AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 14 JUNE 2023

Ashleigh Sherry
Manager Business System and Administration

northern beaches council

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 14 June 2023 via teleconference Commencing at 10:00 AM

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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 24 MAY 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 24 May 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	**DA2023/0253 - 2 PINDARI PLACE BAYVIEW - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE, CONSTRUCTION OF A CABANA AND LANDSCAPING WORKS**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/296302**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2023/0253 for alterations and additions to a dwelling house, construction of a cabana and landscaping works on land at Lot 56 DP 30648, 2 Pindari Place BAYVIEW, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0253

Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 56 DP 30648, 2 Pindari Place BAYVIEW NSW 2104
Proposed Development:	Alterations and additions to a dwelling house, construction of a cabana and landscaping works
Zoning:	R5 Large Lot Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Geoffrey James Neilson Marita Elizabeth Neilson
Applicant:	Andrew William Davies

Application Lodged:	17/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	22/03/2023 to 05/04/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 37.6%
Recommendation:	Approval

Estimated Cost of Works:	$ 962,829.00

EXECUTIVE SUMMARY
This development application seeks consent for alterations and additions to a dwelling house, construction of a cabana and landscaping works.

The application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% . The maximum height of the proposed development has been measured at 11.7 metres, which represents a variation of 37.6% to the prescribed development standard of a maximum 8.5 metres building height limit.

The notification period of the application resulted in one (1) submission. The submissions raised concerns in relation to building bulk, height and impacts upon the local natural environment, inadequacies of stormwater, issues in relation to privacy and devaluation in property prices, as well as

concerns that the development will impact the environmentally sensitive Pindari Reserve. The matters raised in the submission has been considered and are detailed and addressed in this assessment report.

The application has been accompanied by a written Clause 4.6 variation request for the non-compliance. The height standard breach arises from the steep nature of the site with a substantial fall from southern boundary to the northern boundary and a crossfall from the eastern boundary to the western boundary creating a 37.6% variation for a portion of the structure. The non-compliant elements of the proposal have been found to not impact upon the desired character of the locality or unreasonably impact on the amenity of the adjoining properties. When assessed on its merits, it is considered that the built form of the proposal will be commensurate with the existing dwelling and structures on the site and the surrounding built environment and that the height breach will not result in unreasonable amenity impacts to adjoining neighbours.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for alterations and additions to the existing deck, associated landscaping works including the construction of a new cabana and associated works. Specifically, the development proposes:

Demolition Works
• Demolition works as depicted on the architectural plans

External Works
• New cabana adjacent to the tennis court and landscaping works
• New tiered garden with access pathway
• New garden beds and poolside patio
• Landscaping works as depicted on architectural plans and landscape plan

Amended Plans
On 1 June 2023 amended plans were received to address issue over the position and height of retaining wall on the northern side boundary.

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone R5 Large Lot Residential
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - A4.2 Bayview Heights Locality
Pittwater 21 Development Control Plan - D2.6 Side and rear building line
Pittwater 21 Development Control Plan - D2.9 Landscaped Area - Non Urban

SITE DESCRIPTION

Property Description:	Lot 56 DP 30648 , 2 Pindari Place BAYVIEW NSW 2104
Detailed Site Description:	The subject site consists of one (1) allotment located on the northwestern end of cul-de-sac of Pindari Place. The site is irregular in shape with a frontage of 27.165 metres along Pindari Place and a depth of 86.665 metres along the western side boundary and 85.98 metres along the eastern side boundary. The site has a surveyed area of 4050.7m². The site is located within the R5 Large Lot Residential zone and accommodates a one and two storey brick and clad residence with a tiled roof and ancillary structures such as decking, a pool, tennis court and landscaping. The site slopes approximately 28 metres from the front to the rear of the site (approximate sloping grade of 33%). The site has a numbers of large native trees on site including native plantings of shrubs and plants. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by a mix of single detached dwellings comprising of one to three storeys in height with varying building heights and setbacks with associated outbuildings/structures with landscaped gardens and native trees/bushland.

Map:



SITE HISTORY

DA0280/97 - Additions for lower and upper floors. additions to the dwelling approved 4 August 1997

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the height and position of retaining walls along the northern side boundary. The applicant lodged amended plans on 1 June 2023 which has now addressed this issue.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/03/2023 to 05/04/2023 in

accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr James George Cotis	93 Alexandra Crescent BAYVIEW NSW 2104

The following issues were raised in the submissions:

- Stormwater
- Building bulk, height and appears insensitive to the local environment
- Privacy and devalue our property
- Development will impact the environmentally sensitive Pindari Reserve and have impacts on flora and fauna
- Recent clearing on the subject site has reduced privacy, created light pollution and visual amenity issues.

The above issues are addressed as follows:

- **Stormwater**

  "Currently stormwater from 2 Pindari Place is discharged onto our property and has caused damage. Further development is likely to increase runoff and damage."

  Comment: Council's Development Engineer has review the proposal and raised no objections to the proposal, subject to recommended conditions.

- **Building bulk, height and appears insensitive to the local environment**

  "Proposed development is large, overbearing and appears insensitive to the local environment."

  Comment: A review of the proposal has been undertaken against the relevant controls of the Pittwater Local Environmental Plan 2014 (PLEP 2014) and Pittwater 21 Development Control Plan (P21DCP) including a consideration Clause 4.3 Height of buildings and Clause 4.6 Exceptions to development standards. It is considered given the large spatial separation of the proposal combined with the open nature of the new extended deck area with the shade arbour that the proposal is deemed acceptable and not insensitive to its setting.

  Additionally, the proposal will integrate with the existing buildings elements including the dwelling and swimming pool when viewed from Pittwater, and properties both public and private domains.

- **Privacy and devalue property**

  Comment: It is noted that there is a substantial horizontal separation between these proposed works and the dwelling house at 93 Alexandra Crescent, Bayview which is over 60 metres which is complemented by a considerable vertical separation over 20 metres in height difference.

Predominant views from the subject site are to Scotland Island, Pittwater and district views afar and given the substantial physical separation of the proposed new extended deck area and shade arbour it is considered responsible levels of privacy will be maintained. The sightline between the dwellings is obscured by vegetation and natural rock outcrops.

Additionally, the devalue of property is not a consideration under Environmental Planning and Assessment Act 1979 - Section 4.15 Evaluation.

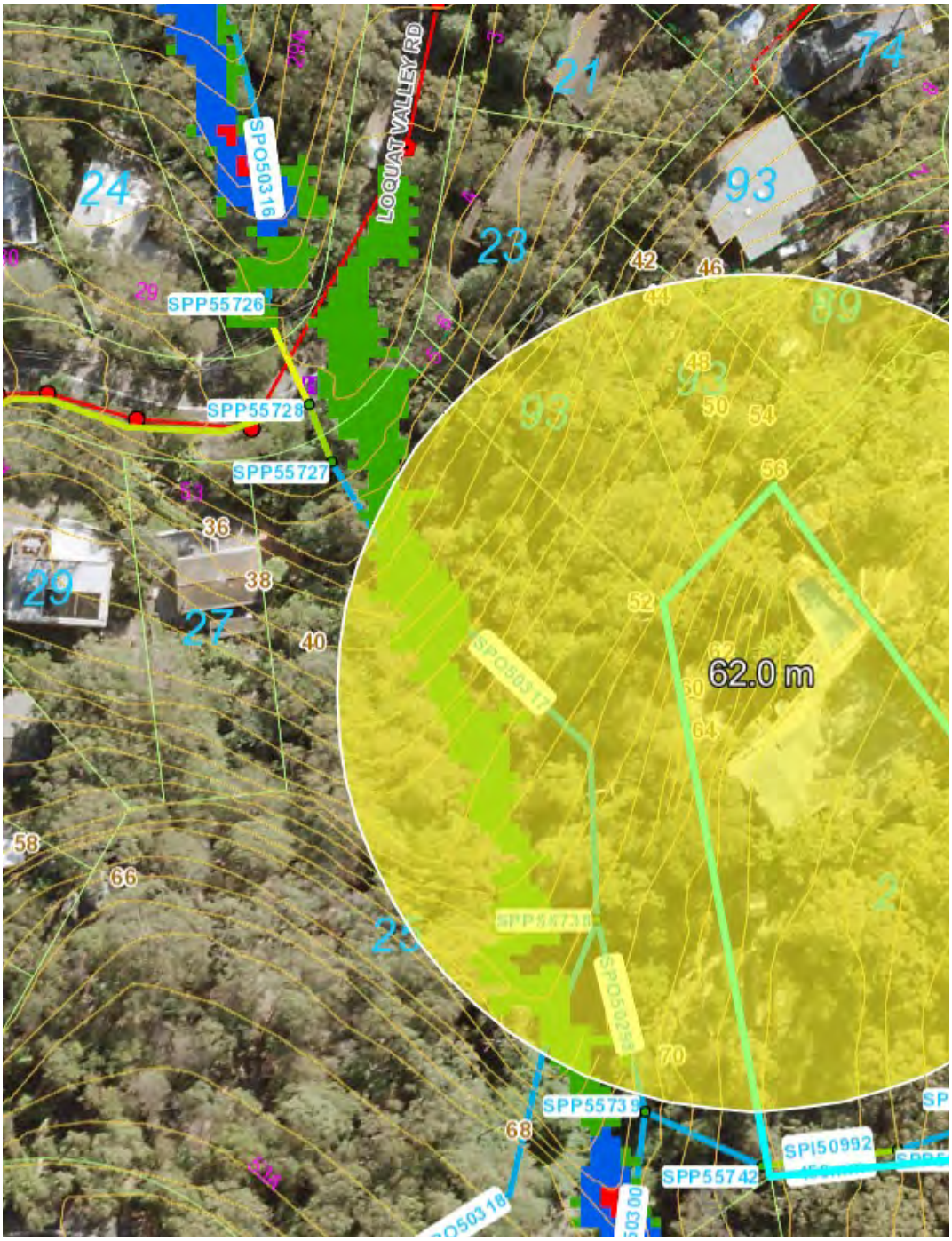


Figure 1 - Demonstrating the distance from the proposal to the adjoining dwelling to the north (93 Alexandra Crescent, Bayview)

- **Development will impact the environmentally sensitive Pindari Reserve and have impacts on flora and fauna**

Comment: Council's Biodiversity Officer has attended the site and reviewed the proposal including the landscape plan and Arboricultural Impact Assessment Report lodged with this application and deemed it acceptable subject to recommended conditions.

- **Clearing on the subject site has reduced privacy, created light pollution and visual amenity issues.**

  Comment: Weed clearing of lantana, other weeds and exotic species of planting have recently occurred. It is noted that there is a substantial number of large native trees and other understory trees, shrubs and plants within the rear portion of the subject site. Council's Landscape Officer and Biodiversity Officer have reviewed the proposal which included reviewing the plans, landscape plan and the arborist report and had no objections subject to recommended conditions.

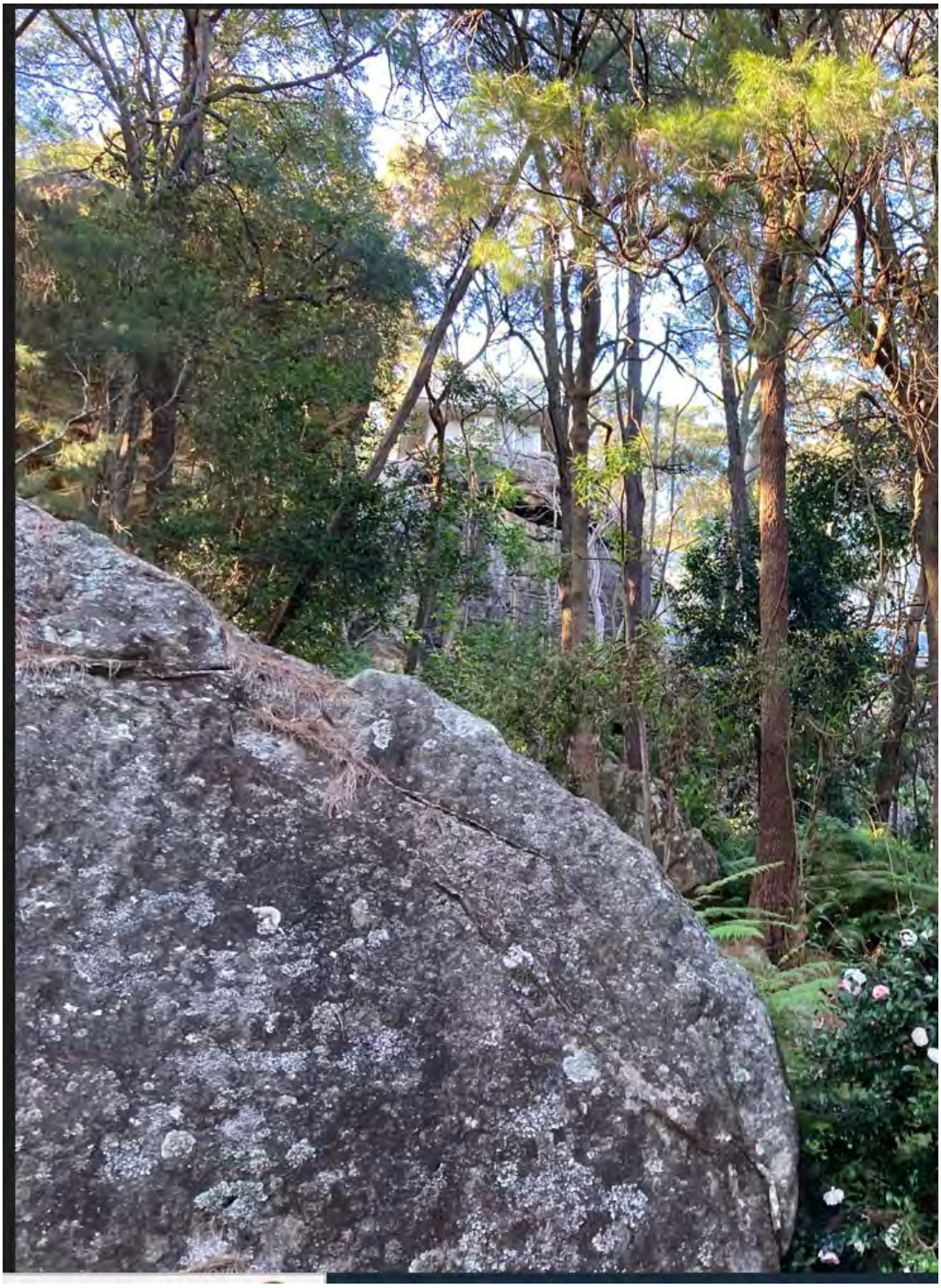


Figure 2 - Photo taken from 93 Alexandra Crescent, Bayview (approximately 30m away from the dwelling at 93 Alexandra Crescent).

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, subject to Conditions*** The application seeks consent for alterations and additions to a dwelling house, construction of a cabana and landscaping works. The Arborist's Report prepared by Hugh the Arborist is noted. The Report assess two trees adjacent to the proposed cabana and concludes that the works can be undertaken with an acceptable level of impact on the trees subject to Arboricultural supervision. The rear deck extension proposes to be constructed on piers founded on rock outcrops. It is noted that the site is mapped as Very High for potential sites of Aboriginal significance. Assessment be the AHO should be undertaken to assess potential impacts. No objections are raised with regard to landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	***Supported, subject to Conditions*** The proposal seeks approval for alterations and additions to a dwelling house, construction of a cabana and landscaping works. The comments on this referral relate to the following controls and provisions: • NSW Biodiversity Conservation 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater 2014 LEP - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B.47 Pittwater Spotted Gum Forest Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). No tree removals have been identified and the submitted Arboricultural impact statement has assessed two trees that could be impacted due to the proposed works. Sensitive building will be required to allow retention of trees 1 and 2. A site inspection undertaken on 31/03/2023 concluded that the landscaping works being proposed are to take place in previously disturbed areas with no tree removal taking place, no presence of native mid-story species and mulched areas where presence of groundcovers is non-existent.

Internal Referral Body	Comments
NECC (Development Engineering)	***Supported, subject to Conditions*** No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, no Conditions required*** The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	***Supported, subject to Conditions*** Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m*	11.7m	37.6%	**No**

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
Part 5 Miscellaneous provisions	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
Part 7 Additional local provisions	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone R5 Large Lot Residential

The underlying objectives of the R5 Large Lot Residential zone are:

- ***To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.***

  Comment:
  The proposed development does not give rise to any unreasonable environmental impacts and maintains consistency with both the existing and desired future character of the Bayview Locality and the streetscape. The proposed development will sit harmoniously on the site and in its wider context.

- ***To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.***

  Comment:
  It is considered that this proposal will not hinder the proper and orderly development of adjoining and surrounding urban areas.

  The proposed development will not have any adverse impacts upon the special values of the site. Specifically, the proposal does not result in any adverse impacts upon the surrounding natural environment. Furthermore, the visual impact of the development remains minimal, with appropriate articulation to ensure that the dwelling remains secondary to landscaping.

- ***To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.***

  Comment:

The proposal will unreasonably increase the demand for public services or public facilities in the area.

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

- ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

Comment:
It is considered that the proposal been for residential purposes will minimise any conflict between land uses within this zone and land uses within adjoining zones.

Conclusion:
For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R5 Large Lot Residential zone.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.7m
Percentage variation to requirement:	37.6%

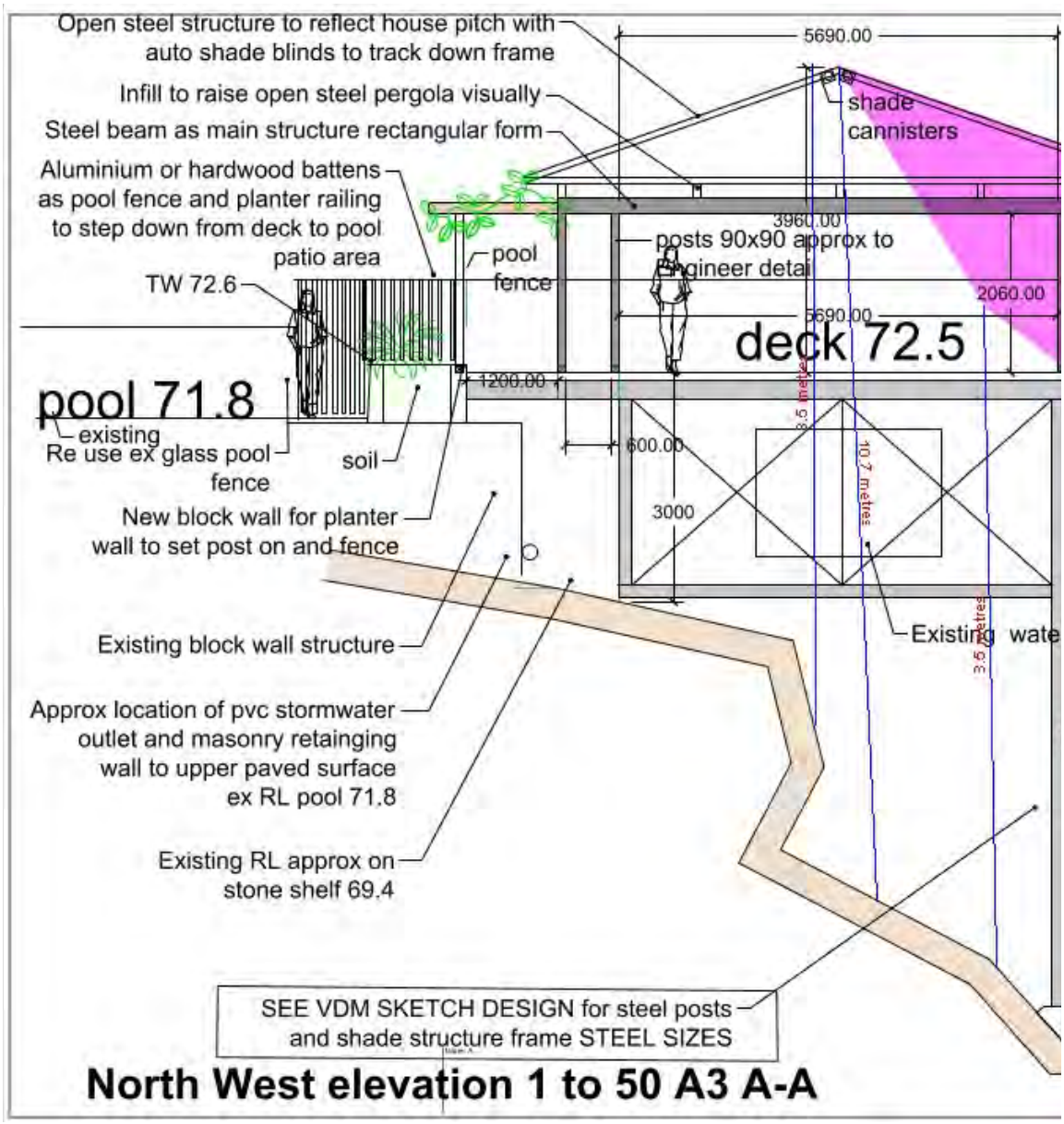


Figure 3: *Building height non-compliance highlighted in purple.*

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

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

circumstances.

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

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

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

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

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
Comment:
The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.
Comment:
In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ

provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

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

The applicants written request argues, in part:

• "The objectives of the PLEP2014 Height of Building control are achieved notwithstanding the technical non-compliance.
• The objectives of the PLEP2014 R5 Large Lot Residential zone are achieved notwithstanding the technical non-compliance.
• The compliance with the development standard is both unreasonable and unnecessary.
• There are sufficient environmental planning grounds to support the proposed variation.
• The site has a steep sloping topography and slopes from the front to the rear of the site. The resulting constraints from the topography of the site contribute the minor variation in the building height.
• The proposal is consistent with the existing bulk and scale of the area.
• The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible.
• The proposal does not adversely impact existing solar access to private and public places. It is noted that the project designer has created alterations and additions that do not adversely impact neighbours while addressing the sites constraints such as the topography.
• The breach to the building is minimal and is due to a steep drop off from the existing deck to the existing ground level below.
• The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.
• The proposed development does not result in any adverse privacy or overshadowing impacts to

neighbouring properties or any public place."

It is agreed that the sufficient grounds to the support the proposal given the steep sloping topography of site not only from front to the rear of the site also from north to south which has contributed to this non-compliance and it is considered that 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 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 R5 Large Lot 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 PLEP 2014 are:

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

a) To ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
Comment:
The proposed dwelling is consistent with the existing character of the locality which exhibits hillside developments of similar scale and heights within the canopy of existing trees.

b) To ensure that buildings are compatible with the height and scale of surrounding and nearby development,
Comment:
Surrounding and nearby development located upon similar topographical contours demonstrate similar maximum roof ridge heights. The elevated location of the site ensures it will not result in visual intrusion when viewed from the public domain. Moreover, the proposal's substantial spatial separation to adjoining and surrounding dwellings will reduce its visual dominance when viewed

from private places.

c) To minimise any overshadowing of neighbouring properties,
Comment:
Given the location of the site, topography and large spatial separation to adjoining dwellings and then associated private open spaces it is considered that the proposal will demonstrate compliance with the requirements of the P21DCP.

d) To allow for the reasonable sharing of views,
Comment:
Given the location of the site, topography and large spatial separation to adjoining dwellings it is considered that the proposal will allow reasonable sharing of views and ensure compliance with the requirements of the P21DCP.

e) To encourage buildings that are designed to respond sensitively to the natural topography,
Comment:
The proposal is articulated in response to the natural topography and the low-profile roof reflects the slope of the land. The accompanying Landscape Plan demonstrates appropriate landscaped areas around the proposed dwelling house which respond sensitively to the landscaped setting of the area.

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

Zone objectives
The underlying objectives of the R5 Large Lot Residential zone are:

- ***To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.***

  Comment:
  The proposed development does not give rise to any unreasonable environmental impacts and maintains consistency with both the existing and desired future character of the Bayview Locality and the streetscape. The proposed development will sit harmoniously on the site and in its wider context.

- ***To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.***
  Comment:
  It is considered that this proposal will not hinder the proper and orderly development of adjoining and surrounding urban areas.

  The proposed development will not have any adverse impacts upon the special values of the site. Specifically, the proposal does not result in any adverse impacts upon the surrounding natural environment. Furthermore, the visual impact of the development remains minimal, with appropriate articulation to ensure that the dwelling remains secondary to landscaping.

- ***To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.***
  Comment:
  The proposal will unreasonably increase the demand for public services or public facilities in the area.

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

- ***To minimise conflict between land uses within this zone and land uses within adjoining zones.***
  Comment:
  It is considered that the proposal been for residential purposes will minimise any conflict between land uses within this zone and land uses within adjoining zones.

Conclusion:
For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R5 Large Lot 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).

7.6 Biodiversity protection

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

(a) whether the development is likely to have:
(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and
(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and
(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval (subject to conditions). As such, it is considered that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the

habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. As such it is considered that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

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

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval (subject to conditions).As such, it is considered that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

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

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

Comment:
The proposed development is supported by a geotechnical risk assessment, architectural plans and a demolition plan that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:
(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

Comment:

The proposed development is supported by a geotechnical risk assessment. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions of consent.

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

Comment:
The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, it is considered that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	20m	20m	-	Yes
Rear building line	20m	15.7m	21.5%	**No**
Side building line	6.5m (south)	1.1m - 5.9m (decks)	9..2% - 83.1%	**No**
	6.5m (north)	Nil (Retaining wall)	100%	**No**
Building envelope	3.5m (south)	Within envelope	-	Yes
	3.5m (north)	Within envelope	-	Yes
Landscaped area	80% (3240.6sqm)	51.6% (2090.2sqm)	35.5%	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater	Yes	Yes
A1 Introduction	Yes	Yes
A1.7 Considerations before consent is granted	Yes	Yes
A4 Localities	Yes	Yes
A4.2 Bayview Heights Locality	Yes	Yes
Section B General Controls	Yes	Yes
B1 Heritage Controls	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3 Hazard Controls	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4 Controls Relating to the Natural Environment	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5 Water Management	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6 Access and Parking	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8 Site Works Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
Section C Development Type Controls	Yes	Yes
C1 Design Criteria for Residential Development	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
Section D Locality Specific Development Controls	Yes	Yes
D2 Bayview Heights Locality	Yes	Yes
D2.1 Character as viewed from a public place	Yes	Yes
D2.2 Scenic protection - General	Yes	Yes
D2.3 Building colours and materials	Yes	Yes
D2.5 Front building line	Yes	Yes
D2.6 Side and rear building line	No	Yes
D2.7 Building envelope	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D2.9 Landscaped Area - Non Urban	No	Yes
D2.11 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D2.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D2.13 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.2 Bayview Heights Locality

The Bayview Heights Locality Statement notes as follows:

- *"The Bayview Heights locality will remain a low-density rural residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations".*

- *"Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Such development will need to consider its impact upon the slope of the land both from a hazard point of view (landslip & bushfires) and visually, especially when viewed from outside the locality such as the Pittwater waterway and Mona Vale valley".*

The proposed development involves the alterations and additions to the existing deck, associated landscaping works including the construction of a new cabana and associated works, the proposed development is considered to achieve the overall intention of the future character statement for the following reasons:

- The development minimises bulk and scale through building modulation and varying building materials;
- The development has a minimal impact of native vegetation, noting conditions pertaining to tree preservation will offset the development's impacts on the Pittwater biodiversity;
- Existing rock outcrops below the footprint of the development will be retained;
- The development will maintain a building height below the established tree canopy;
- The site will remain predominately landscaped, thereby ensuring the development does not detract from the aesthetic values of the rural residential area; and
- The development has been designed and will be managed to respond to the natural hazards of the area, which include landslip hazards.

D2.6 Side and rear building line

Description of non-compliance

Clause D2.6 of the Pittwater 21 DCP requires development be setback at least 20m from the rear

boundary and 6.5m from side boundaries.

The development proposes the following non-compliance:

- **Rear setback** - 15.7 metres (deck)
- **Northern side setback** - Nil (retaining wall)
- **South-western side setback** - 1.1 metres - 5.9 metres (decks)

Merit consideration

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

Comment:
The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality.

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

Comment:
It is noted a portion of the new extended deck area with the shade arbour is above the height limit and non compliant with the side and rear setback controls however, it is considered that the location and the open nature of these structures ensures that the bulk and scale of the built form is minimised and largely resultant of a consequence of the existing built form and the site characteristics. The proposed retaining wall on the northern side boundary has a nil setback to that boundary and is considered to be of a bulk and scale that is generally consistent with other similar structures with the vicinity and utilitarian in its function. Furthermore, the proposal would maintain and introduce suitable landscaping to minimise the visual impact of the development from adjoining properties and the public realm.

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

Comment:
It is not anticipated that the development would result in any unreasonable impacts to any existing views or vistas.

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

Comment:
As above, it is not anticipated that the development would result in any unreasonable impacts to any existing views or vistas.

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

Comment:

While numerically non-compliant with the side and rear setback controls, the semi-rural nature of the subject site and surrounding sites allows for substantial spatial separation between existing dwellings. Therefore, it is unlikely the proposal will create any unreasonable impacts upon the privacy and amenity of the occupants of the subject site and those of adjoining properties. In summary, the proposal is considered to provide reasonable amenity for the dwelling occupants and those of adjoining and surrounding properties as a result of adequate building separation, site orientation, aspect and landscape treatment. The proposed development will not create any unreasonable solar impacts upon adjoining properties given the position of the proposed works on the subject site and spatial separation.

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

Comment:
The works will not result in the removal of additional trees or vegetation. The application is also supported by a landscape plan, which demonstrates an enhancement of vegetation to assist in the softening of the resultant built form.

The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to conditions and adherence to the approved Arborist Report.

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

Comment:
The proposed development is sited with varying setbacks, which ensure appropriate articulation and modulation along both side elevations. Despite non-compliance in some areas, the proposal is considered to be an appropriate response to the development of the site. Adequate pedestrian access to the site is maintained.

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

Comment:
The proposed works will not result in the removal of additional trees or vegetation. The application is also supported by a landscape plan, which demonstrates an enhancement of vegetation to assist in the softening of the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject. Overall, retained and proposed vegetation and the conditioned planting would appropriately break up the building massing and reduce the visual impact of the proposal.

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

Comment:
This control is not applicable given the subject site is located within, and surrounded by, residential zoning.

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

Comment:
As above, the proposed works will not result in the removal of additional trees or vegetation. The

application is also supported by a landscape plan, which demonstrates an enhancement of vegetation to assist in the enhancement of the rural and bushland character. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to the conditions and adherence to the approved Arborist Report. Overall, retained and proposed vegetation and the conditioned replacement planting would appropriately preserve the bushland character of the area.

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

Comment:
As above, this control is not applicable given the subject site is located within, and surrounded by, residential zoning.

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

D2.9 Landscaped Area - Non Urban

Description of Non-Compliance

Clause D2.9 Landscaped Area - Non Urban of the P21 DCP prescribes a landscaped area ratio of 0.8:1 (or 80%) which is, in this instance 3,240.6m^2.

That clause has variation provisions which include the following:

- Residential development (including dwellings, buildings and structures such as garages, home workshops, storage sheds and the like that are ordinarily incidental or subsidiary to a dwelling) with a maximum of 800m^2 will be allowed even if the minimum landscaped area, as per the table above, can't be provided

- Dams, ponds, on-site detention tanks, the water surface area of swimming pools and water tanks that provide reserve capacity and an approved adaptor for fire fighting purposes, or waste water treatment systems can be included as landscaped area for the purpose of this control.

The calculable landscaped area of the site is 2039.3m^2 or 50.3%. In reference to the above two variation provisions, the built-upon areas of the site (not including the tennis court but including the swimming pool) equate to an area of 566.89m^2 which satisfies the maximum footprint permitted notwithstanding landscaped area. For the second variation, the pool and water tank has a total area of 51.2m^2 which would bring the total landscaped area, with dispensation to 2090.2m^2 or 51.6%.

Notwithstanding the fact that the proposal complies with the first variation provision, an assessment of the proposal against the underlying outcomes of the control follows:

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

Comment

As established earlier in this report the proposed development achieves the desired future character of the locality. More than half the site is deep soil landscaping and accommodates mature trees, particularly along the rear boundary. The site maintains an appropriate bushland setting.

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

  Comment

  The shortfall in landscaped area is not considered attributable to any unreasonable bulk or scale of the built form.

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

  Comment

  Notwithstanding the shortfall in landscaped area, the development provides an appropriate level of amenity and solar access to both future occupants, and to neighbouring properties.

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

  Comment

  The proposal seeks to retain all noteworthy vegetation on the site and does not remove any significant trees. New native screen planting is proposed with an on going planting of local native indigenous species which ensure that the site is consistent with this merit consideration.

- *Conservation of natural vegetation and biodiversity.*

  Comment

  As previously mentioned the proposal will maintain all large native gum trees on the site and with the additional planting will ensure that the proposal is consistent with this merit consideration.

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

  Comment

  Council's Development Engineering department is satisfied with the proposed stormwater solution.

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

  Comment

  As described throughout this report, it is found that the proposal is an appropriately proportioned and designed dwelling for the context and will be enhancing to the already established rural and bushland character.

- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off*

and assist with stormwater management.

Comment

Council's Development Engineering department is satisfied with the proposed stormwater solution.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $9,628 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $962,829.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION
This proposal, for Alterations and additions to a dwelling house, construction of a cabana and landscaping works has been referred to the DDP due to a breach of more than 10% of the building height control of the PLEP.

The concerns raised in the objection have been addressed in the relevant sections of the report.

The submitted Clause 4.6 appropriately addresses the requirement of the clause and the non-compliance with the building height is found to be reasonable and well founded within the site constraints and the geographical context.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/0253 for Alterations and additions to a dwelling house, construction of a cabana and landscaping works on land at Lot 56 DP 30648, 2 Pindari Place, BAYVIEW, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
1/1	2 March 2023	Andrew Davies Landscape Designer
3/10	1 June 2023	Andrew Davies Landscape Designer
4/10	1 June 2023	Andrew Davies Landscape Designer
5/10	1 June 2023	Andrew Davies Landscape Designer
6/10	1 June 2023	Andrew Davies Landscape Designer
7/10	1 June 2023	Andrew Davies Landscape Designer
8/10	1 June 2023	Andrew Davies Landscape Designer
9/10	1 June 2023	Andrew Davies Landscape Designer
10/10	1 June 2023	Andrew Davies Landscape Designer

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Geotechnical Assessment	14 December 2022	ASCENTGEO
Arboricultural Impact Assessment Report	3 March 2023	Hugh the Arborist

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	28 February 2023	Geoff Neilson

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.), 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

4. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $9,628.29 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 $962,829.00.

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

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

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

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

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

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

6. **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 Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by AscentGeo Geotechnical Consulting dated 14/12/2022 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

- All new works are to be located within the boundaries of the subject site (2 Pindari Pace, Bayview - Lot 56 DP 30648)

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

12. **Project Arborist**
a) A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with the Arboricultural Impact Assessment dated 3rd March 2023 prepared by Hugh the Arborist and AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

b) All tree protection measures specified must:

i) be in place before work commences on the site, and
ii) be maintained in good condition during the construction period, and
iii) remain in place for the duration of the construction works.

c) The Project Arborist shall provide certification to the Principal Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note: Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Protection of Landscape Features and Sites of Significance**
a) 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.

b) Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

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

Reason: Preservation of significant environmental features.

14. **Tree and Vegetation Protection**

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

- i) all trees within the site, 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 the Arboricultural Impact Assessment dated 3rd March 2023 prepared by Hugh the Arborist and AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,

ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

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

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

15. **Condition of Trees**

a) During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from the Project Arborist during the works.

b) In this regard all protected trees shall not exhibit:

i) a general decline in health and vigour,

ii) damaged, crushed or dying roots due to poor pruning techniques,

iii) more than 10% loss or dieback of roots, branches and foliage,

iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,

v) yellowing of foliage or a thinning of the canopy untypical of its species,

vi) an increase in the amount of deadwood not associated with normal growth,

vii) an increase in kino or gum exudation,

viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,

ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

c) Any mitigating measures and recommendations required by the Arborist are to be implemented.

d) 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.

16. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation

organisation must be contacted for advice.

Reason: To protect native wildlife.

17. **Protection of Habitat Features**
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

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. **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.

20. **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.

21. **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

22. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 qualifications in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the

approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

a) compliance to any Arborist recommendations for tree protection generally and during excavation works,

b) extent of damage sustained by vegetation as a result of the construction works,

c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

23. **Native Landscaping**
Any new landscaping is to incorporate a minimum 80% 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 any Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

24. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

25. **Priority Weed Removal and Management**
All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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 weeds.

26. **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.

27. **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.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

29. **Swimming Pool Requirements (existing pool modified by works)**
The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009
(iii) Swimming Pools Regulation 2018;
(iv) Australian Standard AS1926 Swimming Pool Safety;
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools;
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
(b) A warning sign stating **'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL'** has been installed.
(c) All signage shall be located in a prominent position within the pool area.

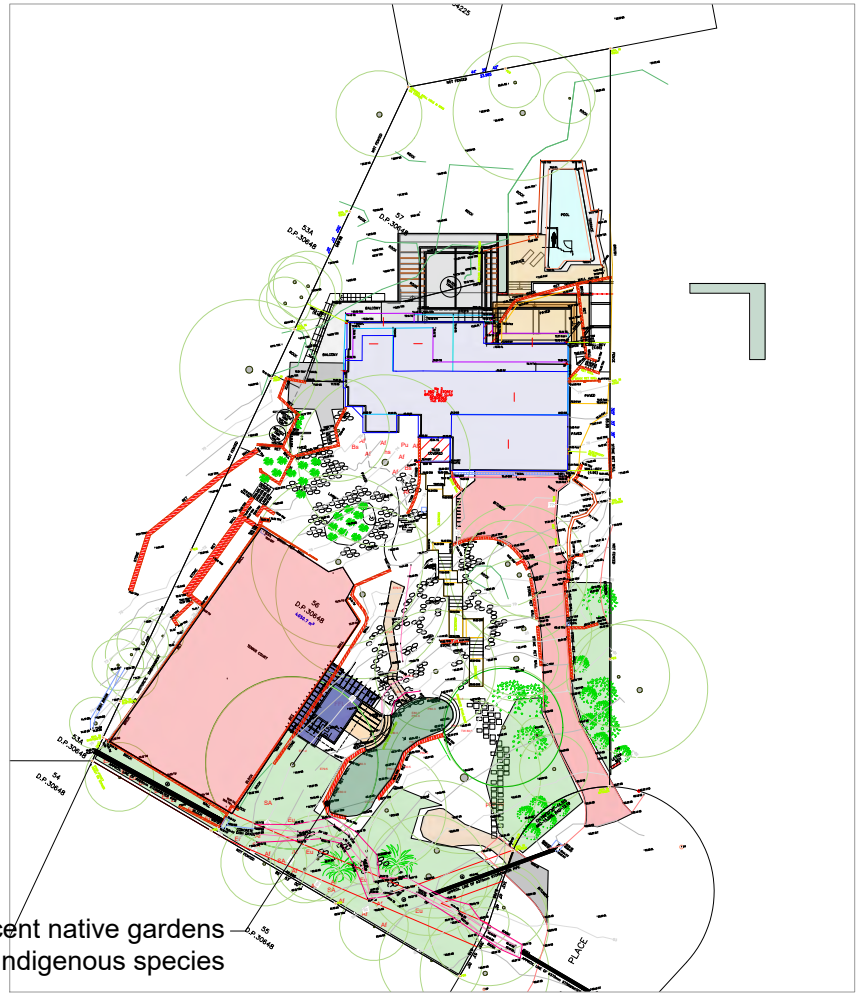
Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.


New extended deck area with shade arbour and garden planters to structural engineers design
Existing pier and beam deck
New deck area to connect to existing deck
Existing septic tank and concrete slab
Existing tiered garden with curved access pathway
New tennis court cabana and landscape works
Existing sandstone steps with concrete base
Existing Eucalyptus maculata see Arborist report
New native screen planting See landscape plan
On going planting of local native indigenous species,Acacia etc
Existing drainage channel
Rock outcrops
extent of existing deck
ex pit
Existing pool,install new coping
Remove existing block wall
New productive garden beds and pool side patio and new paving
Retain garden walls and steps
New steps, paving /remove exist
New steel arbour to attach to existing roof/eaves
Existing sawn sandstone and bitumen driveway
Existing rock garden beds
Existing sandstone entrance pathway
Existing lawn and sandstone steps
New Sawn sandstone stepping pads based on 600x400 units with Dichondra ground cover planting
Existing native garden
3
10
Andrew Davies
landscape designer
north
Marita and Geoff Neilson
2 Pindari place Bayview
Master Plan
Proposed Deck, Cabana and Associated Landscape works

Master plan



100 percent native gardens
80 to 90 % local indigenous species

10
10

Andrew Davies
landscape designer

north

Marita and Geoff Neilson
2 Pindari place Bayview
Area Calculations

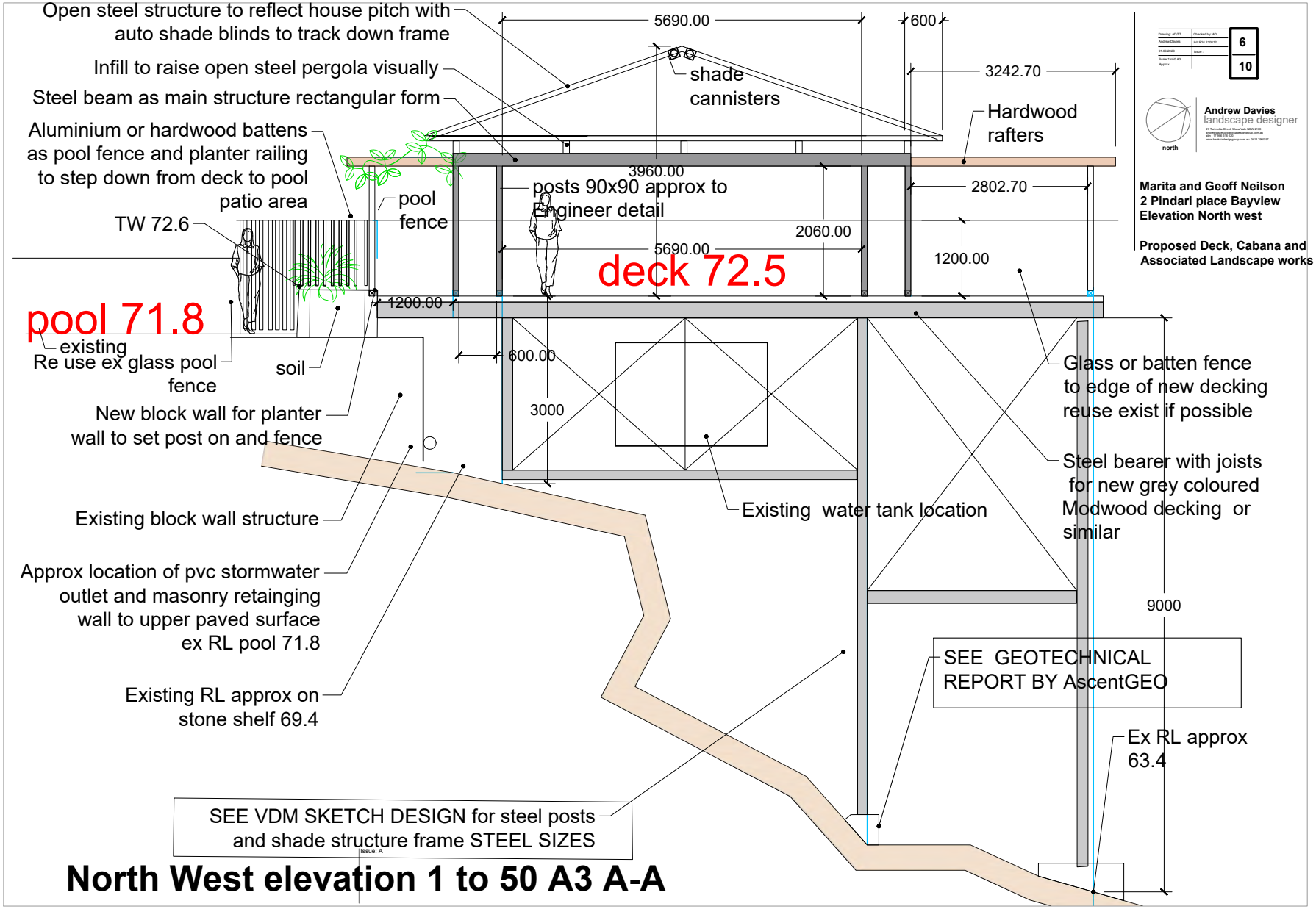
Proposed Deck, Cabana and Associated Landscape works

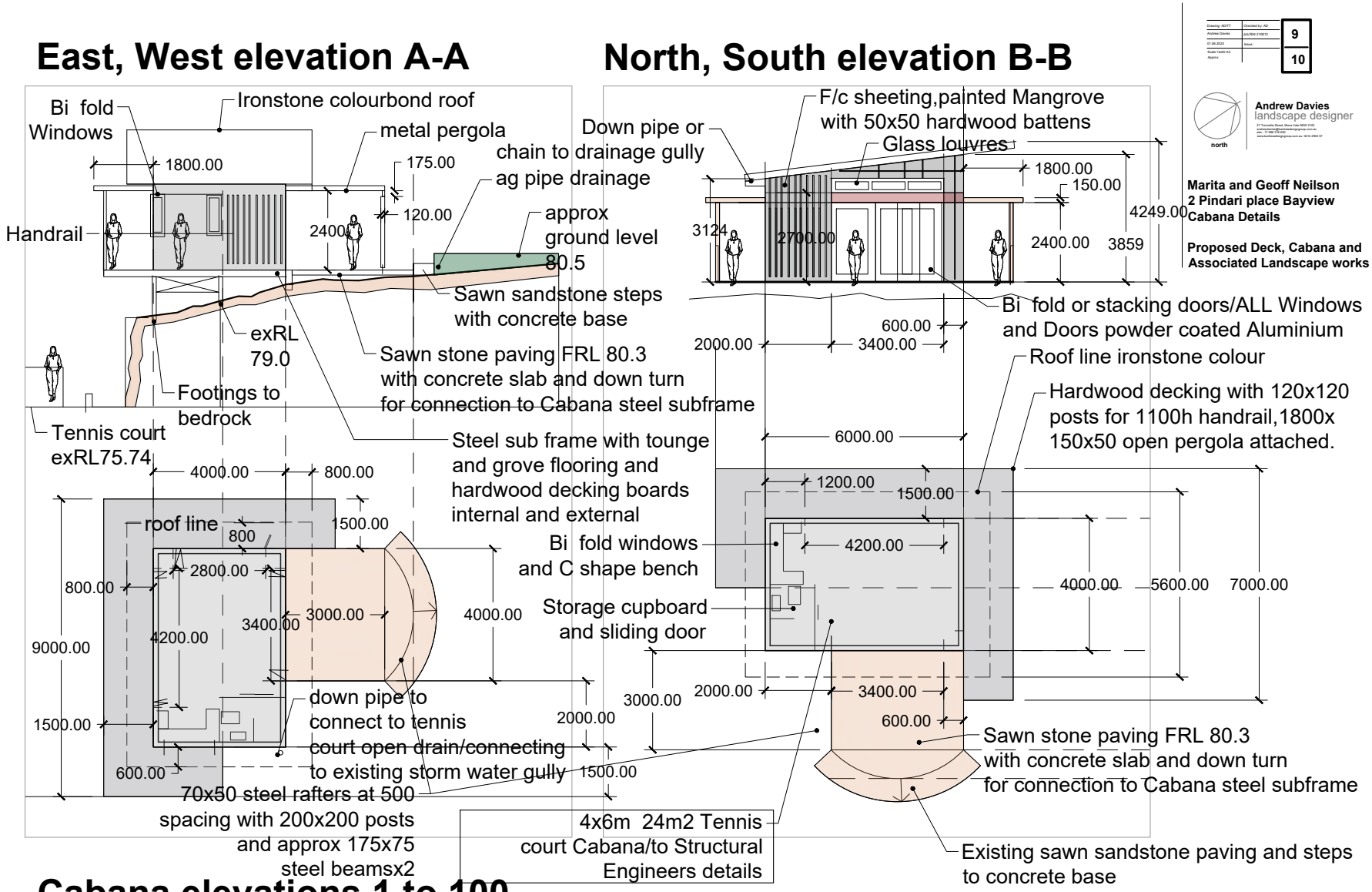
Driveway,entrance path and tennis court existing (in red) 760.6

New Cabana(blue) 74.8
House,pool and new patio 795.0
Total 1630.4

4050lot approx 40.2 percent hardscape

Area Calculations


Open steel structure to reflect house pitch with auto shade blinds to track down frame
Infill to raise open steel pergola visually
Steel beam as main structure rectangular form
Aluminium or hardwood battens as pool fence and planter railing to step down from deck to pool patio area
TW 72.6
pool fence
5690.00
600
3242.70
shade cannisters
Hardwood rafters
3960.00
posts 90x90 approx to Engineer detail
2802.70
2060.00
5690.00
1200.00
deck 72.5
1200.00
pool 71.8
existing
Re use ex glass pool fence
soil
600.00
3000
New block wall for planter wall to set post on and fence
Glass or batten fence to edge of new decking reuse exist if possible
Steel bearer with joists for new grey coloured Modwood decking or similar
Existing water tank location
Existing block wall structure
Approx location of pvc stormwater outlet and masonry retainging wall to upper paved surface ex RL pool 71.8
9000
SEE GEOTECHNICAL REPORT BY AscentGEO
Existing RL approx on stone shelf 69.4
Ex RL approx 63.4
SEE VDM SKETCH DESIGN for steel posts and shade structure frame STEEL SIZES
Issue: A
North West elevation 1 to 50 A3 A-A
6
10
Andrew Davies
landscape designer
north
Marita and Geoff Neilson
2 Pindari place Bayview
Elevation North west
Proposed Deck, Cabana and Associated Landscape works



Cabana elevations 1 to 100

OBJECTION PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE HEIGHT OF BUILDINGS AS DETAILED IN CLAUSE 4.3 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

Alterations and additions to existing deck, landscaping works, new cabana and associated works

2 Pindari Place,
Bayview NSW 2104

mathew@fourtowns.com.au
0425232018
www.fourtowns.com.au
PO Box 361, Balgowlah NSW 2093

Alterations and additions to existing dwelling house including a new swimming pool and associated works

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:
Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:
Geoff and Marita Neilson

30 May 2023

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Alterations and additions to existing dwelling house including a new swimming pool and associated works

Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height of a building as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014). It is noted that this request is made for the proposed alterations and additions to a dwelling house and a new cabana at 2 Pindari Place, Bayview.

The following assessment of the variation to Clause 4.3 – Building Height development standard, has taken into consideration the recent judgement contained within Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, 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.

Requirement	8.5m
Proposed	11.7m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	37.6%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the PLEP 2014. The proposal is consistent with surrounding developments and the proposed minor increase is compatible with the locality and complies with other relevant controls which determine the built form of the site.

A variation to the strict application of the Height of Building standard is considered appropriate for the subject site and is supportable for the following reasons:

- The objectives of the PLEP2014 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the PLEP2014 R5 Large Lot Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a steep sloping topography and slopes from the front to the rear of the site. The resulting constraints from the topography of the site contribute the minor variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible.
- The proposal does not adversely impact existing solar access to private and public places. It is noted that the project designer has created alterations and additions that do not adversely impact neighbours while addressing the sites constraints such as the topography.
- The breach to the building is minimal and is due to a steep drop off from the existing deck to the existing ground level below.

- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.

Clause 4.6 Variation Requirements

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case 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* and review the following:

Compliance being unreasonable or unnecessary

1. 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].*
2. The underlying objective or purpose of Clause 4.3(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*
3. 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]*
4. 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 stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47].*
5. The relevance of the zoning provisions of the land to which the development is proposed.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. 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]

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

a. the particular development standard;
b. the zone in which the development is proposed to be carried out.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

(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.

General Provisions Relating to Clause 4.6 which will be applicable to Clause 4.3(2) Height of Building

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.

(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 all of these zones.*

(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.

Comment: As detailed previously in this request, Clause 4.6 of PLEP2014 is applicable to enable a variation to the Height of Building to permit Northern Beaches Council power to grant development consent to the subject development.

This proposal involves a departure from the Height of Building control of MLEP2013, a formal variation to this standard is required under *Clause 4.6 – Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)*
- *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: Cl 4.6 (4)(a)(ii)*
- *The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)*
- *Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence Cl 4.6 (5)(c)*

4.3 Height of buildings

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

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

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

(c) to minimise any overshadowing of neighbouring properties,

(d) to allow for the reasonable sharing of views,

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

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

(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) Despite subclause (2), development on land—

(a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the Coastal Risk Planning Map, and

(b) that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map,
may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.

(2B) Despite subclause (2), development on land—
(a) at or below the flood planning level or identified as "Coastal Erosion/Wave Inundation" on the Coastal Risk Planning Map, and
(b) that has a maximum building height of 11 metres shown for that land on the Height of Buildings Map,
may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.

(2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the Height of Buildings Map, may exceed the maximum building height shown on the Height of Buildings Map for that land, if the height of the development is not greater than the height shown opposite that area in Column 2.

Column 1	***Column 2***
Area	***Maximum height above the flood planning level***
Area 1	*11.5 metres*
Area 2	*8.5 metres on the street frontage and 10.5 metres at the rear*
Area 3	*8.5 metres*
Area 4	*7.0 metres*

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—
(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
(b) the objectives of this clause are achieved, and
(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

(2E) Despite subclause (2), development for the purposes of shop top housing on land identified as "Area 5" on the Height of Buildings Map may have a height of up to 10 metres if the top floor of the building is setback a minimum of 6 metres from the boundary to the primary street frontage.

(2F) Despite subclause (2), development on land identified as "Area 6" on the Height of Buildings Map must not exceed 8.5 metres within the area that is 12.5 metres measured from the boundary of any property fronting Orchard Street, Macpherson Street, Warriewood Road or Garden Street.

(2FA) Despite subclause (2), the maximum height for a secondary dwelling or a rural worker's dwelling in Zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.

(2FB) Despite subclause (2), in the case of a dual occupancy (detached), the maximum height for the dwelling that is furthest back from the primary street frontage of the lot is 5.5 metres.

(2G) In this clause—

flood planning level *means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.*

floodplain risk management plan *has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.*

Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the PLEP2014 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.
The development standard in Clause 4.3 (2) of the PLEP2014, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referrable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.3 (2) states:

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

The Height of Building Map sets a maximum Height of Building control of 8.5m. For the purpose of calculating Height of Building, the PLEP2014 provides the following definition:

Building height is defined as follows:
building height *(or* ***height of building****) means—*
(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

ground level (existing) *means the existing level of a site at any point.*

It is noted that Northern Beaches Council now refers to the leading case authority which considers the definition of "ground level (existing) *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading case *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*.

The Height of Building in clause 4.3(2) of the PLEP2014 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 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:
(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Despite the variation to the Height of Building control which occurs as a result of the topography of the land and modified components, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designers have worked tirelessly to design new modern high-end alterations and additions that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Pindari Place streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under PLEP2014 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

Objection to Development Standard – Height of Building (Clause 4.3(2))

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the stand: *Wehbe v Pittwater Council at [42] and [43].*

Comment: Clause 4.6(3)(a) of the PLEP2014 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is *'unreasonable or unnecessary in the circumstances of the case'.*

In determining a merits-based assessment for the Height of Building of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – *Veloshin v Randwick Council [2007] NSWLEC 428*.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Bayview precinct. As noted under the review of Clause 4.3 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.3, as outlined below:

- The objectives of the PLEP2014 Height of Building control are achieved notwithstanding the technical non-compliance.

- The objectives of the PLEP2014 R5 Large Lot Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a steep sloping topography and slopes from the front to the rear of the site. The resulting constraints from the topography of the site contribute the minor variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible.
- The proposal does not adversely impact existing solar access to private and public places. It is noted that the project designer has created alterations and additions that do not adversely impact neighbours while addressing the sites constraints such as the topography.
- The breach to the building is minimal and is due to a steep drop off from the existing deck to the existing ground level below.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.

As outlined above, the proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. Given the modified state of the site, through this application the permissible Height of Building control does not align with the permissible height on the site, nor several built form controls of the PDCP. This essentially limits any redevelopment potential of the site without varying Council's standard.

2. The underlying objective or purpose of Clause 4.3 is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*

Comment: In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court. The following is pertinent to the assessment of the proposed building heights for this development:

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

Ground level existing is defined as follows:
ground level (existing) *means the existing level of a site at any point.*

The court now considers the definition of "ground level (existing)" *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases

Bettar v Council of the City of Sydney [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189*.

It is noted that common-sense should prevail from the new court case "Merman Investments Pty Ltd" with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through 'Bettar'.

As a result of the above, it is determined that the maximum building above ground level (existing) is 11.7m for the proposed alterations and additions. This results in a 3.2m variation or 37.6%. This is a result of the existing building structures on the land which prove that the site has been modified to its current form and measured through the definition of ground level (existing). It is noted that if a natural ground level line was implemented, the structure would comply with the maximum building height control.

The review below allows a thorough analysis of the objectives of Clause 4.3, which confirms that the proposal is consistent with the objectives of the zone, as outlined below:

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

The site is located within an area identified within A4.2 Bayview Locality which outlines the desired character of the area. The desired character statement of A4.2 Bayview Locality is provided below:

A4.2 Bayview Heights Locality
Desired Character
The Bayview Heights locality will remain a low-density rural residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Dual occupancy (attached) may be located throughout the locality on rural residential land. Recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. Currently, few of these services exist, and development for anything other than a dwelling house will need to ensure that these services can be provided to the site. Care will need to be taken with future developments to ensure that outbuildings and ancillary recreational structures do not dominate the natural landscape and bushland setting.

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Such development will need to consider its impact upon the slope of the land both from a hazard point of view (landslip & bushfires) and visually, especially when viewed from outside the locality such as the Pittwater waterway and Mona Vale valley.

Existing and new native vegetation, including canopy trees, will be integrated with the development. Development shall maintain generous spatial separation of the built form and low site coverage on large lots. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandas and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be

safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors. Fencing where provided, shall enable the native fauna to pass through yet contain livestock animals where needed.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.
Vehicular, pedestrian and cycle access within and through the locality will need to be provided and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

After reviewing the desired character statement, it is my professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. I have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. It is also noted that most observers would not find the proposed development by virtue of its height and scale, in particular the building height breaching elements, offensive, or unsympathetic in a streetscape context nor the context from Pindari Place.

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

The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designer has worked tirelessly to design alterations and additions for a modern high-end dwelling that meet the sites constraints and the existing bulk and scale of the area. The proposal has been designed to be compatible with the functions of a dwelling while accommodating a bulk and scale that is complementary to the natural environment.

(c) to minimise any overshadowing of neighbouring properties,

The proposal for alterations and additions to the existing deck and a cabana next to the tennis court will have no adverse impacts by way of overshadowing. The alterations and additions to the deck are below the existing ridge line and substantially setback from all neighbouring properties with no shadowing impacts.

(d) to allow for the reasonable sharing of views,

The proposal for alterations and additions to the existing deck and a cabana next to the tennis court will have no adverse impacts by way of view of sharing. Having inspected the site and identified available public and private view lines over and across the site, I am satisfied that the building height variation will not give rise to any unacceptable view loss with a view sharing outcome maintained in accordance with the planning principle established in the matter of Tenacity vs Warringah Council (2004) NSWLEC 140. Notwithstanding the proposed minor building height variation, the proposal is consistent with this objective.

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

The proposed alterations and additions to the existing dwelling have been designed to respond to the existing natural topography of the land, noting the sharp drop off under the existing deck, while

still accommodating alterations and additions to the dwelling that is consistent with the bulk and scale of the area. The proposal is in our opinion is consistent with this objective.

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

The proposal will enhance the site through new alterations and additions which create a more sustainable dwelling which will improve the functionality and landscaping of the site. The proposal will add value to the natural environment and will be visually pleasing to the surrounding areas. The site is not identified or located close to known heritage items. The proposal is consistent with this objective.

3. 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]*

Comment: It would indeed be unreasonable for Council to refuse the development that is proposed by way of a relatively minor variation as the proposal does not have any adverse impacts on the immediate amenity of the area. The development has been designed with the necessary sensitivity to complement existing buildings and the natural landform of the area. There is no adverse visual impact associated with the form and structures proposed.

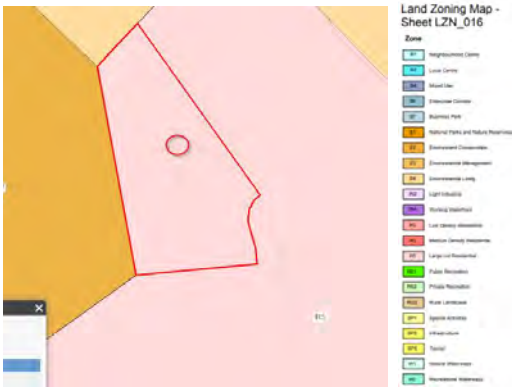
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47].*

Comment: Whilst the proposal seeks a variation to Councils numerical Height of Building standard, it is consistent with the relevant objectives (as outlined previously in this report).

A review of other developments within the immediate area and approvals granted show that the development standard for Height of Buildings has been virtually abandoned or destroyed by Council's own decisions in granting development consents, hence compliance with this development standard is unnecessary and unreasonable.

5. The relevance of the zoning provisions of the land to which the development is proposed.

Zoning Provisions



Alterations and additions to existing dwelling house including a new swimming pool and associated works

Zone R5 Large Lot Residential

1 Objectives of zone
• To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
• To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
• To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
• To minimise conflict between land uses within this zone and land uses within adjoining zones.
• To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

2 Permitted without consent
Home businesses; Home occupations

3 Permitted with consent
Bed and breakfast accommodation; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies (attached); Dwelling houses; Environmental protection works; Home-based child care; Home industries; Horticulture; Oyster aquaculture; Pond-based aquaculture; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture

4 Prohibited
Any development not specified in item 2 or 3

The proposed use is defined as follows under PLEP2014:
dwelling house *means a building containing only one dwelling.*
Note— *Dwelling houses are a type of* ***residential accommodation****—see the definition of that term in this Dictionary.*

Comment: The relevance of the zone objectives are assessed below:
Clause 4.6(4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

The site is zoned R5 Large Lot Residential. A dwelling house and associated works are permissible land uses; therefore, the proposed alterations and additions and cabana are permissible with Council's consent. The proposal is consistent with the objectives of the zone, as supported below:

- The proposal provides a rural residential development within the Bayview locality.
- The proposal encourages the revitalisation and rehabilitation of the existing site while retaining the aesthetic values, ecological aspects of the area.
- The proposal has been strategically designed to sit in the topography of the land to minimise bulk, scale and amenity impacts to adjoining neighbours such as privacy, and access to sunlight.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"

Comment: Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land and man-made alterations to the land which take away from the natural elements of the site which makes strict compliance difficult to achieve whilst appropriately distributing height, in the form of legitimate dwelling, on this particular site. Further justification to support the proposed variation is provided below:

- The LEC planning principles on Height of Building relating to the height, bulk and scale, including compatibility between subject buildings and its surrounding context to ensure the proposal is compatible with its context. The planning principle seeks qualification of the following:

Planning principle: assessment of height and bulk
· The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:
Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)
How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?
· Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:
Does the area have a predominant existing character and are the planning controls likely to maintain it?
Does the proposal fit into the existing character of the area?
· Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:
Is the proposal consistent with the bulk and character intended by the planning controls?
· Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:
Does the proposal look appropriate in its context?
Note: the above questions are not exhaustive; other questions may also be asked.

In addressing the above planning principals, the benefits of the proposal, represents a new functional dwelling through alterations and additions which enhances the site and blends in with the natural landscape.

From a planning perspective, there is sufficient environmental planning grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the PLEP2014 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the PLEP2014 R5 Large Lot Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.

- The site has a steep sloping topography and slopes from the front to the rear of the site. The resulting constraints from the topography of the site contribute the minor variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible.
- The proposal does not adversely impact existing solar access to private and public places. It is noted that the project designer has created alterations and additions that do not adversely impact neighbours while addressing the sites constraints such as the topography.
- The breach to the building is minimal and is due to a steep drop off from the existing deck to the existing ground level below.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, or residential amenity. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and constraints on the site. Such an outcome is achieved whilst realising the reasonable development potential of the land and a functional and usable dwelling.

2. 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]

Comment: This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.3(2). The proposal has assessed the relevant impacts (if any) and has assessed the bulk, scale and mass of the proposed dwelling which will breach the development standard. This report finds that a merit assessment is applicable and determines that there is sufficient grounds to justify the breach to the Height of Buildings. The proposal has been skilfully designed and strategically located to not have an adverse impact to neighbouring properties. Therefore, the development as proposed is sufficiently justified to contravene the development standard.

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:
a. the particular development standard;
b. the zone in which the development is proposed to be carried out.

Comment: As demonstrated in this request, the proposed development 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. The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of Height of Building applicable to this site. Additionally, the building improvements add significant social and healthy benefits through a

new functional dwelling. Council should encourage such developments via support of positive intention to upgrade sites within the Northern Beaches LGA.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Secretary's Concurrence
Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

(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.

Comment: The contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

- The variation to the Height of Building development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case. There are no other relevant matters required to be taken into account by the Secretary.

Summary and Conclusion

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.3(2) Height of Building and this statement verifies that compliance with the

provisions of clause 4.3(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

1(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

1(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

A variation to the strict application of Council's Height of Buildings development standard is considered appropriate for the site at 2 Pindari Place, Bayview.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor in our opinion and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Bayview precinct. As noted under the review of Clause 4.3 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.3. From a planning perspective, there is sufficient environmental planning grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the PLEP2014 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the PLEP2014 R5 Large Lot Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a steep sloping topography and slopes from the front to the rear of the site. The resulting constraints from the topography of the site contribute the minor variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible.
- The proposal does not adversely impact existing solar access to private and public places. It is noted that the project designer has created alterations and additions that do not adversely impact neighbours while addressing the sites constraints such as the topography.
- The breach to the building is minimal and is due to a steep drop off from the existing deck to the existing ground level below.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.

As outlined above, the proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. The permissible Height of Building control does not align with the permissible height on the site, nor several built form controls of the PDCP2014. This essentially limits any redevelopment potential of the site without varying Council's standards.

In addition to the above justification, the proposal is considered to meet the intent of Council's controls relating to Height of Building, the R5 Large Lot Residential zone objectives and the desired future character of this precinct. It is therefore submitted that the non-compliance with the Height of Building Clause 4.3(2) is acceptable, and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. It is noted the assessment has been undertaken in relation to the most recent court case Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582. The variation under Clause 4.6 is to vary the Height of Building control to give Northern Beaches Council the power to grant development consent to the proposed development.

ITEM 3.2	**DA2022/1675 - 57 CUTLER ROAD CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/331986**
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 DA2022/1675 for alterations and additions to a dwelling house including a swimming pool on land at Lot 30 DP 25654, 57 Cutler Road CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1675

Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 30 DP 25654, 57 Cutler Road CLONTARF NSW 2093
Proposed Development:	Alterations and additions to 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:	Petra Isabel Popovac Luka Popovac
Applicant:	Luka Popovac

Application Lodged:	11/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/10/2022 to 31/10/2022
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 7.52% 4.4 Floor space ratio: 29.25%
Recommendation:	Approval

Estimated Cost of Works:	$ 918,500.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) as the proposed maximum floor space ratio exceeds the requirement as prescribed under Clause 4.4 by more than 10%.

Concerns raised in the objections predominantly relate to view loss, asbestos removal, excavation concerns, multiple non-compliances with controls within the Manly Development Control Plan (MDCP) and Manly Local Environmental Plan 2013 (MLEP 2013), inadequate Clause 4.6 documents, building

bulk and resultant privacy and solar access impacts.

Critical assessment issues include Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio and Clause 4.6 Exceptions to development standards, and Clause 6.9 Foreshore scenic protection area within the MLEP 2013; and sunlight access and overshadowing, privacy and security, maintenance of views, height of buildings (wall heights), floor space ratio (FSR), setbacks and building separation, open space and landscaping, parking, vehicular access and loading, and swimming pools, spas and water features.

The 4.6 request for the non-compliance with FSR standard arises from a 81.62m^2 increase in floorspace. The existing building has an existing floorspace of 216.52m^2 (or 0.375:1), which achieves compliance with the requirement of Clause 4.4 of the MLEP 2013 based on historical approvals with the proposal increasing this to 298.14m2 (or 0.517:1), which presents a variation of 29.25%, however it is consistent with the undersized lot FSR provisions of the MDCP. The additional floorspace increases the building mass, yet remains commensurate with developments within the vicinity of the subject site. For the reasons as detailed within this assessment report, the assessment has found the variation to this control is acceptable, in this instance.

The 4.6 request for the non-compliance with height standard arises as a result of the proposed first floor level sited over an existing excavated portion of the site, as measured in accordance with *Merman Investments Pty Ltd Woollahra Municipal Council* [2021] NSWLEC 1582. From an extrapolated measurement as done so within *Bettar v Council of City of Sydney* [2014] NSWLEC 1070, the proposed development would achieve compliance with the requirement prescribed within Clause 4.3 Height of Buildings. The maximum height variation is 7.52%. The proposed first floor level will be commensurate with developments within the vicinity of the subject site. For the reasons as detailed within this assessment report, the assessment has found the variation to this control is acceptable, in this instance.

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 consent for alterations and additions to a residential dwelling house including a swimming pool, pursuant to the Manly Local Environmental Plan 2013 (MLEP 2013), including the following:

Lower ground floor

- Reconfiguration of this space to be a guest room/rumpus room with bar and storage areas
- Laundry
- Lift

Ground floor

- Reconfiguration to accommodate a new kitchen, meals, dining and living area
- Entry foyer
- Extension of existing balcony with planter boxes located off Bedroom 2 along the northern elevation
- Internal staircase to the proposed first floor level
- Lift and lift landing

- Alterations to existing windows and addition of new windows and doors
- New terrace and swimming pool concourse located off the new kitchen and meals area

First floor

- Master suite with walk-in robe and en-suite and access to a balcony along the northern elevation
- Master suite 2 with access to a balcony along the southern elevation
- Privacy screen affixed to the master suite 2 balcony along the eastern elevation
- Lift and lift landing
- Terrace along the western elevation, with access from the hallway
- Office space

External

- Swimming pool
- Landscape planting

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R2 Low Density Residential
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 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 - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 30 DP 25654 , 57 Cutler Road CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Cutler Crescent. The site is irregular in shape with a frontage of 16.925 metres along Cutler Crescent and a depth of 37.88 metres. The site has a surveyed area of 576.5m². The site is located within the R2 Low Density Residential zone within the Manly Local Environmental Plan 2013 (MLEP 2013) and accommodates a two (2) storey residential dwelling within a landscaped setting. The site has a northerly orientation and is located on a cross-fall, falling from the east to the west, of approximately 3.39 metres (or 21.16%). The site is not known to have any threatened species. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential development, ranging between two and three storeys.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Regulation 2021 (EP&A Regulation 2021)	Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans to address the proposed maximum building height, floor space ratio as stipulated under the Manly Local Environmental Plan 2013, and other built form controls stipulated within the Manly Development Control Plan. This additional information was requested via a formal Request for Further Information letter on 10 February 2023. Amended information, including architectural plans and updated documentation to address the amended architectural plans, was provided to Council, via the NSW Planning Portal, on 13 March 2023. As the scope of works on the amended application are of a lesser or reduced environmental impact, in accordance with Council's Community Participation Plan (CPP), the application was not required to be re-notified to adjoining properties. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended 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 recommended condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 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	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration	Comments
in accordance with the EPA Act or EPA Regs	
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 Bushfire Planning & Design, dated 10 August 2022). The report stated that the bushfire attack level of the site is BAL-19 and BAL-12.5 and 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. It is considered that the proposed development satisfies the considerations of Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/10/2022 to 31/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Mark Anthony Burns Mrs Katrina Fay Burns	3 Castle Rock Crescent CLONTARF NSW 2093
Ms Sez Zahia Cardis	55 Cutler Road CLONTARF NSW 2093
Julian Dolk	Address Unknown

The following issues were raised in the submissions:

- View loss
- Asbestos removal
- Excavation concerns

- Multiple non-compliances to controls with the Manly Development Control Plan (MDCP)
- Non-compliant Manly Local Environmental Plan 2013 (MLEP 2013) clauses and inadequate Clause 4.6 documents
- Building bulk and resultant privacy and solar access impacts

The above issues are addressed as follows:

- **View loss**

  The submissions raised concern that the proposed development will create unreasonable impacts upon views currently obtained from the dwelling at 55 Cutler Road, Clontarf (being the property to the east).

  Comment:

  A view loss assessment, in accordance with the four-part test stipulated within *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, has been undertaken within this assessment report against the amended plans provided. Based on the assessment, the proposed development (as amended) provides for reasonable sharing of views.

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

- **Asbestos removal**

  The submissions raised concern regarding the previous removal of asbestos from the dwelling on the subject site, and raised further concern about the proposed development disturbing any remnants of asbestos, and the subsequent health impacts this will have upon adjoining and nearby residents.

  Comment:

  Previous asbestos removal is not for consideration under this development application. Should this development application be approved, there are standard conditions that can be recommended to ensure the safe removal of asbestos.

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

- **Excavation concerns**

  The submissions raised concern that the proposed swimming pool is located above an existing Sydney Water pipeline, with the concern that the excavation works will strike the pipeline and cause substantial issues to adjoining properties, particularly to the property to the south, being 3 Castle Rock Crescent, Clontarf.

  Comment:

  Based on Council's mapping, the Sydney Water Sewer Main does not traverse the rear southern boundary of the subject site, but it does extend across the south-eastern corner of the subject site. In this instance, should this application be approved a condition has been recommended that requires the application be referred to Sydney Water for review.

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

- **Multiple non-compliances to controls with the Manly Development Control Plan (MDCP)**

  The submissions raised concerns that the proposed development results in numerical non-compliances to multiple MDCP controls (such as, sunlight access and overshadowing, visual and acoustic privacy, maintenance of views, FSR, setbacks, first floor and roof additions, and total open space and landscaped area), ultimately resulting in an excessive built form with unreasonable and cumulative amenity impacts upon adjoining properties.

  Comment:

  Where the proposal fails to achieve the numeric requirements under a relevant control of the MDCP, a detailed merit discussion has been undertaken under the relevant sections of this report. It is noted that the existing dwelling results in numerically non-compliant setback distances to the side boundaries - this is not changing and thus there is no material impact upon adjoining properties. The assessment has found that the new non-compliances are found to be acceptable.

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

- **Non-compliant Manly Local Environmental Plan 2013 (MLEP 2013) clauses and inadequate Clause 4.6 documents**

  The submissions raised concerns that the proposed development will exceed the maximum height and floor space ratio (FSR) as stipulated under Cl4.3 Height of Buildings and Cl4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013 (MLEP 2013), resulting in unacceptable and/or unreasonable amenity impacts upon adjoining properties.

  Comment:
  Two (2) separate Clause 4.6 written requests to vary a development standard accompanies this application. As amended plans were provided which reduced the proposed first floor level, subsequently reducing the maximum proposed FSR, the Clause 4.6 documents were updated accordingly. These documents have been reviewed and the assessment has found the proposed variations to Cl4.3 and Cl4.4 are considered acceptable, and can be supported on its merits.

  The assessment of Clause 4.6 can be found within this report under section 4.6 Exceptions to development standards.

  Concerns relating to potential amenity impacts upon adjoining properties as a result of the non-compliant development standards as described above, have been addressed under the relevant sections of this report.

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

- **Building bulk and resultant privacy and solar access impacts**

  The submissions raised concerns that the proposed development will result in unreasonable privacy impacts, particularly from the new windows and first floor level terrace located off the hallway and from the terrace located off the master bedroom. Concerns from the residents of 3 Castle Rock Crescent note that when the first floor level terrace is in use, there will be direct lines of sight in a southerly direction into the backyard, courtyard and back living room thus

impacting upon privacy. Further concern is that the proposed first floor level will remove all solar access to the rear yard of 3 Castle Rock Crescent, which is the location of the clothesline. The concern notes that the removal of solar access to this area of the site will increase energy costs due to the increased need for artificial drying. The submission received from the occupants of 55 Cutler Road note that the non-compliant side setbacks create unreasonable privacy impacts upon the bedrooms of their property.

Comment:

The proposed first floor level terrace is located 10.43 metres from the rear boundary, and as indicated on the architectural plans, the terrace is opposite 4 Castle Rock Crescent, and is off-set from 3 Castle Rock Crescent, Clontarf. Further, the proposed windows are generally considered acceptable, noting that most windows are off-set from windows of adjoining properties. A detailed assessment of the proposal against the objectives of control 3.4.2 Privacy and Security has been undertaken within this assessment report. As conditioned, the proposed development can achieve the requirements of control 3.4.2 Privacy and Security.

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

- **Window placement and other positioning**

Privacy concerns have already been addressed within the assessment report.

- **Barbeque smoke**

The submissions raised concerns that the proposed location of the barbeque on the ground flo

Comment:

The proposed location of the barbeque is sited in an appropriate location on the site.

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

- **Roof**

The submissions raised concerns that the proposed colour and materials schedule does not in

Comment:

Should this application be approved, a condition shall be recommended to ensure the external finishes and colours to the proposed roof are of a medium to dark range within the BCA classification M and D.

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

- **Acoustic Privacy**

The submissions raised concern that the dwelling on the subject site does not currently provid

Comment:

The proposed development seeks to retain the same location of the front door as what is existi

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

- **Retaining Wall**

The submissions raised concern that the existing retaining wall along the eastern boundary of

Comment:

The proposed development does not seek to alter this retaining wall. As the Boundary Identific

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

- **Asbestos**

This concern relates to previous construction works that required the removal of asbestos. This

- **Sydney water sewer line**

This has already been addressed within this assessment report.

- **Swimming pool**

The submissions raised concerns that the proposed location of the swimming pool is in the roc

Comment:

Council's Landscape Officer has reviewed the proposed development and is satisfied the prop

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

- **Waste material locations**

The submissions raised concerns that the proposed location for the waste bin and storage are

Comment:

The proposed location of the skip bins and other construction waste receptacles do not require ground excavation, therefore the root zones of trees within and within proximity to the subject site are unlikely to be destroyed.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, subject to conditions*** 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

Internal Referral Body	Comments
	The existing property contains managed landscape gardens that are generally preserved. The proposed works do not impact upon the landscape area within the frontage and the proposed works within the rear are upon existing hardstand or lawn areas. Two existing native Angophora trees exist and are recommended for retention and conditions shall be imposed for Project Arborist supervision to ensure no impact to these two trees. As noted in the Arboricultural Impact Assessment one exempt palm species is required to be removed and this does not require Council consent. All new landscaping should be managed in accordance with Planning for Bushfire Protection 2019. Landscape Referral raise no objections subject to conditions.
NECC (Coast and Catchments)	***Supported, subject to conditions*** This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Biodiversity & Conservation) 2021 (Clause 6.6 and 6.7); and • State Environmental Planning Policy (Resilience and Hazards) 2021 (clause 2.12); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies.
NECC (Development Engineering)	***Supported, subject to conditions*** The submitted drainage plan including OSD is acceptable. The proposed driveway crossing widening is also acceptable. Development Engineering support the proposal, subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, subject to conditions*** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	***Supported, subject to conditions*** The NSW Rural Fire Service has reviewed the proposed development and have included recommended conditions of consent, which have

External Referral Body	Comments
	been included within this report.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A470044, dated 5 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, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area
2.8 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 subject site is located within proximity to littoral rainforest. Council's Coast and Catchments Officer has reviewed the proposed development and has not raised concern regarding the proposal. As such, it is considered that the proposed development will not significantly impact upon the matters prescribed within (a) and (b) of the above Clause.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment:
The proposed development is unlikely to increase the risk of coastal hazards.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.14m	7.52%	No
Floor Space Ratio	FSR: 0.4:1 (230.6m^2)	FSR: 0.517:1 (298.14m^2)	29.25%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 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
6.12 Essential services	Yes

Detailed Assessment

Zone R2 Low Density Residential

R2 Low Density Residential zone Objectives

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

  Comment:
  The proposed development will be commensurate with the low-density residential environment to which the subject site is located. In this instance, the proposed development maintains the housing variety within the low-density residential area.

  The proposed development **achieves** this underlying objective.

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

  Comment:
  Zone R2 Low Density Residential zone permits a variety of land uses, subject to consent. The proposed development seeks to retain the existing residential use of the site. In this instance, the proposal continues to the current land use that would provide facilities or services that meet

the day to day needs of residents.

The proposed development **achieves** this underlying objective.

4.6 Exceptions to development standards

Description of non-compliance:

CLAUSE 4.3 HEIGHT OF BUILDINGS

Development standard:	Height of buildings
Requirement:	8.5 metres
Proposed:	9.14 metres
Percentage variation to requirement:	7.52%

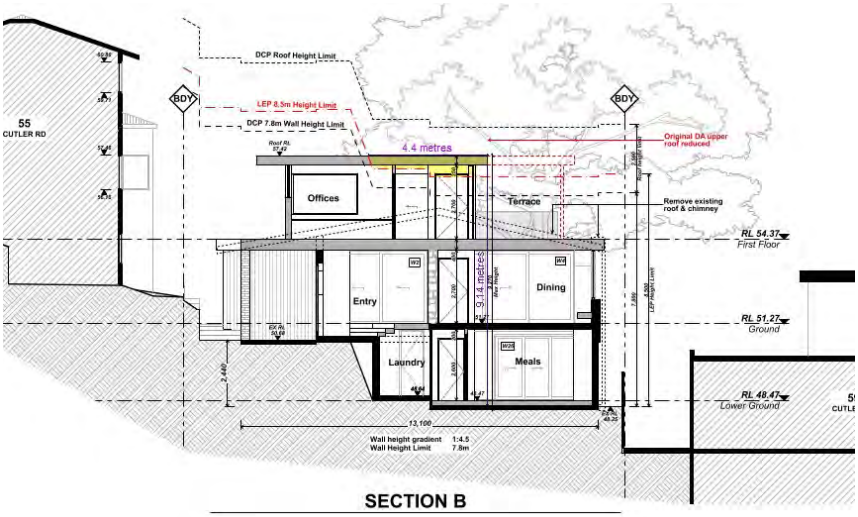


Figure 1. Maximum building height (extent of breach indicated in yellow).

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 OR Clause development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

The applicants written request argues, in part:

- *'The building height and low pitched roof form proposed are consistent with the built form characteristics established by surrounding development and development generally within the site's visual catchment...other dwelling house development within proximity of the site, and also located on sloping sites, breach the 8.5 metre building height standard including the recently approved and under construction development at No. 61 Cutler Road to the west of the site DA2017/1300.*
- *The building presents a predominantly 2 storey stepped building height to Cutler Road with the stepped building form acknowledging the topographic landscape of the land which falls away towards its western boundary. The portion of the development that exceeds the height standard is consistent with prevailing building heights* [of nearby residential developments].
- [The proposal is] *consistent with the desired future streetscape character given the non-compliant building height elements are generally limited to the upper-level roof form, including a relatively minor area of habitable floor space immediately below.*
- *Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of* Project Venture Developments v Pittwater Council (2005) NSW LEC 191*...most observers would not find the proposed development by virtue of its roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.*
- *The predominantly 2 storey stepped building form minimises the disruption of views to*

nearby residential development from the adjoining public spaces with the significant distance between the harbour and its foreshores and the subject site ensuring no discernible disruption of views to nearby residential development as a consequence of the building height breach (a view loss assessment has been undertaken, having regard to the principles as outlined within Tenacity Consulting v Warringah [2004] NSWLEC 140.

- *The accompanying shadow diagrams demonstrate that the building height breaching portion of the development will not give rise to any unacceptable shadowing impacting to the north facing living room and open space areas of the adjoining residential properties with compliant levels of solar access maintained...the extent of overshadowing cast by the building height breaching element will not prevent the orderly and economic use and development of any adjacent and nearby properties with skilful design ensuring compliant levels of solar access are able to be achieved should any surrounding properties be redeveloped notwithstanding that the primary living and private open space areas are likely to be orientated to the south to take advantage of available views.*
- *...Compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
- *Sufficient environmental planning grounds exist to justify the height of buildings variation namely the design constraints imposed by the floor levels established by the existing dwelling house in the context of an application seeking legitimate alterations and additions to an existing dwelling and the topography of the land which has a cross fall of approximately 3 metres in a westerly direction which makes strict compliance difficult to achieve whilst realising the orderly and economic use and development of the land.*
- [It is considered that the proposal is]...*of a skilful design which responds appropriately and effectively to the above constraints by distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes including a view sharing scenario.*
- *While strict compliance could be achieve a reduction in the internal ceiling heights to 2.4 metres at each level such outcome would not represent good design and would significantly compromise the design quality and amenity of the development in circumstances where the building height breaching elements do not give rise to unacceptable environmental consequences.*
- *...The proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.'*

It is considered the Applicant's written request to vary Clause 4.3 Height of Buildings of the *Manly Local Environmental Plan 2013* (MLEP 2013) is acceptable given the proposed resultant built form will be commensurate with surrounding and nearby residential developments, and that the site has experienced excavation that has manipulated the existing ground level, therefore establishing site constraints that makes strict compliance with this requirement difficult. It is noted that the slope of the land is significant, falling from the eastern boundary toward the western boundary (with a fall of approximately 5.89 metres [or 26.16%]). Based on the existing excavation of the site, the maximum building height has been measured in accordance with *Merman Investments Pty Ltd Woollahra Municipal Council* [2021] NSWLEC 1582. From an extrapolated measurement as done so within *Bettar v Council of City of Sydney* [2014] NSWLEC 1070, the proposed development would achieve compliance with the requirement prescribed within Clause 4.3 Height of Buildings. It is noted that the existing excavation of the site is a sufficient environmental planning ground to warrant contravention of this Clause.

The scope of non-compliance occurs for a length of 4.4 metres, where the existing ground level steps down to the lower ground level of the dwelling. The non-compliance is sited predominantly to the roof

form, with a small amount of wall encroaching beyond the maximum building height (as indicated in yellow in Figure 1, above). The breach is setback substantial distances from the front and rear boundaries, as well as the western side boundary. In this instance, the extent of non-compliance is unlikely to be discernible from the street frontage and adjoining properties, and it is unlikely to result in unreasonable amenity impacts upon adjoining properties.

Further, it is noted that amended plans were provided which removed the roof over the proposed terrace on the first floor level, thus minimising the extent of built form extending beyond the maximum building height, not necessarily reducing the maximum height breach (as the existing ground level has been established by the lower ground level). However, notwithstanding the numerical non-compliance, the building mass of the proposed dwelling will achieve compatibility and consistency with the building bulk of adjoining properties along the southern side of Cutler Road. In this instance, the overall building height will not adversely or unreasonably impact upon the existing character of the streetscape.

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:

Due to the steep topography of the subject site and surrounding land, the proposed maximum building height and amended roof form will be consistent with the topographic landscape, prevailing building heights of adjoining and nearby residential developments, and achieve consistency with the desired future streetscape character of the Clontarf locality.

The proposal **achieves** compliance with this objective.

b) to control the bulk and scale of buildings,

Comment:

Having regard to the portion of the building that extends beyond the prescribed maximum building height (being the roof form and small portion of the top of the wall to the western side of the first floor level), the proposal in its entirety is contextually appropriate to the subject site and commensurate with nearby and adjoining residential developments. Amended plans were provided which reduced the building footprint of the proposed first floor level, ensuring that the built form is controlled and minimised to achieve acceptable streetscape and residential amenity outcomes.

The proposal **achieves** compliance with this objective.

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:

A detailed view sharing assessment has been undertaken within this assessment and this can be found in this report under section 3.4.3 Maintenance of Views. The numerical non-compliance to this development standard does not give rise to any unreasonable view loss from adjoining properties. The extent of view loss, as assessed under section 3.4.3 Maintenance of Views, is determined as minor.

The proposal **achieves** compliance with this objective.

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:

Shadow diagrams have been provided with this application. A detailed assessment of the solar access to the subject site and adjoining properties has been undertaken in this report under section 3.4.1 Sunlight Access and Overshadowing. While technically non-compliant, the proposal is considered to be acceptable.

The proposal **achieves** compliance with this objective.

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 located within the R2 Low Density Residential zone within the MLEP 2013, which is not a recreation or environmental protection zone. Therefore, this underlying objective of Clause 4.3 is not for consideration for this assessment.

The proposal **achieves** compliance with this objective.

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

  The proposal **achieves** compliance with this objective.

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

  Comment:
  The proposed development is permissible within the R2 zone. Under this application, consent is not sought for other land uses permissible within the R2 zone. The proposed alterations and additions to the dwelling house will continue to meet the day to day needs of the residents of the subject site.

  The proposal **achieves** compliance with 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).

CLAUSE 4.4 FLOOR SPACE RATIO

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (230.6m^2)
Proposed:	0.517:1 (298.14m^2)
Percentage variation to requirement:	29.25%

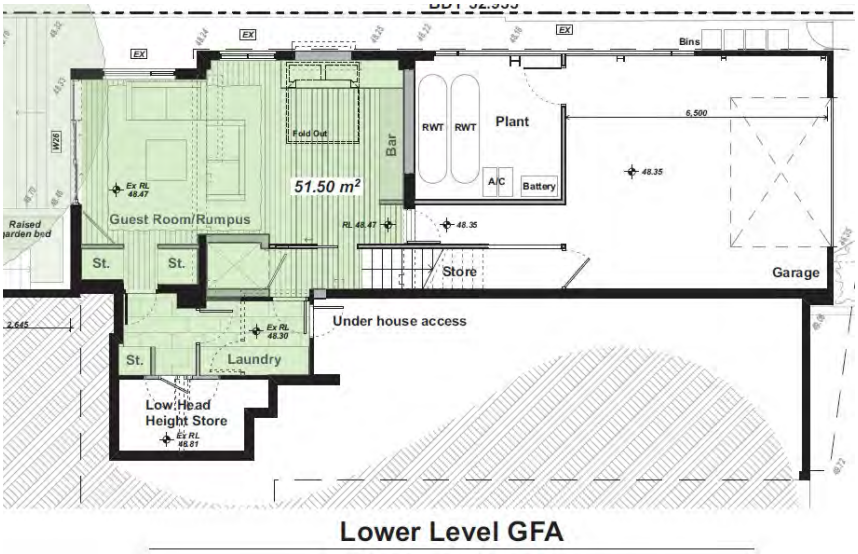


Figure 2. Lower level gross floor area (GFA; indicated in green).

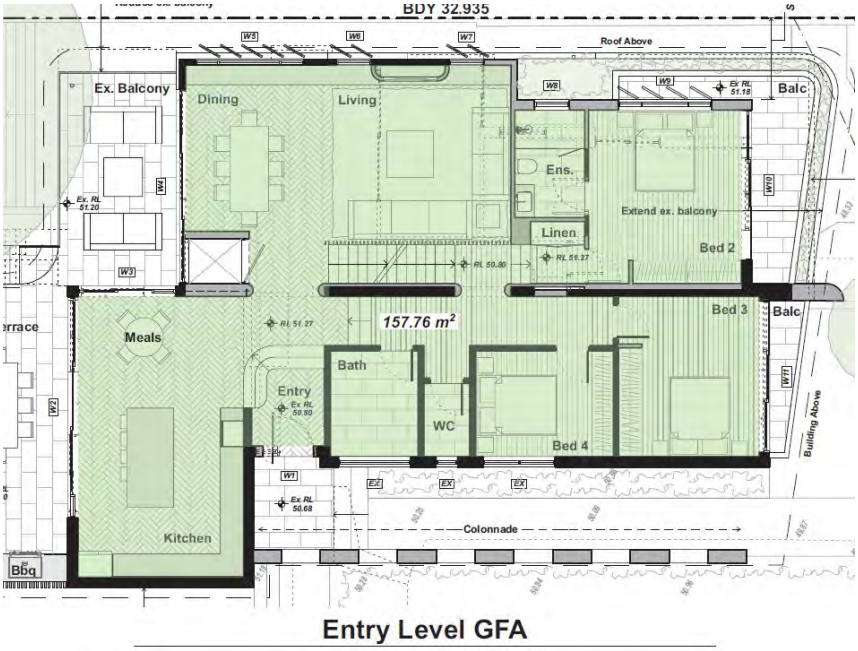


Figure 3. Ground level gross floor area (GFA; indicated in green).

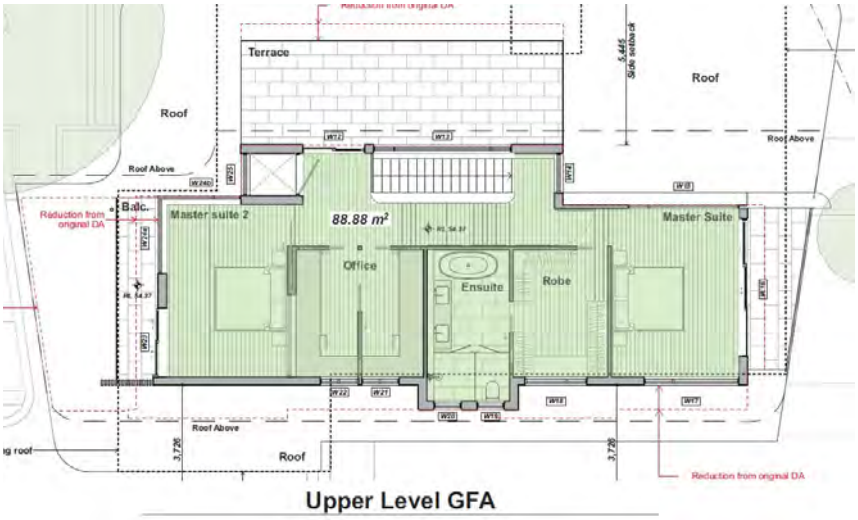


Figure 4. First level gross floor area (GFA; indicated in green).

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

The applicants written request argues, in part:

- *'...the proposal, as amended, result in a total gross floor area on the site of 298.14 square metres. This represents a floor space ratio of 0.571:1 and therefore non-compliant with the FSR standard by 67.54 square metres or 29.2%...Clause 4.1.3 of Manly Development Control Plan 2014 contains FSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the DCP provisions are satisfied. The Lot size map identifies the subject site as being in sub zone "R" in which a minimum Lot area of 750m^2 is required. The site having an area of only 576.5m2 is well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR provisions apply. Clause 4.1.3.1* [the MDCP 2013] *states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m^2 with an achievable gross floor area of 300m^2. In this regard, the 298.14m^2 of gross floor area*

proposed, representing an FSR of 0.397:1 (based on 750m2), is below the maximum prescribed gross floor area of 300m^2 and as such complies with the DCP variation provision. As the proposed GFA/FSR complies with Clause 4.1.3.1 MDCP numerical provision it is also 'deemed to comply' with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an appropriate visual relationships between new development and the existing character and landscape of an area.

- [The proposed development does not comply with the FSR requirement as prescribed under Clause 4.4 of the MLEP 2013], *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...because the objectives of the development standard are achieve notwithstanding non-compliance with the standard.*
- *The proposal presents a predominantly 2 storey stepped building height to Cutler Road with the stepped building form acknowledging (consistent with) the topographic landscape of the land which falls away towards its western boundary...most observers would not find the bulk and scale of the proposed development, as viewed from Cutler Road, to be offensive, jarring or unsympathetic in a streetscape context.*
- *Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 298.14m² of gross floor area proposed, representing an FSR of 0.397:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments...neither the LEP or DCP identify and important landscape or townscape features either on or within proximity of the subject site. The building density and bulk, in relation to a site area, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments...*
- *As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also "deemed to comply" with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an appropriate visual relationships between new development and the existing character and landscape of an area.*
- *In relation to landscape character, the application does not require the removal of any significant trees or vegetation with a building footprint maintained which is compliant with the total open space and landscaped area MDCP controls. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site. An appropriate visual relationship between new development and the existing landscape of the area is maintained.*
- [A view loss analysis has been undertaken by BBF from 1 Alder Street, Clontarf and 55 Cutler Road, Clontarf. The outcome from this is that the proposed development, notwithstanding the non-compliance to the requirements prescribed under Clause 4.4 of the MLEP 2013, is reasonable and acceptable and the extent of view loss from 55 Cutler Road, Clontarf is '*minor*' and the view loss from 1 Alder Street, Clontarf is *'negligible'*].
- *As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development minimises loss of privacy to adjacent and nearby development. Notwithstanding, we note that all surrounding properties are orientated to the south to take advantage of views towards Middle Harbour. This spatial relationship prevents direct overlooking between the living areas of these properties with a degree of mutual overlooking of private open space areas anticipated where all properties are orientated to take advantage of views. Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas to the south towards available views, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.*
- *The accompanying shadow diagrams demonstrate that the building, although non-compliant*

with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing north facing living room and open space areas of the adjoining residential properties with compliant levels of solar access maintained.

- *...the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.*
- *Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191...most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.*
- *Notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.*
- *Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.*
- [The proposed development is consistent with the R2 Low Density Residential objectives in that] *the development seeks legitimate alterations and additions to an existing dwelling house on the site which will provide for the housing needs of the community within a low density residential environment.*
- *Sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment. Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal satisfies such provisions.*
- *As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone'.*

It is considered that the Applicant's reasoning to vary Clause 4.4 Floor Space Ratio (FSR) of the *Manly Local Environmental Plan 2013* (MLEP 2013) is acceptable given the proposed resultant built form will be commensurate with the other residential developments within the visual catchment of the subject site, as well as those new developments within the wider locality of Clontarf.

The proposed first floor addition, which is the reason for the non-compliance to the requirements of Clause 4.4 FSR, results in compliant front and side setback distances, however it is noted that the non-compliance of the first floor level to the rear setback requirement has been increased (by way of amended plans, which form the basis of this assessment) to allow for acceptable view sharing across properties. It is concurred that the FSR non-compliance does not give rise to unreasonable amenity impacts upon adjoining properties.

An independent view loss assessment has been undertaken within this assessment report and this assessment found the proposed development, as amended, provides a reasonable sharing of views amongst properties.

Further, Council concurs that the subject site is considered an undersized allotment and can thus rely upon the exemption provisions as detailed under control 4.1.3 of the Manly Development Control Plan (MDCP). An independent assessment has been undertaken within this report and this assessment confirmed the subject site benefits from the undersized allotment provisions.

In this instance, the proposed resultant built form will be commensurate with adjoining and nearby two (2) and three (3) storey residential dwellings, with no adverse or unreasonable visual impact upon the existing streetscape, notwithstanding the numeric non-compliance to Clause 4.4 FSR.

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 extent of non-compliance with the FSR will not be easily discernible from the street frontage or adjoining properties. The overall built form will be commensurate with other two and three storey residential dwellings within the Clontarf locality.
>
> The proposal **achieves** compliance with this objective.

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:

Notwithstanding the numerical non-compliance to this development standard, the proposed development is located on an undersized allotment and, if the subject site achieved the minimum lot size of 750.0m^2, it would achieve compliance with this development standard. The proposal achieves compliance with the DCP numerical FSR exemption control that applies for undersized allotments (as discussed under section 4.1.3 Floor Space Ratio of this report). There are no important landscape and townscape features within proximity of the subject site, as such, the proposal is not at risk of obscuring such features.

The proposal **achieves** compliance with this objective.

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

Comment:

The proposed bulk of the built form, as detailed above and elsewhere throughout this assessment, is considered to be acceptable given the fact the subject site is an undersized allotment. In this instance, the proposed development will provide a single residential dwelling that is commensurate with adjoining and nearby residential properties along Cutler Road and other residential developments within the wider locality of Clontarf. No substantial vegetation or canopy trees (particularly the two [2] Angophoras on the site) are not proposed for removal. In this instance, the existing character and landscape of the Cutler Road streetscape will not be adversely or unreasonably impacted, rather the relationship between the proposed development and locality will be one of a positive nature that does not detract from the desired character of Clontarf.

The proposal **achieves** compliance with this objective.

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

Comment:

The proposed development is primarily sited over the existing building footprint, notwithstanding the proposed pool and adjacent terrace (which does not contribute to the contravention of Clause 4.4 of the MLEP 2013). The proposed development has been assessed against the relevant amenity controls stipulated within the MDCP and it is considered to achieve a built form that results in minimal environmental and amenity impacts upon adjoining private properties and the public domain.

The proposal **achieves** compliance with this objective.

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

Comment:

The subject site is located within the R2 Low Density Residential zone. Therefore, this objective is not for consideration under this development application.

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

  The proposal **achieves** compliance with this objective.

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

  Comment:

  The proposed development is permissible within the R2 zone. Under this application, consent is not sought for other land uses permissible within the R2 zone. The proposed alterations and additions to the dwelling house will continue to meet the day to day needs of the residents of the subject site.

  The proposal **achieves** compliance with 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).

6.9 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 subject site, while located within the foreshore scenic protection area, is located approximately 124.0 metres from the shore of Middle Harbour. Based on the topography of the land, and the substantial distance between the subject site and shore area, the proposed development is unlikely to result in an unreasonable amenity impact (including overshadowing and obstructing views from a public place to the foreshore area) upon the foreshore area, nor is it likely to impact upon the scenic quality of the coastline of Middle Harbour. The proposed development is suitable for the subject site as it is permissible development within the R2 Low Density Residential zone with the MLEP 2013, the subject site is located a significant distance from the shore of Middle Harbour as such the relationship and potential impact upon the foreshore area is minor and acceptable. The proposed development will not create conflict between land-based and water-based coastal activities.

The proposal **achieves** the objectives.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 576.5m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.2.1 Wall Height	**Eastern elevation** 6.6m (based on gradient 1:60)	5.82m - 6.9m	4.5% max.	Yes & No
	Western elevation 6.6m (based on gradient 1:60)	8.7m	31.8%	No
4.1.2.3 Roof Height	Height: 2.5m	0.36m	N/A	Yes
	Pitch: maximum 35 degrees	0 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	6m	**Ground Floor** *Dwelling*: 6.3m - 10.59m	N/A	Yes
		First Floor *Dwelling*: 8.61m - 15.36m	N/A	Yes
		Terrace: 14.2m - 15.3m	N/A	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages	**Eastern Boundary** 2.3m (based on one third of proposed max. wall height)	**Ground Floor** *Dwelling*: 1.4m & 4.6m *Rear terrace*: 1.47m *Front Balcony*: 4.8m	39.1% max. 36.0% N/A	No (existing) No Yes
		First Floor Dwelling: 3.05m & 3.7m *Rear balcony*: 3.7m *Front balcony:* 4.2m	N/A N/A N/A	Yes Yes Yes
	Western Boundary 2.9m (based on one third of proposed max. wall height)	**Lower Ground Floor** *Dwelling*: 0.96m & 1.4m	66.9% max.	No (existing)
		Ground Floor *Dwelling*: 1.06m & 2.1m *Rear balcony:* 1.4m *Front balcony*: 1.35m	63.4% max. 51.7% max. 53.4% max.	No No No
		First Floor *Terrace*: 2.4m *Dwelling*: 5.4m, 6.95m & 7.16m *Rear balcony*: 7.0m	17.2% N/A N/A	No Yes Yes
	Windows: 3m	**Eastern Elevation** *Lower Ground Floor:* <3.0m *Ground Floor:* <3.0m *First Floor:* >3.0m	N/A N/A N/A	No (existing) No Yes
		Western Elevation *Ground Floor:* >3.0m *First Floor:* <3.0m	N/A N/A	Yes No
4.1.4.4 Rear Setbacks	8m	**Lower Ground Floor** *Dwelling:* 7.3m	8.75%	No
		Ground Floor *Dwelling*: 7.5m & 10.4m *Terrace*: 3.5m - 5.1m *Balcony*: 7.3m	6.25% 56.2% 8.75%	No (existing) No No (existing)
		First floor *Dwelling*: 8.0m *Terrace*: 10.4m *Balcony*: 6.8m	N/A N/A 15%	Yes Yes No
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 60% (345.9m^2) of site area	54.7% (315.6m^2)	8.8%	No

Residential Open Space Area: OS4	Open space above ground 25% (78.9m^2) of proposed total open space	17.3% (54.7m^2)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (126.24m^2) of proposed total open space	32.2% (101.7m^2)	19.5%	No
	3 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18.0m^2	>18.0m2	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	3.73m (22% of frontage)	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.4m - 0.5m	N/A	Yes
	Curtilage 1m	0.75m	25%	No
	Water Side & Rear 1.5m	Rear setback: 1.0m Side setback: 2.8m (E); 5.9m (W)	N/A N/A	Yes Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	50%	No (existing)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	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
3.5.5 Landscaping	Yes	Yes
3.6 Accessibility	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

3.4.1.1 Overshadowing Adjoining Open Space
This control stipulates that any new development, including alterations and additions, must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (being 21 June). Shadow diagrams have been provided which indicates additional overshadowing at 12pm to the private open space of 4 and 3 Castle Rock Crescent to the south of the subject site, and at 3pm to 3 Castle Rock Crescent. At 3pm, additional overshadowing is cast to the side boundary of 55 Cutler Road, which is the property to the east of the subject site.

It is noted that the main private open space at 59 Cutler Road (the adjoining property the west) is sited within the northern portion of the property along the Cutler Street frontage. The proposed development does not create additional overshadowing of more than one third to the private open space area of this property. Additionally, the no solar access is obtained at 9am for properties to the west, and the subject site, due to the steep topography of the land falling to the west.

Notwithstanding, the proposed development does not eliminate more than one third of the existing solar

access to the private open space of adjoining and nearby properties.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties
This control stipulates that for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the Winter solstice. And, for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

With regards to the windows along the eastern elevation of 55 Cutler Road, the proposed development provides solar access from 12noon; for 59 Cutler Road, the proposal provides solar access between 9am and 3pm, with overshadowing commencing at 3pm onwards. The dwellings along Castle Rock Crescent are sited outside of the proposed overshadowing, as such the proposal does not impact upon solar access into internal living areas of these dwellings.

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 equitable access to light and sunshine.

Comment:

The proposed development provides acceptable and equitable solar access to the private open spaces and internal living areas of adjoining properties.

The proposal **achieves** this objective.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

Notwithstanding the additional overshadowing to adjoining properties, the proposal provides an acceptable level of solar access noting that the overshadowing is not unreasonable given the orientation of the allotment and the steep topography of the land.

The proposal **achieves** this objective.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

As detailed above, and on the proposed shadow diagrams, the proposed development allows for the penetration of sunlight into the windows, living rooms and principal outdoor areas of adjoining properties.

The proposal **achieves** this objective.

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

3.4.2 Privacy and Security

Description of non-compliance

3.4.2.1 Window Design and Orientation
This control requires the use of narrow, translucent or obscured glass windows to maximise privacy, where necessary and that when building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

3.4.2.2 Balconies and Terraces
This control stipulates that architectural or landscape screens must be provided to balconies and terraces to limit overlooking of nearby properties. If an architectural screen is proposed, these must be fixed in position and suitably angled to protect visual privacy. Further, a recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment:

Lower ground level

- No new windows are proposed on the lower ground floor along the western elevation (the eastern elevation of the lower ground level is subterranean with no existing windows and no possibility of installing new windows).
- The new door to the rumpus room will replace the existing door. In this instance, there is no material impact on privacy arising from this new door.

Ground level

- No new windows are proposed along the eastern elevation.
- The existing balcony, located off the proposed dining and living area, is not changing (see Figure 6 and 7 below for existing view from the balcony). Therefore, there is no material increase in privacy impact, as such this development will not require a privacy screen along the western elevation.
- The new windows proposed along the western elevation (sited to the dining and living area, bedroom 2 and the en-suite for bedroom 2) will have fixed screens (excluding the window for the en-suite). In this instance, a condition is recommended to ensure the window sited the en-suite (being W8) is appropriately treated with an obscured glazing to ensure privacy for the occupants of the subject site and those of adjoining properties. Additionally, this terrace is located over 10.0 metres from the rear southern boundary. This provides ample spatial separation between

the terrace and adjoining properties, particularly 3 Castle Rock Crescent, Clontarf.

- The proposal includes new doors to the kitchen and meals area, with a new terrace sited off these internal rooms, which increases the outdoor recreational use of the site. The new terrace includes a privacy screen to the eastern elevation (with a maximum height of 2.7 metres when measured from the finished floor level), which provides an acceptable level of privacy between properties. The new terrace is located on the existing RL of the lawn (being RL51.20). In this instance, the recommended condition of screen planting along the rear boundary for the extent of the pool enclosure, and the fact there are no windows along the northern elevation of the dwelling at 3 Castle Rock Crescent, means the new doors and terrace located off the rear of the dwelling are unlikely to cause unreasonable privacy impacts upon the subject site and adjoining/nearby properties.



Figure 5. Existing view of 59 Cutler Road, facing west, standing on the balcony.



Figure 6. Existing view of 59 Cutler Road, facing south-west, standing on the balcony.

First level

- New windows and doors along all elevations, with no fixed angled screens proposed to windows along both the eastern and western elevations.
- W17 (sited to Master Suite 1), W18 (sited to walk-in robe for Master Suite 1), W19 and W20 (sited to the en-suite for Master Suite 1) along the eastern elevation are off-set from the windows along the western elevation of 53 Cutler Road, Clontarf. These windows are considered acceptable. To ensure a high level of privacy for the occupants using the en-suite, a condition will be recommended to ensure W19 and W20 are treated with obscured glazing.
- W20 and W21 are sited to the Office along the eastern elevation. These windows have a sill height of 1.55 metres when measured from the proposed finished floor level. The boundary survey provided shows the location of the windows on adjoining properties, including 55 Cutler Road. This assessment has found that W20 and W21 are not off-set from the windows of 55 Cutler Road (sited along the western elevation at the front of the dwelling). In this instance, a condition will be recommended to alter these windows to ensure a minimum sill height of 1.65 metres, when measured from the finished floor level.
- A new terrace is proposed along the western elevation, with access obtained from the hallway. Amended plans were provided which increased the western side setback to the new terrace from 1.90 metres to 2.45 metres. As will be indicated in the Figures below, due to the steep topography of the land which falls to the west, the existing dwelling sits significantly higher than the dwelling on the low-lying property to the west, being 59 Cutler Road. In this instance, the proposed terrace will not look directly into adjoining windows, rather it will look over the roof and beyond. A privacy screen was considered along the western elevation, however this would add considerable building bulk which would result in an unacceptable planning outcome. In this instance, the potential privacy impact has been mitigated and minimised appropriately.
- A new rear balcony is located off Master Suite 2, with a fixed privacy screen proposed along the eastern elevation, measuring a maximum height of 2.7 metres. While this is higher than the usual height of a privacy screen, it is considered acceptable due to the slope of the land, which results in the adjoining property to the east, being 55 Cutler Road, being at an angle that could result in direct overlooking on the balcony. Further, amended plans were provided which reduced the depth of this balcony from 2.24 metres - 3.34 metres to 1.20 metres.

Subject to the recommended conditions, the proposed development can achieve the requirements of these controls. In this instance, a merit assessment of the proposal against the underlying objectives of this control has been undertaken below.

Merit consideration:

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

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

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

Comment:

Subject to recommended conditions, the proposal will result in an acceptable level of privacy for the occupants of the subject site and those of adjoining properties.

The proposal **achieves** this objective.

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

Comment:

As detailed above, the proposal includes privacy screens affixed to balconies and terraces, where necessary, and angled fixed screens to windows. These privacy mitigation strategies will not adversely or unreasonably compromise access to light and air.

The proposal **achieves** this objective.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

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

The proposal **achieves** this objective.

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

3.4.3 Maintenance of Views

Detailed description of non-compliance

A submission has raised concern that the proposed development will result in unreasonable impacts upon views obtained from the property to the east, being 55 Cutler Road Clontarf. Amended plans were provided which increased the rear setback distance to the proposed first floor level, thus addressing view loss concerns. The submission has been accompanied by a view loss analysis. However, this is based upon the original proposed plans and are not indicative of the amended plans to which this assessment is based upon. Notwithstanding, a view loss assessment has been undertaken below.

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.
Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).
Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

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

Comment:

55 Cutler Road, Clontarf, enjoys partial Harbour water views, and partial land-water interface, as well as district views to the west, south-west and south. The views to the south and south-west includes Chinaman's Beach, Balmoral Beach (which includes Bather's Pavilion) and Sydney City (which includes the Centre Point Tower). The view of Bather's Pavilion is not considered as 'iconic' as this building is locally specific and a reasonable person is unlikely to know this building. However, the views of Sydney City could be considered as 'iconic'.

In this instance, the views obtained toward the south, which includes Sydney City, are valued more highly than the views obtained toward the west and south-west that includes the land-water interface, district views and Chinaman's Beach, which are obscured by the surrounding built and natural environment.

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:

55 Cutler Road enjoys views across the side and rear boundaries, but primarily over the side boundary toward the south-west and west. The views are enjoyed from both a standing and a seated position. Multiple windows along the western elevation of 55 Cutler Road, Clontarf, provide views. The following figures show the extent of views obtained from 55 Cutler Road.



Figure 7. Standing in the ground floor living room facing south-west, over the side boundary (Chinaman's Beach can be seen in this figure).



Figure 8. Sitting in the living room on the ground floor level facing west (with the visual catchment including south-west) over the side and rear boundary.



Figure 9. Sitting in the living room on the ground floor level facing south-west over the side and rear boundary.



Figure 10. Standing in the living room on the ground floor (in the northern corner of the living room), facing west/south-west over the side boundary.



Figure 11. Standing in the living room on the ground floor facing south over the rear boundary (Bather's Pavilion at Balmoral beach can be seen above the fence through the vegetation).



Figure 12. Standing in the living room on the ground floor level, facing south-west over the side boundary (Chinaman's Beach and Bather's Pavilion at Balmoral Beach can be seen in this figure).



Figure 13. Standing in the living room on the ground floor level, facing west, over the side boundary.



Figure 14. Standing in the living room on the ground floor, facing north-west, over the side boundary.



Figure 15. Standing on the front entry deck on the ground floor, facing south-west over the side boundary.



Figure 16. Standing on the deck on the first floor, facing west over the side boundary.



Figure 17. Standing on the deck on the first floor level, facing south-west over the side and rear boundary.



Figure 18. Standing on the deck on the first floor level, facing south/south-west over the rear and side boundary.

The view analysis prepared by Boston Blythe Fleming Town Planners (dated 8 March 2023) relies upon images and floor plans of 55 Cutler Road, Clontarf obtained from realestate.com.au, noting that the first floor level of this dwelling includes the primary living and dining areas, and the kitchen, with the bedrooms being located on the ground floor level. Upon a site visit during the course of the assessment of this application, it was observed that Bedroom 1, as indicated on the floor plan obtained from realestate.com.au, is actually used as the primary living area. As such, the view loss assessment will be based upon the current use of the rooms within the dwelling at 55 Cutler Road, Clontarf, not as shown on the floor plans from realestate.com.au.

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:

With consideration of the whole of the property, the views shown in Figures 7-9, 11, 13, and 16-18 will be retained. The impact of the proposed development from the living room on the ground floor, particularly to the windows along the south-western corner of this room, at 55 Cutler Road, is minor as the rear of the dwelling at 55 Cutler Road is sited closer to the rear boundary than the proposed first floor level at the subject site.

The Harbour views obtained from the north-western corner of the living room, as shown in Figures 10 and 12 will be impacted. The view obtained as shown in Figure 10 will be completely removed. However, this is a small corner of the living room, noting that the views as shown in Figures 7-9 remain. While the proposal will remove views entirely from this window, the retention of views from other points of this room means the extent of view loss is considered minor. The views obtained as shown in Figure 12 will be partially removed, however the district view and land-water interface view towards Balmoral Beach will be retained.

The assessment has found that the extent of view loss, when considering the *whole* of the property, is considered minor and the proposed development will provide an acceptable view sharing outcome.

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:

Amended plans were provided which increased the rear setback distance to the proposed first floor level (from 4.0 metres - 4.95 metres to 6.8 metres). While not technically numerically compliant with the minimum requirement of 8.0 metres, the proposed rear building line will allow for a reasonable sharing of views, as indicated in the figures above. Further, the proposal results in a maximum building height of 9.14 metres which is beyond the maximum building height as prescribed under Clause 4.3 of the *Manly Local Environmental Plan 2013* (MLEP 2013). However, due to the slope of the land, the maximum height breach is sited along the western elevation where the site slopes away to the west. As such, this breach does not create any material impact upon the extent of view loss to 55 Cutler Road, Clontarf, which is sited to the east of the subject site. The proposal also fails to comply with the maximum floor space ratio as prescribed within Clause 4.4 of the MLEP 2013. However, the site is considered as an undersized allotment and, if the site did meet the minimum lot size as detailed on the Manly Lot Size Map within the MLEP 2013, it would achieve compliance with Clause 4.4 of the MLEP 2013. Notwithstanding, the breach to the maximum requirement of Clause 4.4 applicable to the subject site does not give rise to an unreasonable impact upon the equitable sharing of views, which is achieved based on the amended scheme.

Additionally, the proposal results in the following non-compliances to the relevant Manly Development Control Plan (MDCP): wall height, side and rear setbacks, total open space, landscaped area and the curtilage for the swimming pool. The portion of the development along the eastern side boundary (adjacent to 55 Cutler Road) achieves compliance with the maximum allowable wall height and side setback for the proposed first floor level. However, where there is a non-compliance to the side setbacks, this is sited at the ground level and does not create unreasonable impacts upon views for the adjoining property. The rear setback non-compliance to the proposed first floor level has been increased through amended plans, to which this assessment is based upon. As shown in the figures above, it is considered that the proposed rear setback distance does not create an unreasonable view impact.

Notwithstanding the numerical non-compliances to relevant controls within the MLEP and MDCP, the extent of view loss, which is considered as minor when assessing the views obtained form the *whole* property, is acceptable, in this instance.

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

4.1.2.1 Wall height
This control requires development to result in a maximum wall height that is calculated based on the slope of the land sited under the proposed wall.

The topography of the land has been substantially manipulated over the years, resulting in extensive excavation. The gradient of the land sited under the external walls along the eastern and western elevations are as follows:

- Eastern Elevation: 1:60
- Western Elevation: 1:60

In this instance, the *maximum wall height requirements* are as follows:

- Eastern Elevation: 6.6 metres
- Western Elevation: 6.6 metres

The *proposed wall heights* are as follows:

- Eastern Elevation: 5.82 metres - 6.9 metres (gradually becoming non-compliant, presenting a maximum variation of 4.5%)
- Western Elevation: 8.7 metres (presenting a variation of 31.8%)

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposed wall heights, notwithstanding the numerical non-compliance, can be supported on its merits.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the Floor Space Ratio (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 requirements stipulated within Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene this development standard.

The subject site has a total area of 576.5m^2 and has an FSR requirement of 0.4:1 (or 230.6m^2) under the MLEP 2013. The proposed FSR is 298.14m^2, which presents a variation of 29.28%. However, under this control, the subject site is an 'undersized allotment' as it is located within Area B on the LEP LSZ map, which requires a minimum lot size of 750.0m^2. When calculating the FSR against a site area of 750.0m^2, the proposed development would result in an FSR of 0.397:1, which would technically comply if the subject site adhered to the minimum site area for Area B.

Notwithstanding, the proposal has been assessed against the requirements and objectives of Clause 4.6 of the MLEP 2013 within this report.

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
This control requires development to be setback from the side boundary at a distance calculated from one third of the proposed wall height.

Based on the requirement, the *proposed wall heights* are as follows:

- Eastern Elevation: 5.82 metres - 6.9 metres (Note: the side setback will be based on the maximum wall height of 6.9 metres)
- Western Elevation: 8.7 metres

The *required side setbacks* are as follows:

- Eastern Boundary: 2.3 metres
- Western Boundary: 2.9 metres

The *proposed side setbacks* are as follows:

- **Eastern Boundary:**
  - Ground Floor
    - Dwelling: 1.4 metres and 4.6 metres (this is existing and remains unchanged, and pre
    - Rear terrace: 1.47 metres (this presents a variation of 36.0%).
    - Front balcony: 4.8 metres.

  - First Floor
    - Dwelling: 3.05 metres to 3.7 metres.
    - Rear balcony: 3.7 metres.
    - Front balcony: 4.2 metres.

- **Western Boundary:**
  - Lower Ground Floor
    - Dwelling: 0.96 metres to 1.4 metres (this is existing and remains unchanged, and pres

  - Ground Floor
    - Dwelling: 1.06 metres and 2.1 metres (this presents a maximum variation of 63.4%).
    - Rear balcony: 1.4 metres (this is existing and remains unchanged, and presents a var
    - Front balcony: 1.35 metres (this presents a variation of 53.4%).

  - First Floor
    - Dwelling: 5.4 metres, 6.95 metres, and 7.16 metres.
    - Terrace: 2.4 metres (this presents a variation of 17.2%).
    - Rear balcony: 7.0 metres.

Multiple windows are proposed along both the western and eastern elevations, all of which are sited within 3.0 metres of the side boundaries, which is non-compliant with the minimum requirement. The potential privacy impact arising from these windows have been addressed elsewhere within this report, under section 3.4.2 Privacy and Security.

4.1.4.4 Rear setbacks
This control requires development to be setback 8.0 metres from the rear boundary line.

The proposed swimming pool is sited entirely within the rear setback area. This, however, has been addressed within this report under section 4.1.9 Swimming Pools, Spas and Water Features.

The proposed alterations to the dwelling house results in the following setback distances:

- Lower Ground Floor: 7.3 metres (this is existing and unchanged, and results in a variation of 8.75%).

- Ground Floor:
  - Dwelling: 7.5 metres and 10.4 metres (this is existing and unchanged, and presents a maximum variation of 6.25%).
  - Terrace: 3.5 metres to 5.1 metres (this presents a maximum variation of 56.2%).
  - Balcony: 7.3 metres (this is existing and remains unchanged, and presents a variation of 8.75%).

- First Floor:
  - Dwelling: 8.0 metres.
  - Balcony: 6.8 metres (this presents a variation of 15%).
  - Terrace: 10.4 metres.

Where the proposed development seeks to retain the existing non-compliant side and rear setback distance, a detailed merit consideration will not be undertaken.

Where there is a proposed new non-compliance, a detailed merit assessment has been undertaken against the underlying objectives of this control as follows:

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 achieves compliance with the front setback requirement of 6.0 metres. The proposed rear setback distances have no bearing on the existing streetscape and desired spatial proportions of the street, the street edge. The eastern side boundary setback distance to the ground floor level is existing and remains unchanged under this development application. The proposed first floor level achieves compliance to the eastern side setback, thus creating ample spatial separation between the subject site and the adjacent dwelling to the east.

The proposed western side setback on the lower ground level is existing and remains unchanged. The proposed alterations to the ground and first floor levels gradually step in along the western elevation, providing a degree of articulation, noting that the amended plans removed the first floor level roof above the terrace which adheres to the spatial proportions of the street.

The retention of the large Angophora's in the north-eastern front corner of the site and the south-

western rear corner of the site will continue to contribute to the landscape character of the street.

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:

As detailed within this report under section 3.4.2 Privacy and Security, the proposed development provides an acceptable level of privacy, subject to recommended conditions requiring minor alterations to proposed windows along the side elevations. As conditioned, the proposed development results in an acceptable level of privacy for the occupants of the subject site and those of adjoining properties. Shadow diagrams have been provided with this application and it is noted the proposal achieves compliance with the requirements of sunlight access as prescribed within control 3.4.1 Sunlight Access and Overshadowing within the MDCP. A detailed assessment for view sharing has been undertaken within this assessment report under section 3.4.3 Maintenance of Views in accordance with the four-part test within *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. Additionally, the proposal provides adequate articulation that will positively contribute to the character of the streetscape. Finally, the proposed off-street parking arrangement provides for safe vehicular egress, the existing levels of visibility from the subject site to the street does not change as a result of the proposed development.

The proposal **achieves** this objective.

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

Comment:

Notwithstanding the non-compliances to the side and rear setback requirements, there remains ample room to navigate the site around the siting of the building.

The proposal **achieves** this objective.

Objective 4) To enhance and maintain natural features by:

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

Comment:

No significant vegetation is proposed to be removed to facilitate the proposal.

The proposal **achieves** this objective.

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

Comment:

A Bushfire Assessment Report was submitted with the application that included a certificate (prepared by Bushfire Planning & Design, dated 10 August 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bushfire Assessment Report have been included as conditions of consent, should this application be approved. Further, this certificate recommended the application be referred to the NSW Rural Fire Service (NSW RFS). The NSW RFS reviewed the proposal and provided comment and recommendations, which will be included as a condition of consent, should this application be approved.

The proposal **achieves** this objective.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

4.1.5.1 Minimum Residential Total Open Space Requirements
4.1.5.2 Landscaped Area

The subject site is located within Area 2 of the Total Open Space mapping. As such, the site is required to provide 60% (345.9m^2) of the site area as total open space, and 40% (126.24m^2) of the proposed total open space is to be landscaped area, both with minimum dimensions of 3.0 metres with an unbreakable area of at least 12.0m^2.

The site currently provides the following:

- Total open space: 318.0m^2
- Landscaped area: 195.9m^2

The proposal provides the following:

- Total open space: 315.6m^2
- Landscaped area: 101.7m^2

There are areas throughout the site that are less than the required 3.0 metre minimum dimensions which, by definition of landscaped area within the MLEP 2013, are considered as landscaped areas.

With these areas included, the total landscaped area is increased to 181.8m^2, which exceeds the minimum numeric requirement.

Based on the above, the proposal seeks a variation to the numerical requirement of both the total open space and the landscaped area minimum requirements. In this instance, the proposal is assessed against the underlying outcomes of this control, as follows:

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 subject site has two (2) large trees (*Angophora Costata*) - one with the front setback area, and the other within the rear setback area. These trees are being retained. In this instance, the proposal retains these important landscape features and vegetation (which includes remnant populations of native flora and fauna).

The proposed development **achieves** this objective.

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:

As detailed above, and notwithstanding the removal of lawn area to facilitate the proposed swimming pool, there remains ample soft landscaped areas throughout the site that will encourage tree planting, noting that the proposal seeks to retain the native vegetation and trees on the site.

The proposed development **achieves** this objective.

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

Comment:

Notwithstanding the numeric non-compliance to the minimum requirement for total open space, the proposed development will provide an acceptable level of amenity for the occupants of the subject site, and those of adjoining properties. As detailed elsewhere in this report, the proposed development will not adversely impact upon the amenity of the streetscape.

The proposed development **achieves** this objective.

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

Comment:

Notwithstanding the technical numerical non-compliance to the requirements for landscaped open

space, the proposed development will continue to provide for a high level of water infiltration into porous landscaped areas and surfaces (including the swimming pool) to minimise stormwater runoff. Further, Council's Development Engineer has reviewed the proposed development and has not raised concern regarding the management of stormwater runoff, subject to recommended conditions relating to stormwater management.

The proposed development **achieves** this objective.

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

Comment:

The proposed development includes some landscaping, comprising laid turf within the front setback area. In this instance, the possibility of the spread of weeds is minimal.

The proposed development **achieves** this objective.

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

Comment:

The retention of on-site vegetation will allow for wildlife habitat, and potential wildlife corridors, are maximised.

The proposed development **achieves** this objective.

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

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

The subject site, as existing, has one (1) off-street parking space sited within the existing garage. The proposed development does not seek to change this. As such, a detailed merit assessment is not required in this instance.

4.1.9 Swimming Pools, Spas and Water Features

Detailed description of non-compliance

4.1.9.1 Height above ground
This control requires pools and spas be built on or in the ground and not elevated more than 1.0 metres above the natural ground level. Consideration of any exception to exceed this requirement must demonstrate that the pool and/or spa and it's curtilage/concourse that is more than 1.0 metre above natural ground level:

i) would not detract from the amenity or character of the neighbourhood; and
ii) is a minimum distance from any side boundary equivalent to the height of the pool and/or spa and it's curtilage and/or concourse at any point above ground level.

Comment:
Due to the slope of the land, the rear yard has been terraced with a lawn level ranging between

RL51.38 and RL50.65 off the kitchen, then steps down to another lawn area of approximately RL48.88. The lower lawn RL shall remain as is under this development application, and the proposed swimming pool will be constructed within the top lawn area, with a curtilage/concourse level of RL51.20 to align with an existing RL51.20 located off the kitchen.

The portion of the swimming pool above ground level (toward the western end of the pool) is 0.94 metres. In this instance, the proposal achieves compliance with this requirement.

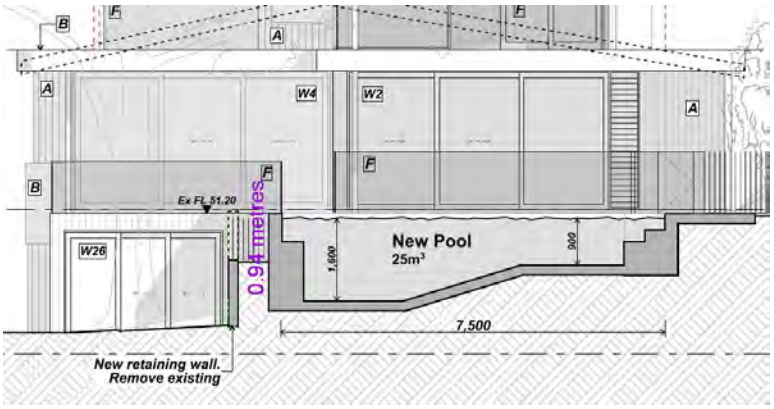


Figure 5. Maximum height of the swimming pool above ground level.

4.1.9.2 Location and setbacks
This control requires the following setback distances to the pool and it's curtilage/concourse:

- Not located within the front setback area
- At least 1.0 metres from the outer edge of the pool/spa concourse to the side and rear boundary
- At least 1.5 metres from the water line of the pool/spa concourse to the side and rear boundary

Comment:
The proposed swimming pool is not located within the front setback area. The proposal achieves compliance with the minimum requirement to the water line along both the side and rear boundaries. However, the proposed curtilage to the rear boundary is 0.75 metres, which is within the rear setback area and presents a variation of 25%. An assessment of this non-compliance has been undertaken against the underlying objectives of this control below.

4.1.9.3 Proportion of Total Open Space
This control stipulates that swimming pools and/or spas must not exceed 30% of the total open space.

Comment:
The proposed total open space is 315.6m^2 (or 54.1%). 30% of this is 94.68m2. The proposed swimming pool area, including the curtilage/concourse area is 30.6m2. This is less than the maximum 30%. The proposal achieves compliance with the requirements of this control.

Merit consideration

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

Comment:
The proposed swimming pool is sited predominantly in-ground, until the western end of the swimming

pool which is located where the existing terraced yard drops away. Notwithstanding, the western end of the swimming pool has no concourse or surrounding terrace, ensuring a high level of privacy is maintained for the occupants of the subject site and those of adjoining properties. Further, amended plans were provided which increased the rear setback distance to allow for a reasonable area to facilitate screen planting, which will be recommended as a condition within this report. The proposed swimming pool filter/pump has not been shown on the amended plans. In this instance, a condition will be recommended to ensure that the pool filter/pump is located in a reasonable area on the subject site to limit noise to the appropriate standard.

The proposal **achieves** this objective.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:
The proposed swimming pool is located within the rear yard and cannot be viewed from the street frontage. In this instance, the streetscape will not be adversely impacted. Further, swimming pools are a common ancillary development to residential developments within the locality.

The proposal **achieves** this objective.

Objective 3) To integrate landscaping; and

Comment:
As detailed above, the proposed development was amended to increase the pool curtilage setback distance to the rear boundary to ensure the facilitation of screen planting along the rear boundary for the extent of the swimming pool enclosure (this will be included as a recommended condition).

The proposal **achieves** this objective.

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

Comment:
The subject site is located within bushfire prone land. The pool may be a suitable water resource during bushfire emergencies.

Based on the above assessment, it is concluded that the proposed development achieves the underlying objectives of this control. The application is supported on merit, in this particular instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $9,185 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $918,500.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including a swimming pool has been referred to the Development Determination Panel (DDP) as the proposed maximum floor space ratio exceeds the requirement by more than 10%.

The concerns raised in the objections have been addressed within the assessment report. The amended plans have reduced the proposed first floor level, as such it is considered that the concerns relating to building bulk, privacy and view loss have been resolved. However, where necessary, recommended conditions have been included to minimise amenity impacts upon adjoining properties.

The critical assessment issues include Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio, Clause 4.6 Exceptions to development standards, and Clause 6.9 Foreshore scenic protection area within the Manly Local Environmental Plan 2013 (MLEP 2013); and sunlight access and overshadowing, privacy and security, maintenance of views, height of buildings (wall height), floor space ratio (FSR), setbacks and building separation, open space and landscaping, parking, vehicular access and loading, and swimming pools, spas and water features.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/1675 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 30 DP 25654, 57 Cutler Road, CLONTARF, 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**
A.01 Rev B. Site Plan + Site Analysis	9 March 2023	Gartner Trovato Architects
A.02 Rev B. Lower Ground	9 March 2023	Gartner Trovato Architects
A.03 Rev B Ground Floor	9 March 2023	Gartner Trovato Architects

A.04 Rev B First Floor	9 March 2023	Gartner Trovato Architects
A.05 Rev B North + East Elevation	9 March 2023	Gartner Trovato Architects
A.06 Rev B South + West Elevation	9 March 2023	Gartner Trovato Architects
A.07 Rev B Sections	9 March 2023	Gartner Trovato Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
CIV1 Sediment & Erosion Control Plan / Detailing	9 September 2022	Barrenjoey Consulting Engineers Pty Ltd
SW1 Site Stormwater Management Plan	9 September 2022	Barrenjoey Consulting Engineers Pty Ltd
Sw2 Site Stormwater Management Detailing	9 September 2022	Barrenjoey Consulting Engineers Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate A470044	5 September 2022	Gartner Trovato Architects
Arboricultural Impact Assessment Report (Ref: 12222)	13 September 2022	Rain Tree Consulting Arboricultural Management
Bushfire Risk Assessment and Certificate	10 August 2022	Bushfire Planning and Design
Geotechnical Investigation (Ref: J4435)	2 August 2022	White Geotechnical Group

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	5 September 2022	Luka Popovac

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	Not dated
NSW Rural Fire Service	DA20230227000829-Original-1	8 March 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 site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Dwelling House, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

'Dwelling house means a building containing only one dwelling'

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

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

4. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

that Act,

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

5. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

(c) At all times after the submission the Notice of Commencement to Council, a copy of the

Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $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 $9,185.00 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 $918,500.00.

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

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

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

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

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. **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.

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

- The proposed privacy screen along the eastern elevation of the first floor level balcony (located off Master Suite 2), is to extend for the full extent of the balcony width and shall not overhang beyond the width of this 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.

10. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

12. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Barrenjoey Consulting Engineers Pty Ltd, drawing number 220802 SW1DA and SW2DA, dated 09/09/22. 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. An overflow pipe is to be provided within the OSD tank connected to the outlet pipe from the OSD tank.
2. An inspection grate is to be provided at each end of the OSD tank.
3. Junction pits or cleaning eyes are to be provided at changes in direction of the pipeline.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

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

Reason: To provide public and private safety.

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

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

Reason: To facilitate suitable vehicular access to private property.

15. **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.

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

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

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

17. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

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

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Project Arborist**
A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and the recommendations of the Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
i) section 2.2 Specific tree management recommendations,
ii) section 2.3 General tree protection requirements

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

All tree protection measures specified must:
a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:
i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
ii) all trees and vegetation located on adjoining properties,
iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Principal Certifier must ensure that:
d) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint to the recommendations of the Arboricultural Impact Assessment.
e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

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

Reason: Public safety.

23. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

24. **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.

25. **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.

26. **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.

27. **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.

28. **Traffic Control During Road Works**
Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

29. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing Extra Low 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.

30. **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

31. **Landscape Completion**
Any landscape areas requiring planting shall be provided in accordance with the following conditions:
i) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Reason: Environmental amenity.

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. **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.

34. **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.

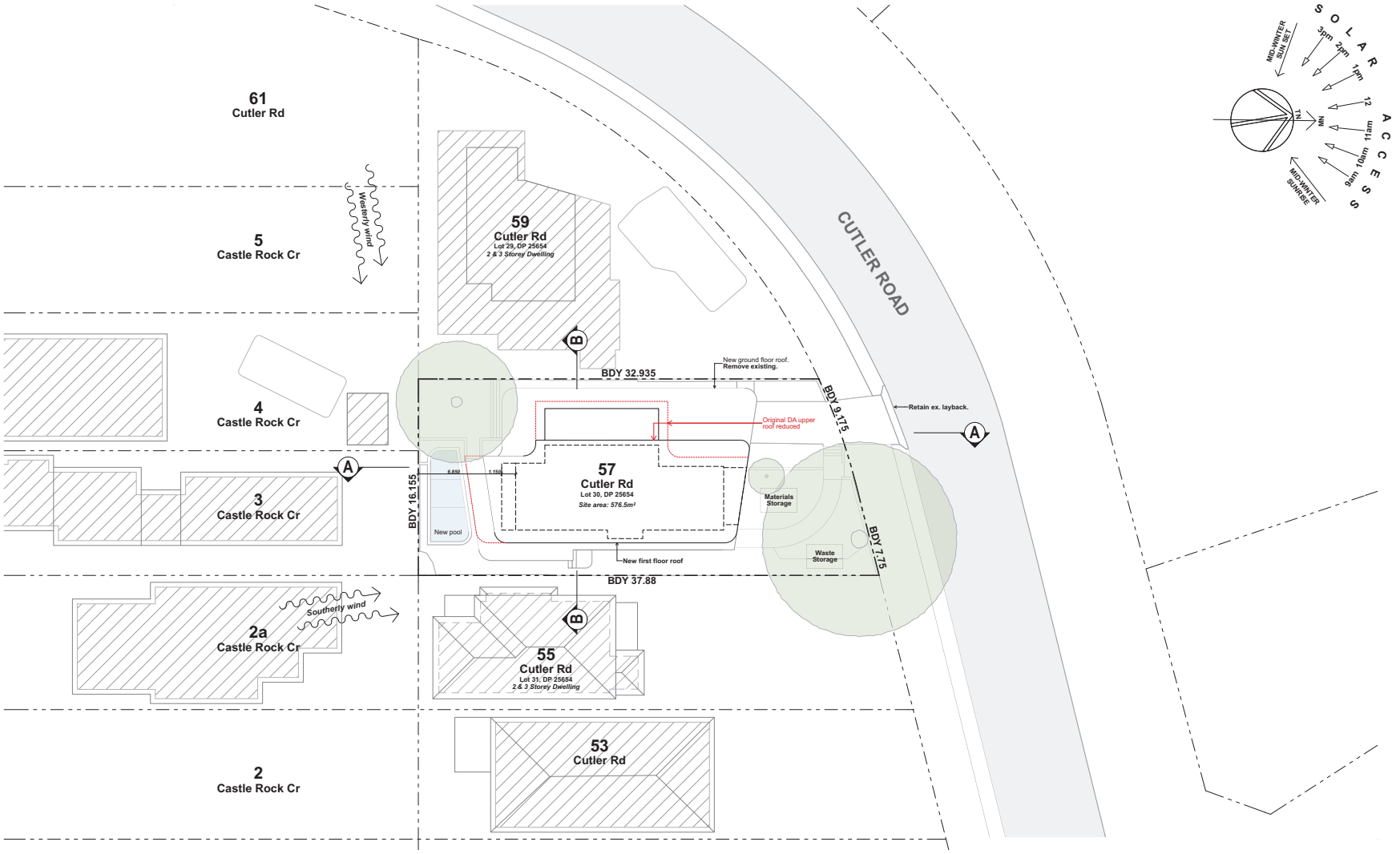
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

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

Reason: To ensure geotechnical risk is mitigated appropriately.

36. **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.



GARTNERTROVATO ARCHITECTS

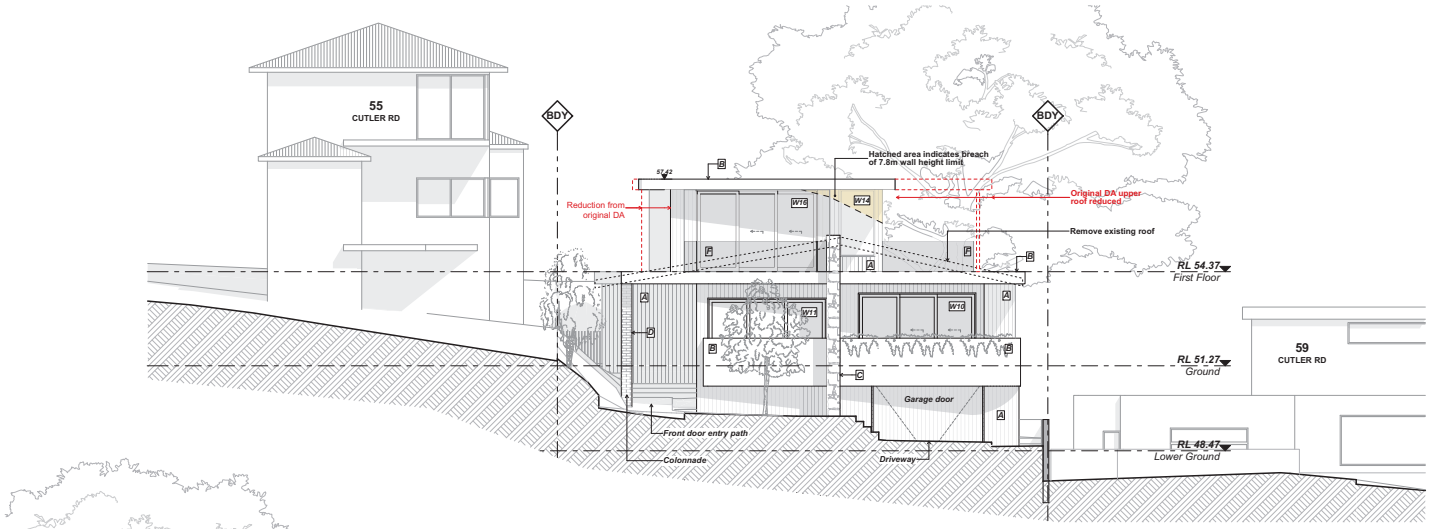
DATE	REV	DESCRIPTION
06/09/22	A	DA
9/03/2023	B	REVISED DA

PROJECT
ALTERATIONS & ADDITIONS
57 CUTLER RD, CLONTARF, NSW 2093
LOT 30, DP 25654

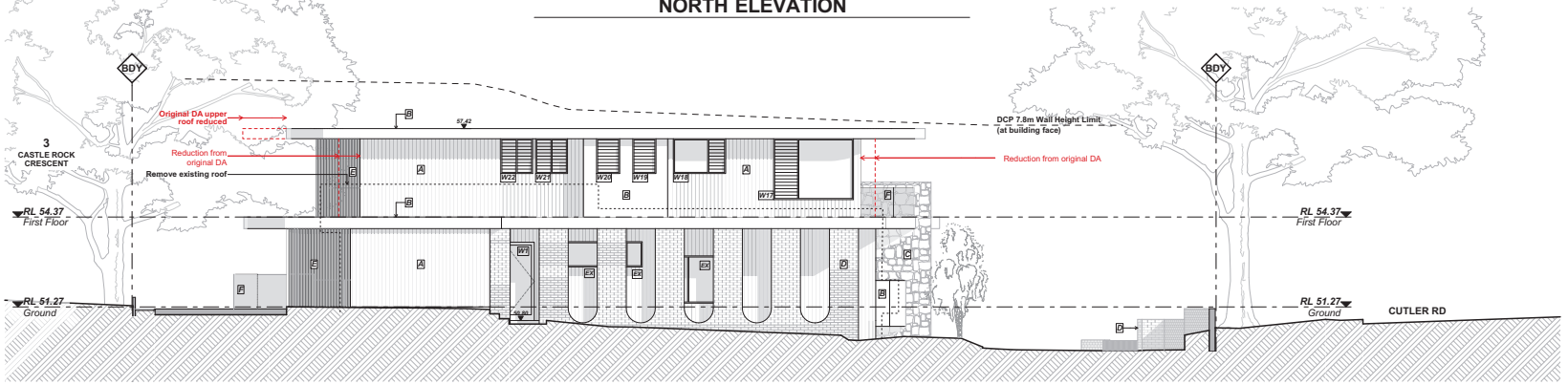
FOR POPOVAC

DRAWING TITLE
SITE PLAN + SITE ANALYSIS

PROJECT NO.	DRAWN BY	PLOT DATE
2212	LT/AB	9/03/2023
SCALE	DRAWING NO.	REVISION
1:200 @ A2	A.01	B



NORTH ELEVATION



EAST ELEVATION

EXTERIOR FINISHES LEGEND

- A TIMBER CLADDING, vertical
- B RENDER, white
- C SANDSTONE CLADDING
- D BRICK, off white
- E TIMBER SCREEN, vertical
- F GLASS



GARTNERTROVATO ARCHITECTS

DATE	REV	DESCRIPTION
06/09/22	A	DA
9/03/2023	B	REVISED DA

PROJECT
ALTERATIONS & ADDITIONS
57 CUTLER RD, CLONTARF, NSW 2093
LOT 30, DP 25654

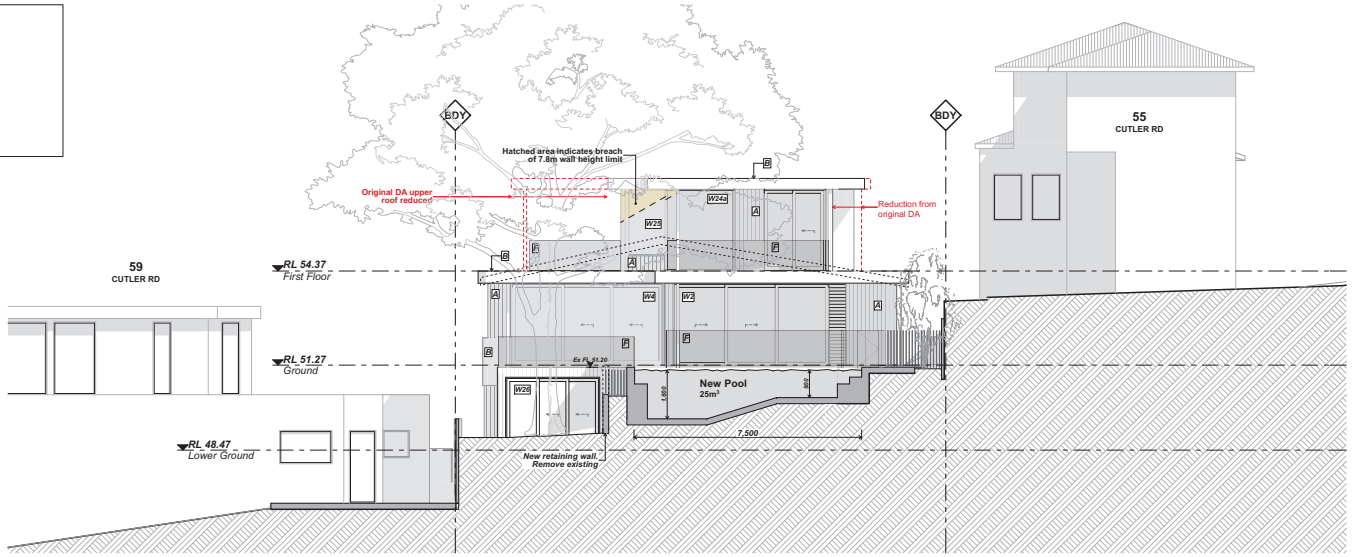
FOR POPOVAC

DRAWING TITLE
NORTH + EAST ELEVATION

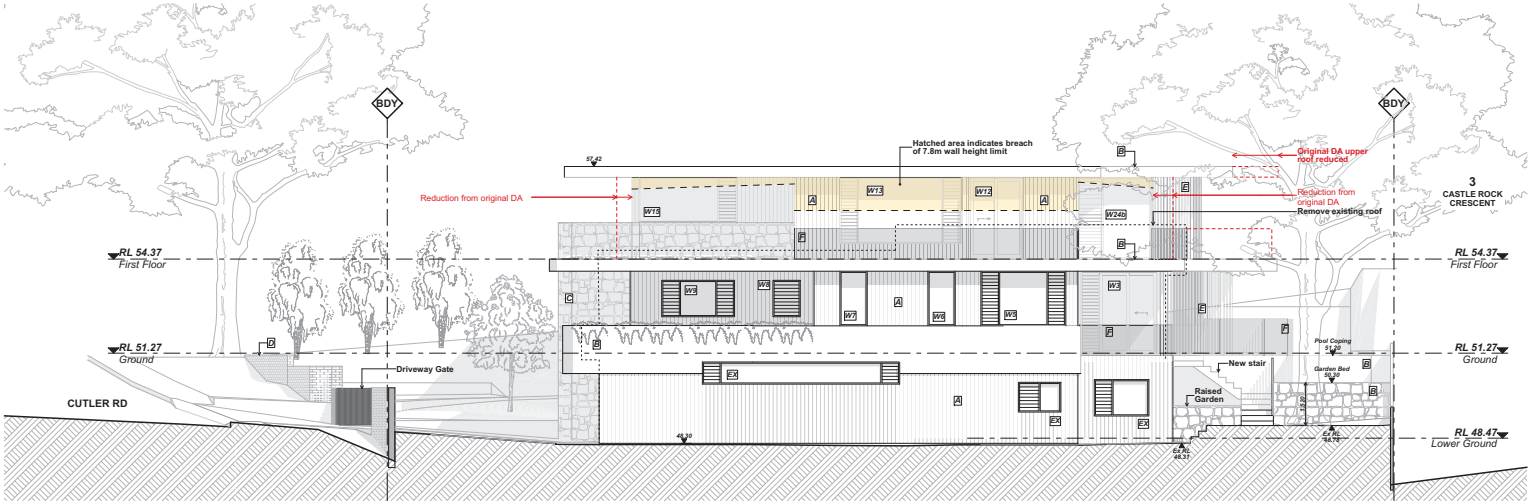
PROJECT NO. 2212
DRAWN BY LT/AB
PLOT DATE 9/03/2023
SCALE **1:100 @ A2**
DRAWING NO. **A.05**
REVISION **B**

EXTERIOR FINISHES LEGEND

- A TIMBER CLADDING, vertical
- B RENDER, white
- C SANDSTONE CLADDING
- D BRICK, off white
- E TIMBER SCREEN, vertical
- F GLASS



SOUTH ELEVATION



WEST ELEVATION

GARTNERTROVATO ARCHITECTS

DATE	REV	DESCRIPTION
06/09/22	A	DA
9/03/2023	B	REVISED DA

PROJECT
ALTERATIONS & ADDITIONS
57 CUTLER RD, CLONTARF, NSW 2093
LOT 30, DP 25654

FOR POPOVAC

DRAWING TITLE
SOUTH + WEST ELEVATION

PROJECT NO.	DRAWN BY	PLOT DATE
2212	LT/AB	9/03/2023
SCALE	DRAWING NO.	REVISION
1:100 @ A2	A.06	B

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Boston Blyth Fleming
Town Planners

3rd May 2023

The General Manager
Northern Beaches Council
Po Box 882
MONA VALE NSW 1660

Attention: Megan Surtees – Planner

Dear Ms Surtees,

Development Application DA2022/1675
Updated clause 4.6 variation requests – FSR
Alterations and additions to a dwelling house including a swimming pool
57 Cutler Road, Clontarf

1.0 Introduction

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

2.0 Manly Local Environmental Plan 2013 ("MLEP")

2.1 Clause 4.4 – Floor space ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 230.6 square metres. The stated objectives of this clause are:

(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.

It has been determined that the proposal, as amended, result in a total gross floor area on the site of 298.14 square metres. This represents a floor space ratio of 0.517:1 and therefore non-compliant with the FSR standard by 67.54 square metres or 29.2%.

I note that clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied.

The Lot size map identifies the subject site as being in sub zone “R” in which a minimum Lot area of 750m² is required. The site having an area of only 576.5m² is well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m² with an achievable gross floor area of 300m².

In this regard, the 298.14m² of gross floor area proposed, representing an FSR of 0.397:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision. We note that such provision contains the following note:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1)	*To ensure the scale of development does not obscure important landscape features.*
Objective 2)	*To minimise disruption to views to adjacent and nearby development.*
Objective 3)	*To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also "deemed to comply" with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area*.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(1) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal *in RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

> *"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of 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.

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

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 floor space ratio provision at 4.4 of MLEP which specifies a maximum FSR however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 20-002 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

(5) In deciding whether to grant concurrence, the Director-General must consider:

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

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified

in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51].*

    The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant*

can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 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 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?

4.0 Request for variation

4.1 Is clause 4.4 of MLEP a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Clause 4.4 MLEP prescribes a floor space height provision which seeks to limit the bulk, scale and density of the development. Accordingly, clause 4.4 MLEP is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the floor space ratio standard

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

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

Response: This objective relates to streetscape character and in this regard the proposal presents a predominantly 2 storey stepped building height to Cutler Road with the stepped building form acknowledging (consistent with) the topographic landscape of the land which falls away towards its western boundary. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Cutler Road, to be offensive, jarring or unsympathetic in a streetscape context.

This objective is satisfied, notwithstanding the non-compliant FSR proposed, as 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,*

Response: Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 298.14m² of gross floor area proposed, representing an FSR of 0.397:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that Objective 1 of the DCP provision, which relates to establishing building density and bulk, as reflected by FSR, in relation to site area (undersized allotments) is similar to this LEP objective namely:

> *Objective 1) To ensure the scale of development does not obscure important landscape features.*

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective.

That said, neither the LEP or DCP identify and important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify and landscape or townscape features that I would consider important in terms of their visual significance.

I am satisfied that the proposal, notwithstanding the FSR non-compliance, achieves this objective as the building density and bulk, in relation to a site area, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments, with the development not obscuring any important landscape and townscape features.

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

Response: This objective is the same as the primary purpose/ objective outlined at clause 4.1.3 of the DCP as confirmed in the note such provision namely:

> *Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:*
>
> *Objective 1) To ensure the scale of development does not obscure important landscape features.*
>
> *Objective 2) To minimise disruption to views to adjacent and nearby development.*
>
> *Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area*.
That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to *ensure the bulk and scale of development is consistent with the existing and desired streetscape character.* Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.

In relation to landscape character, the application does not require the removal of any significant trees or vegetation with a building footprint maintained which is compliant with the total open space and landscaped area MDCP controls. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site. An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains 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,

Response: In responding to this objective. I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

Views

An analysis of potential view impacts having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140 is as follows.

First Step - Assessment of views to be affected

An assessment of the view to be affected. The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg 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, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

1 Alder Street, Clontarf

Whilst no submission has been received from the owner of this property photos available on realestate.com.au provide some insight as to the view is generally available from this property.
The photographs at Figures 3 and 4 show that views are available in a south westerly direction from the upper-level kitchen/living area and adjacent balcony in a south westerly direction across Middle Harbour towards the Balmoral Beach, Balmoral Slopes and the associated land/water interface. These views are filtered to a certain extent by intervening vegetation and built form elements.



Figure 3 - View available in a south westerly direction from 1 Alder Street, Clontarf



Figure 4 - View available in a south westerly direction from 1 Alder Street, Clontarf

55 Cutler Road, Clontarf

The views available from this adjoining property are sweeping views generally in a south/ south westerly direction across middle harbour towards Balmoral Beach, the Balmoral Slopes and the associated land/water interface around to Cobblers Bay. These views are depicted in photographs obtained from realestate.com.au at Figures 5, 6 and 7.



Figure 5 - View available in a south westerly direction from 55 Cutler Road, Clontarf



Figure 6 - View available in a south/ south westerly direction from 55 Cutler Road, Clontarf



Figure 7 - View available in a south westerly direction from 55 Cutler Road, Clontarf

Second Step - From what part of the 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.

1 Alder Street, Clontarf

Floor plans obtained from realestate.com.au confirm that the views at Figures 3 and 4 are available from the upper-level kitchen, living room and adjacent balcony from both a standing and seated position although seated position views are extremely vulnerable given the relatively shallow nature of the view and intervening landscape and built form elements. A copy of the floor plans is at Figure 8.



Figure 8 – Floor plans of 1 Alder Street, Clontarf obtained from realestate.com.au

55 Cutler Road, Clontarf

Floor plans obtained from realestate.com.au confirm that the views at Figures 5 and 6 are available from the upper-level (first floor) Living room and dining room and adjacent south western corner balcony. The view at Figure 7 is from the ground floor level master bedroom. We note that the submission from the owner of 55 Cutler Street appeared to ignore the views available from the upper-level principal living areas and

adjacent balcony with primary focus on views available from the ground floor level study and Bedroom 1 which were incorrectly identified as principal living areas.

The views form the upper level living areas and balcony are from both a standing and seated position with the views from the ground floor level master bedroom also available from both a standing and seated position although the seated position views are extremely vulnerable given the relatively shallow nature of the view and intervening landscape and built form elements. A copy of the floor plans is at Figure 9.



Figure 9 – Floor plans of 55 Cutler Road, Clontarf obtained from realestate.com.au

Third Step – Assessment of extent of the 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.

1 Alder Street, Clontarf

The subject property is visible in Figures 3 and 4 particularly the pitched roof form located in the north-western corner of the property over which the views are obtained.

The north-eastern corner of the proposed ground floor additions maintain the front and side boundary setback alignment and eave height of the existing pitched roof form with the proposed upper-level set well back from the front and western side boundary to maintain the existing view corridor as depicted in Figures 10 and 11. In this regard, we are satisfied that the existing views will be retained with view impact appropriately described as negligible.

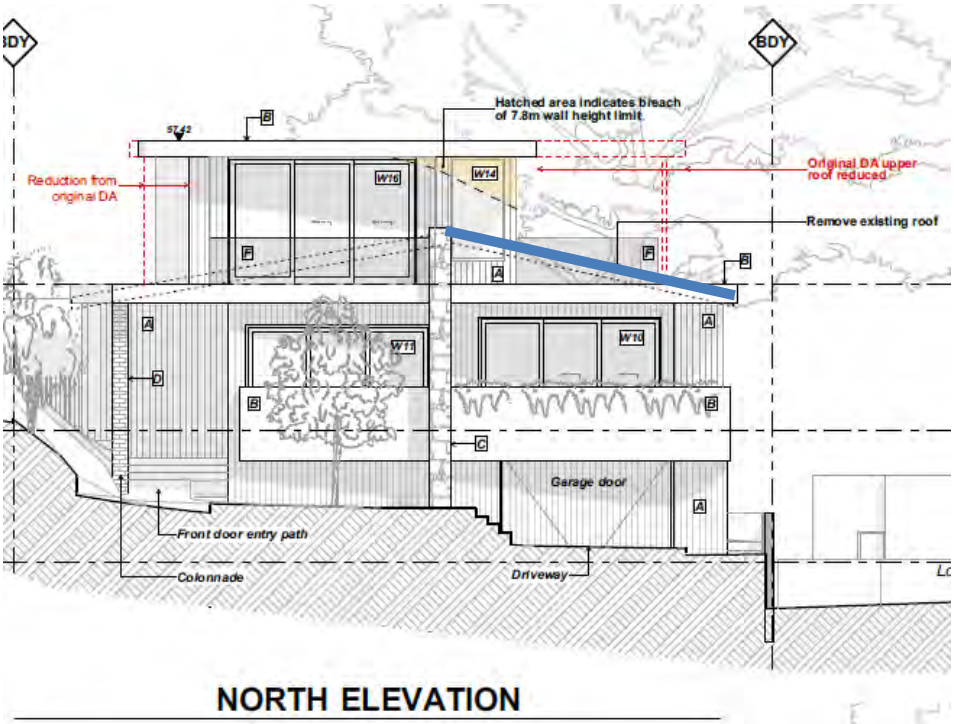


Figure 10 – Plan extract showing the height and alignment of the existing pitched roof form over which existing views are obtained (existing roof shown with blue line).

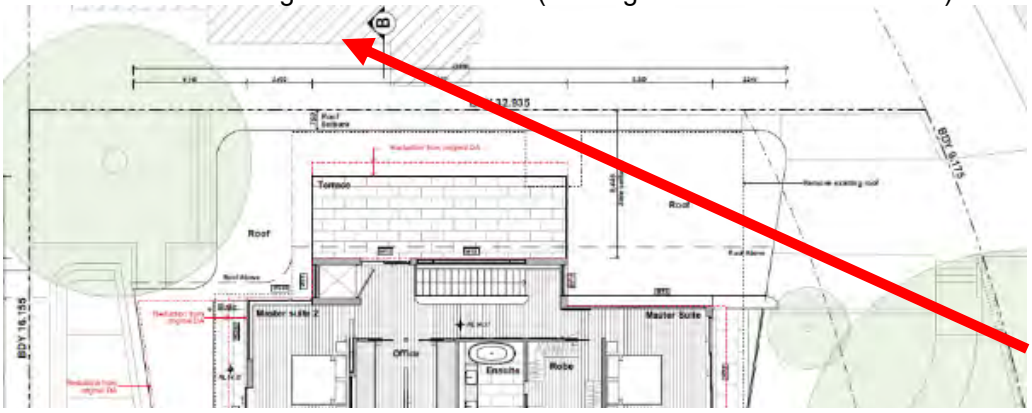


Figure 11 – Plan extract showing maintained view corridor across the north-western corner of the subject property.

55 Cutler Road, Clontarf

Given the relative levels of the properties the views currently obtained from the upper-level principal living areas and adjacent balcony will not be impacted by the proposal from either a seated or standing position. The view analysis plan at Figure 12 over page demonstrates that views currently obtained through the south facing windows of the ground floor master bedroom will also be preserved with views available in a westerly direction through the west facing windows in the same room will be impacted by the proposal to a varying degree on both a standing and seated position.

That said, the views available from the ground floor of the development are from a bedroom and obtained directly across the side boundary of the property with any concern in relation to view impacts from the street facing study at this level is not sustainable given the location of this room, the fact that views are available directly across the side boundary and the vulnerability of view impact from any compliant development on the subject site. As previously indicated, all views currently obtained from the first-floor principal living areas and adjacent balcony are preserved.

Given the totality of views retained the view impact is qualitatively described as minor.



Figure 12 – Plan extract showing view loss analysis from the ground floor master bedroom 55 Cutler Road, Clontarf.

Fourth Step – Reasonableness of the proposal

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.

In relation to the identified view impact from 55 Cutler Road we note the building height breaching elements do not give rise to the view affectation and whilst it could be argued that the FSR non-compliance contributes to such impact we do not consider this to be determinative given the contextually appropriate distribution of floor space on the site which maintains views from the principle living areas and adjacent private open space areas of all surrounding properties including, but not limited to, 1 Alder Street and 55 Cutler Road, Clontarf.

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: N/A

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140 and *Davies v Penrith City Council* [2013] NSWLEC 1141.

Notwithstanding the non-compliant FSR, the proposal achieves the objective of minimising view impact as demonstrated by the view sharing outcome achieved.

Privacy

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 298.14m² of gross floor area proposed, representing an FSR of 0.397:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that the privacy objectives at clause 3.4.2 are also referenced in relation to these provisions namely:

> *See also objectives for privacy at paragraph 3.4.2 of this plan.*
>
> *3.4.2 Privacy and Security*
>
> *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;*
> - *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development *minimises loss of privacy to adjacent and nearby development.*

Notwithstanding, we note that all surrounding properties are orientated to the south to take advantage of views towards Middle Harbour. This spatial relationship prevents direct overlooking between the living areas of these properties with a degree of mutual overlooking of private open space areas anticipated where all properties are orientated to take advantage of views.

Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas to the south towards available views, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The accompanying shadow diagrams (Attachment 1) demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing north facing living room and open space areas of the adjoining residential properties with compliant levels of solar access maintained.

Visual amenity/ building bulk and scale

As indicated in response to objective (a), I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191,* I have formed the considered opinion that most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

I have formed the considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and 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.*

Response: This objective is not applicable.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned R2 Low Density Residential pursuant to the provisions of MLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

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

Response: The development seeks legitimate alterations and additions to an existing dwelling house on the site which will provide for the housing needs of the community within a low density residential environment. The proposal is consistent with this objective.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant development, as it relates to FSR, demonstrates consistency with objectives of the R2 Low Density Residential zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be is unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard".

The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal satisfies such provisions.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).

- The development represents good design (1.3(g)).

- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment).

Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

There are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

> *"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."*

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of an FSR variation in this instance.

Boston Blyth Fleming Pty Limited

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

Attachment 1 Shadow diagrams



ITEM 3.3	**DA2023/0219 - 12 GLENTREES AVENUE FORESTVILLE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/332411**
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 DA2023/0219 for alterations and additions to a dwelling house on land at Lot 6 DP 27418, 12 Glentrees Avenue FORESTVILLE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0219

Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 6 DP 27418, 12 Glentrees Avenue FORESTVILLE NSW 2087
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:	David John Falconer Vanessa Falconer
Applicant:	Beecraft Pty Ltd

Application Lodged:	06/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/05/2023 to 26/05/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 31.18%
Recommendation:	Approval

Estimated Cost of Works:	$ 467,500.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a breach of a development standard (maximum building height) which has been supported by a written Clause 4.6 variation request which is greater than 10%.. The proposal presents a variation of 31.18% (2.65 metres) to the maximum height of buildings standard of 8.5 metres. The breach to the standard is as a result of the proposed lift structure being integrated into the existing built form and steep topography.

During the notification period, concerns were raised in the one (1) submission received in relation to

Clause 4.3 Height of buildings, and Clause 4.6 Exceptions to development standards of Warringah Local Environmental Plan 2011. Further concern is raised in relation to Clause B3 Side Boundary Envelope, Clause D6 Access to Sunlight, D8 Privacy, and D9 Building Bulk of Warringah Development Control Plan 2011.

Critical assessment issues included Clause 4.3 Height of buildings, and adequacy of the written Clause 4.6 variation request that has been submitted in support of the breach of the maximum building height prescribed by the Warringah Local Environmental Plan 2011.

The written Clause 4.6 variation request for the non-compliance with height standard arises from the steeply sloping site that contains a rock cliff face that the existing dwelling house is built upon. The subject site slopes steeply from the existing carport to the existing dwelling house, and the proposed lift structure to provide accessibility presents a variation of 31.18% (2.65 metres) to the required 8.5 metres development standard.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Construction of a lift, and walkway structure;
- Construction of a covered landing;
- Reconstruction and enlargement of an existing deck;
- Extension of existing living room; and
- Reconstruction and enlargement of an existing ensuite, and balcony.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - C9 Waste Management
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 6 DP 27418 , 12 Glentrees Avenue FORESTVILLE NSW 2087
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of the cul-de-sac of Glentrees Avenue. The site is irregular in shape with an arched frontage of 11.04 metres along the cul-de-sac of Glentrees Avenue, and a maximum depth of 65.1m. The site has a surveyed area of 1260.5m². The site is located within the R2 Low Density Residential zone from WLEP 2011, and accommodates a dwelling house, swimming pool, and carport currently on the site. The site slopes steeply from the front western boundary upwards to the rear eastern boundary over approximately 14 metres. The site contains lawn areas, trees, hedges, palms, and a large rock outcrop that the dwelling house is built upon. There are no details of any threatened species on the subject site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architecture style and design.

Map:



SITE HISTORY

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

DA1999/3012
Development Application for Additions and alterations to an existing dwelling.
Approved 14 March 2000.

DA2016/0050
Development Application for Demolition works and the construction of a dwelling house including garage, swimming pool and secondary dwelling.
Rejected on 8 February 2016.

DA2016/0481
Development Application for Demolition works and the construction of a dwelling house, swimming pool and secondary dwelling
Approved on 22 November 2016.

BC2016/0131
Building Certificate for Masonry retaining wall constructed on south eastern side of property.
Approved on 20 March 2017.

DA2017/0162
Demolition and construction of a carport.
Approved on 10 April 2017.

APPLICATION HISTORY
A site visit was undertaken on 22 March 2023 of the subject site. Following the preliminary assessment of the application, Council requested additional information on 19 April 2023 in relation to Clause 4.3 Height of Buildings of Warringah Local Environmental Plan 2011, and Clause 4.6 Exceptions to development standards of Warringah Local Environmental Plan 2011. Additionally, information was

requested in relation to Clause D6 Access to Sunlight of Warringah Development Control Plan 2011, and Clause D8 Privacy of Warringah Development Control Plan 2011. A photomontage was requested in accordance with the Application Requirements as defined in Schedule 7 of the *Environmental Planning and Assessment Regulation 2021* as a form approved by the Planning Secretary and published on the NSW Planning Portal.

On 4 May 2023, the applicant submitted amended Master Plans, amended Shadow Diagrams, a Photomontage, a Schedule of Materials and Finishes, amended Clause 4.6, Certification of Shadow Diagrams, and a Statement of Revisions. The amended plans constituted an altered environmental impact and therefore, the application was required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).The application was formally re-notified from 12 May 2023 to 26 May 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.3 Height of Buildings of Warringah Local Environmental Plan 2011, and Clause 4.6 Exceptions to development standards of Warringah Local Environmental Plan 2011. Further information was requested in relation to Clause D6 Access to Sunlight of Warringah Development Control Plan 2011, and Clause D8 Privacy of Warringah Development Control Plan 2011. A photomontage was requested in accordance with the Application Requirements as defined in Schedule 7 of the Environmental Planning and

Section 4.15 Matters for Consideration	Comments
	Assessment Regulation 2021 as a form approved by the Planning Secretary and published on the NSW Planning Portal. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended 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 recommended condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 Hazards Solutions Pty Ltd, dated 28 February 2023) 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. It is considered that the proposed development satisfies the relevant matters prescribed by Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/05/2023 to 26/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr John Robert David Barnett Mrs Philippa Mary Barnett Precise Planning	11 Glentrees Avenue FORESTVILLE NSW 2087

The following issues were raised in the submissions:

- **Height of Buildings / Clause 4.6**
- **Side Boundary Envelope**
- **Access to Sunlight**
- **Privacy**
- **Building Bulk**
- **Photomontage**

The above issues are addressed as follows:

- **Height of Buildings / Clause 4.6**

  The submissions raised concerns that the proposed development breaches the height of buildings development standard. The concerns raised argue that the accompanying Clause 4.6 written request does not provide justification for consistency with the objectives of Clause 4.3 Height of buildings of Warringah Local Environmental Plan 2011 (WLEP 2011).

  Comment:
  A detailed assessment has been conducted under Clause 4.6 Exceptions to development standards of WLEP 2011 contained within this report. In summary, it is considered the Clause 4.6 demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. Furthermore, it is considered that the proposed development is consistent with the objectives of Clause 4.3 Height of buildings of WLEP 2011, and as such the proposal is supportable.

- **Side Boundary Envelope**

The submissions raised concerns that the proposal is does not comply with Clause B3 Side Boundary Envelope of Warringah Development Control Plan 2011 (WDCP 2011).

Comment:
A detailed assessment has been conducted under Clause B3 Side boundary envelope of WDCP 2011 contained within this report. In summary, the proposed variation to Clause B3 is supportable, as the proposal has satisfied the objectives of the control.

- **Access to Sunlight**

  The submissions raised concerns that the proposal will impact the solar access to No.11 Glentrees Avenue.

  Comment:
  The applicant submitted amended shadow diagrams, and a certification of shadow diagrams report during the assessment of the application. A detailed assessment has been conducted under Clause D6 Access to Sunlight of WDCP 2011. In summary, the proposed development will provide an acceptable level of solar access to the adjoining sites to the south.
- **Privacy**

  The submissions raised concerns that the proposed lift, walkway, and deck extension will result in exacerbated overlooking opportunities to the principal private open space, and habitable rooms of 11 Glentrees Avenue.

  Comment:
  A detailed assessment has been conducted under Clause D8 Privacy of WDCP 2011 contained within this report. In summary, the amended master plans detailed acceptable privacy measures including solid wall cladding to the lift along the south-west elevation and south-east elevation, a 1.8 metre privacy screen along the walkway of the south-east elevation, and solid balustrades to the south-east elevation of the reconstructed deck. Therefore, it is considered the proposal presents compliance with the objectives of the control, and suitable privacy measures have been included to mitigate unacceptable privacy impacts.
- **Building Bulk**

  The submissions raised concerns that the proposal will present bulk and scale to No.11 Glentrees Avenue.

  Comment:
  A detailed assessment has been conducted under Clause D9 Building Bulk of WDCP 2011 contained within this report. In summary, the proposal presents compliance with the objectives of the control, and it is considered that the proposal is of an acceptable bulk and scale.
- **Photomontage**

  The submissions raised concerns that a Photomontage was not submitted with the application in accordance with Clause 24 of the *Environmental Planning and Assessment Regulation 2021.*

  Comment:
  The applicant provided amended documentation including a Photomontage of the proposal, and as such satisfied the requirements under Clause 24 of *Environmental Planning and Assessment Regulation 2021*.

Concluding Comments:

In summary, the concerns raised have been addressed and do not warrant the refusal of the proposed

application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported - subject to conditions.*** The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation The existing property contains an established landscape setting that is preserved. The proposed works require the removal of an exempt Palm species and no concerns are raised, and the exempt species may be removed without Council consent. Standard conditions of consent for tree and vegetation retention shall be imposed to ensure the existing landscape setting is maintained.
NECC (Development Engineering)	***Supported - subject to conditions.*** The site can drain to the street by gravity. On-site detention is not required for alterations and additions in Region 2. No vehicle construction/ re-construction is proposed. No works on the road reserve are proposed.

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.
Aboriginal Heritage Office	***Supported - subject to conditions.*** Development Application No. DA2023/0219 Description: Alterations and additions to a dwelling house Address: 12 Glentrees Avenue FORESTVILLE Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.

External Referral Body	Comments
	Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A486730 dated 31 January 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0 metres 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 5.0 metres of an overhead electricity power line.

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.15m (Lift)	31.18% (2.65m)	**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
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:	11.15m

Percentage variation to requirement:	31.18% (2.65m)

The proposed height of buildings is detailed in Figure 1 below with the maximum height of buildings proposed to be 11.15 metres as a result of the lift and walkway.

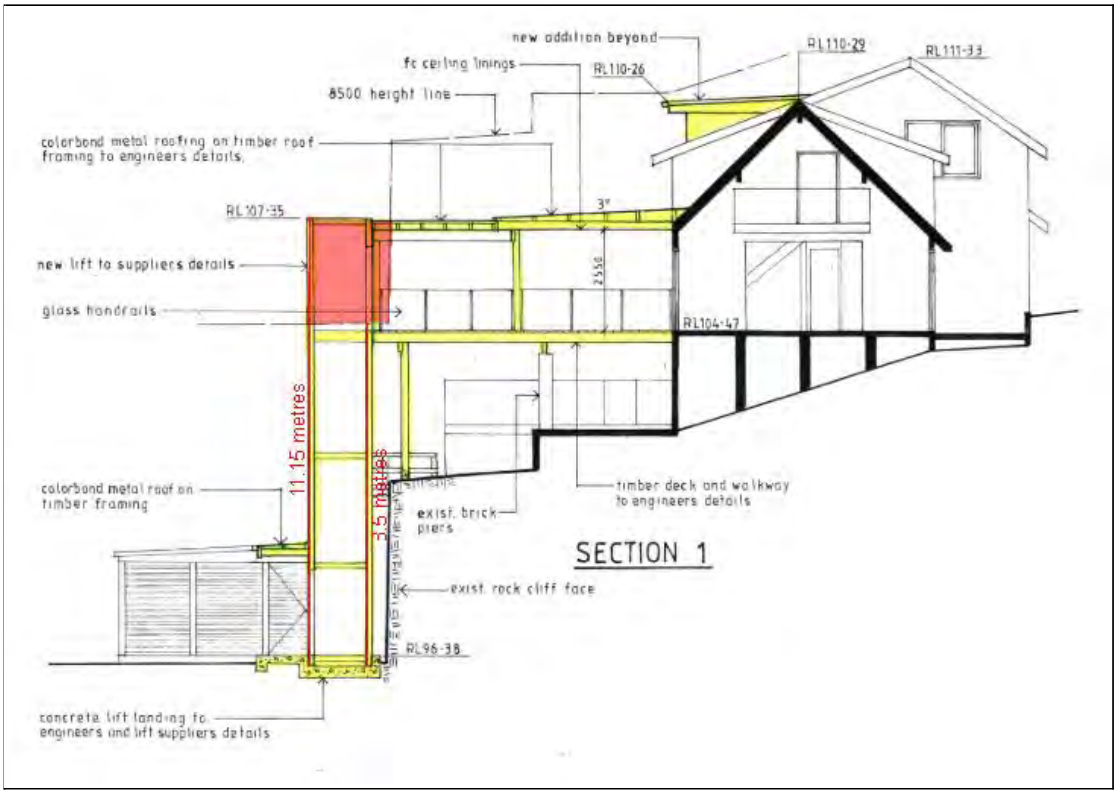


Figure 1. Section 1 (red highlighting height of building variation).

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 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 new lift and walkway structure due to their discrete location will not result in any undue loss of amenity to surrounding properties.*
- *When viewed from Glentrees Avenue the new lift will be concealed to some extent behind the properties existing carport that will visually reduce its apparent height. Mature trees within the front yard will further screen the lift from the broad street view. Overall we propose that those portions of new lift and walkway structure visible from within the surrounding area will not be significant and therefore not impact unduly on the residential character of the area.*
- *The location of the new lift structure takes into account the existing rock cliff face traversing through the property which is considered a significant environmental feature. The requirements of Part E6 of WDCP 2011 - Retaining unique environmental features states: (1) Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land. (2) Development should respond to these features through location of structures, outlook, design and materials.*
- *We submit that the location of the new lift and ancillary structure as described above meet the objectives of this control by maintaining a significant environmental feature without any disturbance to its fabric".*

It is agreed that the written request details compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and sufficient environmental planning grounds to justify the contravention have been provided.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that

will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:
The proposed lift and walkway is considered to be compatible with the height and scale of the existing dwelling house on site, noting that the lift is sighted below the maximum ridge line of the existing dwelling house. The proposed height variation is a result of the varied topography of the site, and namely the existing rock cliff face that the dwelling house is built upon. It is considered the lift, and walkway is in scale of the existing dwelling house, and the surrounding and nearby development located on the high side of Glentrees Avenue.

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

Comment:
The proposed lift and walkway will minmise the visual impact via the proposed colours and materials that will assist with the structure to blend in with the natural environment. Furthermore, it is noted that the existing site obtains vegetation that will provide supplementary screening to reduce the visual impact. The proposed lift and walkway is not likely to disrupt any significant views given the location of the proposal. Furthermore, the proposal has implemented acceptable privacy measures include cladding of the lift structure on the south-west elevation, and south-east elevation to mitigate any unreasonable privacy impacts. The walkway includes a 1.8 metre

privacy screen along the south-east elevation that will provide privacy to the adjoining site to the south (No.11 Glentrees Avenue). Lastly, the proposal will not result in an unacceptable loss of solar access as detailed by the accompany shadow diagrams.

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

Comment:
The proposal will not detract from the scenic quality of Warringah's bush environment. The proposal is not located in proximity to Warringah's coastal environments.

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

Comment:
The location of the proposed lift and walkway is distanced from the road and streetscape, and therefore it is considered that the proposed lift and walkway structure will not result in any adverse impacts to the public places. The proposal is not visible from any parks, reserves, or community facilities.

Zone objectives

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

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

  Comment:
  The proposal will continue to provide housing needs of the community within a low density residential environment. The proposal will allow for alterations and additions to an existing dwelling house that will provide suitable access via the proposed lift and walkway to enable ageing in place.

  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 will maintain the dwelling house land use that will provide improved accessibility 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 presents a compliant area of landscaped open space, and it is considered the proposal suitably maintains the natural rock cliff face that is a significant character of the natural environment of the subject site.

  It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	11.15m	31.18% (2.65m)	**No**
B3 Side Boundary Envelope	4m (North-West)	Within envelope	-	Yes
	4m (South-East)	Outside envelope	61.76% (4.2m)	**No**
B5 Side Boundary Setbacks	0.9m (North-West)	2.2m	-	Yes
	0.9m (South-East)	1.7m	-	Yes
B7 Front Boundary Setbacks	6.5m (South-West)	18.6m	-	Yes
B9 Rear Boundary Setbacks	6m (North-East)	10.5m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (504.2m^2)	49.08% (618.7m^2)	-	Yes

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposed wall height as a result of the lift is 11.15 metres, presenting a variation of 54.86% (3.95 metres) to the 7.2 metres wall height control.

Exceptions can be made in the following circumstances as detailed under Clause B1 Wall Height of Warringah Development Control Plan 2011:
This control may be varied 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 8.5 metre height development standard;*
- *is designed and located to minimise bulk and scale; and*
- *has a minimal visual impact when viewed from the downslope sides of the land.*

The site obtains a slope of 38% within the building footprint, however as the wall height exceeds 8.5 metres, this exception can not be applied.

It is recognised that the breach is isolated to the lift structure, which is a retrofit addition to an otherwise steep site.

Notwithstanding, the proposed wall height has been assessed against the objectives of the control, and as such is supportable as the objectives have been satisfied.

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 location of the proposed lift is located to be largely screened from the streetscape, and as such will not result in any unacceptable impacts to the character of the street. The proposal has been considered in relation to surrounding properties, and the proposed visual impact is found to be acceptable in this regard given the proposed colours, and materials of the structure. The proposal is not visible from waterways, or land zoned for public recreation purposes.

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

  Comment:
  The proposed is generally beneath the existing tree canopy level, and therefore will be supplementary screened by the existing plantings, and vegetation on site.

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

  Comment:
  The proposal will not impact upon any significant views to and form public and private properties.

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

  Comment:
  The proposal is considered to minimise the impact of development on adjoining or nearby properties, through suitable design measures to ensure appropriate solar access, privacy, and overall amenity.

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

Comment:
The proposed development responds sensitively to the site topography that contains a rock cliff face, and the design mitigates the need for significant excavation of the natural landform.

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

Comment:
The proposed lift structure provides a flat roof design to minimise the proposed height of the structure.

B3 Side Boundary Envelope

Description of non-compliance

Under Clause B3 of Warringah Development Control Plan 2011 (WDCP 2011), buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 4 metres above ground level (existing) at the side boundaries.

The proposal sits outside of the building envelope on the South-East Elevation as depicted in Figure 2. The South-East Elevation presents a maximum encroachment of 4.2 metres in vertical height for a horizontal length of 1.6 metres, resulting in a maximum variation of 61.76% (4.2 metres). It is noted that the breach in building envelope is largely resultant due to the existing rock cliff face, and the steep rise of topography on the subject site.

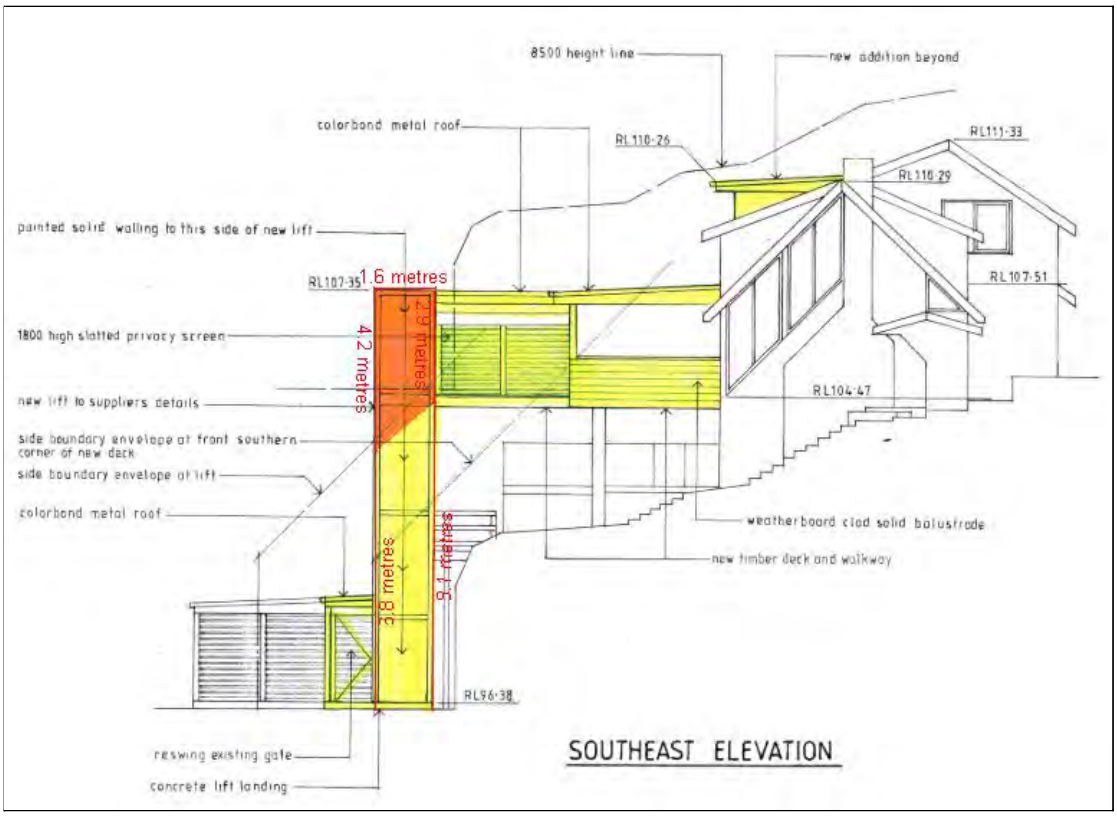


Figure 2. South-East Elevation (red highlighting building envelope numerical non-compliance)

A detailed assessment has been undertaken that concludes the proposal is consistent with the objectives of the control as outlined below. Therefore, the variation to the side boundary envelope is supportable in this circumstance.

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 proposed development does not become visually dominant by virtue of its height and bulk as it is considered that the lift, and walkway structure is contextually appropriate given the steep topography as a result of the rock cliff face that the existing dwelling house is built upon. The existing dwelling house is sighted higher than the proposed lift, and walkway structure, and only as a result of the varied topography of the site does the proposal present a variation to the building envelope control.

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

  Comment:
  The proposal is accompanied with shadow diagrams that detail acceptable light, and solar access is provided to adjoining sites. The proposal provides suitable privacy through the cladding on the south-eastern elevation, and south-western elevation of the lift. Furthermore, a privacy screen is included along the south-east elevation of the reconstructed deck to mitigate unacceptable privacy impacts. The proposed development presents compliant side setbacks that provide adequate separation between buildings.

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

  Comment:
  The proposed development responds appropriately to the steeply sloping topography of the site as result of the existing and retained rock cliff face.

C9 Waste Management

The application was not accompanied by a Waste Management Plan.

To ensure the proper disposal of waste, a suitable condition has been recommended to ensure a Waste Management Plan is provided in accordance with Council's Waste Management Guidelines. The Waste Management Plan is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Further conditions have been recommended to ensure compliance with the Waste Management Plan during works, and to ensure the waste has been disposed of appropriately prior to the issuance of a Occupation Certificate.

D6 Access to Sunlight

Clause D6 Access to Sunlight of Warringah Development Control Plan 2011 stipulates the following:

1. Development should avoid unreasonable overshadowing any public open space.
2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

The proposal is accompanied by shadow diagrams that detail the adjoining sites to the south, namely No.11 Glentrees Avenue, and No.9 Glentrees Avenue.

A detailed assessment against the objectives of the control has been undertaken as detailed below, and it is considered the proposal provides an acceptable access to sunlight that is consistent with the objectives of the control.

Merit consideration

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

- ***To ensure that reasonable access to sunlight is maintained.***

  Comment:
  The proposal presents reasonable access to sunlight to the subject site, and adjoining sites. It is considered the proposal is compliant with Clause D6 requirements, and as such an acceptable amount of sunlight is retained.

  The shadow diagrams detail additional shadows at 9am to No.9 Glentrees, and unaltered shadows to No.11 Glentrees. The proposed development at 12pm present additional shadows to No.11 Glentrees, and unaltered to No.9 Glentrees. The proposed development at 3pm demonstrate additional shadows to No.11 Glentrees, and no additional shadows to No.9 Glentrees.

  Private open space is defined in the Dictionary of Warringah Local Environmental Plan 2011 as, "private open space means an area external to a building (including an area of land, terrace, balcony or deck) that is used for private outdoor purposes ancillary to the use of the building". It is considered the private open space of No.11 Glentrees Avenue is the covered deck located to the north of the dwelling house, and this deck is approximately 32.7m^2. Under Clause D2 Private Open Space of Warringah Development Control Plan, the required private open space for a dwelling house with 1 or 2 bedrooms is 35m^2 with a minimum dimension of 3 metres.

  It is noted that a submission was received from No.11 Glentrees Avenue regarding access to sunlight. Notwithstanding, the proposal demonstrates that the private open space of No.11 Glentrees is unaltered at 9am, and 3pm. It is noted that a portion of the deck will receive additional shadows at 12pm, however it is considered that the additional shadowing would not result in less than 50% of the private open space to be in shadow from 9am to 3pm. It is noted that 81% of the private open space is in sunlight at 9am, 33% of the private open space is in sunlight at 12pm, and 100% of the private open space is in sunlight at 3pm on 21 June. Therefore, overall the proposal presents 71.5% of sunlight to the private open space between 9am to 3pm on 21 June.

  It is important to note, that an extension of the private open space to the rear eastern yard, and

southern yard of No.11 Glentrees is unaffected by shadows as a result of the proposed development. Whilst the covered deck of No.11 Glentrees Avenue is susceptible to additional shadowing at 12pm, there are no changes to the existing access to sunlight at 9am and 3pm.

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

  Comment:
  The proposal is considered to be an appropriate design to allow for suitable access to the existing dwelling house as a result of the existing site conditions, that include a significant rock outcrop. It is considered that the proposed lift, and walkway is an innovative design, that will result in improved accessibility to the dwelling house within the urban environment.

- ***To promote passive solar design and the use of solar energy.***

  Comment:
  The proposal is accompanied by a BASIX Certificate that demonstrates suitable building sustainability. As such, it is considered the proposal will promote passive solar design, and the use of solar energy.

D8 Privacy

A submission from No.11 Glentrees Avenue raised concerns surrounding privacy impacts as a result of the proposed development. Specifically, concerns are raised that the proposed lift, walkway, and deck extension will result in exacerbated overlooking opportunities to the principal private open space, and habitable rooms of 11 Glentrees Avenue. The issues raised by No.11 Glentrees Avenue include the proximity of the proposed structures to the southern boundary of No.11 Glentrees, the enlarged first floor deck, transparent materials proposed for the lift and walkway, and height of the structure. It is important to note, the proposal is compliant with the side setback controls, and the enlargement of the first floor deck is largely to the north-west (opposite direction to the subject site).

A detailed assessment has been undertaken against he objectives of the control, and it is considered that overall the proposal provides acceptable privacy to the subject site, and adjoining sites.

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 applicant provided amended plans during the assessment of the application, that included the addition of privacy measures. The amended plans detailed solid wall cladding to the lift along the south-west elevation, and south-east elevation. Furthermore, a 1.8 metre privacy screen is added to the south-east elevation of the pedestrian walkway, and the south-east elevation of the deck has been amended to a weatherboard clad solid balustrade. It is important to note the positioning of the deck along the south-east elevation is generally in the location of the existing deck, with the addition of a solid balustrade, as opposed to the existing open balustrade providing an improved privacy outcome.

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

Comment:
The proposal presents an innovative design solution to improve the accessibility to the existing dwelling house, that will overall improve the urban environment.

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

  Comment:
  The proposal will provide for acceptable personal, and property security for occupants, and visitors.

D9 Building Bulk

The requirements of D9 Building Bulk of Warringah Development Control Plan 2011 stipulates the following:

1. Side and rear setbacks are to be progressively increased as wall height increases.
2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.
3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:
The amount of fill is not to exceed one metre in depth.
Fill is not to spread beyond the footprint of the building.
Excavation of the landform is to be minimised.
4. Building height and scale needs to relate to topography and site conditions.
5. Orientate development to address the street.
6. Use colour, materials and surface treatment to reduce building bulk.
7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.
8. Articulate walls to reduce building mass.

It is considered the proposed development satisfies the requirements of the control, and as such the proposal is supportable.

Merit consideration

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

- ***To encourage good design and innovative architecture to improve the urban environment.***

  Comment:
  It is considered the proposed development presents a good design, that presents an innovative response to the existing site that includes the rock cliff face. The proposal has specifically satisfied Point 4, with the building height, and scale relating to the sloping topography, and existing site conditions.

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

  Comment:

The proposal minimises the visual impact when viewed from adjoining properties through the use of colours, materials, and surfaces that include dark colours satisfying Point 6 of the requirements. The proposed lift, and walkway is considered to present appropriately to the streetscape satisfying Point 5, as the structure is largely screened due to the shape of the allotment, and positioning to the cul-de-sac.

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 $4,675 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $467,500.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for Alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011.

The concerns raised in the objections have been addressed and resolved as it is considered the proposed development is acceptable. The proposal considers ageing in place through improved accessibility to the existing dwelling house, and as such is considered an appropriate design solution given the existing site constraints as a result of the existing rock cliff face.

The critical assessment issues relate to Clause 4.3 Height of buildings, and Clause 4.6 Exceptions to development standards of Warringah Local Environmental Plan 2011. It is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

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 permits a contravention of 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 DA2023/0219 for Alterations and additions to a dwelling house on land at Lot 6 DP 27418, 12 Glentrees Avenue, FORESTVILLE, 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**
Carport Plan - 1	September 2022	Beecraft
Ground Floor Plan - 2A	24 April 2023	Beecraft
First Floor Plan - 3	September 2022	Beecraft
Southwest Elevation - 4A	24 April 2023	Beecraft
Southeast Elevation - 5A	24 April 2023	Beecraft
Northwest and Northeast Elevation - 6A	24 April 2023	Beecraft
Sections and Notes - 7	24 April 2023	Beecraft
Site Plan - 8	September 2022	Beecraft

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (No.A486730)	31 January 2023	Network Irrigation P/L
Bushfire Report	28 February 2023	Building Code & Bushfire Hazard Solutions Pty Ltd
Geotechnical Report	25 January 2023	White Geotechnical Group
Schedule of Materials and Finishes	n.d.	No Author

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

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

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

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 - OH and UG Cables	17 May 2023
	Ausgrid Referral Response - Underground Cables	17 May 2023

Aboriginal Heritage Office	Referral - Aboriginal Heritage Office - DA2023/0219 - 12 Glentrees Avenue Forestville	13 April 2023

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative

change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $4,675.00 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 $467,500.00.

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

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

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

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

6. **Security Bond**

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

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

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

to the issue of the Construction Certificate.

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

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

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

7. **Stormwater Disposal**
The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

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 Rating M or 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:
- "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.

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **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.

Reason: Tree and vegetation protection.

14. **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.

15. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

16. **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.

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

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

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

18. **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.

19. **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

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

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

21. **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.

22. **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.

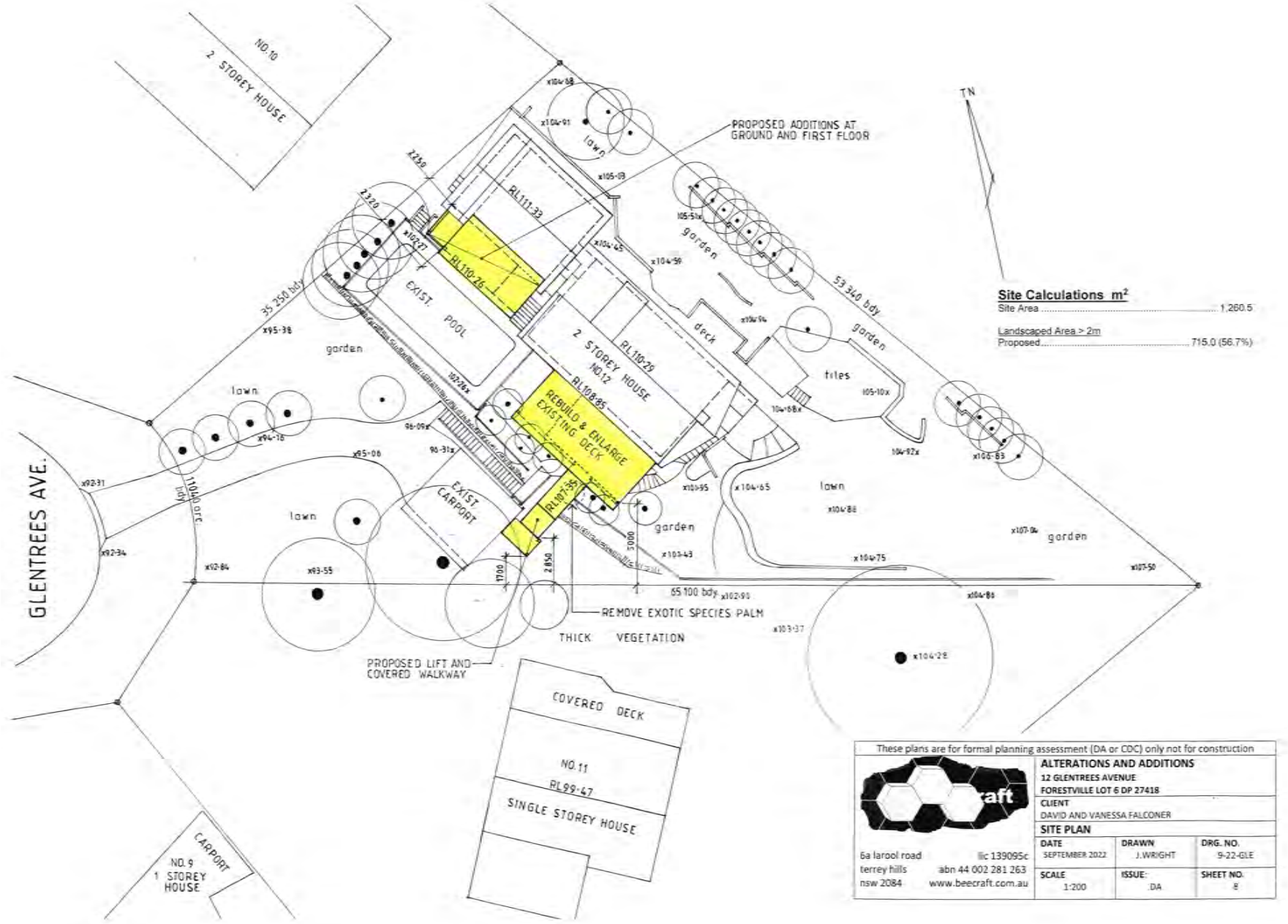
23. **Swimming Pool Requirements (existing pool modified by works)**
The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009
(iii) Swimming Pools Regulation 2018;
(iv) Australian Standard AS1926 Swimming Pool Safety;
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools;
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
(b) A warning sign stating **'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL'** has been installed.
(c) All signage shall be located in a prominent position within the pool area.

Swimming pools and spas must be registered with the *Division of Local Government*.

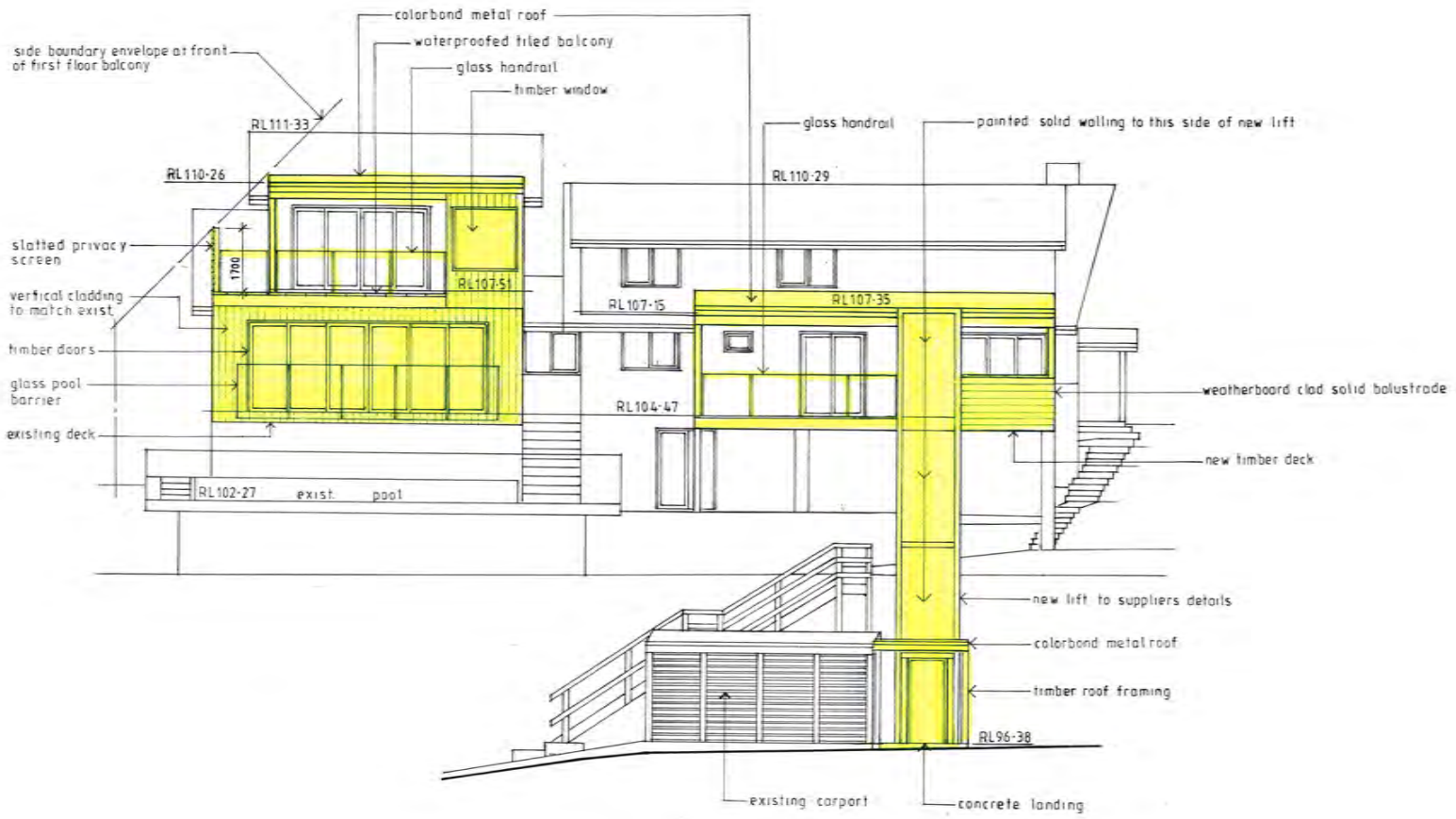
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.



These plans are for formal planning assessment (DA or CDC) only not for construction

6a larool road terrey hills nsw 2084	lic 139095c abn 44 002 281 263 www.beecraft.com.au	**ALTERATIONS AND ADDITIONS** **12 GLENTREES AVENUE** **FORESTVILLE LOT 6 DP 27418** **CLIENT** DAVID AND VANESSA FALCONER **SITE PLAN**	
		DATE SEPTEMBER 2022	**DRAWN** J.WRIGHT
		SCALE 1:200	**ISSUE:** DA
			DRG. NO. 9-22-GLE
			SHEET NO. 8



SOUTHWEST ELEVATION

Issue	Date	Revision
A	24-4-23	Solid walling added to southwest side of lift and new deck balustrade

These plans are for formal planning assessment (DA or CDC) only not for construction

6a larool road
terrey hills
nsw 2084

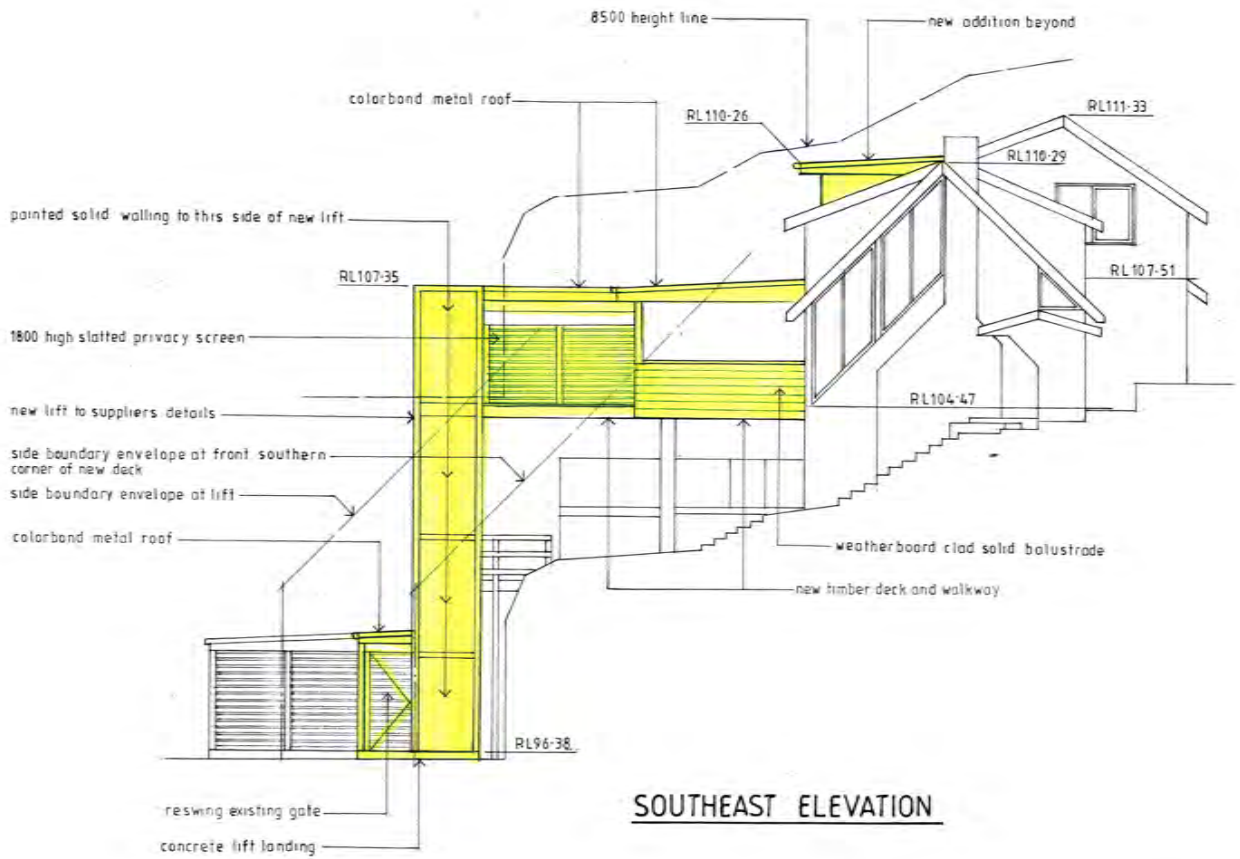
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ALTERATIONS AND ADDITIONS
12 GLENTREES AVENUE
FORESTVILLE LOT 6 DP 27418

CLIENT
DAVID AND VANESSA FALCONER

SOUTHWEST ELEVATION

DATE	DRAWN	DRG. NO.
SEPTEMBER 2022	J.WRIGHT	9-22-GLE
SCALE	**ISSUE:**	**SHEET NO.**
1:100	DA	4A



SOUTHEAST ELEVATION

Issue	Date	Revision
A	24-4-23	Solid walling added to southeast side of lift and new deck balustrade Privacy screen added to southeast side of lift walkway

These plans are for formal planning assessment (DA or CDC) only not for construction

ALTERATIONS AND ADDITIONS
12 GLENTREES AVENUE
FORESTVILLE LOT 6 DP 27418

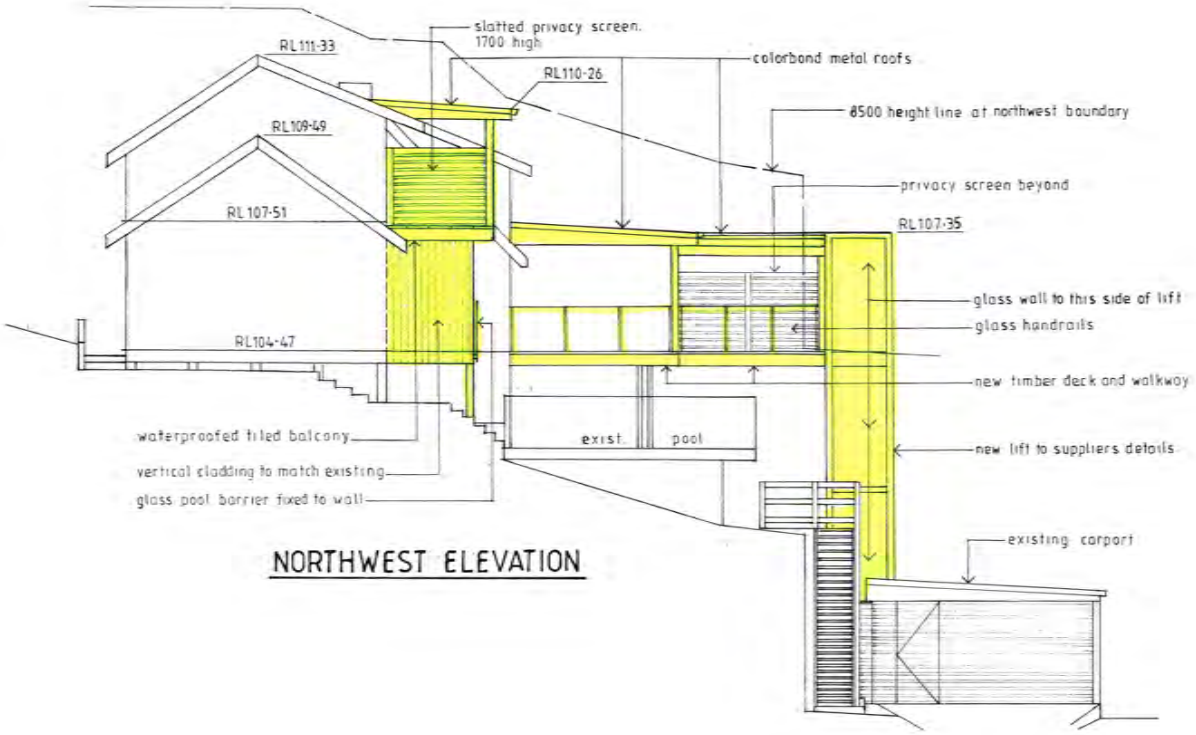
CLIENT
DAVID AND VANESSA FALCONER

SOUTHEAST ELEVATION

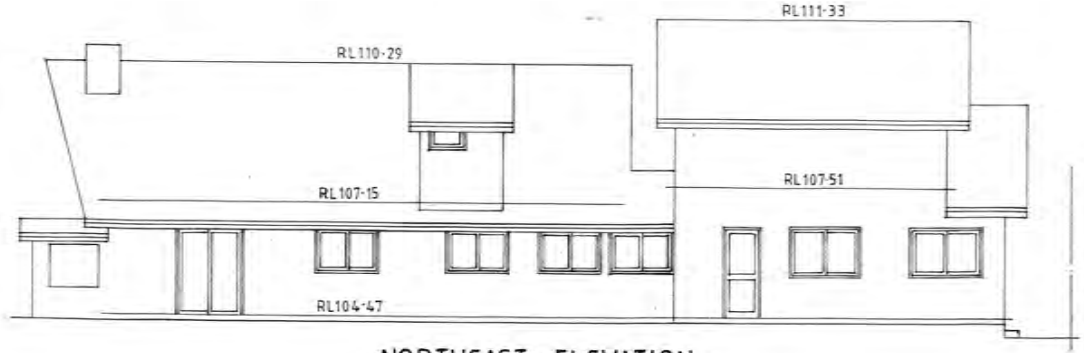
DATE	DRAWN	DRG. NO.
SEPTEMBER 2022	J.WRIGHT	9-22-GLE
SCALE	**ISSUE:**	**SHEET NO.**
1:100	DA	5A

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NORTHWEST ELEVATION



NORTHEAST ELEVATION
UNCHANGED

Issue	Date	Revision
A	24-4-23	Glass walling noted to northwest side of lift and privacy screen to southeast side lift walkway shown (beyond).

These plans are for formal planning assessment (DA or CDC) only not for construction

ALTERATIONS AND ADDITIONS
12 GLENTREES AVENUE
FORESTVILLE LOT 6 DP 27418

CLIENT
DAVID AND VANESSA FALCONER

NORTHWEST AND NORTHEAST ELEVATION

DATE	DRAWN	DRG. NO.
SEPTEMBER 2022	J.WRIGHT	9-22-GLE
SCALE	**ISSUE:**	**SHEET NO.**
1:100	DA	6 A

6a larool road
terrey hills
nsw 2084

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abn 44 002 281 263
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WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011
(REVISION A)
12 GLENTREES AVENUE, FORESTVILLE

For:	Alterations and additions to the existing dwelling including a new lift and elevated covered walkway.
At:	12 Glentrees Avenue, Forestville
Owner:	David and Vanessa Falconer
Applicant:	Beecraft P/L

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Warrringah Local Environmental Plan 2011 (WLEP 2011).

2.0 Background

Clause 4.3 restricts the height of a building in this locality to a maximum of 8.5m above ground level and considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The development includes a new lift and covered walkway. The new lift and a small portion of the walkway will exceed the 8.5m maximum building height.

The controls of Clause 4.3 are considered a development standard as defined in the Environmental Planning and Assessment Act, 1979 and therefore the development as a whole inclusive of existing structure needs to be assessed in relation to current development controls.

3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance with a new lift and walkway providing practical, accessible all-weather access from the property's carport to the main living level of the residence. Currently access into the dwelling from the carport is via a flight of stairs adjacent the carport which lands at the top of a 4.5 metre rock cliff that traverses through the property. The stairs join with a lengthy winding path and irregular stone steps that lead to the residence's entry located towards the rear. This travel path is arduous and challenging particularly in foul weather and impossible for anybody with mobility issues. We submit that due to the unique secluded location and existing mature trees and vegetation in the vicinity of the new lift the proposed new structures exceeding the maximum building height will not impact unduly on the surrounding area and the development will be 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.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The breach of the maximum building height by the proposed lift and walkway is a result of the rock cliff traversing through the property and the elevational difference between the carport and residence which sets the height of new structure. The new lift and a small portion of a covered walkway at the top will exceed 8.5m in height. These structures will reach a maximum height of 11.15m.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

> *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
>
> *(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and* ***(refer to Precondition 3 below)***
> *(b) That there are sufficient environmental planning grounds to justify contravening the development standard.* ***(refer to Precondition 4 below)***

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

6.0 Justification of Proposed Variation

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

Paragraph 27 of the Samadi judgement states:

> *Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to*

consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in an R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

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

The development allows for alterations and additions to an existing detached residence including a lift and covered walkway to provide a practical, accessible all-weather access from the property's carport to the main living level of the residence. The lift and walkway will improve the residences viability going into the future by allowing occupants of all ages and mobility capabilities to easily access the residence.

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

Not applicable.

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

The lift will not result in any significant loss of vegetation with development in total maintaining a landscaped area of 56.7% well in excess of the DCP requirement of 40%. The elevated walkway will not interfere with any landscaping. The natural rock cliff traversing through the property which is considered a significant environmental feature will be maintained without any disturbance by new structure.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

(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.

Despite the variation to the maximum building height, the proposed lift and walkway is considered in this instance to be in keeping with the relevant Objectives of Clause 4.3 for the following reasons:

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

When viewed in context because of the location of the proposed lift behind the carport and adjacent the rock cliff, the apparent height will not appear excessive when viewed from the street and surrounding area. Furthermore the lift will rise up amongst established trees and dense vegetation that will further reduce its visual impact. Lifts are unique structures that are inevitably deployed on difficult sites to improve access.
We submit that in this instance the height of the lift and walkway given their secluded location will not be out of scale when viewed in context with surrounding elevated development along the high side of Glentrees Avenue.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
As discussed above the lift is to be located in a discrete location behind the existing carport and surrounded by mature trees and dense vegetation. The lift and associated walkway structure will not interfere with any surrounding properties views or outlook and as demonstrated within the accompanying shadow plans will not result in any significant additional shadow. In terms of privacy the mature trees and dense vegetation in the immediate vicinity of the lift will prevent any undue overlooking opportunities.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
The property is not located within close proximity to the coast and separated from natural bushland to the southeast by several residential properties.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.
The property cannot be seen from any public parks, reserves or community facilities. The proposed remote location of the lift and walkway will ensure they will not be visually prominent within the broad streetscape.

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

It is unreasonable and unnecessary to require strict compliance with the development standard in this instance as the proposal provides for a practical and accessible all-weather access ensuring the residences viability for all ages and mobility capabilities.

Council's controls in Clause 4.3 provide a maximum building height of 8.5m above ground level.

It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

- The new lift and walkway structure due to their discrete location will not result in any undue loss of amenity to surrounding properties.
- When viewed from Glentrees Avenue the new lift will be concealed to some extent behind the properties existing carport that will visually reduce its apparent height. Mature trees within the front yard will further screen the lift from the broad street view. Overall we propose that those portions of new lift and walkway structure visible from within the surrounding area will not be significant and therefore not impact unduly on the residential character of the area.
- The location of the new lift structure takes into account the existing rock cliff face traversing through the property which is considered a significant environmental feature.
  The requirements of Part E6 of WDCP 2011 - Retaining unique environmental features states: (1) Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land.
  (2) Development should respond to these features through location of structures, outlook, design and materials.

We submit that the location of the new lift and ancillary structure as described above meet the objectives of this control by maintaining a significant environmental feature without any disturbance to its fabric.

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

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

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

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

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

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

   Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

   Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

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.

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

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

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

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

Council's controls in Clause 4.3 provide a maximum building height of 8.5m above ground level for the subject development.

The new lift and walkway structure at its highest point will reach a maximum height of 11.15 metres.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

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

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.
The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

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

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

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The lift and walkway is a unique structure which by nature is a design solution for a difficult access situation. The challenging topography including a 4.5 metre high rock cliff face traversing through the property and the location of the existing residence is such that pedestrian access into the residence is arduous for the able bodied and impossible for those with mobility issues. The new lift and associated walkway will provide access to the residence for both occupants and visitors of all capabilities.
- The proposal is considered to be an acceptable form of development within the local built environment as appropriate views, solar access and privacy will be maintained within acceptable levels for the surrounding properties. The design also respects the existing natural environment with new structure avoiding any disturbance to surrounding trees, vegetation and the rock cliff feature.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

7.0 Conclusion

This development proposes a departure from the maximum building height control, with the proposed new lift and associated walkway structure reaching a maximum height of 11.15 metres as defined in Clause 4.3 of Warringah LEP 2011.
This variation occurs as a result of a rock cliff approximately 4.5 metres high extending across the property and moderate falls in natural surface at the top and bottom of the cliff face.
This written request to vary the maximum building height control specified in Clause 4.3 of the Warringah LEP 2011 adequately demonstrates that that the objectives of the standard will be met.
The bulk and scale of the proposed lift and walkway is appropriate for the site and its unique and secluded location.
Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

John Wright
Building Designer

ITEM 3.4	**DA2022/2133 - 23 OSBORNE ROAD MANLY - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/335650**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations
	3 ⇩Clause 4.6 - FSR
	4 ⇩Clause 4.6 - BHS

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/2133 for alterations and additions to a semi-detached dwelling on land at Lot 1 DP 744967, 23 Osborne Road MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2133

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 DP 744967, 23 Osborne Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Simon Geoffrey Phillips Anna Joan Phillips
Applicant:	Anna Joan Phillips

Application Lodged:	20/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/12/2022 to 25/01/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 2.4 % 4.4 Floor space ratio: 8.1%
Recommendation:	Approval

Estimated Cost of Works:	$ 803,300.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing semi-detached, including a first floor addition.

The application is referred to the Development Determination Panel (DDP) at the discretion of the Executive Manager, Development Assessment, due to the proposal's relationship with the adjoining Development Application (DA2022/2134) at No. 25 Osborne Road, Manly.

No submissions were received within the public notification period.

The proposal includes variation to the Height of Buildings and Floor Space Ratio development standards, which are less than 10%.

These variations have been supported through written Clause 4.6 requests. In the case of the non-compliance with FSR standard, it arises from a 54.2m^2 increase in floor space. However and despite this, the proposal has been amended to largely conceal the additional floor space behind the existing roof form when view from the street. The proposal does not result in adverse building bulk and the works remain visually commensurate with the existing built form.

In the case of the building height, the non-compliance with height standard arises from the site being previously excavated for an existing basement. It has been argued within the written Clause 4.6 request that the construction of first floor over the previously excavated area creates non-compliance with the height control. However and based on extrapolated natural ground levels the height would be compliant and measures at a maximum of 7.8 metres. The remainder of the building is under the 8.5 metre height.

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

PROPOSED DEVELOPMENT IN DETAIL

Development application for alterations and additions to an existing semi-detached dwelling. The works comprise:

Parking level (RL23.95)

- Construction of hardstand.
- Alterations to existing garage.
- Landscaping works in western setback, including new garden bed and paves.

Ground level (RL 26.27 - 26.30)

- Demolition of exiting sunroom and construction of porch.
- Conversion of bedroom 1 into living area.
- Construction of new bathroom and laundry.
- Construction of vergola above side deck.
- Installation of gas fireplace.
- Landscaping works in rear.

First floor (RL29.95)

- Construction of first floor, including three bedrooms and two bathrooms.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

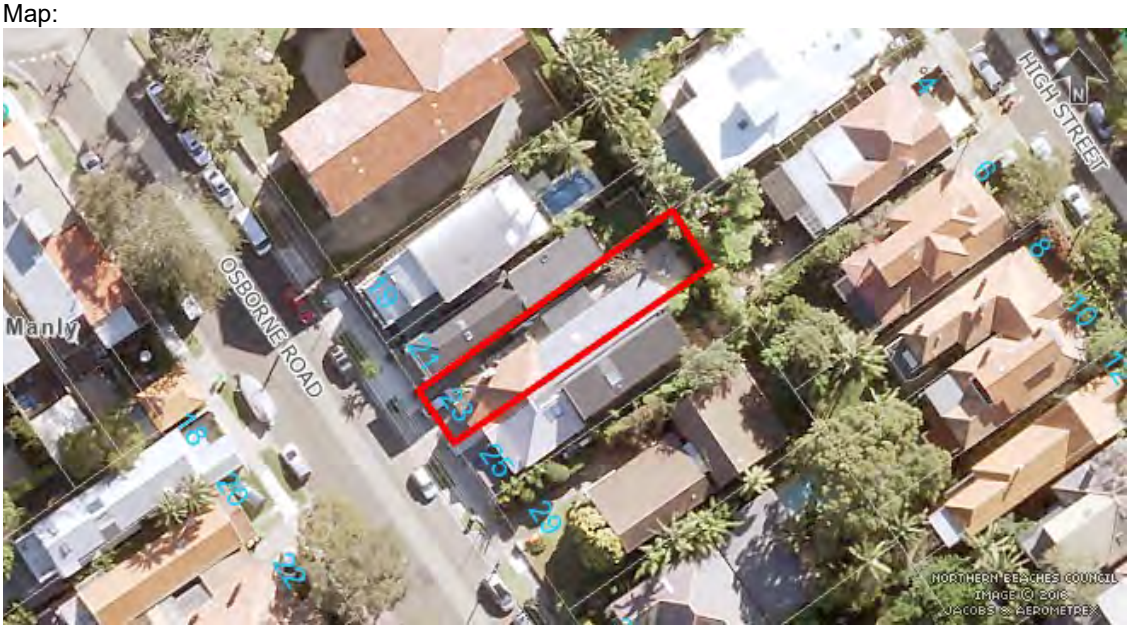
Manly Local Environmental Plan 2013 - Zone R1 General Residential
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 1 DP 744967 , 23 Osborne Road MANLY NSW 2095
Detailed Site Description:	The subject property is commonly known as 23 Osborne Road, Manly and is legally known as Lot 1 DP 744967. The site is irregular in shape with a frontage to Osborne Road of 7.98 metres and a maximum depth of 35.82 metres. The site has a surveyed area of 276.2m². The site is located within the R1 General Residential zone and accommodates a single storey semi detached brick dwelling with a tiled roof and an attached garage. The site is flat and there is no significant vegetation. **Detailed Description of Adjoining/Surrounding Development** The surrounding area includes residential terraces and other residential development which exist along Osborne Road. It

	also includes residential flat buildings and detached dwelling houses varying in size, age and construction.

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:

DA107/2015
Development application for alterations and additions to an existing semi-detached dwelling including a carport over an existing hardstand and rear side addition. This application was approved by the Development Assessment Unit on 31 July 2015. This application has since lapsed

Mod2022/0411
Modification of Development Consent DA0457/07. This application was withdrawn on 27 September 2022, as works were not considered substantially the same as the previously approved development. In addition, Council required further information that the original consent had physically commenced during the operational period.

DA2022/2134
Development application at the adjoining site known as 25 Osborne Road, for alterations and additions to an existing semi-detached dwelling including a first floor extension. This proposal has been lodged in tandem with the subject application and concurrently assessed.

Application History

The history of this application is detailed as below;

8 December 2022
Application received.

29 December 2022 to 25 January 2023
Public notification. No submissions received.

8 February 2023
Site inspection and preliminary assessment complete.

21 February 2023
Request For Information (RFI) letter was sent to the listed Applicant, via email and the NSW Planning Portal. The RFI requested amended plans to address concerns with the non-compliant building height and floor space ratio. It was considered that these non-compliances were significant and contributed to a built form that is out of character with the locality.

28 March 2023
Additional information was provided to Council in regards to the above letter. This information included an amended master-set with the following changes;

- Delete the northern hardstand parking space and replace with landscaping.
- Remove the existing storage area under the house and provide a new single garage.
- Provide tandem hardstand in front of garage.
- Revise the proposed first-floor layout, including the removal of the balcony and concealing the addition behind the existing hipped roof.

In addition, the applicant provided revised 4.6 variation requests and an amended BASIX certificate. In accordance with the provisions of the Northern Beaches Community Participation Plan, as the amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain, re-notification of the application was not required. The amended plans form basis of the assessment of this proposal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/12/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	***Supported, subject to Conditions*** The proposed development is located within declared habitat for the endangered population of Long-nosed Bandicoot at North Head. As such, a 'threatened species test of significance' is required to be undertaken in accordance with s7.3 of the NSW Biodiversity Conservation Act 2016. This assessment has been undertaken (Kingfisher Urban Ecology and Wetlands, November 2022) and concludes that the proposal will not result in significant impact to the endangered population.
NECC (Development Engineering)	***Supported, subject to Conditions*** The submitted stormwater plan including OSD is acceptable. The proposal incudes the demolition of a portion of the existing garage and provision of two on grade parking spaces forward of the building line with a portion of the spaces under a proposed verandah. The proposed parking forward of the building line is to be assessed by Planning. In terms of the two hardstand parking spaces, the plans do not include any finished levels for these spaces and a review of the existing paving levels adjacent to the northern boundary indicates that the gradient exceeds 1 in 20 (5%) which is unacceptable. Also the proposed verandah is over the spaces and there is no dimension for the clearance to ensure there is a minimum of 2.2 metres clearance. The existing driveway crossing is in poor condition and will need to be reconstructed as part of the works. The width of the crossing is to be limited to 4.5 metres from the kerb to 5.5 metres at the boundary using Council's Normal profile. Development Engineering cannot support the proposal due to insufficient information to assess the proposed parking in accordance with clause 4.1.6 of the DCP. **Amended plans submitted 28/03/2023** The revised plans have addressed the original issues by deleting the hardstand parking areas and converting the existing store into a garage. The existing driveway crossing is to be reconstructed to suit the revised driveway access to the garage. Development Engineering support the proposal, subject to conditions as recommended.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral

Internal Referral Body	Comments
	The proposal has been referred to Heritage as the subject site is within the vicinity of heritage items, listed in Schedule 5 of Manly LEP 2013. **Item I2 – All Stone Kerbs** - Along Osborn Road, Manly **Item I75 - Group of dwellings** - 57, 63, 86, 86A and 88–106 Addison Road and 16 Osbourne Road, Manly

Details of heritage items affected

Item I75 - Group of dwellings
Statement of Significance
The streetscape has major significance as a pleasing mixture of late 19th and early 20th century residential architecture of varying scale and style.
Physical Description
This section of Addison Road contains a well maintained mixture of late 19th and early twentieth century residential development consisting of brick or rendered brick, single and two storey and semi-detached buildings. Significant elements in the streetscape include tile and slate roofs, bull nose verandahs, gables and chimneys and the mature street planting.

Other relevant heritage listings

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
Australian Heritage Register	No	
NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	No	
RAIA Register of 20th Century Buildings of Significance	No	
Other	No	

Consideration of Application

The proposal seeks consent for alterations and additions to an existing semi-detached dwelling. Although the existing property dates back to the Federation era, it is not listed as a heritage item and it has been modified previously. The proposal involves a first floor addition with a similar streetscape presentation to the proposed first floor addition of the adjacent semi at 25 Osborne Road, Manly, and together they are considered to be sympathetic to the streetscape.

Internal Referral Body	Comments
	The street kerbing outside the subject site does not contain any heritage listed stone kerbing and given the physical separation between the heritage item (Group of Dwellings) and the proposal, the impact upon the significance of the heritage items is considered manageable. Therefore, no objections are raised on heritage grounds, subject to one condition. Consider against the provisions of CL5.10 of Manly LEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No 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.

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. A455927_06 dated 24 March 2023).

A condition has been included in the recommendation of this report requiring compliance with the

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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 5.0 metres 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 5.0 metres of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.7m	2.4%	**No**
Floor Space Ratio	FSR: 0.6:1 (165.72m^2)	FSR: 0.65:1 (179.2m^2)	8.1%	**No**

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

The underlying objectives of the R1 General Residential zone:

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

  Comment:

  The proposal maintains the residential character of the locality, while enhancing the amenity, functionality and appearance of the existing dwelling to provide for the housing needs of the residents.

  It is considered that the development satisfies this objective.

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

  Comment:

  The proposal maintains the existing housing type and will not change the approved density.

  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:

  No change to the existing residential land use is proposed.

It is considered that the development satisfies this objective.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.7m
Percentage variation to requirement:	2.4%

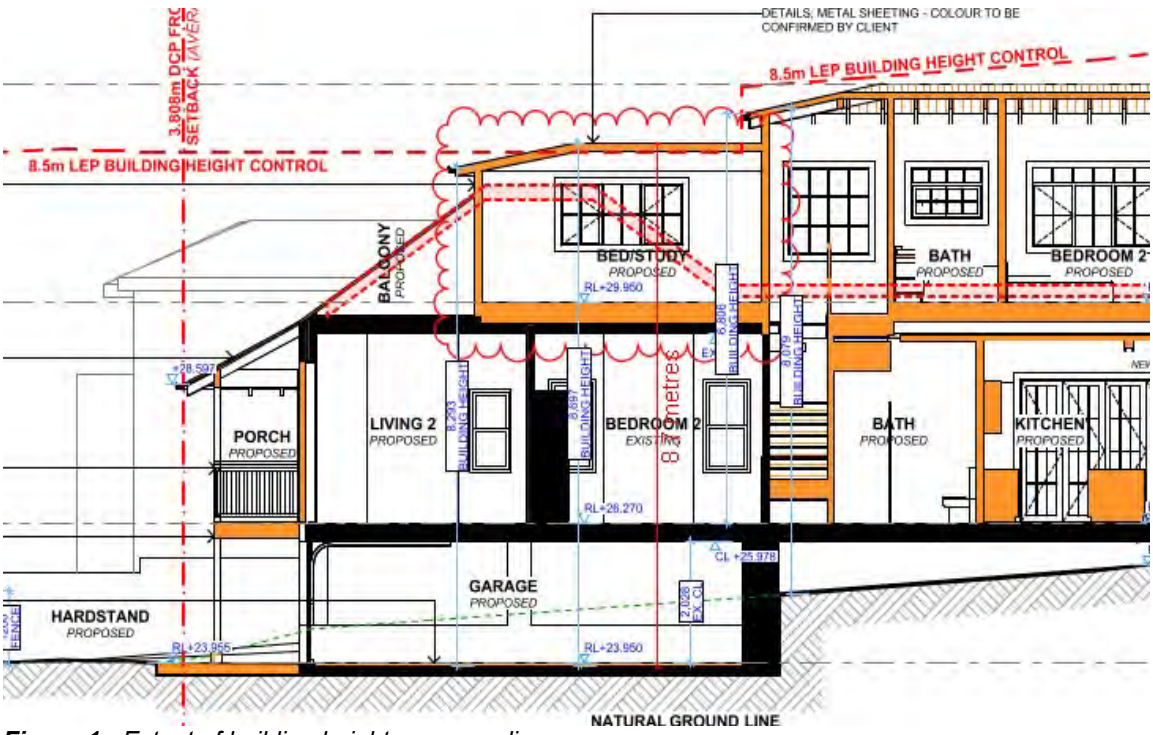


Figure 1 *- Extent of building height non-compliance*

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 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 variation between the proposed works and the building height control is reasonable at 0.228 metres or 2.68% when measured in accordance with Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582. The proposed building height is a compliant maximum 7.8 metres, when measured in accordance with the previously applied interpolated height set out in the Bettar judgement.*
- *The design, with a minor variation to the height, largely results from taking into account the existing excavated garage and sub-floor and the revised building height measurement definitions set out in the Merman judgement.*
- *The small variation is for a limited area and the vast majority of the building complies with the height control. The apparent bulk through the variation is negligible and the resulting development remains consistent with the streetscape"*

Planner's Comment
The applicant's justification is agreed with. The extent of the non-compliance is limited to a minor area

of the pitched roof of the first floor addition. Also, it is acknowledged that the non-compliance is largely consequence of the site being previously excavated to allow for the existing basement and that the proposal is measured at 7.8 metres when taken from the extrapolated natural ground levels. Furthermore, it is also considered that the minor noncompliance will not; give rise to any adverse amenity impacts or result in unreasonable streetscape impacts, particularly as the first floor has been design to integrate into the existing dwelling's hipped roof form.

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 projections above the 8.5 metres height limit are limited to the front of the building with a minor area of the pitched roof (demonstrated in figure 1 above). As above, this is largely consequence of existing excavation and the proposal would comfortably comply if measured from the extrapolated natural ground levels. Notwithstanding, the proposed first floor has been amended to provide a generous front setback so that the additions are adequately concealed behind the existing hipped roof form. As a result, the dwelling generally presents as two-storey, when viewed from Osborne Road. In addition, the proposal's facade and roof form has been

designed to link with concurrent development application (DA2022/2134) for the adjoining semi at No. 25 Osborne Road, which will result in positive streetscape outcomes. Overall, the proposed height is considered to be compatible and commensurate with the existing built form and therefore, remains 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,

Comment:

The bulk and scale of the development as amended is consistent with nearby development and will not result in any unreasonable impacts within the locality. 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 surroundings 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 proposal will not result in the loss of views.

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:

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 is for alterations and additions to an existing semi-detached dwelling house.

It is considered that the development satisfies this objective.

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

  Comment:

  No change to the existing residential land use is proposed.

  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:

  No change to the existing residential land use is proposed.

  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 Height of building Development Standard associated with a single dwelling house (Class 1 building).

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (165.72m^2)
Proposed:	0.65:1 (179.2m^2)
Percentage variation to requirement:	8.1%

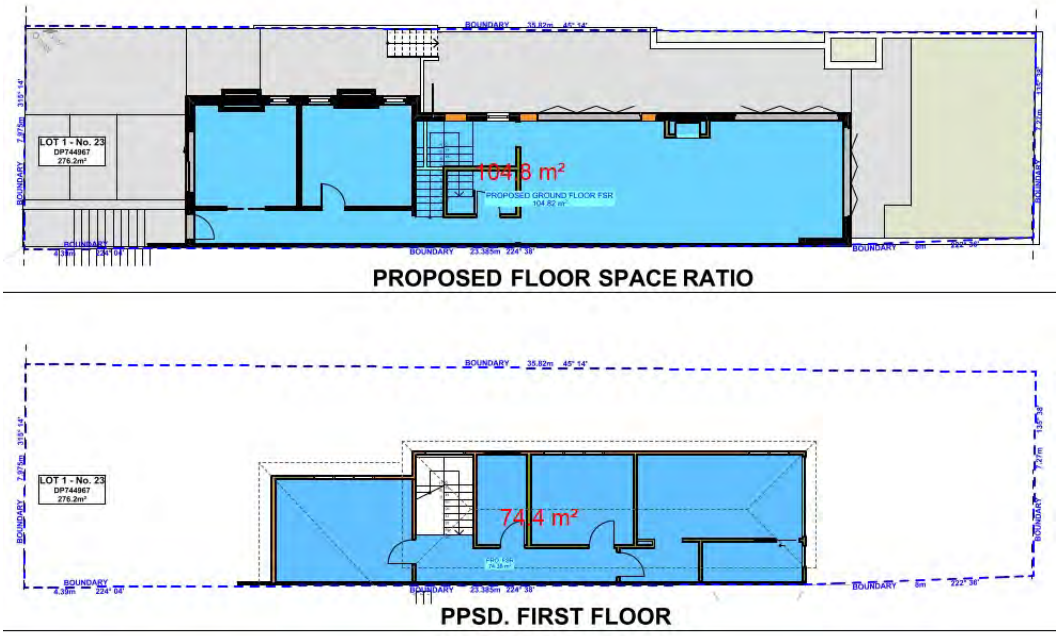


Figure 2. *Gross floor area calculation.*

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

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

The applicants written request argues, in part:

- *"The proposed dwelling has been designed to remain consistent with the character of the locality, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.*
- *The proposed development will allow for the provision of a modern floor plan, with open plan living areas and additional bedrooms on the first floor.*
- *Given the site context, the proposed variation is minor at reasonable at 8.13% or 13.48m2 and does not result in any unreasonable impacts to neighbouring properties.*

Planner's Comment
It is agreed that the proposed addition will remain compatible within the immediate locality without rise to any adverse amenity impacts, as the built form is appropriately modulated and sited, such that the proposal achieves an acceptable level of compliance with the relevant built form controls and meets the objectives of the relevant controls. Overall, the requested variation is reasonable in terms of its impacts and strict compliance with this development standard would not provide a net benefit to the immediate locality, as the proposal is considered an appropriate design within a residential setting, which preserves an acceptable level neighbourhood amenity. The additional floor space can be attributable to that within the hipped roof space and as such not directly viewable from adjoining properties.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the 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 well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon 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:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works, as the footprint of the proposed dwelling remains largely consistent with the existing building. In regards to townscape features, there are no townscape features within the close vicinity of the subject site.

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

Comment:

The development has been amended to ensure that the first floor is largely concealed behind the existing roof form. As a result, the development overall generally maintains a two-storey appearance, which is consistent with other comparable developments found on smaller allotments. In addition, the proposal's facade has been designed to provide an appropriate visual relationship between the adjoining semi-detached dwelling at No. 25 Osborne Road. In this regard, the proposal is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit

appropriately within the residential setting in a manner that is consistent with the 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 proposal is consistent with the numeric control under clause 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the Manly DCP. With regards to views, there will be no unreasonable impact to neighbouring private open space or the public realm.

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

Comment:

The development is for residential use.

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 is for alterations and additions to an existing semi-detached dwelling house.

  It is considered that the development satisfies this objective.

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

  Comment:

  No change to the existing residential land use is proposed.

  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:

  No change to the existing residential land use is proposed.

  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).

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,

northern beaches council

(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 subject site is substantially set back from nearby (approximately 250 metres+) foreshore areas. The proposed development is not of a size or scale to have any discernible impact upon the visual amenity of the foreshore. In this regard, the proposal has appropriately designed to avoid any adverse impacts to the above matters.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 276.2m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.2.1 Wall Height	7.0m (based on gradient 1:12)	7.8m	11.4%	**No**
4.1.2.2 Number of Storeys	2	2-3	50%	**No**
4.1.2.3 Roof Height	Height: 2.5m	<2.5m	N/A	Yes
	Pitch: maximum 35 degrees	<35 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Nil (Hardstand) 4.2m (Porch) 8.8m (First floor)	100% 30% N/A	**No** **No** Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N:2.6m (based on wall height of 7.8m)	Nil (Vergola) 2.9m - 3.8m (First floor)	100% N/A	**No** Yes
	S: Semi-detached dwelling	N/A	N/A	N/A
	Windows: 3m	2.99m	0.3%	**No**
4.1.4.4 Rear Setbacks	8m	8.1m (First floor)	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (151.9sqm)	40% (110.3sqm)	27.2%	**No**
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	66.5% (73.3sqm)	N/A	Yes
	1 native trees	1 trees - Existing	N/A	N/A
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	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	6.5m (81.5%)	63%	**No**
Schedule 3 Parking and Access	Dwelling 2 spaces	2	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 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
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Clause 3.1.1.2 of the MDCP 2013 sets out the following requirements for front fences, which read as follows:

a) Notwithstanding the 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.

Comment:

In response to the above criteria, a detailed assessment is carried out below:

a) The proposed fence contains a maximum height of 1.2 metres, which exceeds the 1 metre requirement specified within Clause 4.1.10 of the MDCP 2013.

An inspection of the street reveals that there various examples of front fences which exceed the 1 metre height requirement. Overall, the proposed fence has incorporated an open design to ensure compatibility within the surrounding streetscape.

b) The proposed fence has responded appropriately to the topography of the land and incorporates various design elements design to reduce it's visual impact upon the streetscape. Overall, the proposal will result in acceptable streetscape outcomes, which will prevent conflict with the local character.

c) The proposal involves the construction of a masonry and timber fence. The proposal's incorporates vertical timber slats with spacing, which achieves a reasonable level of openness and remains compatible within the established built environment.

d) The proposed access gates will not encroach on public land when opened.

Based on the above assessment, it is concluded that the proposal does satisfy the streetscape requirements for fences.

Merit consideration

With regard to the consideration of a variation, the proposal 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:

As above, the visual impact of the works have been mitigated by a site responsive design, which appropriately minimises the built form, when viewed from the street.

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

Comment:

The fence will be consistent with the established streetscape character along Osborne Road .

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

Comment:

The proposed fence along the frontage is considered an appropriate response, as it is compatible within the established streetscape and to ensure that a reasonable level of privacy is provided for the occupants of the development.

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

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

Description of non-compliance

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013.

Clause 4.1.2 of the MDCP stipulates that walls are not to exceed 7.0 metres for the northern side wall. The proposal would result in a maximum northern wall height of 7.8 metres above the existing ground level. This represents a 11.4% 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:

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed height of the building is minimised by a low roof pitch and suitable articulation. The visual impact upon the streetscape will be acceptable and not unreasonable in this residential setting, as the non-compliant proportions will be largely screened by the existing roof form and proposed planting.

b) to control the bulk and scale of buildings,

Comment:

The proposed first floor adequately steps in at the front portion of the building and provides a compliant northern side setback ranging between 2.9 - 3.8 metres. The amended northern elevation is adequately articulated using recessed and modulated walls, fenestration, eaves and changes in materials to break up built form. The amended design provides a low roof pitch which minimisies the the building height and mitigates as best possible the impact of height from the roof without having to resort to a completely flat roof that would be out of character. It is noted that flat roof designs are generally inconsistent within the immediate locality. In this regard, the proposal has been designed with consideration of the site constraints and will not give rise to adverse building bulk.

c) to minimise disruption to the following:
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposal will not result in the loss of views.

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 development are minimal and acceptable in terms of their impact on habitable rooms of the adjoining properties and public open space.

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 site is not located within or adjacent to a recreation or environmental protection zone.

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.

4.1.3 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

Front setback
The proposed porch is set back 4.2 metres from the front boundary. Manly DCP requires new development to relate to the front building line of neighbouring properties and in the immediate vicinity. The works remain behind the prevailing building lines, while sharing the same alignment as the adjoining semi detached dwelling at No. 25 Osborne Road.

Side setback
The proposal involves the construction of a metal roof pergola over the existing northern side deck and will be located on a nil setback. The proposed pergola will replace the existing plastic roof pergola that partly encroaches the northern side boundary shared with No. 21 Osborne Road.

Windows
The proposed northern elevation includes six (6) windows within 3.0 metres of the northern boundary.

Merit consideration:

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

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

Comment:

The proposal involves the demolition of the existing ground floor sunroom and construction of an entry porch, which is located on a 4.2 metre front setback. The proposal is set back 1.0 metre further than the existing sunroom to better align with the facade of the adjoining semi detached dwelling at No. 25 Osborne Road. In this regard, the proposal will reduce building bulk within the frontage, while providing an integrated facade that is suitably articulated and visually commensurate to the existing built form. Furthermore, the proposal will provide suitable landscaped area within the site's frontage to assist in moderating the visual impact of the works and in turn enhancing the streetscape. Overall, the proposal is a positive and compatible element of 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 ground floor pergola will maintain existing spatial separation and will not result in any adverse privacy impacts, as the works involve suitable screening along the northern boundary. In addition, the proposed first floor north facing windows are affixed to low-use rooms and have been sufficiently offset from adjacent windows. Notwithstanding the setback non-compliances the proposal has been designed to preserve local amenity through providing reasonable privacy between buildings.

The applicant has submitted shadow diagrams and detailed analysis of the overshadowing impact of the development and Council are satisfied that the adjoining site's will receive solar access to living room windows and private open space in accordance with the Manly DCP.

The proposal will not result in the loss of views.

As mentioned elsewhere the proposal has been designed to maintain acceptable streetscape outcomes.

The proposal will facilitate safe and adequate traffic conditions

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

Comment:

northern beaches council

The proposed setback breach is considered to be acceptable given the characteristics of the site and the absence of any adverse amenity impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal provides landscaped area which is consistent with the control for nearby dwellings and proposes vegetation to the front of the site. This provides a reasonable circumstance for natural features.

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 MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

The subject site is located within Area OS3, which requires a total open space of at least 55% (or 151.9m^2). The proposal provides 40% (110.3m^2) of site toward total open space

As the proposed total open space area is increasing upon the existing setting by 6.4 % (17.6m^2) with the proposed front garden, a merit assessment is not necessary in this instance.

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

Description of non-compliance

Clause 4.1.6 of the MDCP 2013 requires dwelling houses to provide at least 2 off-street parking spaces. The site currently only benefits from 1 off-street parking space via the single hardstand. The proposal involve demolishing the existing hardstand and constructing a new single garage, in effect maintaining the status quo in terms of car parking provision.

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:

Despite the off-street parking non-compliance, there is adequate space forward of the garage to provide an additional hardstand space. In addition, on-street parking is found along Osborne Road. Furthermore, as the proposal is not significantly intensifying the density of the site, the existing non-compliance is supported, noting the availability of on-street parking.

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 existing driveway and nearby on-street parking are sufficient in compensating for the additional car space required.

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

Comment:

The proposal's design adequately provides one off-street carparking spaces that promote efficient, safe, and convenient vehicular access. Furthermore, as mentioned elsewhere in this report the proposal retains compatibility with the Osborne Road streetscape.

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

Comment:

The proposal does not involve significant earthworks, as it will be reasonably constructed within the existing footprint.

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

Comment:

The proposal involves reducing the width of the existing driveway and crossover, which will provide a benefit to the streetscape.

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

Comment:

The design of the car space is minimal in terms of width and low-lying nature, such that it allows adequate opportunities for landscaped areas in the front setback.

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:

This clause does not apply.

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.

4.1.10 Fencing

The proposal exceeds the maximum allowable height for fences under clause 4.1.10. This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1, subject to recommended conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $8,033 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $803,300.

CONCLUSION

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

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

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

conditions contained within the recommendation.

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

Planning Conclusion

In summary, the application has been assessed with regard to the relevant Manly LEP and DCP controls which guide the future desired character of the site and locality.

Subject to the recommended conditions of consent, it is considered that the proposal will result in a development that displays reasonable size, scale and density which is compatible with the existing site and surrounding development and will not result in unreasonable amenity impacts to surrounding properties. Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the DPP 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 and 4.4 Floor Space Ratio development standards 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 DA2022/2133 for Alterations and additions to a semi-detached dwelling on land at Lot 1 DP 744967, 23 Osborne Road, 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**
DA04 - RevB: Site plan	2 May 2023	Actions Plans
DA05 - RevB: Parking level demolition plan	2 May 2023	Actions Plans
DA06 - RevB: Ground floor demolition plan	2 May 2023	Actions Plans
DA07 - RevB: Parking level plan	2 May 2023	Actions Plans
DA08 - RevB: Ground floor plan	2 May 2023	Actions Plans
DA09 - RevB: First floor plan	2 May 2023	Actions Plans
DA10 - RevB: North elevation	2 May 2023	Actions Plans
DA11 - RevB: East & west elevation	2 May 2023	Actions Plans
DA12 - RevB: Sections	2 May 2023	Actions Plans

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
D01 - Issue A	6 December 2022	NB Consulting Engineers
D02 - Issue A	6 December 2022	NB Consulting Engineers
D03 - Issue A	6 December 2022	NB Consulting Engineers
D04 - Issue A	6 December 2022	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Bandicoot Impact Assessment	November 2022	Ecological Consultants Australia
BASIX Certificate No.A455927_06	24 March 2023	Action Plans

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	30 November 2022	Anna Phillips & Simon Phillips

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	6 January 2023

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not

be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:
  A. the name and licence number of the principal contractor, and
  B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:
  A. the name of the owner-builder, and
  B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of

jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

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

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

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

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

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant

shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992
(ii) Swimming Pools Amendment Act 2009
(iii) Swimming Pools Regulation 2018
(iv) Australian Standard AS1926 Swimming Pool Safety
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $8,033.00 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 $803,300.00.

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

Details demonstrating compliance, by way of written receipts issued by Council, are to be

submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

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

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

6. **Security Bond**

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

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

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

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

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

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

7. **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 NB Consulting Engineers, drawing number 2211071 D01, D02, D03 & D04 Issue A, dated 6/12/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following: i

1. The plans are to be amended to suit the deletion of the existing hardstand area adjacent to the driveway entry to the garage.

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.

8. **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.

9. **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.

10. **External colour scheme**
Full details of the colour scheme are to be submitted to Council's Heritage Advisor for approval prior to the issue of a Construction Certificate.

Reason: To ensure the colour scheme is complementary to the heritage items in the vicinity and the streetscape.

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

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

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

12. **External Finishes to Roof**
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.

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

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

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.

Property:
- 25 Osborne Road, Manly (Lot 1 DP 576814)

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. **Report dead or injured bandicoots**
Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

16. **Road Reserve**
The applicant shall ensure the public footways and roadways adjacent to the site are maintained

in a safe condition at all times during the course of the work.

Reason: Public safety.

17. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

18. **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.

19. **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.

20. **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.

21. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 3 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. All redundant laybacks and crossings are to be restored to kerb, footpath 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.

22. **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.

23. **Pre-clearance surveys**
A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Little Penguins or Long-nosed Bandicoots are present within the area to be cleared or the immediate vicinity. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

24. **Construction management**
The construction associated with this development consent is required to be completed concurrently with the adjoining development at No. 25 Osborne Road to ensure that the works are appropriately completed, in accordance with the plans listed in Condition 1.

Reason: To promote the orderly development of land.

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

25. **Fencing for Wildlife Passage**
Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

Details demonstrating compliance are to be provided the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To preserve wildlife corridors.

26. **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.

27. **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.

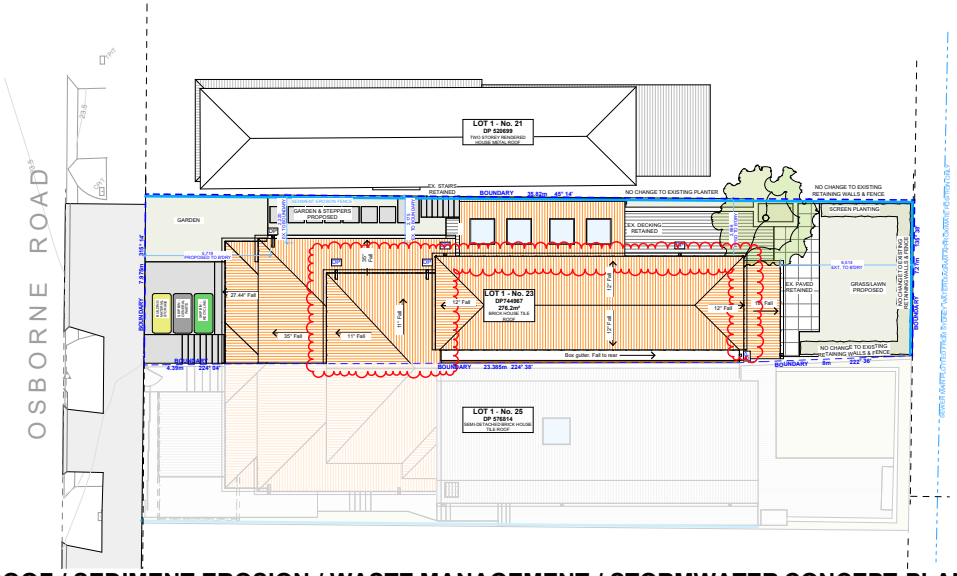
In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Adam Richardson, Manager Development Assessments

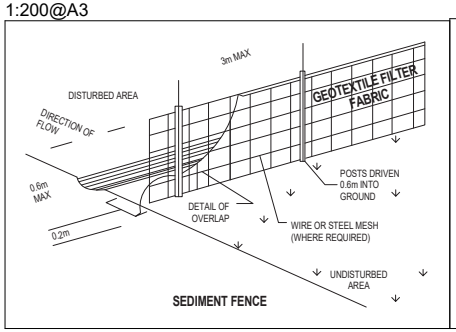
The application is determined on //, under the delegated authority of:

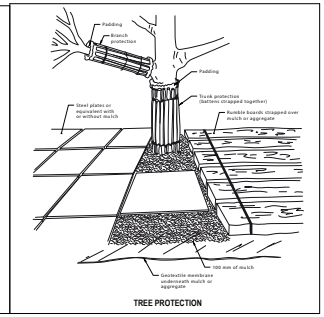
Adam Richardson, Manager Development Assessments



SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN

1:200@A3





NOTES REGARDING BOUNDARY
THE INFORMATION SHOWN ON THIS PLAN IS FOR DESIGN PURPOSES ONLY. THE POSITION OF BOUNDARY LINES HAVE BEEN ESTABLISHED BY A SURVEY TO MEET THE IDENTIFICATION REQUIREMENTS FOR COUNCIL AND NOT FOR REGISTRATION WITH THE LAND REGISTRATION SERVICES NSW NOR MAY THIS PLAN BE USED FOR ANY OTHER PURPOSE. SUBSEQUENT REGISTERED OR OTHER SURVEYS MAY AFFECT THE DEFINED BOUNDARY POSITIONS IN THIS AREA. ANY DIFFERENCES OF THIS NATURE ARE BEYOND THE PURPOSES OF THIS PLAN. THIS PLAN IS FOR THE ABOVE STATED PURPOSES ONLY. RESTRICTIONS ON THE TITLE HAVE NOT BEEN INVESTIGATED. IF FURTHER DEVELOPMENT IS CONTEMPLATED OR CONSTRUCTION INTENDED THEN IT IS IMPORTANT THAT A SURVEY SET OUT IS CARRIED OUT.

DUST CONTROL :
TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED. WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES

SEDIMENT NOTE :
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREA AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEPT DAILY.

STOCKPILES :
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :
PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

ACTION PLANS
m: 0426 957 518
e:operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	10/11/2022	DA SET	CHL
B	24.03.2023	REV. A	CHL

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All errors and omissions are to be verified by the Builder/Contractor and referred to the designer prior to the commencement of works.

LEGEND
APROVED
PROPOSED
DEMOLISHED

CLIENT
ANNA & SIMON PHILLIPS

PROJECT ADDRESS
23 OSBORNE ROAD, MANLY NSW 2095

DRAWING NO.
DA04

DATE
Tuesday, 2 May 2023

DRAWING NAME
SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN

SCALE
1:200, 1:1.39 @A3



NORTH ELEVATION
1:100@A3

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A	10/11/2022	DA SET	CHL
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LEGEND
EXISTING
PROPOSED
DEMOLISHED

CLIENT
ANNA & SIMON PHILLIPS

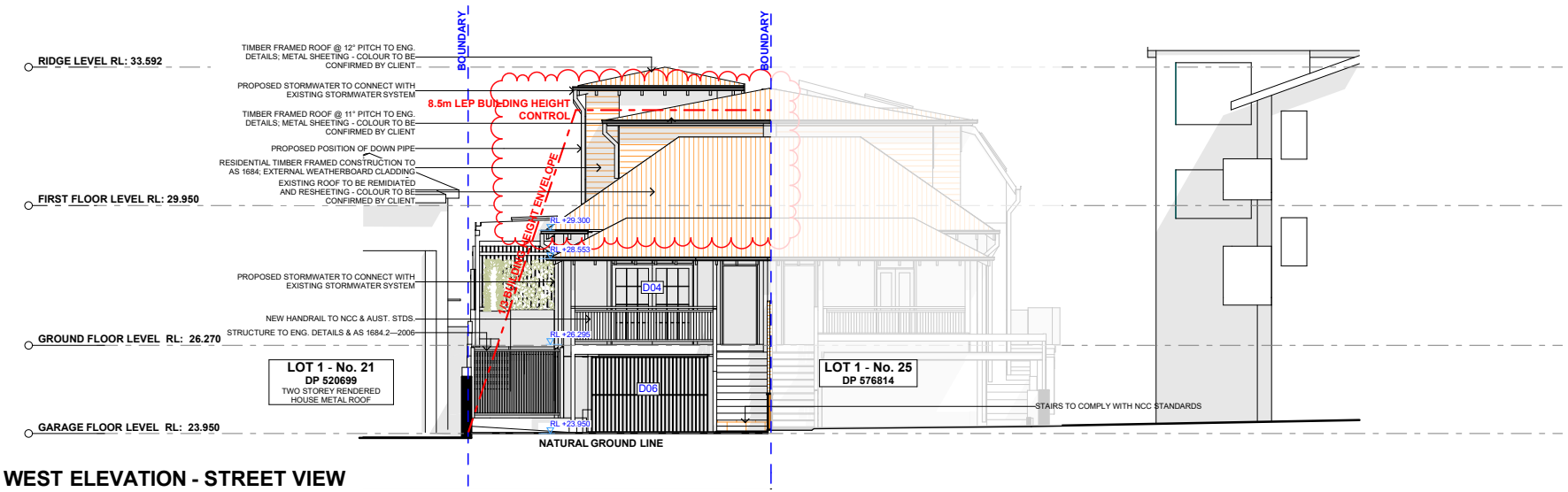
PROJECT ADDRESS
23 OSBORNE ROAD, MANLY NSW 2095

DRAWING NO.
DA10

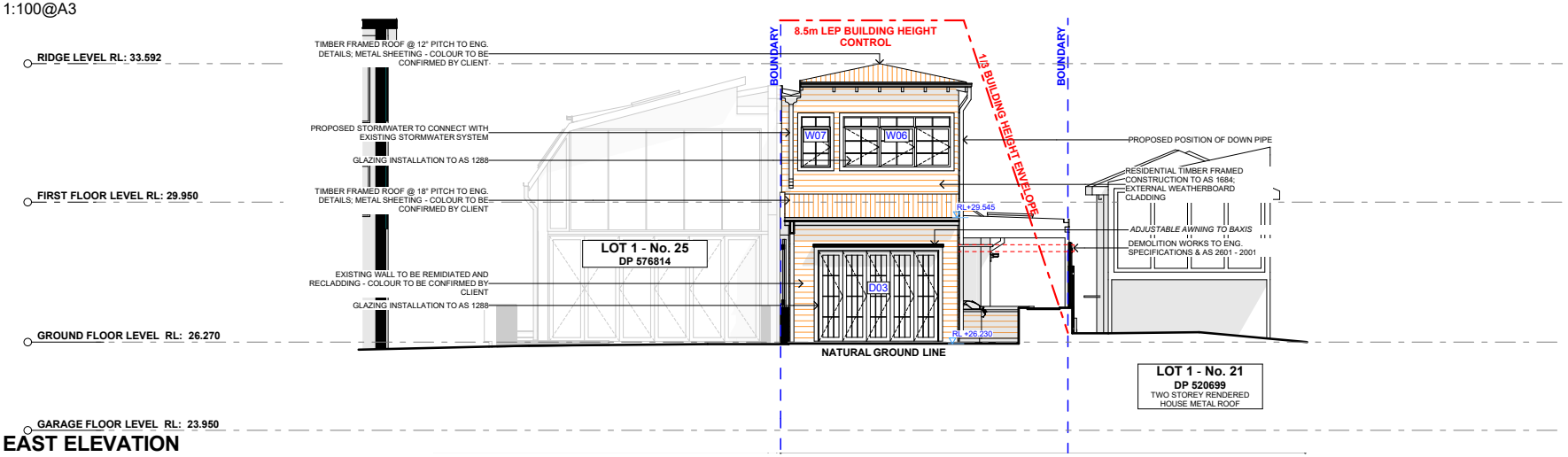
DATE
Tuesday, 2 May 2023

DRAWING NAME
NORTH ELEVATION

SCALE
1:100 @A3



WEST ELEVATION - STREET VIEW
1:100@A3



EAST ELEVATION
1:100@A3

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REV.	DATE	COMMENTS	DRWN
A	10/11/2022	DA SET	CHL
B	24.03.2023	REV. A	CHL

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All errors and omissions are to be verified by the Builder/Contractor and referred to the designer prior to the commencement of works.

LEGEND
- EXISTING
- PROPOSED
- DEMOLISHED

CLIENT
ANNA & SIMON PHILLIPS

PROJECT ADDRESS
23 OSBORNE ROAD, MANLY NSW 2095

DRAWING NO.
DA11

DATE
Tuesday, 2 May 2023

DRAWING NAME
EAST / WEST ELEVATION

SCALE
1:100 @A3

23 OSBORNE ROAD
MANLY

**CLAUSE 4.6 VARIATION REQUEST (FSR) FOR
ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING**



Report prepared for
Anna and Simon Phillips
March 2023

T 02-89010741 | E info@watermarkplanning.com.au | W watermarkplanning.com.au

1. Introduction

1.1 This is a Clause 4.6 variation request to Clause 4.4, *Floor Space Ratio* of the Manly Local Environmental Plan 2013, for alterations and additions to an existing semi-detached dwelling, at 23 Osborne Road, Manly.

1.2 This report has been prepared with reference to the following:

- Site visit
- Updated Architectural Plans prepared by Action Plans
- Statement of Environmental Effects prepared by Watermark Planning.

2. The site and its locality

2.1 The subject site is located on the eastern side of Osborne Road in Manly, approximately 65 metres south of its intersection with Addison Road. It is legally described as Lot 1 DP 744967 and is known as 23 Osborne Road.

2.2 It is a generally rectangular shaped lot with boundaries of 7.975 metres (south-west front boundary), 7.27 metres (north-east rear boundary) and side boundaries of 35.82 metres and 35.775 metres.

2.3 The site has an area of 276.2m^2 and slopes to the south-west, towards the Osborne Road frontage. The site is currently occupied by a single storey brick, semi-detached dwelling with a tile roof, sub-floor storage and 2 hard stand car spaces.

2.4 The property is surrounded by a mix of detached and semi-detached dwellings and multi-dwelling housing in all directions. It is located in close proximity to retail and public transport services in Manly to the north.



Figure 1. The site and its immediate surrounds

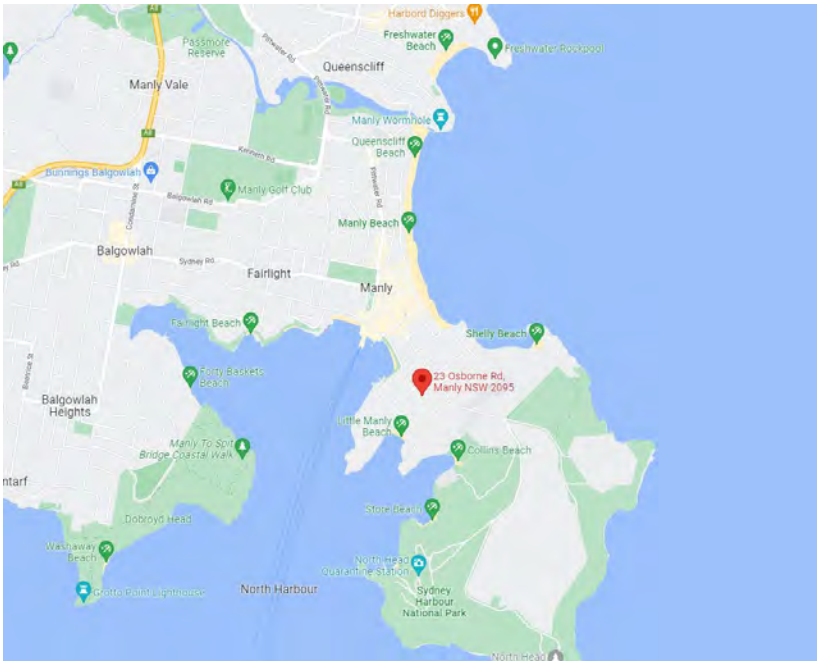


Figure 2. The site within the locality

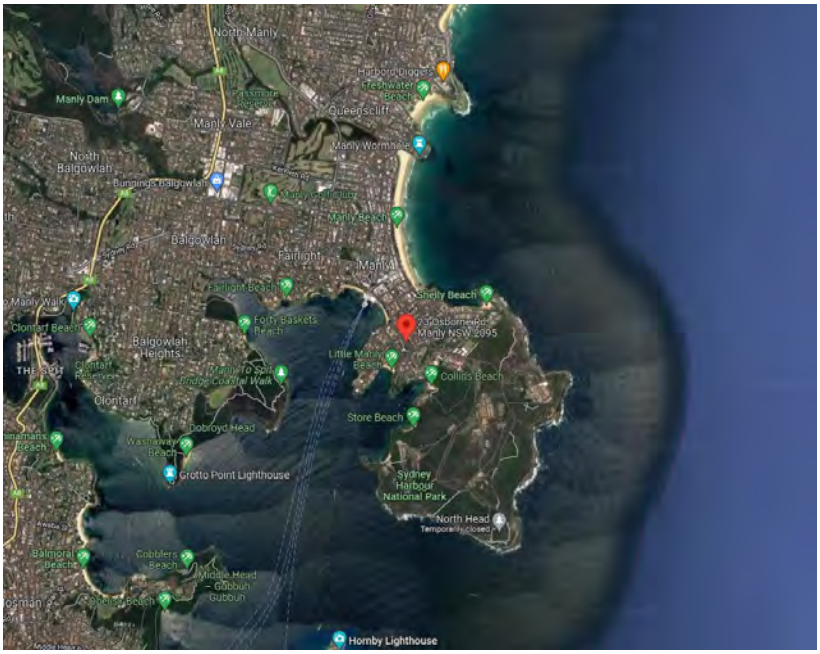


Figure 3. Aerial image of the site within the locality

3. Site Photos



Figure 4. The existing semi-detached dwelling, looking north-east from Osborne Road.



Figure 5. The adjoining dwelling to the north and side deck, looking south-west towards Osborne Road.



Figure 6. The first-floor addition of the adjoining semi, looking south.



Figure 7. The existing kitchen, dining and living room.

4. Proposed Development

4.1 The proposed development is for alterations and additions to the existing semi-detached dwelling, including internal alterations and a first floor addition to create a more functional residence on the site.

The development has been designed to ensure an attractive and modern dwelling which remains consistent with the existing streetscape. The proposal is consistent with Council controls and ensures privacy and solar access are maintained for the site and neighbouring dwellings.

4.2 The development will be made up as follows:

Sub-floor Level

- Demolish front of garage (below sunroom) and demolish the subfloor area to create a single lock up garage.

Ground Floor

- Demolish the existing sunroom and construct a new porch,
- Covert bedroom 1 to create a living room, with cavity doors,
- New door to retained bedroom 2,
- Demolish the bathroom to create a staircase to access the first floor, bathroom and laundry, including filling in one window and replacing one window,
- Reconfigure the layout of the open plan kitchen / dining / living room, including new bifold doors and gas fireplace.
- Demolish the alfresco cover and screening and provide new adjustable awnings over the bi-fold doors,
- Remove the pathway along the northern boundary and a portion of the paved rear terrace and replace with new soft landscaping.

First floor

Construct a new first floor consisting of:

- Master suite with ensuite and built-in robes,
- Bedroom 1 with built in robe,
- Bathroom,
- Staircase to access the ground floor,
- Bedroom / study with built-in robe.

4.3 The same building designer has prepared plans for the neighbouring semi-attached dwelling at 25 Osborne Road, Manly. The streetscape elevation and character of the two proposals has been kept consistent. Both Development Applications have been lodged concurrently to ensure that the assessment takes into consideration the matching pair. See images below of street front for the pair of semi-detached dwellings.



Figure 8. Existing front face of 23 and 25 Osborne Road.



Figure 9. Proposed front face of 23 and 25 Osborne Road.

5. Clause 4.6 Exceptions to Development Standards – Floor Space Ratio

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act) being:*

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

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

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

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

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

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R1 – General Residential

1.3 What are the objectives of the zone?

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

1.4 What is the development standard being varied?

Cl 4.4 – Floor Space Ratio

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.4 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

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

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

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

The numeric value of the FSR development standard applicable to the subject site is 0.6:1, this equates to a maximum floor area of 165.72m^2 for the site area of 276.2m^2.

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a maximum floor area of 179.2m^2 or FSR of 0.648:1.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 8.13% or 13.48m^2.

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827, (*expanded on the findings in *Winten v North Sydney Council),* identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

*1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).*

*2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).*

*3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).*

*4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Way**).*

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

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has

a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;

2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

2.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

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

Comment

The proposed development is for alterations and additions to the existing semi-detached dwelling and the revised design minimises bulk and scale when viewed from the street by:

- Utilising the existing subfloor area as a garage, to increase the front setback of the lower level and increase landscaping on the street frontage,
- Removing the previously proposed front balcony creating an increased first floor front setback. In addition, the altered first floor design allows for the retention of the existing dominant roof form when viewed from the street as illustrated in the renders below.



Figure 10. Plan Extract – Renders

The proposed variation is 8.13% or 13.48m^2 and is considered minor and reasonable. It is considered this objective is met, despite the numerical variation.

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

Comment

The development will result in a built form and massing that is of a consistent scale to surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts.

It is therefore considered this objective is met, despite the numerical variation.

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

Comment

The proposed development is visually appropriate for the locality and proposes a built form consistent with the adjoining semi, as illustrated in the render images above. The relocation of the carparking area into the subfloor area allows for an increase in the landscaped area on the property frontage.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings. Compliant levels of solar access are maintained despite the proposed variation and there will be no unreasonable impact on views, visual privacy or acoustic privacy.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

Not relevant as the subject site is not located in a business zone.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).

This exception to development standards request does not rely on this reason.

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is,

the particular parcel of land should not have been included in the particular zone (Fifth Way).

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the floor space ratio control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The area surrounding the subject site is characterised by 1, 2 and 3 storey residential dwellings. A 4 storey residential flat building is located in close proximity to the north.

- The proposed dwelling has been designed to remain consistent with the character of the locality, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.

- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:

    - 2021/0932 – 1 Bower Lane Manly, FSR Variation of 7.5%
    - 2021/1222 – 12 Bareena Drive Balgowlah Heights, FSR Variation of 12%
    - 2021/1558 – 70 Bower Street Manly, FSR Variation of 8%
    - 2020/1477 – 43 Castle Circuit Seaforth, FSR variation of 20%
    - 2020/1487 – 89 Cutler Road Clontarf, FSR Variation of 48.8%
    - 2020/1748 – 10 Kangaroo Street Manly, FSR Variation of 9.1%
    - 2021/0617 – 37 Radio Avenue Balgowlah Heights, FSR Variation of 11.4%

- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed development will allow for the provision of a modern floor plan, with open plan living areas and additional bedrooms on the first floor,
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with other buildings in the locality,
- Given the site context, the proposed variation is minor at reasonable at 8.13% or 13.48m^2 and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The proposal will remove paving and concrete areas in the front and rear yard and reinstate soft landscaping,
- The development does not require the removal of any native trees,
- The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in a dedicated study. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the

objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR, and the discussion above, reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A).

An assessment of consistency with the objectives of the Zone is provided below:

Zone – R1 General Residential

Objectives of zone

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

Consistent. The proposed works will allow the current and future housing needs of the residents to be met in their current local community.

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

Consistent. The proposal will retain the existing semi-detached dwelling house.

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

Not relevant. No change of use is proposed.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the

zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

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

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

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

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Strict numerical compliance with the 0.6:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment* and *promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development to reconfigure the ground floor plan and add a first-floor addition on land zoned R1 – General Residential is appropriate and reasonable for the following reasons:

- There is recent precedent for similar variations to Cl 4.4 FSR of the Manly LEP 2013 being accepted by Council,
- The proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts.
- The works proposed will allow the housing needs of the residents to be met, including an opportunity to work from home, in their current community,
- The variation proposed is less than 10%, as such is considered minor and appropriate,
- The objectives of the R1 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.

23 OSBORNE ROAD
MANLY

**CLAUSE 4.6 VARIATION REQUEST (HEIGHT) FOR
ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING**



Report prepared for
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March 2023

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1. Introduction

1.1 This is a Clause 4.6 variation request to Clause 4.3, *Height of Buildings* of the Manly Local Environmental Plan 2013, for alterations and additions to an existing semi-detached dwelling, at 23 Osborne Road, Manly.

1.2 This report has been prepared with reference to the following:

- Site visit
- Updated Architectural Plans prepared by Action Plans
- Statement of Environmental Effects prepared by Watermark Planning.

2. The site and its locality

2.1 The subject site is located on the eastern side of Osborne Road in Manly, approximately 65 metres south of its intersection with Addison Road. It is legally described as Lot 1 DP 744967 and is known as 23 Osborne Road.

2.2 It is a generally rectangular shaped lot with boundaries of 7.975 metres (south-west front boundary), 7.27 metres (north-east rear boundary) and side boundaries of 35.82 metres and 35.775 metres.

2.3 The site has an area of 276.2m^2 and slopes to the south-west, towards the Osborne Road frontage. The site is currently occupied by a single storey brick, semi-detached dwelling with a tile roof, sub-floor storage and 2 hard stand car spaces.

2.4 The property is surrounded by a mix of detached and semi-detached dwellings and multi-dwelling housing in all directions. It is located in close proximity to retail and public transport services in Manly to the north.



Figure 1. The site and its immediate surrounds

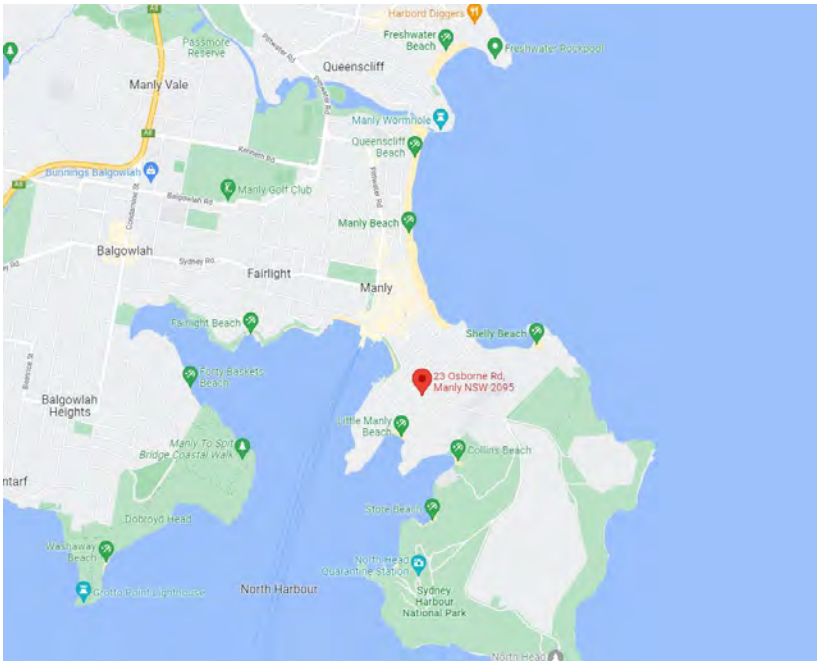


Figure 2. The site within the locality

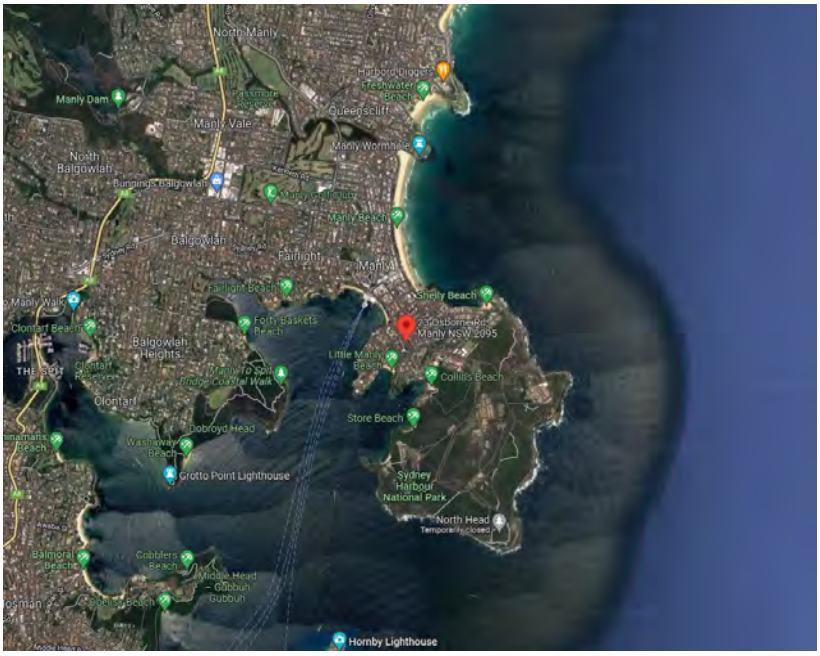


Figure 3. Aerial image of the site within the locality

3. Site Photos



Figure 4. The existing semi-detached dwelling, looking north-east from Osborne Road.



Figure 5. The adjoining dwelling to the north and side deck, looking south-west towards Osborne Road.



Figure 6. The first-floor addition of the adjoining semi, looking south.



Figure 7. The existing kitchen, dining and living room.

4. Proposed Development

4.1 The proposed development is for alterations and additions to the existing semi-detached dwelling, including internal alterations and a first-floor addition to create a more functional residence on the site.

The development has been designed to ensure an attractive and modern dwelling which remains consistent with the existing streetscape. The proposal is consistent with Council controls and ensures privacy and solar access are maintained for the site and neighbouring dwellings.

4.2 The development will be made up as follows:

Sub-floor Level

- Demolish front of garage (below sunroom) and demolish the subfloor area to create a single lock up garage.

Ground Floor

- Demolish the existing sunroom and construct a new porch,
- Covert bedroom 1 to create a living room, with cavity doors,
- New door to retained bedroom 2,
- Demolish the bathroom to create a staircase to access the first floor, bathroom and laundry, including filling in one window and replacing one window,
- Reconfigure the layout of the open plan kitchen / dining / living room, including new bifold doors and gas fireplace.
- Demolish the alfresco cover and screening and provide new adjustable awnings over the bi-fold doors,
- Remove the pathway along the northern boundary and a portion of the paved rear terrace and replace with new soft landscaping.

First floor

Construct a new first floor consisting of:

- Master suite with ensuite and built-in robes,
- Bedroom 1 with built in robe,
- Bathroom,
- Staircase to access the ground floor,
- Bedroom / study with built-in robe.

4.3 The same building designer has prepared plans for the neighbouring semi-attached dwelling at 25 Osborne Road, Manly. The streetscape elevation and character of the two proposals has been kept consistent. Both Development Applications have been lodged concurrently to ensure that the assessment takes into consideration the matching pair. See images below of street front for the pair of semi-detached dwellings.



Figure 8. Existing front face of 23 and 25 Osborne Road.



Figure 9. Proposed front face of 23 and 25 Osborne Road.

Clause 4.6 Exceptions to Development Standards – Building Height

1. Introduction

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act) being:*

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

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

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

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

2. Environmental Planning Instrument Details (Manly LEP 2013)

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

Manly Local Environmental Plan 2013

2.2 What is the zoning of the land?

R1 – General Residential

2.3 What are the objectives of the zone?

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

2.4 What is the development standard being varied?

Cl 4.3 - Height of Buildings

2.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.3 of the Manly Local Environmental Plan 2013

2.6 What are the objectives of the development standard?

(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.

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

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

2.8 What is proposed numeric value of the development standard in your development application?

The numeric value of the building height proposed is 8.728 metres (when measured in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*). The proposed building height is a compliant maximum 7.8 metres, when measured in accordance with the previously applied *Bettar judgement*.

2.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The development proposes a variation of 0.228 metres or 2.68%.

3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

3.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827, (*expanded on the findings in *Winten v North Sydney Council),* identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

*1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).*

*2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).*

*3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).*

*4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Way**).*

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

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

3.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

3.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;

2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone

objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

3.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

4. Consideration

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

4.1 Five (5) Part Test - Wehbe v Pittwater

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment

The proposed alterations and additions are appropriate to the site and will result in a similar or lesser scale development than surrounding properties. The variation is the result of taking into account the existing excavated garage and sub-floor area as required by *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, rather than the interpolated ground line previously applied by the *Bettar judgement.*

The dwelling presents with a compliant building height of 7.8 metres when the natural ground line is interpolated into the cross section, as illustrated in the cross section and long section below.

The proposal will not result in any discernible impact and will sit comfortably within the streetscape. There will be no unreasonable view loss, loss of privacy or increase in shadowing for neighbouring properties.

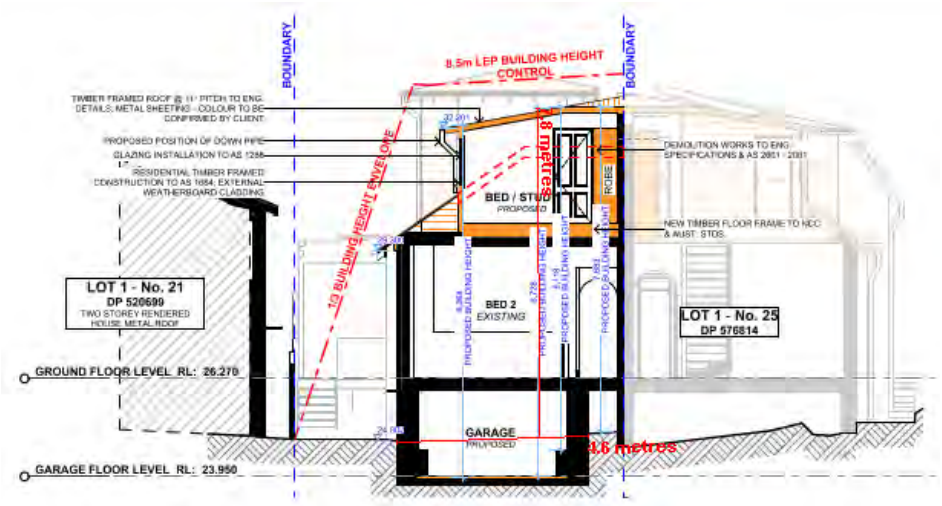


Figure 10. Plan Extract: Cross Section

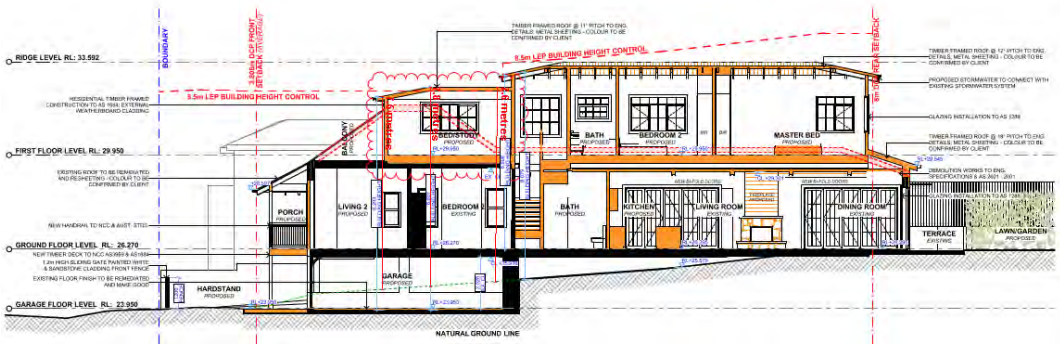


Figure 11. Plan Extract: Long Section

It is considered this objective is met, despite the numerical variation.

(b) to control the bulk and scale of buildings,

Comment

The proposed built form for the most part is located below the maximum height of 8.5m as illustrated above. The proposed height exceedance of an additional 0.228 metres or 2.68% is considered to be negligible in relation to bulk and scale.

The development has been revised to minimise bulk and scale when viewed from the street by:

- Utilising the existing subfloor area as a garage, to increase the front setback of the lower level and increase landscaping on the street frontage,
- Removing the previously proposed front balcony creating an increased first floor front setback. In addition, the altered first floor design allows for the retention of the existing dominant roof form when viewed from the street as illustrated in the renders below.



Figure 12. Plan Extract – Renders

It is considered this objective is met, despite the numerical variation.

(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

A site visit has been undertaken and it is concluded the proposed development will not result in any view loss impacts. It is therefore considered this objective is met, despite the numerical variation.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment

The proposed variation to height does not result in any unreasonable solar access impacts to adjoining dwellings. Given that compliant solar access is achieved, despite the height variation sought, it is considered the underlying objective of this clause has been satisfied.

(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

No applicable as the subject site is not located in a recreation or environmental protection zone.

2. ***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

3. ***The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason

4. ***The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

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

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Detail of Variation

- The variation between the proposed works and the building height control is reasonable at 0.228 metres or 2.68% when measured in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. The proposed building height is a compliant maximum 7.8 metres, when measured in accordance with the previously applied interpolated height set out in the *Bettar judgement.*

- The proposed variation is largely the result of taking into account the existing excavated garage and subfloor which is acknowledged in the *Merman judgement* to distort *the height of buildings development standard plane overlaid above the site, when compared to the topography of the hill.* The judgement acknowledges that this distortion can *be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.*

- The small variation is for a limited area and the vast majority of the building complies with the height control. The apparent bulk through the variation is negligible and the resulting development remains consistent with the streetscape, satisfying Cl1.3(g).

Neighbour Amenity

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The same building designer has prepared plans for the neighbouring semi-attached dwelling at 25 Osborne Road, Manly. The streetscape elevation and character of the two proposals has been kept consistent and both Development Applications have been

lodged concurrently to ensure that the assessment takes into consideration the matching pair.

- Compliance with the height control would not result in a building which has a significantly lesser bulk as the majority of the dwelling complies with the maximum height controls. A numerically complaint building height would have no material impact to neighbour, accordingly compliance with the development standard in this instance is unreasonable.

- Solar access impacts as a result of the small height variation are negligible. Solar access on the neighbouring sites are compliant, accordingly, compliance with the development standard based on this would be unreasonable.

- The minor height variation has no impact on privacy for neighbours, accordingly, the variation is reasonable in the circumstances of the case.

Site Constraints

- The design, with a minor variation to the height, largely results from taking into account the existing excavated garage and sub-floor and the revised building height measurement definitions set out in the *Merman judgement*. As such the minor variation allows for the orderly and economic use of the site and allows for an ecologically sustainable development satisfying Cl1.3(g) and (f).

Design and Streetscape Appeal

- Strict numerical compliance with the height control would not result in a better urban design outcome. The architectural character proposed will result in the appealing redevelopment of this property, consistent with the neighbouring dwelling. Compliance with the development standard based on this would be unreasonable.

- The proposed development will not present with excessive bulk from the public domain with surrounding dwellings presenting with a consistent form and scale.

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone, ensuring that appropriate and reasonable housing is proposed. Compliance with the development standard based on this would be unreasonable.

Natural Environment

- The inclusion of the small height variation has no impact on the natural environment. No landscape area is lost or impacted through the minor height variation satisfying Cl1.3(b). The natural environment is unaffected by the small departure to the development standard and it would be unreasonable for the development to be refused on this basis.

Environmentally Sustainable Development

- The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable.

Social and economic welfare

- The small variation to the height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

- The small variation to the height as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard.

- The variation does not result in a roof form or height beyond that which is found in the locality. The small variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.

- Removal of the non-compliance would not substantially alter the perceived bulk and scale due to the minor nature, siting and topography.

The environmental planning ground set out above, reflect the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R1 General Residential

Objectives of zone

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

Consistent. The proposal is for alterations and additions to an existing semi-detached dwelling and will provide additional living space and accommodation for the residents.

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

Consistent. The proposed development retains the existing semi-detached dwelling, providing variety within the existing residential neighbourhood.

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

Not relevant. The proposal is for alterations and additions to a residential dwelling.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a minor exceedance and is consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

4.4 Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

4.5 Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

4.6 Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence,

N/A

4.7 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

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

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

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

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment* and *promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development is for alterations and additions to an existing semi-detached dwelling house on land zoned R1 – General Residential.

As stated above the non-compliance between the proposal and the environmental planning instrument is 0.228 metres or 2.68% , when measured in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. The proposed building height is a compliant 7.8 metres when measured in accordance with the previously applied interpolated height set out in the *Bettar judgement.*

The non-compliance is the result of taking into account the existing excavated garage and sub-floor which is acknowledged in the *Merman judgement* to distort *the height of buildings development standard plane overlaid above the site, when compared to the topography of the hill.* The judgement acknowledges that this distortion can *be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.*

The variation does not result in any unreasonable impacts in regards to view loss, loss of privacy or increase in shadowing for neighbouring properties and will result in a development of a similar scale development to surrounding properties.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.5	**DA2022/2134 - 25 OSBORNE ROAD MANLY - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/335066**
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 DA2022/2134 for alterations and additions to a semi-detached dwelling on land at Lot 1 DP 576814, 25 Osborne Road MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2134

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 DP 576814, 25 Osborne Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Christopher Simon Dawtrey Helen Mary Dawtrey
Applicant:	Helen Mary Dawtrey

Application Lodged:	19/12/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/12/2022 to 25/01/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 22%
Recommendation:	Approval

Estimated Cost of Works:	$ 169,200.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing semi-detached, including a first floor extension.

The application is referred to the Development Determination Panel (DDP) due to the application proposing a greater then 10% variation to the Floor Space Ratio development standard. A 22% variation to the FSR standard is proposed, however the majority of this breach relates to the existing dwellings quantum of floor space, with only a minor increase of gross floor area equating to 7.2% (19.3m^2). The development is related to and has been considered in conjunction with DA2022/2133.

No submissions were received within the public notification period.

The breach in the floor space ratio has been supported by a written Clause 4.6 request for the non-compliance with FSR standard arises from a 19.3m^2 increase in floorspace. The proposal has been amended to conceal the additional floorspace behind the existing roof form. The proposal does not result in adverse building bulk and the works remain visually commensurate with the existing built form, particularly as it integrates with the redevelopment and integrated design with the semi at No. 23 Osbourne Road.

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

PROPOSED DEVELOPMENT IN DETAIL

Development application for alterations and additions to an existing semi-detached dwelling. The works comprise:

- Demolition of first floor attic.
- Construction of a first floor master bedroom with ensuite and storage.
- Associated landscaping works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R1 General Residential
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Development Control Plan - 3.1.1 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 - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 1 DP 576814 , 25 Osborne Road MANLY NSW 2095
Detailed Site Description:	The subject property is commonly known as 25 Osborne Road, Manly and is legally known as Lot 1 DP 576814. The site is irregular in shape with a frontage to Osborne Road of 7.3 metres and a maximum depth of 35.7 metres. The site has a surveyed area of 268.6m². The site is located within the R1 General Residential zone and accommodates a two storey semi detached brick dwelling with a tiled roof and an attached carport. The site is flat and there is no significant vegetation. **Detailed Description of Adjoining/Surrounding Development** The surrounding area includes residential terraces and other residential development which exist along Osborne Road. It also includes residential flat buildings and detached dwelling houses varying in size, age and construction.

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:

DA0223/2011
Development application for alterations and additions to an existing semi-detached dwelling including a first floor addition. This application was approved by the Development Assessment Unit on 17 January 2012.

PLM2022/0049
Pre-lodgement meeting for alterations and additions to a two-storey semi-detached dwelling at the subject site. In summary, the proposal was considered unacceptable, due to the following:
• *Non-compliance with the front and side setback control for the first floor addition.*
• *Non-compliance with the wall height control for the carport and elevated terrace to the northern side boundary.*
• *Non-compliance with the Floor Space Ratio (FSR) development standard.*
• *The impact of the first floor addition on the immediate and broader character of the streetscape of Osborne Road.*

The applicant was encouraged to redesign the proposal to reduce the overall bulk and scale of the addition and provide a more compliant development.

DA2022/2133
Development application at the adjoining site known as 23 Osborne Road, for alterations and additions to an existing semi-detached dwelling including a first floor addition. This proposal has been lodged in tandem with the subject application and as a result has been concurrently assessed.

Application History

The history of this application is detailed as below;

8 December 2022
Application received.

28 December 2022 to 25 January 2023
Public notification. No submissions received.

8 February 2023
Site inspection and preliminary assessment complete.

21 February 2023
Request For Information (RFI) letter was sent to the listed Applicant, via email and the NSW Planning Portal. The RFI requested amended plans to address the significant variation (27.4%) to the FSR development standard.

28 March 2023
Additional information was provided to Council in regards to the above letter. This information included an amended master-set with the following changes;

- Revise the proposed first-floor layout, including the removal of the balcony and concealing the addition behind the existing hipped roof.
- The changes resulted in a GFA reduction of 8.7m^2.

In addition, the applicant provided revised 4.6 variation requests and an amended BASIX certificate. In accordance with the provisions of the Northern Beaches Community Participation Plan, as the amendments are considered to be minor and will result in a lesser environmental impact on nearby

properties and the public domain, re-notification of the application was not required. The amended plans form basis of the assessment of this proposal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent. 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 recommended condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

Section 4.15 Matters for Consideration	Comments
	(iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered 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 28/12/2022 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	***Supported, subject to Conditions*** The proposed development is located within declared habitat for the endangered population of Long-nosed Bandicoot at North Head. As such, a 'threatened species test of significance' is required to be undertaken in accordance with s7.3 of the NSW Biodiversity Conservation Act 2016. This assessment has been undertaken and concludes that the proposal will not result in significant impact to the endangered population.
NECC (Development Engineering)	***Supported, subject to Conditions*** The proposal is for alterations and additions to the existing dwelling. As the impervious area exceed 60% of the site OSD is required for the development in accordance with Council's Water Management for development Policy. **Review 24/5/2023**

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<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>As commented previously OSD is required for the development. The required OSD volume shall be provided by retrofitting the existing RWT under consent 223/11 (Trim Reference 2017/216227, sheet 52 & 61) to operate as a combined retention and detention system or in the absence of the RWT as a separate system. It is noted the current survey does not show a RWT on site. Conditions are provided to this effect.

The development is supported subject to conditions as recommended.</td></tr>
<tr><td>Strategic and Place Planning (Heritage Officer)</td><td>HERITAGE COMMENTS
Discussion of reason for referral

The proposal has been referred to Heritage as the subject site is within the vicinity of heritage items, listed in Schedule 5 of Manly LEP 2013.

Item I2 – All Stone Kerbs - Along Osborn Road, Manly

Item I75 - Group of dwellings - 57, 63, 86, 86A and 88–106 Addison Road and 16 Osbourne Road, Manly

Details of heritage items affected

Item I75 - Group of dwellings
Statement of Significance
The streetscape has major significance as a pleasing mixture of late 19th and early 20th century residential architecture of varying scale and style.
Physical Description
This section of Addison Road contains a well maintained mixture of late 19th and early twentieth century residential development consisting of brick or rendered brick, single and two storey and semi-detached buildings. Significant elements in the streetscape include tile and slate roofs, bull nose verandahs, gables and chimneys and the mature street planting.

Other relevant heritage listings
<table>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
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Internal Referral Body	Comments
	Other | No | Consideration of Application The proposal seeks consent for alterations and additions to an existing two storey semi-detached dwelling. The existing property is not heritage listed, however it is from the Federation era and the previous first floor extension has retained front portion of the original semi including the front verandah and the original roof form. In the pre-lodgement meeting Heritage had recommended the retention of the front roof line at the street frontage in order to retain the existing single storey presentation to the streetscape and to be complementary to the adjacent semi. However, another application with a similar first floor extension has been submitted to Council for the adjacent semi at 23 Osborne Road, Manly, which resolved this concern. Heritage also had required the full details of the external colours and finishes. The proposal provided the materials however the colour schedule has not been included. The existing street kerbing outside the subject site does not contain any heritage listed stone kerbing and given the physical separation between the heritage item (Group of Dwellings) and the proposed works it is considered that the impact of the proposal upon the significance of the heritage items is acceptable. Therefore, no objections are raised on heritage grounds, subject to one condition. Consider against the provisions of CL5.10 of Manly LEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No 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.

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. No.A480122_02 dated 24 March 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0 metres 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 5.0 metres of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no

risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.3m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (161.2m^2)	FSR: 0.73:1 (196.7m^2)	22%	**No**

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone R1 General Residential

The underlying objectives of the R1 General Residential zone:

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

  Comment:

  The proposal maintains the residential character of the locality, while enhancing the amenity, functionality and appearance of the existing dwelling to provide for the housing needs of the residents.

  It is considered that the development satisfies this objective.

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

  Comment:

  The proposal maintains the existing housing type and will not change the approved density.

  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:

  No change to the existing residential land use is proposed.

  It is considered that the development satisfies this objective.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (161.2m^2)
Proposed:	0.73:1 (196.7m^2)
Percentage variation to requirement:	22%

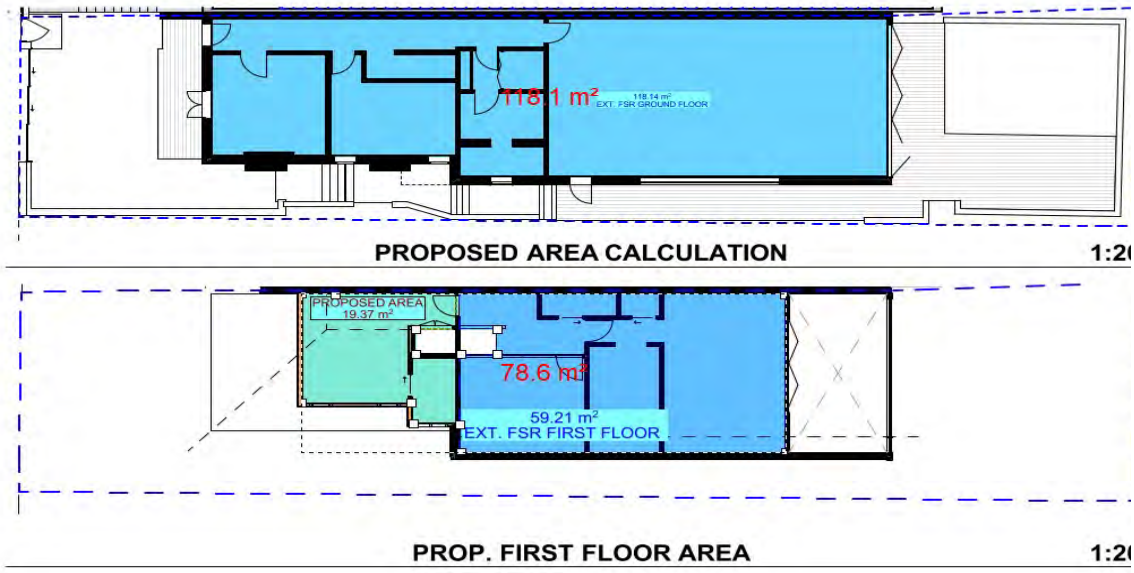


Figure 1. *Gross floor area calculation.*

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

Comment:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

The applicants written request argues, in part:

- *"The proposed dwelling has been designed to remain consistent with the character of the locality, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.*

- *The bulk of the variation is within an approved attic space (with compliant head room) that already achieves ample floor to ceiling height, meaning that the actual additional area is only 1.04m2.*
- *The proposed development will allow for the provision of an additional bedroom on the first floor*

Planner's Comment
It is agreed that the proposed addition will remain compatible within the immediate locality without rise to any adverse amenity impacts, as the built form is appropriately modulated and sited, such that the proposal achieves an acceptable level of compliance with the relevant built form controls and meets the objectives of the relevant controls. Overall, the requested variation is reasonable in terms of its impacts and strict compliance with this development standard would not provide a net benefit to the immediate locality, as the proposal is considered an appropriate design within a residential setting, which preserves an acceptable level neighbourhood amenity. It is important to note that the extent of built form integrates with 23 Osbourne Road.

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 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 well articulated and modulated so as to break down the visual appearance of the built form. The proposed addition provides a generous front setback and will not unreasonably impact upon 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:

No important landscape features within the close vicinity of the subject site will be unreasonably impacted by the proposed works, as the footprint of the proposed dwelling remains largely consistent with the existing building. In regards to townscape features, there are no townscape features within the close vicinity of the subject site.

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

Comment:

The development has been amended to ensure that the first floor is largely concealed behind the existing roof form. As a result, the development overall generally maintains a two-storey appearance, which is consistent with other comparable developments found on smaller allotments. In addition, the proposal's facade has been designed to provide an appropriate visual relationship between the adjoining semi-detached dwelling at No. 23 Osborne Road. In this regard, the proposal is found to enhance the visual continuity of the existing character of the area and improve the aesthetics of the development on site. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the 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 proposal is consistent with the numeric control under clause 3.4.1 Sunlight Access and Overshadowing and 3.4.2 Privacy and Security of the Manly DCP. With regards to views, there will be no unreasonable impact to neighbouring private open space or the public realm.

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

Comment:

The development is for residential use.

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 is for a dwelling house.

It is considered that the development satisfies this objective.

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

  Comment:

  No change to the existing residential land use is proposed.

  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:

  No change to the existing residential land use is proposed.

  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).

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

northern beaches council

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 as recommended by a Condition.

(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 subject site is substantially set back from nearby (approximately 250 metres+) foreshore areas. The proposed development is not of a size or scale to have any discernible impact upon the visual amenity of the foreshore. In this regard, the proposal has appropriately designed to avoid any adverse impacts to the above matters.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 268.6m^2	**Requirement**	**Proposed**	**% Variation***	**Complies**
4.1.2.1 Wall Height	7.0m (based on gradient 1:12)	6.8m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	<2.5m	N/A	Yes
	Pitch: maximum 35 degrees	<35 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line /	8.9m (First floor)	N/A	Yes

	6m			
4.1.4.2 Side Setbacks and Secondary Street Frontages	S:2.3m (based on wall height of 6.8m)	2.5m - 3.2m	N/A	Yes
	N: Semi-detached dwelling	N/A	N/A	N/A
	Windows: 3m	2.5m	16.7%	**No**
4.1.4.4 Rear Setbacks	8m	7.8m (existing)	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (147.7sqm)	38% (101.6sqm) - Existing	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (35.56sqm)	39.4% (40.1sqm) - Existing	N/A	N/A
	0 native trees	0 trees - Existing	N/A	N/A
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.5.1 Solar Access	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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

3.1.1 Streetscape (Residential areas)

Clause 3.1.1.2 of the MDCP 2013 sets out the following requirements for front fences, which read as follows:

a) Notwithstanding the 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.

Comment:

In response to the above criteria, a detailed assessment is carried out below:

a) The proposed fence contains a maximum height of 1.2 metres, which exceeds the 1 metre requirement specified within Clause 4.1.10 of the MDCP 2013.

An inspection of the street reveals that there various examples of front fences that exceeds the 1 metre requirement. Overall, the proposed fence has incorporated an open design to ensure compatibility within the surrounding streetscape.

b) The proposed fence has responded appropriately to the topography of the land and incorporates various design elements design to reduce it's visual impact upon the streetscape. Overall, the proposal will result in acceptable streetscape outcomes, which will prevent conflict with the local character.

c) The proposal involves the construction of a masonry and timber fence. The proposal's incorporates vertical timber slats with spacing, which achieves a reasonable level of openness and remains compatible within the established built environment.

d) The proposed access gates will not encroach on public land when opened.

Based on the above assessment, it is concluded that the proposal does satisfy the streetscape requirements for fences.

Merit consideration

With regard to the consideration of a variation, the proposal 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:

As above, the visual impact of the works have been mitigated by a site responsive design, which appropriately minimises the built form, when viewed from the street.

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

Comment:

The fence will be consistent with the established streetscape character along Osborne Road .

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

Comment:

The proposed fence along the frontage is considered an appropriate response, as it is compatible within the established streetscape and to ensure that a reasonable level of privacy is provided for the occupants of the development.

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

4.1.3 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

The proposed southern elevation includes one (1) window within 3.0 metres of the boundary.

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 first floor is set back 8.9 meters from the front boundary and complies with the prescribed height limit. In this regard, the proposed bathroom window will have a negligible impact upon 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 first floor provides one ensuite window that is set back 2.5 meters from the southern boundary, which includes a sill height of 1.5 metres above the FFL. The proposed first floor windows are accessed by low use rooms when applying the planning principle of *Meriton v Sydney City Council [2004] NSWLEC 313* and do not provide any direct sight-lines into adjoining windows or private open space. Overall, the proposal has been designed to preserve local amenity through providing reasonable privacy between buildings.

The applicant has submitted shadow diagrams and detailed analysis of the overshadowing impact of the development and Council are satisfied that the adjoining site's will receive solar access to living room windows and private open space in accordance with the Manly DCP.

The proposal will not result in the loss of views.

As mentioned elsewhere the proposal has been designed to maintain acceptable streetscape outcomes.

The proposal will facilitate safe and adequate traffic conditions.

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

Comment:

The proposed setback breach is considered to be acceptable given the characteristics of the site and the absence of any adverse amenity impacts.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*

- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal provides landscaped area which is consistent with the control for nearby dwellings and proposes vegetation to the front of the site. This provides a reasonable circumstance for natural features.

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 MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

The site has an existing non-compliant total open space provision. The proposed alterations and additions to the dwelling are contained within the footprint of existing building and do not result in the reduction in total open space or significant vegetation.

4.1.10 Fencing

The proposal exceeds the maximum allowable height for fences under clause 4.1.10. This clause relies upon the objectives of clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of clause 3.1, subject to recommended conditions.

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 $ 846 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of $ 169,200.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 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.

In summary, the application has been assessed with regard to the relevant Manly LEP and DCP controls which guide the future desired character of the site and locality.

Subject to the recommended conditions of consent, it is considered that the proposal will result in a development that displays reasonable size, scale and density which is compatible with the existing site and surrounding development and will not result in unreasonable amenity impacts to surrounding properties. Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the DPP 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 4.4 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 DA2022/2134 for Alterations and additions to a semi-detached dwelling on land at Lot 1 DP 576814, 25 Osborne Road, 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**
DA04 - RevB: Site plan	24 March 2023	Actions Plans
DA06 - RevB: First floor demolition plan	24 March 2023	Actions Plans
DA07 - RevB: Ground floor plan	24 March 2023	Actions Plans
DA08 - RevB: First floor plan	24 March 2023	Actions Plans
DA09 - RevB: East & street elevation	24 March 2023	Actions Plans
DA10 - RevB: South & west elevation	24 March 2023	Actions Plans
DA11 - RevB: Sections	24 March 2023	Actions Plans
DA12 - RevB: Driveway plan and long sections	24 March 2023	Actions Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No.A480122_02	24 March 2023	Action Plans

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

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

Waste Management Plan		

Drawing No/Title.	Dated	Prepared By
Waste Management Plan	6 December 2022	Helen Dawtrey

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	6 January 2023

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until

the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $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 $846.00 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 $169,200.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

6. **Security Bond**

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

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

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

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

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

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

7. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention (OSD) in accordance with Northern Beaches Council's Water Management for Development Policy. 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:
i. OSD shall be provided in accordance with Section 9.3.3.2 of Council's Water Management for Development Policy. OSD can be provided as
- A separate system or
- Retrofitting the existing RWT (Rain Water Tank) to operate as retention and detention system.

ii. PSD shall be determined in accordance with Section 9.3.3.2.3.
iii. Final discharge from the detention system shall be discharged to Osborne St via gravity.

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.

8. **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.

9. **External colour scheme**
Full details of the colour scheme are to be submitted to Council's Heritage Advisor for approval prior to the issue of a Construction Certificate.

Reason: To ensure the colour scheme is complementary to the heritage items in the vicinity and the streetscape.

10. **Compliance with standards (Demolition):**
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 Council prior to the commencement of demolition works.

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

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

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

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

12. **External Finishes to Roof**
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.

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

Please refer to the website www.sydneywater.com.au for:
- “Tap in” details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

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.

Property:
- 23 Osborne Road, Manly (Lot 1 DP 744967)

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. **Pre-clearance Surveys**
A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared or the immediate vicinity. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

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

Reason: Public safety.

17. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

18. **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.

19. **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.

20. **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.

21. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

22. **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.

23. **Report dead or injured bandicoots**
Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the Biodiversity Conservation Act 2016.

24. **Construction management**
The construction associated with this development consent is required to be completed concurrently with the adjoining development at No. 23 Osborne Road to ensure that the works are appropriately completed, in accordance with the approved plans listed in Condition 1.

Reason: To promote the orderly development of land.

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

25. **Fencing for Wildlife Passage**
Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

Details demonstrating compliance are to be provided the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To preserve wildlife corridors.

26. **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.

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. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf

The form for the application can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-

documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

In signing this report, I declare that I do not have a Conflict of Interest.

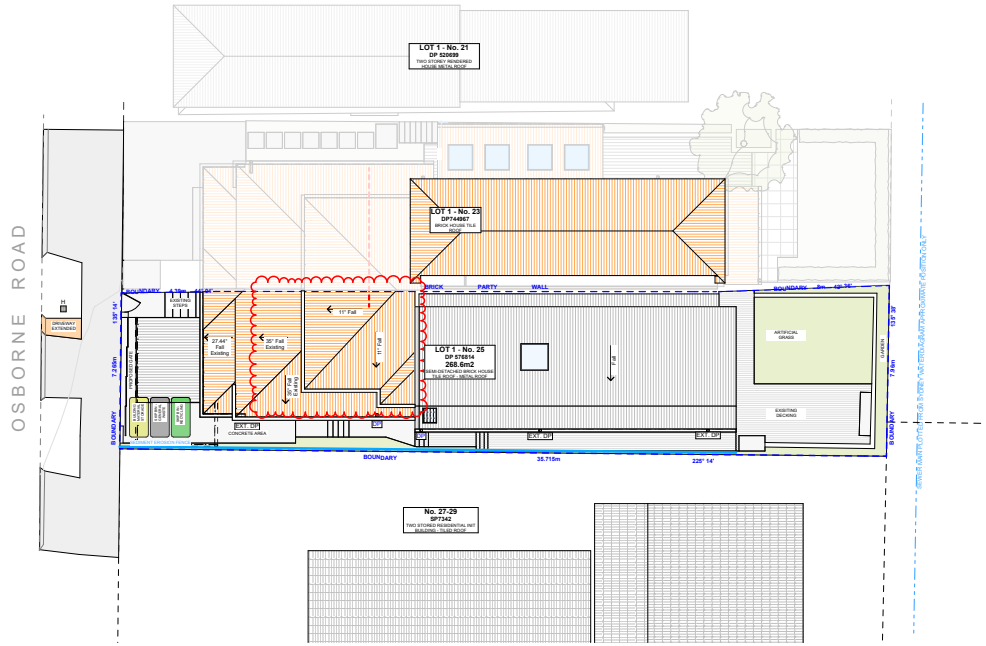
Signed

Adam Richardson, Manager Development Assessments

The application is determined on //, under the delegated authority of:

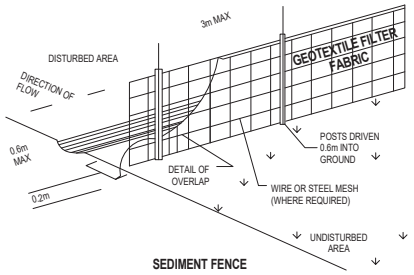
Adam Richardson, Manager Development Assessments

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH PREVIOUSLY APPROVED STORMWATER SYSTEM BY COUNCIL UNDER DA223/2011

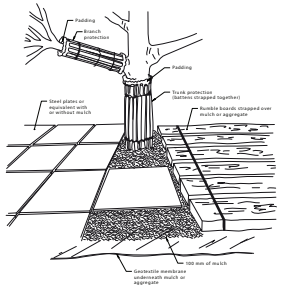


SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN

1:200@A3



SEDIMENT FENCE



TREE PROTECTION

NOTES REGARDING BOUNDARY
THE INFORMATION SHOWN ON THIS PLAN IS FOR DESIGN PURPOSES ONLY. THE POSITION OF BOUNDARY LINES HAVE BEEN ESTABLISHED BY A SURVEY TO MEET THE IDENTIFICATION REQUIREMENTS FOR COUNCIL AND NOT FOR REGISTRATION WITH THE LAND REGISTRATION SERVICES NSW NOR MAY THIS PLAN BE USED FOR ANY OTHER PURPOSE. SUBSEQUENT REGISTERED OR OTHER SURVEYS MAY AFFECT THE DEFINED BOUNDARY POSITIONS IN THIS AREA. ANY DIFFERENCES OF THIS NATURE ARE BEYOND THE PURPOSES OF THIS PLAN. THIS PLAN IS FOR THE ABOVE STATED PURPOSES ONLY. RESTRICTIONS ON THE TITLE HAVE NOT BEEN INVESTIGATED. IF FURTHER DEVELOPMENT IS CONTEMPLATED OR CONSTRUCTION INTENDED THEN IT IS IMPORTANT THAT A SURVEY SET OUT IS CARRIED OUT.

DUST CONTROL :
TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED. WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES

SEDIMENT NOTE :
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREA AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEPT DAILY.

STOCKPILES :
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :
PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

NOTE: SITE BOUNDARY IS TO BE IDENTIFIED BY A REGISTERED SURVEYOR AND CLEARLY MARKED ON SITE PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORKS.

ACTION PLANS
m: 0426 957 518
e:operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	13-03-2023	DESIGN OPTION 1	CHL
B	20-03.2023	REV. A	CHL

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The Builder/contractor/owner is to ensure that the approved boundary setbacks and approved levels are confirmed and set out by a registered Surveyor prior to construction, the boundary setbacks take precedence over all other dimensions.
The Builder/Contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.
All errors and omissions are to be verified by the Builder/Contractor/client and referred to the designer prior to the commencement of works.

LEGEND
EXISTING
DEMOLISHED
METAL ROOFING
TILED ROOFING
TIMBER STUD
TILED FLOOR
TIMBER FLOOR
BRICKWORK

CLIENT
HELEN & CHRIS DAWTREY

PROJECT ADDRESS
25 OSBORNE ROAD
MANLY NSW 2095

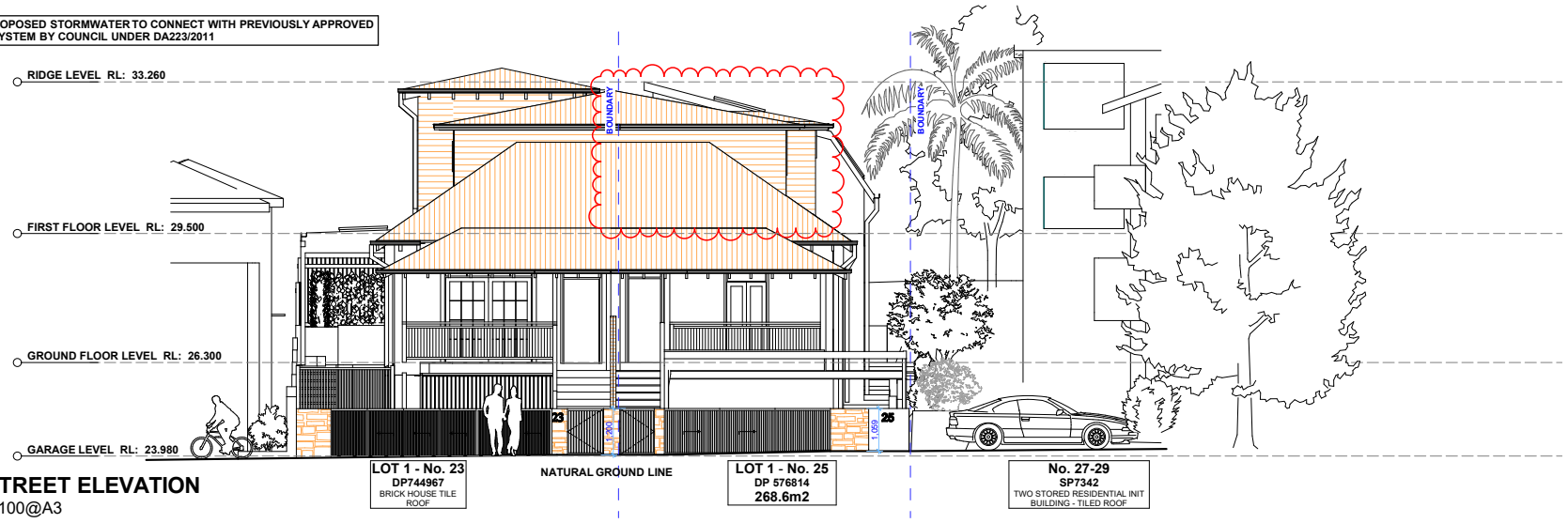
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DA04

DATE
Friday, 24 March 2023

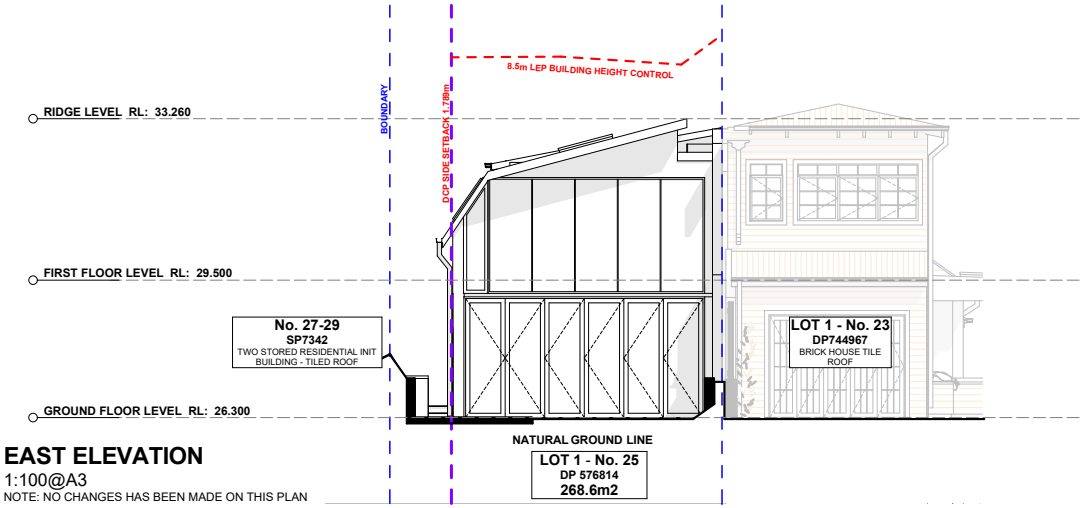
DRAWING NAME
SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN

SCALE
1:200, 1:1.39 @A3

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH PREVIOUSLY APPROVED STORMWATER SYSTEM BY COUNCIL UNDER DA223/2011



STREET ELEVATION
1:100@A3



EAST ELEVATION
1:100@A3
NOTE: NO CHANGES HAS BEEN MADE ON THIS PLAN

ACTION PLANS
m: 0426 957 518
e:operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	13-03-2023	DESIGN OPTION 1	CHL
B	20-03.2023	REV. A	CHL

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All errors and omissions are to be verified by the Builder/Contractor/client and referred to the designer prior to the commencement of works.

LEGEND
- METAL ROOFING
- TILED ROOFING
- TIMBER CLAD
- BRICKWORK
- CONCRETE
- EXISTING

CLIENT
HELEN & CHRIS DAWTREY

PROJECT ADDRESS
25 OSBORNE ROAD
MANLY NSW 2095

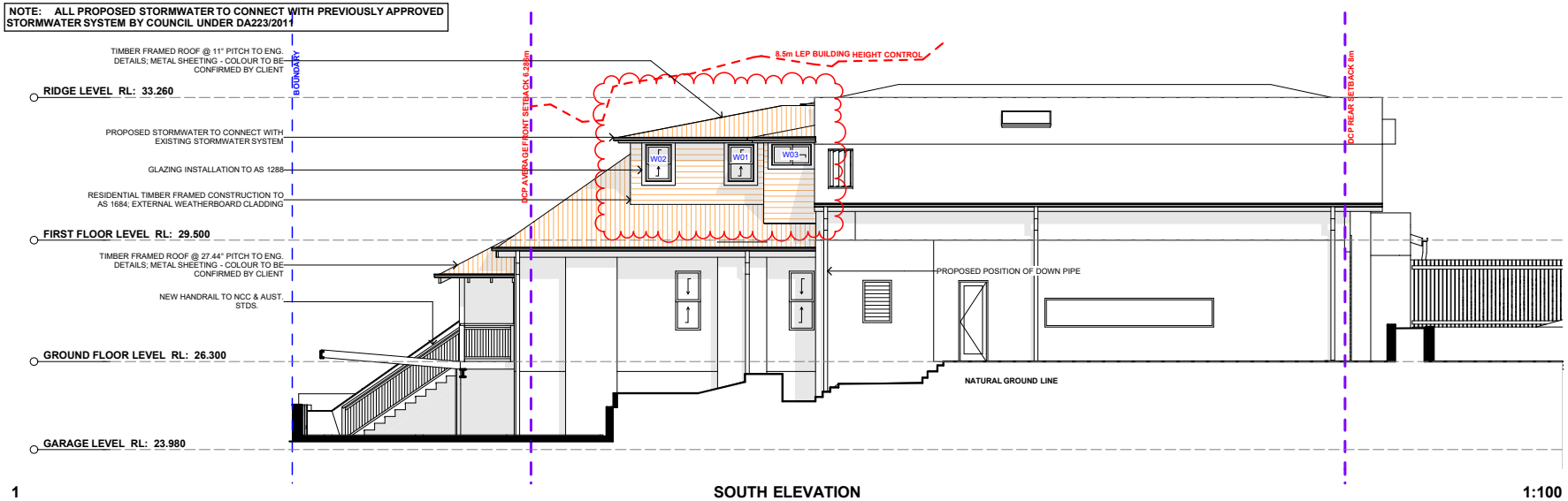
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DA09

DATE
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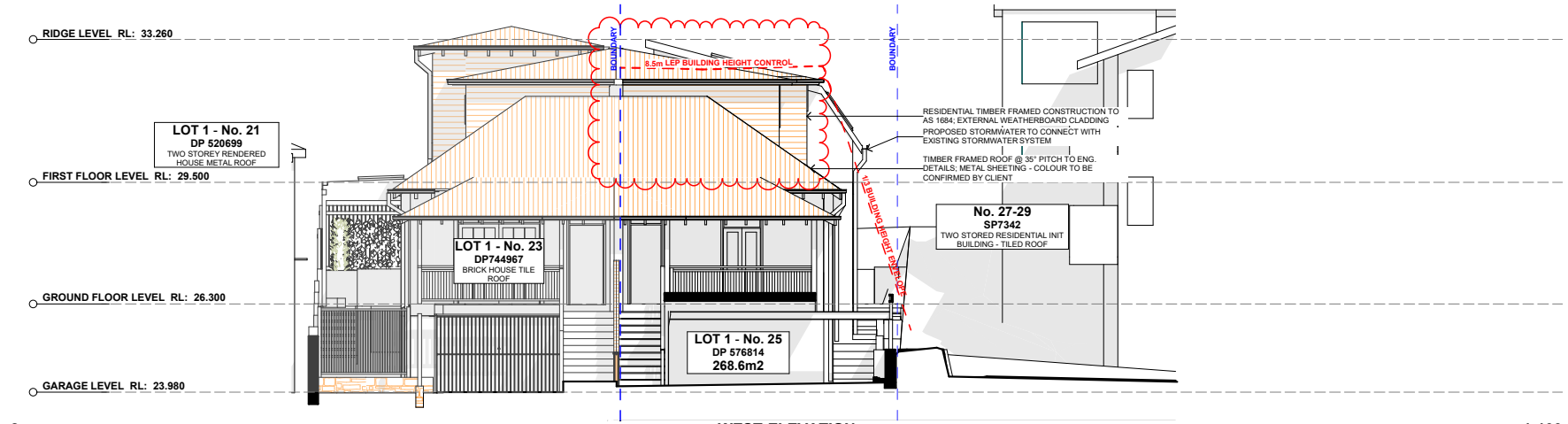
DRAWING NAME
EAST ELEVATION

SCALE
1:100 @A3

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH PREVIOUSLY APPROVED STORMWATER SYSTEM BY COUNCIL UNDER DA223/2011



1 **SOUTH ELEVATION** **1:100**



2 **WEST ELEVATION** **1:100**

ACTION PLANS
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e:operations@actionplans.com.au
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REV.	DATE	COMMENTS	DRWN
A	13-03-2023	DESIGN OPTION 1	CHL
B	20-03.2023	REV. A	CHL

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LEGEND
- METAL ROOFING
- TILED ROOFING
- TIMBER CLAD
- BRICKWORK
- CONCRETE
- EXISTING

CLIENT
HELEN & CHRIS DAWTREY

PROJECT ADDRESS
25 OSBORNE ROAD
MANLY NSW 2095

DRAWING NO.
DA10

DRAWING NAME
SOUTH / WEST ELEVATION

DATE
Friday, 24 March 2023

SCALE
1:100 @A3

25 OSBORNE ROAD
MANLY

**CLAUSE 4.6 VARIATION REQUEST (FSR) FOR
ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING**



Report prepared for
Helen and Chris Dawtrey
March 2023

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1. Introduction

1.1 This is a Clause 4.6 variation request to Clause 4.4, *Floor Space Ratio* of the Manly Local Environmental Plan 2013, for alterations and additions to an existing semi-detached dwelling, at 25 Osborne Road, Manly.

1.2 This report has been prepared with reference to the following:

- Site visit
- Updated Architectural Plans prepared by Action Plans
- Statement of Environmental Effects prepared by Watermark Planning.

2. The site and its locality

2.1 The subject site is located on the eastern side of Osborne Road in Manly, approximately 70 metres south of its intersection with Addison Road. It is legally described as Lot 1 DP 544967 and is known as 25 Osborne Road.

2.2 It is a generally rectangular shaped lot with boundaries of 7.26 metres (south-west front boundary), 7.96 metres (north-east rear boundary) and side boundaries of 35.715 metres and 35.78 metres.

2.3 The site has an area of 268.6m^2 and slopes to the south-west, towards the Osborne Road frontage. The site is currently occupied by a two storey brick, semi-detached dwelling with a tile roof and double carport on frontage.

2.4 The property is surrounded by a mix of detached and semi-detached dwellings and residential flat buildings in all directions. It is located in close proximity to retail and public transport services in Manly to the north.



Figure 1. The site and its immediate surrounds

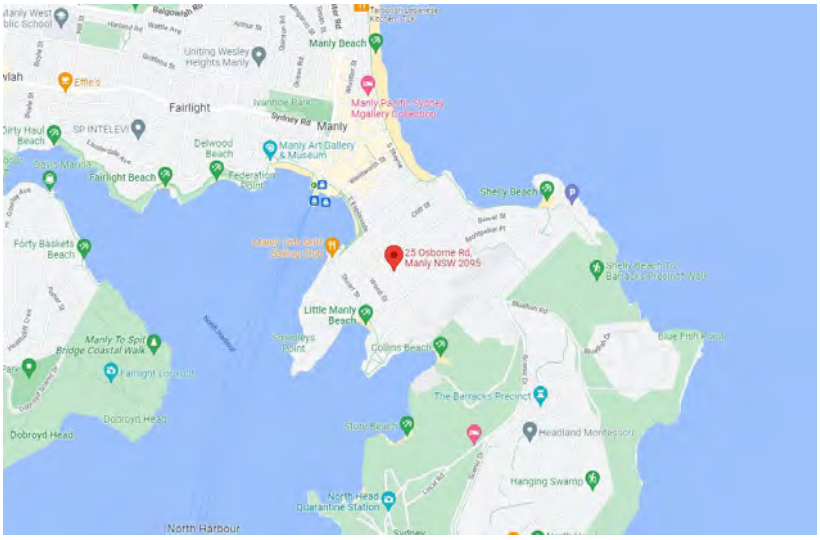


Figure 2. The site within the locality

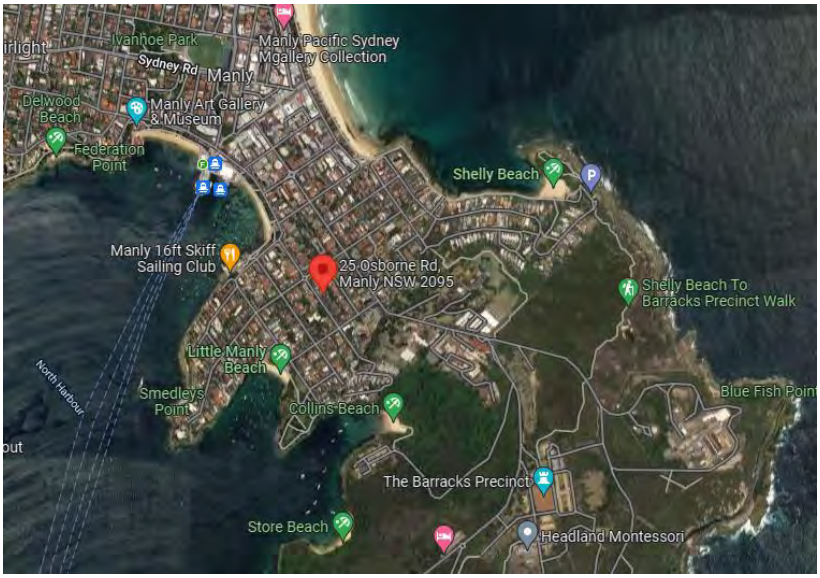


Figure 3. Aerial image of the site within the locality

3. Site Photos



Figure 4. The existing semi-detached dwelling, looking north-east from Osborne Road.



Figure 5. The existing first floor viewed from southern frontage.

4. Proposed Development

4.1 The proposed development is for alterations and additions to the existing semi-detached dwelling, utilising the current attic space to provide a new master bedroom and ensuite.

The development has been designed to integrate an addition into the existing roof structure of the dwelling, so as to mitigate bulk, while maintaining the predominant character of the existing streetscape. The proposal is generally consistent with Council controls and ensures privacy and solar access are maintained for the site and neighbouring dwellings.

4.2 The development will be made up as follows:

Site and Ground Floor

No changes

First floor

Convert the existing attic space to form a part of first floor, creating a new master bedroom with ensuite.

4.3 The same building designer has prepared plans for the neighbouring semi-attached dwelling at 23 Osborne Road, Manly. The streetscape elevation and character of the two proposals has been kept consistent. Both Development Applications have been lodged concurrently to ensure that the assessment takes into consideration the matching pair. See images below of street front for the pair of semi-detached dwellings.



Figure 6. Existing front facade of 23 and 25 Osborne Road



Figure 7. Proposed front facade of 23 and 25 Osborne Road

5. Clause 4.6 Exceptions to Development Standards – Floor Space Ratio

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act) being:*

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

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

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

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

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

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R1 – General Residential

1.3 What are the objectives of the zone?

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

1.4 What is the development standard being varied?

Cl 4.4 – Floor Space Ratio

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.4 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

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

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

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

The numeric value of the FSR development standard applicable to the subject site is 0.6:1, this equates to a maximum floor area of 161.16m^2 for the site area of 268.6m^2.

Note: The current approved FSR on the site is 0.66:1 or 177.35m^2.

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a maximum floor area of 196.72m^2 or FSR of 0.73:1.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 35.56m^2 or 22%.

Note 1: a variation of 19.37m^2 or 11% to the currently approved FSR.

Note 2: The existing dwelling has a GFA, non-compliant with the current LEP control, of 195.68m^2 or FSR of 0.73:1 and the proposed additional area sought by the variation is just 1.04m^2.

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827, (*expanded on the findings in *Winten v North Sydney Council),* identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

*1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).*

*2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).*

*3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).*

*4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Way**).*

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

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;

2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone

objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

2.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

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

Comment

The proposed development is for alterations and additions to the existing semi-detached dwelling and the revised design minimises bulk and scale when viewed from the street by:

- Removing the previously proposed front balcony and reducing the size of the master bedroom, creating an increased first floor front setback. The altered, recessive first floor design allows for the retention of the existing dominant roof form when viewed from the street as illustrated in the renders below.



Figure 8. Plan Extract – Renders

The proposed variation is 35.56m^2 or 22% and is considered reasonable for the small lot as works are located within the existing attic area. The development will result in an increase of just 1.04m^2 to the existing Gross Floor Area. It is considered this objective is met, despite the numerical variation.

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

Comment

The development will result in a built form and massing that is of a consistent scale to surrounding properties. The development will not obscure any important landscape or townscape features and will not result in any view loss impacts.

We note that a streetscape study accompanies the development application which demonstrates that Osborne Road is primarily made up of 2-3 storey dwellings and residential flat buildings and the works proposed will complement and be of a similar scale.

It is therefore considered this objective is met, despite the numerical variation.

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

Comment

The proposed development is visually appropriate for the locality and proposes a compliant building height and a built form consistent with the adjoining semi, as illustrated in the render images above.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings. Compliant levels of solar access are maintained despite the proposed variation and there will be no unreasonable impact on views, visual privacy or acoustic privacy.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

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

Comment

Not relevant as the subject site is not located in a business zone.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).

This exception to development standards request does not rely on this reason.

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

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the floor space ratio control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- The area surrounding the subject site is characterised by 1, 2 and 3 storey residential dwellings, with the high side of Osborne Road dominated by 3 storey buildings as shown in the accompanying streetscape study. A 4 storey residential flat building is located in close proximity to the north.

- The proposed dwelling has been designed to remain consistent with the character of the locality, despite the minor variation to FSR, through design, architectural features and complimentary materials and colour choices.

- Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments, none of which fall into the small lot category:

    - 2020/1745 - 92 Addison Road, Manly, FSR variation of 31.67%
    - 2022/0351 – 19 Herbert Street, Manly, FSR Variation of 15.59%
    - 2021/2313 – 177 Seaforth Crescent, Seaforth, FSR Variation of 28.4%
    - 2022/0538 – 229 Pittwater Road, Manly, FSR Variation of 13.06%

- 2022/0095 – 13 Barrabooka Street, Clontarf, FSR variation of 67.41%
- 2021/2023 - 35 Beatty Street, Balgowlah Heights , FSR Variation of 42.5%
- 2021/2409 – 9 Eustace Street, Manly, FSR Variation of 24.6%
- 2021/2626 – 36 Gurney Crescent, Seaforth, FSR Variation of 29.75%

- There are historic examples including the semi-detached dwellings at 24 Stuart Street, Manly which have variations of 32.57% and 27.23% and was approved under the Manly LEP 2013,
- The bulk of the variation is within an approved attic space (with compliant head room) that already achieves ample floor to ceiling height, meaning that the actual additional area is only 1.04m^2.
- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

Future Development

- The proposed development will allow for the provision of an additional bedroom on the first floor.
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with other buildings in the locality,
- Given the existing dwelling has a non-compliant FSR, and the works will result in a minor 1.04m^2 additional floor area, the proposed variation of 35.56m^2 or 22% is considered reasonable and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,
- The proposal will have no impact on existing landscaping with all works located above the existing ground floor,

- The development does not require the removal of any native trees,
- The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home with additional space available. It utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR, and the discussion above, reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A).

An assessment of consistency with the objectives of the Zone is provided below:

Zone – R1 General Residential

Objectives of zone

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

Consistent. The proposed works will allow the current and future housing needs of the residents to be met in their current local community.

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

Consistent. The proposal will retain the existing semi-detached dwelling house.

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

Not relevant. No change of use is proposed.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

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

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

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

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Strict numerical compliance with the 0.6:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment* and *promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development to extend the existing floor area into the existing attic with a small additional extension on land zoned R1 – General Residential is appropriate and reasonable for the following reasons:

- There is recent precedent for similar variations to Cl 4.4 FSR of the Manly LEP 2013 being accepted by Council,
- The proposed development has been integrated into the existing roof structure and therefore mitigates excessive bulk, while presenting a dwelling that is a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts.
- The bulk of the variation is within an approved attic space that already achieves ample floor to ceiling height, meaning that the actual additional area is only 1.04m^2.

- The works proposed will allow the housing needs of the residents to be met, including an opportunity to work from home, in their current community,
- The objectives of the R1 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

We note that the owners attended a pre-DA meeting at Council and the current proposal is the result of taking on all the advice provided at this. This current design is a reduction from the initial design, removing the front balcony, stepping the previously proposed extension in at the side & front boundaries, as well as aligning the front façade across both semis.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.6	**DA2022/2210 - 2 PERONNE PARADE ALLAMBIE HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/334888**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/2210 for alterations and additions to a dwelling house including a swimming pool on land at Lot 2 DP 835714, 2 Peronne Parade ALLAMBIE HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2210

Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 2 DP 835714, 2 Peronne Parade ALLAMBIE HEIGHTS NSW 2100
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:	John Anthony Hutchison Victoria Anne Hutchison
Applicant:	John Anthony Hutchison

Application Lodged:	06/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/04/2023 to 01/05/2023
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	$ 703,874.02

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing dwelling including a new first floor addition and swimming pool.

The application is referred to the Development Determination Panel (DDP) due to more than five (5) submissions (eight in total(8) being received during the notification period.

Concerns raised in the objections predominantly relate to visual privacy, deficient landscaped open space and variations to the setback controls of the DCP.

Critical assessment issues include front and rear setback non-compliances, as well as ensuring that the existing approved quantum of landscaped open space is maintained in the proposal is maintained.

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

PROPOSED DEVELOPMENT IN DETAIL

The development application proposed alterations and additions to an existing single-storey dwelling including the following works:

- Internal alterations to existing ground floor and minor extension towards the west
- New first floor addition
- New front plunge pool
- New front fence

It is noted an originally proposed front carport and first floor rear deck have been deleted from the plans during the assessment process.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - 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 - D16 Swimming Pools and Spa Pools

SITE DESCRIPTION

Property Description:	Lot 2 DP 835714 , 2 Peronne Parade ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	The subject site is identified as Lot 2 in DP 835714 which is known as 2 Peronne Parade, Allambie Heights. The site is located at the northern side of Peronne Parade with a street frontage of 11.925 metres. The site has an area of 306.7m² with a maximum depth of 27.205 metres. The site is zoned R2 Low Density Residential. The site has a slight cross fall from west to east. The site is currently occupied by a single storey brick dwelling with a tiled pitched roof.

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:

Consent **No.92/437** for erection of detached dual occupancy and subsequent subdivision (Approved 21 December 1992)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 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)	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 front setback, rear setback and landscaped open space non-compliances, as well as Landscape referral requirements. The amended information received by Council was re-notified to the public for 14 days. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development,	(i) **Environmental Impact** The environmental impacts of the proposed development on the

Section 4.15 Matters for Consideration	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/04/2023 to 01/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Ms Sophie Elizabeth Van Den Hout	3 Peronne Parade ALLAMBIE HEIGHTS NSW 2100
Withheld Withheld	ALLAMBIE HEIGHTS NSW 2100
Mr Rock David Bogan	5 Peronne Parade ALLAMBIE HEIGHTS NSW 2100
Narelle Anne Stewart	3 Orara Road ALLAMBIE HEIGHTS NSW 2100
Miss Gillian Mary Hedges	40 Kentwell Road ALLAMBIE HEIGHTS NSW 2100
Mr Nicholas Drivas Mrs Val Drivas	7 Peronne Parade ALLAMBIE HEIGHTS NSW 2100
Ms Rochelle Jones	6 Smith Avenue ALLAMBIE HEIGHTS NSW 2100
Mr Geoffrey Stephen	4 Smith Avenue ALLAMBIE HEIGHTS NSW 2100

Name:	Address:
Wiltshire	
Withheld	MONA VALE NSW 2103

Submissions were provided to Council from 8 unique objectors during the community notification period. One additional submission was received which was in support of the application. The following concerns were raised:

- **Visual Privacy**

Comment:
Concern was raised regarding the overlooking impacts of the proposed front deck, first floor addition and proposed pool area. Part D8 WDCP 2011 requires Council to consider visual privacy impacts in the context of adjoining private open space areas and windows. The proposed pool area is located below the existing ground level in the front yard of the subject site and is substantially separated from any adjoining principal private open space areas. The proposed front deck is orientated away from windows of the adjoining property to the west and is adequately separated from the principal private open space area of the adjoining property to the east. The proposed first floor consists of a living room, a master bedroom and a guest room. Bedrooms or associated ensuites are considered low trafficable areas which are not conducive to high volumes of pedestrian movement and therefore result in minimal overlooking opportunities from their windows. The east facing window (W10) which adjoins a more highly trafficable area being the first floor living room, incorporates a raised window sill height from the finished floor level, the purpose of which is to limit overlooking impacts. Furthermore, a condition of consent has been recommended to ensure the ground floor roof above the dining and kitchen area is not to be used as a habitable or trafficable space.

- **Landscaped Open Space**

Comment:
Concern was raised in regards to the non-compliant amount of proposed landscaped open space. The existing site currently accommodates a landscaped open space non-compliance, that exists as a consequence of the development consent issued for the site in 1992 (92/437). Amended plans were provided by the applicant during the assessment process which ensured that there is no net loss of landscaped open space on the site in comparison to the existing approved extent. The submissions also note that there appears to be less 'green space' on the proposed landscape open space calculation compared to the existing approved extent, however it is noted that the current percentage of landscaped open space on both the existing approved plan as well as the proposed plan is calculated using the definition under Clause D1 WDCP 2011 which requires landscaped open space to have a minimum 2-metre dimension in order to be included.

- **Prior consent history**

Comment:
Concern was raised in regards to the unreasonableness of the prior development approval which was granted for the site under Consent No.92/437. Council cannot consider the merits of a historical development approval when assessing the current proposal. Rather, Council must only consider any additional impacts that are proposed by the current application and the acceptability of such impacts in the context of the existing approved on-site development against the planning controls that are currently

in place..

- **Vegetation Protection**

Comment:
Concern was raised in regards to the impacts of the development upon trees at various boundaries of the subject property and on adjoining sites. Council's Landscape Officer has reviewed the application in regards to tree protection and raised no objection to approval, subject to recommended conditions of consent.

- **Access to Sunlight**

Comment:
Concern was raised in regards to overshadowing impacts from the proposed development. Clause D6 WDCP 2011 requires at least 50% of the required area of private open space of adjoining dwellings to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. In accordance with the shadow diagrams provided with the application, the proposal results in a numerically compliant amount of access to sunlight for adjoining properties. It is noted that due to the north-south orientation of the allotment it is naturally expected that overshadowing impacts for adjoining allotments to the east and west are minimised as the development does not significantly impact the development. Concern was also raised in the submissions that the shadow diagrams do not take into the account shading from existing vegetation, however Clause D6 states that overshadowing by vegetation will not form part of Council's assessment of access to sunlight.

- **On-Street Parking**

Comment:
Concern was raised in regards to additional on-street parking demand and congestion created by the proposed development. Appendix 1 WDCP 2011 requires a dwelling house to accommodate two off-street car parking spaces. In accordance with the approved plans, the proposed development provides a single attached garage as well as one hardstand parking space in front of the garage. The DCP requirement is therefore achieved.

- **Rear Setback**

Comment:
Concern was raised in regards to the rear setback encroachment of the proposed development. The existing approved single-storey dwelling currently contains a non-compliant rear building line of 3.99 metres which is not encroached by the proposed development. As discussed under Part B9 within this report, a small ground floor extension towards the western side boundary is proposed inside the rear setback area, however this low-lying portion is behind the existing rear building line, compliant with the side setback control and does not result in a reduction to the existing approved quantum of landscaped open space. Furthermore, an originally proposed first floor deck located inside the rear setback area has been deleted from the proposed plans, to ensure the proposed first floor maintains numerical compliance with built form controls. A condition of consent has been recommended to ensure the ground floor roof above the dining/kitchen area where the deck was originally proposed, remains a non-habitable area. In summary, the general footprint and setbacks of the existing approved ground floor are maintained with only a generally compliant first floor addition now being proposed.

- **Bin Storage Area**

Comment:
Concern was raised in regards to the external areas of the site not being conducive for storing bins which will therefore need to be moved inside the garage. An assessment of the site concludes that there are reasonable external areas on the proposed site to store domestic garbage bins.

- **Pool Safety**

Comment:
Concern was raised in regards to pool safety requirements and regulations being met. A condition of consent has been recommended to ensure that all relevant legislative requirements and relevant Australian Standards in regards to pool safety are fulfilled.

- **Building envelope**

Comment:
Concern was raised in regards to the proposed building envelope. A minor encroachment to the envelope (0.1 metres) is proposed on the eastern elevation and is addressed under the Clause B3 WDCP 2011 section of this report. As stated, the control permits an exception for first floor additions to an existing ground floor that to a minor extent does not comply with the control.

- **Building Bulk**

Comment:
Concern was raised in regards to bulk and scale impacts of the proposal. As stated above, the proposed development generally maintains the footprint and setbacks of the existing ground floor, with a generally compliant first floor addition also proposed. In this regard, the bulk and scale of the proposed development is considered to be reasonable.

- **Building Height**

Comment:
Concern was raised in regards to the height of the proposed development. The proposal results in a numerically compliant height in accordance with the building height standard under WLEP 2011.

- **Building Colours**

Comment:
Concern was raised in regards to proposed building colours and materials which do not blend in with their surroundings. The objective of the control under Clause D10 WDCP 2011 states that the colours and materials of new or altered buildings and structures are to be sympathetic to the surrounding natural and built environment. A schedule of colours and materials has been provided with the application which illustrates a grey matt finish for the roof and wall cladding as well as a white finish to any new and existing face bricks and render. Whilst it is noted that Peronne Parade contains several examples of dwellings with natural face brick finishes and earthy tones, it is also considered that the facade of the existing structure on the subject site is predominantly white, whilst numerous dwellings in

the immediate locality also adopt a predominantly white streetscape presentation. The proposed colour scheme is therefore considered to be in keeping with the existing built environment. A condition of consent has also been recommended for the external finish to the roof to 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 by the condition.

- **Front Setback**

Comment:
Concern was raised in regards to the proposed development encroaching the front setback area. It is noted that a carport was originally proposed in the front setback area which has been subsequently deleted from the plans during the assessment process. Merit discussions for the proposed first floor front deck and swimming pool have been included within this report under clause B7 and D16 respectively of the WDCP 2011. It is considered the front deck contains a point encroachment only due to the skewed front boundary of the allotment, whilst the location of the swimming pool is constrained by existing on-site development.

- **Stormwater**

Comment:
Concern was raised in regards to stormwater management of the site including an existing pipe at the rear of the property which is obstructed by tree roots. Council's Development Engineer has reviewed the application in regards to stormwater management and raised no objection to approval, subject to recommended conditions of consent. If there are any pre-existing defects in relation to Council infrastructure or common property which are considered by a community member to be a hazard or require maintenance, it is advised to please lodge a complaint through Council's website.

- **Construction and Demolition**

Comment:
Concern was raised regarding the construction works creating damage or debris to a neighbouring property. Conditions of consent have therefore been recommended for a pre and post construction dilapidation report to be conducted on the relevant adjoining site.

- **Unauthorised works**

Comment:
Concern has been raised regarding unauthorised works currently occupying the subject property, including a rear ground floor alfresco deck as well as the existing front fencing. Council recognises that these components are not present on the most recent prior development approval for the site (92/437). A condition of consent has been included within this consent that no existing unauthorised works are consented to in this application. Inclusive of the unathorised deck, the proposed site still maintains an improved landscaped open space outcome compared to the existing approved site. Therefore if the deck were to be re-instated as landscaped open space as a result of any future building works order, this would result in a further landscaped open space improvement. Furthermore, the existing front fence is to be demolished and replaced as part of this application so therefore shall be regularised with development approval. The only works relevant to this development application are those currently being proposed.

- **Front Fence**

Comment:
Concern was raised regarding the height of the proposed front fence. The objectives of Clause D13 WDCP 2011 state that fencing, terracing and retaining walls are to be compatible with the existing streetscape character while creating visual interest in the public domain. The proposed front fence, which shall replace the existing, proposes a maximum height of 1.7 metres and is to be constructed of rendered masonry with timber battens. It is considered to be compatible in height and scale with other examples of similar structures along the local streetscape.

- **Loss of views of sky and vegetation**

Comment:
Concern was raised in regards to loss of views of areas of sky and vegetation as a result of the development. View sharing in the context of residential development generally relates to ocean and iconic views rather than district or neighbourhood views. Therefore the principles of Tenacity Consulting v Warringah Council (2004) would not be relevant in this particular circumstance.

- **Precedent**

Comment:
Concern was raised that an undesirable precedent shall be set by this development. It is advised that precedent can not be the only the factor used to gain a development approval. Each site has its own characteristics and circumstances that dictate what sort of development is and isn't possible. The precedent set by a development that was approved under planning controls which have now been superseded, would generally no longer be relevant.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, subject to Conditions*** Additional Information Comment 30/03/23: The amended plans are noted. Should the development application be approved, the two trees proposed to be removed are located within 2 metres of an approved existing dwelling, therefore are exempt under Council's tree protection requirements and can be removed without consent. A native replacement canopy tree has been shown on the Landscape Plan which will offset any canopy loss. All neighbouring trees and vegetation shall be protected during works as per the requirements outlined in the conditions of consent and Arboricultural Impact Assessment (AIA). As recommended in the AIA a Project Arborist shall be engaged to satisfy the requirements outlined in section 5.2 (of the AIA). The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the conditions of

Internal Referral Body	Comments
	consent. Original Comment Summary: The following concerns were raised; • the alterations and additions are substantial and required a Landscape Plan to satisfy the WDCP.
NECC (Development Engineering)	***Supported, subject to Conditions*** The application is supported subject to conditions recommended. Assessment 2: 24/04/2023 No development engineering objections to the revised plans, subject to conditions.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A457682_02 dated 3 May 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0 metres 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 5.0 metres of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.86m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.64m	-	Yes
B3 Side Boundary Envelope	4m (east)	Outside envelope (0.1m)	1.79%	**No**
	4m (west)	Within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (east)	Existing (ground floor) 1.53m (first floor - min.)	- -	Yes Yes
	0.9m (west)	0.9m (ground floor - min.) 1.7m (first floor)	- -	Yes Yes
B7 Front Boundary Setbacks	6.5m	6.3m (ground floor - existing) 5.5m (first floor deck) 7.72m (first floor wall) 1.7m (pool)	- 15.39% - 73.86%	No but existing **No** Yes **No**
B9 Rear Boundary Setbacks	6m	3.99m (ground floor - existing) 6m (first floor)	- -	No but existing Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	21.8% (67m2)	-	No but increase to existing

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	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
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	No	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The proposal encroaches the building envelope control to a minor extent on the eastern elevation by a maximum of 0.01 metres. This represents a variation from the numerical control of 1.79%.

The control permits an exception for first floor additions to an existing dwelling house that to a minor extent does not comply with the requirement of this control.

The non-compliance is illustrated below.

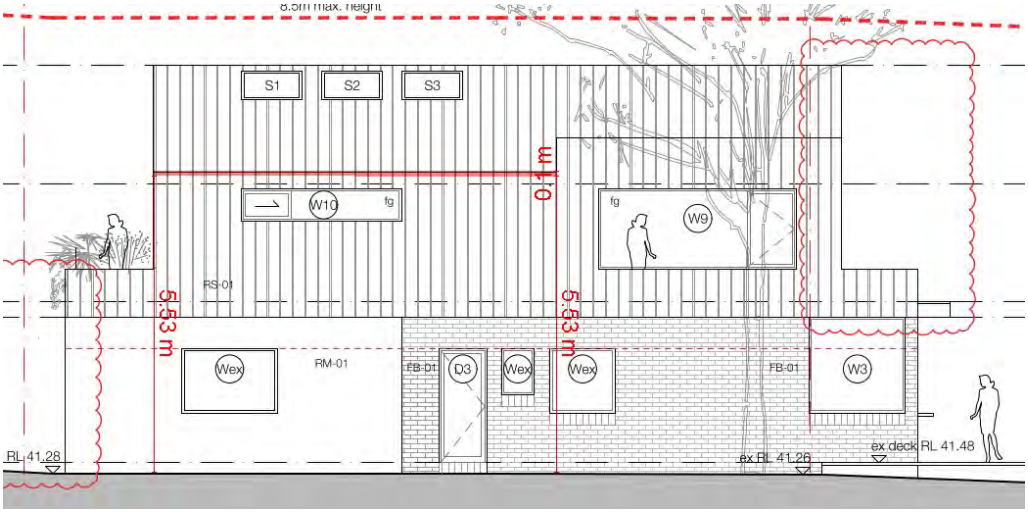


Figure 1: *Eastern envelope encroachment (shaded red)*

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 height and bulk is consistent with the established character of the wider area and anticipated by the low density zoning. The proposal also provides sufficient articulation in the form of varied wall plains and roof lines and also generally complies with all setback and landscaping controls to ensure a compatible visual presentation.

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

Comment:

The design, location and orientation of the extensions do not result in adverse solar access or privacy impacts, as demonstrated in the submitted shadow diagrams and architectural plans.

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

Comment:

The site is generally flat and the built form of the proposal maintains a suitable visual presentation.

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

The proposal contains the following front boundary setbacks:

Ground Floor - 6.3 metres (Existing)
First Floor - 7.72 metres (Complies)
First Floor Deck - 5.46 metres (16% variation)

The first floor deck encroachment is a point encroachment which results from the skewed, irregular shaped allotment which limits the ability of development to wholly comply with the control. The deck is also an open, lightweight structure which therefore shall not result in a visually obtrusive built form impact upon the streetscape. The wall of the first floor complies with the control and the ground floor maintains the existing front 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 create a sense of openness.*

  Comment:

  As stated above, the proposed deck is an open structure and results in a point encroachment and therefore a sense of openness is maintained.

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

  Comment:

  The proposed works are not considered to unreasonably impact the visual continuity or front setback pattern of Peronne Parade.

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

  Comment:

  The proposed works shall maintain a suitable visual presentation upon the streetscape.

- *To achieve reasonable view sharing.*

  Comment:

  The proposal will not unreasonably impact upon view sharing.

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

The proposed ground floor maintains the existing rear building line of 3.99 metres.

A ground floor extension towards the western side boundary is proposed inside the rear setback area. This extension is located behind the existing rear building line and complies with the side setback control. The extension also does not create any net loss of landscaped open space from the existing extent and is a low-lying ground floor level structure.

The proposed first floor is entirely compliant with all built form controls, with the exception of a minor envelope encroachment on the eastern elevation.

Merit consideration:

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

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

  Comment:

  No negative impact to the existing extent of deep soil landscaped areas are proposed.

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

  Comment:

  No encroachment is proposed to the existing ground floor rear building line, whilst the proposed first floor complies with the control.

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

  Comment:

  No unreasonable privacy impacts are anticipated to arise as a result of the proposed development.

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

  Comment:

  As mentioned, the proposed extension works are located behind the existing rear building line therefore maintaining the existing pattern of buildings.

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

Comment:

As noted above, the proposal will not give rise to unreasonable privacy impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in 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

The proposal provides a total of 21.8% (67m^2) landscaped open space which does not comply with the numerical requirement of 40%.

The existing site in its current form currently provides 12.1m^2 of landscaped open space (3.9%).

A search of Council records revealed that the currently approved landscaped area of the site is 65.5m^2 (Consent No. 92/437 dated 21 December 1992). This was calculated using the landscaped open space measurements requirements as framed under Part D1 WDCP 2011.

Amended plans were provided during the assessment process to ensure that there is no proposed net loss in landscaped open space in comparison to the prior approved consent.

It is also noted that there is an existing unauthorised rear deck which currently occupies the site which created the inconsistency between the existing approved landscaped open space percentage and the actual existing amount on-site. Therefore, the amended plans which were provided ensured that there is no proposed net loss in landscaped open space, inclusive of the deck. A recommended condition of consent ensures that no approval is granted under this consent for any existing unauthorised works, therefore if the current deck were to be reinstated as landscaped open space under any future building works order, this would result in a further improved landscaped open space outcome.

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 proposed landscaped area is an improvement to the existing amount and therefore enhancing the streetscape.

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

  Comment:

  The proposal will not impact on existing indigenous vegetation, topographical features and

habitat for wildlife.

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

  Comment:

  The areas of landscaped open space are suitably dimensioned to provide for the establishment of suitable landscaping to mitigate any perceived bulk and scale.

- *To enhance privacy between buildings.*

  Comment:

  The landscape open space variation will not give rise to privacy impacts between buildings.

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

  Comment:

  The proposal does not reduce the existing areas for outdoor recreational opportunities that meet the needs of the occupants.

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

  Comment:

  Sufficient space provided for service functions, including clothes drying.

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

  Comment:

  Adequate areas shall be provided to facilitate water management, including 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.

D16 Swimming Pools and Spa Pools

Description of non-compliance

The proposed pool is located within the front building setback which does not comply with the requirements of the control.

Merit consideration

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

- *To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*

  Comment:

  The proposed swimming pool location is restricted by the small size of the allotment, siting of the existing dwelling, private open space and ancillary structures, and there is no reasonable alternative location on site. The proposed pool location will not adversely impact the natural environment or residential amenity, whilst existing and proposed boundary fencing and landscaping works shall screen the pool from the street frontage. It is not visible from the public domain.

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

  Comment:

  The swimming pool location is acceptable in the context of the site and existing development.

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 $7,039 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $703,874.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/2210 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 2 DP 835714, 2 Peronne Parade, ALLAMBIE 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**
1-01-E	5 April 2023	Nikki Mote Architects
2-00-E	5 April 2023	Nikki Mote Architects
3-00-E	5 April 2023	Nikki Mote Architects
3-01-E	5 April 2023	Nikki Mote Architects
4-00-E	5 April 2023	Nikki Mote Architects
5-00-E	5 April 2023	Nikki Mote Architects
5-01-E	5 April 2023	Nikki Mote Architects
5-02-E	5 April 2023	Nikki Mote Architects
5-03-E	5 April 2023	Nikki Mote Architects
5-04-E	5 April 2023	Nikki Mote Architects
6-00-E	5 April 2023	Nikki Mote Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
Storm - 1/A	18 November 2022	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (A457682_02)	3 May 2023	Nikki Mote Architects
Arboricultural Impact Assessment	13 December 2022	All Arbor Solutions
Preliminary Geotechnical Assessment (J4513)	18 November 2022	White Geotechnical Group

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
L-01-B	5 April 2023	Site Design Studios
L-02-B	5 April 2023	Site Design Studios

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	Undated	Nikki Mote 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	19 January 2023

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved

in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A “Road Opening Permit” must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

5. **Unauthorised works**
No approval is granted under this consent for any existing works that currently occupy the site which do not have prior development approval, as these are unauthorised works. This includes the rear ground floor deck area.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $7,038.74 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 $703,874.02.

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.

8. **Construction, Excavation and Associated Works Bond (Drainage works)**
The applicant is to lodge a bond of $1000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

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. The plans should generally be in accordance with those prepared by Taylor Consulting, dated 31/10/22, Drawing No. STORM-1/A. Stormwater shall be conveyed from the site to the rear easement.

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

- No approval for side and rear boundary fencing is given under this consent, as this is a matter for civil negotiation between relevant property owners. Plans are to be amended to remove reference to all side and rear boundary fencing.

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

Reason: To ensure consistency with the relevant legislation under the Dividing Fences Act 1991.

11. **Stormwater Drainage Application**
The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the connection to council's existing stormwater pipe within downstream property which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

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. **Use of rooftop area**
The rear ground floor rooftop area located above the kitchen and dining rooms and adjacent to the first floor master bedroom, shall not be used as a trafficable or habitable space.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
a) tree protection requirements under section 5 Conclusions,
b) any pruning work to existing trees.

All tree protection measures specified must:
a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures

under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:
Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

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

Property / Properties: 1 Orara Road, Allambie Heights

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

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

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

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. **Stormwater Disposal**
The Applicant shall submit a certificate from a suitably qualified person that the stormwater

drainage works have been constructed/installed in accordance with all relevant Australian Standards and Codes.

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

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

24. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Section 68 are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

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

25. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing L-01, L-02 by Site Design Studios dated 05/04/23), and inclusive of the following conditions:
a) landscape works are to be contained within the legal property boundaries,
b) all tree planting shall be a minimum pre-ordered planting size of 75 litres; 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 metre from common boundaries; and located either within garden bed or within a prepared bed within lawn,
c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
d) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
e) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
f) should any existing vegetation shown to be retained be damaged or removed during construction, it shall be replaced with a like-for-like substitute to ensure the existing landscape character is maintained.

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.

26. **Post-Construction Dilapidation Report**
Post-Construction Dilapidation Reports, including photos of any damage evident at the time of

inspection, must be submitted after the completion of works. The report must:

- 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.

27. **Geotechnical Certification Prior to Occupation Certificate**
A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.
Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

28. **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

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

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

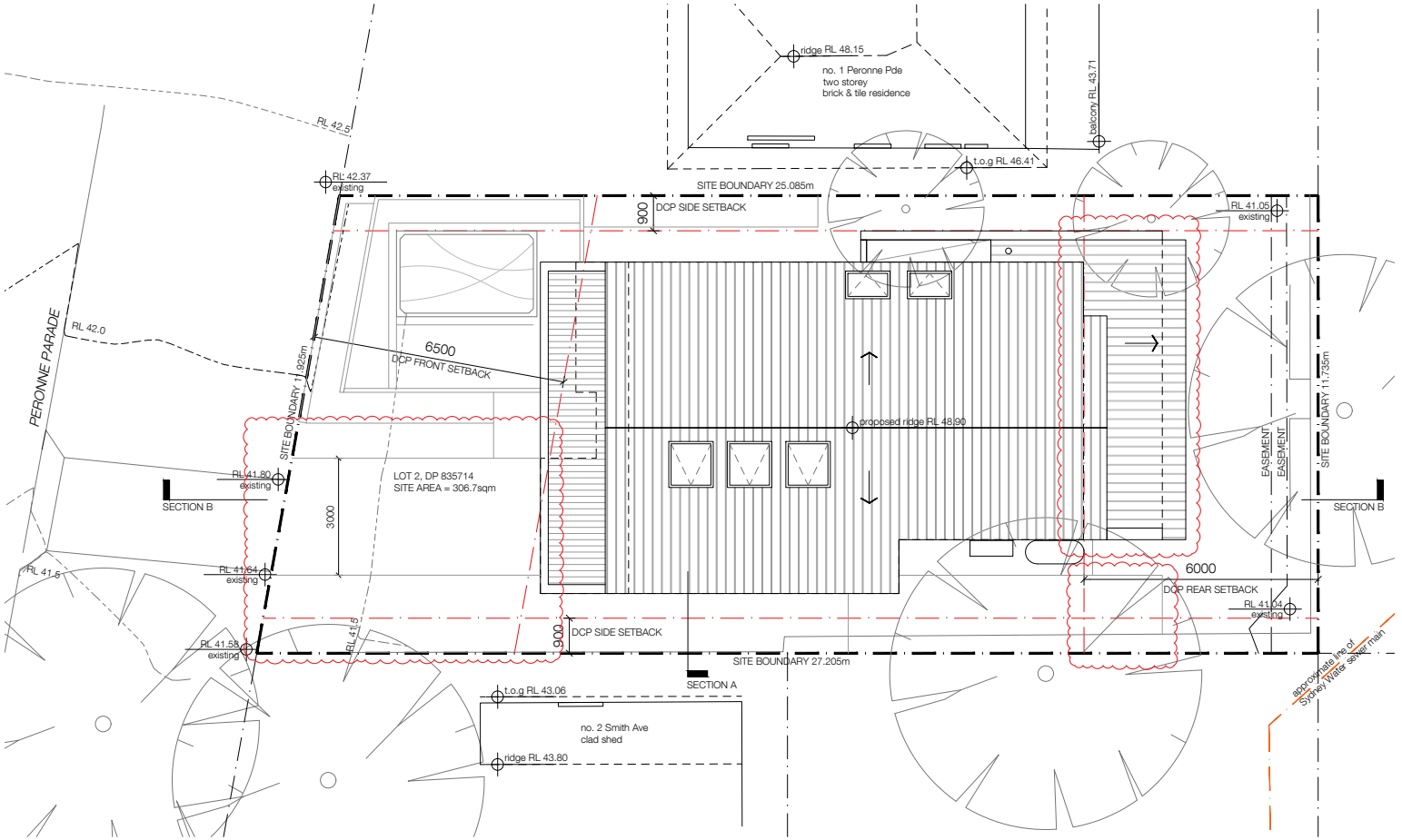
Reason: To maintain local environmental amenity.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

31. **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.



01 Site/ Roof Plan - Proposed
1:100@A3

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proposed masonry wall
wall to be demolished
DCP boundary setbacks

LEGEND

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gl	glazed louvres
S/A	Smoke Alarm in ceiling above to be hard-wired connected to consumer mains, and to comply with NCC E2.2a, and AS 3786

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John & Victoria Hutchison

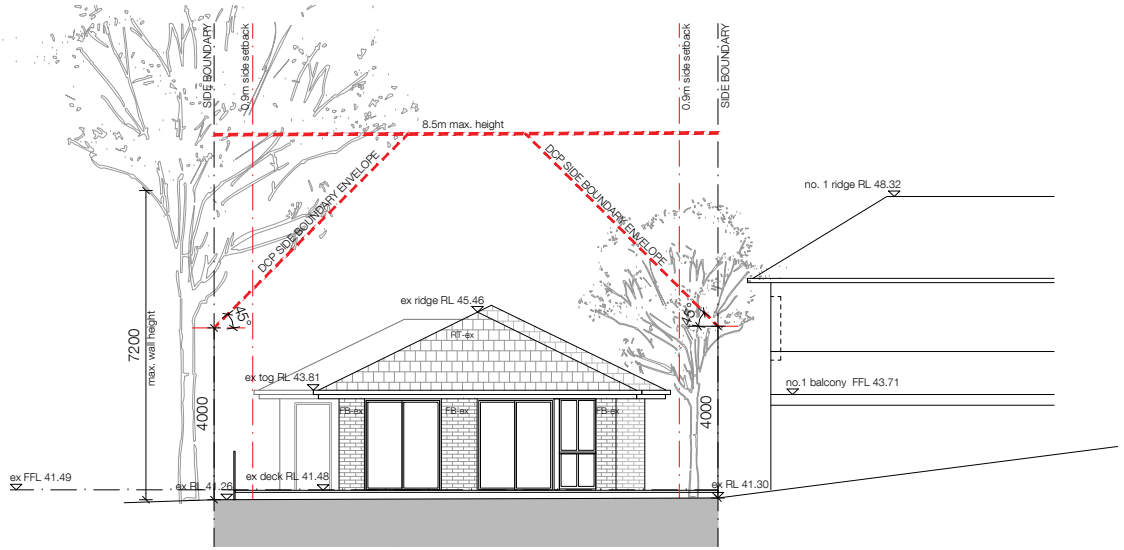
2 Peronne Pde, Allambie Heights
LOT 2, DP 835714

Site/ Roof Plan
Proposed

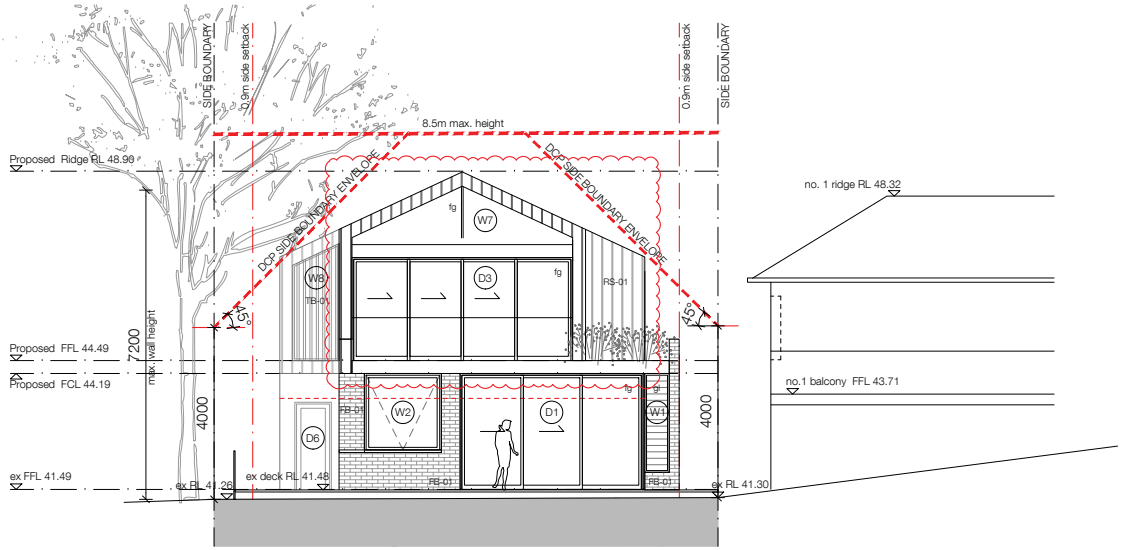
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Scale	1:100 @ A3
Project no.	2010
Date	13.11.20
Drawing no.	AR DA 1 01 E
	Discipline. Stage/ Package. Type. No. Revision.

Drawn by:

Nikki Mote Architects
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0420 503363
nikki@nikkimotearchitect.com



01 Elevation North - Existing
1:100@A3



02 Elevation North - Proposed
1:100@A3

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John & Victoria Hutchison

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LOT 2, DP 835714

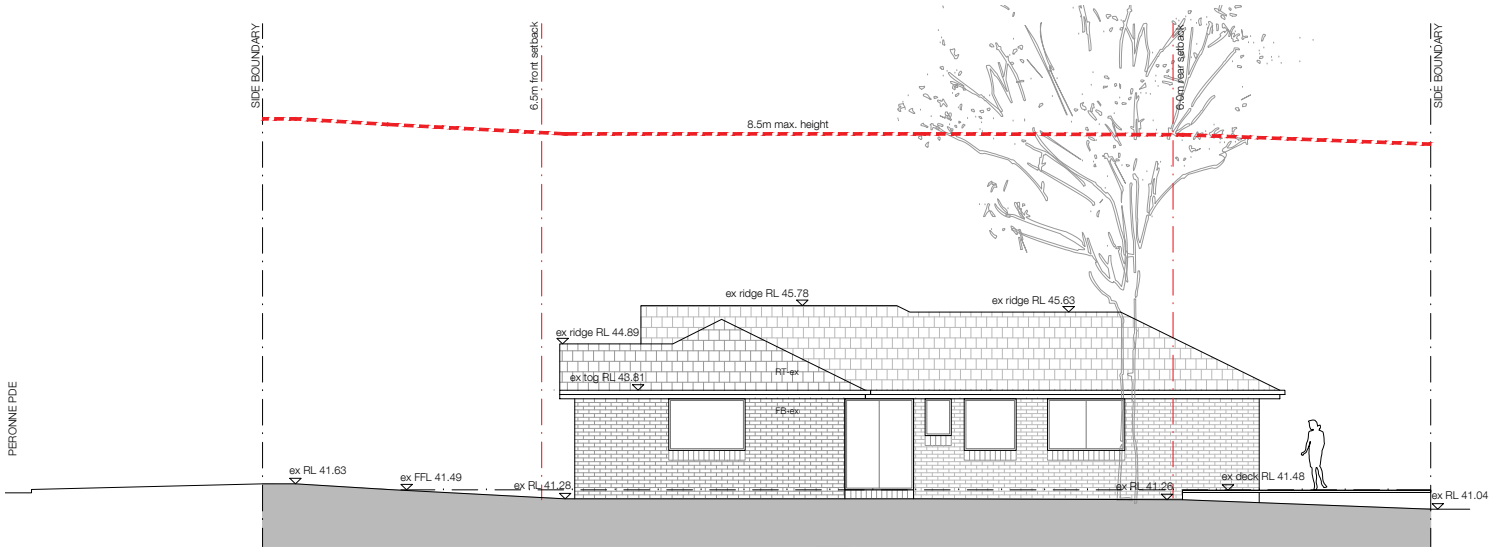
Elevation North
Existing & Proposed

Status	Development Application
Scale	1:100 @ A3
Project no.	2010
Date	04.01.22

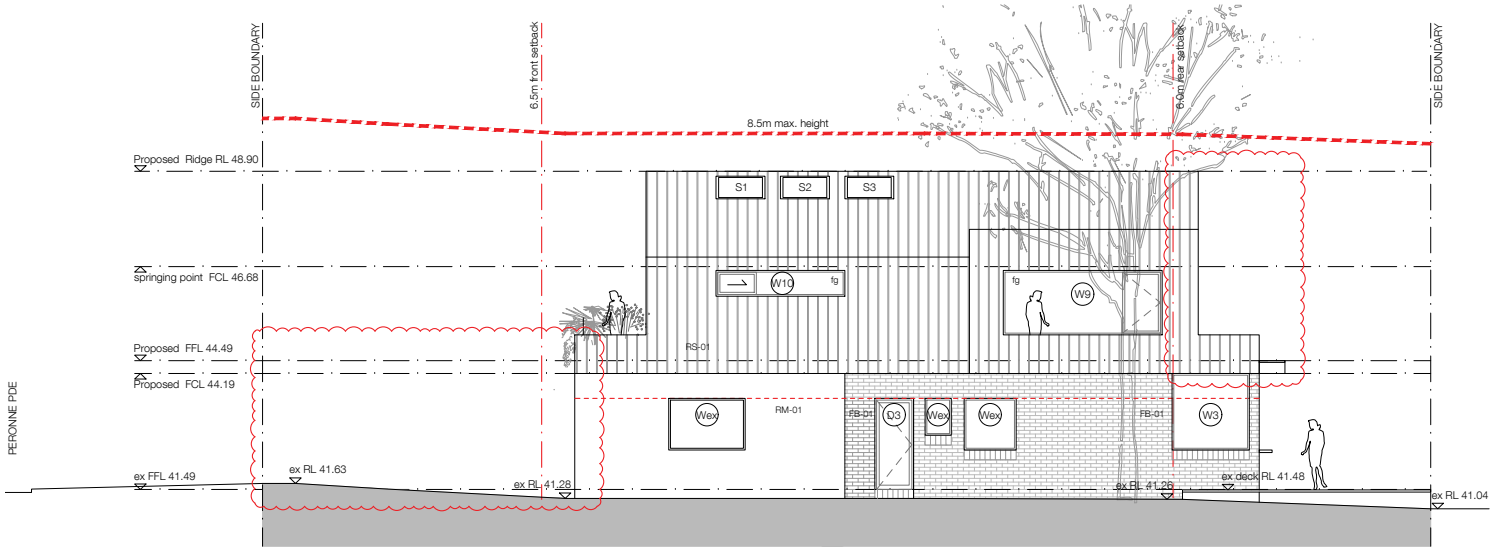
Drawing no.
AR DA 5 00 E
Discipline. Stage/ Package. Type. No. Revision.

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0420 503363
nikki@nikkimotearchitect.com



01 Elevation East - Existing
1:100@A3



02 Elevation East - Proposed
1:100@A3

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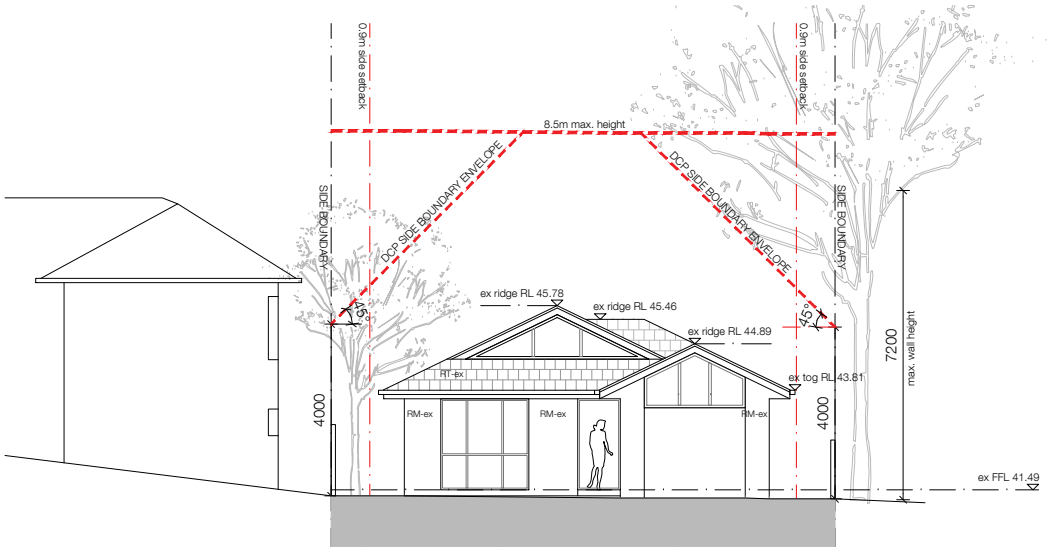
2 Peronne Pde, Allambie Heights
LOT 2, DP 835714

Elevation East
Existing & Proposed

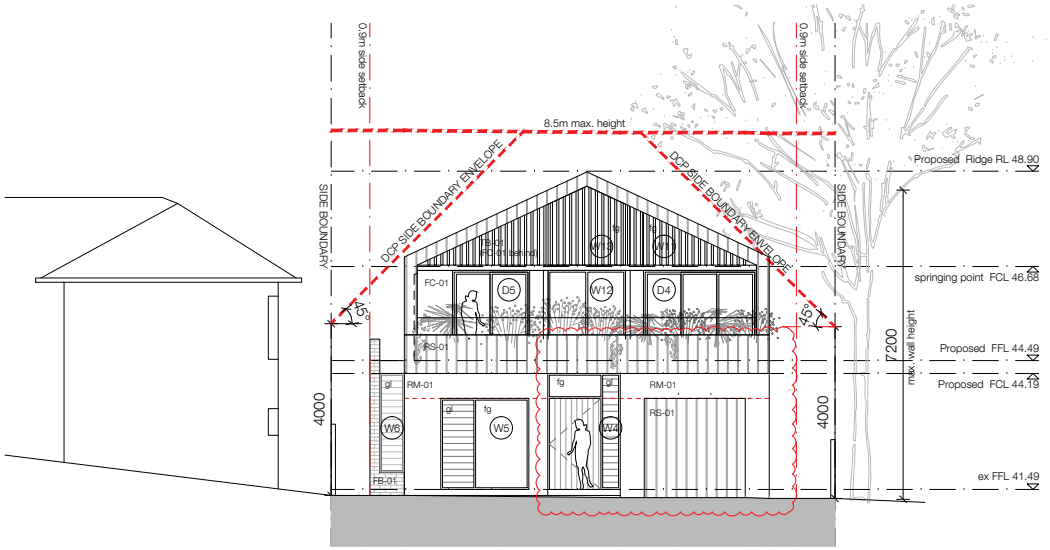
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Scale	1:100 @ A3
Project no.	2010
Date	04.01.22
Drawing no.	AR DA 5 01 E
	Discipline. Stage/ Package. Type. No. Revision.

Drawn by:

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0420 503363
nikki@nikkimotearchitect.com



01 Elevation South (Street) - Existing
1:100@A3



02 Elevation South (Street) - Proposed
1:100@A3

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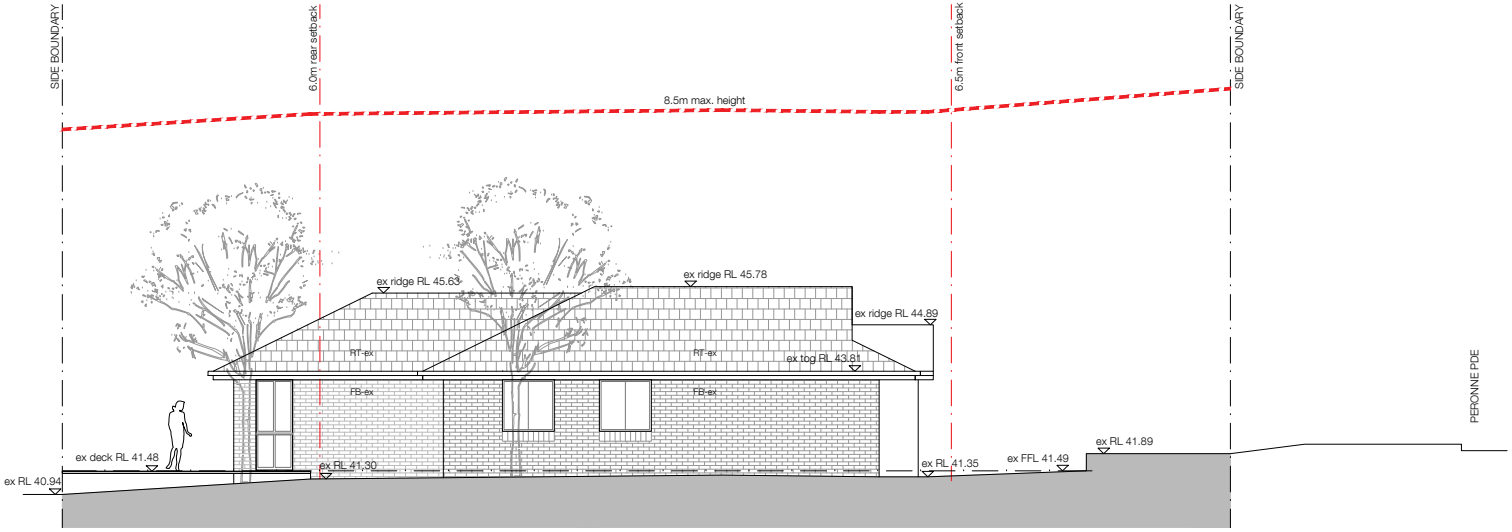
2 Peronne Pde, Allambie Heights
LOT 2, DP 835714

Elevation South (Street)
Existing & Proposed

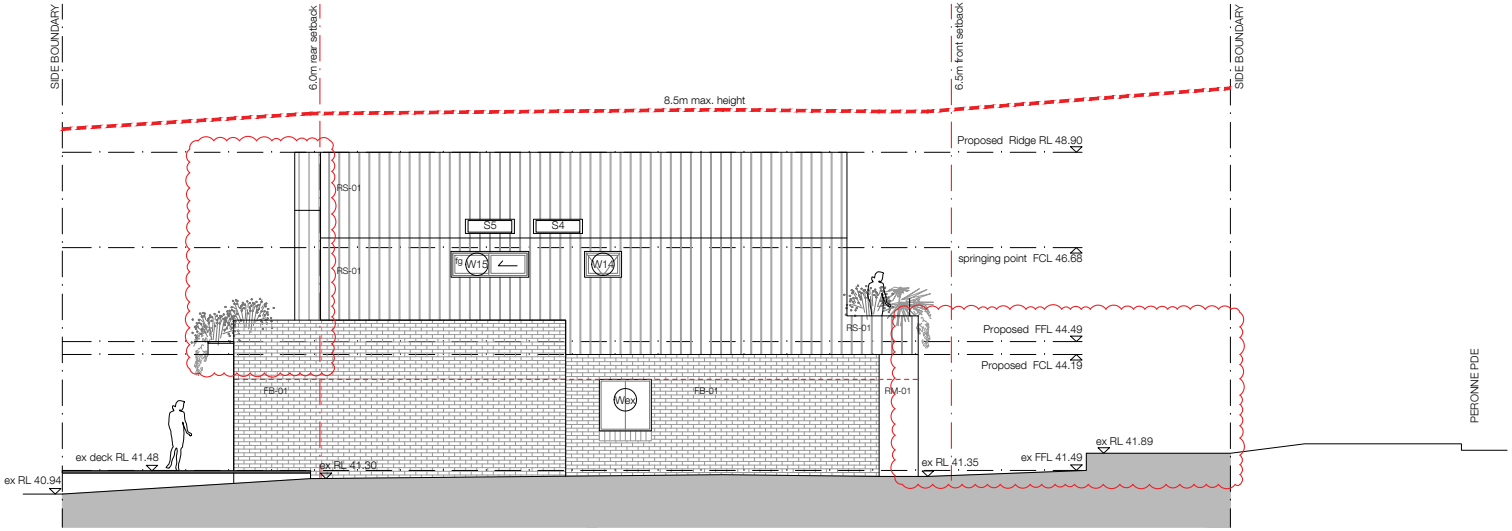
Status	Development Application
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Drawing no.	AR DA 5 02 E
	Discipline. Stage/ Package. Type. No. Revision.

Drawn by:

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nikki@nikkimotearchitect.com



01 Elevation West - Existing
1:100@A3



02 Elevation West - Proposed
1:100@A3

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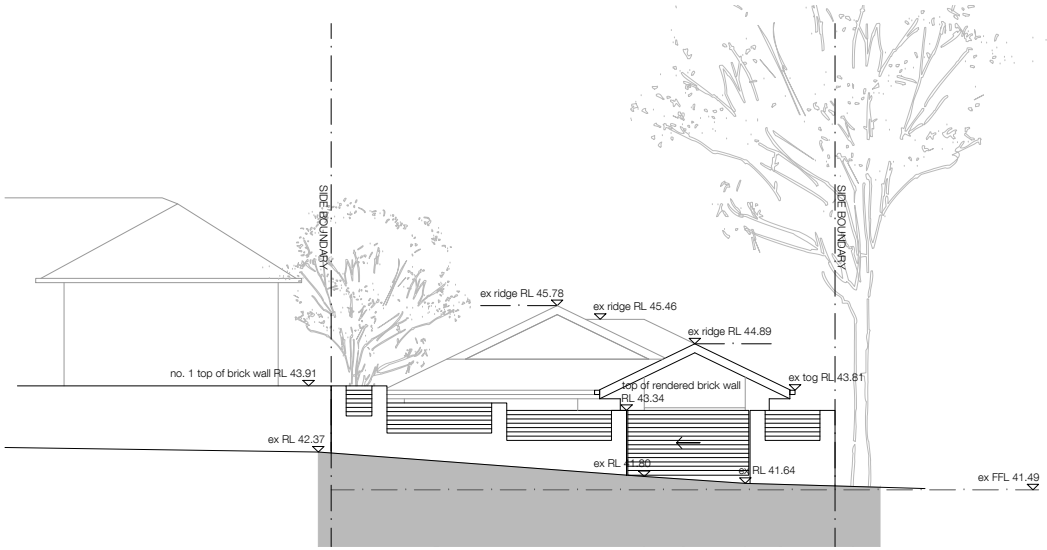
2 Peronne Pde, Allambie Heights
LOT 2, DP 835714

Elevation West
Existing & Proposed

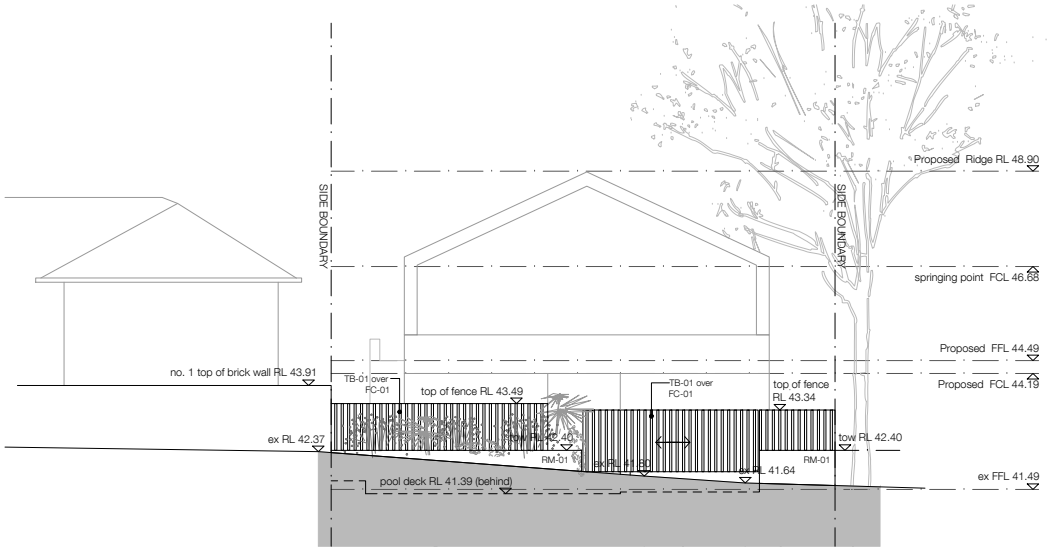
Status	Development Application
Scale	1:100 @ A3
Project no.	2010
Date	04.01.22
Drawing no.	AR DA 5 03 E
	Discipline. Stage/ Package. Type. No. Revision.

Drawn by:

Nikki Mote Architects
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0420 503363
nikki@nikkimotearchitect.com



01 Elevation South (Street) - Existing
1:100@A3



02 Elevation South (Street) - Proposed
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John & Victoria Hutchison

2 Peronne Pde, Allambie Heights
LOT 2, DP 835714

Elevation South (Street)
Proposed Front Fence & Gates

Status	Development Application
Scale	1:100 @ A3
Project no.	2010
Date	04.01.22
Drawing no.	AR DA 5 04 E
	Discipline. Stage/ Package. Type. No. Revision.

Drawn by:

Nikki Mote Architects
NSW ARB Reg# 8638
0420 503363
nikki@nikkimotearchitect.com

ITEM 3.7	**DA2022/2161 - 13 ABINGDON STREET NORTH BALGOWLAH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING SWIMMING POOL AND SECONDARY DWELLING**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/354557**
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 DA2022/2161 for alterations and additions to a dwelling house including swimming pool and secondary dwelling on land at Lot 300 DP 12316, 13 Abingdon Street NORTH BALGOWLAH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2161

Responsible Officer:	Grace Facer
Land to be developed (Address):	Lot 300 DP 12316, 13 Abingdon Street NORTH BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including swimming pool and secondary dwelling
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:	Philippa Joan Cail
Applicant:	Philippa Joan Cail

Application Lodged:	10/02/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/02/2023 to 02/03/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 18.35%
Recommendation:	Approval

Estimated Cost of Works:	$ 995,500.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including the construction of a first floor addition, secondary dwelling and swimming pool.

The proposed application seeks a variation to the Height of Buildings development standard pursuant to Clause 4.3 of the Warringah LEP 2011. The application is 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% (1.56m or 18.35%)

The 4.6 request for the non-compliance with the building height development standard arises due to the

site being partially excavated underneath the ground floor to accommodate an existing sub-floor laundry area. When measured from the natural ground levels, the dwelling presents a compliant building height.

No submissions were received as a result of the public exhibition of the application.

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, including a first floor addition, and conversion of the existing garage to a secondary dwelling.

Specifically, the proposal comprises of the following works:

Site

- New driveway and carport
- New swimming pool in rear yard
- New front fence

Ground Floor

- New Laundry and pantry and stair access to first floor
- New front deck

First Floor

- New level comprising of master bedroom with WIR and ensuite, bathroom, bedroom 3 and 4, living room, linen closet, 2 balconies at the front of the property and 1 balcony at the rear

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 - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 300 DP 12316 , 13 Abingdon Street NORTH BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Abingdon Street. The site is irregular in shape with a splayed frontage of 9.805m and 6.095m along Abingdon Street and a maximum depth of 39.755m. The site has a surveyed area of 661.9m². The site is located within the R2 Low Density Residential zone from WLEP 2011 and accommodates a one and two storey brick veneer dwelling with a metal roof and a detached brick garage. The slope on the site has a south-easterly aspect and the average gradient across the site is approximately 15 degrees. The site contains lawn areas, garden beds, small to medium-sized shrubs and trees. There are no details of any threatened species on the subject site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by one and two storey dwelling houses of varying ages and architectural styles. The site is located in close proximity to North Balgowlah shops to the west and the Balgowlah retail centre to the south-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:

PLM2019/0094
Pre-lodgement meeting for Alterations and additions to the dwelling house, construction of a carport and conversion of a garage into a secondary dwelling was held on 23 May 2019.

Application History
Following the preliminary assessment of the application and referral to Council's Development Engineer, the applicant was required to submit an amended driveway and carport plan to demonstrate compliance with AS2890.1. The applicant was also required to amend the proposal to reduce the significant numerical non-compliance with the side boundary envelope control on the southern elevation. Additionally, it was requested that either a Clause 4.6 variation request was to be provided or the first floor addition over the excavated laundry was to be removed in order to comply with the development standard for building height. Subsequently, the applicant submitted amended architectural plans and a Clause 4.6 variation request.

The amended plans did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 Matters for Consideration	Comments
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amendments to the Plans - Master Set and an amended Clause 4.6 variation request. Subsequently, the applicant submitted the requested information. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. (ii) **Social Impact**

Section 4.15 Matters for Consideration	Comments
	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 Consultancy Australia, dated 8 November 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/02/2023 to 02/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.

Internal Referral Body	Comments
	Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Solid Fuel/Oil Heater)	**General Comments** The proposed development is for alterations and additions to the existing dwelling and the change of use of the existing garage to a secondary dwelling. The alterations and additions include a new carport on the street frontage and a new first floor addition, resulting in a 6 bedroom dwelling and 1 bedroom secondary dwelling on the subject site. The proposed alterations and additions remain consistent with the streetscape and the locality. The proposal is consistent with Council controls, ensures privacy, solar access and views are maintained for both neighbours and the subject site. The alterations and additions to the dwelling will be made up as follows: Lower Ground Floor • No changes are proposed to the lower ground floor of the existing dwelling • Installation of rainwater tanks New Secondary Dwelling • Conversion of the existing garage to a 1 bedroom secondary dwelling. • 2 new entry doors and 1 new window • New internal walls to create a kitchen / living / dining room, bedroom and ensuite. Ground Floor • New front deck with doors accessing from the living room • New internal stair accessing the first floor • New double carport at the front of the existing dwelling with covered stair access First Floor (new level) • Living room with balcony (including privacy ccreen) • Master bedroom with ensuite, WIR and balcony • Bathroom • Bedroom 3 and 4 with balconies Site • Removal of existing driveway • New driveway • Swimming pool in rear yard (7m x 2-3m) Extension of brick chimney: Very little information on the fireplace have been provided with the submitted document other than it being shown on the master set of plans. Given the age of the dwelling and a review of the property file finding no section 68

Internal Referral Body	Comments
	application or development application for installation of a solid fuel heater, it is assumed that the existing fireplace is a brick and mortar open fireplace as opposed to an enclosed solid fuel heater. Brick and motar fireplaces provide a very inefficient burn with elevated particulates that pose a risk to public health and the environment. Environmental Health understand that historic fireplaces exist and will only require their removal if the smoke generated from them are found to be excessive or if they are amended as part of a development application. Given that an amendment to the flue/chimney is required for this development application Environmental Health will be recommending conditions relating to the upgrade of the flue and solid fuel heater to bring them into compliance with current emission standards and setbacks applicable in AS4013:2014 & AS2918:2018, conditions will include the certification of the installation prior to OC. Given that the flu/chimney is being extended it is anticipated to easily meet the required setbacks in AS2918:2018 of 6m from an adjacent structure and 3m from the highest point of the flue to the roof penetration of the dwelling. Environmental support the proposal subject to conditions being imposed.
Landscape Officer	The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation A Landscape Plan and a Arboricultural Impact Assessment are submitted for consideration of Landscape Referral. Of concern is the proposed non compliance with the landscaped area requirement under D1 as this reduces the capacity for the provision of an appropriate landscape setting, and this matter shall be determined by the Assessing Planning Officer. No prescribed trees protected by the DCP are located within the property and only exempt tree species are found within the property. Exempt species do not require Council consent for removal. The Arboricultural Impact Assessment report has additionally assessed neighbouring trees in proximity and existing street trees within public road reserve, and the report provides recommendations for tree protection measures that shall be the subject of imposed conditions, including the requirement for the proposed driveway alignment to be setback outside of the 2.8 meter SRZ radius of the existing Brushbox (tree 8) and be constructed using tree sensitive methods.

Internal Referral Body	Comments
	The reference to tree 8 in plan DA14 'existing tree proposed to be removed' shall be disregarded as other plans includes notes for retention and Council as well as the Arboricultural Impact Assessment report do not support removal. The Landscape Plan provides a landscape setting compatible with the available landscape area, and provides tree planting to the frontage of the development and screen planting to the rear and side of the property. The combination of a secondary dwelling and pool with associated terrace within the rear of the property excludes the opportunity for any tree planting to the rear of the property, to replace existing trees to be removed. Should the application be approved Landscape Referral provide conditions of consent.
NECC (Development Engineering)	The applicant needs to provide DRAINS model to assess Onsite Detention (OSD) volume calculation. The Development Engineering cannot support the application due to lack of information to assess clause C4 of the DCP. **Additional Information Provided on 6/4/2023 & 11/4/2023** *Stormwater* The stormwater plan is satisfactory subject to conditions. *Access* The proposed angle of the access driveway and grades are not acceptable. Such an alignment with the existing street tree is likely to block the site line distances for vehicles existing the site. The vehicular crossing shall be in line with to the parking facility. The carport shall be relocated towards the northern boundary such that the existing vehicular crossing alignment can be utilized. Additionally the proposed driveway profile appears steep and does not have any required transitions. The Applicant shall provide engineering long sections at both edges and center line of the proposed driveway and demonstrate compliance with AS2890.1. The vehicular crossing shall incorporate one of Council's standard profiles. The internal driveway grades shall not exceed a maximum of 1 in 4 with a transition of 1 in 10 prior to a level parking facility. To achieve this the carport levels may need to be raised. **Additional Information Provided on 11/5/2023** The amended driveway profile is acceptable subject to conditions. No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021,	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the

External Referral Body	Comments
s2.48	relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
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. **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 for the principal dwelling (see Certificate No.A344209_05 dated 9 May 2023). A BASIX certificate has also been submitted with the application for the secondary dwelling (see Certificate No.1004335S_04 dated 10 May 2023).

The BASIX Certificate for the secondary dwelling indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	49
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 (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	**Compliance/Comment**
a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land.	Complies. The proposal will result in one (1) principal dwelling and one (1) secondary dwelling on the subject site.
b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument.	Complies. No floor area for principal dwellings under WLEP 2022 and secondary dwelling is less than 60m^2
c) The total floor area of the secondary dwelling is: i) no more than 60m², or ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	Complies. Secondary dwelling has a total floor area of 49.2m^2

Clause 53 – Non-discretionary development standards	
Standard	**Compliance/Comment**
a) For a detached secondary dwelling - a minimum site area of 450m².	Complies. Site area is 661.9m^2
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Complies. Proposal retains two parking spaces on site

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the

electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.06m	18.35% (1.56m)	**No**

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	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:	10.06m
Percentage variation to requirement:	18.35%

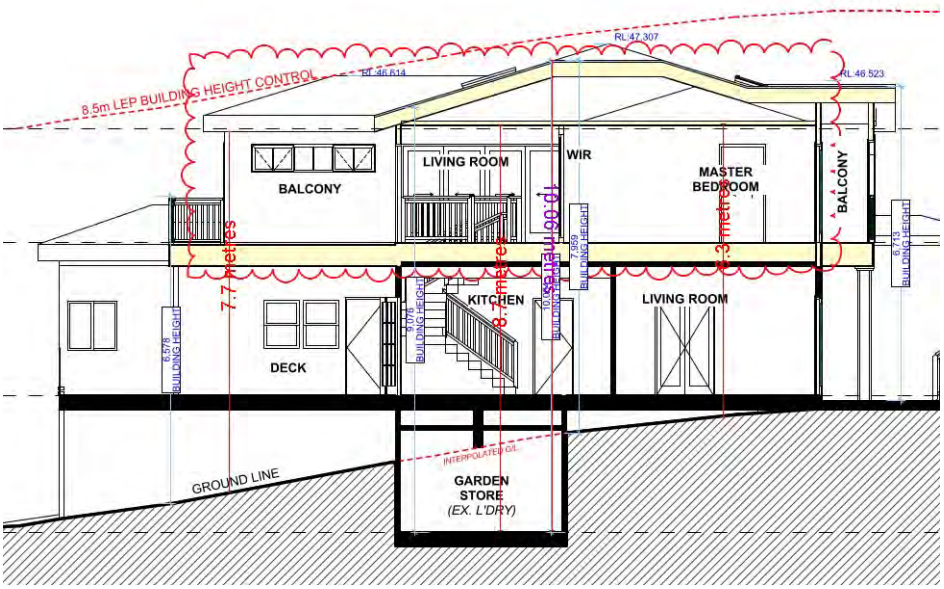


Figure 1 - Building Height Non-Compliance

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 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 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 building height is 8.5 metres, or a 0% variation, when measured in accordance with the previously applied interpolated height set out in the Bettar judgement.*
- *The dwelling presents with a compliant height on all elevations and the small sub-floor variation does not result in inappropriate bulk or scale, remaining consistent with the adjoining dwellings and other dwellings in the locality*
- *Compliance with the height control would not result in a building which has a significantly lesser bulk, as the dwelling complies with the height control on the external elevations and only fails to meet in the small area of laundry.*
- *The technical height variation has no impact on privacy, views or solar access for neighbours*
- *The inclusion of the small height variation has no impact on the natural environment. No landscape area is lost or impacted through the minor height variation*

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. Furthermore, the numerically non-compliant building height arises entirely as a result of the Land and Environment Court of NSW judgement of *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* which establishes that the measurement of building height must take place from any existing excavated portion of a 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 WLEP 2011 are:

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

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

Comment:
The proposed development will result in a dwelling house that is consistent with the height and scale of surrounding developments. The proposal will present as a two storey dwelling house when viewed from the public domain with the numerical non-compliance confined to the rear of the dwelling where the sub-floor laundry is located. As the dwelling is located on the lower side of Abingdon Street with the site topography sloping towards the rear of the lot, the impact of the building height non-compliance on the streetscape will be negligible.

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

Comment:
The numerically non-compliant building height is not anticipated to result in any view loss, loss of privacy or overshadowing to adjoining or surrounding properties. Privacy screens and high sill windows are incorporated along the side elevations and compliant side setbacks provide sufficient spatial separation between dwellings to mitigate visual bulk. Shadow diagrams

accompanying the application demonstrate that the subject site and the adjoining property to the south-west will retain compliant levels of solar access.

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

Comment:
The proposal will not be visually dominant within the streetscape and is therefore not anticipated to adversely impact the scenic quality of the locality.

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

Comment:
The proposed building materials and finishes are complementary to the existing dwelling and surrounding developments. Moreover, the bulk and scale of the development when viewed from the public domain is not considered to be adverse nor unreasonable. As such, the proposal will maintain the visual character of the site and its surrounds.

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:
  The proposal demonstrates consistency with the slope of the locale and maintains a landscaped setting with compliant landscaped areas on the site. Sufficient vegetation will be maintained to ensure there are no detrimental impacts on the natural environment.

  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 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.

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, 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	8.7m	20.83% (1.5m)	**No**
B3 Side Boundary Envelope	North: 4m	Within Envelope	-	Yes
	South: 4m	Outside Envelope	Two encroachments: Rear - Maximum height of 0.3m for a horizontal length of 2.1m Front - Heights of between 0.6m - 1.1m for a horizontal length of 6.6m	**No**
B5 Side Boundary Setbacks	North: 0.9m	Secondary Dwelling: Nil Lower Ground: 3.1m Ground: 1.1m First Floor: 1.2m	Secondary Dwelling: 100% (0.9m), as existing	**Secondary dwelling: No**
	South: 0.9m	Lower Ground: 1.3m Ground: 1.3m First Floor: 1.9m	-	Yes
B7 Front Boundary Setbacks	6.5m	Carport:0.1m Dwelling: 7.8m	Carport: 98.4% (6.4m)	**Carport: No**
B9 Rear Boundary Setbacks	6m	Secondary Dwelling: Nil Pool: 1m Principal Dwelling: 8.5m	Secondary Dwelling: 100% (6m), as existing Pool: 83.3% (5m)	**Secondary dwelling: No** **Pool: No**
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (264.76m^2)	31.9% (211m^2)	20.3% (53.76m^2)	**No**

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	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
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
E6 Retaining unique environmental features	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 numerical non-compliance to the control above the existing sub-floor laundry and exhibits a wall height of 8.7m, resulting in a variation of 20.83% (1.5m) to the control. Due to the sloping topography of the site, the rear of the dwelling also results in a non-compliant wall height of 7.7m, presenting a variation of 6.5% (0.5m).

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 numerical non-compliance arises as a result of the sloping nature of the site towards the rear of the lot. As such, the three storey element of the proposal will not be perceived from the public domain and will not contribute to excessive visual bulk when viewed from adjoining properties.

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

  Comment:
  The proposal will retain vegetation on the subject site to soften the built form and the height of the proposal will be sited below the existing tree canopy level.

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

  Comment:
  The proposed development does not result in any detrimental impacts on the sharing of views to and from public and private properties.

- ***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.

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

  Comment:
  No excavation works are proposed in order to accommodate the construction of the first floor level, therefore the proposed development responds appropriately to the natural landform of the site. Excavation to level the carport area and construct the inground pool in the rear yard are relatively minor in scale and will largely retain the existing topography of the site.

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

  Comment:
  The proposed roof form has been designed to match the existing form of the single storey dwelling on the site and will result in a roof pitch and height that is compatible with the character of development observed within the locality.

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

with the aims and objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 partially encroaches into the side boundary envelope along the southern elevation. As demonstrated in Figure 1 below, the envelope non-compliance along the southern elevation occurs along two sections with horizontal lengths of 6.6m and 2.1m and vertical heights of between 0.6m to 1.1m and 0.3m, respectively.

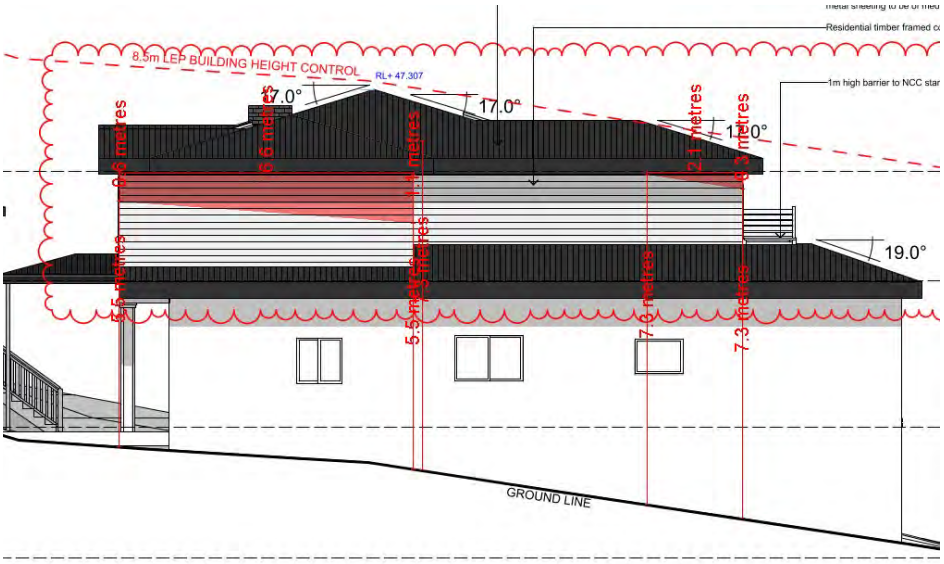


Figure 2 - Southern Elevation Building Envelope Encroachment

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 proposed first floor addition incorporates appropriate articulation and balconies to the front and rear of the dwelling to assist in alleviating building bulk. Furthermore, the sample board accompanying the application demonstrates that the materials and finishes of the proposal are complementary to the existing dwelling house and residential surrounds to reduce the development's visual impact. The existing dwelling house is sited closer to the southern boundary, which gives rise to encroachment into the southern side boundary envelope and the

encroachment is exacerbated by the slope of the land and excavated lower ground floor.

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

  Comment:
  Adjoining and surrounding properties will maintain a compliant level of solar access and privacy. No windows are proposed on the dwelling's first floor level along the southern elevation to prevent overlooking into the neighbouring site.

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

  Comment:
  The proposal responds appropriately to the topography of the site through incorporating increased setbacks towards the rear of the dwelling house which slope with the form of the land. As such, the proposal results in a modulated built form which provides appropriate spatial separation from the southern adjoining property.

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

B5 Side Boundary Setbacks

Description of non-compliance

Clause B5 of the DCP requires development to maintain a minimum setback of 0.9m to side boundaries. The existing garage, which presents a nil setback to the northern side boundary, is proposed to be converted into a secondary dwelling under this development application. As such, the proposed development is numerically non-compliant with the requirements of the control.

Notably, the dwelling house, carport and proposed pool demonstrate compliant setbacks from the side boundaries.

Merit consideration

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

- ***To provide opportunities for deep soil landscape areas.***

  Comment:
  The proposed development retains adequate areas on the site to provide sufficient opportunities for deep soil landscaping.

- ***To ensure that development does not become visually dominant.***

  Comment:

The numerically non-compliant setback of the proposed secondary dwelling will not result in additional visual dominance as the proposal relies upon the setbacks of the existing garage. The driveway to the garage will be replaced with soft landscaping to assist in softening the built form when viewed from the public domain. It should also be noted that, given that the secondary dwelling is a single storey structure located in the rear yard, the development is unlikely to result in any adverse visual impacts.

- ***To ensure that the scale and bulk of buildings is minimised.***

  Comment:
  As the proposal will utilise the existing garage to accommodate the secondary dwelling, the scale of the development on the subject site will be unchanged.

- ***To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.***

  Comment:
  Privacy will be retained to the northern adjoining neighbour as no windows or openings are proposed along the secondary dwelling's northern elevation. Existing boundary fencing will further provide appropriate privacy screening measures. As no change to the external built form of the garage structure is proposed, the existing solar access arrangement will be maintained. The principal dwelling demonstrates compliant setbacks which ensures adequate spatial separation between dwellings.

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

  Comment:
  The proposal will not result in the obstruction of views to or from public and private properties.

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

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 carport is setback 0.1m from the front boundary line, resulting in a variation to the control of 98.4% (6.4m).

The dwelling house on the subject site demonstrates a compliant front 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 create a sense of openness.***

Comment:
The proposed carport's open structure results in a design that will enhance the sense of openness in the streetscape and will not dominate the frontage of the site. The proposed structure is consistent parking areas and carports that encroach within the front setback, which appear in the local context.

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

  Comment:
  The front boundary of the subject site is irregular in shape which exacerbates the numerically non-compliant front setback of the proposed carport. There is an established pattern of carports within the front setback, including the adjoining property to the south (No.11 Abingdon Street). The proposed carport has been designed to mirror the neighbouring property's carport to create consistency along the streetscape and is considered to maintain the visual continuity and pattern of buildings within the locality.

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

  Comment:
  The driveway location and proposed carport have been redesigned in order to protect the street tree on the property's frontage as a result of the advice provided to the applicant at the pre-lodgement meeting (PLM2019/0094). The retention of this street tree and the large verge which exists at the front of the subject site will maintain the landscaped visual quality of the street.

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

  Comment:
  The proposed carport's location within the front setback will not adversely impact view sharing.

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

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 secondary dwelling maintains the nil rear setback of the existing garage. The proposed pool exhibits a setback of 1m to the rear boundary resulting in a variation to the control of 83.3% (5m). It is noted that the control allows for swimming pools to encroach within the rear building setback, provided they do not exceed 50% of the rear setback area. The proposed pool (18.8m^2) occupies approximately 15% of the rear setback area (120.5m^2) and therefore qualifies for the variation.

The proposed alterations and additions to the principal dwelling are fully compliant with the rear 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:
  A detailed merit assessment in regard to landscaped areas on the site has been undertaken in Section D1 of this report. It is considered that the permeable areas on the site will provide sufficient opportunities for deep soil landscaping.

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

  Comment:
  The proposed pool and single storey secondary dwelling are modest in size relative to the principal dwelling and size of the lot, therefore the minor numerical non-compliance with the rear setback control is not anticipated to adversely contribute to the bulk of the built form in the rear yard.

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

  Comment:
  The proposal is not anticipated to result in any adverse amenity impacts to neighbouring properties. Existing boundary fencing and vegetation will assist in maintaining adequate privacy between dwellings.

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

  Comment:
  The existing garage will be converted into the proposed secondary dwelling, which will maintain the visual continuity and pattern of buildings observed on the site. The location of the proposed pool in the rear yard is consistent with structures and landscape elements within rear yards in the locality.

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

  Comment:
  As the proposed pool will be an inground structure, the proposal will not result in any additional overlooking opportunities from the subject site over the adjoining rear boundary. Furthermore, no windows or openings are proposed along the secondary dwelling's eastern wall which adjoins the rear boundary. In this regard, the proposal appropriately maintains privacy between dwellings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in 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

Clause D1 of the DCP requires a minimum of 40% (264.7m^2) of the subject site to be landscaped open space. The proposal results in a landscaped open space of 31.9% (211m^2), resulting in a variation of 20.3% (53.76m^2) to the control. As the control defines landscaped open space as areas with a minimum 2m dimension, there are additional areas of landscaped, pervious areas on the site that have been omitted from the LOS calculation. It should also be noted that the existing landscaped open space on the site of 35.5% (235.1m^2) is numerically non-compliant with the control and the proposal only results in a relatively minor reduction to the landscaped areas of 24.1m^2.

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 existing driveway along the northern boundary will be removed and replaced with soft landscaping to maintain a sense of openness in the front yard. The subject site is generously setback from Abingdon Street and street trees within the road reserve are proposed to be retained in order to maintain and enhance the streetscape.

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

  Comment:
  The proposal will not unreasonably impact on existing indigenous vegetation, topographical features, and habitat for wildlife.

- ***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:
  Large areas of landscaping will be retained in the front yard and rear yard with the capability to support the establishment of a variety of shrubs and trees to mitigate the height, bulk and scale of the built form. The application has been referred to Council's Landscape Officer who notes that the Landscape Plan provides a landscape setting compatible with the available landscape area, and provides tree planting to the frontage of the development and screen planting to the rear and side of the property.

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

  Comment:
  Landscaped areas along the side boundaries and in the rear yard will provide appropriate spatial separation between dwellings to enhance privacy.

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

the occupants.

Comment:
The proposed pool will provide additional opportunities for outdoor recreation to meet the needs of the occupants. Additionally, adequate lawn areas and garden beds will be maintained on the site.

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

  Comment:
  Sufficient spaces for service functions, including clothes drying will be maintained to the rear of the dwelling house.

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

  Comment:
  The site has adequate permeable surfaces to ensure that water management and the natural infiltration of stormwater into the ground will continue to occur. Council's Development Engineer has also 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 existing subsurface flow conditions.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $9,955 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $995,500.

CONCLUSION

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

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

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% (1.56m or 18.35%).

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 to the character of the site and will maintain an appropriate visual relationship with the surrounding environment.

Therefore, the application is recommended for approval (subject to conditions).

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 permits a contravention of 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 DA2022/2161 for Alterations and additions to a dwelling house including swimming pool and secondary dwelling on land at Lot 300 DP 12316, 13 Abingdon Street, NORTH BALGOWLAH, 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.DA03 Revision C	10 May 2023	Action Plans
Existing Lower Ground Floor Plan - Drawing No.DA04 Revision C	10 May 2023	Action Plans
Proposed Lower Ground Floor Plan - Drawing No.DA05 Revision C	10 May 2023	Action Plans
Existing Ground Floor Plan - Drawing No.DA06 Revision C	10 May 2023	Action Plans
Proposed Ground Floor Plan - Drawing No.DA07 Revision C	10 May 2023	Action Plans
Proposed First Floor Plan - Drawing No.DA08 Revision C	10 May 2023	Action Plans
North Elevation - Drawing No.DA09 Revision C	10 May 2023	Action Plans
East Elevation - Drawing No.DA10 Revision C	10 May 2023	Action Plans
South Elevation - Drawing No.DA11 Revision C	10 May 2023	Action Plans
West Elevation - Drawing No.DA12 Revision C	10 May 2023	Action Plans
Long/Cross Section - Drawing No.DA13 Revision C	10 May 2023	Action Plans

Long Section 2 - Drawing No.DA14 Revision C	10 May 2023	Action Plans
Cross Section 2 - Drawing No.DA15 Revision C	10 May 2023	Action Plans
Driveway Plan and Long Section - Drawing No.DA16 Revision C	10 May 2023	Action Plans
Pool Plan - Drawing No.DA17 Revision C	10 May 2023	Action Plans
Sample Board, Carport & Front Fence Elevations - Drawing No.DA18 Revision C	10 May 2023	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No.1004335s_04 (Secondary Dwelling)	10 May 2023	Action Plans
BASIX Certificate No.A344209_05 (Dwelling House)	9 May 2023	Action Plans
Bushfire Assessment Report	8 November 2021	Bushfire Consultancy Australia
Arboricultural Impact Assessment Report	23 November 2021	Hugh The Arborist
Geotechnical Report	17 November 2021	Ascent Geotechnical 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**
Landscape Plan	9	

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	30 January 2023	Phillipa Cail

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	20 February 2023

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

A. the name of the owner-builder, and

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

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the

excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

4. **General Requirements**

(a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and

construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for

swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $9,955.00 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 $995,500.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council’s website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition

work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

7. **Stormwater Drainage Disposal**
The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

8. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Laundry Facilities (Class 1)**
The layout of the bathroom/laundry area is to be designed/modified to incorporate clothes washing facilities, comprising of at least one washtub and space in the same room for a washing machine and is required to comply with Part 3.8.3 of the Building Code of Australia –'Facilities'. A kitchen sink or washbasin must not be counted as a laundry washtub. 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.

10. **Roof lights**
3.7.3.4 NCC Volume 2 - 2019 - Roof lights
Combustible roof lights, skylights or the like installed in a roof or part of a roof required to have a non-combustible covering must—

(a) have an aggregate area not more than 20% of the roof or part of the roof; and

(b) be not less than 900 mm from the vertical projection of a separating wall extending to the underside of the roof covering.

11. **On-site Stormwater Detention Details**
The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NB Consulting Engineers, job number 211140, drawing number D01 to D07, dated 17/8/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

12. **Vehicle 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.

14. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

15. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:
- "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.

16. **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

17. **Project Arborist**
A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009' Protection of trees on development sites', and any recommendations of an approved Arboricultural Impact Assessment specific to the existing street tree (tree 8).

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
a) section 8.2 Design modifications, 8.3 Tree Sensitive Construction Specification, and 8.3.1 Tree Sensitive Hard Surfacing Construction, for tree 8
b) section 9 Recommendations
c) section 10 Arboricultural Work Method Statement and Tree Protection Requirements
d) section 11 Hold Points
e) appendix 1A Tree Protection Plan

All tree protection measures specified must:
a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the

tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:
Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:
i) all trees within the site, including trees and vegetation nominated for retention on the approved Plans,
ii) all trees and vegetation located on adjoining properties,
iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:
i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:
c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project

Arborist as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

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. **Geotechnical Requirements**
All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

21. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

22. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 3.0 metres wide at the kerb in accordance with Northern Beaches Council Drawing Maximum Low 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.

23. **Waste Management During Development**
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

24. **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

25. **Installation and certification of solid/fuel burning heater**
Any open hearth wood fireplace being replaced with a compliant solid fuel heater (or gas heater)
The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide to the Principal Certifier certification that the solid fuel heater has been installed by an appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

26. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved Landscape Plan(s), and inclusive of the following conditions:
a) landscape works are to be contained within the legal property boundaries,
b) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
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 1metre 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) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

27. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:
a) compliance to any Arborist recommendations for tree protection generally and during

excavation works,
b) extent of damage sustained by vegetation as a result of the construction works,
c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

28. **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.

29. **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.

30. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the

process can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf

The form for the application can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

31. **Waste Management Confirmation**
Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

32. **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

33. **Landscape Maintenance**
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity

34. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **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.

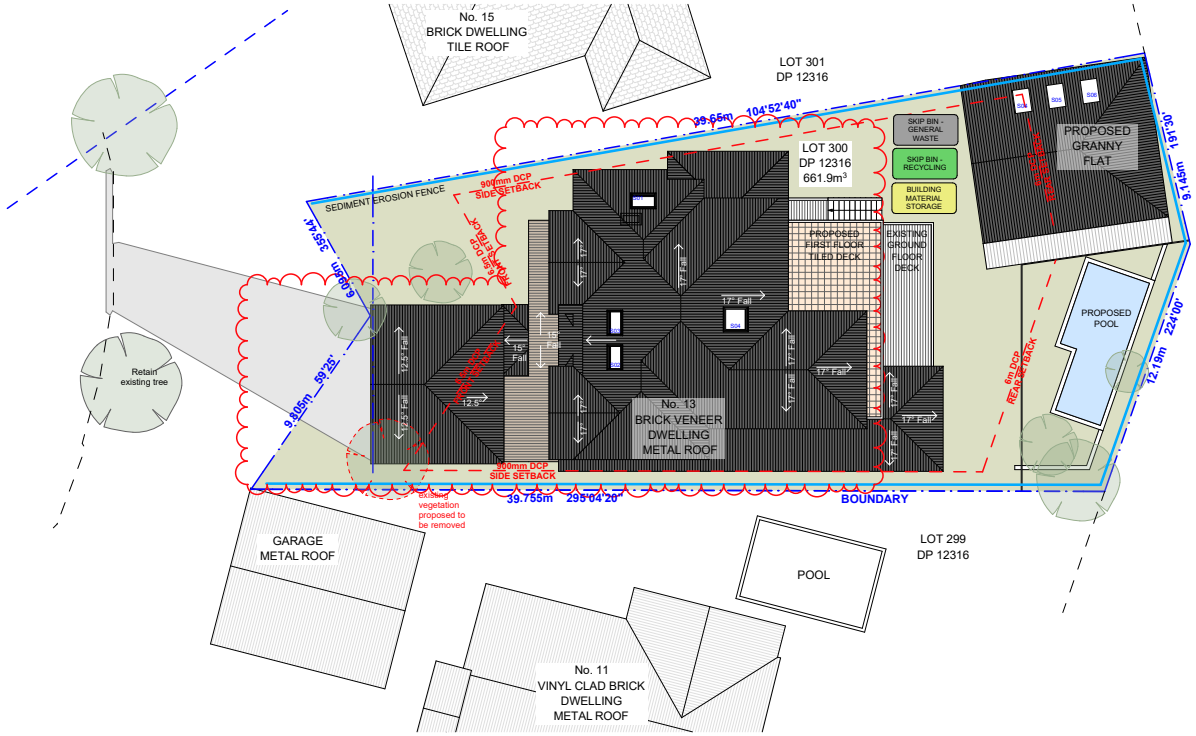
36. **Maintenance of solid fuel heaters**
The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

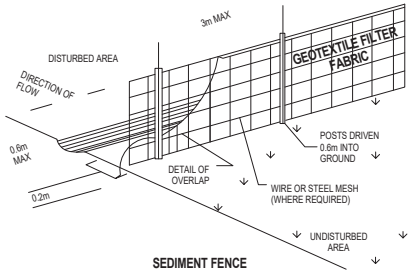
Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

37. **Operation of solid fuel burning heaters**
The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.





SEDIMENT FENCE

DUST CONTROL :
TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED. WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES

SEDIMENT NOTE :
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREA AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEPT DAILY.

STOCKPILES :
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :
PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN
1:200

ACTION PLANS
m: 0426 957 518
e:operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	27/05/2021	DESIGN PLAN	AM
B	17.04.2023	DA: REV A	RNA
C	10.05.2023	DA: REV B	RNA

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Do no scale on drawings. Use figured dimensions.

LEGEND
EXISTING
PROPOSED
DEMOLISHED
PROPOSED CHANGES

CLIENT
PHILLIPA CAIL

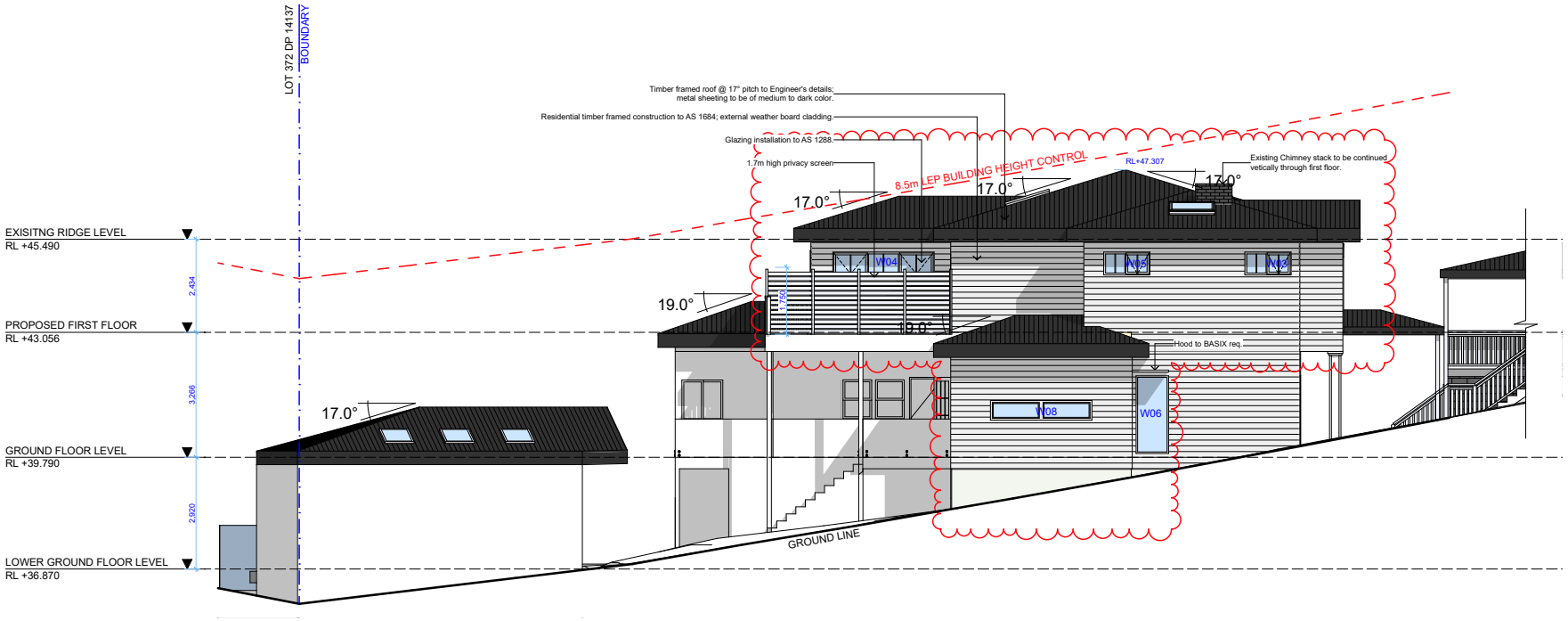
PROJECT ADDRESS
13 ABINGDON STREET, NORTH BALGOWLAH NSW 2093

DRAWING NO.
DA03

DATE
Wednesday, 10 May 2023

DRAWING NAME
SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN

SCALE
1:200 @A3



NORTH ELEVATION
1:100

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REV.	DATE	COMMENTS	DRWN
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Do no scale on drawings. Use figured dimensions.

LEGEND
WEATHERBOARD
METAL ROOFING
FACE BRICKWORK
GLASS
EXISTING
PROPOSED CHANGES

CLIENT
PHILLIPA CAIL

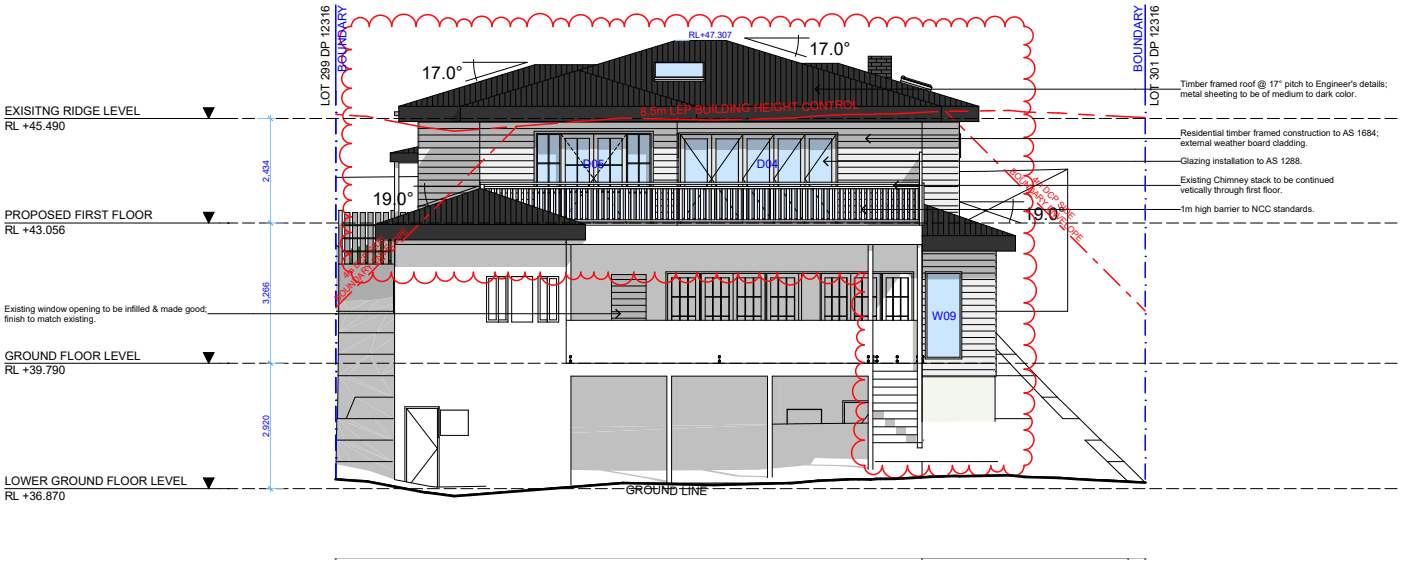
PROJECT ADDRESS
13 ABINGDON STREET, NORTH BALGOWLAH NSW 2093

DRAWING NO.
DA09

DATE
Wednesday, 10 May 2023

DRAWING NAME
NORTH ELEVATION

SCALE
1:100 @A3



EAST ELEVATION

1:100

ACTION PLANS
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REV.	DATE	COMMENTS	DRWN
A	27/05/2021	DESIGN PLAN	AM
B	17.04.2023	DA: REV A	RNA
C	10.05.2023	DA: REV B	RNA

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LEGEND

- WEATHERBOARD
- METAL ROOFING
- FACE BRICKWORK
- GLASS
- EXISTING
- PROPOSED CHANGES

CLIENT
PHILLIPA CAIL

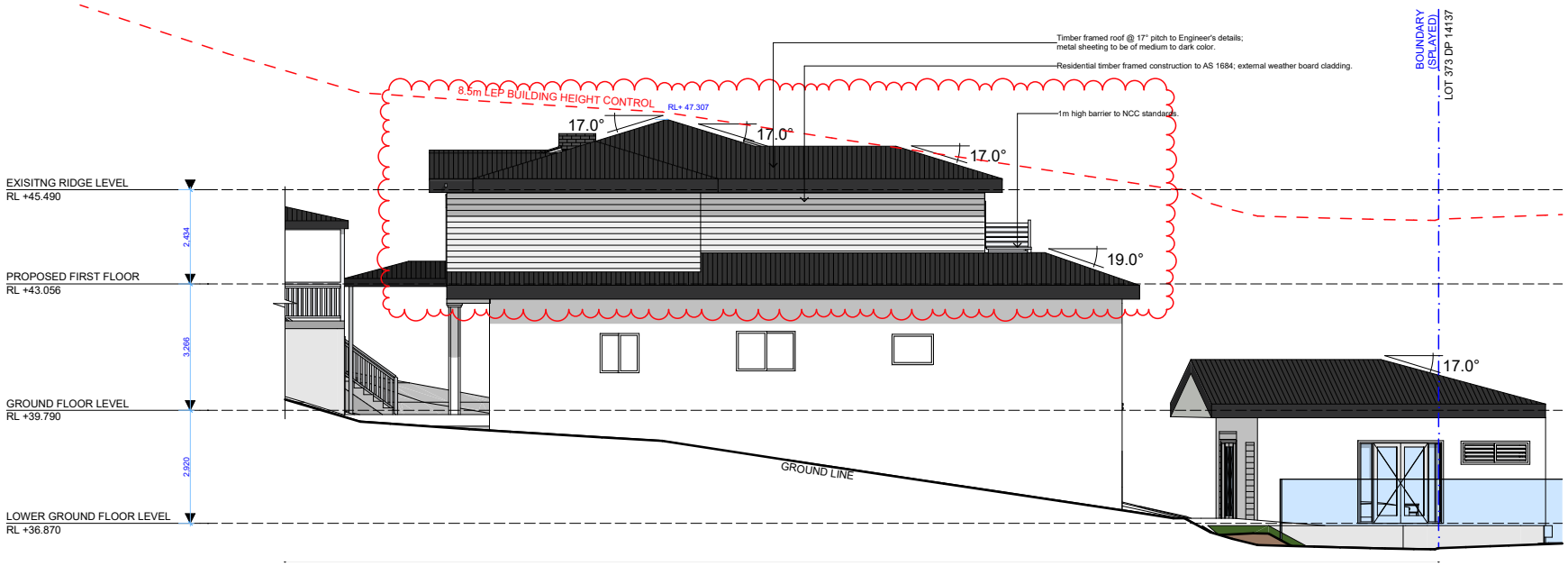
PROJECT ADDRESS
13 ABINGDON STREET, NORTH BALGOWLAH NSW 2093

DRAWING NO.
DA10

DATE
Wednesday, 10 May 2023

DRAWING NAME
EAST ELEVATON

SCALE
1:100 @A3



SOUTH ELEVATION
1:100

ACTION PLANS
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e:operations@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	27/05/2021	DESIGN PLAN	AM
B	17.04.2023	DA: REV A	RNA
C	10.05.2023	DA: REV B	RNA

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LEGEND
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- PROPOSED CHANGES

CLIENT
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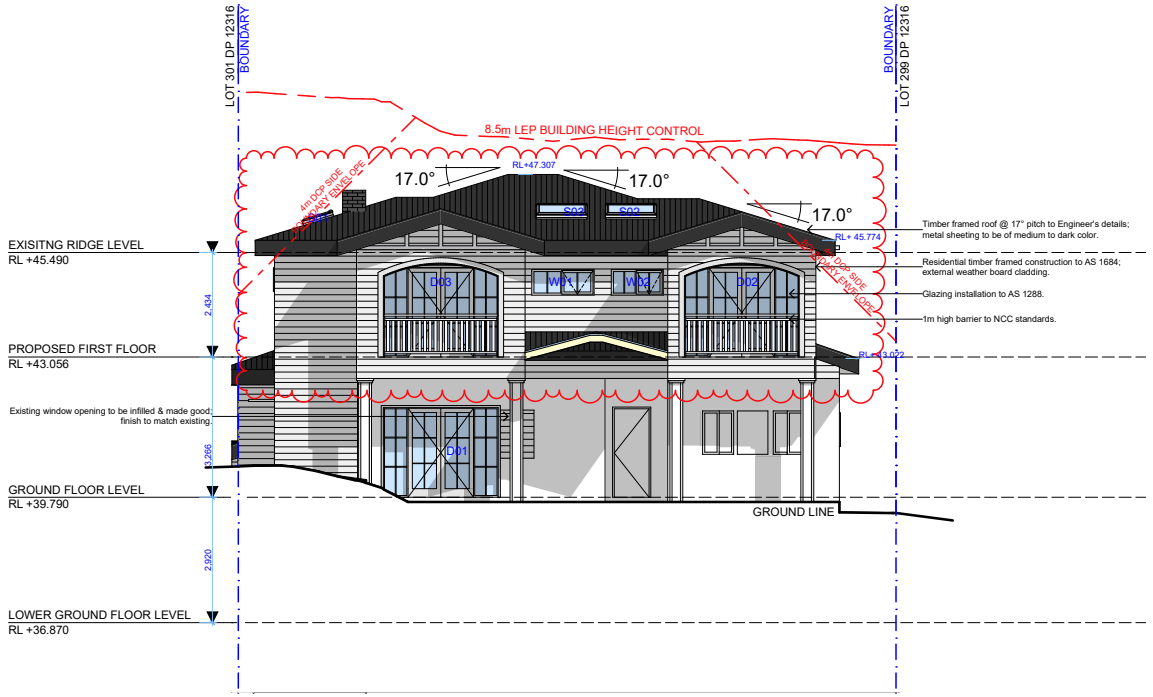
PROJECT ADDRESS
13 ABINGDON STREET, NORTH BALGOWLAH NSW 2093

DRAWING NO.
DA11

DATE
Wednesday, 10 May 2023

DRAWING NAME
SOUTH ELEVATION

SCALE
1:100 @A3



WEST ELEVATION
1:100

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REV.	DATE	COMMENTS	DRWN
A	27/05/2021	DESIGN PLAN	AM
B	17.04.2023	DA: REV A	RNA
C	10.05.2023	DA: REV B	RNA

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LEGEND
- WEATHERBOARD
- METAL ROOFING
- FACE BRICKWORK
- GLASS
- EXISTING
- PROPOSED CHANGES

CLIENT
PHILLIPA CAIL

PROJECT ADDRESS
13 ABINGDON STREET, NORTH BALGOWLAH NSW 2093

DRAWING NO.
DA12

DATE
Wednesday, 10 May 2023

DRAWING NAME
WEST ELEVATION

SCALE
1:100 @A3

13 ABINGDON STREET
NORTH BALGOWLAH

CLAUSE 4.6 VARIATION REQUEST (BUILDING HEIGHT) FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND CHANGE OF USE GARAGE TO A SECONDARY DWELLING



Report prepared for
Action Plans
May 2023

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1. Introduction

1.1 This is a Clause 4.6 variation request to Clause 4.3, *Building Height* of the Warringah Local Environmental Plan 2011 for alterations and additions to an existing dwelling and the change of use of a garage to a secondary dwelling at 13 Abingdon Street North Balgowlah.

1.2 The report has been prepared with reference to the following:

- Site visit,
- DA Plans and BASIX Certificate prepared by Action Plans,
- Statement of Environmental Effects prepared by Watermark Planning.

2. The site and its locality

2.1 The subject site is located on the south-east side of Abingdon Street, approximately 200 metres north of its intersection with Kitchener Street in North Balgowlah. The site is legally described as Lot 300 DP 12316.

2.2 It is an irregular shape lot with a splayed front boundary to Abingdon Street of 9.805 metres and 6.095 metres (west), a spayed rear boundary of 12.19 metres and 9.145 metres (east). The side boundaries are 39.65 metres (north) and 39.755 metres (south). The lot has an area of 661.9m^2.

2.3 The site is currently occupied by a one and two storey brick veneer dwelling with a metal roof. The site is set within a residential lot and informal landscaped grounds and slopes from west to east to the rear of the lot.

2.4 The site is surrounded by detached residential dwellings in all directions. The site is located in close proximity to North Balgowlah shops to the west and Balgowlah retail centre to the south-east.



Figure 1. The site and it's immediate surrounds

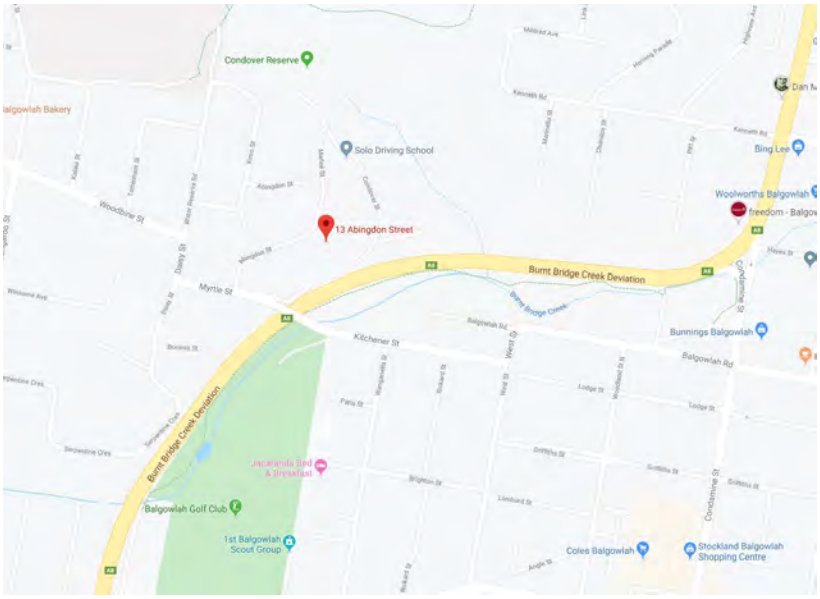


Figure 2. The site within the locality

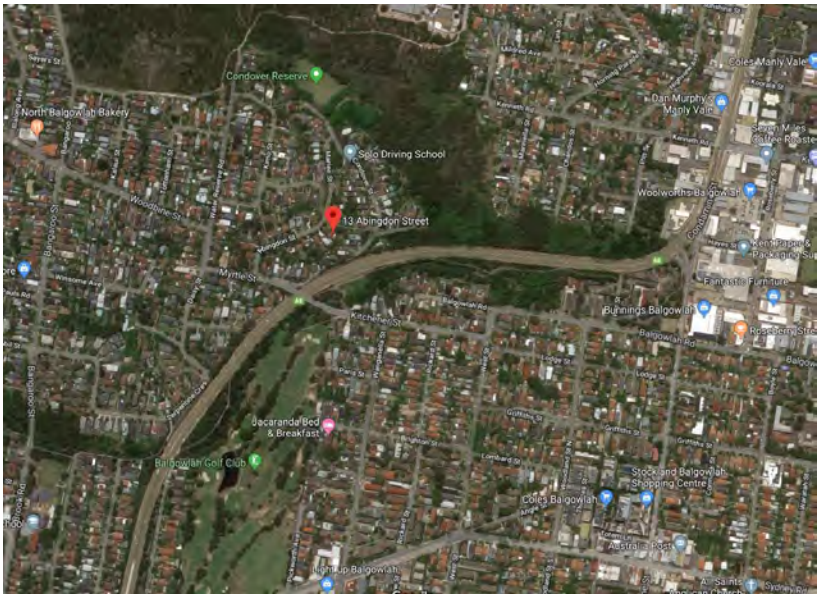


Figure 3. Aerial image of the site within the locality

3. Site Photos



Figure 4. The existing dwelling, view from Abingdon Street



Figure 5. Existing tree on the street frontage, looking south-west



Figure 6. The front façade of the existing dwelling, looking south



Figure 7. The existing driveway, looking north west towards Abingdon Street



Figure 8. The existing garage, looking east



Figure 9. The existing garage, looking north-east



Figure 10. The rear of the existing dwelling, looking north-west.

4. Proposed Development

4.1 The proposed development is for alterations and additions to the existing dwelling and the change of use of the existing garage to a secondary dwelling. The alterations and additions include a new carport on the street frontage and a new first floor addition, resulting in a 6 bedroom dwelling and 1 bedroom secondary dwelling on the subject site.

4.2 The proposed alterations and additions remain consistent with the streetscape and the locality. The proposal is consistent with Council controls, ensures privacy, solar access and views are maintained for both neighbours and the subject site.

4.3 The alterations and additions to the dwelling will be made up as follows:

Lower Ground Floor

- No changes are proposed to the lower ground floor of the existing dwelling,
- Installation of rainwater tanks.

New Secondary Dwelling

- Conversion of the existing garage to a 1 bedroom secondary dwelling,
- 2 new entry doors and 1 new window,
- New internal walls to create a kitchen / living / dining room, bedroom and ensuite.

Ground Floor

- New front deck with doors accessing from the living room,
- New internal stair accessing the first floor,
- New laundry and pantry,
- New double carport at the front of the existing dwelling with covered stair access,

First Floor (new level)

- Living room with balcony (including privacy screen),
- Master bedroom with ensuite, WIR and balcony,
- Bathroom,
- Bedroom 3 and 4 with balconies.

Site

- Removal of existing driveway,
- New driveway,
- Swimming pool in rear yard (7m x 2-3m).

5. Clause 4.6 Exception to Development Standard - Height of Buildings

Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act) being:*

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

The aims and objectives of the Warringah LEP 2011 Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Under Clause 4.6(3) and (4) of the WLEP 2011, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.

(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Warringah LEP 2011)

1.1 What is the name of the environmental planning instrument that applies to the land?

Warringah Local Environmental Plan 2011

1.2 What is the zoning of the land?

R2 Low Density Residential

1.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

1.4 What is the development standard being varied?

Clause 4.3 – Height of Buildings

1.5 Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3 – Height of Buildings of the Warringah LEP 2011

1.6 What are the objectives of the development standard?

(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.

1.7 What is proposed numeric value of the development standard in the environmental planning instrument?

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

1.8 What is the numeric value of the development standard in your development application?

The numeric value of the building height proposed is 10.064 metres (when measured in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*).

The proposed building height is 8.5 metres (when measured in accordance with the previously applied *Bettar judgement).*

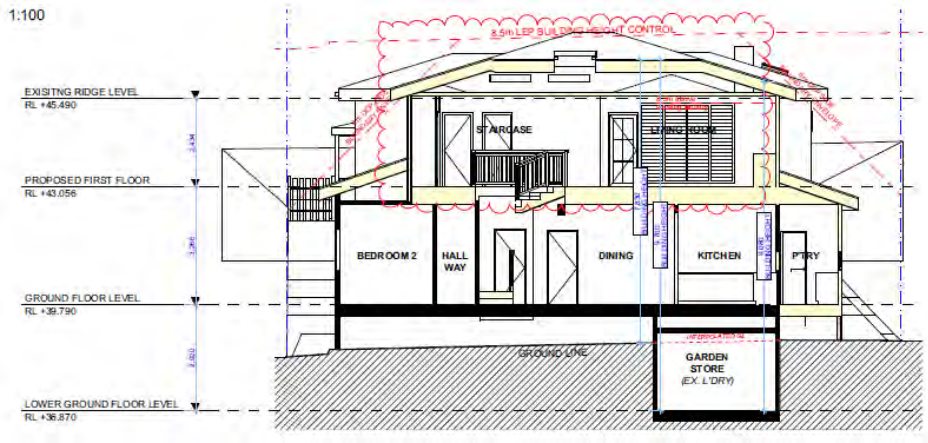


Figure 11: Extract - Cross Section with interpolated ground line

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The development proposes a variation of 1.564 metres or 18.4% (when measured in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*).

The development proposes no variation when measured in accordance with the previously applied *Bettar judgement.*

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 *Wehbe* v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827, (*expanded on the findings in *Winten v North Sydney Council),* identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

*1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Way**).*

*2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Way**).*

*3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Way**).*

*4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Way**).*

*5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Way**).*

In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in Wehbe) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LE

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;

2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone

objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

2.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of the WLEP 2011 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in Winten v North Sydney Council and expanded by Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The Objectives of the standard are:

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment

The proposed alterations and additions are appropriate to the site and will result in a similar or lesser scale development than surrounding properties. The variation is entirely the result of taking into account the existing excavated sub floor laundry area as required by *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, rather than the interpolated ground line previously applied by the *Bettar judgement.*

The dwelling largely presents with a compliant building height when the natural ground line is interpolated into the cross section, as illustrated in Figure 11 above. The proposal will not result in any discernible impact as it will present as a 2 storey dwelling, which sits on the low side of the street, with a significant setback from the road. Given the fall of Abingdon Street, at this point, it will sit comfortably within the streetscape. There will be no unreasonable view loss, loss of privacy or increase in shadowing for neighbouring properties.

The numerical variation to the building height is 1.564 metres or 18.4%, however, the height measurement utilising the natural interpolated ground line is compliant with a maximum 8.5 metres or 0% variation. The long section provided as Figure 12 below, illustrates the compliant presentation. As a result, the built form is considered to be consistent with the building height controls and compatible with the streetscape character within the locality, despite the numerical non-compliance.

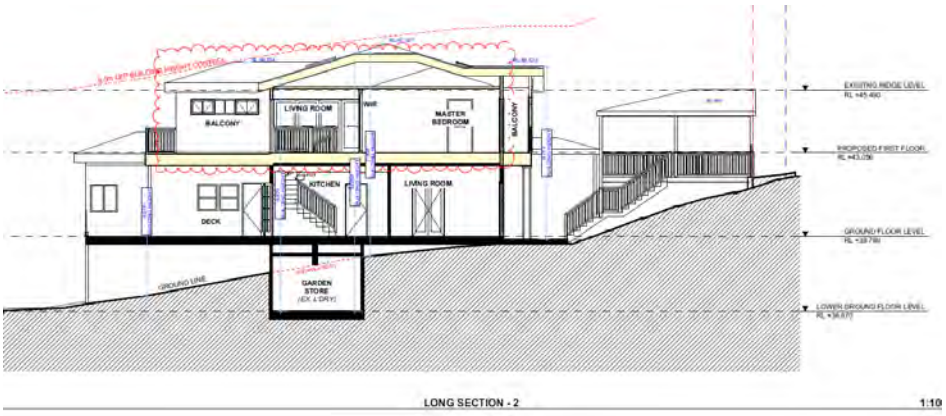


Figure 12: Extract - Long Section with existing ground line.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

The proposed development presents with a consistent scale to the adjoining properties and other dwellings within the locality. All works resulting in the variation are due to an existing sub-floor laundry. It will not present with excessive bulk when viewed from the adjoining properties and the non-compliance will not result in any unreasonable view loss, loss of privacy or increase in shadowing for neighbouring properties.

A site visit has been undertaken and it is concluded the development will result in minor and reasonable view loss for the rear neighbour. A view loss assessment is provided with this application.

The development incorporates a range of measures to ensure privacy is maintained, including offset windows, privacy glazing, the use of skylights, high sill heights and privacy screening. Setbacks are at a sufficient distance to ensure privacy is retained.

The private open space of both the subject site and the adjoining properties maintain compliant solar access despite the variation as described in the SEE.

It is therefore considered this objective is met, despite the numerical variation.

(c) to minimise any adverse impact of development on the scenic quality of Warringah' s coastal and bush environments,

The alterations and additions will result in a dwelling which will remain in character with its surrounds and the streetscape. The residential locality will remain reflected in the character of the site and the scenic quality of the area will be positively contributed to, as a result of the development proposed.

It is therefore considered this objective is met, despite the numerical variation.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The site and the development are not visible from any significant public places other than Abingdon Street, from which it will be an attractive addition.

It is therefore considered this objective is met, despite the numerical variation.

2. ***The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

3. ***The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

4. ***The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

5. ***The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Detail of Variation

- The variation between the proposed works and the building height control is minor at 1.564 metres or 18.4%, when measured in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. The proposed building height is 8.5 metres, or a 0% variation, when measured in accordance with the previously applied interpolated height set out in the *Bettar judgement.*

- The proposed variation is only the result of taking into account the existing excavated laundry, which is acknowledged in the *Merman judgement* to distort *the height of buildings development standard plane overlaid above the site, when compared to the topography of the hill.* The judgement acknowledges that this distortion can *be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.*

- The dwelling presents with a compliant height on all elevations and the small sub-floor variation does not result in inappropriate bulk or scale, remaining consistent with the adjoining dwellings and other dwellings in the locality, satisfying Cl1.3(g).

Neighbour Amenity

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The new works are appropriately located within the existing building footprint. The adjoining dwellings have similar scale to the proposed addition and the proposed development represents a comfortable transition, with a consistent bulk and scale.

- Compliance with the height control would not result in a building which has a significantly lesser bulk, as the dwelling complies with the height control on the external elevations and only fails to meet in the small area of laundry.

- A numerically compliant building height would have no material impact to neighbours, accordingly compliance with the development standard in this instance is unreasonable.

- Solar access impacts as a result of the small height variation are negligible. Solar access on the neighbouring sites is compliant, as detailed in the accompanying solar access diagrams. Accordingly, compliance with the development standard based on this would be unreasonable.

- The technical height variation has no impact on privacy for neighbours, accordingly, the variation is reasonable in the circumstances of the case.

Site Constraints

- The design, with a minor variation to the height, largely results from taking into account the existing excavated laundry and the revised building height measurement definitions set out in the *Merman judgement*. As such the minor variation allows for the orderly and economic use of the site and allows for an ecologically sustainable development satisfying Cl1.3(g) and (f).

Design and Streetscape Appeal

- Strict numerical compliance with the height control would not result in a better urban design outcome. The architectural character proposed will result in the appealing redevelopment of this property, consistent with renovation works undertaken by neighbouring dwellings. Compliance with the development standard based on this would be unreasonable.

- The proposed development will not present with excessive bulk from the public domain with surrounding dwellings presenting with a consistent form and scale.

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone, ensuring that appropriate and reasonable housing is proposed. Compliance with the development standard based on this would be unreasonable.

Natural Environment

- The inclusion of the small height variation has no impact on the natural environment. No landscape area is lost or impacted through the minor height variation satisfying Cl1.3(b). The natural environment is unaffected by the small departure to the development standard and it would be unreasonable for the development to be refused on this basis.

Environmentally Sustainable Development

- The proposal represents an environmentally sustainable design allowing for extension of the life on an existing dwelling satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable.

Social and economic welfare

- The small variation to the height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b)and accordingly refusal of the development based on this reason would be unreasonable.

- The small variation to the height control will have no economic impacts for the site, or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard.

- The variation does not result in a roof form or height beyond that which is found in the locality. The small variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.

- Removal of the non-compliance would not substantially alter the perceived bulk and scale due to the minor nature, siting and topography.

The environmental planning ground set out above, reflect the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

Objectives of zone

- ***To provide for the housing needs of the community within a low density residential environment.***

Consistent. The proposal is for alterations and additions to an existing dwelling.

- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents***

Not relevant. The proposal is for alterations and additions to an existing dwelling.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

It is considered the low-density character will be maintained as the non-compliance is entirely the result of considering the existing excavated laundry, slope of the site and the recent change to the building height measurement set out in the *Merman judgement.*

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects, as it will not result in any discernible impacts and is consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

4.4 Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

4.5 Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

4.6 Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

4.7 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

(g) to promote good design and amenity of the built environment,

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Strict compliance with the 8.5 metre height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment* and *promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development is for alterations and additions to an existing dwelling house on land zoned R2 – Low Density Residential.

As stated above the non-compliance between the proposal and the environmental planning instrument is 1.564 metres or 18.4%, when measured in accordance with *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. The proposed building height is 8.5 metres or a non-compliance of 0% variation when measured in accordance with the previously applied interpolated height set out in the *Bettar judgement.*

The non-compliance is largely the result of taking into account the existing excavated laundry which is acknowledged in the *Merman judgement* to distort *the height of buildings development standard plane overlaid above the site, when compared to the topography of the hill.* The judgement acknowledges that this distortion can *be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.*

The variation does not result in any unreasonable impacts in regards to view loss, loss of privacy or increase in shadowing for neighbouring properties and will result in a development of a similar scale development to surrounding properties.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.

Planner Declaration

This report was prepared by:

Senior Planner: Naomi Lyons
Report Version: Final

Document Control Table

Document Purpose:	**Statement of Environmental Effects**	
Date	**Prepared by**	**Approved by**
15/05/2023	Naomi Lyons Senior Planner	Sarah McNeilly Director

Disclaimer

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ITEM 3.8	**DA2023/0176 - 8 ADELAIDE STREET BALGOWLAH HEIGHTS - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/354604**
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 DA2023/0176 for demolition works and construction of a dwelling house including a swimming pool on land at Lot B DP 402370, 8 Adelaide Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0176

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot B DP 402370, 8 Adelaide Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and 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:	Nathan Roy Thompson Lindsay Victoria Thompson
Applicant:	Adme Construction Pty Ltd

Application Lodged:	06/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	13/03/2023 to 27/03/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 31%
Recommendation:	Approval

Estimated Cost of Works:	$ 1,090,000.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house including a swimming pool.

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 0.524:1 (286.6m^2), which represents a variation of 31% to the prescribed 0.4:1 floor space ratio.

The clause 4.6 variation request regarding the non-compliance with FSR development standard

arises due to the site being classified as an undersized allotment. It is noted that the proposed development demonstrates compliance with the FSR variations permitted within Manly DCP for undersized allotments.

No submissions were received during the notification period.

The critical assessment issue includes the alteration of the approved development from compliance to non-compliance with the floor space ratio development standard and the resultant amenity impact upon adjacent properties and the public domain. The proposed dwelling does not comply with the wall height and rear setback controls, but this assessment finds there to be no unreasonable built form or amenity impact of these non-compliances.

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 demolition of the existing dwelling and construction of a new two storey dwelling and swimming pool. The proposal includes ancillary works, including driveway, landscaping, earthworks and retaining walls.

AMENDED PLANS

During assessment, Council requested the applicant amend the design of the proposed dwelling to demonstrate compliance with the side setback and open space built form controls and increase the setback of the swimming pool from the rear boundary.

The applicant provided amended plans that increase the setback of the dwelling to the east side boundary and the first floor to the west side boundary. The wall height of the western ground floor is reduced to comply with the setback control. Minor adjustment of the proposed driveway enables compliance with the total open space control requirement. The amended siting of the swimming pool complies with the control requirements.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot B DP 402370 , 8 Adelaide Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Adelaide Street. The site is regular in shape with a frontage of 24.435m along Adelaide Street and a depth of 22.405m. The site has a surveyed area of 547.4m². The site is located within the R2 Low Density Residential zone and accommodates a two-storey residential dwelling. The site is generally flat and contains predominantly grassed front and rear setback areas. Hedging vegetation is located along the front boundary and two small trees are located on the street verge at the front of the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Application **DA5150/1991** for alterations and additions to the existing dwelling was approved on 09/01/1992.

Application **DA0406/1994** for first floor alterations and additions to an existing dwelling was approved on 22/11/1994.

Application **DA0136/1998** for alterations and additions to the existing dwelling was approved on 15/12/1998 by the former Manly Council.

Application **CDC2018/0101** for Alterations and additions to existing rear deck and pool was approved on 08/02/2018 by a private certifier.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural and landscape plans and a revised clause 4.6 variation request. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of

Section 4.15 Matters for Consideration	Comments
	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 13/03/2023 to 27/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application seeks consent for demolition works and construction of a dwelling house including swimming pool. The Arborist's Report prepared by Hugh the Arborist and Landscape Plans prepared by Studio Plum are noted. The Arborist's Report indicates that on exempt tree (*Fraxinus griffithii*) and one non-exempt tree (Tree Fern) are to be removed to accommodate the proposed works. All other trees are to be retained. The trees are not considered significant and no objections are raised to removal. The Landscape Plans indicate replanting of 8 trees on the site, which is supported. No objections are raised with regard to landscape issues subject to conditions.
NECC (Development Engineering)	The proposal is for the construction of a new dwelling. No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1362659S dated 13/12/2022).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
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 (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.25m	N/A	Yes
Floor Space Ratio:	0.4:1 (218.8m^2)	0.524:1 (286.6m^2)	31%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Clause	Compliance with Requirements
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 (218.8m^2)
Proposed:	0.524:1 (286.6m^2)
Percentage variation to requirement:	31%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61,* and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development

standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *The variation permits a density of development that is commensurate with other residential development in the Balgowlah Heights locality. The general locality is characterised predominately by single dwelling houses of both single and two storey construction. Recent development adjacent and nearby to the site consists of modern dwellings that exceed the 0.4:1 FSR ratio and are set much closer to the Adelaide Street frontage than what is being proposed. The variation permits the introduction of a two storey dwelling that is not excessively large yet allows a high level of internal and external amenity to future residents.*
- *Floor space ratio is also concerned with controlling building scale, being the size of a building and its relationship with surrounding buildings and landscape. The proposed development would have a positive relationship with existing surrounding development, as the development will address its street frontage with the two storey construction which is consistent with directly adjacent sites. As such there will not be an abrupt change in scale.*
- *The proposed development will provide high quality housing in close proximity to facilities and public open spaces including, Clontarf Reserve, Bareena Park and Balgowlah Heights Public School.*
- *The additional floor space of the development is without amenity impacts, in terms of preserving privacy, overshadowing or disrupting views. The resulting development provides a generous amount of landscaping and deep soil areas which will facilitate an appealing landscape setting.*
- *We note that the site is an undersized lot with an area of 547.4m² in a mapped minimum lot size area of 750m²... Based on the proposed gross floor area of 282m² and the minimum lot size of 750m² an FSR of 0.376:1 is achieved which is below the maximum 0.4:1. Although the FSR of the proposal is 31% over actual lot size, we note that it is 3.6% under the required FSR for the minimum lot size of 750m². On the basis of the undersized nature of the site, we believe that the variation is reasonable in the circumstances.*

Council generally concurs with the applicant's justification to vary the floor space ratio development standard. The proposal demonstrates a generally compliant built form with sufficient open space and landscaping provided on the site. The proposal is not expected to unreasonably impact upon the , privacy, solar access and amenity of adjacent properties or the public domain.

In this regard, the applicant’s written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6

(3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the 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 bulk and scale of the proposed development is considered to be in keeping with the prevailing bulk and scale of the existing dwelling to be demolished and other dwellings in the locality.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed development is considered to exhibit an acceptable level of bulk in the context of the subject site. The level of impact to landscape and townscape features is considered reasonable in the context of the site and surrounds.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

It is considered the proposal demonstrates and acceptable visual relationship with the existing low density residential character and landscape of the area.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

It is demonstrated that the proposed development is designed in a manner that minimises impact on adjacent properties and the public domain.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

  Comment:

  The proposed development maintains the low density residential land use of the site and introduces a contemporary designed dwelling the housing stock 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 does not alter the existing residential land use of the site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the 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: 547.4m^2	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 750m^2	1 dwelling	N/A	Yes
	Dwelling Size: 124m^2	282m^2	N/A	Yes
4.1.2.1 Wall Height	E: 6.8m (based on gradient 1:20)	GF - 3.97m	N/A	Yes
		FF - 7.88m	15.9%	No
	W: 6.7m (based on gradient 1:30)	GF - 2.75m	N/A	Yes
		FF - 7.27m	8.5%	No
4.1.2.2 Number of Storeys	2 storeys	2 storeys	N/A	Yes
4.1.2.3 Roof Height	Pitch: maximum 35 degrees	7 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (5m)	5.5m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: GF - 1.31m (based on wall height)	1.33m	N/A	Yes
	E: FF - 2.6m (based on wall height)	2.6m	N/A	Yes
	W: GF - 0.91m (based on wall height)	0.92m	N/A	Yes
	W: FF - 2.4m (based on wall height)	2.4m	N//A	Yes
	Windows: 3m	0.92m	69.3%	No
4.1.4.4 Rear Setbacks	8m	Dwelling - 7.38m	7.75%	No
		Pergola - 5.3m	33.75%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (328.2m^2)	60% (328.1m^2)	N/A	Yes
	Open space above ground 25% of total open space (82m^2)	4% (13m^2)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (131.2m^2)	56.9% (186.7m^2)	N/A	Yes
	3 native trees	3 trees	N/A	Yes
4.1.5.3 Private Open Space	18m^2	181.4m^2	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	Nil	N/A	Yes
	1m curtilage side/rear setback	1m	N/A	Yes
	1.5m water side/rear setback	2.07m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Description of non-compliance

4.1.2.1 Wall Height

The control requires the maximum external wall height to be calculated based on the slope of the land under the proposed wall.

Based on a gradient of 1:20 along the east elevation, the maximum permitted wall height is 6.8m.

Based on a gradient of 1:30 along the west elevation, the maximum permitted wall height is 6.7m.

The proposed dwelling is to have a maximum wall height of 7.88m on the east elevation and 7.27m on the west elevation, representing a variation of 15.9% and 8.5%, respectively.

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 surrounding area contains a mix of roof forms including flat and skillion forms. The proposed skillion roof form is expected to complement with this character. The proposed development also steps down the site with the topography and this reduces the presentation of bulk to provide a desirable outcome for the locality.

(b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling is generally sited in a similar location to the existing dwelling. The height of the proposed dwelling is well below the maximum permitted building height. As such, the bulk and scale of the proposed dwelling is considered to be appropriate in the context of the site and surrounds.

(c) to minimise disruption to the following—
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposal will not have any unreasonable impact on views, and provide viewing corridors through the site as a result of reasonable setbacks and appropriate modulation.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposal provides sufficient setbacks and modulation to allow for corridors for sunlight. The proposal complies with the minimum solar access DCP requirements.

(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.

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 0.524:1 (286.6m^2), which represents a variation of 31% to the prescribed 0.4:1 (218.8m^2) FSR requirement.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

MDCP provides guidance in assessing the floor space ratio of undersized allotments.

The site is located in 'Area R' on the MLEP 2013 Lot Size Map, meaning that, based on an actual lot size of 547.7m^2, calculation of the floor space ratio can be made as if the lot size were 750m^2.

As such, the floor space ratio of the proposed development is 0.382:1, which complies with the maximum permitted 0.4:1 floor space ratio.

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

The control requires new windows to be setback 3m from the side boundaries.

The proposal includes windows setback less than 3m to the side boundaries.

4.1.4.4 Rear Setbacks

The control requires that the distance between any part of a building and the rear boundary be not less than 8m.

The rear setback of the proposed dwelling is 7.38m and 5.3m for the rear pergola, representing a variation of 7.75% and 33.75%, 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 dwelling and surrounding development. No adverse impact to 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 proposed development will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

The proposed development is considered to be appropriately sited and utilises much of the existing building's footprint.

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.

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 $10,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,090,000.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant’s written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 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 demolition works and construction of a dwelling house including a swimming pool 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 critical assessment issue includes the alteration of the approved development from compliance to non-compliance with the floor space ratio development standard and the resultant amenity impact upon adjacent properties and the public domain.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That 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 DA2023/0176 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot B DP 402370, 8 Adelaide 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**
230380 A03 Rev H	25/05/2023	KJR Drafting

230380 A05 Rev H	25/05/2023	KJR Drafting
230380 A06 Rev H	25/05/2023	KJR Drafting
230380 A07 Rev H	25/05/2023	KJR Drafting
230380 A08 Rev H	25/05/2023	KJR Drafting
230380 A09 Rev H	25/05/2023	KJR Drafting
230380 A10 Rev H	25/05/2023	KJR Drafting
230380 A14 Rev H	25/05/2023	KJR Drafting
175 L2-DA Rev B	25/05/2023	Studio Plum

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
33788 C1 Rev A	18/01/2023	Nastasi & Associates Consulting Engineers
33788 C2 Rev C	06/03/2023	Nastasi & Associates Consulting Engineers
33788 C3 Rev C	06/03/2023	Nastasi & Associates Consulting Engineers
33788 C4 Rev C	06/03/2023	Nastasi & Associates Consulting Engineers
33788 C5 Rev A	18/01/2023	Nastasi & Associates Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. 1362659S	13/12/2022	Chapman Environmental Services
Arboricultural Impact Assessment	21/09/2022	Hugh The Arborist
Geotechnical Investigation (Ref: J4476)	16/12/2022	White Geotechnical Group

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
175 L0-DA Rev A	09/02/2023	Studio Plum
175 L1-DA Rev E	25/05/2023	Studio Plum

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
230380 A17 Rev H	25/05/2023	KJR Drafting

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	29/03/2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**
Nothing in this consent shall authorise the use of the site beyond the definition of a *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 $10,900.00 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 $1,090,000.00.

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 $10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

8. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**
The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any

Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

10. **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 Nastasi & Associates, project number 33788, drawing number C1 to C5, dated 18/01/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

11. **Vehicle Crossings Application**
The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

12. **Compliance with Standards**
The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

13. **Sydney Water "Tap In"**
The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:
- "Tap in" details - see http://www.sydneywater.com.au/tapin
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **Protection of Existing Street Trees**
a) All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

b) 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 unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

c) All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

d) 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: Tree protection.

15. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected including:
   i) all trees and vegetation within the site not indicated for removal in the Arboricultural Impact Assessment dated 21st September 2022 prepared by Hugh the Arborist, 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 the Arboricultural Impact Assessment dated 21st September 2022 prepared by Hugh the Arborist and 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 the Project Arborist,
   iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
   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 the Project Arborist on site,
   vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
   vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works

undertaken shall be submitted by the Arborist to the Principal Certifier,

viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

16. **Condition of Trees**

a) During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to or by seeking arboricultural advice from the Project Arborist during the works.

b) In this regard all protected trees shall not exhibit:

i) a general decline in health and vigour,

ii) damaged, crushed or dying roots due to poor pruning techniques,

iii) more than 10% loss or dieback of roots, branches and foliage,

iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,

v) yellowing of foliage or a thinning of the canopy untypical of its species,

vi) an increase in the amount of deadwood not associated with normal growth,

vii) an increase in kino or gum exudation,

viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,

ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

c) Any mitigating measures and recommendations required by the Arborist are to be implemented.

d) 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.

17. **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.

18. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

19. **Geotechnical Requirements**
All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

20. **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 3.0 metres wide in accordance with Northern Beaches Council Drawing Extra 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.

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**
a) Tree planting is to be implemented in accordance with the approved Landscape Plan

b) Prior to the issue of any Occupation Certificate details (from a qualified horticulturalist, landscape architect or landscape designer) shall be submitted to the Principal Certifier certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

25. **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.

26. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The

application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf

The form for the application can be found on Council's website using the following link.

https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

27. **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

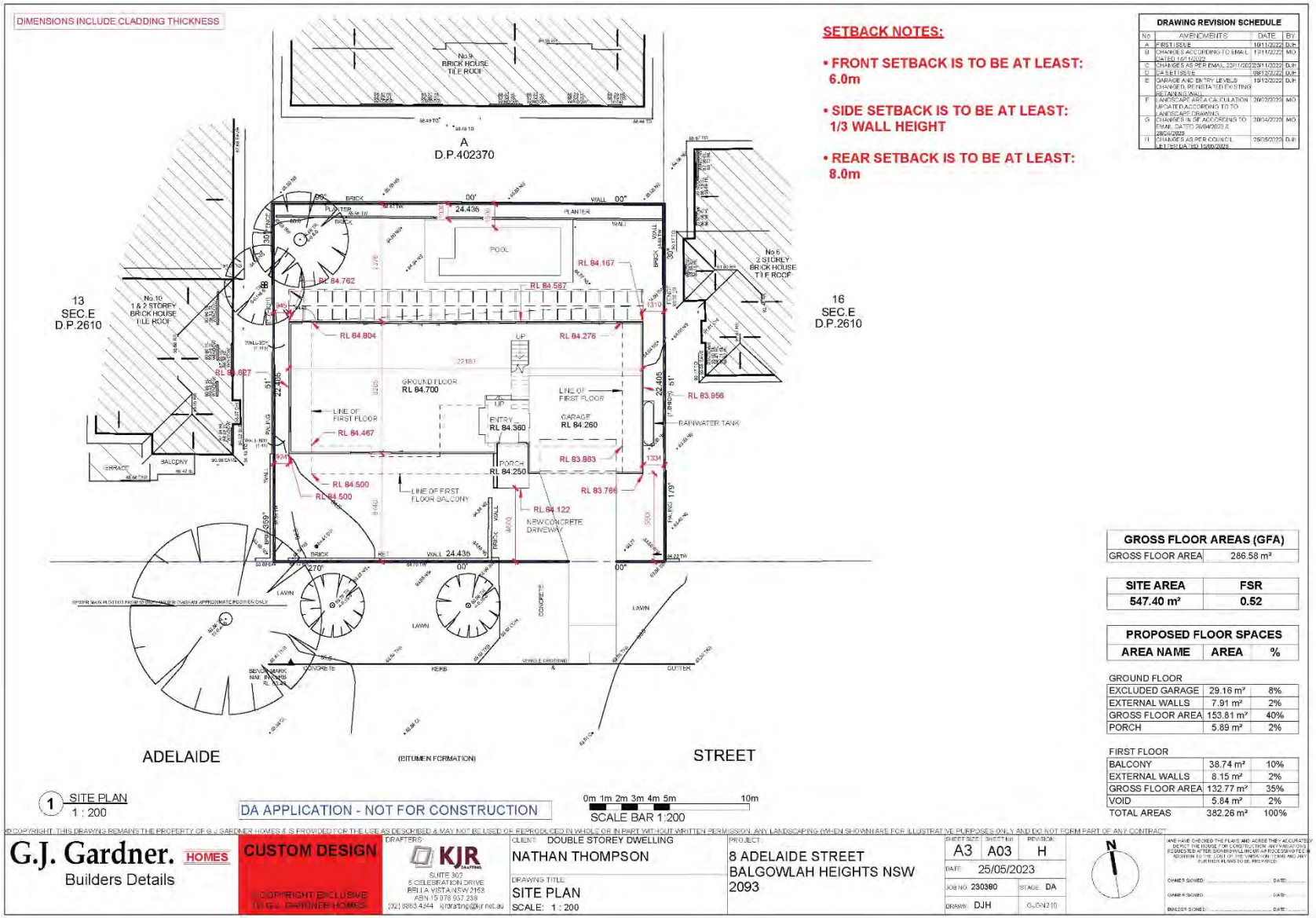
28. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me

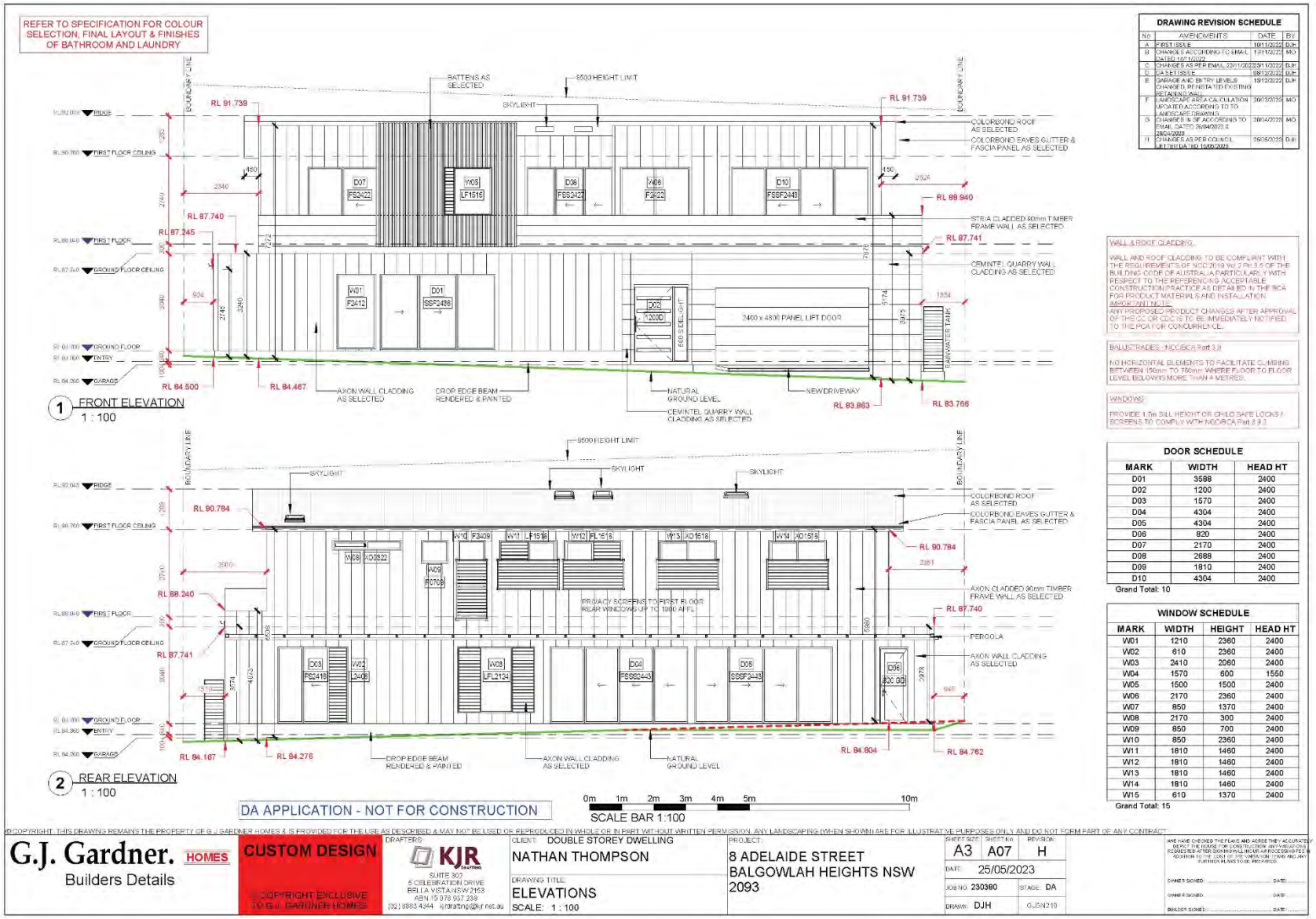
maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

29. **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.


DIMENSIONS INCLUDE CLADDING THICKNESS
SETBACK NOTES:
• FRONT SETBACK IS TO BE AT LEAST: 6.0m
• SIDE SETBACK IS TO BE AT LEAST: 1/3 WALL HEIGHT
• REAR SETBACK IS TO BE AT LEAST: 8.0m
DRAWING REVISION SCHEDULE
No | AMENDMENTS | DATE | BY
A | FIRST ISSUE | 19/11/2022 | DJH
B | CHANGES ACCORDING TO EMAIL DATED 16/11/2022 | 12/11/2022 | MO
C | CHANGES AS PER EMAIL 23/11/2022 | 23/11/2022 | DJH
D | DA SET ISSUE | 09/12/2022 | DJH
E | GARAGE AND ENTRY LEVELS CHANGED, REINSTATED EXISTING RETAINING WALL | 15/12/2022 | DJH
F | LANDSCAPE AREA CALCULATION UPDATED ACCORDING TO TO LANDSCAPE DRAWING | 26/03/2023 | MO
G | CHANGES IN DA ACCORDING TO EMAIL DATED 26/04/2023 & 28/04/2023 | 28/04/2023 | MO
H | CHANGES AS PER COUNCIL LETTER DATED 15/05/2023 | 25/05/2023 | DJH
No.8 BRICK HOUSE TILE ROOF
A D.P.402370
No.10 1 & 2 STOREY BRICK HOUSE TILE ROOF
13 SEC.E D.P.2610
No.6 2 STOREY BRICK HOUSE TILE ROOF
16 SEC.E D.P.2610
POOL
GROUND FLOOR RL 84.700
LINE OF FIRST FLOOR
ENTRY RL 84.360
GARAGE RL 84.260
PORCH RL 84.250
LINE OF FIRST FLOOR BALCONY
NEW CONCRETE DRIVEWAY
RAINWATER TANK
ADELAIDE
STREET
(BITUMEN FORMATION)
1 SITE PLAN 1 : 200
DA APPLICATION - NOT FOR CONSTRUCTION
SCALE BAR 1:200
GROSS FLOOR AREAS (GFA)
GROSS FLOOR AREA 286.58 m²
SITE AREA 547.40 m² | FSR 0.52
PROPOSED FLOOR SPACES
AREA NAME | AREA | %
GROUND FLOOR
EXCLUDED GARAGE 29.16 m² 8%
EXTERNAL WALLS 7.91 m² 2%
GROSS FLOOR AREA 153.81 m² 40%
PORCH 5.89 m² 2%
FIRST FLOOR
BALCONY 38.74 m² 10%
EXTERNAL WALLS 8.15 m² 2%
GROSS FLOOR AREA 132.77 m² 35%
VOID 5.84 m² 2%
TOTAL AREAS 382.26 m² 100%
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G.J. Gardner. HOMES
Builders Details
CUSTOM DESIGN
© COPYRIGHT EXCLUSIVE TO G.J. GARDNER HOMES
DRAFTERS: KJR
SUITE 302 5 CELEBRATION DRIVE BELLA VISTA NSW 2153 ABN 15 078 957 239 (02) 8883 4344 kjrdrafting@kjr.net.au
CLIENT: DOUBLE STOREY DWELLING
NATHAN THOMPSON
DRAWING TITLE: SITE PLAN
SCALE: 1 : 200
PROJECT: 8 ADELAIDE STREET BALGOWLAH HEIGHTS NSW 2093
SHEET SIZE: A3
SHEET No: A03
REVISION: H
DATE: 25/05/2023
JOB NO: 230360
STAGE: DA
DRAWN: DJH
GJGN2110



DRAWING REVISION SCHEDULE			
No	AMENDMENTS	DATE	BY
A	FIRST ISSUE	10/11/2022	DJH
B	CHANGES ACCORDING TO EMAIL DATED 16/11/2022	16/11/2022	MO
C	CHANGES AS PER EMAIL 22/11/2022	9/11/2022	DJH
D	CA SET ISSUE	09/12/2022	DJH
E	GARAGE AND ENTRY LEVELS CHANGED, REINSTATED EXISTING RETAINING WALL	15/12/2022	DJH
F	LANDSCAPE AREA CALCULATION UPDATED ACCORDING TO TO LANDSCAPE DRAWING	26/03/2023	MO
G	CHANGES IN SF ACCORDING TO EMAIL DATED 26/04/2023 & 28/04/2023	28/04/2023	MO
H	CHANGES AS PER COUNCIL LETTER DATED 15/05/2023	25/05/2023	DJH

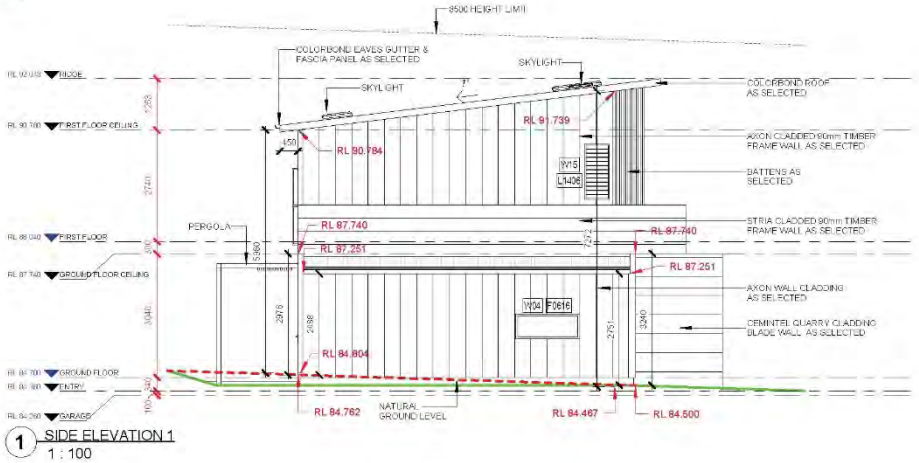
DOOR SCHEDULE		
MARK	WIDTH	HEAD HT
D01	3588	2400
D02	1200	2400
D03	1570	2400
D04	4304	2400
D05	4304	2400
D06	820	2400
D07	2170	2400
D08	2688	2400
D09	1810	2400
D10	4304	2400

Grand Total: 10

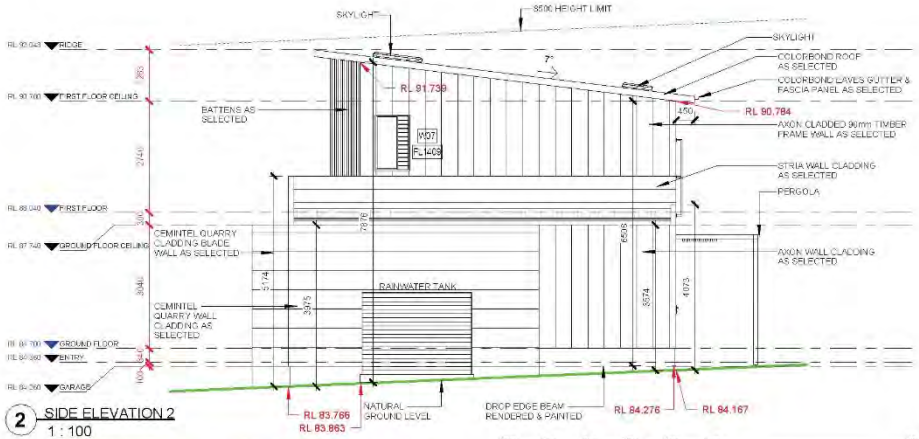
WINDOW SCHEDULE			
MARK	WIDTH	HEIGHT	HEAD HT
W01	1210	2360	2400
W02	610	2360	2400
W03	2410	2060	2400
W04	1570	600	1550
W05	1500	1500	2400
W06	2170	2360	2400
W07	850	1370	2400
W08	2170	300	2400
W09	850	700	2400
W10	850	2360	2400
W11	1810	1460	2400
W12	1810	1460	2400
W13	1810	1460	2400
W14	1810	1460	2400
W15	610	1370	2400

Grand Total: 15

REFER TO SPECIFICATION FOR COLOUR SELECTION, FINAL LAYOUT & FINISHES OF BATHROOM AND LAUNDRY



1 SIDE ELEVATION 1
1 : 100



2 SIDE ELEVATION 2
1 : 100

DA APPLICATION - NOT FOR CONSTRUCTION

0m 1m 2m 3m 4m 5m 10m
SCALE BAR 1:100

DRAWING REVISION SCHEDULE			
No	AMENDMENTS	DATE	BY
A	FIRST ISSUE	10/11/2022	DJH
B	CHANGES ACCORDING TO EMAIL DATED 10/11/2022	12/11/2022	MO
C	CHANGES AS PER EMAIL 22/11/2022	23/11/2022	DJH
D	CA SET ISSUE	08/12/2022	DJH
E	GARAGE AND ENTRY LEVELS CHANGED, REINSTATED EXISTING RETAINING WALL	19/12/2022	DJH
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G	CHANGES IN SF ACCORDING TO EMAIL DATED 26/04/2023 & 28/04/2023	28/04/2023	MO
H	CHANGES AS PER COUNCIL LETTER DATED 19/05/2023	25/05/2023	DJH

WALL & ROOF CLADDING

WALL AND ROOF CLADDING TO BE COMPLIANT WITH THE REQUIREMENTS OF NCC 2019 Vol 2 Pt 3.5 OF THE BUILDING CODE OF AUSTRALIA PARTICULARLY WITH RESPECT TO THE REFERENCING ACCEPTABLE CONSTRUCTION PRACTICE AS DETAILED IN THE BCA FOR PRODUCT MATERIALS AND INSTALLATION.
IMPORTANT NOTE:
ANY PROPOSED PRODUCT CHANGES AFTER APPROVAL OF THIS CC OR CDC IS TO BE IMMEDIATELY NOTIFIED TO THE PCA FOR CONCURRENCE.

BALUSTRADES - NCC/BCA Part 3.9

NO HORIZONTAL ELEMENTS TO FACILITATE CLIMBING BETWEEN 150mm TO 760mm WHERE FLOOR TO FLOOR LEVEL BELOW IS MORE THAN 4 METRES.

WINDOWS

PROVIDE 1.7m SILL HEIGHT OR CHILD SAFE LOCKS / SCREENS TO COMPLY WITH NCC/BCA Part 3.9.3.

DOOR SCHEDULE		
MARK	WIDTH	HEAD HT
D01	3588	2400
D02	1200	2400
D03	1570	2400
D04	4304	2400
D05	4304	2400
D06	820	2400
D07	2170	2400
D08	2688	2400
D09	1810	2400
D10	4304	2400

Grand Total: 10

WINDOW SCHEDULE			
MARK	WIDTH	HEIGHT	HEAD HT
W01	1210	2360	2400
W02	610	2360	2400
W03	2410	2060	2400
W04	1570	600	1550
W05	1500	1500	2400
W06	2170	2360	2400
W07	850	1370	2400
W08	2170	300	2400
W09	850	700	2400
W10	850	2360	2400
W11	1810	1460	2400
W12	1810	1460	2400
W13	1810	1460	2400
W14	1810	1460	2400
W15	610	1370	2400

Grand Total: 15

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G.J. Gardner. HOMES
Builders Details

CUSTOM DESIGN
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DRAFTERS: KJR DRAFTING
SUITE 302
5 CELEBRATION DRIVE
BELLA VISTA NSW 2153
ABN 15 078 957 238
(02) 9883 4244 kjrdrafting@bigpond.net.au

CLIENT: DOUBLE STOREY DWELLING
NATHAN THOMPSON

DRAWING TITLE:
ELEVATIONS
SCALE: 1 : 100

PROJECT:
8 ADELAIDE STREET
BALGOWLAH HEIGHTS NSW
2093

SHEET SIZE	SHEET No	REVISION
A3	A08	H

DATE: 25/05/2023
JOB NO: 230360 STAGE: DA
DRAWN: DJH GJGN210

WE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY DEPICT THE HOUSE FOR CONSTRUCTION. ANY VARIATIONS REQUIRED AFTER SIGNING WILL INCUR ADDITIONAL FEES IN ADDITION TO THE COST OF THE VARIATION ITEMS AND ANY FURTHER PLANS TO BE PREPARED.

OWNER SIGNED: ..... DATE: .....
OWNER SIGNED: ..... DATE: .....
BUILDER SIGNED: ..... DATE: .....



METRO PLANNING

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD (AMENDED)

Manly Local Environmental Plan 2013

Clause 4.4 Floor Space Ratio

No.8 Adelaide Street, Balgowlah Heights

May 2023

Clause 4.6 Exception to Development Standard request to Clause 4.4-Floor Space Ratio

Site Address: 8 Adelaide Street, Balgowlah Heights
Proposal: Demolition of existing structures and construction of a new two (2) storey dwelling.

Introduction.

This amended Clause 4.6 Variation request has been prepared by Metro Planning Services on behalf of G J Gardner Homes (Sydney North). It is submitted to Northern Beaches Council in support of a development application (DA) for the demolition and construction of a new two (2) storey dwelling at No. 8 Adelaide Street, Balgowlah Heights.

This amended Clause 4.6 Variation report has been prepared based on amended architectural plans prepared by KJR Drafting dated 25 May 2023, Revision H.

This Clause 4.6 request refers to the floor space ratio development standard under Clause 4.4 of the Manly Local Environmental Plan 2013 - 'Floor Space Ratio' which requires a floor space ratio requirement of 0.4:1.

The proposed development has a gross floor area of 286.58m^2 which equates to an FSR of 0.52:1. The development standard imposes a maximum gross floor area of 218.96m^2. The variation is 67.62m^2 which represents an 31% degree of non-compliance.

This request to contravene the development standard for the floor space ratio development standard has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79,
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446,
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009,
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118,
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170, *and*
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council (2019) NSWCA 130*

This Clause 4.6 request is set out in accordance with the relevant principles established by the Court including:

1. Is the development consistent with the objectives of the zone?

2. Is the proposed development consistent with the objectives of the development standard which is not met?

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a) and cl 4.6(4)(a)(i))

4. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b) and 4.6(4)(a)(ii))

5. Is the proposed development in the public interest because it is consistent with the objectives of the standard and the zone? (cl 4.6(4)(a)(ii))

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

The focus of cl 4.6(3)(a) of the LEP which requires demonstration that compliance with the development standard is unreasonable or unnecessary is on whether the compliance with the specified control itself is unreasonable or unnecessary.

The contravention of the development standard for the proposed two storey dwelling achieves the objectives of the standard, notwithstanding non-compliance with the standard as detailed below.

Objective for floor space ratio

The relevant objectives of the FSR development standard are stated as:

1) *The objectives of this clause are as follows—*
   - *(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
   - *(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
   - *(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
   - *(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
   - *(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

- **Objective (a)**: The proposed development introduces a dwelling that is compatible with the bulk and scale of the existing locality of Adelaide Street and the low density residential portions of Balgowlah Heights which comprises single and two storey dwellings. The proposed dwelling is a two-storey development that complies with Council's provisions for maximum height and thus reducing the visual impact onto the locality. It is noted that the site area (547.4m^2) is 152.6m^2 smaller than the minimum lot subdivision size (750m^2). Given these factors, the development has been designed so that the proposed dwelling will resemble existing and proposed dwellings. Objective (a) is satisfied.

- **Objective (b):** The proposed development and variation does not obscure any important landscape or townscape features, given the residential setting of the site and distance to nearby coastal features. The site is also not in close proximity to a heritage item or within a heritage conservation area or Aboriginal place of heritage significance. Objective (b) is satisfied.

- **Objective (c):** The two storey dwelling has been designed with a variety of differing façade materials and design treatment features that reflect the existing style of dwellings on Adelaide Street and the wider character of Balgowlah Heights, as further expanded upon in the Statement of Environmental Effects. The contemporary design of the dwelling will freshen the presentation of the existing, 1970's era dwelling to the streetscape and is more congruent to recent developments on Adelaide Street. Objective (c) is satisfied.

- **Objective (d):** The two storey dwelling has been suitably sited and designed to ensure no adverse amenity impacts upon adjoining properties in respect to visual and acoustic privacy, overshadowing and view loss. The orientation of the site allows excellent solar access penetration into the proposed dwelling in the AM and PM periods. A compliant BASIX certificate is included for the proposed dwelling. The development provides for a contemporary dwelling, which reinforces the existing and desired low density character of the area and as such does not negatively impact the amenity of any adjoining allotments or nearby public domains. Objective (d) is satisfied.

- **Objective (e):** The development will not impede the viability of nearby business zones and will encourage the economic growth of the Manly area by providing employment for construction companies during the build. Further, by expanding the habitability of the site with additional bedrooms, the future supply of persons to the locality will benefit the local centre of Balgowlah Heights in terms of future commerce. Objective (e) is satisfied.

Clause 4.6(3)(b) - Sufficient Environmental Planning Grounds

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the FSR development standard because:

- The variation permits a density of development that is commensurate with other residential development in the Balgowlah Heights locality. The general locality is characterised predominately by single dwelling houses of both single and two storey construction. Recent development adjacent and nearby to the site consists of modern dwellings that exceed the 0.4:1 FSR ratio and are set much closer to the Adelaide Street frontage than what is being proposed. The variation permits the introduction of a two storey dwelling that is not excessively large yet allows a high level of internal and external amenity to future residents.

- Floor space ratio is also concerned with controlling building scale, being the size of a building and its relationship with surrounding buildings and landscape. The proposed development would have a positive relationship with existing surrounding development, as the development will address its street frontage with the two storey construction which is consistent with directly adjacent sites. As such there will not be an abrupt change in scale.

- The proposed development will provide high quality housing in close proximity to facilities and public open spaces including, Clontarf Reserve, Bareena Park and Balgowlah Heights Public School.

- The additional floor space of the development is without amenity impacts, in terms of preserving privacy, overshadowing or disrupting views. The resulting development provides a generous amount of landscaping and deep soil areas which will facilitate an appealing landscape setting.

- We note that the site is an undersized lot with an area of 547.4m² in a mapped minimum lot size area of 750m². Refer minimum lot size mapping in **Figure 1** below. Based on the proposed gross floor area of 282m² and the minimum lot size of 750m² an FSR of 0.376:1 is achieved which is below the maximum 0.4:1. Although the FSR of the proposal is 31% over actual lot size, we note that it is

3.6% under the required FSR for the minimum lot size of 750m². On the basis of the undersized nature of the site, we believe that the variation is reasonable in the circumstances.



Figure 1-Minimum lot size mapping

The proposed development and in particular the variation to the FSR Standard would further the following objectives of the Act specified in s.1.3. 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 development meets the above objectives in the following manners:

(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,

Comment: The proposed development will provide high quality housing in the Balgowlah Heights locality in close proximity to existing services. The additional floor area allows for a five (5) bedroom dwelling to be constructed to accommodate a future family in the area without adversely impacting any natural or other resources.

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

Comment: The development has facilitated the relevant economic, environmental and social considerations during the design stage of the dwelling house, as well as the accompanying Statement of Environmental Effects which details the impacts and considerations of the proposal.

(c) to promote the orderly and economic use and development of land,

Comment: The provision of quality housing in the Balgowlah Heights locality represents the orderly and economic use and development of land. The provision of a modestly sized five (5) bedroom dwelling is commensurate with modern development in the locality and does not set a negative precedent.

(d) to promote the delivery and maintenance of affordable housing,

Comment: The provision of additional floor space and habitable occupancy (with the additional bedrooms) will promote the delivery and maintenance of affordable housing within the Manly locality.

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

Comment: The proposed dwelling is not foreseen to negatively impact the environment, including threatened or other species of native flora and fauna, ecological communities and their associated habitats.

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),

Comment: The site is not situated on a parcel of land that is noted as having any built or cultural heritage.

(g) to promote good design and amenity of the built environment,

Comment: The proposed development will facilitate the provision of a modestly sized five (5) bedroom dwelling. The development has been skilfully designed to be compatible to both the existing character and desired low density residential character. The development would provide a high level of amenity to occupants yet would not adversely affect amenity levels on adjoining properties.

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

Comment: The proposed development will be constructed to Australian Standards with the supervision of a suitably accredited Certifier and as such will protect the health and safety of future occupants.

(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,

Comment: Not applicable to this form of development.

(j) to provide increased opportunity for community participation in environmental planning and assessment.

Comment: It is noted that the development will be notified to adjoining properties and displayed at the Local Planning Panel due to the variance exceeding 10%. We welcome the increased opportunity for community participation.

Clause 4.6(4) Zone Objectives & The Public Interest

The subject property is zoned R2 – Low Density Residential pursuant to the Manly LEP 2013. The relevant objectives of the R2 zone in accordance with the planning assessment provided as follows:

To provide for the housing needs of the community within a low density residential environment.	The proposed dwelling provides for additional housing designed to meet the development standards and controls ensuring the built form is compatible within the low density residential environment.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposed dwelling will provide the appropriate facilities and services required for a modern family to meet the day to day needs of future occupants.

Clause 4.6(5)

As addressed, it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

a) The contravention of the FSR control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and

b) There is no public benefit in maintaining the development standard as it relates to the current proposal.

Conclusion

The development proposal has a variation of 67.62m^2 or 31% to the 0.4:1 floor space ratio development standard contained within clause 4.4 of the Manly LEP 2013. Notwithstanding, the proposal demonstrates that the property can accommodate a two storey dwelling, presenting a built form that is consistent with the objectives of the standard and suitable for the subject site.

The dwelling does not result in unreasonable amenity impacts to the adjoining properties regarding overshadowing, visual and acoustic privacy or visual bulk and scale. The development achieves good residential amenity.

It is unreasonable and unnecessary to apply strict compliance with the development standard noting the non-compliance is relatively minor, the natural constraints of the site being a smaller allotment than standard and the precedent for variations to Clause 4.4 in the locality. The dwelling is compatible with the envisaged low-density residential character of Balgowlah Heights.

In accordance with the environmental planning grounds addressed in this Clause 4.6 variation, the variation to the floor space ratio for the construction of a two storey dwelling should be upheld.



John Mckee
Metro Planning Services

ITEM 3.9	**REV2023/0004 - 257 HARBORD ROAD DEE WHY - REVIEW OF DETERMINATION OF APPLICATION MOD2022/0373 WHICH SOUGHT CONSENT TO MODIFY DEVELOPMENT CONSENT DA2013/0324 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A BOARDING HOUSE**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/334998**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Ground Floor Plan

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Development Consent to REV2023/0004 for Review of Determination of Application Mod2022/0373 which sought consent to modify Development Consent DA2013/0324 granted for demolition works and construction of a Boarding House on land at Lot 1770 DP 752038, 257 Harbord Road DEE WHY, for the reasons for refusal set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0004

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1770 DP 752038, 257 Harbord Road DEE WHY NSW 2099
Proposed Development:	Review of Determination of Application Mod2022/0373 which sought consent to modify Development Consent DA2013/0324 granted for demolition works and construction of a Boarding House
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under SEPP (Affordable Rental Housing) 2009
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Hong Li Zhang Fu Zhen Zhang 257 Investments Pty Ltd
Applicant:	Vigor Master Pty Ltd

Application Lodged:	01/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	06/03/2023 to 20/03/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	$ 12,000.00

EXECUTIVE SUMMARY

This development application seeks consent for Review of Determination of Application Mod2022/0373 which sought consent to modify Development Consent DA2013/0324 granted for demolition works and construction of a Boarding House.

The application is referred to the Development Determination Panel (DDP) as any Review of

Determination sought under Section 8.2 for a development application previously determined by a Manager is required to be determined by the DDP.

Mod2022/0373 was refused by Council for the following five (5) reasons:

1. Inadequate Resident Amenity
2. Substantially the Same Development
3. Waste Facilities
4. Visual Privacy
5. Acoustic Privacy

In seeking the review, the applicant has sought to address the reasons for refusal through the exclusion of the proposed conversion of the rear communal living room to a new boarding room from the proposal. The conversion of the front communal living room to a new boarding room and increase in occupancy to 54 boarders remains part of the proposal.

Despite the retention of one communal living room in the boarding house, it is considered the proposal does not adequately address the reason for refusal relating to inadequate residential amenity. The proposal unreasonably reduces the internal living amenity of occupants, will harm the social well-being of lodgers and has an unacceptable social impact. The proposal is considered to satisfactorily address all other reasons for refusal.

This report concludes with a recommendation that the DDP refuse the review of determination application.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks a Review of Determination of Application Mod2022/0373 which sought consent to modify Development Consent DA2013/0324 granted for demolition works and construction of a Boarding House. The modification application was refused by Council staff on 7 February 2023.

The modification sought to covert two communal living rooms on the ground floor of the boarding house to new boarding rooms and increasing the capacity of the boarding house from 52 to 56 persons.

The review application seeks to convert one of the communal living rooms to a new boarding room and increase the boarding house capacity to 54 persons.

The proposed development is considered in regard to the reasons for refusal of Mod2022/0373 as follows:

1. Inadequate Resident Amenity

The removal of the only remaining communal living rooms in the boarding house would unacceptably harm the amenity and social wellbeing of lodgers.

Particulars
(a) The application seeks to convert the two (2) existing communal living rooms into two (2) new private boarding rooms, resulting in there being no communal living rooms in the building.
(b) Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with clause 30(1)(a) of the State Environmental Planning Policy (Affordable Rental housing) 2009 which requires a minimum of one (1) communal living room to be provided.
(c) Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the loss of

communal facilities will unacceptably harm the social wellbeing of lodgers and has an unacceptable social impact.

Comment:

Despite a single communal living room being retained under the proposal, it increases the total occupants of the boarding house from 52 to 54 persons while at the same time reducing the floor area of communal living space of the boarding house to from 66.5m^2 to 42m^2, which is a rate of 0.78m^2 of communal living floor space per resident. This amount of communal living area and the constriction of all internal communal living space into a single room is not considered to adequately cater for 54 persons and will result in poor health and well-being outcomes for occupants.

2. Substantially the Same Development

The changes sought to remove communal rooms will entirely change the living conditions for lodgers from an acceptable scenario to an unacceptable scenario.Council cannot be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted, and before that consent as originally granted was modified.

Particulars
(a) Pursuant to Section 4.55(1A)(b) of the Environmental Planning and Assessment Act 1979, the modification is not substantially the same development.

Comment:

The proposed development is considered to satisfactorily address this reason for refusal by retaining one communal living room.

3. Waste Facilities

The application seeks to provide two (2) new boarding rooms which requires an additional two x 240 litre garbage bins to be provided. The application does not detail whether the existing bin room is sufficient in size to accommodate these two bins, and
therefore Council cannot be satisfied that sufficient facilities exist to service the development.
If the bin room is not large enough, then it would need to be increased in size which may have adverse impacts on the streetscape.

Particulars
(a) Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C9 Waste Management and D14 Site Facilities of the Warringah Development Control Plan 2011.
(b) Because Council does not know if the bin room is of an adequate size, it cannot know if the room would need to be increased to accommodate the new bins, and therefore pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of clause 29(2)(b) Landscaped Area of the State Environmental Planning Policy (Affordable Rental housing) 2009.

Comment:

The proposed development is considered to satisfactorily address this reason for refusal by reducing the total occupancy of the boarding house from 56 to 54 persons.

4. Visual Privacy

The future occupants of proposed boarding room 'R34' would, by way of the room having two large glass doors directly onto the shared garden, have an unacceptably low provision of visual privacy.

Particulars
(a) Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part D8 Privacy of the Warringah Development Control Plan 2011.

Comment:

The proposed development is considered to satisfactorily address this reason for refusal by retaining this area as a communal living room.

5. Acoustic Privacy

The future occupants of proposed boarding room 'R34' would likely be unacceptably impacted by noise generated from the shared garden, and no justification or mitigation measures have been provided.

Particulars
(a) Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part D3 Noise of the Warringah Development Control Plan 2011.

Comment:

The proposed development is considered to satisfactorily address this reason for refusal by retaining this area as a communal living 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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 1770 DP 752038 , 257 Harbord Road DEE WHY NSW 2099
Detailed Site Description:	The subject site is legally identified as Lot 1770 in Deposited Plan 752038 and is known as 257 Harbord Road, Dee Why. The site falls within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011. The site falls to the eastern side of Harbord Road and is surrounded to the north, south and east by dwelling houses. West of the site, and across Harbord Road, there are a range of light industrial and warehouse premises consistent with the IN1 General Industrial zone which they sit on. The site accommodates a three storey boarding house with semi-basement car parking on the lower level.

Map:



SITE HISTORY

- **Development Application No. DA2013/0324** for demolition works and the construction of a boarding house. Approved by the former Warringah Development Application Panel on 2 October 2013.

- **Modification Application No. Mod2018/0314** to modify DA2013/0324 by replacing three (3) of the four (4) communal living areas with new boarding rooms and in effect, increasing the capacity of the boarding house to 54 people. The modification sought to incorporate 34 secure storage units within the basement which necessitated the relocation of cycle parking.

The application was refused by the Northern Beaches Local Planning Panel on 20 December 2018 for the following reasons:

1. *Pursuant to Section 4.15 (1) (b) (ii) of the Environmental Planning and Assessment Act, 1979, the proposal will result in an adverse social impact on the locality as it fails to maintain compatibility with the surrounding character of the area.*

Pursuant to Clause 29 (2) (e) of the State Environmental Planning Policy (Affordable Rental Housing) 2009, the proposal fails to provide compliant parking.

2. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.*

3. *Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone R2 Low Density Residential of the Warringah Local Environmental Plan 2011.*

4. *The proposed modifications are inconsistent with the overriding objectives of the DCP as the proposal is considered to result in unnecessary adverse impacts on the internal and local amenity.*

5. *The proposal is deficient in a number of respects with regard to the information submitted:*

(a) it does not include a traffic and parking assessment to address the traffic and parking implications of the self.
(b) The proposed modifications result in the relocation of the bicycle storage to in front of the existing building. The application does not provide a site plan which identifies the true setback to the street. It is unknown if the new works are within the front setback as the front building alignment has not been constructed as approved. Accordingly, it cannot be accurately established whether the development complies with the front boundary setback requirements.

6. *Pursuant to Section 4.55 (1A) (a) and (b) of the Environmental Planning and Assessment Act, 1979, the proposed development is not considered to be of minimal environmental impact and does not satisfy the requirement for 'substantially the same development' as the modifications introduce a new prohibited use (self-storage units) within the R2 low density residential zone.*

Pursuant to Section 4.15 (1) (a) (i) of the Environmental Planning and Assessment Act, 1979, the proposal is inconsistent with the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009.

Pursuant to Section 4.15 (1) (b) (ii) of the Environmental Planning and Assessment Act, 1979, the proposal will result in an adverse social impact on the locality.

7. *Pursuant to Section 4.15 (1) (e) the proposed development is not considered to be in the public interest:*

(1) as the development introduces a prohibited use within the R2 low density residential zone.
(2) the development fails to provide adequate parking and internal amenity

- **Review Application No. REV2019/0002** the Applicant sought a review of the refusal of Modification Application No. 2018/0314. The application included 28 secure storage cages in the basement; conversion of two (2) first floor communal areas into two (2) new dual-occupancy

boarding rooms.

The Review Application was approved by the Northern Beaches Local Planning Panel on 12 June 2019 subject to conditions, which notably included: maximum capacity (52 persons); maximum number of boarding rooms (32 rooms); use of basement storage areas (23 secure storage cages) for the use of current occupants of the boarding house only - the storage areas are not to be made available to any external third party users; maintenance of remaining communal rooms.

- **Modification Application No. Mod2022/0373** to modify DA2013/0324 by replacing two (2) communal living areas with new boarding rooms and in effect, increasing the capacity of the boarding house to 56 people.

  The application was refused by Council staff on 7 February 2023 for the following reasons:

  1. Inadequate Resident Amenity

  The removal of the only remaining communal living rooms in the boarding house would unacceptably harm the amenity and social wellbeing of lodgers.

  Particulars
  (a) The application seeks to convert the two (2) existing communal living rooms into two (2) new private boarding rooms, resulting in there being no communal living rooms in the building.
  (b) Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with clause 30(1)(a) of the State Environmental Planning Policy (Affordable Rental housing) 2009 which requires a minimum of one (1) communal living room to be provided.
  (c) Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the loss of communal facilities will unacceptably harm the social wellbeing of lodgers and has an unacceptable social impact.

  2. Substantially the Same Development

  The changes sought to remove communal rooms will entirely change the living conditions for lodgers from an acceptable scenario to an unacceptable scenario.Council cannot be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted, and before that consent as originally granted was modified.

  Particulars
  (a) Pursuant to Section 4.55(1A)(b) of the Environmental Planning and Assessment Act 1979, the modification is not substantially the same development.

  3. Waste Facilities

  The application seeks to provide two (2) new boarding rooms which requires an additional two x 240 litre garbage bins to be provided. The application does not detail whether the existing bin room is sufficient in size to accommodate these two bins, and
  therefore Council cannot be satisfied that sufficient facilities exist to service the development. If the bin room is not large enough, then it would need to be increased in size which may have adverse impacts on the streetscape.

Particulars
(a) Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C9 Waste Management and D14 Site Facilities of the Warringah Development Control Plan 2011.
(b) Because Council does not know if the bin room is of an adequate size, it cannot know if the room would need to be increased to accommodate the new bins, and therefore pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of clause 29(2)(b) Landscaped Area of the State Environmental Planning Policy (Affordable Rental housing) 2009.

4. Visual Privacy

The future occupants of proposed boarding room 'R34' would, by way of the room having two large glass doors directly onto the shared garden, have an unacceptably low provision of visual privacy.

Particulars
(a) Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part D8 Privacy of the Warringah Development Control Plan 2011.

5. Acoustic Privacy

The future occupants of proposed boarding room 'R34' would likely be unacceptably impacted by noise generated from the shared garden, and no justification or mitigation measures have been provided.

Particulars
(a) Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part D3 Noise of the Warringah Development Control Plan 2011.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review of a modification application must be lodged on the NSW Planning Portal within 28 days of its determination and determined within 6 months after the date of determination. The application was determined and the notice of determination was issued on 7 February 2023. The review was lodged on the NSW Planning Portal on 22 February 2023, which is within 28 days of the date of determination of the modification application and is to be considered by 7 August 2023, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority

is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the "Proposed Development in Detail" section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 06/03/2023 to 20/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Waste Officer	The modification proposes a development of 34 units including the managers unit. The existing allocation of bins provides capacity for 33 units, however the allocation will be sufficient to cater for an additional unit. It will be the on site manager's responsibility to ensure bin lids are fully closed, or service may be withheld until excess waste is removed. A condition will be applied to this effect.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of

External Referral Body	Comments
	Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) was repealed in November 2021 and the provisions of the new Housing SEPP would generally apply to an application for a boarding house. However, the development consent was granted pursuant to SEPP ARH and therefore this instrument remains applicable to the development as modified.

Division 3: Boarding houses

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

"(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

In this Division '*communal living room*' means "*a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room*".

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or	**Consistent**

(b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	The site is located within the R2 Low Density Residential and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 27: Development to which this Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area. **Note:** ***Accessible area*** means land that is within: (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	**Consistent** The site is located within the R2 Low Density Residential zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	Not applicable The site is located within the Sydney region.

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The modification seeks changes to an approved and existing boarding house, and therefore the application may be considered under Division 3 of the SEPP.

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority	(a) the existing maximum floor space	There is no floor space ratio applied in WLEP	Not applicable

must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	ratio for any form of residential accommodation permitted on the land, or	2011.	
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Not applicable.	Not applicable
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	Residential flat buildings are not permitted in the R2 Low Density Residential zone pursuant to the WLEP 2011.	Not applicable
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	No change to building height.	Not applicable

(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The proposal does not alter the existing landscaping in the front setback area.	Consistent
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	Not applicable as the development would not provide any communal living room (refer to cl.30 (a) below).	Not applicable
(d) private open space	if at least the following private open space areas are provided (other than the front setback area): (i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers, (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided adjacent to that accommodation,	The development provides a garden that is greater than 20 square metres.	Compliant
(e) parking	if: (i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and (ii) in the case of development carried out by or on behalf of a social housing provider	The proposal would result in there being 34 boarding rooms therefore necessitating a minimum of 17 car parking spaces. The architectural plans submitted do not show any modifications to the basement (i.e., no elements are encircled in red, unlike the boarding rooms subject to change). The basement on site	**Inconsistent**

	not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and (iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and (iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,	does not match the basement as shown on the architectural plans. The discrepancy is detailed earlier in this report. The basement does not have 17 car parking spaces and it is therefore considered that inadequate car parking is provided on site to accommodate the additional residents that would occupy the new boarding room.	
(f) accommodation size	if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least: (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case.	Achieved.	Consistent
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	The proposed boarding rooms each have a private kitchen and bathroom.	Consistent
	(4) A consent authority may consent to development to which this Division applies whether or not the	The proposal is found to be inconsistent with cl.29 (e) *parking* which warrants the refusal of the application.	**Inconsistent**

	development complies with the standards set out in subclause (1) or (2).		

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	At present the development has two (2) communal living rooms and one (1) communal kitchen. The communal living rooms comprise of unfixed furnishings, and the communal kitchen consists of a fixed kitchen with appliances, and a four-seater dining table. This application seeks to convert the one of the ground floor communal living rooms into a boarding room. Despite a single communal living room being retained under the proposal, it increases the total occupants of the boarding house from 52 to 54 persons while at the same time reducing the floor area of communal living space of the boarding house to from 66.5m^2 to 42m^2, which is a rate of 0.78m^2 of communal living floor space per resident. This amount of communal living area and the constriction of all internal communal living space into a single room is not considered to adequately cater for 54 persons and will result in poor health and well-being outcomes for occupants. The background of this development has been explained earlier in this report, and it is evident that the gradual conversion of communal spaces into private boarding rooms would have a corresponding	**Inconsistent**

	reduction in the available communal spaces available to residents. As such, the conversion of one of the two remaining communal living rooms to a boarding room cannot be supported.	
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m²,	The boarding rooms do not exceed 25 square metres.	Consistent
(c) no boarding room will be occupied by more than 2 adult lodgers,	Conditions can be imposed on any consent limiting the maximum occupancy rates of each room.	Consistent
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	The lodgers within the boarding house will have adequate access to kitchen and bathroom facilities.	Consistent
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The boarding house accommodates more than 20 occupants and an on-site boarding house manager must be provided.	Consistent
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	N/A	N/A
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	Refer to comments above under SEPP (ARH) cl.29(2)(e) *parking*. The basement plan submitted indicates no changes are proposed to the basement, however that plan does not reflect what is approved on the site, nor what currently exists on the site. The areas marked as 'B' on the plan is understood to indicate 'bicycle parking' - however in this location there is no cycle parking, and it instead appears to be a	**Inconsistent**

	parking space. Similarly, whilst the plans show a compliant seven (7) motorcycle spaces, these do not exist on the site. On the site visit it was observed that there was one electric scooter parked in the area marked as 'motorcycle parking' - however the majority of that area appeared to be used as storage for waste and cleaning materials.	
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	This is not applicable as the works are not minor alterations or additions.	N/A

Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment:

This clause was introduced to the SEPP ARH on 28 February 2019 ("2019 amendment"), and the parent Development Consent predates the introduction of this clause. Clause 54C of the SEPP ARH provides a savings provision with specific respect to the 2019 amendment which, in effect, stipulates that the effect of this clause in limiting the number of boarding rooms would not apply to this application to modify a development consent.

Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

- *The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.*

  Comment:

  The application does not seek to physically amend the exterior of the building, and therefore no further assessment on this matter is required.

- *The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.*

  Comment:

  The application does not seek to physically amend the exterior of the building, and therefore no further assessment on this matter is required.

- *The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.*

  Comment:

  The application does not seek to physically amend the exterior of the building, and therefore no further assessment on this matter is required.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

  Comment:

  The application does not seek to physically amend the exterior of the building, and therefore no further assessment on this matter is required.

The above principles were further developed in *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The application does not seek to physically amend the exterior of the building,and are therefore not considered to impact on the development potential of surrounding sites.

Conclusion to character assessment

Given the absence of change sought to the exterior of the building as sought under this application, it is concluded that the works would not have a physical impact on the visual character of the area.

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 as a boarding house 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 continued use as a boarding house.

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

No changes are proposed to the Principal Development Standards and therefore no further assessment is required.

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
4.3 Height of buildings	Yes

Detailed Assessment

Warringah Development Control Plan

Built Form Controls

No changes are proposed to the Built Form Controls and therefore no further assessment is required.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than $100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal, for Review of Determination of Application Mod2022/0373 which sought consent to modify Development Consent DA2013/0324 granted for demolition works and construction of a Boarding House has been referred to the Development Determination Panel (DDP) as any Review of Determination sought under Section 8.2 for a development application previously determined by a Manager is required to be determined by the DDP.

The critical assessment issues include the expected detrimental impact of the proposed reduction on internal communal living space on the amenity and well-being of occupants of the boarding house and insufficient information to adequately address the reasons for refusal of the modification application.

The proposed development does not adequately address the reason for refusal of Mod2022/0373 relating to inadequate residential amenity. The proposal has therefore been recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

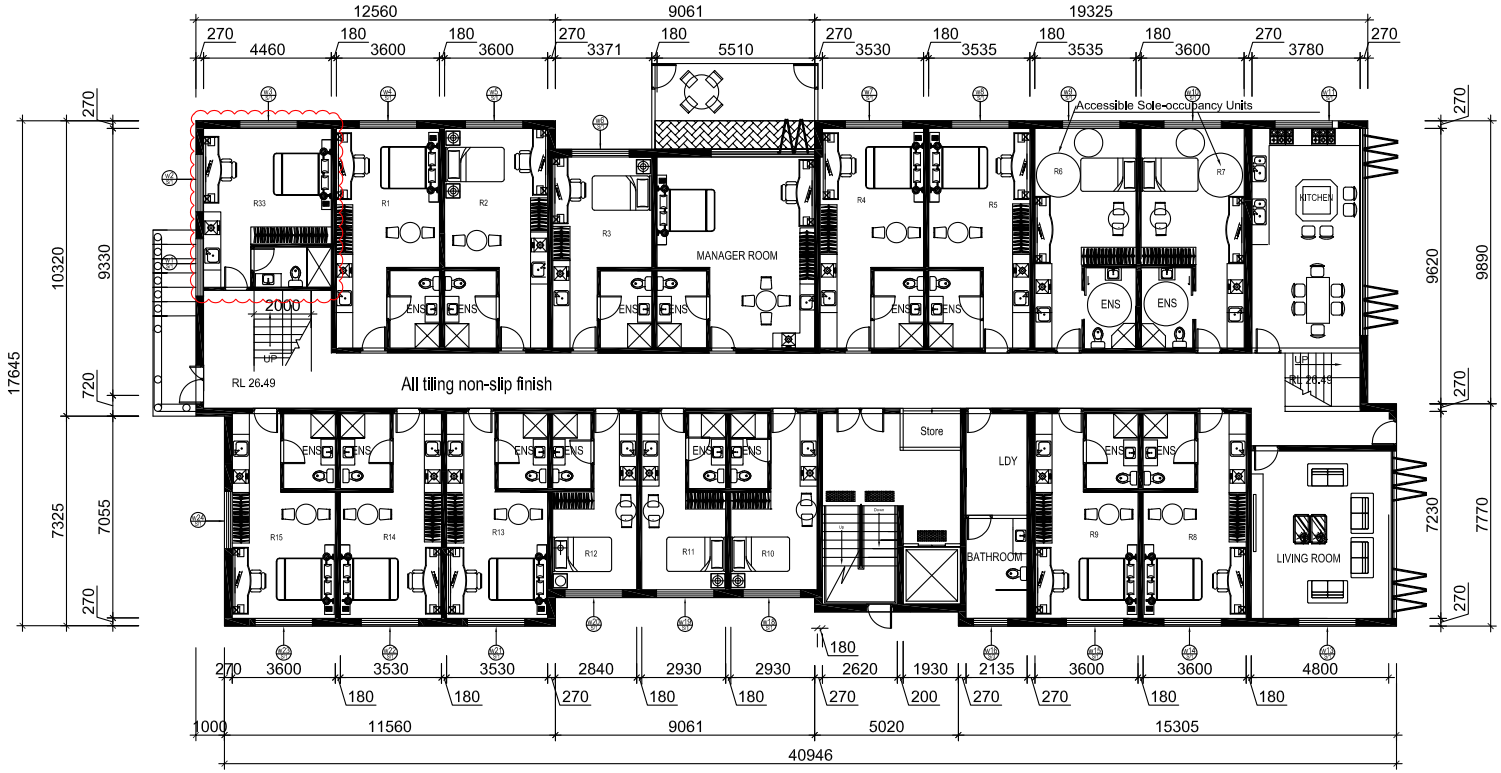
RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No REV2023/0004 for the Review of Determination of Application Mod2022/0373 which sought consent to modify Development Consent DA2013/0324 granted for demolition works and construction of a Boarding House on land at Lot 1770 DP 752038,257 Harbord Road, DEE WHY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 29(2)(e) and Clause 30(1) (a) & (h) of State Environmental Planning Policy (Affordable Rental Housing) 2009.

2. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the reduction of communal facilities will unacceptably harm the social well-being of lodgers and has an unacceptable social impact.

3. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.



Date	Rev	Amendment

Project:
Boarding Housing
MOD
257 Harbord Rd, Dee why

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Drawn: RT
Checked: MW
Title: GROUND FLOOR PLAN

Job number: 257MOD
Date: 21/02/2023 Scale: 1:150@A3
Drawing no: 102 Rev: A