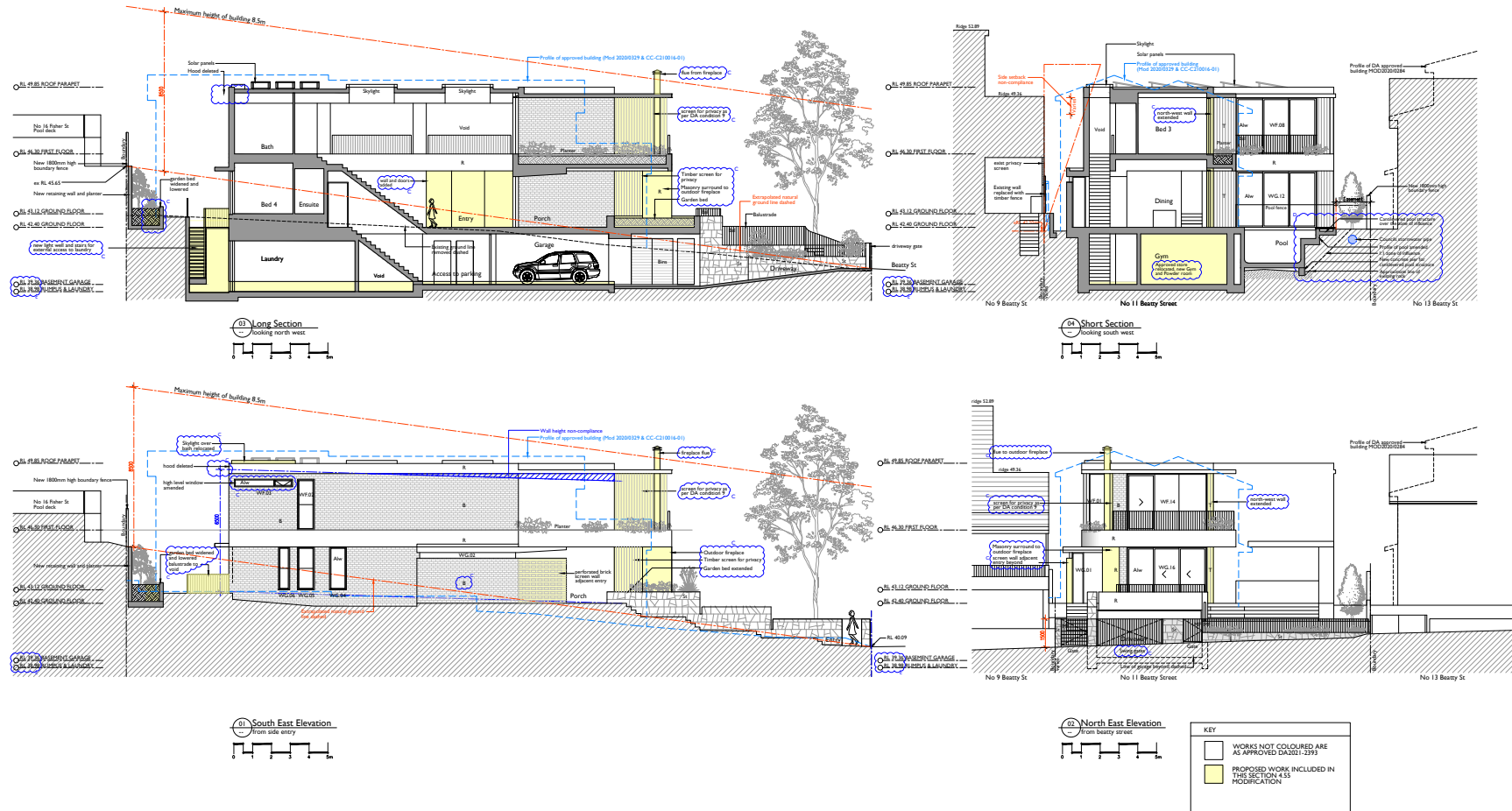
N. Add Condition - Extent of works - to read as follows:

All works including the southern fence/masonry wall shall be located wholly within the subject site.

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

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



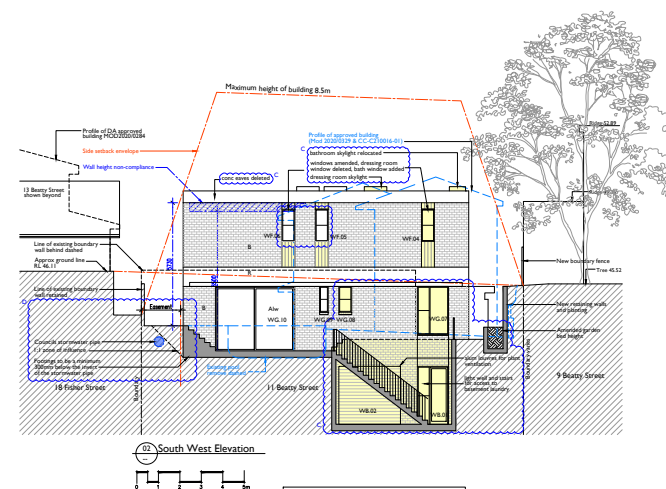
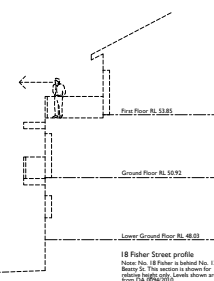


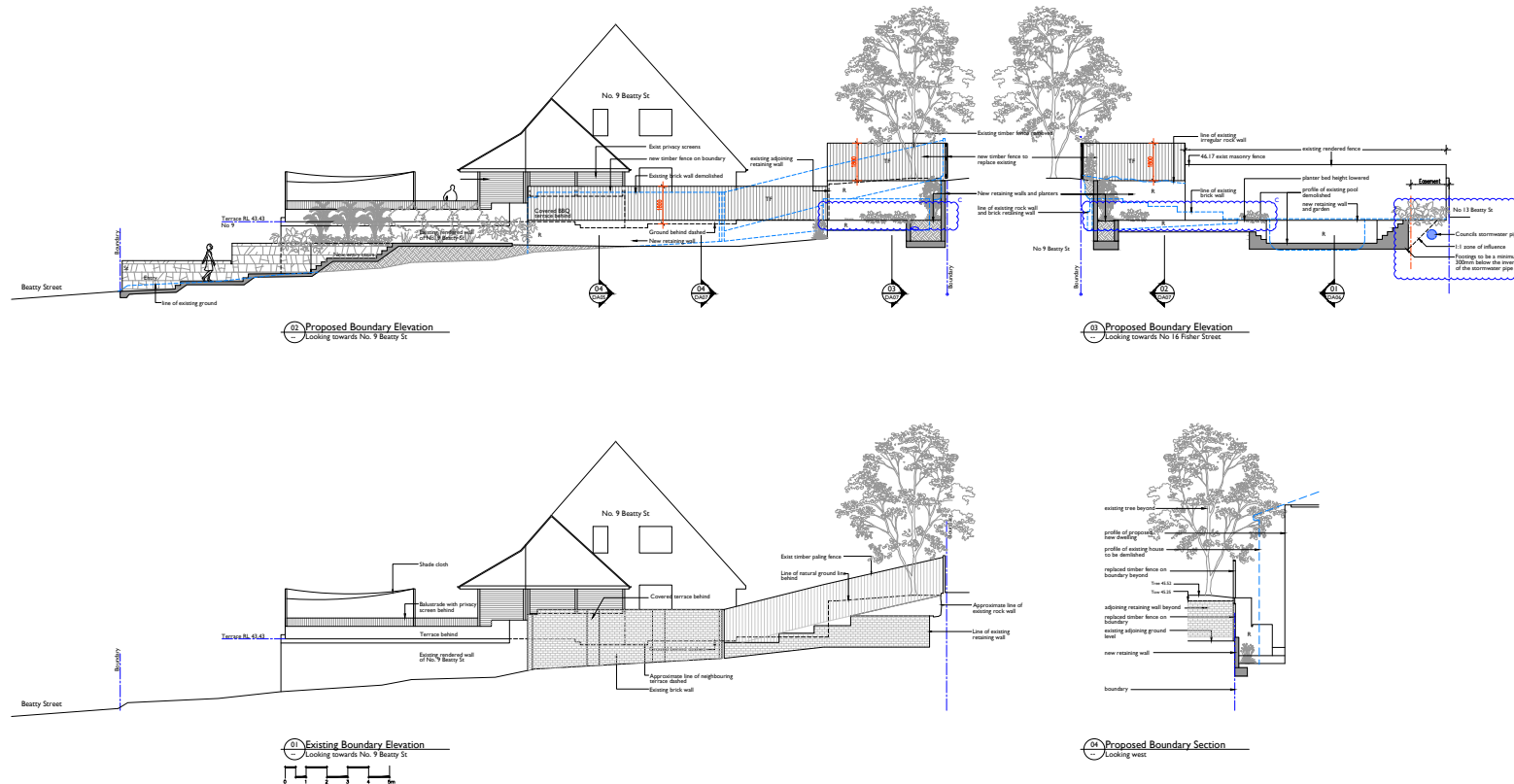
DATE	ISSUE	AMENDMENT	DATE ISSUED
do not scale off this drawing any unapproved dimensions may vary from those on any previous drawings with architects before proceeding copyright of this drawing remains vested with Lawton Hurley Pty Ltd (Coping License Registration No. 5665)	A	DEVELOPMENT APPLICATION	NOV 2021
	B	AMENDMENTS AS CLOUSED	APR 2022
	C	INCLUDING INCREASED REAR SETBACK	NOV 2022
	D	SA 45 APPLICATION, MODIFICATIONS AS CLOUSED	DEC 2022
		STORMWATER PIPE ADDED AS CLOUSED	

11 Beatty Street Balgowlah Heights

LawtonHurley
Architecture Interiors Planning

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DATE	ISSUE	DESCRIPTION	DATE ISSUED
do not scale off this drawing use the figures dimensions only	A	DEVELOPMENT APPLICATION	APR 2022
	B	REVISED APPLICATION	MAY 2022
	C	REVISED APPLICATION	NOV 2022
	D	STORMWATER PIPE ADDED AS CLOUDED	DEC 2022

11 Beatty Street Balgowlah Heights	LawtonHurley Architecture Interiors Planning	PROJECT PROPOSED NEW DWELLING	SCALE 1:100 @ A1	DATE 10 MAY 2023	JOB NO 1307
		11 BEATTY STREET BALGOWLAH HEIGHTS 2093	DA 07		
		ELEVATIONS SOUTH AND WEST FENCES			

ITEM 3.7**DA2022/1742 - 899 PITTWATER ROAD COLLAROY -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL**

REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2023/275905
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/1742 for alterations and additions to a dwelling house including a swimming pool on land at Lot 8 Sec 7 DP 12985, 899 Pittwater Road COLLAROY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1742
Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 8 DP 12985, 899 Pittwater Road COLLAROY NSW 2097
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Briannan Danielle Davis Scott Stephen Davis
Applicant:	Sean Clive Gartner
Application Lodged:	21/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/10/2022 to 11/11/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 15.88%
Recommendation:	Approval
Estimated Cost of Works:	\$ 495,000.00

EXECUTIVE SUMMARY

This development application seeks consent for the alterations and additions to a dwelling house including a swimming pool, and is referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to *Clause 4.3 Height of Buildings* of the *Warringah Local Environmental Plan 2011* (WLEP 2011).

The maximum permitted building height under the LEP is 8.5 metres. A variation to which a Clause 4.6 variation request for the non-compliance with the building height standard arises due to the proposed first floor being located partially upon a previous excavated lower ground floor (garage), resulting in a variation of 15.88%.

The proposed development 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 the development failing to satisfy the requirements of the Warringah Development Control Plan 2011, particularly in relation to side boundary envelope, wall height, view loss, privacy and the overall bulk and scale. These variations are not considered to result in unacceptable environment or amenity impacts, with the development achieving the objectives of the relevant clauses.

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

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the alteration and additions to an existing dwelling house, including a swimming pool.

Specifically, the works comprise of:

- Replace and widen driveway, associated driveway crossing and new entry to dwelling house;
- Demolish internal walls to existing garage, to accommodate for a double garage;
- Reconfigure upper ground floor level, with the addition of an internal staircase to service first floor level;
- Construction of a first floor level including a balcony to front façade;
- Addition and replacement of various windows and doors;
- Excavation and construction of an inground swimming pool and outdoor terrace area; and
- Associated landscaping works including the construction of a front fence with vehicular gate.

ASSESSMENT INTRODUCTION

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

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

proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D13 Front Fences and Front Walls

SITE DESCRIPTION

Property Description:	Lot 8 DP 12985 , 899 Pittwater Road COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Pittwater Road. The subject site is legally identified as Lot 8, Section 7 in Deposited Plan 12985, No. 899 Pittwater Road, Collaroy. The site is rectangular in shape with a frontage of 15.245 metres and an average depth of 45.79 metres. The site has a surveyed area of 697.0m². The site is located within the R2 Low Density Residential zone under the provisions of the Warringah Local Environmental Plan 2011 and accommodates a dwelling house. The site topography slopes downward from north to south by approximately 8.46 metres. The site consists of a lawn area to the rear, with various forms of vegetation and combinations of native and exotic species. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one, two and three storey dwellings, of various architectural styles. Dee Why Lagoon is located to the south, with Long Reef to the south-east.

Map:



SITE HISTORY

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

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

Current Application History

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan, which resulted in one (1) submission.

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

- An Acoustic Report was requested to ensure that the proposal complied with *Division 17 Roads and Traffic* under the *State Environmental Planning Policy (Transport and Infrastructure) 2021*.
- Clause 4.6 Variation was requested due to the proposed building height variation, which exceeds 8.5 metres.
- The proposal does not numerically comply with Clause B1 Wall Heights and Clause B3 Side Boundary Envelope of the WDCP 2011. Council requested that the the first-floor level of the development allow for an increase in the side setbacks and provide further articulation to reduce the numerical non-compliance and building bulk.
- Privacy concerns were raised in relation to the proposed first floor balcony, situated within 9.0m of the western neighbouring property. The dimensions of the first-floor balcony were requested to be reduced in size and should be wholly located to the front elevation (south), minimising the potential for direct overlooking into neighbouring properties.

The amended plans were received on 16 February 2023 and 3 March 2023, with the third set of amended plans being received on 24 March 2023.

Council's Landscape Officer further requested for amended plans to accurately note which planting is proposed and existing on the site plan, and for an Arboricultural Assessment Report to be submitted. These amendments were received on the 1 May 2023.

Formal re-notification was not required due to a reduction in environmental impacts and further clarification on the design. The fourth set of amended plans form the basis of this report and have been assessed accordingly.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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 Clause 4.3 Height of Buildings of the WLEP 2011, Clause B1 Wall Heights, Clause B3 Side Boundary Envelope, Clause D8 Privacy, Clause D9 Building Bulk of the WDCP 2011 and requests made by Council's Development Engineer and Riparian Lands Officer. <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

Section 4.15 Matters for Consideration	Comments
	consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Services, dated 18 March 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. As such, the proposal is satisfactory

with the requirements prescribed by Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/10/2022 to 11/11/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Raphael Sy Ann Francis Sy	897 Pittwater Road COLLAROY NSW 2097

One (1) submission was received. The planning concerns raised in this submission will be discussed below:

- **Amenity Impacts - View Loss, Visual Privacy and Overshadowing**

Comment

Concerns were raised in the submission received that the development will give rise to amenity impacts to adjoining western property, which are addressed below:

- A view loss analysis has been conducted in relation to the loss of views at No. 897 Pittwater Road, Collaroy, and has been addressed in detail elsewhere in this report. Refer to *Clause D7 Views* for further detail.

- Visual privacy has also be addressed in detail elsewhere in this report. Amended plans were received addressing the privacy concern relating to the positioning of the front façade balcony. Conditions of consent have been additionally imposed to further ensure privacy to adjoining neighbours and the residents to minimise any unreasonable privacy impacts. Refer to *Clause D8 Privacy* for further detail.

- No unreasonable overshadowing is caused by the development and is considered compliant under Clause D6 Access to Sunlight. All adjoining properties will receive sunlight to at least 50% of their private open space areas, receiving a minimum of 3 hours of sunlight between 9am and 3pm on June 21. Amended Plans were received, which indicated the relevant date/times on the shadow diagrams, which were originally left out in error.

- **The proposed building is excessive in bulk and scale, and appears to be a three storey building**

Comment

Concerns were raised in relation to the elevated nature of the dwelling house, which appears to present a three-storey dwelling house. The proposal maintains an existing excavated garage/subfloor area, upper ground floor, with the addition of a first floor level. The steep slope in the land and the retention of the existing garage/subfloor level, can result in the perception of a three story build, when viewed from the street. Several dwelling houses along Pittwater Road in this particular location, exhibit three storey front façades. This proposal is not considered out of character for the area, and is subject to a site constraint in relation to the previously mentioned sloping topography.

- **Built Form Compliance - Side boundary envelope and wall height - insufficient information presented to determine the impact of the increased size of this development**

Comment

During the assessment of this application, amended plans were received which increased reduced the side boundary envelope non-compliance. Where the proposal seeks to vary a built form control, a merit assessment is conducted against the objectives of that clause within the relevant section of this report. Refer to *Clause B3 Side Boundary Envelope and Clause B1 Wall Heights* for further detail. The submitted plans are considered to include sufficient detail, to determine the extent of non-compliance and subsequently any potential impacts.

- **Potential fire pit location result in fire and smoke hazard**

Comment

The submitted architectural plans include a notation to indicate a potential fire pit location. This is to be removed by a recommended condition. Hence, will not form part of this assessment.

- **Front fence height above 1.5m (adjacent front fence) and of solid construction, obstructing view of the pedestrian footpath and preventing safe vehicular egress into Pittwater Road**

Comment

Pittwater Road is a classified arterial road which is considered to generate high levels of noise, therefore a variety of fence types and heights exist. In relation to the subject site and the surrounding properties, front fences and retaining walls, are not excessive in height, and generally present levels of vegetation screening.

A recommended condition is therefore included to limit the front fence to a maximum height of 1.5m to allow for acceptable viewing to the pedestrian foot path and safe vehicular egress onto Pittwater Road. Additionally, a recommended condition is also included to increase the setback of the fence to provide adequate space for planting in front of the fence. The fence will be set back a minimum of 500mm to allow for suitable planting, resulting in visual interest and softening of the solid built form.

- **Stormwater flow during heavy rainy periods**

Comment

Council's Development Engineer has reviewed the proposal and is in support subject to recommended conditions. This includes a demonstration of how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy, which is to be demonstrated by an appropriately qualified and practicing Civil Engineer.

- **Proposed trees along western boundary could result in overhang onto adjoining property, minimise solar access and obscure view of the pedestrian footpath**

Comment

The architectural plans have not been accompanied by a formal landscape plan, and does not appear to propose any additional landscaping to the western boundary in exception of one palm tree. Most of the vegetation along this boundary is as existing. The proposed landscaping has been reviewed by Council's Landscape Officer, who is in support subject to recommended conditions.

- **Traffic/congestion concerns during construction phase**

Comment

The proposal has been reviewed by Council's Development Engineers and Transport for NSW who raised no objection to the proposal (subject to recommended conditions). It is not considered that the proposal would generate additional traffic or congestion. A recommended condition is also included, requiring the applicant to submit a Construction Site Management Plan.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to conditions.</i> A Arboricultural Impact Assessment is submitted with the application, and provides recommendations for tree preservation. No Landscape Plan is submitted as the proposal includes the intent to preserve all existing trees and shrubs within the property, and Landscape Referral base this assessment of such retention, regardless of species type, and conditions shall be imposed for protection. The architectural ground floor plan includes landscape notations including "retain all trees and shrubs labelled T1/T35" including no impact to those located on adjoining property, and additional landscape works include the noted planter to the upper floor level. Landscape Referral raise no concerns subject to retention of trees and vegetation as nominated on the plans and completion of planter landscaping.
NECC (Bushland and Biodiversity)	<i>Supported, subject to conditions.</i> The comments on this proposal relate to the following provisions: • Warringah DCP 2011 Clause E2 Prescribed Vegetation • Warringah DCP 2011 Clause E4 Wildlife Corridor • Warringah DCP 2011 Clause E6 Retaining unique environmental features The proposal seeks approval for alterations and additions to a dwelling including a swimming pool. The proposal has been submitted with a Bushfire report indicating that the site "provides adequate separation between the proposed building and surrounding vegetation for a compliant structure to be built". Additionally, a desktop survey, as well as plans provided, show that the proposed works will take place within 5 metres of canopy trees and no arborist and landscaping reports have been provided to determine impacts on the remnant vegetation present on the site.

Internal Referral Body	Comments
	Therefore, conditions will apply to ensure compliance with WDCP 2011 Applicable Controls.
NECC (Coast and Catchments)	Supported, subject to conditions. The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011. 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 'Proximity to Coastal Wetlands Area' and 'Coastal Environment Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.8, 2.10 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 Garten Trovato Architects Pty. Ltd. dated April 2022, the DA satisfies requirements under clauses 2.8, 2.10 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 Warringah LEP 2011 and Warringah DCP 2011 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 Warringah LEP 2011 and Warringah DCP 2011.
NECC (Development Engineering)	Supported, subject to conditions. The proposal is for alterations and additions to the existing dwelling. The subject site is burdened by a Council pipeline. Survey information has been provided regarding the location of the pipeline. However the proposed works encroach over the existing location of the pipeline which is not acceptable. To demonstrate compliance with Northern Beaches Council's Water

Internal Referral Body	Comments
	Management for Development policy, it is recommended that amended plans are submitted detailing the following: • All structures are located clear of any Council pipeline, pit or easement and comply with minimum vertical and horizontal clearances; • Where there is no existing easement, a 3m wide easement, located centrally over the pipeline, will need to be proposed in accordance with Clause 6.1.2; • Footings of any structure adjacent to an easement, pipeline, culvert or channel are to be designed in accordance with the above-mentioned policy; and • Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance with Council's policy are to be submitted. Amended plans shall be submitted showing the Council pipeline, proposed easement and the proposed development without any encroachment over the Council system. Additional Information Provided on 2/3/2023 The amended plans proposes a raised deck and pool fencing located over the Council pipeline and proposed easement which is not acceptable. All structures are located clear of any Council pipeline, pit or easement and comply with minimum vertical and horizontal clearances as previously commented. Additional Information Provided on 24/3/2023 Amended plans showing the proposed easement clear of all structures are satisfactory subject to conditions. No objections to approval subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	Supported, subject to conditions. This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy The site is on land identified as proximity area for coastal wetlands and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the wetland, or the quantity and quality of surface and ground water flows that it receives. The updated application includes a sediment pit. On assessment the application meets the requirements of the relevant Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater.
Strategic and Place Planning	HERITAGE COMMENTS

Internal Referral Body	Comments		
(Heritage Officer)	Discussion of reason for referral		
	This application has been referred as it is located within the vicinity of a heritage conservation area, being C5 - Dee Why Lagoon and Reserve , listed in Schedule 5 of Warringah LEP 2011.		
	Details of heritage items affected		
	Details of the conservation area in the vicinity, as contained within the Heritage Inventory are: C5 - Dee Why Lagoon and Reserve		
	Statement of Significance		
	The Australian Heritage Commission states in its official statement of significance that: 'Dee Why Lagoon is one of the best examples, in the Sydney Region, of an estuarine lagoon. It is one of the few large estuarine barrier lagoons, remaining in good condition, in the Sydney Region. The saltmarsh of the lagoon area is a regionally uncommon remnant of saline marshlands, which were formerly more widespread in the Sydney Region. The diversity of saltmarsh plants found at Dee Why Lagoon is high in comparison to other saltmarsh communities in the region. Dee Why Lagoon is also an important site for teaching and research associated with biological zonation, estuarine barrier lagoons and estuarine wetlands. The Lagoon is also an important feeding and sheltering place for migratory birds, including some from the Northern Hemisphere. Its south-western sector also contains one of the best remaining stands of Swamp Mahogany (<i>Eucalyptus robusta</i>), now a threatened species.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	Yes	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
Consideration of Application			
This application proposes alterations and additions to the existing dwelling, including an additional upper floor and rear swimming pool.			
The Dee Why Lagoon conservation area is located on the opposite (southern) side of Pittwater Road. It is a natural heritage area including the lagoon body itself and surrounding flora and fauna. This application, being separated by a 6 lane road, will have no adverse impact upon the heritage significance of this conservation			

Internal Referral Body	Comments
	area. Visually, the proposed dwelling will be more visible from the conservation area, but will not be out of keeping with the urban fabric of this section of Pittwater Road. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of WLEP 2011:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A Further Comments

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.
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	Supported, subject to conditions. Transport for New South Wales (TfNSW) has reviewed the application and provides concurrence to the proposed widening of the vehicular crossing on Pittwater Road under <i>Section 138</i> of the <i>Roads Act 1993</i>, subject to conditions being included in the consent issued by Council.

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. A455781_02 dated 20 October 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment

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

Roads and Maritime Service (RMS)

Section 2.119 - 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 application was referred to Transport for New South Wales (TfNSW) and provided concurrence to the proposal, subject to conditions. The application was also referred to Council's Development Engineer, who is in support of the application subject to recommended conditions

Section 2.119 - Impact of road noise or vibration on non-road development states:

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment

The proposal has been accompanied by an Acoustic Assessment Report. The noise levels were assessed in accordance with the requirements of Northern Beaches Council, NSW Department of Planning & Infrastructure and relevant Australian Standards. The report has included recommendations which will be included in Condition 1 of this development consent. Accordingly, it is considered that the proposed development satisfies the relevant matters prescribed by Section 2.119 of the SEPP.

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:

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

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment

The application has been reviewed by Council's Coast/Catchments and Riparian Lands/Creeks Team who are satisfied that that works will not result in adverse impacts to the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or the quantity and quality of surface and ground water flows, subject to recommended conditions.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

- c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.
- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
- a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment

As mentioned above, the application has been reviewed by Council's Coast/Catchments and Riparian Lands/Creeks Team who support the application, subject to conditions. Therefore, it is considered that the proposal will not adversely impact the coastal environment area.

Division 5 General

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

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

Comment

The proposal is not likely to cause an increased risk of coastal hazards on the subject site 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.

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	Dwelling: 9.85m	15.88% (1.35m)	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

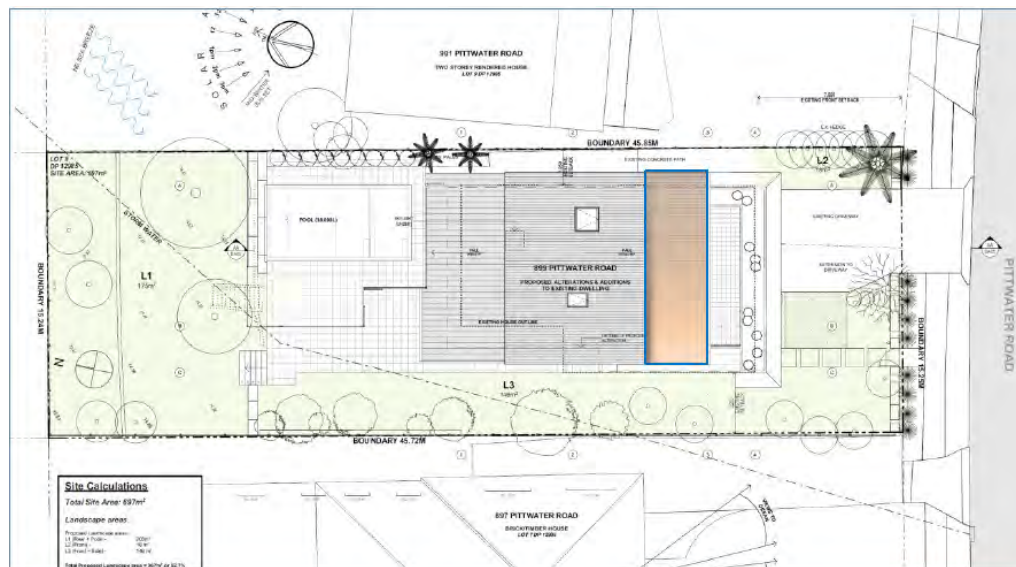
Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.85m
Percentage variation to requirement:	15.88%

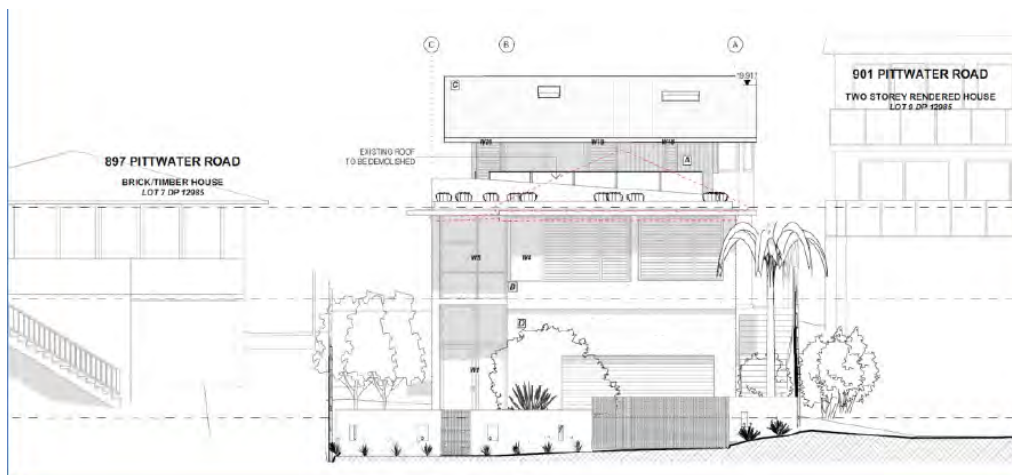
An extract of the submitted architectural plans and Clause 4.6 Variation demonstrating the extent of non-compliance is shown below:



(Figure 1: Section 1 - Red shading to indicate building height non-compliance)



(Figure 2: Site Plan - Showing area of non-compliance in orange)



(Figure 3: South Elevation Street View - Showing transition in building height)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment

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

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

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

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

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by*

subclause (3), and

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

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

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

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

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

Comment

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

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

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

Comment

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *The non-compliance arises as a consequence of existing excavation on the lower ground floor. The proposed development is limited to a maximum of two storeys in height as it steps up a sloping site. The proposed upper floor addition is setback from the street front elevation. When measured at the perimeter of the building.*
- *The proposed upper floor is maintained below the 8.5m height plane when measured to extrapolated/assumed pre-existing ground levels. 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 plane can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.*
- *The height of the proposed development is entirely commensurate with that of the adjoining development as the land slopes from east to west. The height of the dwelling provides a transition between the adjoining properties at 901 – higher to the east, and 897 – lower to the west. The proposal is consistent with the streetscape as shown in the street elevation.*
- *Views to all properties to the rear are maintained with no affect due to height. Views to the adjoining properties are through the front elevation in a south easterly direction to the ocean. The addition is set back from the existing frontage.*
- *Privacy is maintained to adjoining dwellings through the careful and considered placement of windows to the side boundaries of the proposed upper floor addition. Uses in the upper floor addition are low use bedrooms to maintain privacy. The proposal has no impact to any adjoining properties in terms of overshadowing as the all adjoining living and private open space areas are to the northern rear of the properties and are unaffected by the proposed additions.*
- *The proposed development is highly articulated and is of a scale that is consistent with that of surrounding and nearby dwellings, and that anticipated by the desired future character of the locality. The portions of the proposal that protrude above the height plane are centrally located on the site and setback from the primary facades, such that they are not the dominant feature of the development when viewed from adjoining properties or the public domain.*
- *The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider R2 Low Density Residential Zone.*

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

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

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

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

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

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

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

Comment

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

Objectives of development standard

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

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

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

Comment

The proposal includes alteration and additions to an existing dwelling house, including a first floor addition which proposes a maximum height of RL 18.226 - RL 19.999. The non-compliance directly relates to the retention of the lower floor garage, which has been previously excavated, and the retention of majority of the upper ground floor building footprint.

The immediate properties to the east of the subject site exhibit ridgeline of approximately RL 20.96 (No. 901 Pittwater Road), and RL 21.49 (905 Pittwater Road). It is evident that as the land slopes upward to the east, the building height of dwellings increase. The opposite can be said towards the west, with the immediate properties to the west exhibiting heights of RL 17.42 (897 Pittwater Road) and RL 18.20 (895 Pittwater Road). It can be considered that the proposal demonstrates consistency in way of height and spatial proportions when compared to the

properties within the immediate vicinity.

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

Comment

The proposal will result in acceptable view sharing, solar access and privacy levels to surrounding properties, subject to conditions. Refer to *Clause D7 Views* and *Clause D8 Privacy*, elsewhere in this report for further detail.

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

Comment

The proposal consists of soft landscaping throughout the site, exceeding compliance with the landscaping requirements under WDCP 2011. In addition, the roof form has been designed to complement existing roof styles within Warringah's coastal and bush environments

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

Comment

As mentioned above, the proposal is designed to keep within the existing character of the area and existing dwelling house, when viewed from public places.

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 will maintain a build of a low density design, which will continue to provide for the housing needs of the community.

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, that provide facilities to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

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

Comment

The proposal is compliant with the landscaping requirements under WDCP 2011 to ensure that the landscaped setting of the surrounding natural environment is acceptably preserved.

It is considered that the development satisfies this objective.

Conclusion

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

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

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

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

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***

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***

propertiesComment

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 relicsComment

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 watercourse, drinking water catchment or environmentally sensitive areaComment

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.4 Development on sloping land

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) the application for development has been assessed for the risk associated with landslides in relation to both property and life, andComment

The subject site is located on Area D of the Landslip Risk Map. The application has been accompanied by a Preliminary Landslip Assessment prepared by a suitably qualified geotechnical expert, in accordance with the requirements (and checklist) contained within Clause E10 of Warringah Development Control Plan 2011 and the Warringah Local Environmental Plan 2011. This assessment concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, andComment

The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is

satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment

The application as mentioned above, has been assessed by Council's Development Engineers in relation to stormwater and additionally assessed by Council's Riparian Lands Officer. The officers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	West: 8.1m East: 7.1m	12.5% -	No
B3 Side Boundary Envelope	4.0m Western Envelope	Within Envelope	-	Yes
	4.0m Eastern Envelope	Outside Envelope	Maximum: 30.0%	No
B5 Side Boundary Setbacks	0.9m Western Boundary	Ground Floor: 3.2m - 5.8m First Floor: 4.6m	-	Yes
	0.9m Eastern Boundary	Swimming Pool: 1.8m Swimming Pool Paving: 0.8m Ground Floor: 1.3m - 1.9m First Floor: 1.3m - 2.7m	- -	Yes No Yes Yes
B7 Front Boundary Setbacks	6.5m Southern Boundary	Porch: 6.9m Dwelling: 7.3 - 7.7m	-	Yes
B9 Rear Boundary Setbacks	6.0m Northern Boundary	Paving: 10.7m Stairs: 10.3m Dwelling: 21.4m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40.0% (278.8m ²)	52.5% (365.8m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of Non-Compliance

Clause B1 states that wall heights are not to exceed 7.2 metres, when measured from ground level (existing) to the underside of the ceiling on the uppermost floor of the building.

The proposed development exhibits non-compliance to the numerical requirements, presenting a maximum wall height of 8.1m, with a variation of 12.5%.

Merit Consideration

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

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

Comment

The wall height non-compliance will not unreasonably impact the streetscape or adjoining dwellings. This is achieved by providing acceptable levels of articulation, varied setbacks and roof lines, and building elements such as a balcony, which will aid in the minimisation of any perceivable dominance.

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

Comment

Due to the steep topography of the subject site and placement of surrounding canopy trees, the proposed development presents a design that is sited below tree canopy level.

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

Comment

The wall height encroachment to the western elevation is not considered to result in unacceptable view loss to the neighbouring properties or public domain. Refer to *Clause D7 Views* for further detail elsewhere within this report.

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

Comment

The proposal exhibits adequate spatial separation between adjoining buildings and compliant solar access requirements. Privacy has been addressed in further detail elsewhere within the report (refer to *Clause D8 Privacy*). The proposal is found to acceptably minimise impact to surrounding properties.

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

Comment

Previous excavation has occurred on site to facilitate the lower ground floor garage. No excavation other than the proposed swimming pool will occur within this application.

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

Comment

The roof form of the dwelling house is presented as a low pitched skillion and flat roof, consistent with the urban environment in the immediate vicinity.

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

B3 Side Boundary Envelope

Description of Non-compliance

Clause B3 Side Boundary Envelope requires development to be sited within a 5.0m building envelope to ensure the bulk and scale of the built form is minimised.

The proposed development encroaches the eastern elevation side boundary envelope, exhibiting a maximum variation of 30.0% (See figure 4 below).

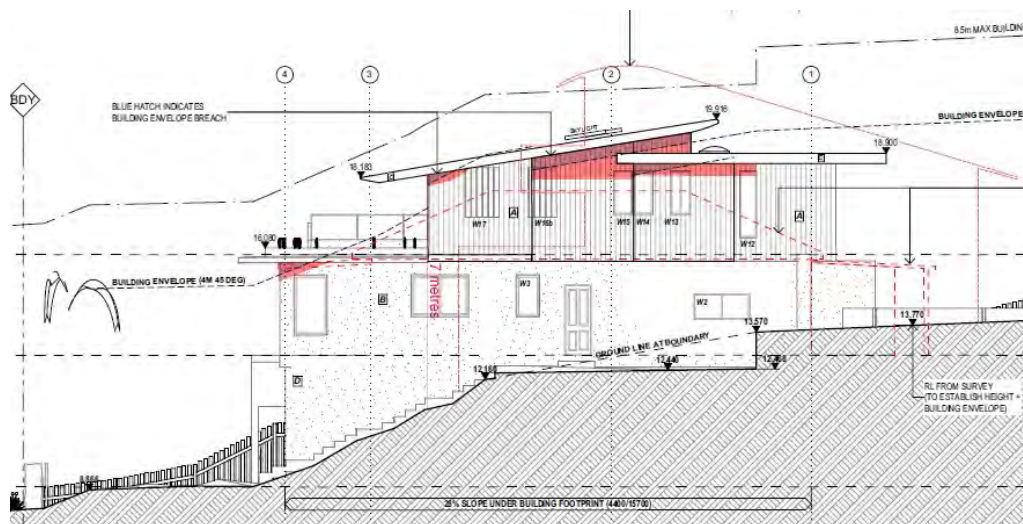


Figure 4 - (Eastern Elevation - Red shading to demonstrate area of non-compliance)

It is recognised that the breach in building envelope is attributed to the pronounced and disjointed topography of the subject site.

Merit Consideration

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

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

Comment

The bulk and scale of the building is consistent with that of surrounding properties along Pittwater Road, which are predominantly elevated in nature due to the steeply sloped topography of the area. The eastern elevation has incorporated an acceptable level of articulation. Majority of the non-compliance is situated under the 8.5 metres building height standard.

The front façade of the dwelling has incorporated a planter box on the balcony, to aid in the mitigation of dominance and scale when viewed from adjoining properties and the public domain. The proposal also includes a variation in roof form and pitch, exhibiting a level of articulation to the roof design.

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

Comment

The dwelling house presents compliance with the solar access and side setback requirements, with the proposal presenting acceptable privacy levels within a residential environment. Refer to *Clause D8 Privacy* for further detail.

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

Comment

The proposal does not include any significant excavation that will disrupt the existing topography of the land.

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.

B5 Side Boundary Setbacks

Description of Non-Compliance

Clause B5 Side Boundary Setbacks requires a setback of 0.9 metres to each side boundary to sites located within the R2 Low Density Residential zone.

The proposal includes swimming pool pavers with a side setback of 0.8 metres - 0.9 metres to the eastern boundary. These elements are noted to be below 1.0 metres in height, with the partial non-compliance related to the slight angled boundary line.

The clause consists of an exception for R2 zoned areas, which stipulates that structures not more than 1.0 metres above ground level (existing) may encroach beyond the minimum side setback.

Merit Consideration

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

- ***To provide opportunities for deep soil landscape areas.***

Comment

The proposal presents a compliant landscape area, with a large vegetated rear yard, and acceptably vegetated side setback areas. The dimensions of landscaped open space can accommodate for further and proposed landscaping opportunities.

- ***To ensure that development does not become visually dominant.***

Comment:

The non-compliant element is located at ground level, and will be adjacent to screen vegetation. The proposed dimensions of vegetation, combined with acceptable levels of articulation will aid in the minimisation of visual dominance of the proposal as a whole.

- ***To ensure that the scale and bulk of buildings is minimised.***

Comment

As mentioned above, the design has incorporated acceptable levels of articulation and various external materials to aid in the mitigation of any perceivable bulk and scale.

- ***To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.***

Comment

The side boundary setbacks are consistent with the surrounding dwelling houses and is compliant with the relevant solar access requirements. Privacy has been addressed under *Clause D8 Privacy*, elsewhere within this report.

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

Comment

The encroachment into the side setback area caused by the swimming pool pavers will not result in any unacceptable view loss from surrounding private properties or the public domain.

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.

D7 Views

Merit Consideration

One (1) submissions was received from the following property which included concerns regarding view loss:

- 897 Pittwater Road, Collaroy

A site inspection was conducted on 7 March 2023, the photos taken from the inspection 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 underlying Objectives of the Control as follows:

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

Comment

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

1. Nature of the views affected

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

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

Comment to Principle 1

The view of concern obtained by No. 897 Pittwater Road, is achieved towards the south-east partly over the side boundary of the subject site. The view consists of a partial view of Long Reef Beach (land and water interface), obstructed by powerlines and vegetation. Additional views obtained from the property include Dee Why Lagoon towards the south and south-west.

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

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

Comment to Principle 2

The views mentioned above are obtained from the upper ground floor living spaces (i.e. kitchen, dining and living room) and associated balcony situated to the front of the dwelling house of No. 897 Pittwater Road. The views are obtained primarily from a standing perspective, however can be partially obtained in a sitting position.



(Image 1: View towards south-west of Dee Why Lagoon from Balcony)



(Image 2: View towards south-east of Long Reef Lagoon from Balcony)



(Image 3: View towards south-east of Long Reef Lagoon from Living Room)



(Image 4: View towards south-east of Long Reef Lagoon from Kitchen/Dining)



(Image 5: View towards south-east of Long Reef Lagoon from Kitchen/Dining)

- **3. Extent of impact**

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but

in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3

The views towards Long Reef (Land and water interface) will be retained from both a standing and sitting position from the outdoor balcony, and is not considered to be detrimentally impacted upon. This view of Long Reef is considered to be retained also from the internal living spaces (i.e. kitchen, dining and living room). It is noted that these views improve substantially when obtained at the western portion of the dwelling house. The sky outlook towards the east will however be reduced. The view of Dee Why Lagoon will not be impacted upon and wholly retained from both a sitting and standing position from the balcony and internal living spaces. The overall view loss is considered 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

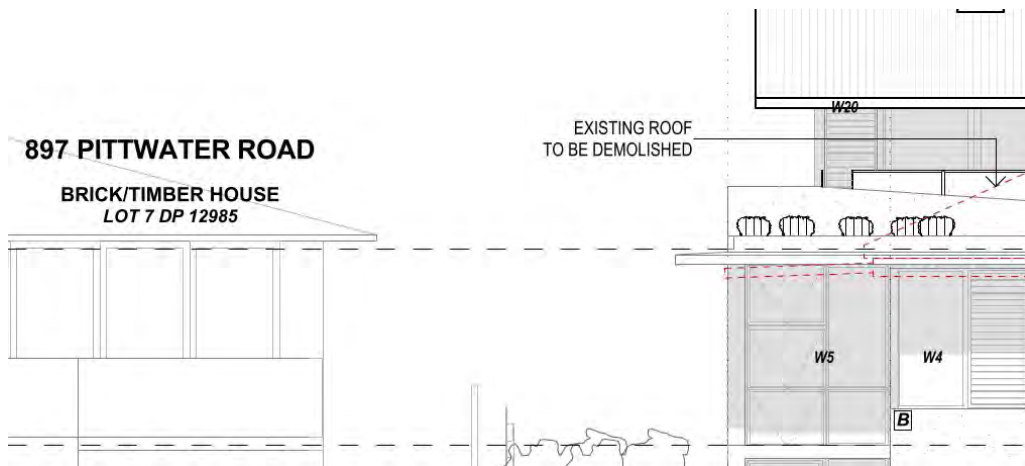
The alterations and additions have been found to exhibit non-compliance with the side boundary envelope built form control and wall height control. The non-compliances were found to be acceptable, achieve consistency with the objectives of the control and have subsequently been supported. The proposal also exhibits a non-compliant building height to a partial section of the dwelling. However, this non-compliant section of the dwelling is not considered to impact on the current view corridor.

In relation to the side boundary envelope, the non-compliance is located to the eastern envelope, and is not considered a significant in nature. There is not side boundary envelope breach to the western elevation, which faces No. 897 Pittwater Road. Therefore, to provide a fully compliant side boundary envelope to the east, would not improve any view corridor obtained by No. 897 Pittwater Road. The wall height non-compliance is located to the western elevation, however will not be located in the sightline of the current view corridor. A fully compliant wall height to the west, would not improve any view corridor obtained by No. 897 Pittwater Road.

The question of a more skillful design which provides the residents of the subject site with a similar development potential and amenity, whilst also retaining the current view corridor is considered. However, based on the above images and a close analysis of the architectural plans, it is determined that the view currently obtained from No. 897 Pittwater Road will remain generally the same as the existing outlook, with a reduction of a sky view towards the south-east.

The proposal is maintaining the current front setback of the upper ground floor, this area is shown in the above images (white section of the current building on No. 899 Pittwater Road) and is a maximum height of RL15.15. The proposed first floor balcony and suspended planter box will be setback 6.5m - 8.6m from the front boundary, which will exhibit RL15.880 - RL16.080. It is considered that the proposed works located forward of the existing front setback of 7.8 metres will be the suspended planter box and associated eave, which will be situated at a

higher level than the current Long Reef View (Refer to Figure 5 below).



(Figure 5: South Elevation of No. 897 Pittwater Road and No. 899 Pittwater Road - existing house outline dashed in red)

However, to achieve an increase in openness to the view corridor and skyline, it is recommended by Condition to increase the western side setback of the eave to 3.2 metres, and to increase the front setback of the eave to 7.0 metres. This will also aid in the reduction of visual dominance to the south-western corner of the build, when viewed from No. 897 Pittwater Road.

Therefore, the proposed dwelling house 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.

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

Comment

The proposal including recommended conditions, 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 vicinity.

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

Comment

No canopy trees are proposed for removal, ensuring vegetation has priority over views.

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.

D8 Privacy

Merit Consideration

Clause D8 Privacy requires that habitable rooms and outdoor living areas of dwellings optimise visual privacy through an appropriate design outcome. Private open space areas including swimming pools

and living rooms of the proposal, and any existing adjoining dwellings are to be protected from direct overlooking within 9.0 metres, through the use of acceptable design elements.

Windows - Western Elevation

Concern has been raised in relation to the proposed northern elevation windows adjacent to the western adjoining neighbour No. 897 Pittwater Road. The windows of concern are located within 9.0 metres of the northern adjoining neighbour, and are addressed in detail below:

- Windows No. W6, W8 and W21 are proposed to be of a louvred style, and are located on the first floor at a distance of at least 6.0 metres from the western adjoining property, and is not considered to cause unacceptable privacy impacts.
- Window No. W9 although a living room window, is located at ground level and would be obscured by a standard 1.8 metres height boundary fence and surrounding vegetation. In addition, this window is located at an acceptable distance of 8.0 metres from the western adjoining neighbour and is not considered to cause unacceptable privacy impacts.
- Windows No. W23 and W22 are located approximately 6.8m from the adjoining western property, and are associated with a bedroom and stairwell. As established in the NSW Land and Environment Court (*Meriton v Sydney City Council* [2004] NSWLEC 313), the use of a space will determine the level of privacy achieved. It can be considered that the privacy of living areas which is most frequently used, is more objectionable than that of a bedroom where people tend to spend less time. Therefore, these windows are not considered to cause unacceptable privacy impacts.

First Floor Balcony

The proposed first floor balcony is situated to the front (south) elevation, and extends almost the entire width of the first floor, with a depth of approximately 3.5 metres. The balcony presents a setback of 3.4 metres to the eastern boundary line and 4.6 metres to the western boundary line, therefore within 9.0 metres of both adjoining neighbours. However, the balcony itself is located approximately 7.0 metres from the western adjoining balcony, and 4.1 metres from the eastern adjoining property. Amended Plans were received which deleted a balcony wrap around to the western elevation, as requested by Council.

The neighbouring terraces/balconies are located behind the subject site's dwelling house and proposed balcony. The proposed works under this application are orientated towards the south, with the viewing direction being up and out towards the ocean views, rather than down and behind into the eastern or western properties. A planter box will be located to the southern and eastern elevation to aid in the mitigation of privacy impacts. Privacy screens along the edges of the balcony, were not considered reasonable in this instance, as it was determined to result in unreasonable bulk and scale. A condition is recommended for the ongoing maintenance of the vegetation within the planter boxes.

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

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

D13 Front Fences and Front Walls

Merit Consideration

The proposal seeks consent for the construction of a masonry style fence at a height of approximately

1.5 metres, with an automated vehicular access gate.

Pittwater Road is a classified road which is considered to generate high levels of noise, therefore a variety of fence types and heights exist. In relation to the subject site and the surrounding properties, front fences and retaining walls, are not excessive in height (maximum approximately 1.5 metres), and generally present levels of vegetation screening to soften the built form.

A recommended condition is therefore included to limit the front fence to a maximum height of 1.5 metres to allow for acceptable viewing to the pedestrian foot path and safe vehicular egress onto Pittwater Road. Additionally, a recommended condition is also included to increase the front setback of the fence to provide adequate space for planting in front of the fence. The fence will be set back a minimum of 500 millimetres to allow for suitable planting, resulting in visual interest and softening of the masonry constructed fence. With the further incorporation of landscaping, the subject site will avoid a "walled in" streetscape and will be considered compatible with the existing streetscape character.

Having regard to the above assessment, it is concluded that the requirements and objectives of the control will be achieved, subject to compliance with the recommended conditions of consent.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$4,950 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$495,000.

CONCLUSION

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

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

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

conditions contained within the recommendation.

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

PLANNING CONCLUSION

This proposal for the alterations and additions to a dwelling house, including a swimming pool, has been referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to *Clause 4.3 Height of Buildings* under the provision of the Warringah Local Environmental Plan 2011 (WLEP 2011).

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, which resulted in one (1) submission.

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

On balance, and considering the preceding detailed assessment of the application, including a detailed analysis of the variation to Clause 4.3 of the WLEP 2011, it is considered that the 'amended' proposal, subject to recommended conditions will result in a development that is acceptable in design, and will not detrimentally impact the character or amenity of the area or adjoining properties.

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

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

It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2022/1742 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 8 DP 12985, 899 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
DA01, Site Plan, Revision C	9 February 2023	Gartner Trovato Architects
DA02, Garage Plan, Revision C	9 February 2023	Gartner Trovato Architects
DA03, Ground Floor Plan, Revision G	21 April 2023	Gartner Trovato Architects
DA04, Upper Floor Plan, Revision C	9 February 2023	Gartner Trovato Architects
DA05, Elevations North + South, Revision B	9 February 2023	Gartner Trovato Architects
DA06, Elevations East + West, Revision B	9 February 2023	Gartner Trovato Architects
DA07, Section, Revision D	20 February 2023	Gartner Trovato Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Road Noise Intrusion Assessment	21 February 2023	Acoustic Dynamics
BASIX Certificate (No. 455781_02)	20 October 2022	Gartner Trovato Architects

Bushfire Risk Assessment	29 March 2022	Bushfire Planning Services Pty Ltd
Preliminary Landslip Assessment for 899 Pittwater Road, Collaroy (Ref. 2022-064)	12 April 2022	Crozier Geotechnical Consultants
Arboricultural Impact Assessment	April 2023	Treeism Arboricultural Services

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	8 April 2022	Scott Davis C/- Gartner Trovato Architects

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	10 November 2022
Transport for New South Wales (TfNSW)	TfNSW Referral Response	17 November 2022

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

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

3. **Prescribed Conditions**

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

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

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$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 \$4,950.00 is payable to Northern Beaches Council for the provision

of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$495,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

7. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$10 000 as security against any damage to Council's stormwater 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. **On Slab Landscape Works**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planter over slab as indicated to the Upper Floor, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping as proposed: 300mm for groundcovers, perennials.

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

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

9. **Stormwater Disposal**

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

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

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 Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

12. **Water Quality Management**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

13. **Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's Water Management for Development Policy. Details and certification prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to Council for approval. Council's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

14. **Amendments to the approved plans**

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

a) **Potential Fire Pit:** The proposed "potential fire pit" does not form part of this development consent. Reference to potential fire pit is to be removed from approved plans prior to the issue of the construction certificate.

b) **Front Fence:** The proposed front fence as noted on the approved plans shall not exceed a maximum of 1.5m in height, and shall be setback a further 500mm front the front boundary, to allow for planting.

c) **Upper Floor Plan:** The eave located off the suspended planter box to the Upper Floor Plan of the approved plans, shall be reduced in size to reflect a minimum front setback of 7.0m, and a western side setback of 3.2m.

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.

15. **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.

16. **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 and the Letter for TfNSW dated 17/11/2022. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

17. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction/demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The pre-construction/demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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 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.

21. **Construction Traffic Management Plan**

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

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

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

The Construction Traffic Management Plan shall be submitted to the Principal Certifying

Authority prior to the issue of the Construction Certificate.

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

22. **Waste Management Plan**

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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 AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work

commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

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. **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.

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

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

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

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

- 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.

28. **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.

29. **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.

30. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4.5 metres wide in accordance with Northern Beaches Council Drawing Normal High and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

31. **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.

32. **Implementation of Construction Traffic Management Plan**

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

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

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

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

33. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Plans, and inclusive of the following conditions:

- a) proposed landscape works as shown are to be contained within the legal property boundaries,
- b) existing trees and vegetation as shown retained shall be preserved,
- c) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

34. **Stormwater Disposal**

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

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

35. **New Landscaping**

Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

36. **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.

37. Certification of Structures Located Adjacent to Council Pipeline or Council Easement

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure.

38. Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

39. Easement for Drainage

An easement for drainage 3 meters wide and located centrally over the stormwater pipeline is to be created on the title in favor of Northern Beaches Council in accordance with Council's Water Management for Development Policy.

The easement is to be created to ensure all drainage infrastructure is located within the easement and include a minimum 1 meter horizontal clearance to the edge of any pipeline and pit structure. The easement plan is to be prepared to Council's requirements at the applicant's expense and

be endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services.

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

Reason: To create encumbrances on the land

40. **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.

41. **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.

42. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

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

43. **Maintenance of Stormwater Treatment Measures**

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

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

Reason: Protection of the receiving environment.

44. **Swimming Pool/Spa Motor Noise**

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

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



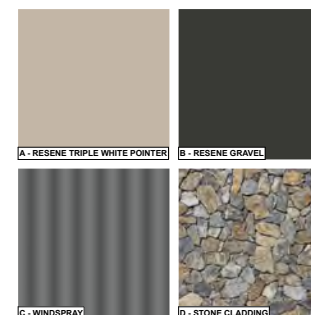


☐ A TIMBER CLADDING, PAINT FINISH WHITE

☐ B PAINT FINISH GREY

☐ C METAL ROOFING, GREY

☐ D STONE CLADDING





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ELEVATIONS NORTH + SOUTH

Issue Date	Rev	Description	Drawn	Checked
14/02/23	A	GENERAL REVISIONS		
9/23	B	GENERAL AMENDMENTS TO DA	B	B

PROJECT

ALTERATIONS AND ADDITIONS
DEVELOPMENT APPLICATION
899 PITTVATER ROAD, COLLAROY NSW
LOTS DP12955

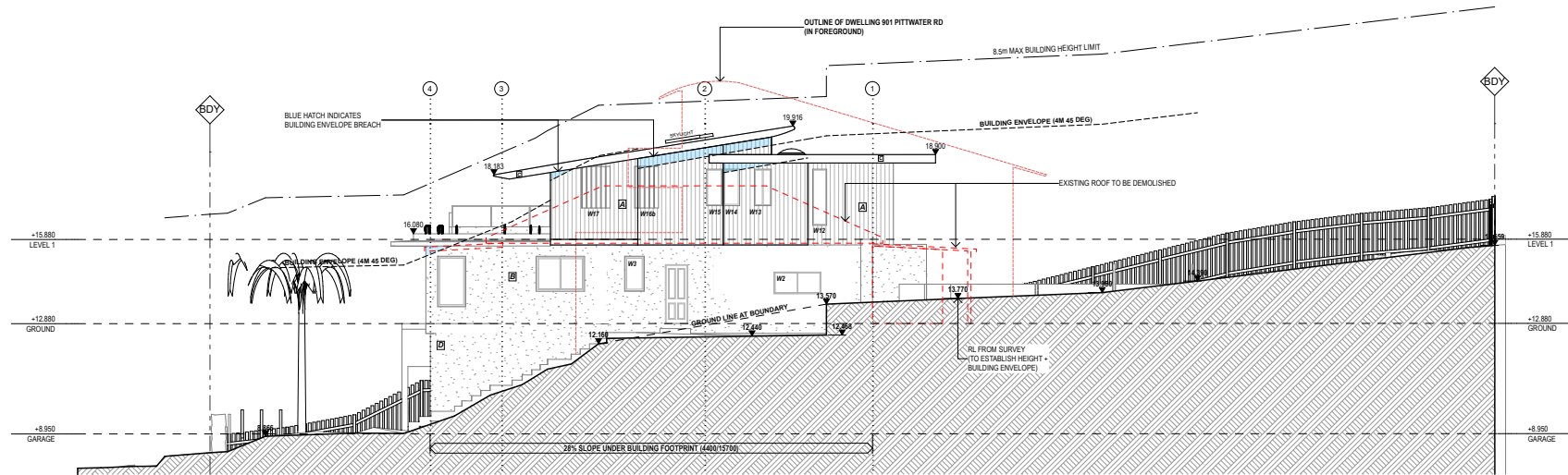
FOR B + S DAVIS

EXISTING TITLE

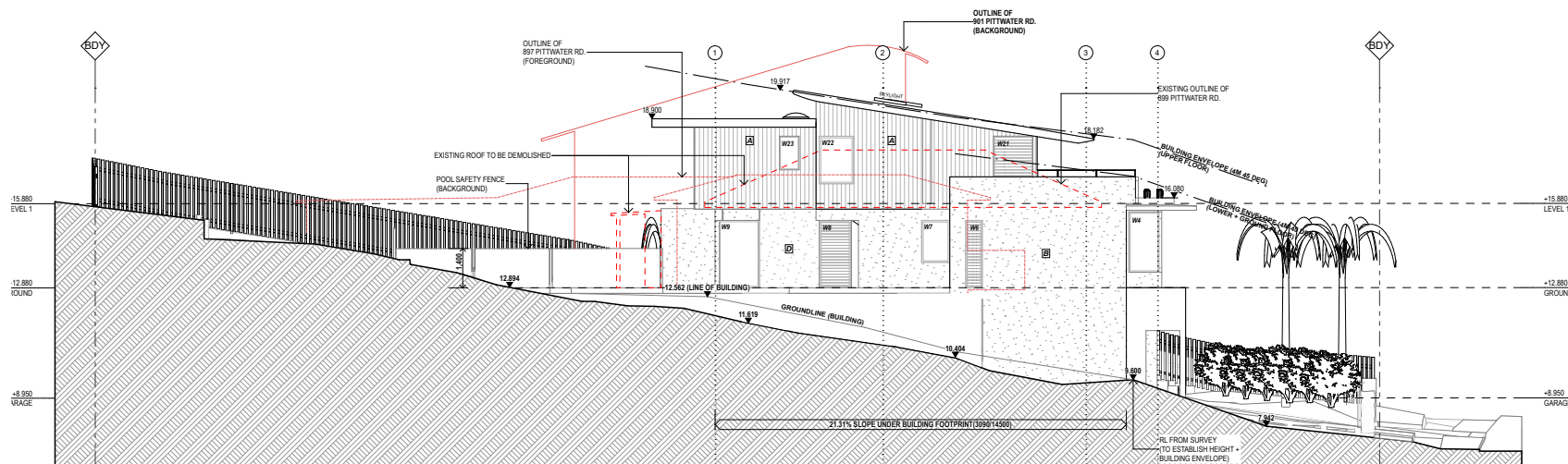
ELEVATIONS NORTH + SOUTH

SCALE
1:100 @ A2
2138

DRAWN BY
SGLE
DA05



EAST ELEVATION



WEST ELEVATION

GARTNERTROVATO ARCHITECTS 10/7700 HERRING ROAD, SPRINGBROOK NSW 2126 PHONE: 02 9679 1000 FAX: 02 9679 1001 WWW.GARTNERTROVATO.COM.AU	Issue Date	Rev	Description	Drawn	Checked	Project	Scale	Drawn By	Plot Date
	16/02/22	A	GENERAL REVISIONS	A	A	ALTERATIONS AND ADDITIONS ELEVATIONS EAST + WEST DEVELOPMENT APPLICATION 899 PITTWATER ROAD, COLLAROY NSW LOTS DP12985 FOR B + S DAVIS	1:100 @ A2	SCALE	15/03
	02/23	B	GENERAL AMENDMENTS TO DA	B	B		2138	DA06	B

ELEVATIONS EAST + WEST

Clause 4.6 Variation to a Development Standard



Alterations & Additions to an Existing Dwelling @
899 Pittwater Road, Collaroy

Prepared For S&B Davis



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project no	2138
date	February 2023
issue	A

1.0 INTRODUCTION

This request to vary a development standard has been prepared on behalf of S & B Davis, owners of the property at 899 Pittwater Road, Collaroy in relation to a development application for alterations and additions to the existing dwelling at the property.

This request is made pursuant to clause 4.6 of Warringah Local Environmental Plan (WLEP 2011) and with regard to relevant case law including Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 STANDARD TO BE VARIED

The standard in the WLPE 2011 that is proposed to be varied, is Clause 4.3 Height of Buildings.

Clause 4.3 (2) requires the height of a building on any land is not to exceed 8.5m in height. Building Height is defined as:

- a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

Ground Level (existing) is defined as:

the existing level of a site at any point.

The stated objectives of such control, Clause 4.3 (1) are as follows:

- a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

3.0 EXTENT OF THE PROPOSED BREACH

The application seeks consent for alterations and additions to an existing dwelling including an upper floor addition. Whilst this addition sits below 8.5m above natural ground, it does not sit below 8.5m above *existing ground* due to an existing excavated garage into the slope of the land that the house is upon.

The proposed maximum height above *existing ground* being the excavated level of the garage, is 9.85m

The breach occurs to the proposed upper floor addition for a short length of the upper floorplate for a length of 2m over the 12m long floor plate.

The breach only occurs above excavated ground as shown in the section below with the maximum height of 9.85m reached in only one point. The height then tapers back to compliance over the length of the floorplate. The extent of the breach is 1.35m or 15.8% of the building height development standard.

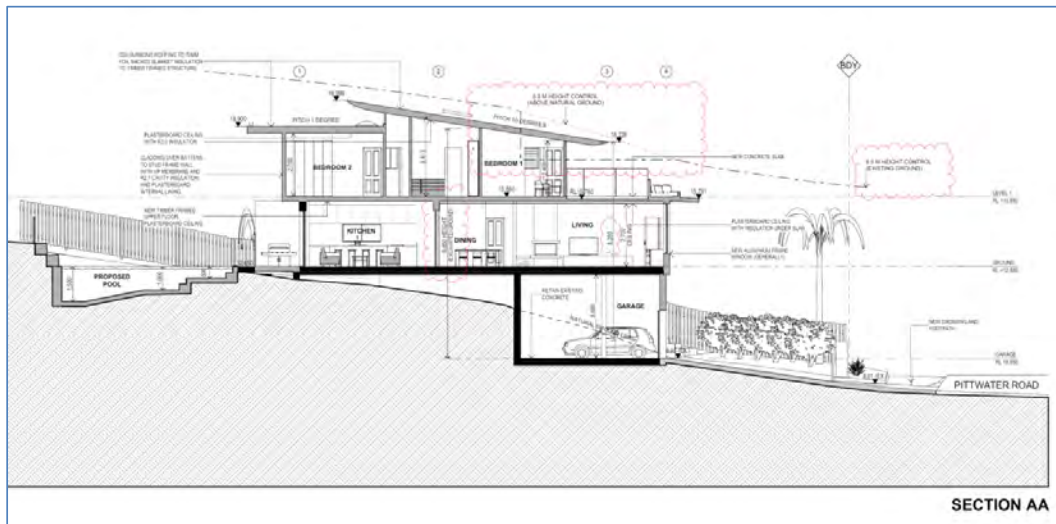
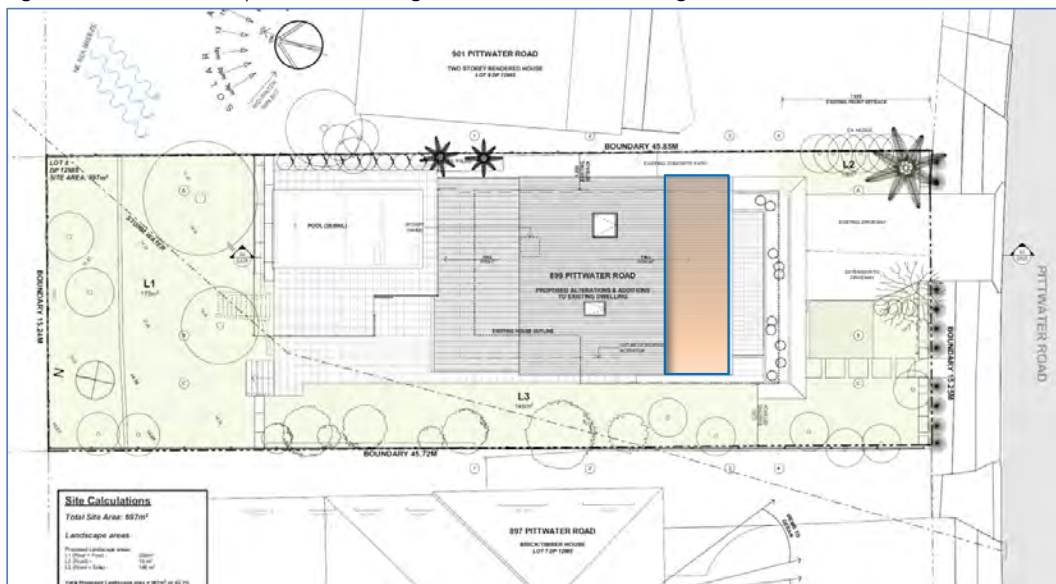


Figure 1. Extract of Section drawing from drawing DA07 (D)

Figure 2. Extract of roof plan from drawings DA01 (C), breach in orange fill 16% of roof



The proportion of roof above the 8.5m height limit is 15.7% of the total roof area including the upper and lower roofs. The majority of the dwelling is well below 8.5 metres as shown in Figure 1.

4.0 CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

The objectives of Clause 4.6 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.*

Reference is drawn to the court precedent of *Initial Action* where the conclusion was that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operation provisions.

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

This clause applies to the clause 4.3 Height of Buildings Development Standard

Clause 4.6(3) states that... *"consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

The proposed development does not comply with the height of buildings development standard at clause 4.3 of WLEP 2011 which specifies a maximum height of 8.5m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) 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 Planning Secretary has been obtained.*

Reference is drawn to *Initial Action* for 4.6a)(i), where the test of unreasonable or unnecessary, and sufficient environmental planning grounds, are dealt with below in section 5 of this report.

Reference is further drawn to *Initial Action* for 4.6a)(ii), where 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 in the zone, also dealt with in section 5 of this report.

In terms of satisfying clause 4.6 (4)b), we refer to section 5 of this report.

The remaining clauses 4.6 (5) through (8) are not relevant to this application.

5.0 REQUEST FOR VARIATION

Unreasonable or Unnecessary

Clause 4.6 (3)a requires demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstance.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The proposed development is consistent with the objectives of the Building Height development standard, as prescribed by clause 4.3 of WLEP 2011, as follows:

1. *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The non-compliance arises as a consequence of existing excavation on the lower ground floor. The proposed development is limited to a maximum of two storeys in height as it steps up a sloping site. The proposed upper floor addition is setback from the street front elevation. When measured at the perimeter of the building, the development is wholly maintained below the building height plane and will not appear to be inconsistent or non-compliant with the height prescribed, as shown in Figure 3 below

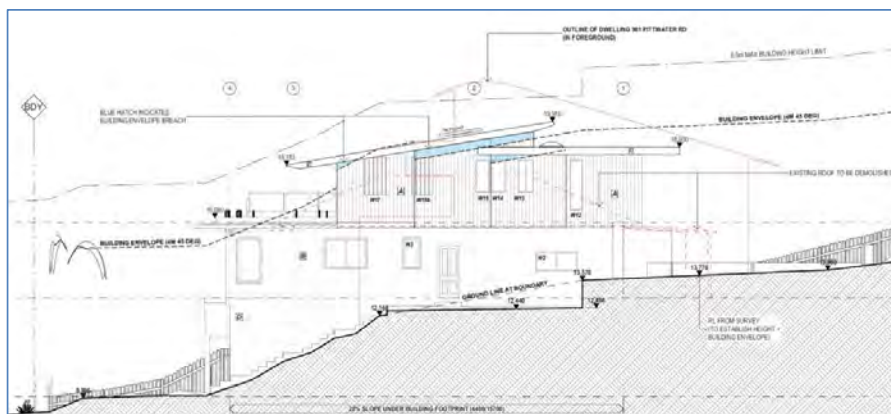


Figure 3. Extract of East Elevation demonstrating the built form stepping up the sloping site maintaining a two storey form. Note the outline of the adjoining dwelling to the east (901 Pittwater Road) with height greater than the proposal.

Comment: The height of the proposed development is entirely commensurate with that of the adjoining development as the land slopes from east to west. The height of the dwelling provides a transition between the adjoining properties at 901 – higher to the east, and 897 – lower to the west. The proposal is consistent with the streetscape as shown in the street elevation below in Figure 4.

The objective is satisfied notwithstanding the non-compliance with the building height development standard.



Figure 4. Extract of South Elevation showing the streetscape and the transition of building height from right to left – the proposal is compatible with surrounding forms of development

2. *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
Comment: Views to all properties to the rear are maintained with no affect due to height. Views to the adjoining properties are through the front elevation in a south easterly direction to the ocean. The addition is set back from the existing frontage and as such, no views are impacted by the proposal.

Privacy is maintained to adjoining dwellings through the careful and considered placement of windows to the side boundaries of the proposed upper floor addition. Uses in the upper floor addition are low use bedrooms to maintain privacy.

The proposal has no impact to any adjoining properties in terms of overshadowing as the all adjoining living and private open space areas are to the northern rear of the properties and are unaffected by the proposed additions.

The objective is satisfied notwithstanding the non-compliance with the building height development standard.

3. *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
Comment: The proposed development achieves the objective with a design that blends into the built form of the surrounding area and has no affect on the scenic quality of the coastal and bushland setting. As the proposal contains the additions entirely within the existing building footprint, there is no loss of vegetation or bush environment.

The objective is satisfied notwithstanding the non-compliance with the building height development standard.

4. *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
Comment: The proposed development is highly articulated and is of a scale that is consistent with that of surrounding and nearby dwellings, and that anticipated by the desired future character of the locality. The portions of the proposal that protrude above the height plane are centrally located on the site and setback from the primary facades, such that they are not the dominant feature of the development when viewed from adjoining properties or the public domain.

The proposed alterations and additions to the dwelling are of a high quality architectural design with appropriate response to the individual characteristic of the subject site and its context.

The objective is satisfied notwithstanding the non-compliance with the building height development standard.

Sufficient Environmental Planning Grounds

Clause 4.6 (3)b) requires demonstration that there are sufficient environmental planning grounds to justify contravention of the standard. These grounds are as follows:

1. Existing Excavation.

The proposed height breach is a direct consequence of existing excavation at the lower ground level. As demonstrated in Figure 1, the proposed upper floor is maintained below the 8.5m height plane when measured to extrapolated/assumed pre-existing ground levels.

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 plane can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.

2. Superior Architectural Design

The apparent size of the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of significantly greater bulk and scale. The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments*, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider R2 Low Density Residential Zone.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

Public Interest

Clause 4.6 (4)a) requires that consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest. A development can be considered in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

As identified above, the proposed development is consistent with the objectives of the Building Height development standard. The following commentary demonstrates that the development is also consistent with the objectives of the zone:

- *to provide for the housing needs of the community within a low density residential environment*
Comment: The proposal is entirely consistent with the objective, being permissible with consent in the zone and will fulfill the needs to the community to provide housing as required.

- *To enable other land uses that provide facilities or services to meet the day to day needs of the residents*
Comment: The proposed alterations and additions provide a swimming pool and additional accommodation by way of bedrooms and living spaces to a single dwelling to satisfy this objective.
- *To ensure that low density residential environments are characterised by landscape settings that are in harmony with the natural environment of Warringah*
Comment: The proposal does not require the removal of any trees or vegetation as it is built over the existing dwelling footprint. The proposal will provide additional landscaping to enhance the natural environment. The proposal satisfies this objective.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the Building Height standard.

Secretary's Concurrence

In terms of satisfying clause 4.6 (4)b), advice is provided by the Department of Planning, Industry & Environment by letter dated 2 November 2021;

Development applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures

6.0 CONCLUSION

Pursuant to clause 4.6 of WLEP 2011, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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



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Director

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