



northern
beaches
council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 28 JUNE 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 28 June 2023
via teleconference
Commencing at 10:00am**

| | | |
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1.0 APOLOGIES

Nil.

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

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

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 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 | DA2022/1879 - 135A SEAFORTH CRESCENT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING CONSTRUCTION OF AN INCLINATOR, STAIRS AND FENCING |
| REPORTING MANAGER | Rod Piggott |
| TRIM FILE REF | 2023/341248 |
| ATTACHMENTS | 1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 |

PURPOSE

- A. To refer the attached application for determination as required under adopted delegations of the Charter.
- B. To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/1879 for alterations and additions to a dwelling house including construction of an inclinator, stairs and fencing on land at Lot 1 DP 236331, 135A Seaforth Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|---|---|
| Application Number: | DA2022/1879 |
| Responsible Officer: | Thomas Prosser |
| Land to be developed (Address): | Lot 1 DP 236331, 135 A Seaforth Crescent SEAFORTH NSW 2092 |
| Proposed Development: | Alterations and additions to a dwelling house including construction of an inclinor, stairs and fencing |
| Zoning: | Manly LEP2013 - Land zoned C3 Environmental Management |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | Sarah Lucinda Nicholson Peter John Nicholson |
| Applicant: | Peter Downes Designs Pty Ltd |
| Application Lodged: | 09/11/2022 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 16/11/2022 to 30/11/2022 |
| Advertised: | Not Advertised |
| Submissions Received: | 9 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 21.1% |
| Recommendation: | Approval |
| Estimated Cost of Works: | \$ 406,906.90 |

EXECUTIVE SUMMARY

This development application seeks consent for the construction of an inclinor and a staircase structure with four associated landings.

The application is referred to the Development Determination Panel (DDP) as the proposal seeks a variation of more than 10% to the minimum Building Height of 8.5m. The proposal involves a height of up to which is a variation of 10.3m / 21.1%. The proposal also involves a height which is 100mm above the ridge of the road, and therefore does not comply with the special height provisions under the Manly LEP (1% variation).

The Clause 4.6 variation request for the non-compliance with the Building height and Special height provisions standards arises due to the roof adjoining the existing carport required for the access structure, being in a location both down slope and above the ridge of the road.

The proposed structure extending to the rear of an existing carport, fits in with the context of the area, and does not cause any unreasonable visual or amenity impact (subject to conditions).

The 4.6 request for the non-compliance with Building height standard is well founded and supported.

The 4.6 request for the non-compliance with special height provisions is well founded and supported.

Amended plans were provided on 13 April 2023. These plans involved a reduction in the size of the staircase structure including greater setbacks and reduction of the roof area. Privacy screens were also provided to mitigate overlooking impacts.

Internal or external referrals raise not objection to the application, subject to conditions.

The application was notified and seven submissions were received from the public. Concerns raised in submissions have been addressed in this report and conditions have been imposed to **ensure** appropriate design for privacy.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the construction of an inclinator and a staircase structure. The inclinator also involves the construction of four associated landings. The inclinator is to provide access from the existing carport structure at the front of the site to the dwelling at the foreshore.

Tree removal and planting

A total of 3 trees (other than exempt species) are proposed for removal. A condition is imposed to require new planting of four locally native trees, being three replacement species and a further species to maintain appropriate balance between the proposed built form and natural character.

Amended Plans

Amended plans were provided on 13 April 2023. These involved the following changes.

- Increase to northern setback of staircase structure (from 0m to 1.5m)
- Increase to southern setback of staircase structure (from 0m to 280mm)
- Reduction in the roof area
- Increased setbacks at north and west boundary
- A privacy screen to the northern elevation of the railcar (noting that a condition in this report also requires a screen to the southern elevation of rail car)
- A privacy screen to both levels of Stairway Structure at the northern

In accordance with the Community and Participation plan, re-notification was not required.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.3 Maintenance of Views

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

SITE DESCRIPTION

| | |
|-----------------------------------|---|
| Property Description: | Lot 1 DP 236331 , 135 A Seaforth Crescent SEAFORTH NSW 2092 |
| Detailed Site Description: | <p>The subject site consists of an allotment located on the western side of Seaforth Crescent.</p> <p>The site is irregular in shape with with a battle-axe handle providing connecting Seaforth Crescent to the existing dwelling at the foreshore. The site has a surveyed area of 1107m².</p> <p>The site is located within the C3 Environmental Management zone and accommodates a dwelling house.</p> <p>The site has a slope from the front of the property down to the rear, with a crossfall of approximately 60m.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development.</p> |

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 | Mainly Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021) | <p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021</p> |

| Section 4.15 Matters for Consideration | Comments |
|--|--|
| | <p>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.</p> <p>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.</p> |
| 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 | <p>(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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p> |
| 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 16/11/2022 to 30/11/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

| Name: | Address: |
|--------|---------------------------------|
| Ya Shi | 20 John Street CONCORD NSW 2137 |

| Name: | Address: |
|-------------------------------------|---|
| Mrs Cheryl Forrester-Babcock | C/- MHDP Architects Level 2 271 Alfred Street North NORTH SYDNEY NSW 2060 |
| MHDP Architects | Level 2, 271 Alfred Street North NORTH SYDNEY NSW 2060 |
| BBF Town Planners | 1 / 9 Narabang Way BELROSE NSW 2085 |
| Maddocks Lawyers | GPO Box 1692 Sydney NSW 2001 |
| Michael Haynes & Associates Pty Ltd | 1 / 9 Narabang Way BELROSE NSW 2085 |
| Mrs Nicola Caroline Billingham | 139 Seaforth Crescent SEAFORTH NSW 2092 |
| Ya Ping Shi | 20 John Street CONCORD NSW 2137 |
| Mr Michael Haynes | 1 / 9 Narabang Way BELROSE NSW 2085 |

The above issues are addressed as follows:

- **Privacy**

The submissions raised concerns with regard to overlooking from the structure and rail car.

Concern is also raised with acoustic privacy. A request is made for an acoustic expert to assess noise emissions prior to occupation certificate.

Concern is raised with privacy impact caused by landings.

Comment:

A condition is imposed to require privacy screen that extends along both sides of the railcar, 1.7m from floor level.

A condition is also imposed to require a qualified acoustic consultant confirms appropriate noise emissions, prior to occupation certificate.

The landings are transitional in nature and are not of a size that would encourage other recreational use. Further, the rail car and privacy screens required on the rail car will assist in providing a buffer between the landings and neighbouring properties. As such, there is no unreasonable privacy impact arising from the landing design.

- **Setbacks**

The submissions raised concerns the setbacks of the proposed staircase structure.

Pittwater DCP controls for setbacks to inclinator.

Comment:

An assessment is made with regard to the relevant Manly DCP control for side boundary setbacks. This assessment (later in this report) has found that the inclinator and associated structure is acceptable on merit due to consistency with the objectives of the setbacks clause. In particular, no unreasonable amenity or visual impact arise from the design (as modified by

conditions).

- **Loss of vegetation and tree removal; lack of replacement planting**

The submissions raised concerns the loss of vegetation and replacement with a rail structure.

Safety concerns are raised with regard to Geotechnical impact of tree removal and destabilisation of land.

Comment:

Council's Landscape officer has reviewed the application, including the Arboricultural Impact assessment. From this, Council's Landscape officer is satisfied with the proposal, subject to conditions including requirements for replacement planting.

The safety concerns including potential Geotechnical impact of tree removal was raised with the applicant's Geotechnical Engineer. The Geotechnical engineer was satisfied with the risk, subject to the recommendations provided in the Geotechnical report. Conditions requiring compliance with the Geotechnical report are imposed.

- **Existing inclinator access; necessity of inclinator**

The submissions suggest an additional inclinator is unnecessary as the site already has inclinator access.

It is argued that the inclinator cannot be considered a necessity with regard to the planning principle established under *Davies vs Penrith City Council 2013 NSW LEC 1141*.

Comment:

As stated under the Planning principle established under *Davies vs Penrith City Council 2013 NSW LEC 1141*, there is a risk in assessment "through the separation of necessity from reasonableness - of an anthropocentric interpretation of this element of the planning principle." In this case, the assessment has found the proposal does not result in any unreasonable environmental impact, for the reasons outlined in this report. In such, the proposed new access is appropriate for the site, regardless of any conclusion made on necessity.

- **Size of structure**

Submissions raise concern with the size of the structure and the inadequate width of the access handle for structure.

Comment:

The stair and landing structure at the front of the site is well separated from neighbouring living spaces and private open space. The proposed structure is also at the same level in height as the existing carport. This provides a situation in which the design of the structure in the access handle is appropriate as there would be no unreasonable visual impact or amenity impact.

Further, the conditions are imposed for privacy screen and noise control for the proposed rail car of the inclinator. This ensure the rail car can traverse the access handle without causing inappropriate privacy impact.

- **Loss of views**

The submissions raised concerns regarding view loss.

Comment:

An assessment later in this report, in accordance with the Land and Environment court established planning principle for views, has found that the proposal will have a negligible impact and that the view sharing outcome is reasonable.

- **Building height and reliance on exception to development standard; bulk and scale; impact on scenic quality**

The submissions raised concerns with the height and size of the structure.

Comment:

The Cl4.6 requests for the non-compliance with Building height is well founded supported for the reasons in this report (under the Clause 4.6 section). In particular, it has been found that the structure will fit in with the context of the area, and will not be of a size or scale that will cause any unreasonable amenity or visual impact (having regard to the scenic quality of the area).

- **Location of inclinator**

The submissions raised concerns that the inclinator may not be able to be wholly contained on applicants site given to roof overhang adjacent to Landing 3 & 4.

Comment:

The architectural plans show that rail car of the inclinator is to be contained wholly on the subject site. The inclinator rail car height is lower than the roof overhang at Landing 3 and Landing 4.

A specific condition is also imposed to ensure all works (**including** the path for the rail car) are verified by Boundary identification survey and are to be verified to be wholly on the subject site.

- **Dividing Fence**

The submissions raised concerns that chain wire fence is inappropriate for the area, offers no privacy, and has not been agreed between neighbours

Comment:

A condition is imposed to delete reference to the new boundary fence and this is subject to the *Dividing Fences Act*.

- **Construction impacts**

The submissions raised concerns with a lack of construction management and site access planning.

There are no agreements within land title arrangements that allow access to neighbouring land during construction.

Comment:

A Construction Access and Traffic Management Plan has provides sufficient measures to mitigate construction impacts. This plan is included (and required to be complied with) Condition 1. Standard conditions are also imposed which assist in appropriately mitigating construction

impact.

Any access to neighbouring properties during development is also subject to the Access to Neighbouring Land Act 2000.

- **Geotechnical risk**

Concern is raised with regard the potential Geotechnical risk imposed by the proposed development. This includes the potential impact caused by the removal of trees.

One submission has provided a geotechnical report to provide considerations.

Comment:

A Geotechnical report has been provided with the application along with a further response letter to a Geotechnical report provided by a submitter.

Council's Engineer has reviewed the application and supports the proposal subject to requiring Geotechnical report recommendations to be incorporated into the design.

As such, the Geotechnical risk is deemed to be at an acceptable level, subject to conditions requiring compliance with recommendations provided by applicant.

- **Inconsistency with objectives of C3 Environmental Conservation zone**

The submissions raised concerns that the proposal is inconsistent with the objectives of the zone.

Comment:

An assessment of the objectives of the zone has been made in the Building height section of this report. In summary, it is concluded the structure will appropriate integrate with the natural character of the area and will not be antipathetic to the values of the zone.

- **Request for the removal of the easement for right of footway and right of mechanical way across 135 and 133A Seaforth Crescent on the basis that they are no longer needed.**

Comment:

Any removal of a private easement is a civil matter. As such, it is not appropriate for Council to impose such a condition.

REFERRALS

| Internal Referral Body | Comments |
|------------------------|---|
| Landscape Officer | Council's Landscape Referral section have considered the application against the zone C3 Environmental Management objectives of Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): |

| Internal Referral Body | Comments |
|----------------------------------|--|
| | <p>• DCP section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation,</p> <p>• DCP section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping.</p> <p>The landscape outcome of the zone C3 Environmental Management objectives include protection and management of the ecological and aesthetic landscape values, protection of tree canopies to maintain the natural scenic qualities of the foreshore, revegetate and rehabilitate the foreshore, and ensure that the bulk and scale of development integrates with the natural environment.</p> <p>The proposal for a inclinator passenger lift is located such that three prescribed trees (ie. protected under the DCP) are impacted and require removal. Three trees identified as tree 10, 11 and 16, and all exist as lopped trees and the Arboricultural Impact Assessment assesses all with low retention value and low significance and no objection is raised. The updated Arboricultural Impact Assessment that previously recommended removal of prescribed tree 9 has been re-assessed on-site that the tree location is not impacted by development works, and tree 9 is to be retained.</p> <p>Additionally seven exempt species (listed under the DCP and not requiring Council approval for management or removal) are impacted by the proposed inclinator lift. The Arboricultural Impact Assessment includes existing trees to be retained and managed and conditions shall be imposed for a project arborist to be in attendance to select appropriate locations for pier footings for the inclinator lift structure within the tree protection zone of existing trees within 5 metres of development works.</p> <p>The landscape canopy within the property is impacted upon by the proposed development and tree removal is unavoidable, and should the application be approved, Landscape Referral require replacement endemic tree canopy planting and conditions shall be imposed.</p> <p><u>Assessing officer comment</u></p> <p>The required the planting conditions has been amended by Council's assessing officer to require the planting of four new locally native species on site. This is an increase to the requirement of three 3 trees recommended by Council's Landscape officer. The reason for the additional required planting is to ensure that the proposed built form integrates appropriately with the natural form of the area, having regard to the objectives of the zone, C3 Environmental Management.</p> |
| NECC (Bushland and Biodiversity) | <p>The proposal seeks approval for alterations and additions to a dwelling house including construction of an inclinator, stairs and fencing.</p> <p>The comments on this referral relate to the following controls and</p> |

| Internal Referral Body | Comments |
|--------------------------------|---|
| | <p>provisions:</p> <ul style="list-style-type: none"> SEPP (Resilience and Hazards) 2021 - Development within the coastal environment Manly LEP 2013 - Clause 6.5 Terrestrial Biodiversity <p>The proposal has been submitted with an accompanying arborist report which has assessed a total of 22 trees and has recommended the removal of 11, including a total of 4 prescribed (protected) trees. Additionally, a range of preventive protection measures has been recommended to avoid and minimise impacts to trees to be retained, special care should be taken with works undertaken around the TPZ (Tree protection zone) and SRZ (Structural root zone) of tree 13 which is a mature Eucalypt that has a NW lean. However, neighbour's consent will have to be granted for the removal of tree 9 as it is a tree partially found within the boundary of the adjoining property; this will be assessed by the Assessing Officer.</p> <p>Replacement canopy trees are to be selected from the Coastal Sandstone Foreshores Forest Plant Community Type.</p> <p><u>Assessment officer comment</u></p> <p>An updated Arborist report was provided to state that tree 9 does not require removal. As such, a 10 trees are proposed for removal (7 of these being exempt species).</p> |
| NECC (Development Engineering) | <p>The proposed works do not require OSD. The existing driveway crossing is to remain.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p> |

| External Referral Body | Comments |
|----------------------------|---|
| Aboriginal Heritage Office | <p>Development Application No. DA2022/1879</p> <p>Description: Alterations and additions to a dwelling house including construction of an inclinor, stairs and fencing</p> <p>Address: 135A Seaforth Crescent SEAFORTH</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area</p> |

| External Referral Body | Comments |
|------------------------|---|
| | <p>has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>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.</p> |

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 (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

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The proposal has been reviewed by Council's Landscaped Officer, Development Engineer and Biodiversity Officer who have raised no objection to the works and their impacts to the coastal area (subject to conditions). Further to this, the inclinor and associated landings are well separated from the water edge and are not of a scale that could cause adverse impact.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed works are well separated from the water edge, do not involve any significant excavation and are not of a scale that could cause adverse impact.

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

- will be managed to minimise that impact, or
- c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The size and physical separation of the works from the coastline suitably avoids the potential for adverse impact.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposal is sited and design appropriately so as to not have any adverse impact on the above matters.

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:

Subject to recommendations of the Geotechnical report and other conditions, the proposal is is not likely to cause increased risk of coastal hazards on that land or other land.

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

Chapter 4 – Remediation of Land

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

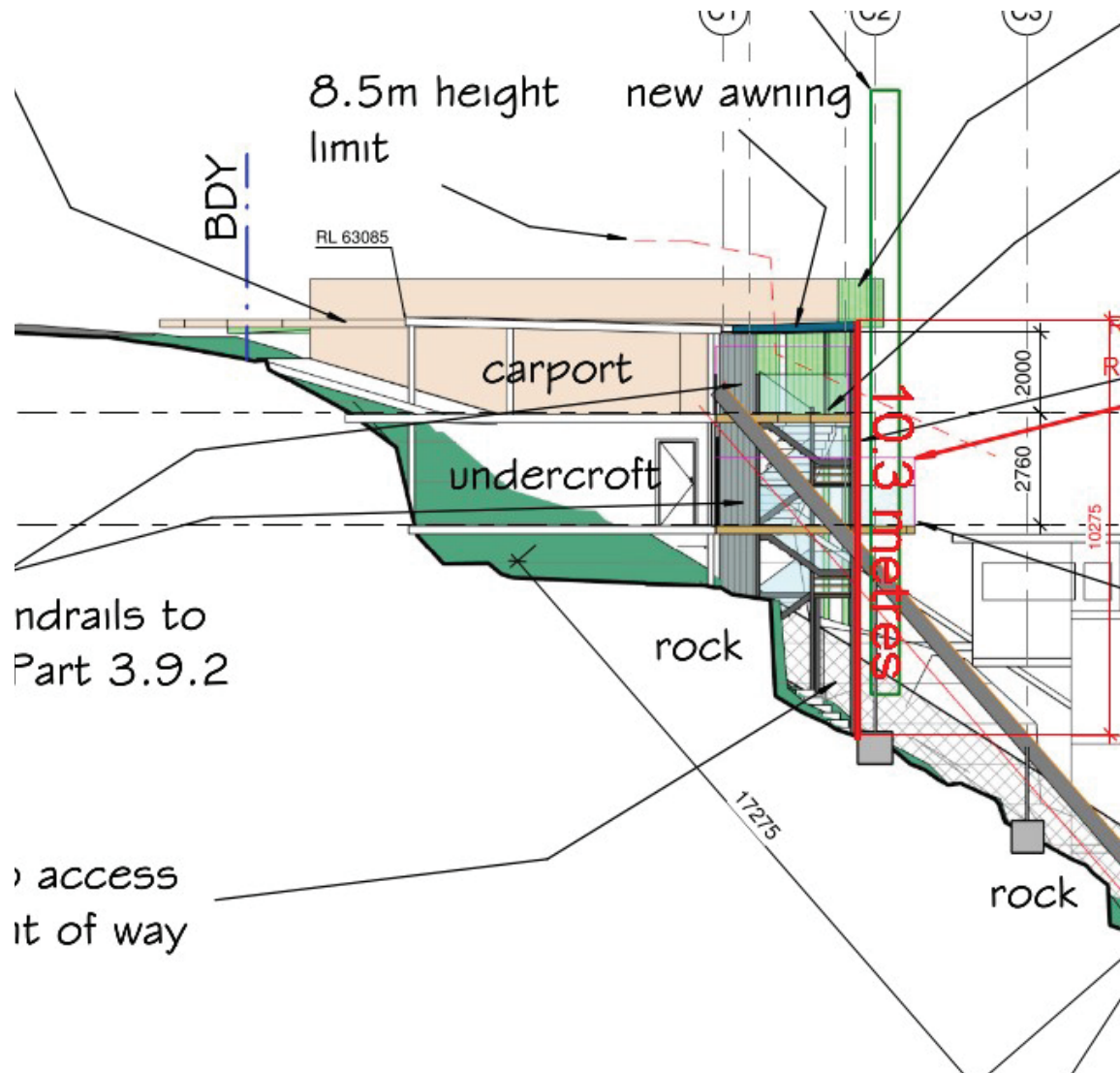
Manly Local Environmental Plan 2013

| | |
|--|-----|
| 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 | 10.3m | 21.1% | No (see comments) |
| Special height provisions | Ridge of road: RL62.88 (10.2m from ground level) | RL62.98 (10.3m from ground level) | 100mm (1%) | No (see comments) |

Diagram showing Special height provision standard, proposed height and ground level



Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 4.3 Height of buildings | No |
| 4.3A Special height provisions | No |
| 4.4 Floor space ratio | Yes |
| 4.6 Exceptions to development standards | Yes |
| 5.7 Development below mean high water mark | Yes |
| 6.1 Acid sulfate soils | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Stormwater management | Yes |

| Clause | Compliance with Requirements |
|--|------------------------------|
| 6.5 Terrestrial biodiversity | Yes |
| 6.8 Landslide risk | Yes |
| 6.9 Foreshore scenic protection area | Yes |
| 6.10 Limited development on foreshore area | Yes |
| 6.12 Essential services | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 10.3m |
| Percentage variation to requirement: | 21.1% |

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

standard.

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

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

The applicants written request argues, in part:

- The steep nature of the topography provides a situation in which inclinator access is required, and the awning that breaches the height provides weather protection and safety from weather.
- The area of the awning that breaches the height limit is minor and occurs to provide safe and convenient access.
- This height breach is typical of structures in the area that have challenging topography.
- A car parking structure in close vicinity has been recently approved at this level.

It is agreed that the restraints provided by topography provide a situation in which inclinator access is appropriate, and that a height breach such as this is typical of the area due to the challenging topography.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration

must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed inclinator structure connects to the existing carport structure at the front of the site, being at the same level of the roof of carport. The height of the structure is also at a similar level as the neighbouring dwelling to the north. Despite a height non-compliance due to the steeply sloping land, the structure is well limited in its length along the side boundary. Due to this, the structure is well setback from the rear building lines of the neighbouring properties. For these reasons, the proposal meets the desired future streetscape character.

b) to control the bulk and scale of buildings,

Comment:

The proposed structure is generally open in nature, and is maintained at the level of the existing carport roof. Further, the structure extends along a small proportion of the length of the site. As such, bulk and scale is suitably controlled.

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:

For the reasons discussed under Clause 3.4.3 Maintenance of Views, the proposal will not have any unreasonable impact on 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 proposal complies with the numerical requirements of Sunlight Access and Overshadowing under the Manly DCP. Along with the open nature of the structure, this provides a circumstance in which provision of solar access is appropriate.

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 proposed structure covers a relatively small proportion of the site. This ensures that significant landscaping and landscaped area (compliant with the numerical control under the DCP) can be maintained. Along with the open nature of the structure and complementary form with existing structures, this provides a situation in which the proposed built form will respect the environmental qualities of the area.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed inclinor is well integrated in to the existing carport structure. It is also limited in size and extent to ensure that extensive natural features are maintained to dominate site. Conditions are also imposed to further allow for the proposal to integrate in with the natural form of the area, and not cause any unreasonable impact on natural processes or Stormwater flows.

The proposed structure and inclinor will be low impact, will respect the values of the area and will sufficiently integrate with the natural qualities of the area.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of

the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Special height provisions Development Standard associated with a single dwelling house (Class 1 building).

Description of non-compliance:

| | |
|--------------------------------------|---------------------------|
| Development standard: | Special height provisions |
| Requirement: | RL62.88 |
| Proposed: | RL62.98 |
| Percentage variation to requirement: | 1% |

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3A – Special height provisions 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 4.3A – Special height provisions development standard is not expressly excluded from the operation of this clause.

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

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

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

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

proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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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 design of the roof allows for appropriate clearance and drainage, whilst providing for practicalities (being providing a roof for the access).

It is agreed the roof allows for sufficient drainage, and provides sufficient clearance for appropriate accessibility to be provided for the inclinator.

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 Special height provisions 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 4.3A – 'Special height provisions' of the MLEP 2013 are:

- (1) The objective of the clause is as follows:

- a) to maintain public views to Sydney Harbour from street level on local roads above steeply sloping sites on certain land

Comment:

The proposed structure extends at generally the same level of the existing carport, in a location in which there will be no unreasonable impact to public views. The existing public views of the water are substantially obstructed by the exiting carport and existing vegetation, and public view corridors to the side of the carport will be maintained.

The proposal therefore complies with the objective.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The proposed inclinator is well integrated in to the existing carport structure. It is also limited in size and extent to ensure that extensive natural features are maintained to dominate site. Conditions are also imposed to further allow for the proposal to integrate in with the natural form of the area, and not cause any unreasonable impact on natural processes or Stormwater flows.

The proposed structure and inclinator will be low impact, will respect the values of the area and will sufficiently integrate with the natural qualities of the area.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone.

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

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

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

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 1107sqm | Requirement | Proposed | % Variation* | Complies |
|---|--|--------------------------|--------------|-------------------|
| 4.1.2.3 Roof Height | Height: 2.5m | 250mm | N/A | Yes |
| 4.1.4.1 Street Front Setbacks | Prevailing building line / 6m | Prevailing setback | N/A | Yes |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | 3.2m (for stair structure) | North: 1.5m South: 0m | 53%-100% | No (see comments) |
| 4.1.4.5 Foreshore Building Lines and Foreshore Area | FBL | Within | N/A | Yes |
| 4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4 | Open space 60% of site area (664.2sqm) | 71.8% (795sqm) | N/A | Yes |
| 4.1.5.2 Landscaped Area | Landscaped area 40% of open space | 90.5% (720sqm) | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes | Yes | Yes |
| 3.1.1 Streetscape (Residential areas) | Yes | Yes |
| 3.3.1 Landscaping Design | Yes | Yes |
| 3.3.2 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) | Yes | Yes |
| 3.4.1 Sunlight Access and Overshadowing | Yes | Yes |
| 3.4.2 Privacy and Security | Yes | Yes |
| 3.4.3 Maintenance of Views | Yes | Yes |
| 3.4.4 Other Nuisance (Odour, Fumes etc.) | Yes | Yes |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes | Yes |
| 3.6 Accessibility | Yes | Yes |
| 3.7 Stormwater Management | Yes | Yes |
| 3.8 Waste Management | Yes | Yes |
| 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 |
| 4.1.4 Setbacks (front, side and rear) and Building Separation | No | Yes |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 4.1.5 Open Space and Landscaping | Yes | Yes |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) | Yes | Yes |
| 4.1.7 First Floor and Roof Additions | Yes | Yes |
| 4.1.8 Development on Sloping Sites | Yes | Yes |
| 4.4.1 Demolition | Yes | Yes |
| 4.4.2 Alterations and Additions | Yes | Yes |
| 4.4.5 Earthworks (Excavation and Filling) | Yes | Yes |
| 5.4.1 Foreshore Scenic Protection Area | Yes | Yes |

Detailed Assessment

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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

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

137 Seaforth Crescent

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

Comment:

The properties on this side of Seaforth Crescent, including 137 Seaforth Crescent, have views toward Middle Harbour. The views to the water are generally extensive but are obstructed by existing development and vegetation.



Photo 1: View from upper level of 137 Seaforth Crescent, Seaforth.

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:

Views are obtained from the rear of the site from multiple levels, including an upper level as seen in *photo 1* above. The inclinator will generally affect views over the side boundary. Extensive water views can be obtained from sitting and standing position.

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

Comment:

The inclinator rail car will impact a small proportion of the overall water views when in operation. Further water views will be generally unobstructed when the rail car is not in use. As such, the impact to views is negligible.

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:

Despite some non-compliance with planning controls, the negligible impact on views provides a reasonable view sharing outcome.

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.

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

Description of non-compliance

The proposed inclinator and stair structure has a setback of 1.5m to the northern boundary, and 0m to the southern 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 stair and inclinator structure is an extension at the rear of the existing carport. As such, the presentation of the structure to the street will remain substantially the same as exists. Further, the proposed structure is generally open in nature to provide a continuance of the open style that the existing carport provides.

The proposal therefore **complies** with this objective.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The structure is well separated from neighbouring living spaces, particularly from living rooms and private open space. Further, the structure is limited in extent across the site and generally open so as to reduce impact on amenity. As such, the proposal will not have any unreasonable impact on local amenity.

A condition has also been imposed to require that the rail car has a privacy screen at each side elevation, and has checks to ensure noise emissions are appropriate.

The proposal therefore **complies** with the objective.

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

Comment:

It is appropriate to provide flexibility to the side setback control, in the battle-axe section of the site in this circumstance due to the lack of unreasonable amenity, visual or environmental impact.

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 maintains compliance with the numerical control for Landscaped area, and is sufficiently

integrated in with the natural environment.

The proposal therefore **complies** with this objective.

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

Comment:

The site is not in Bush fire prone land.

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.

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 \$4,069 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$406,907.

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 / Clause 4.3A Special Height provisions 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 an inclinor and staircase structure has been referred to the Development Determination Panel (DDP) due to seeking consent for a variation to the height standards for Height of Buildings and special Height provisions. Under the circumstances the variation is reasonable and consistent with other development in the area.

Seven submissions were received which have been addressed by way of conditions. The DA referral responses provided raise no objection to approval subject to conditions.

Overall, the development is a reasonable design that is satisfactory in terms of the LEP and DCP controls and will not result in unreasonable impacts on the amenity of 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 Clause 4.3 Height of Buildings / Clause 4.3A Special Height provisions 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 DA2022/1879 for Alterations and additions to a dwelling house including construction of an inclinor, stairs and fencing on land at Lot 1 DP 236331, 135 A Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|---|---------|--------------|
| Drawing No. | Dated | Prepared By |
| 00A - Cover Sheet | 13.4.22 | Peter Downes |
| 01A - Site plan/ Landings Arrangement | 13.4.22 | Peter Downes |
| 02A - Section 1 / Access Structure Elevations | 13.4.22 | Peter Downes |
| 03A - Site Access Plan | 13.4.22 | Peter Downes |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|------------------|-------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Geotechnical Assessment | 27 June 2022 | Ascent Geo |
| Geotechnical Response Letter | 2 June 2023 | Ascent Geo |
| Arboricultural Impact Assessment - Rev C | 27 February 2023 | IACA |

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

| Waste Management Plan | | |
|-----------------------|---------|-------------|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | 8.11.22 | Applicant |

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

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

2. 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 \$4,069.07 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 \$406,906.90.

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans and associated documentation.

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.

7. **Amendments to the approved plans**

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

- o A privacy screen 1.7m in height is to be provided along the extent of both sides of the rail car.

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.

8. **Boundary Identification Survey**

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

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent. This is to include that all works, including the path of travel for the inclinor railcar, are to be on the subject site.

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

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

9. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

10. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree numbers 10, 11, and 16, subject to tree replacement,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree (identified as tree 1 in the Arboricultural Impact Assessment) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS 4970-2009 Protection of trees on development sites..

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

12. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment, including sections 4.4, 4.5, 4.6, 5.2 and 5.6.

Reason: Tree and vegetation protection.

13. **Impacts to Protected Native Wildlife**

Habitat for native wildlife including trees approved for removal are to be inspected for native wildlife prior to removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier.

Reason: To protect native wildlife.

14. **Relocation of Logs and Coarse Woody Debris**

Any hollows and significant logs are to be salvaged from trees approved for removal prior to any vegetation clearing and reused as fauna habitat within areas of retained native vegetation on the site.

Reason: To protect wildlife habitat.

15. **Road Reserve**

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

Reason: Public safety.

16. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

17. **Survey Certificate**

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

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

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

18. **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

19. **Required Tree Planting**

- a) Four (4) locally native trees shall be planted within the property to achieve at least 10 metres height at maturity, and in accordance with the following:
- i) tree planting shall be a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, or Schedule 4 - Part B - Native Tree Selection of the Manly DCP, and the following suggestions may be included - a mix of *Glochidion ferdinandi*, *Elaeocarpus reticulatus*, and *Ceratopetalum gummiferum*, or *Syzygium paniculatum*; 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 and others trees, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

20. **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.

21. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

22. **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.

23. **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.

24. **Acoustic expert to verify noise**

Prior to Occupation certificate, a qualified acoustic expert is to ensure the inclinometer does not exceed noise levels of 60dBA 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.

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

25. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

26. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

27. **Inclinor Noise**

The inclinor shall not produce noise levels that exceed 60dBA 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.







BLACKWATTLE PLANNING

CLAUSE 4.6 Request for
variation to
Manly LEP 2013
HEIGHT OF BUILDINGS

for construction of an inclinor and
associated alterations to a dwelling
and carport at

**135A Seaforth Crescent
SEAFORTH**

Content

- 1.0 Introduction
- 2.0 Manly Local Environmental Plan 2013
- 3.0 Variation to Clause 4.3 Height of buildings
- 4.0 Clause 4.6 Exceptions to Development Standards
- 5.0 Conclusion

Figures

- Figure 1 Zoning Map Manly LEP 2013
- Figure 2 Height of Buildings Map Manly LEP 2013
- Figure 3 Plan showing Height of awning

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1.0 Introduction

This Clause 4.6 Request for Variation to the Height of Buildings development standard under Manly Local Environmental Plan 2013 (MLEP 2013) is prepared by Blackwattle Planning on behalf of Peter Downes Designs. The Request is provided to support a Development Application for a new inclined lift and alterations to a carport and dwelling at 135A Seaforth Crescent to be submitted to Northern Beaches Council.

The Development Application consists of the following components:

- Extend stairs and landings from existing carport
- Extend a new awning over the landings
- Construct a new inclined lift connecting the carport to the dwelling
- Construct a new boundary fence

This document should be read in conjunction with the Statement of Environmental Effects prepared by Blackwattle Planning, as amended by further letter dated 14th April 2023.

Through this document it is demonstrated that compliance with the Height of Buildings Development Standard of MLEP 2013 is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention of the development standards.

2.0 Manly LEP 2013

No. 135A Seaforth Crescent (the site) falls within the area to which MLEP 2013 applies. The site contains an existing dwelling and has an area of 1107sqm. The land is situated on the western side of Seaforth Crescent and falls very steeply (31 degrees) away from the street frontage. No. 135A Seaforth Crescent is a battle axe lot with a handle and vehicular access area at its eastern end and the main body of the lot (which contains the dwelling) adjoining the foreshore of Middle Harbour.

Under **Clause 2.2** of MLEP 2013, the site is zoned C3 Environmental Management as shown in Figure 1 below. Dwelling houses are permitted with consent. The proposal to construct an inclined lift ancillary to the dwelling, and associated alterations to the carport and dwelling is permissible with consent in the C3 Zone.

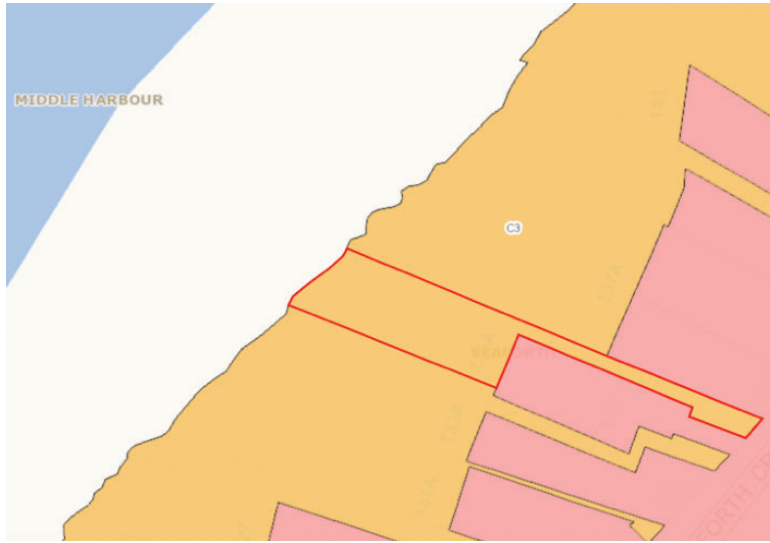


Figure 1: The site outlined red on map indicating zone C3 Environmental Management,
Source: Northern Beaches Online Mapping

Clause 4.3 of MLEP 2013 restricts the height of development on the site in accordance with the Height of buildings Map at Figure 2 below to 8.5m. Clause 4.3 is a development standard.



Figure 2: The site outlined in red on map indicating Category I, 8.5m Height limit.
Source: Northern Beaches Online Mapping

Clause 4.6 of MLEP 2013 enables the consent authority to grant consent to development even though the development does not comply with a development standard. The purpose of the Clause is to allow flexibility in the application of certain development standards which may in turn result in better outcomes.

3.0 Variation to Clause 4.3 Height of building

This written request seeks a variation to Clause 4.3 Height of buildings development standard in MLEP 2013.

MLEP 2013 defines building height as follows:

building height (or **height of building**) means—

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

The highest point of the proposed development is the extension of an awning over Landing No. 1 at RL 62.98, achieving a height of 10.275m above ground level. A small portion of the balustrade below also breaches the 8.5m limit. The variation to the 8.5m Height of buildings development standard sought is 20%, and is shown in Figure 3 below:



Figure 3: Plan showing height of awning over Landing No. 1, **Source:** Peter Downes Designs

4.0 Clause 4.6 Exceptions to Development standard

The objectives of Clause 4.6 are set out in subclause (1) as follows:

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

Decisions of the NSW Land and Environment Court have established that Clause 4.6(1) is not an operational Clause.

Clause 4.6(2) is the enabling Clause that permits development consent to be granted to a development that contravenes a development standard imposed by MLEP 2013. As the Height of buildings is a development standard and is not expressly excluded from the operation of the Clause, a variation may be granted, subject to the remaining subclauses of Clause 4.6 being satisfied.

4.1 Clause 4.6(3) of MLEP 2013 provides that:

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

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

This written request addresses these requirements in turn, having regard for relevant key decisions of the NSW Land and Environment Court that have informed the approach to the application of Clause 4.6

4.2 **Clause 4.6(3)(a) demonstrating that *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case***

The decision in *Wehbe v Pittwater Council 2007* establishes five ways that an applicant may commonly demonstrate that this Clause is achieved. The decision also establishes that it may be sufficient to establish only one way.

The first of those pathways is to establish that *the objectives of the development standard are achieved notwithstanding non-compliance with the standard*. This request relies on this pathway.

The objectives of the Height of Buildings development standard are set out below, together with a discussion of how the objectives are met by the proposal, notwithstanding the variation to the standard.

4.2.1

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment: The new awning proposed over Landing No. 1 adjoins the existing carport. The awning also protects the staircase connecting the carport level with the existing undercroft and Landing No 2 below. The proposed roof form of the awning is an almost flat roof (2 degrees fall is proposed for appropriate drainage) to ensure minimal disruption to view from the street.

The awning will connect with the existing carport roof at almost the same level. The leading edge of the new awning is 105mm lower than the eastern edge of the existing carport. The landform under the new awning falls away very steeply however the new awning and landings below have been limited in their extent to only require a maximum westward extension of the awning 3.25m from the edge of the existing carport. The roof form has been designed to be unobtrusive in the streetscape, and any impact upon views from the street will be negligible.

4.2.2

(b) to control the bulk and scale of buildings,

Comment: The variation occurs primarily because of the precipitous landform to the west of the carport. The existing carport sits above a rock outcrop and the western half of the new awning will extend slightly beyond that outcrop. The lightweight nature of the awning, as well as its limited size and open construction will avoid any additional bulk being presented to neighbours or the public domain.

4.2.3

(c) to minimise disruption to the following—
(i) views to nearby residential development from public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

Comment: Given the very minor extension of the new awning from the existing carport and noting that its western edge is approximately 105mm below the eastern RL of the carport roof, views from public spaces including from Seaforth Crescent and from the harbour will be unaffected.

The new awning sits above and behind adjoining residences and will therefore have no impact upon their west facing views. The awning sits below the balustrade level of the recently approved carstand at No. 135 Seaforth Crescent and will not disrupt views from that vantage point. As it is an open structure, any view lines from the west facing existing carport or the approved storage area of No. 135 Seaforth Crescent will also be unaffected.

Dwellings on the opposite side of Seaforth Crescent are elevated well above the road level and will be unaffected by the proposed awning.

Views both to and from Seaforth Crescent to the harbour will have no adverse impact as a result of the proposal because the roof has been designed to be low profile and below the eastern level of the existing carport roof.

4.2.4

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment: Morning shadows from the proposed awning will fall on the eastern roof of No. 135 Seaforth Crescent because of the significant change in level from the carport level to the residence below. At late morning, shadows from the proposed awning will fall on the staircase adjoining the carport for 135 Seaforth Crescent and from about 11.30am, will fall to the south and east. The approved storage area for 135 Seaforth Crescent is a nil setback at this point with the hardstand carparking above being unaffected.

Overall, the dwelling at 135 Seaforth Crescent will maintain more than adequate existing sunlight access from late morning and onwards in midwinter. Private open spaces for No 135 Seaforth Crescent are located on its western side facing the view and will be unaffected. Notwithstanding the non-compliance with the development standard, adequate sunlight will be maintained to public and private spaces.

4.2.5

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment: The site is located within the C3 Environmental Management zone which is considered an environmental protection zone. The height of the structures proposed are a result of the steep fall in the land and the challenging topography in this part of Seaforth Crescent.

The open nature of the structures proposed and the piered construction methods provide the least impact upon the highly sensitive and vegetated site and minimise the need for site disturbance and vegetation removal.

4.2.6 Conclusion under Clause 4.6 (3)(a)

We conclude that as the proposed development meets the objectives of the Height of buildings development standard as outlined above, compliance with the standard is found to be unreasonable and unnecessary in the circumstances.

4.3 **Clause 4.6(3)(b) demonstrating that *there are sufficient environmental planning grounds to justify contravening the standard***

Clause 4.6(3)(b) requires that sufficient environmental planning grounds be demonstrated to justify contravening the development standard. As established in relevant caselaw, the sufficient grounds must relate to the circumstances of the proposed development and focus on the relevant aspect of the development that contravenes the standard.

In this case, that part of the proposed works which exceeds the development standard is the new awning over Landing No. 1 and the balustrade below. The environmental planning grounds that justify the exceedance of the development standard are as follows:

- The very steep nature of the topography (31 degrees) at 135A Seaforth Crescent is the primary reason the proposed access structures, inclinator, and associated awning are required. The awning that breaches the height limit provides much needed weather protection to the access structures. The balustrade provides the required safety for the landing. Absent the inclinator and access structures, the topography is entirely prohibitive of providing appropriate access to the dwelling.
- The area of the awning that breaches the 8.5m height limit is very minor and occurs to ensure safe and convenient access on a difficult site.
- The area of the awning that breaches the height limit is typical of structures on the lower side of Seaforth Crescent which respond to challenging topography whilst still ensuring appropriate development in the highly sensitive escarpment area. The adjoining neighbour at 135 Seaforth Crescent has recently gained approval for a higher and more substantial carparking structure immediately adjoining the subject site, demonstrating the consistency of providing non-compliant structures for access in the immediate context. An excerpt from the approved plan is provided below.

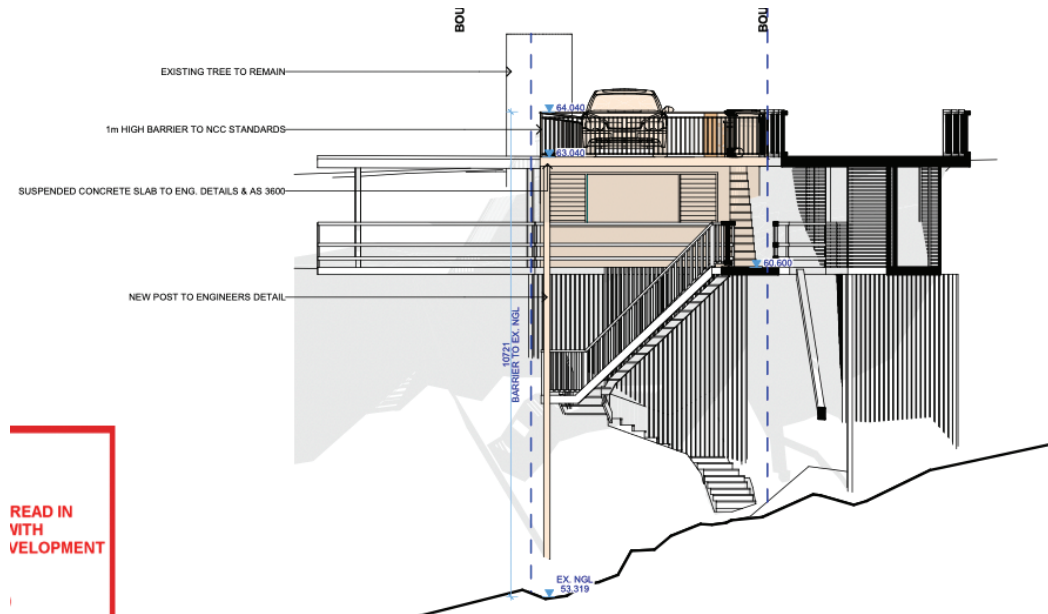


Figure 4: West Elevation of approved car hardstand at 135 Seaforth Crescent **Source:** Action Plans

- The non-compliant area of the awning over Landing No. 1 will have no environmental impacts. No trees are required to be removed as a result of the awning.

4.3.1 Objects of the Environmental Planning and Assessment Act

In demonstrating sufficient environmental planning grounds, it is noted that the contravention of the maximum height standard in this case fulfils the following objects of the Environmental Planning and Assessment Act 1979:

(g) to promote good design and amenity of the built environment,

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

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,

In particular these are achieved by providing a balance between the practicalities of obtaining access on steep land with the amenity of the locality. In particular, it is appropriate to provide suitable and convenient access to the dwelling which is a meaningful contribution to the health and safety of the occupants on this steep site.

4.3.2 Conclusion under Clause 4.6(3)(b)

In our opinion the above environmental planning grounds are sufficient to justify the exceedance of the height of buildings development standard.

4.4 Clause 4.6(4)(a)(i) The written request adequately addresses the matters required to be demonstrated by subclause (3)

This written request comprehensively addresses the matters required to be demonstrated by subclause (3).

4.5 Clause 4.6(4)(a)(ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

4.5.1 Consistent with objectives of development standard

As outlined in paragraphs 4.2 of this document, the proposed development exceeding the height limit is found to be consistent with the objectives of the Height of buildings development standard.

4.5.2 Consistent with objectives of the C3 Environmental Management Zone

The objectives of this zone and the manner in which the objectives are achieved by the proposed development are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment: The proposed access structure and related awning is a response to the significant access difficulties on this site, and also to the need for a sensitive construction methodology to minimise impacts on the rock outcrop and vegetated context. The proposal's management of the environmental values on the site whilst providing for the ongoing viability of the existing residential development is consistent with this objective.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment: The proposed development and in particular the awning which breaches the development standard will have negligible impact upon the environmental and aesthetic values of the site and the immediate context.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment: The extension of the access structure, awning, and the inclinor itself will have minimal impact upon the extensive tree canopy on the site. The low profile and minimal extension of the awning will be unobtrusive in the streetscape and as viewed in the wider locality.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment: The design of the awning, access structure and inclinators will have no impact upon the foreshore area of the site. Piered construction design allows the structures to avoid significant cut and fill, and the disturbance of significant rock features and vegetation on the site.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment: The proposal has no proximity to the foreshore and as such no further rehabilitation is required as a result of the proposed works. Stormwater collected by the new roof will be managed by the existing stormwater system on site such that water quality and the ecological characteristics of the immediate context will not be adversely affected

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment: The existing and significant tree canopy on the site will not be adversely affected by the proposed awning and associated access structure. The extension of landings at the upper and undercroft levels have been minimised. The open nature of the structures and piered construction provide the best possible outcome for canopy on the site, access in the context of the steep land, and minimising impacts upon neighbours.

4.6 Clause 4.6(4)(b) *The concurrence of the Planning Secretary has been obtained*

Concurrence is obtained from the Secretary of the Department of Planning in these circumstances through Planning Circular dated 5 May 2020 which established concurrence can be assumed for variations exceeding 10% where a Local Planning Panel is the Consent authority. Advice from the DPIE dated 2 November 2021 permits Clause 4.6 variations greater than 10% to building height to be determined by Council staff under delegation in accordance with Council procedures.

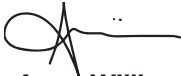
5.0 Conclusion

This document demonstrates that the required tests contained in Clause 4.6 have been met by the proposed development. In particular, that:

- Compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case given that the objectives of Clause 4.3 Height of Buildings have been met; and,

- Sufficient environmental planning grounds have been demonstrated to justify the contravention of the development standard; and,
- The proposed development is found to be in the public interest given its consistency with the objectives of the development standard and of the C3 Environmental Management zone.

Following this, the consent authority can be satisfied that it is appropriate to apply the flexibility permitted under Clause 4.6 of MLEP 2013 to vary the Height of Buildings development standard of MLEP 2013 to the extent proposed.



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| | |
|--------------------------|---|
| ITEM 3.2 | DA2022/2208 - 77 CASTLE CIRCUIT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE |
| REPORTING MANAGER | Rod Piggott |
| TRIM FILE REF | 2023/332350 |
| ATTACHMENTS | 1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6 - BHS 4 Clause 4.6 - FSR |

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/2208 for alterations and additions to a dwelling house on land at Lot 33 DP 200638, 77 Castle Circuit SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|----------------------------|-------------|
| Application Number: | DA2022/2208 |
|----------------------------|-------------|

| | |
|---|---|
| Responsible Officer: | Jordan Howard |
| Land to be developed (Address): | Lot 33 DP 200638, 77 Castle Circuit SEAFORTH NSW 2092 |
| Proposed Development: | Alterations and additions to a dwelling house |
| Zoning: | Manly LEP2013 - Land zoned R2 Low Density Residential |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | Nicole Mary Algar |
| Applicant: | Hot House Projects Pty Ltd |

| | |
|----------------------------------|--|
| Application Lodged: | 06/01/2023 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 12/01/2023 to 27/01/2023 |
| Advertised: | Not Advertised |
| Submissions Received: | 3 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 32.9% 4.4 Floor space ratio: 49.6% |
| Recommendation: | Approval |

| | |
|---------------------------------|---------------|
| Estimated Cost of Works: | \$ 609,840.00 |
|---------------------------------|---------------|

EXECUTIVE SUMMARY

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

The proposed application seeks a variation to the Height of Buildings development standard pursuant to Clause 4.3 of the Manly LEP 2013. The proposed application also seeks a variation to the Floor Space Ratio development standard pursuant to Clause 4.4 of the Manly LEP 2013. The application is referred to the Development Determination Panel (DDP) due to the application proposing a variation to both development standards of more than 10%.

The Clause 4.6 variation request for the non-compliance with the building height and FSR arises due to existing site constraints and structures, a small lot size, and steeply sloping topography.

The applicant's written requests pursuant to clause 4.6 of the Manly LEP 2013 have adequately addressed the merits required to be demonstrated. The proposal is for alterations and additions to an existing dwelling and must content with existing non-compliances and site layout. Furthermore, the subject site is constrained by steeply sloping topography and the proposed development is commensurate to surrounding residential development.

Three (3) 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 proposed development comprises of the construction of alterations and additions to a dwelling house. Specifically, the proposal comprises of the following:

Basement/Garage (RL 35.60m AHD)

- Double garage
- Driveway and vehicle cross over at the northern boundary
- Pedestrian access adjoining eastern boundary
- Internal lift access contained within proposed garage
- Removal of 9 trees (3 requiring approval)

Terrace (RL 40.81m AHD)

- Terrace over proposed garage
- Lift access

Pool Terrace (RL 42.87m AHD)

- Modifications to existing pool and surrounds
- Pergola over the eastern end of the pool enclosure

Ground Floor (RL 44.61m AHD)

- No change proposed

First Floor (RL 47.20m AHD)

- Extension of a portion of the northern wall of the Master Bedroom
- Replacement of window

Second Floor (RL 50.01m AHD)

- Extension in northern wall of the Lounge Room
- Lift access

Garage - to be converted to storage (RL 51.55m AHD)

- Deletion of existing garage and replacement with storage
- Pedestrian entrance to southern boundary

- Stairs to third floor

Third Floor (RL 53.14m AHD)

- Parent's Lounge/Study and deck.

Roof Ridge (RL 55.94m AHD)

- Roof extension and alteration to accompany works

Additional information was requested in relation to referral comments from Council's Development Engineers, as well as in relation to the width/size of the proposed garage, the FSR Clause 4.6 Request and privacy. Additional information and amended plans were provide which satisfied this request. This additional information and amended plans did not require renotification in accordance with the Northern Beaches Council Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 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 - 4.1.9 Swimming Pools, Spas and Water Features
Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 33 DP 200638 , 77 Castle Circuit SEAFORTH NSW 2092 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the southern side of Castle Circuit.</p> <p>The site is irregular in shape with a curved frontage of 24.341m along Castle Circuit, an eastern side boundary length of 26.245m, a western side boundary length of 21.74m, and a southern rear boundary length of 25.305m. The site has a surveyed area of 562.6m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and swimming pool.</p> <p>The site slopes steeply from the south (rear) down towards the north (front), with a crossfall of approximately 16m.</p> <p>The site contains trees, lawn areas and garden beds. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses.</p> |

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:

DA3736/1990 issued by Manly Council for 'Proposed Timber Deck' on 27 August 1990.

DA597/2003 issued by Manly Council for 'Retaining Walls and landscaping (including removal of certain trees)' on 16 March 2003.

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) | <p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to referral comments from Council's Development Engineers, as well as in relation to the width/size of the proposed garage, the FSR Clause 4.6 Request and privacy.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> |

| Section 4.15 Matters for Consideration | Comments |
|--|--|
| | <p>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.</p> <p>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.</p> |
| 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 | <p>(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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney Bushfire Consultants, dated 3 December 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/01/2023 to 27/01/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

| Name: | Address: |
|----------------------|-------------------------------------|
| Mrs Rebecca Wareham | 79 Castle Circuit SEAFORTH NSW 2092 |
| Withheld Withheld | SEAFORTH NSW 2092 |
| Withheld Withheld | SEAFORTH NSW 2092 |

The following issues were raised in the submissions:

- **Geotechnical Hazards**

The submissions raised concerns regarding geotechnical hazards presented by the development. In particular, concern was raised about potential geotechnical impacts on the neighboring property to the east (79 Castle Circuit).

Comment:

The development application is supported by a Geotechnical Report, the recommendations of which will form a condition of consent. Furthermore, a condition of consent has been included requiring pre-construction dilapidation reporting be undertaken at 79 Castle Circuit. This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works. The proposed development, subject to conditions, is considered to meet the geotechnical requirements of the MLEP 2013 and MDCP.

- **Impact of proposed lift structure on solar amenity of surrounding properties**

The submissions raised concerns that the proposed lift structure would reduce solar access to surrounding properties.

Comment:

A Shadow Diagram submitted with the DA depicts the additional shadows cast by the proposed development during midwinter at 9am 12pm and 3pm. The diagrams show that the additional shadowing of the proposed development is mostly cast on the right of carriageway behind the subject site, which is a paved access driveway to adjoining sites. Very minor additional shadowing occurs on the neighboring property to the west (75 Castle Crescent) from minor paving extension along the west boundary at the swimming pool terrace. Properties to the south are uphill, and not impacted by the additional shadowing. Additional shadowing on the neighboring property to the east (79 Castle Circuit) is limited to a small landscaped area at the rear during the afternoon, and does not result in shadowing on the building between 9am - 3pm. Private open space is provided at the front of 79 Castle Circuit with a northerly aspect, and is not impacted by additional shadowing. Overall, the proposal is considered to meet controls related to solar access in MDCP Clause 3.4.1 Sunlight Access and Overshadowing (refer to this section of the report for a detailed assessment).

- **Height Non-Compliance**

The submissions raised concerns that the proposal is non-compliant with the Height of Building development standard.

Comment:

The applicant has made a 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. Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for a detailed assessment of building height and the 4.6 request. In summary, Council is satisfied that:

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

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

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

Therefore, this report recommends the approval of the variation request.

- **Floor Space Ratio Non-Compliance**

The submissions raised concerns that the proposal is non-compliant with the Floor Space Ratio development standard.

Comment:

The applicant has made a 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. Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for a detailed assessment of FSR and the 4.6 request. In summary, 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.

Therefore, this report recommends the approval of the variation request.

- **Visual privacy impacts**

The submissions raised concerns that the development would result in unreasonable privacy impacts.

Comment:

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, concerns were raised with the applicant during the assessment process regarding the impact of the development on privacy, particularly concerning the proposed Parent's Lounge / Study and Deck and its potential impacts on adjacent properties to the west, south-west and south. Amended plans were provided which increased privacy screening on western elevation windows at the Parent's Lounge / Study level and reduced the size and shape of the western section of the Deck. The amendments are considered to address the concerns and ensure reasonable levels of privacy.

The amended development is not considered to create an unreasonable privacy impact on adjoining properties, considering the implementation of privacy devices, design alterations, existing landscaping and the distance between properties towards the west, south-west and south.

- **Acoustic privacy impacts**

The submissions raised concerns that the development would result in an unreasonable acoustic impact.

Comment:

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security, which includes assessment of acoustic privacy. Conditions of consent are included in the recommendations of this report requiring that the swimming pool / spa motor and lift shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

The proposal does not intensify the use of the subject site, remaining a dwelling house within a low density residential environment. Outdoor entertaining areas are characteristic of dwellings in the area. Given the area is an R2 Low Density Residential zone, it must be expected that some level of acoustic background noise may be heard from neighbouring properties when utilising outdoor living areas or going about daily activities. Such noise is not unreasonable in a low density residential area. Subject to conditions, the proposal is acceptable in terms of acoustic privacy.

- **Lighting impacts**

The submissions raised concerns that the extension of the dwelling will contain lighting, particularly noting the proposed Parent's Lounge / Study and Deck.

Comment:

Again, it must be noted the area is an R2 Low Density Residential zone. It is expected that some level of lighting from surrounding low density residential buildings be visible from adjacent properties. The proposal does not intensify the use of the subject site, remaining a dwelling house within a low density residential environment. Adequate separation and vegetation is maintained between the extension and properties to the west and south of the development. Lighting is not considered to create a unreasonable impact on adjacent properties.

- **Arboricultural concerns**

The submissions raised concerns that vegetation was not adequate between the proposal and surrounding development.

Comment:

The proposal has been supported by an Arboricultural Impact Assessment. This has been reviewed by Council's Landscape Officers who support the proposal, subject to conditions. It is considered that distance and exiting vegetation between the subject site and properties to west, south-west and south are adequate to mitigate amenity impacts to a reasonable level. Again, it must be noted the area is an R2 Low Density Residential zone, where it is expected that adjoining properties may be seen through vegetation.

- **View loss**

The submissions raised concerns that the development would result in unreasonable view loss.

Comment:

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

REFERRALS

| Internal Referral Body | Comments |
|--------------------------------|---|
| Landscape Officer | <p>The proposal is supported with regard to landscape issues.</p> <p>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):</p> <ul style="list-style-type: none"> • 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 <p>The Arboricultural Impact Assessment has identified nine trees for removal, of which trees 14, 15, 16, 19, and 20 are exempt by species or height, and trees 25 and 26 are also exempt as they are forming part of a hedge; thus these trees do not require consent for removal. Trees 13 and 21 are small specimens with a low retention rating, and as such they can be supported for removal.</p> <p>The on slab planter above the garage shall meet Council's minimum soil depth requirements, and the species selection shall meet the requirements outlined in the conditions of consent. All natural rock outcrops outside the approved construction footprint shall be retained and protected during works.</p> |
| NECC (Development Engineering) | <p>The proposed development increases the impervious area by more than 50 square metres and the total impervious area for the site exceeds 60% and as such on-site stormwater detention (OSD) is required in accordance with Council's Water Management for Development Policy. The proposed driveway crossing is too wide and must be reduced to 4 metres at the kerb to 5 metres at the boundary. A section from the kerb invert to the proposed garage on either side of the crossing must be provided to ensure compliance with Council's normal high profile.</p> |

| Internal Referral Body | Comments |
|---|---|
| | <p>Development Engineering cannot support the proposal due to insufficient information to address stormwater management and vehicular access in accordance with clauses 3.7 and 4.1.6 of the DCP.</p> <p>Additional information submitted 15/05/2023</p> <p>The submitted driveway profile and amended driveway width is acceptable.</p> <p>The submitted stormwater design including OSD has been designed in accordance with Council's Water Management for Development Policy in terms of the volume and discharge rate for the proposal. The design includes the provision of proprietary precast stormwater tanks to achieve the required OSD volume. These tanks do not provide any grade to the outlet and are connected via pipes above the base of the tank which will cause water to pond and not drain sufficiently. Also there are no access points to each of the tanks which will not allow for any future maintenance of the system. The provision of the high early discharge chamber in the final tank is unclear as this would need to be constructed as a variation to the standard unit and there is no non return valve shown. The proposed OSD system is not acceptable and an amended storage system must be provided to achieve the required OSD for the proposal.</p> <p>Development Engineering cannot support the proposal due to insufficient information to address stormwater management in accordance with clause 3.7 of the DCP.</p> <p><u>Planner Comments:</u> Amended Stormwater Plans were submitted on 8/6/2024 to address the second set of comments from Development Engineering. These amendments satisfied the concerns raised, and the proposal was changed to supported, subject to conditions.</p> |
| External Referral Body | Comments |
| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48 | The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent. |
| Aboriginal Heritage Office | <p>Development Application No. DA2022/2208 Description: Alterations and additions to a dwelling house Address: 77 Castle Circuit SEAFORTH</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of</p> |

| External Referral Body | Comments |
|------------------------|---|
| | <p>surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>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.</p> |

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. A478115, issued 14 December 2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

| Standard | Requirement | Proposed | % Variation | Complies |
|----------------------|---------------------------|--|----------------------|----------------------|
| Height of Buildings: | 8.5m | Existing: 10.2m (to lounge balcony) | 20% | No (existing) |
| | | 11.3m (lounge roof extension) | 32.9% | No |
| | | 9.5m (parents retreat deck balustrade) | 11.8% | No |
| | | 11.2m (parents retreat sunhood) | 31.8% | No |
| | | 9.1m (parents retreat roof) | 7.1% | No |
| Floor Space Ratio | FSR: 0.4:1 (225.04sqm) | Existing FSR: 0.47:1 (266.1sqm) | 18.2% (41.06sqm) | No (existing) |
| | | Proposed FSR: 0.6:1 (336.6sqm) | 49.6% (111.56sqm) | 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 |
| 4.5 Calculation of floor space ratio and site area | Yes |

| Clause | Compliance with Requirements |
|--|------------------------------|
| 4.6 Exceptions to development standards | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Stormwater management | Yes |
| 6.8 Landslide risk | Yes |
| 6.9 Foreshore scenic protection area | Yes |
| 6.10 Limited development on foreshore area | Yes |
| 6.12 Essential services | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 Height of Buildings

Description of non-compliance:

| | |
|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 11.3m |
| Percentage variation to requirement: | 32.9% |

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

justify the contravention of the development standard by demonstrating:

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The development complies with the relevant objectives of the R2 Low Density Residential Zone of the MLEP 2013.
- The development complies with the relevant objectives of the Height of Buildings development standard of the MLEP 2013.
- The proposed development has been designed with respect for neighbouring amenity.
- The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- The proposed alterations and additions ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation (except for the proposed garage) and maintain the existing topography of the subject site.
- No significant trees or vegetation are required to be removed as a result of the increase in overall height.

It is considered that the arguments provided by the applicant are acceptable. It is considered the site is constrained by its allotment shape and steeply sloping topography. The proposal is also for alterations and additions to an existing dwelling, and must also contend with the existing built form on the site and existing non-compliances. The proposal is considered commensurate to surrounding residential development on similar topography and with similar site constraints.

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 proposal is of a comparable size, height and scale to surrounding development. Surrounding development is also restricted by steeply sloping topography and the proposal is commensurate to surrounding residential development. The flat roof form has been designed to minimise the overall height of the development where possible. The proposed development is considered to satisfy this objective.

b) to control the bulk and scale of buildings.

Comment:

It is not considered that the breach of the Height of Buildings standard contributes to excessive bulk or scale, considering the surrounding residential environment, topography and existing vegetation, which acts to soften the impact of the built form. The proposed development is considered to satisfy 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:

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. The proposal provides an acceptable level of view sharing to public and

private spaces and does not result in unreasonable view loss. The proposed development is considered to satisfy 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:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for a detailed assessment of solar access. In summary, the development is not considered to create unreasonable overshadowing on public or private spaces. The proposed development is considered to satisfy 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 not a recreation or environmental protection zone. Nonetheless, the height and bulk of the proposal are not considered to impact on existing vegetation. No significant trees or vegetation are required to be removed as a result of the increase in overall height. The proposed development is considered to satisfy 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 proposal provides for the needs of current and future occupants within a low density residential environment. The proposed development is considered to satisfy this objective.

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

Comment:

Non-residential land uses are not proposed on the subject site. However, the proposal includes adequate indoor and outdoor areas to provide for the residential needs of current and future occupants. The proposed development is considered to satisfy 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 (225.04sqm) |
| Proposed: | 0.6:1 (336.6sqm) |
| Percentage variation to requirement: | 49.6% (111.56sqm) |

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

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

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

The applicants written request argues, in part:

- The development complies with the relevant objectives of the R2 Low Density Residential Zone of the MLEP 2013.
- The development complies with the relevant objectives of the Height of Buildings development standard of the MLEP 2013.
- The proposed development has been designed with respect for neighbouring amenity.
- The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.

It is considered that the arguments provided by the applicant are acceptable. The proposal is for alterations and additions to an existing dwelling and must contend with the existing built form on the site and existing non-compliances. The proposal is considered commensurate to surrounding residential development on similar topography and with similar site constraints.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

It is not considered that the breach of the Floor Space Ratio standard contributes to excessive bulk or scale, considering the surrounding residential environment, topography and existing vegetation, which acts to soften the impact of the built form. The development is characteristic of the surrounding residential development. Additional GFA is added primarily at the Parents Lounge/Study, which adjoins adjoining properties to the south as a small two storey structure due to the topography. The proposed development is considered to satisfy 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:

It is not considered that the breach of the Floor Space Ratio standard contributes to excessive bulk or scale, considering the surrounding residential environment, topography and existing vegetation, which acts to soften the impact of the built form. The built form of the development does not obscure important landscape and townscape features. Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. The proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss. The proposed development is considered to satisfy this objective.

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

Comment:

The development is considered appropriate in regards to the visual relationship between new development and the existing character and landscape. The proposal has been reviewed and supported, subject to conditions, by Council's Landscape Officer. The proposed landscaped area is compliant with the controls of the MDCP. The proposed development is considered to satisfy this objective.

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

Comment:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and

Overshadowing for a detailed assessment of solar access. In summary, the development is not considered to create unreasonable overshadowing on public or private spaces.

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, the development is not considered to create unreasonable privacy impact on adjoining properties.

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

The development minimises adverse environmental impacts on the use or enjoyment of adjoining land and the public domain. The proposal has been reviewed and supported, subject to conditions, by Council's Landscape Officer. The proposed landscaped area is compliant with the controls of the MDCP. The proposed development is considered to satisfy 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 not in a business zone and does not propose any non-residential use. This objective is not relevant in this case.

Zone objectives

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

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

Comment:

The proposal provides for the needs of current and future occupants within a low density residential environment. The proposed development is considered to satisfy this objective.

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

Comment:

Non-residential land uses are not proposed on the subject site. However, the proposal includes adequate indoor and outdoor areas to provide for the residential needs of current and future occupants. The proposed development is considered to satisfy 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 / Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) matches the underlying geotechnical conditions of the land, and*
- (b) is restricted on unsuitable land, and*
- (c) does not endanger life or property.*

In this regard, 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 the risk of landslide—

- (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 development application is supported by a Geotechnical Investigation Report, the recommendations of which will form a condition of consent. Furthermore, the application has been reviewed by Council's Development Engineers, subject to conditions. A condition has also been included regarding Dilapidation Reports on neighboring properties. As such, Council can be satisfied the above has been considered.

Development consent must not be granted to development on land to which this clause applies unless 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 that—

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) 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*
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

The development application is supported by a Geotechnical Investigation Report, the recommendations of which will form a condition of consent. Furthermore, the application has been reviewed by Council's Development Engineers, subject to conditions. As such, Council can be satisfied

the above has been considered.

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 562.6sqm | Requirement | Proposed | % Variation* | Complies |
|--|---|---|---|-----------------|
| 4.1.1.1 Residential Density and Dwelling Size | Density: 1 dwellings | 1 | - | Yes |
| | Dwelling Size: 134sqm (5 bedroom, 5 bathroom) | 316.2sqm | - | Yes |
| 4.1.2.1 Wall Height | East: 8m (based on gradient 1:4+) | 11.8m | 47.5% | No |
| | West: 8m (based on gradient 1:4+) | 10m | 25% | No |
| 4.1.2.2 Number of Storeys | 2 | 5 | 150% | No |
| 4.1.2.3 Roof Height | Height: 2.5m | 0.5m | - | Yes |
| | Parapet Height: 0.6m | 0.2m | - | Yes |
| | Pitch: maximum 35 degrees | 0 degrees | - | Yes |
| 4.1.4.1 Street Front Setbacks | Prevailing building line / 6m | 1.3m, (to proposed garage) consistent with prevailing setback | - | Yes |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | <u>East</u> 0.9m to garage (based on wall height 2.7m) 3.9m to lift (based on wall height 11.7m) 3.7m to parents retreat and deck (based on wall height 11m) | <u>East</u> 1.3m - 3.1m 2m - 2.5m 2.3m - 2.9m | - Maximum 48.7% Maximum 37.8% | Yes No No |
| | <u>West</u> 3m to parents retreat (based on wall height 9.1m) | <u>West</u> 13.8m - 14.9m | - | Yes |
| | Windows within 3m of side boundaries | 2 new windows proposed within 3m of side boundary | N/A | No |
| 4.1.4.4 Rear Setbacks | 8m | Nil | 100% | No |
| 4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4 | Open space 60% of site area (337.6sqm) | 63.6% (357.9sqm) | - | Yes |
| | Open space above ground no more that 25% of total open space (89.5sqm) | 51.7% (185.1sqm) | 106.8% | No |
| 4.1.5.2 Landscaped Area | Landscaped area 40% | 40.7% (145.6sqm) | - | Yes |

| | | | | |
|---|--|----------|---|-----|
| | of open space (143.2sqm) | | | |
| 4.1.5.3 Private Open Space | 18sqm per dwelling | >18sqm | - | Yes |
| 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas | Maximum 50% (12.2m) of frontage up to maximum 6.2m | 6.2m | - | Yes |
| Schedule 3 Parking and Access | Dwelling 2 spaces | 2 spaces | - | Yes |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes | Yes | Yes |
| 3.1.1 Streetscape (Residential areas) | Yes | Yes |
| 3.3.1 Landscaping Design | Yes | Yes |
| 3.3.2 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| 3.3.3 Footpath Tree Planting | Yes | Yes |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) | Yes | Yes |
| 3.4.1 Sunlight Access and Overshadowing | Yes | Yes |
| 3.4.2 Privacy and Security | Yes | Yes |
| 3.4.3 Maintenance of Views | Yes | Yes |
| 3.4.4 Other Nuisance (Odour, Fumes etc.) | Yes | Yes |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes | Yes |
| 3.5.1 Solar Access | Yes | Yes |
| 3.5.3 Ventilation | Yes | Yes |
| 3.5.5 Landscaping | Yes | Yes |
| 3.5.7 Building Construction and Design | Yes | Yes |
| 3.6 Accessibility | Yes | Yes |
| 3.7 Stormwater Management | Yes | Yes |
| 3.8 Waste Management | Yes | Yes |
| 3.9 Mechanical Plant Equipment | Yes | Yes |
| 3.10 Safety and Security | Yes | Yes |
| 4.1 Residential Development Controls | Yes | Yes |
| 4.1.1 Dwelling Density, Dwelling Size and Subdivision | Yes | Yes |
| 4.1.1.1 Residential Density and Dwelling Size | Yes | Yes |
| 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) | No | Yes |
| 4.1.3 Floor Space Ratio (FSR) | No | Yes |
| 4.1.4 Setbacks (front, side and rear) and Building Separation | No | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 4.1.5 Open Space and Landscaping | No | Yes |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) | Yes | Yes |
| 4.1.7 First Floor and Roof Additions | Yes | Yes |
| 4.1.8 Development on Sloping Sites | Yes | Yes |
| 4.1.9 Swimming Pools, Spas and Water Features | No | Yes |
| 4.4.1 Demolition | Yes | Yes |
| 4.4.2 Alterations and Additions | Yes | Yes |
| 4.4.5 Earthworks (Excavation and Filling) | No | Yes |
| 5 Special Character Areas and Sites | Yes | Yes |
| 5.4.1 Foreshore Scenic Protection Area | Yes | Yes |

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Description of non-compliance

3.1.1.4 Garages, Carports and Hardstand Areas

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

The proposed development incorporates a new driveway crossover and garage on Castle Circuit, with a front setback of between 1.3m - 1.8m. This setback is considered consistent with the prevailing building line (see the section of this report regarding MDCP Clause 4.1.4.1 Street Front Setbacks). Nonetheless, the development is assessed against the objectives of the control below.

Merit consideration

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

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

Comment:

The design and scale of the proposed garage is considered consistent with the existing street frontage giving existing garage structures with minimal front setback on the southern side of Castle Circuit, including 79 and 81 Castle Circuit. The proposed development is considered to satisfy this objective.

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

Comment:

As above, the proposed garage is considered to complement the existing streetscape. The proposed

development is considered to satisfy this objective.

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

Comment:

Soft landscaping is maintained in the north-west corner of the subject site which will visually soften the built form. The soft landscaping and garage are considered appropriate within the context of the streetscape. The proposed development is considered to satisfy 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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

A submission raised concerns surrounding overshadowing. As such, as detailed assessment has been undertaken to assess the proposal against the controls.

Clause 3.4.1.1 Overshadowing Adjoining Open Space

In relation to sunlight access to private open space of adjacent properties:

a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

Under Clause 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties of MDCP 2013, in relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:

b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);

c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.

In this instance, shadow diagrams submitted with the proposal have demonstrated compliance with the controls. The proposal maintains adequate solar access to private open spaces and sunlight to windows to living rooms of adjacent properties.

Merit consideration:

The development is considered to comply with the requirements of this Clause. Nonetheless, 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 proposal includes shadow diagrams that demonstrate that access to sunshine is providing to the subject site and adjoining properties in accordance with the control. The subject site and adjacent lots are north-south orientated, with a steep slope from the southern rear to the northern front. This is

favorable to solar access. The proposed development is considered to satisfy 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:

The diagrams show that the additional shadowing of the proposed development is mostly cast on the right of carriageway behind the subject site, which is a paved access driveway to adjoining sites. Very minor additional shadowing occurs on the neighboring property to the west (75 Castle Crescent) from minor paving extension along the west boundary at the swimming pool terrace. Properties to the south are uphill, and not impacted by the additional shadowing owing to the topography and orientation. Additional shadowing on the neighboring property to the east (79 Castle Circuit) is limited to a small landscaped area at the rear during the afternoon, and does not result in shadowing on the building between 9am - 3pm. Private open space is provided at the front of 79 Castle Circuit with a northerly aspect, and is not impacted by additional shadowing.

The shadow diagrams show the development is compliant with controls relating to solar access. As such, the development allows adequate sunlight to penetrate the development site and adjoining sites, in regard to private open space and windows. The proposed development is considered to satisfy 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 established above, the development allows adequate sunlight to penetrate the development site and adjoining sites. Regarding maximization of southern setbacks to encourage solar penetration into properties to the south, it is noted the development maintains a nil rear southern setback. However, this is not considered to infringe on solar access to southern properties, as properties to the south are uphill and separated from the subject site by a shared right of carriageway. The proposed development is considered to satisfy 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

Submissions raised concerns regarding privacy. As such, as detailed assessment has been undertaken

to assess the proposal against the controls.

3.4.2.1 Window Design and Orientation & 3.4.2.2 Balconies and Terraces

Clause 3.4.2.1 requires the use of narrow, translucent or obscured glass windows to maximise privacy where necessary and the design of windows to be off-set from close adjacent buildings. Clause 3.4.2.2 requires privacy screening on balconies where necessary and design of balconies to consider privacy.

Concerns were raised with the applicant during the assessment process regarding the impact of the development on privacy, particularly concerning the proposed Parent's Lounge / Study and Deck and its potential impacts on adjacent properties to the west, south-west and south. Amended plans were provided which increased privacy screening on western elevation windows at the Parent's Lounge / Study level and reduced the size and shape of the western section of the Deck. The amendments are considered to address the concerns and ensure reasonable levels of privacy towards the west, south-west and south.

3.4.2.3 Acoustical Privacy (Noise Nuisance)

Conditions of consent are included in the recommendations of this report requiring that the swimming pool / spa motor and lift shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary. The proposal does not intensify the use of the subject site, remaining a dwelling house within a low density residential environment. Subject to conditions, the proposal is acceptable in terms of acoustic privacy.

Merit consideration:

The development is considered to comply with the requirements of this Clause. Nonetheless, 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:

Proposed windows utilise appropriate design measures, such as high sills or privacy screening to minimise privacy impacts on adjacent and nearby development. The proposed development is considered to satisfy 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 solutions and design features where necessary. These privacy mitigation strategies will not adversely or unreasonably compromise access to light and air. The proposed development is considered to satisfy 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 proposed development is considered to satisfy 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

The merit consideration below includes a view loss assessments from an adjoining property to the south.

85 Castle Circuit - South of the Subject Site

A site inspection was carried out from this adjacent property on 10 February 2023 to ascertain the extent of the view impact. It is noted that the information submitted with the application was sufficient to enable an accurate view impact assessment based off the levels of the existing building. Height poles were not required to be erected in this instance.



Figure 1 - View from kitchen of 85 Castle Circuit looking North (towards subject site)



Figure 2 - View from lounge room of 85 Castle Circuit looking North (towards subject site)



Figure 3 - View from balcony of 85 Castle Circuit looking North (towards subject site)



Figure 4 - View from balcony of 85 Castle Circuit looking North-West

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.

1. Nature of the views affected

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

Comment to Principle 1:

The view affected from 85 Castle Circuit is one looking north and downhill from the vantage point of the kitchen, living room and lounge room. *Figures 1, 2 & 3* depict this northern view of trees, vegetation and bushland over the subject site, which will be partially obscured by the proposed Parent's Lounge / Study set above the existing garage (which is proposed to be converted to storage). There also exists a tree between the subject site and affected property which partially obscures the view towards the subject site.

Notably, only a small portion of this northern outlook towards bushland will be affected, with the development occurring downhill and approximately 18m away. Furthermore, considering the view as a whole, 85 Castle Circuit benefits from north-western views up Middle Harbor towards Bantry Bay, seen in *Figure 4*. In this direction, the land-water interface of both sides of Middle Harbor are clearly discernable, along with large areas of bushland. This view is obtained primarily from the balcony, but also visible from the lounge room and kitchen. Of the northern and north-western outlook obtained by 85 Castle Circuit, views toward Middle Harbor could be considered the most significant element. This element of the view is unaffected by the proposal.

2. What part of the affected property are the views obtained

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

Comment to Principle 2:

As shown in *Figures 1, 2 & 3*, the view affected is obtained from the kitchen, living room and balcony. The portion of the view affected by the proposed development can be viewed sitting or standing in the living room or on the balcony, whilst only by standing in the kitchen. The portion of the view affected by the proposed development is obtained over what is arguably a front boundary, as access to the property is provided by a right of carriageway at this northern end of 85 Castle Circuit.

3. Extent of impact

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

Comment to Principle 3:

As has been discussed in the comments to Principle 1, the property obtains a sweeping north to north-west view primarily from the balcony, but also visible from the lounge room and kitchen.

The proposed development impacts on a small portion of this view. Considering the view as a whole, the proposed development does not impact the most significant element of this view (being Middle Harbor), only impacting a limited outlook on bushland downhill to the north, away from the significant elements of the view. As such, the view loss is considered to be negligible.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal presents a number of breaches to planning controls, including to building height, FSR, wall height and setbacks. However, the proposal is for additions and alterations to an existing dwelling, meaning it is constrained by existing building layout and existing non-compliances. Furthermore, the subject site, and surrounding sites, are impacted by natural topography and a steep slope to the north. The reasonableness of the proposed breaches to planning controls are assessed on merit within the various sections of this report, concluding the proposal is supported on merit. Furthermore, 4.6 Variation Requests regarding building height and FSR development standards have demonstrated compliance with the standard is unreasonable or unnecessary in the circumstances of the case pursuant to Clause 4.6 of the MELP 2013.

The proposed development is considered to satisfy the objectives.

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.

3.9 Mechanical Plant Equipment

The control requires that external mechanical plant systems (for pools, air conditioning and the like) must be acoustically enclosed, located centrally and away from living areas of neighbouring properties and boundaries. The proposed lift is located near the side boundary.

It is noted that the lift motor will only run when the lift is in use, and not constantly for a long period of time as an air conditioner or pool pump might.

Conditions of consent are recommended to ensure that no unreasonable noise impacts are caused by the proposal, requiring that the lift does not exceed more than 5dBA above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

Subject to this condition, the proposal is considered generally acceptable, and will not cause any unreasonable acoustic impacts.

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed:

- 8m (based on gradient 1:4+) for the eastern elevation.

- 8m (based on gradient 1:4+) for the western elevation.

The proposal presents a non-compliant wall height on the eastern elevation of 11.8m at the lift shaft, representing a variation of 47.5% to the control.

The proposal presents a non-compliant wall height on the western elevation of 10m at the extended lounge on the Second Floor (a wall that is located significantly in from the western most dwelling wall), representing a variation of 25% to the control.

The control also requires that buildings must not exceed two (2) storeys. The proposed dwelling contains a maximum of five (5) storeys.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at Clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under Clause 4.6, above in this report. In summary, the proposal is of a comparable size, height and scale to surrounding development. The development is also restricted by steeply sloping topography. The breach is not considered to contribute to additional bulk and scale considering surrounding development. The proposal also does not result in any unreasonable amenity impacts. The proposed development is considered to satisfy the objectives.

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 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)

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 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 562.6sqm and has an FSR requirement of 0.4:1 (225.04sqm) under the MLEP 2013. The proposed FSR is 0.6:1 (336.6sqm), which presents a variation of 49.6% (111.56sqm).

Under this MDCP control, the subject site is an 'undersized allotment' as it is located within Area U on the LEP LSZ map, which requires a minimum lot size of 1150sqm. This allows for a variation to FSR as established by Figure 30 of the MDCP, with FSR calculated against a site area of 750sqm.

When calculating the FSR against a site area of 750sqm, the FSR requirement equates to 0.4:1 (300sqm). As the proposed GFA exceeds 300sqm, it would not technically comply with the variation allowed by this MDCP control.

Notwithstanding, the proposal has been assessed against the requirements and objectives of Clause 4.6 of the MLEP 2013 within this report. The provisions of MLEP Clause 4.6 Exceptions to development standards operate independently from, and superior to, the MDCP.

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

Description of non-compliance

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front building line of neighboring properties and the prevailing building lines in the immediate vicinity. The proposal includes a new garage presenting a setback to the front boundary of between 1.3m and 1.8m. The new garage is considered consistent with the prevailing building line in the vicinity, given existing garage structures with minimal front setback on the southern side of Castle Circuit, including at 79 and 81 Castle Circuit.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height.

The proposed development is compliant with side setback requirements to the western boundary. However, the proposal exhibits non-compliance with side setback requirements to the eastern boundary.

- The garage complies with the required eastern side setback.
- Based on a wall height of 11.7m, the proposed lift requires a 3.9m eastern side setback, exhibiting instead a 2m - 2.5m setback. This represents a maximum 48.7% variation to the control.
- Based on a wall height of 11m, the proposed parents retreat requires a 3.7m eastern side setback, exhibiting instead a 2.3m - 2.9m setback. This represents a maximum 37.8% variation to the control.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposal includes two (2).

Clause 4.1.4.4 Rear Setbacks stipulates that the distance between any part of a building and the rear boundary must not be less than 8m. The proposal exhibits a non-compliant rear setback of nil, representing a 100% variation to the control. This nil setback is existing, with additions maintaining the established setback.

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 streetscape is not considered to be adversely impacted. The front setback is consistent with the prevailing building line in the vicinity, given existing garage structures with minimal front setback on the southern side of Castle Circuit, including at 79 and 81 Castle Circuit. Landscaping is maintained in the north-west corner of the front setback to soften the built form and maintain a landscaped street character. Non-compliances with proposed side and rear setbacks are towards the rear of the property and not readily visible from the street. The proposed development is considered to satisfy 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:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for a detailed assessment of solar access. In summary, the development is not considered to create unreasonable overshadowing on public or private spaces.

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, the development is not considered to create unreasonable privacy impact on adjoining properties.

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

The proposal is also considered to maintain the existing streetscape characteristic and not detrimentally impact on traffic conditions. The proposed development is considered to satisfy this objective.

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

Comment:

Flexibility is required in the siting of alterations and additions to existing dwellings as the proposal must contend with existing site structures with existing non-compliances. The proposed alterations and additions are not expected to result in any unreasonable amenity impacts on surrounding properties. As such, flexibility is warranted, in this instance. The proposed development is considered to satisfy 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:

The proposal is compliant with the landscape area provisions of the MDCP and maintains adequate landscaping and vegetation. The proposed development is considered to satisfy this objective.

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

Comment:

The site is classified as bush fire prone land. A Bush Fire Report was submitted with the application that

included a certificate stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. As such, the proposed development is considered to satisfy 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

The subject site is located within Residential Open Space Area OS4, which requires at least 60% (337.6sqm) of the site to be open space. In addition, at least 40% (143.2sqm) of the proposed total open space is to be landscaped area. Additionally, no more than 25% (89.5sqm) of total open space can be provided above ground level.

The proposed development results in a compliant total open space of 63.6% (357.9sqm). Furthermore, the proposal is compliant with landscaped area requirements, with 40.7% (145.6sqm) of total open space being landscaped area.

However, the proposal exhibits 51.7% (185.1sqm) of open space above ground level, a non-compliance of 106.8% to the control requiring no more than 25% of open space be above ground level

Merit consideration:

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

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

Comment:

The proposal is compliant with total open space and landscaped area requirements. In this regard the proposal retains landscape features. The proposed development is considered to satisfy 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:

The proposal is compliant with total open space and landscaped area requirements. In this regard the proposal maximises soft landscape areas. The non-compliance arising from open space above ground level can be considered a result of the steeply sloping topography and existing built form, which sees stepped terraces provide open space. This limits the amount of open space that can be provided at ground level. Where open space is provided at ground level, it is landscaped in order to meet the requirements of this control. The proposed development is considered to satisfy 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:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for a detailed assessment of solar access. In summary, the development is not considered to create unreasonable overshadowing on public or private spaces.

Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, the development is not considered to create unreasonable privacy impact on adjoining properties.

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

The proposal is compliant with total open space and landscaped area requirements, and is consistent with the existing streetscape. The proposed development is considered to satisfy this objective.

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

Comment:

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area. The proposed development is considered to satisfy this objective.

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

Comment:

The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space. The proposed development is considered to satisfy this objective.

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

Comment:

The proposed works are not expected to affect wildlife habitat. The proposal is compliant with total open space and landscaped area requirements. Existing wildlife corridors will be retained. The proposed development is considered to satisfy 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.

4.1.9 Swimming Pools, Spas and Water Features

Clause 4.1.9.1 Height above ground requires that pools/spas be built on or in the ground and not elevated more than 1m above natural ground level.

Clause 4.1.9.2 Location and Setbacks requires that the outer edge of any pool/spa curtilage must be setback from the side and rear boundaries at least 1m, and the water line must be at least 1.5m from the boundary.

The site contains an existing swimming pool, with a minimum curtilage setback from the western side boundary of 0.4m and waterline setback from the western side boundary of 1.5m. The pool is also elevated up to 3.4m above ground level.

The pool is existing, however, the proposal includes minor alterations to the pool, including the reconfiguration of pool shape and removal of steps to 'square off' the pool. These minor alterations do not contribute to or worsen any existing non-compliances with the requirements of Clause 4.1.9 Swimming Pools, Spas and Water Features.

As such, a detailed merit assessment is not required in this instance. The proposal is supported on merit, in this particular circumstance.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The control requires natural and undisturbed ground levels to be maintained within 0.9 metres of side and rear boundaries. New retaining walls and fill are proposed within 0.9 metres of the side and rear boundaries, which does not satisfy the prescribed requirement.

Moreover, approximately 2.9m of excavation is proposed to accommodate for the proposed garage, which exceeds the numeric requirement of 1m. Whilst an exception to this control is provided for basements parking and pools, the proposed excavation also provides for access including stairs and a lift.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- Limiting excavation, "cut and fill" and other earthworks;
- Discouraging the alteration of the natural flow of ground and surface water;
- Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and
- Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.

Comment:

The application has been accompanied by a Geotechnical Report which stipulates that the proposed development will achieve an acceptable level of risk to neighbouring properties, subject to compliance with certain recommendations. The recommendations of the report are included in a condition of consent. It is noted that the earthworks proposed are not likely to create any adverse environmental impacts. Furthermore, the works are supported, subject to conditions, by Council Development Engineers in regards to stormwater. A further condition of consent has also been included regarding Dilapidation Reports on neighboring properties. Subject to conditions, the proposed development is considered to satisfy 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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$6,098 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$609,840.

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 Environment Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

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

Council is satisfied that:

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

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

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

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

PLANNING CONCLUSION

This proposal for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the application proposing a variation to the Height of Buildings and Floor Space Ratio development standards of more than 10%.

When assessed against the MLEP 2013 and MDCP 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 commensurate with the character of the area 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.

RECOMMENDATION

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

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 DA2022/2208 for Alterations and additions to a dwelling house on land at Lot 33 DP 200638, 77 Castle Circuit, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|--|--------------|----------------------|
| Drawing No. | Dated | Prepared By |
| DA 010, Issue C, Site Analysis | 12 May 2023 | Hot House Architects |
| DA 098, Issue C, Basement | 12 May 2023 | Hot House Architects |
| DA 099, Issue C, Pool and Terrace | 12 May 2023 | Hot House Architects |
| DA 100, Issue C, Ground Floor | 12 May 2023 | Hot House Architects |
| DA 101, Issue C, First Floor Plan | 12 May 2023 | Hot House Architects |
| DA 102, Issue C, Second Floor Plan | 12 May 2023 | Hot House Architects |
| DA 103, Issue C, Third Floor Plan | 12 May 2023 | Hot House Architects |
| DA 110, Issue C, Roof Plan | 12 May 2023 | Hot House Architects |
| DA 200, Issue C, East Elevation | 12 May 2023 | Hot House Architects |
| DA 201, Issue C, West Elevation | 12 May 2023 | Hot House Architects |
| DA 202, Issue C, Street (North) Elevation | 12 May 2023 | Hot House Architects |
| DA 203, Issue C, South Elevation | 12 May 2023 | Hot House Architects |
| DA 300, Issue C, Section | 12 May 2023 | Hot House Architects |
| DA 301, Driveway Sections | 12 May 2023 | Hot House Architects |

| Engineering Plans | | |
|--|--------------|----------------------|
| Drawing No. | Dated | Prepared By |
| D1, Issue B, Details, Notes & Legend | 8 June 2023 | NY Civil Engineering |
| D2, Issue B, Stormwater Management Basement Plan | 8 June 2023 | NY Civil Engineering |
| D3, Issue B, Stormwater Management Terrace/Ground Floor Plan | 8 June 2023 | NY Civil Engineering |
| D4, Issue B, Stormwater Management First/Second Floor Plan | 8 June 2023 | NY Civil Engineering |
| D5, Issue B, Stormwater Management | 8 June 2023 | NY Civil Engineering |

| | | |
|--|-------------|----------------------|
| Third Floor/Roof Plan | | |
| D6, Issue B, Stormwater Details | 8 June 2023 | NY Civil Engineering |
| D7, Issue B, Stormwater Details | 8 June 2023 | NY Civil Engineering |
| D8, Issue B, Stormwater Details | 8 June 2023 | NY Civil Engineering |
| D9, Issue B, Sediment Control Plan | 8 June 2023 | NY Civil Engineering |
| D10, Issue B, Sediment Control Details | 8 June 2023 | NY Civil Engineering |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|------------------|-----------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| BASIX Certificate No. A478115 | 14 December 2022 | Hot House Studio |
| Bushfire Assessment Report | 3 December 2022 | Sydney Bushfire Consultants |
| Bushfire Risk Assessment Certificate | 3 December 2022 | Sydney Bushfire Consultants |
| Arboricultural Impact Assessment | 9 December 2022 | Hugh The Arborist |
| Geotechnical Report, J4559 | 11 October 2022 | White Geotechnical Group |

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

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

| Waste Management Plan | | |
|------------------------------|-----------------|---|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | 21 October 2022 | Jonathan Algar C/O Hot House 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 | 19/01/2023 (on EDMS) |

(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.

5. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,098.40 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 \$609,840.00.

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. **Landscape Plan**

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

- a) detailed planting scheme for the on slab planter above the garage,
- b) species selection must include shrubs and groundcovers (grasses, perennials or succulents can be included if desired),
- c) selected shrubs are to achieve a minimum mature height of 1.5 metres at maturity and be installed towards the southern side of the planter, for the full width.

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

Reason: Landscape amenity.

9. **On Slab Landscape Works**

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

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

The following soil depths are required to support landscaping: 600mm.

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

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

10. **On-Site Stormwater Detention Details**

The applicant is 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 NY Civil Engineering, drawing number E230246 D1 - D10 Revision B, dated 08/06/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

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

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

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

The recommendations 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 the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 4 metres wide at the kerb to 5 metres wide at the boundary in accordance with Northern Beaches Council Standard Drawing Normal High Profile in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

A Council 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. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 13 - *Banksia integrifolia*, and tree 21 - *Elaeocarpus reticulatus*,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

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:

- o 79 Castle Circuit SEAFORTH

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

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

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

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

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

Reason: Preservation of significant environmental features.

18. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

19. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the

works. In this regard all protected trees shall not exhibit:

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

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

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

Reason: Protection of trees.

20. **Road Reserve**

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

Reason: Public safety.

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

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

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

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

22. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

23. **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.

24. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

25. **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**

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) shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
- c) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- d) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- e) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been

constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

28. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal 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.

29. **House / Building Number**

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

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

Reason: Proper identification of buildings.

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

30. **Landscape Maintenance**

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

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

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

Reason: To maintain local environmental amenity.

31. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

32. **Swimming Pool/Spa Motor Noise**

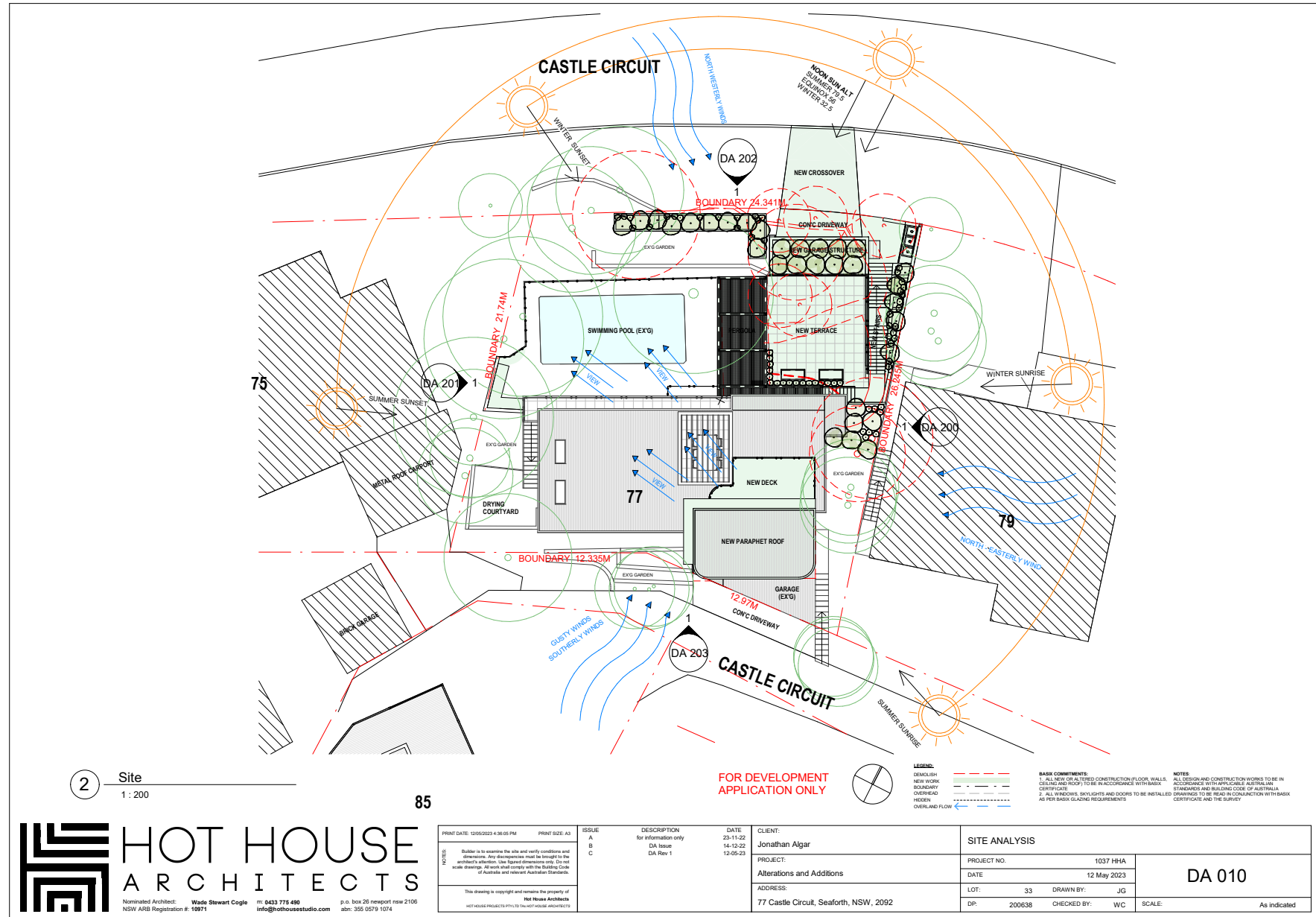
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

33. **Lift Noise**

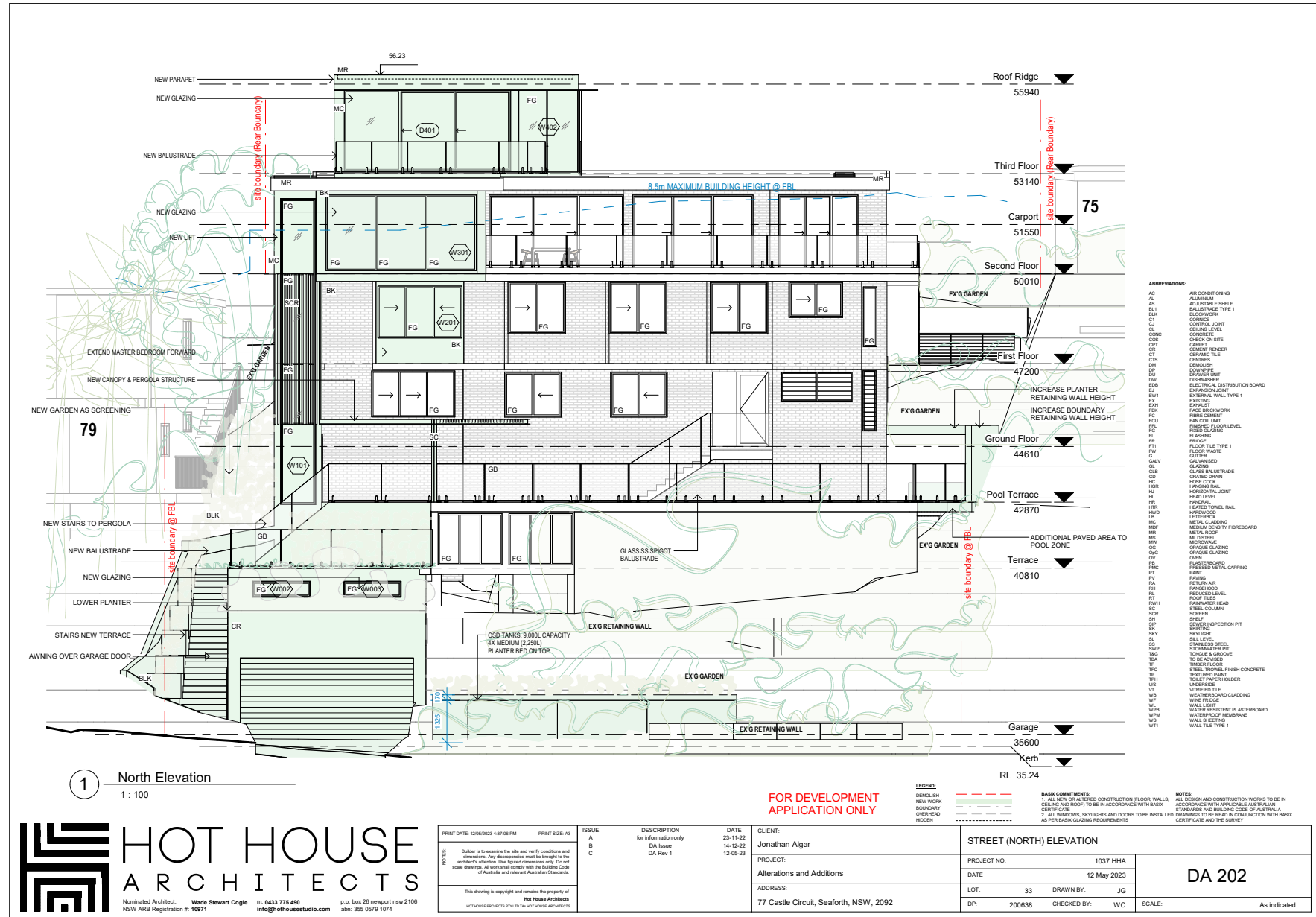
The lift shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



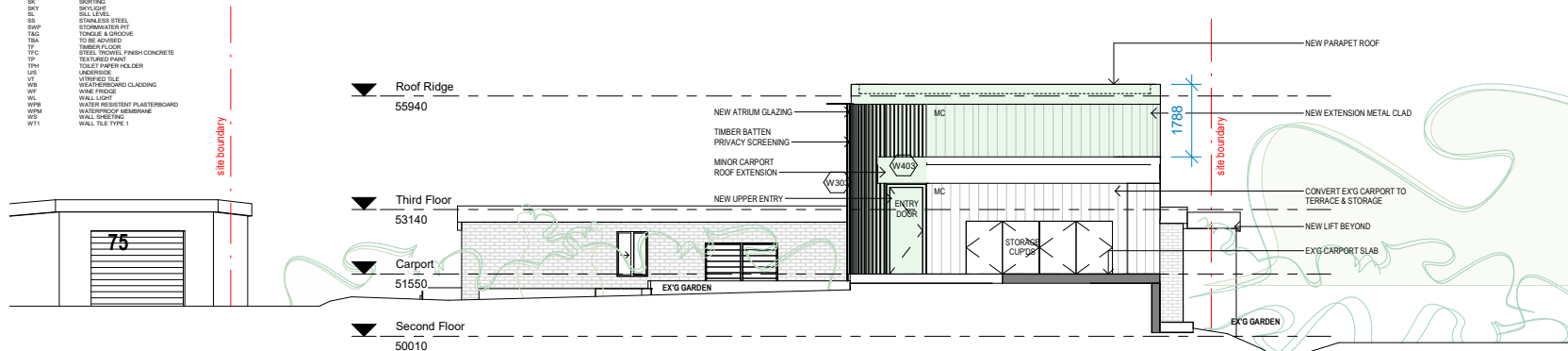






ABBREVIATIONS:

| | |
|------|-------------------------------|
| AC | AIR CONDITIONING |
| AL | ALUMINIUM |
| AS | ADJUSTABLE SHELF |
| BLK | BLOCKWORK |
| CU | CUPBOARD |
| CJ | CONTROL JOINT |
| CL | COLOR LEVEL |
| CONC | CONCRETE |
| CDS | CHECK ON SITE |
| CR | CERAMIC TILE |
| CT | CERAMIC TILE |
| CTB | CENTRE |
| DN | DOWNPIPE |
| DU | DOWNPIPE |
| DU | DOWNPIPE UNIT |
| EDB | ELECTRICAL DISTRIBUTION BOARD |
| EJ | EXPANSION JOINT |
| EW1 | EXTERNAL WALL TYPE 1 |
| EX | EXISTING |
| EXH | EXHAUST |
| FBK | FACE BRICKWORK |
| FCU | FAN COIL UNIT |
| FFL | FINISHED FLOOR LEVEL |
| FG | FIXED GLAZING |
| FL | FLOORING |
| FR | FLOOR TILE TYPE 1 |
| FT1 | FLOOR TILE TYPE 1 |
| FW | FLOOR WASTE |
| G | GUTTER |
| GALV | GALVANISED |
| GL | GLAZING |
| GLB | GLASS BALUSTRADE |
| GD | GRATED DRAIN |
| H | HORIZONTAL |
| HJ | HORIZONTAL JOINT |
| HL | HEAD LINE |
| HR | HANDRAIL |
| HTR | HEATED TOWEL RAIL |
| HWD | HARDWOOD |
| LB | LETTERBOARD |
| MC | METAL CLADDING |
| MF | METAL IDENTIFY FIBREBOARD |
| MR | MINOR CARPORT |
| MS | MILD STEEL |
| MS | MICROWAVE |
| OG | OPAQUE GLAZING |
| OG | OPAQUE GLAZING |
| PC | PLASTERBOARD |
| PNC | PRESSED METAL CLADDING |
| PT | PAINT |
| PV | PAVING |
| RA | RETURN AIR |
| RA | RAISED |
| RL | RAISED LEVEL |
| RT | ROOF TILE |
| RT | ROOF TILE |
| SC | SCREEN |
| SCR | SCREEN |
| SH | SHED |
| SP | SEWER INSPECTION PIT |
| SK | SKYLIGHT |
| SKY | SKYLIGHT |
| SL | SILL LEVEL |
| SS | STAINLESS STEEL |
| SWP | STORMWATER PIT |
| TAG | TONGUE & GROOVE |
| TBA | TO BE ADVISED |
| TFC | TIMBER FLOOR |
| TFC | STEEL TROWEL FINISH CONCRETE |
| TP | TOWEL PAPER HOLDER |
| TPH | TOWEL PAPER HOLDER |
| UP | UNDERPINNING |
| VT | VITRIFIED TILE |
| WB | WATER RESISTANT PLASTERBOARD |
| WB | WATER RESISTANT PLASTERBOARD |
| WL | WALL LIGHT |
| WPM | WATERPROOF MEMBRANE |
| WT | WALL TILE TYPE 1 |
| WT1 | WALL TILE TYPE 1 |



1 South Elevation
1 : 100

**FOR DEVELOPMENT
APPLICATION ONLY**

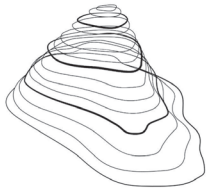
LEGEND:
DEMOLISH
NEW WORK
BOUNDARY
OVERHEAD
HIDDEN

BASIC COMMENTS:
1. ALL NEW OR ALTERED CONSTRUCTION (FLOOR, WALLS, CEILING AND ROOF) TO BE IN ACCORDANCE WITH THE AUSTRALIAN CERTIFICATE
2. ALL WINDOWS, SKYLIGHTS AND DOORS TO BE INSTALLED AS PER BASIC GLAZING REQUIREMENTS

NOTES:
ALL DESIGN AND CONSTRUCTION WORKS TO BE IN ACCORDANCE WITH APPLICABLE AUSTRALIAN STANDARDS AND BUILDING CODE OF AUSTRALIA CERTIFICATE AND THE SURVEY

**HOT HOUSE
ARCHITECTS**
Nominated Architect: Wade Stewart Cogle
NSW ARA Registration #: 19971
P.O. Box 20 Newport NSW 2106
Tel: 0433 775 490
Email: info@hthousestudio.com
ABN: 355 0579 1074

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| This drawing is copyright and remains the property of HOT HOUSE PROJECTS PTY LTD (HOT HOUSE ARCHITECTS) | | | | | ADDRESS: 77 Castle Circuit, Seaford, NSW, 2092 | LOT: 33 | DRAWN BY: JG | CHECKED BY: WC | SCALE: As indicated |



Northern Development Assessment

CLAUSE 4.6 REQUEST FOR VARIATION OF THE HEIGHT OF BUILDINGS STANDARD UNDER CLAUSE 4.3 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

TO ACCOMPANY
DEVELOPMENT APPLICATION

FOR
PROPOSED ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL DWELLING

AT
77 CASTLE CIRCUIT, SEAFORTH
LOT 33 DP 200638

Prepared By

DAVE MOODY

B.Plan. (UNSW), Dipl. Build. & Const. (MIBT), MPIA.

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Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth**1.0 INTRODUCTION**

This request is made under the provisions of Clause 4.6 of Manly Local Environmental Plan 2013 (LEP 2013).

This Clause 4.6 Request has been prepared in relation to the Height of Buildings Standard under Clause 4.3 of LEP 2013 in support of a Development Application (DA) seeking approval for “alterations and additions to an existing residential dwelling” on the property known as 77 Castle Circuit, Seaforth (subject site).

The Objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes arising from a proposed development.

For the reasons referred to in this Clause 4.6 Request, I consider that variation of the height of Buildings Standard in the circumstances of this DA would achieve a better planning outcome, rather than requiring strict adherence to the height of Buildings Standard.

Clause 4.6 of LEP 2013 allows a Consent Authority to grant a variation to a Development Standard as prescribed below.

4.6 Exceptions to development standards

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

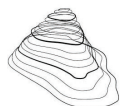
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(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.*

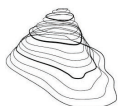
(4) *Development consent must not be granted for development that contravenes a development standard unless—*



Northern
Development
Assessment

Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth

- (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 land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (ca) *clause 6.15,*
 - (cb) *a development standard on land to which clause 6.19 applies.*



Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth

In the case of *Al Maha Pty Ltd v Strathfield Council* [2017] NSWLEC 1083, Presiding Commissioner C Dickson of the Land and Environment Court (Court) held that:

“[63] It is clear from a reading of cl 4.6 of LEP 2012 that the onus is on the applicant to meet the tests of cl 4.6 in seeking flexibility to the Height or FSR standards by demonstrating that the breaches of the two development standards are justified. Ms Ogg provided a written request under cl 4.6(3) which seeks to justify the contravention of the FSR Standard (FSR Request).

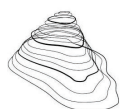
[64] In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7, Preston CJ outlines that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments that contravene the building height standard, or the FSR standard (cl 4.6(2)). However, they cannot grant such a development consent unless they:

- (1) are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii))*
- (2) are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii))*
- (3) have considered a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6 (4)(a)(i)).*
- (4) have considered 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)).”*

In addition to the abovementioned Court judgments, there are other relevant Court judgements relating to the application of a Clause 4.6 Request including, but not limited to, *Winton Property Group v North Sydney Council* [2001] NSW LEC 46, *Wehbe v Pittwater Council* [2007] NSW LEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC 90, and *Moskovich v Waverley Council* [2016] NSW LEC 1015.

Given the above judgment of his Honour, Chief Judge Preston, which was followed by Presiding Commissioner C Dickson, this Clause 4.6 Request seeks to address the matters raised in (1) - (4) above and the provisions of Clause 4.6 of LEP 2013.

I note that the Height of Buildings Development Standard is not specifically excluded from the operation of Clause 4.6 of LEP 2013.



Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth**2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT****4.3 Height of buildings**

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

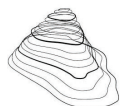
- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
 - (b) *to control the bulk and scale of buildings,*
 - (c) *to minimise disruption to the following—*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
 - (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
 - (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Comment:

The proposed alterations and additions incorporate a lift and addition in the form of a Parent's Lounge, both of which result in breaches in the Height of Buildings Standard. I note that the remainder of the proposed development remains well below the Maximum Height of Buildings Standard of 8.5m.

The maximum height of the proposed development will be 11.342m relating to the proposed lift, noting that this structure has been positioned to allow continuous access across all existing levels of the dwelling and is incorporated into the existing building façade, terminating below the existing Second Level roof form. The proposed Parent's Lounge will have a maximum building height of 9.703m at its northernmost edge, whilst the balustrading on the associated deck will have a maximum building height of 9.835m

This results in a 33.48% breach of the Height of Buildings Standard for the proposed lift, 15.7% for the balustrade and 14% for the Parent's Lounge. Despite this breach, I consider that variation is very reasonable. I should note that the Land and Environment Court has held on previous occasions that the degree of the breach is not the ultimate determining factor in the deciding whether to support a request for variation of a Development Standard.



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Furthermore, I note that in order to determine the maximum building height, the following measurements have been taken from existing excavated areas which contribute to the staggered nature of the existing development, which follows the topography of the subject site;

- The Parent's Lounge – Measured from the Ensuite and Storage Area adjoining the Master Bedroom at First Floor. Noting that the majority of the Parent's Lounge complies with the 8.5m Height Standard until the minor overlap with the Ensuite and Storage area at First Floor.
- The Balustrade – Measured from the Storage Area and Gym at Ground Floor noting that this deck maintains the height of the existing Second Floor roof form.
- The Lift – I note that the proposed lift has been incorporated into the existing dwelling façade and at its highest point, remains below the roof form of the second floor roof.

I consider that the breach of the Height of Buildings Standard does not contribute to the perceived bulk, scale and height of the proposed development. I note the judgement by Commissioner O'Neill of the Court in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070 (Bettar)*. In the *Bettar* judgement, there was a sunken basement level with the public footpath at a higher level. Commissioner O'Neill adopted the level of the "footpath at the boundary" because it "bears a relationship to the context and overall topography".

A similar scenario was considered by Acting Commissioner Bindon in *Nicola v Waverley Council [2020] NSWLEC 1599 (Nicola)*.

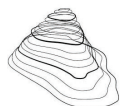
The decision in *Nicola* is an example of where the *Bettar* method was applied to levels contained within the subject site which are the subject of the development application.

In this case, applying *Betta* and *Nicola*, if one views the subject site from adjoining properties to the east and west (75 and 79 Castle Circuit), the perceivable breach is significantly reduced. When viewed from the east, the breaches of the Height of Buildings Standard would be perceived as follows;

- The Parent's Lounge – The maximum breach would be only 689mm measured at the northernmost edge.
- The Balustrade – The maximum breach would be 1.712m, again noting that this deck is located at the existing height of the Second Floor roof form and is required to be at least 1m in height for BCA Compliance.
- The Lift – The maximum breach would be 2.27m. I note that the proposed lift remains below the existing Second Floor Roof Form to which it provides access.

When viewed from the west, the breaches of the Height of Buildings Standard would be perceived as follows;

- The Parent's Lounge – Fully compliant and remaining significantly below the Maximum 8.5m Height Line.
- The Balustrade – Fully compliant and remaining significantly below the Maximum 8.5m Height Line.

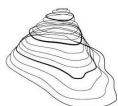


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- The Lift – Very minor breach of the northernmost edge of the lift and otherwise compliant.

Furthermore, I note that when the proposed development is viewed from the south, it will only appear as a 2 storey development. When viewed from the north at the level of Castle Circuit, the proposed Parent's Lounge has been significantly recessed back from the roof form of the Level below ensuring it will not be readily visible from the street.



Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth**3.0 PROPOSAL WILL BE IN PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD**

The proposed development will be in the public interest because it is consistent with both the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The subject site is located within the R2 Low Density Residential Zone.

The objectives of the R2 Low Density Residential zone are as follows:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

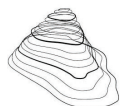
The proposal is consistent with the objectives of the R2 Low Density Residential zone, assisting in providing for the housing needs of the community within a low density residential environment.

The proposed alterations and additions comply with the relevant Objectives of the R2 Zone as follows;

- The proposed alterations and additions will provide for improved parking and access to the site, whilst removing traffic from the single lane shared driveway and providing additional off-street parking. Furthermore, the proposed alterations and additions will provide improved accessibility throughout the site through the introduction of the lift.
- The proposed alterations and additions result in an improved bedroom and living area within the residential dwelling. The improved bedroom and living area serve the needs of the current occupants of the subject site providing for the housing needs within the community.
- The proposed alterations and additions contribute to the variety of housing types and densities within the immediate area. The proposed alterations and additions ensure that the existing residential form of housing is retained, allowing for improved amenity for current and future occupants of the subject site without any unreasonable amenity impacts to adjoining properties.
- The proposed alterations and additions ensure the residential dwelling remains sympathetic to the existing streetscape. These design elements ensure that the proposed development, when viewed from the street complements the identified streetscape.

Based on Clause 4.3 of LEP 2013, the relevant Objectives of the Height of Buildings Standard for buildings in Zone R2 – Low Density Residential zone 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,*



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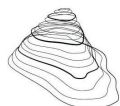
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

The Height of Buildings Standard applicable to the subject site is 8.5m pursuant to Clause 4.3 under LEP 2013.

Despite the breach of the Height of Buildings Development Standard, I consider that the proposed alterations and additions comply with the following relevant objectives of this clause;

- The proposed alterations and additions will provide for a building height and roof form that is consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.
- The degree of breach of the Height of Buildings Standard is significantly contributed to by the topographic landscape and the excavated, stepped nature of the existing dwelling. I note that the proposed alterations and additions incorporate significant setbacks modulation to assist in breaking up the built form.
- The proposed alterations and additions will provide improved living areas as well as providing access throughout the dwelling.
- The proposed alterations and additions do not result in the disruption of any of 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),
- I note that the Owner of 77 castle Circuit provided photographs from 85, 87, 89 and 91 Castle Circuit looking towards the subject site in order to confirm the lack of potential view loss from these properties as a result of the proposed Parent's Lounge. I note that these properties all sit to the south and south-east of the subject site and are situated further upslope ensuring significantly elevated views across the subject site. The topography of the area and the location of the proposed Parent's Lounge ensure that the existing views from these properties to the north and north-west will not suffer any unreasonable view loss. Furthermore, the photographs confirmed that existing significant

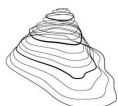


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trees and vegetation between the sites will further ensure that the proposed Parent's Lounge is screened from view.

- I note that the Parent's Lounge addition has been sunken into the roof form of the existing development in order to reduce the overall height. Furthermore, this addition has been significantly recessed from the northern leading edge of the roof form below in order to minimise the potential for visual impact when viewed from the north.
- The significant setback of the proposed Parent's Lounge from the north edge of the roof form below ensure that no unreasonable view loss from the adjoining property at 79 Castle Circuit will occur.
- As evidenced by the Shadow Diagrams accompanying this DA, the proposed alterations and additions will not result in any unreasonable overshadowing to adjoining properties.
- The subject site is not located within a recreation or environmental protection zone, however, I note that the height and bulk of the breaching portions of the proposed alterations and additions do not result in any conflict that requires the removal of any significant trees or vegetation or any excavation/significant changes to the existing topography.



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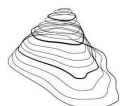
4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

For the reasons outlined in this Clause 4.6 Request and the accompanying SEE, I consider that the compliance with the Height of Buildings Standard under LEP 2013 is unreasonable and unnecessary in the circumstances of the proposed development.

The steps to considering in assessing whether compliance with the height of Buildings Development Standard is unreasonable or unnecessary were confirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**) and are summarised below:

1. 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* [2007] NSWLEC 827 (**Wehbe**) at [42] and [43].
2. 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* at [45].
3. 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* at [46].
4. 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* at [47].
5. 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* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe* 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.
6. 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.

For the purposes of this request, it is my opinion that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are

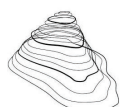


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achieved, notwithstanding non-compliance with the standard, consistent with the “first way” as set out in Step 3 above.

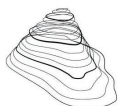
I wish to particularly note the following points: -

- The proposed development is consistent with the relevant objectives of the height of Buildings development standard expressed by clauses 4.3 LEP 2013.
- The proposed development achieves the relevant Objectives of the R2 Low Density Residential zone.
- The proposed development will not result in any unreasonable environmental impacts upon the amenity of neighbouring properties in terms of visual bulk, privacy, overshadowing and view sharing.
- The proposed development satisfies the relevant tests established in *Wehbe v Pittwater Council* (2007) 156 LGERA 446.
- The proposed development will be consistent with the surrounding residential character of the area and will contribute to the variety of housing and help meet demand for housing in the locality.
- The overall bulk, scale and streetscape elements of the proposed development are compatible with the existing and desired future character of the locality.
- The underlying objective would be thwarted if strict compliance with the Height of Buildings development standard was applied as the development satisfies the objectives or purpose of the Height of Buildings standard, despite the non-compliance. The development allows a more efficient use of land and provides for improved living areas and access throughout the existing dwelling, contributing to the variety and availability of housing types in the area.
- For the reasons outlined in the accompanying SEE and this Clause 4.6 Request, I consider that the proposed development results in a range of Positive Outcomes:
 - i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
 - ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
 - iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in overall building height.
 - iv. The proposed alterations and additions ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation (except for the proposed garage) and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the increase in overall height.



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- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.
- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth**5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?**

For the reasons outlined in this Clause 4.6 Request and the SEE, I consider that there are strong environmental planning grounds to justify variation of the Height of Buildings Standard.

The adjectival phrase “*environmental planning grounds*” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act (the Act), including the Objects in Section 1.3 of the Act.

Clause 4.6(3)(b) requires the Applicant to demonstrate that there are sufficient Environmental Planning Grounds to contravene the development standard.

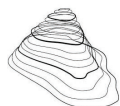
In *Initial Action* the Court found at [23]-[24] that:

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].

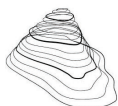
For the reasons outlined in this Clause 4.6 Request, I consider that the compliance with the Height of Buildings Standard under LEP 2013 is unreasonable and unnecessary in the circumstances of the proposed development.

I note the following environmental grounds or, in other words, the Positive Outcomes arising from the proposed development and the breach of the Height of Buildings Standard:



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- i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in overall building height.
- iv. The proposed alterations and additions ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation (except for the proposed garage) and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the increase in overall height.
- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.
- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth**6.0 STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD**

Clause 4.6 (5) relates to matters for consideration by the Secretary as to “*whether contravention of the Development Standard raises any matter of significance for State or regional environmental planning.*”

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.

Would non-compliance raise any matter of significance for State or regional planning?

The non-compliance does not raise any other matter of significance for State or regional planning.

Is there a public benefit of maintaining the development standard?

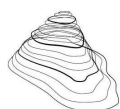
I consider that there is no public benefit associated with maintaining strict compliance with the development standard;

- The proposed development results in a range of positive outcomes as outlined in this Clause 4.6 Request and accompanying SEE.
- The breach of the Height of Buildings Standard is reduced when applying the method of *Betta* and *Nicola*. Even if the method established in these judgements is not applied, the proposed alterations and additions do not result in any unreasonable environmental impacts.
- The proposed alterations and additions are of an attractive palate of colours and materials.
- I consider that, when viewed from the street, the proposed alterations and additions will result in a significant improvement in the visual aesthetics of the existing building.

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered in exercising the assumed concurrence of the Secretary.

The contravention of the Height of Buildings Standard in the circumstances of this application does not raise any matter of significance for State or regional environmental planning.



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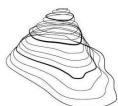
7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

This Clause 4.6 Request has demonstrated and justified that:

- The proposed development satisfies the relevant objectives of the Height of Buildings development standard and Objectives of the R2 Low Density Residential Zone; and
- Sufficient environmental planning grounds have been established to justify the non-compliance, given the range of positive outcomes and the absence of adverse environmental impacts upon neighbouring properties and the public domain, relative to the Height of Buildings non-compliance.

I consider that this objection is well founded for the reasons outlined in this Clause 4.6 Request and the accompanying SEE. I again note the range of positive outcomes which are listed below:

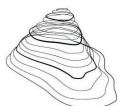
- i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in overall building height.
- iv. The proposed alterations and additions ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation (except for the proposed garage) and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the increase in overall height.
- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.



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- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



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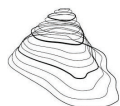
Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth**8.0 CONCURRENCE OF DIRECTOR GENERAL**

- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
- (b) *the concurrence of the Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Comment:

The Department issued Planning Circular No. PS18-003 (dated 21st February 2018) which notified Council of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6...of the Standard Instrument...”

Clause 64 of the EPA Regulations provide that Council may assume the Director General’s [Secretary’s] concurrence for exceptions to Development Standards, thus satisfying the terms of this provision.

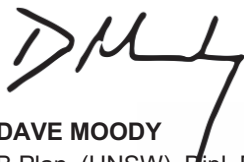


Clause 4.6 Request – Height: 77 Castle Circuit, Seaforth**9.0 CONCLUSION**

Notwithstanding the breach of the Height of Buildings Standard, I consider that this request for variation of the Height of Buildings Standard is well founded.

I consider that the proposed development, notwithstanding the breach of the Height of Buildings Standard, will not have an unreasonable adverse impact on adjoining properties or the public domain and will result in a range of Positive Outcomes outlined in this Clause 4.6 Request and the accompanying SEE.

For the reasons provided within this Clause 4.6 request and accompanying SEE, variation of the Height of Buildings is supported. The Clause 4.6 request has adequately addressed the matters required under clause 4.6 of LEP 2013. Furthermore, it has been established that the proposed development would be in the public interest as it is consistent with the objectives of the Height of Buildings Development Standard and the Objectives of the R2 Low Density Residential Zone.

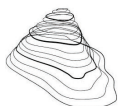
**DAVE MOODY**

B.Plan. (UNSW), Dipl. Build. & Const. (MIBT), MPIA.
0401 450 989

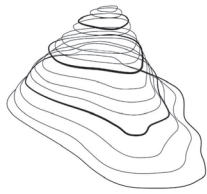
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**CLAUSE 4.6 REQUEST FOR VARIATION OF THE FLOOR SPACE RATIO STANDARD
FLOOR SPACE RATIO STANDARD UNDER CLAUSE 4.4 OF
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

**TO ACCOMPANY
DEVELOPMENT APPLICATION**

**FOR
PROPOSED ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL DWELLING**

**AT
77 CASTLE CIRCUIT, SEAFORTH
LOT 33 DP 200638**

Prepared By

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Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**1.0 INTRODUCTION**

This request is made under the provisions of Clause 4.6 of Manly Local Environmental Plan 2013 (LEP 2013).

This Clause 4.6 Request has been prepared in relation to the Floor Space Ratio (FSR) Standard under Clause 4.4A of LEP 2013 in support of a Development Application (DA) seeking approval for “alterations and additions to an existing residential dwelling” on the property known as 77 Castle Circuit, Seaforth (subject site).

The Objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes arising from a proposed development.

For the reasons referred to in this Clause 4.6 Request, I consider that variation of the FSR Standard in the circumstances of this DA would achieve a better planning outcome, rather than requiring strict adherence to the FSR Standard.

Clause 4.6 of LEP 2013 allows a Consent Authority to grant a variation to a Development Standard as prescribed below.

4.6 Exceptions to development standards

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

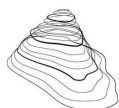
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(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.*

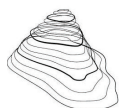
(4) *Development consent must not be granted for development that contravenes a development standard unless—*



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- (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 land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (ca) *clause 6.15,*
 - (cb) *a development standard on land to which clause 6.19 applies.*



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In the case of *Al Maha Pty Ltd v Strathfield Council* [2017] NSWLEC 1083, Presiding Commissioner C Dickson of the Land and Environment Court (Court) held that:

“[63] It is clear from a reading of cl 4.6 of LEP 2012 that the onus is on the applicant to meet the tests of cl 4.6 in seeking flexibility to the Height or FSR standards by demonstrating that the breaches of the two development standards are justified. Ms Ogg provided a written request under cl 4.6(3) which seeks to justify the contravention of the FSR Standard (FSR Request).”

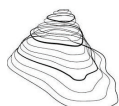
[64] In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7, Preston CJ outlines that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments that contravene the building height standard, or the FSR standard (cl 4.6(2)). However, they cannot grant such a development consent unless they:

- (1) are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii))*
- (2) are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii))*
- (3) have considered a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6 (4)(a)(i)).*
- (4) have considered 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)).”*

In addition to the abovementioned Court judgments, there are other relevant Court judgements relating to the application of a Clause 4.6 Request including, but not limited to, *Winton Property Group v North Sydney Council* [2001] NSW LEC 46, *Wehbe v Pittwater Council* [2007] NSW LEC 827, *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC 90, and *Moskovich v Waverley Council* [2016] NSW LEC 1015.

Given the above judgment of his Honour, Chief Judge Preston, which was followed by Presiding Commissioner C Dickson, this Clause 4.6 Request seeks to address the matters raised in (1) - (4) above and the provisions of Clause 4.6 of LEP 2013.

I note that the FSR Development Standard is not specifically excluded from the operation of Clause 4.6 of LEP 2013.



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2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

4.4 Floor space ratio

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

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
 - (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.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*
- (2A) *Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.*

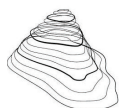
Comment:

I note that the subject site contains residential dwelling located on a lot with a Site Area of 562.6m² which is significantly below the minimum lot size of 1150m² identified under the LEP. The subject site has an FSR Standard of 0.4:1 allowing for a Gross Floor Area of 225m². The existing dwelling on the subject site has a Gross Floor Area of 266.1m².

Based on the calculations provided on the plans accompanying this DA, I note that under the proposed alterations and additions, the Ground Floor area remains unchanged. The additional floor area comes as a result of the following;

- Construction of the garage at basement level resulting in an additional 19.3m², excluding the 2 car spaces required and access thereto.
- Minor 2.38m² extension at Level 1.
- Minor 9.12m² extension at Level 2 to provide access from the proposed lift into the Living Room and a minor 5.5m² extension to provide a new entrance.
- New Level 3 for the Parent's Lounger resulting in an additional 21.4m² of floor area.

The above additions result in a Gross Floor Area of 323.83m² which provides an FSR of 0.57:1. I note that this results in a breach of the FSR Standard by 43.9%. I should note that the Court has held on previous occasions that the degree of the breach is not the ultimate determining factor in the deciding whether to support a request for variation of a Development Standard.



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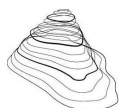
The proposed alterations and addition therefore require the submission of a Clause 4.6 Variation Request for Council to assess the reasonableness of the breach.

I note that as contained within Council's DCP Clause 4.1.2.1- Exceptions to FSR for Undersized Lots, *"the undersized nature of a lot is a matter that Council may consider in determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case"* and *"there is sufficient environmental planning grounds to justify contravening the development standard"* under LEP clause 4.6(3). For the reasons outlined in this Clause 4.6 request and accompanying SEE, I consider that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and that there is 'sufficient environmental planning grounds to justify contravening the Development Standard.'

I note that Clause 4.1.3.1(a) of Council's DCP advises that *"The extent of any exception to the LEP FSR development standard pursuant to LEP clause 4.6 in this plan is to be no greater than the achievable FSR for the lot size indicated in Figure 30 - Extent of FSR Variation for Undersized Lots."* I note that Figure 30 does not identify Area B within this table as restricting the maximum variation.

Furthermore, I note that under DA 104/2016, Council approved an FSR of 0.6:1 at 75 Castle Circuit which has a comparable lot size and similar topography, advising that this breach was *"within the allowances for it in the Manly DCP Clause 4.1.3.1 Exceptions to FSR for Undersized Lots."*

This Clause 4.6 Request seeks to demonstrate that compliance with the FSR Development Standard is unreasonable or unnecessary by reference to the first test in *Wehbe*, that is that the objectives of the standard are achieved notwithstanding the non-compliance with the FSR Development Standard.



Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**3.0 PROPOSAL WILL BE IN PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD**

The proposed development will be in the public interest because it is consistent with both the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out. The subject site is located within the R2 Low Density Residential Zone.

The objectives of the R2 Low Density Residential zone are as follows:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

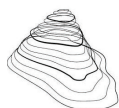
The proposal is consistent with the objectives of the R2 Low Density Residential zone, assisting in providing for the housing needs of the community within a low density residential environment.

The proposed alterations and additions comply with the relevant Objectives of the R2 Zone as follows;

- The proposed alterations and additions will provide for improved parking and access to the site, whilst removing traffic from the single lane shared driveway and providing additional off-street parking. Furthermore, the proposed alterations and additions will provide improved accessibility throughout the site through the introduction of the lift.
- The proposed alterations and additions result in an improved bedroom and living area within the residential dwelling. The improved bedroom and living area serve the needs of the current occupants of the subject site providing for the housing needs within the community.
- The proposed alterations and additions contribute to the variety of housing types and densities within the immediate area. The proposed alterations and additions ensure that the existing residential form of housing is retained, allowing for improved amenity for current and future occupants of the subject site without any unreasonable amenity impacts to adjoining properties.
- The proposed alterations and additions ensure the residential dwelling remains sympathetic to the existing streetscape. These design elements ensure that the proposed development, when viewed from the street complements the identified streetscape.

Based on Clause 4.4 of LEP 2013, the relevant Objectives of the FSR Standard for buildings in Zone R2 – Low Density Residential zone are as follows:

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



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- (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.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*
- (2A) *Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.*

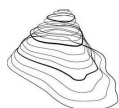
Comment:

The FSR Standard applicable to the subject site is 0.4:1 pursuant to Clause 4.4 under LEP 2013.

The FSR of the proposed development is 0.57:1, based on the advice of the Architect for the proposed development. The breach is approximately 43.9% over the maximum FSR Standard.

Despite the breach of the FSR Development Standard, I consider that the proposed alterations and additions comply with the following relevant objectives of this clause;

- The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.
- The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in Gross Floor Area.
- The proposed alterations and additions which increase the gross floor area ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation and maintain the existing



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topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed.

- The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.

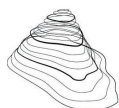
Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?**

For the reasons outlined in this Clause 4.6 Request and the accompanying SEE, I consider that the compliance with the FSR Standard under LEP 2013 is unreasonable and unnecessary in the circumstances of the proposed development.

The steps to considering in assessing whether compliance with the FSR Development Standard is unreasonable or unnecessary were confirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**) and are summarised below:

1. 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* [2007] NSWLEC 827 (**Wehbe**) at [42] and [43].
2. 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* at [45].
3. 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* at [46].
4. 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* at [47].
5. 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* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe* 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.
6. 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.

For the purposes of this request, it is my opinion that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are

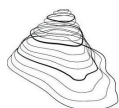


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achieved, notwithstanding non-compliance with the standard, consistent with the “first way” as set out in Step 3 above.

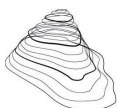
I wish to particularly note the following points: -

- The proposed development is consistent with the relevant objectives of the FSR development standard expressed by clauses 4.4 LEP 2013.
- The proposed development achieves the relevant Objectives of the R2 Low Density Residential zone.
- The proposed development will not result in any unreasonable environmental impacts upon the amenity of neighbouring properties in terms of visual bulk, privacy, overshadowing and view sharing.
- The proposed development satisfies the relevant tests established in *Wehbe v Pittwater Council* (2007) 156 LGERA 446.
- The proposed development will be consistent with the surrounding residential character of the area and will contribute to the variety of housing and help meet demand for housing in the locality.
- The overall bulk, scale and streetscape elements of the proposed development are compatible with the existing and desired future character of the locality.
- The underlying objective would be thwarted if strict compliance with the FSR development standard was applied as the development satisfies the objectives or purpose of the FSR standard, despite the non-compliance. The development allows a more efficient use of land and provides for improved living areas and access throughout the existing dwelling, contributing to the variety and availability of housing types in the area.
- For the reasons outlined in the accompanying SEE and this Clause 4.6 Request, I consider that the proposed development results in a range of Positive Outcomes:
 - i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
 - ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
 - iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in Gross Floor Area.
 - iv. The proposed alterations and additions which result in an increase in Gross Floor Area ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the additional Gross Floor Area.



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- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.
- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?**

For the reasons outlined in this Clause 4.6 Request and the SEE, I consider that there are strong environmental planning grounds to justify variation of the FSR Standard.

The adjectival phrase “*environmental planning grounds*” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act (the Act), including the Objects in Section 1.3 of the Act.

Clause 4.6(3)(b) requires the Applicant to demonstrate that there are sufficient Environmental Planning Grounds to contravene the development standard.

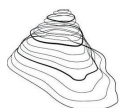
In *Initial Action* the Court found at [23]-[24] that:

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].

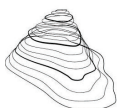
For the reasons outlined in this Clause 4.6 Request, I consider that the compliance with the FSR Standard under LEP 2013 is unreasonable and unnecessary in the circumstances of the proposed development.

I note the following environmental grounds or, in other words, the Positive Outcomes arising from the proposed development and the breach of the FSR Standard:



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- i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in Gross Floor Area.
- iv. The proposed alterations and additions which increase the Gross Floor Area ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the additional Gross Floor Area.
- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.
- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**6.0 STATE OR REGIONAL ENVIRONMENTAL PLANNING SIGNIFICANCE AND THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD**

Clause 4.6 (5) relates to matters for consideration by the Secretary as to “*whether contravention of the Development Standard raises any matter of significance for State or regional environmental planning.*”

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.

Would non-compliance raise any matter of significance for State or regional planning?

The non-compliance does not raise any other matter of significance for State or regional planning.

Is there a public benefit of maintaining the development standard?

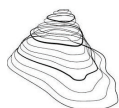
I consider that there is no public benefit associated with maintaining strict compliance with the development standard;

- The proposed development results in a range of positive outcomes as outlined in this Clause 4.6 Request and accompanying SEE.
- The breach of the FSR Standard does not result in any unreasonable environmental impacts.
- The proposed alterations and additions are of an attractive palate of colours and materials.
- I consider that, when viewed from the street, the proposed alterations and additions will result in an improvement in the visual aesthetics of the existing building.

Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no additional matters that need to be considered in exercising the assumed concurrence of the Secretary.

The contravention of the FSR Standard in the circumstances of this application does not raise any matter of significance for State or regional environmental planning.



Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth

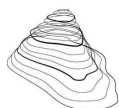
7.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

This Clause 4.6 Request has demonstrated and justified that:

- The proposed development satisfies the relevant objectives of the FSR development standard and Objectives of the R2 Low Density Residential Zone; and
- Sufficient environmental planning grounds have been established to justify the non-compliance, given the range of positive outcomes and the absence of adverse environmental impacts upon neighbouring properties and the public domain, relative to the FSR non-compliance.

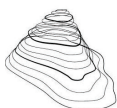
I consider that this objection is well founded for the reasons outlined in this Clause 4.6 Request and the accompanying SEE. I again note the range of positive outcomes which are listed below:

- i. The proposed alterations and additions maintain the residential use of the residential dwelling and provide for a built form that is of a bulk and scale consistent with the existing and desired streetscape character.
- ii. The proposed alterations and additions do not result in a development that obscures important landscape and townscape features.
- iii. The proposed alterations and additions maintain an appropriate visual relationship between new development and the existing character and landscape of the area. I note that no significant trees or vegetation are required to be removed as a result of the increase in Gross Floor Area.
- iv. The proposed alterations and additions which increase the gross floor area ensure no unreasonable adverse environmental impacts on the use or enjoyment of adjoining land and the public domain as they do not require any excavation and maintain the existing topography of the subject site. Furthermore, as noted above, no significant trees or vegetation are required to be removed as a result of the additional Gross Floor Area.
- v. The proposed alterations and additions do not result in any unreasonable overshadowing, overlooking, view loss, view impact or acoustic/visual privacy impact.
- vi. The proposed development is contextually appropriate to the area and is considered to result in a positive contribution to the streetscape and character of the area in terms of massing and architectural expression.
- vii. The proposed development maintains the existing views over the subject site.
- viii. The proposed development results in an improvement in passive surveillance of Castle Circuit.
- ix. There will be no increase in carparking demand as a result of the proposed development. The proposed garage is considered to be a positive element to the streetscape, providing off street parking and reducing traffic along the single lane shared driveway which previously provided vehicle access to the subject site.
- x. The proposed development is of a high standard of architectural design, incorporating attractive colours and materials.



Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth

- xi. The proposed alterations and additions do not represent an overdevelopment of the subject site. I note that the Open Space and Landscaped Area requirements of Council remain compliant with both the numerical requirements and objectives following the proposed alterations and additions.



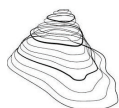
Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**8.0 CONCURRENCE OF DIRECTOR GENERAL**

- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
- (b) *the concurrence of the Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

Comment:

The Department issued Planning Circular No. PS18-003 (dated 21st February 2018) which notified Council of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6...of the Standard Instrument...”

Clause 64 of the EPA Regulations provide that Council may assume the Director General’s [Secretary’s] concurrence for exceptions to Development Standards, thus satisfying the terms of this provision.

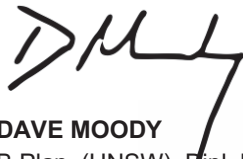


Clause 4.6 Request – FSR: 77 Castle Circuit, Seaforth**9.0 CONCLUSION**

Notwithstanding the breach of the FSR Standard, I consider that this request for variation of the FSR Standard is well founded.

I consider that the proposed development, notwithstanding the breach of the FSR Standard, will not have an unreasonable adverse impact on adjoining properties or the public domain and will result in a range of Positive Outcomes outlined in this Clause 4.6 Request and the accompanying SEE.

For the reasons provided within this Clause 4.6 request and accompanying SEE, variation of the FSR is supported. The Clause 4.6 request has adequately addressed the matters required under clause 4.6 of LEP 2013. Furthermore, it has been established that the proposed development would be in the public interest as it is consistent with the objectives of the FSR Development Standard and the Objectives of the R2 Low Density Residential Zone.

**DAVE MOODY**

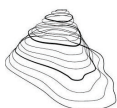
B.Plan. (UNSW), Dipl. Build. & Const. (MIBT), MPIA.

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Suite 11, 303 Barrenjoey Road, Newport NSW 2106



Northern
Development
Assessment

| | |
|-------------------|---|
| ITEM 3.3 | DA2023/0202 - 26 GREYCLIFFE STREET QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE |
| REPORTING MANAGER | Rod Piggott |
| TRIM FILE REF | 2023/335707 |
| 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 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 DA2023/0202 for alterations and additions to a dwelling house on land at Lot 23 DP 6076, 26 Greycliffe Street QUEENSCLIFF, subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|---|---|
| Application Number: | DA2023/0202 |
| Responsible Officer: | Jordan Howard |
| Land to be developed (Address): | Lot 23 DP 6076, 26 Greycliffe Street QUEENSCLIFF NSW 2096 |
| 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: | Daniel Antun Sestic Melanie Jane Sestic |
| Applicant: | Andrew Donaldson Architecture And Design Pty Ltd |
| Application Lodged: | 03/03/2023 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 09/03/2023 to 23/03/2023 |
| Advertised: | Not Advertised |
| Submissions Received: | 3 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 48.2% |
| Recommendation: | Approval |
| Estimated Cost of Works: | \$ 971,036.92 |

EXECUTIVE SUMMARY

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

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% (12.6m or 48.2%).

The 4.6 request for the non-compliance with the building height development standard is greatest at the rear of the property. The non compliance arises due to the site being highly constrained by its narrow

width, typography, orientation and existing structures. The steep slope to the rear of the property results in the largest extent of the breach. Furthermore, the roof form of the rear uppermost level is designed to provide northern sunlight penetration from northern highlight windows, resulting in additional height. Importantly, the proposal reduces the overall ridge height of the dwelling from RL 20.54m AHD to RL 19.481m AHD, which is also lower than the ridge height of neighbouring development.

Three (3) 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 proposed development comprises of the construction of alterations and additions to a dwelling house. Specifically, the proposal comprises of the following:

Roofs

- Lowering maximum Ridge Height from RL 20.540m AHD to RL 19.481m AHD (in kitchen / dining / lounge).
- Garage Roof Ridge Height RL 19.040m AHD.

Front Entrance

- New screen garage door, front fence and entry gate.
- Concrete planter above front fence.

Garage (RL 14.5m AHD)

- Alteration and additions to existing garage, including extension at the south-west corner.

Ground Floor (RL 15.330m AHD)

- Widening of walkway path from entry gate to front door, overhanging courtyard below.
- Internal alterations to provide for entry, mud room, lift, guest room, hall, stairwell, bathroom, kitchen, pantry, lounge and dining.
- Rearward extension of deck to provide outdoor dining.
- Changes to windows and doors.

Lower Ground Floor (RL 11.890m AHD)

- Internal alterations to provide for bedroom 2, bedroom 3, ensuite, laundry, lift, hall, stairwell, bathroom, bedroom 1.
- Bedroom 3 and laundry includes extension at to the west, located under extended south-eastern corner of garage above.
- Internal alterations to provide for master bedroom, 2 x walk in robe, ensuite and study (set higher at RL 12.250m AHD).
- Changes to windows and doors.

Basement Floor (RL 9.660m AHD)

- Internal alterations to provide rumpus, bathroom, beach foyer, stairs, lift and under house storage.
- Changes to doors and windows.

External Works (around building and in rear yard)

- Repair of existing side stairs and rear pathway.

Additional information was requested in relation to WLEP 2011 Clause 4.3 Height of Buildings & Clause 4.6 Exceptions to Development Standard, as well as WDCP Clause C7 Views, Clause D8 Privacy, B1 Wall Heights and B3 Side Boundary Envelope. Additional information and amended plans were provided which satisfied this request. This additional information and amended plans did not require renotification in accordance with the Northern Beaches Council Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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 - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 23 DP 6076 , 26 Greycliffe Street QUEENSLIFF NSW 2096 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the southern side of Greycliffe Street.</p> <p>The site is irregular in shape with a frontage of 10.665m along Greycliffe Street, east and west side boundaries both of 34.145m, and a south rear boundary of 10.8m. The site has a surveyed area of 358.7m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site slopes steeply from the north front boundary down to the rear south boundary, with an approximate crossfall of 12.5m.</p> <p>The site contains lawn areas, garden beds and trees. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses.</p> |

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:

DA2019/0670 for Alterations and additions to a dwelling house was approved on 25 July 2019.

DA2010/1134 for Alterations and Additions to a dwelling-house and Construction of a front fence screen and gates was approved on 23 August 2010.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration | Comments |
|---|---|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on “Environmental Planning Instruments” in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | There are no current draft environmental planning instruments. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Warringah Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021) | <p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to WLEP 2011 Clause 4.3 Height of Buildings & Clause 4.6 Exceptions to Development Standard, as well as WDCP Clause C7 Views, Clause D8 Privacy, B1 Wall Heights and B3 Side Boundary Envelope.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a</p> |

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/03/2023 to 23/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

| Name: | Address: |
|------------------------|---|
| Mr David James Bell | 24 Greycliffe Street QUEENSCLIFF NSW 2096 |
| Mrs Sallie Ann Portnoy | 28 Greycliffe Street QUEENSCLIFF NSW 2096 |
| Withheld | QUEENSCLIFF NSW 2096 |

The following issues were raised in the submissions:

- **View loss from west of the subject site**

The submissions raised concerns regarding the impact of the proposed development on the view obtained from 28 Greycliffe Street, the adjoining property to the west of the subject site.

Comment:

A site inspection was carried out from this adjacent property to ascertain the extent of the view impact and other concerns raised. The view loss from this location was raised to the applicant and amended plans were received which considered concerns raised.

A full view loss assessment is undertaken in the section of this report on WDCP Clause D7 Views. This assessment focused on the view from a bedroom/study window on the south-eastern corner of the upper floor of 28 Greycliffe Street. This window was considered the most affected, with other windows on the upper floor able to obtain a view of Queenscliff Beach and Manly Lagoon unobstructed by the proposal. Other locations such as terraces at 28 Greycliffe Street are also discussed the view loss assessment, however, again the window of the bedroom/study was considered most affected, and is therefore the focus of the view loss assessment.

In summary, amendments sought during the assessment process have resulted in a proposal which provides an acceptable level of view sharing. This is fully outlined in the section of this report on WDCP Clause D7 Views.

- **Privacy impacts to the west of the subject site**

The submissions raised concerns regarding the impact of the proposed development on the privacy of 28 Greycliffe Street, the adjoining property to the west of the subject site.

Comment:

Refer to the section of this report on WDCP Clause D8 Privacy for a detailed assessment of privacy. In summary, amendments sought during the assessment process have resulted in a proposal that is not considered to create unreasonable privacy impacts.

The potential for overlooking was raised in regards to the original proposed balcony. The amended proposal has reduced the scope of the balcony by removing the western section. This has moved the trafficable area of the balcony away from the 28 Greycliffe Street. The focus of this balcony is views of Queenscliff Beach and Manly Lagoon towards the east and south. The amended positioning of the trafficable area, in regard to sight lines around the existing western dwelling wall and proposed planter balcony, has reduced the potential impact of overlooking to an acceptable standard of privacy. It should also be noted that privacy screening on the western elevation would exacerbate view loss.

- **View loss from east of the subject site**

The submissions raised concerns regarding the impact of the proposed development on the view obtained from 24 Greycliffe Street, the adjoining property to the east of the subject site.

Comment:

A site inspection was carried out from this adjacent property to ascertain the extent of the view

impact and other concerns raised. A full view loss assessment is undertaken in the section of this report on WDCP Clause D7 Views. In summary, the amended proposal is considered to provide an acceptable level of view sharing.

- **Privacy impacts to the east of the subject site**

The submissions raised concerns regarding the impact of the proposed development on the privacy of 24 Greycliffe Street, the adjoining property to the east of the subject site.

Comment:

Refer to the section of this report on WDCP Clause D8 Privacy for a detailed assessment of privacy. In summary, the amended proposal is considered not to create unreasonable privacy impacts.

Privacy to 24 Greycliffe is provided with fixed privacy solutions, including privacy screens and obscure glass. Privacy solutions on both sites provide for adequate privacy, considering the narrow allotments and close proximity as existing.

- **Protrusion of development further south than surrounding development**

The submissions raised concerns that the proposed development extends further south than the existing rear building line established by surrounding development.

Comment:

The proposal is fully compliant with WDCP Clause B9 Rear Boundary Setback, which requires a 6m setback. Non-compliances with other controls are assessed within relevant sections of this report as supported on merit, in this case.

- **Visual impact of development on Manly Lagoon**

The submissions raised concerns that the development would detract from the beauty of Manly Lagoon or impact on the environment.

Comment:

The overall ridge height of the proposal is RL 19.481m AHD, which is lower than the existing ridge height of RL 20.54m AHD and neighbouring ridge height of RL 20.03m AHD. While the proposed development will be visible from the Manly Lagoon Reserve, the visual impact is considered commensurate with the surrounding built form and is not considered to result in any unacceptable impacts as a result.

The proposal has also been reviewed by Council's Natural Environment Unit officers in regards to Flooding, Bushland and Biodiversity, Riparian Lands and Creeks and Coasts and Catchments. These referral bodies have all supported to the proposal, subject to conditions.

- **Solar access impacts on adjoining properties**

The submissions raised concerns that the development will result in loss of solar access to adjoining properties.

Comment:

Refer to the section of this report on WDCP Clause D6 Sunlight Access for a detailed assessment of solar access. In summary, considering existing site conditions, natural topography and built form, the development is not considered to create unreasonable overshadowing on public or private spaces.

- **Acoustic privacy**

The submissions raised concerns that the completed development will result in more noise. Related was concern that the development would result in more people living in the dwelling.

Comment:

The proposed development remains a dwelling house, with no change of use proposed. Considering the use is not being intensified from its existing residential use, the acoustic impact of the finished dwelling is not expected to be increased or unreasonable.

- **Construction impacts**

The submissions raised concerns over various impacts related to construction of any development.

Comment:

Conditions of consent in relation to building works have been included to ensure that works do not interfere with reasonable amenity expectations of residents and the community. This includes the restriction of building construction and delivery of material hours to 7.00 am to 5.00 pm Monday to Friday, 8.00 am to 1.00 pm on Saturday, and 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. Furthermore, construction works will have to comply with any legislative requirements that apply to the site or works.

- **Effect on the property values of adjoining properties and concerns related to compensation**

The submissions raised concerns that surrounding property values would negatively be effected. Also raised were questions on compensation of surrounding properties and businesses, both in regards to compensation for the impacts of construction and compensation for the impacts of the proposed development.

Comment:

Property value impacts are not a relevant planning consideration for Council under the Section 4.15 of the *EP&A Act 1979*. However, impacts raised as potential causes of property devaluation, such as solar access, privacy and views, have been assessed pursuant to relevant planning controls. Compensation for construction impacts or impacts of the proposed development are also not relevant planning considerations under the Section 4.15 of the *EP&A Act 1979*.

REFERRALS

| Internal Referral Body | Comments |
|------------------------|---|
| Landscape Officer | <p>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):</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation <p>The Plans indicate that the existing landscape features (rock face and ledge outcrops, trees and vegetation) at the rear of the property shall be retained, and Landscape Referral consider such retention are key</p> |

| Internal Referral Body | Comments |
|----------------------------------|--|
| | <p>to ensuring the proposed development is integrated into the existing landscape setting facing Manly Lagoon.</p> <p>Additionally the landscape setting is proposed to be improved as indicated on the Plans with the addition of planters to soften the building facade.</p> <p>Landscape Referral raise no concerns subject to conditions.</p> |
| NECC (Bushland and Biodiversity) | <p>The proposal seeks approval for alterations and additions to a dwelling.</p> <p>The comments on this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) 2021 - Chapter 2.10 Development within the coastal environment • Warringah DCP 2011 - Clause E2 Prescribed Vegetation • Warringah DCP 2011 - Clause E4 Wildlife Corridors • Warringah DCP 2011 - Clause E6 Retaining Unique Environmental features <p>The proposed alterations and additions are unlikely to have an impact on native flora and fauna as they would take place in previously disturbed areas of the site.</p> <p>No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p> |
| NECC (Coast and Catchments) | <p>SUPPORTED WITH CONDITIONS</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021 and - Relevant LEP and DCP clauses <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this DA. The proposed development is considered to be consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP). Hence, Clauses</p> |

| Internal Referral Body | Comments |
|----------------------------------|---|
| | <p>2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Andrew Donaldson Architecture & Design dated MARCH 2023, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Warringah LEP 2011 and Warringah DCP 2011 The subject site has been identified as being within Waterways and Riparian Lands hence, Part E8 of the Warringah DCP is applicable to this DA. On internal assessment and assessed in the Waterway Impact Statement prepared by GIS Environmental Consultants dated February 2023, the DA satisfies requirements under Part E8 of the Warringah DCP.</p> |
| NECC (Development Engineering) | <p>The application seeks consent for alterations and additions to a dwelling house.</p> <p>Access The Geotechnical Report prepared by White Geotechnical Group, dated 10/02/2023, is noted.</p> <p>The proposed garage requires reconstruction of the existing vehicle crossing. The proposed new vehicle crossing is to be 5.75m wide at edge of bitumen and 5.75m wide at boundary. Driveway profile must be in compliance with Council's Standard Vehicle Crossing Profile - Normal.</p> <p>Stormwater The subject site is a low level property, falling towards the rear of the property and discharging into Manly Lagoon. The Stormwater Management Plans prepared by NB Consulting Engineers, dated 07/02/2023, is noted. No changes are proposed to the existing stormwater management system for the property. The proposed alterations and additions will connect into the existing drainage system, which point discharges into Manly Lagoon.</p> <p>The proposal is supported, subject to conditions.</p> |
| NECC (Flooding) | <p>The development proposes alterations and additions to the existing dwelling. The proposed modifications are not considered to increase flood risk. There are no flood related objections.</p> |
| NECC (Riparian Lands and Creeks) | <p>Supported. This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy |

| Internal Referral Body | Comments |
|-------------------------------------|---|
| | <p>The site abuts Queenscliff lagoon on land identified as waterways and riparian land. As such, the development must not significantly impact on the biophysical, hydrological or ecological integrity of the lagoon, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development. Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> |
| Parks, reserves, beaches, foreshore | <p>The development site adjoins Lagoon Park Reserve and its lagoon that is located downslope of the property.</p> <p>All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the Reserve.</p> <p>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.</p> <p>Public access to the reserve is not impacted by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p> |

| External Referral Body | Comments |
|---|--|
| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48 | <p>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.</p> |
| Aboriginal Heritage Office | <p>Development Application No. DA2023/0202 Description: Alterations and additions to a dwelling house Address: 26 Greycliffe Street QUEENSCLIFF</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>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.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>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</p> |

| External Referral Body | Comments |
|------------------------|--|
| | 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. A478433_03, issued 29 May 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021**Chapter 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 2 Coastal Vulnerability Area**2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

There is currently no adopted Coastal Vulnerability Area Map, however, Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, subject to conditions.

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

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

Comment:

The proposed development consists of alterations and additions to an existing dwelling. The works are not considered to have adverse impacts on the above matters. Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, subject to conditions.

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

Comment:

The proposed development has been sited so as not to cause adverse impacts on the coastal environment.

Division 4 Coastal use area**2.11 Development on land within the coastal use area**

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

Comment:

The proposed development has been sited so as the above is considered.

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 nature of the alterations and additions are such that the development will not result in an increased risk of coastal hazards. Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, subject to conditions.

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

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

Comment:

There are no certified coastal management programs that apply to the land. Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, subject to conditions.

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

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

| Standard | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|--|----------------|----------|
| Height of Buildings: | 8.5m | 11m (maximum height of existing dwelling) 12.6m | 29.4% 48.2% | No No |

Compliance Assessment

| Clause | Compliance with Requirements |
|---|---|
| 4.3 Height of buildings | No (see detail under Clause 4.6 below) |
| 4.6 Exceptions to development standards | Yes |
| 5.21 Flood planning | Yes |
| 6.1 Acid sulfate soils | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Development on sloping land | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 12.6m |
| Percentage variation to requirement: | 48.2% |

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

- (a) *that compliance with the development standard is unreasonable or unnecessary in the*

circumstances of the case, and

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

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

The applicants written request argues, in part:

- The proposal reduces the overall ridge height of the dwelling from RL 20.54m AHD to RL 19.481m AHD, which is also lower than the ridge height of neighbouring development.
- The development complies with the relevant objectives of the R2 Low Density Residential Zone of the WLEP 2011.
- The development complies with the relevant objectives of the Height of Buildings development standard of the WLEP 2011.
- The proposed development has been designed with respect for neighbouring amenity.
- The breach is caused by a very steep drop-off to the rear of the property and the need to raise the internal roof to allow for northern sunlight access to the living areas.

It is considered that the arguments provided by the applicant are acceptable. The site is highly constrained by its narrow width, topography and existing structures. The breach is worst at the very rear of the property at the proposed balcony, which overhangs the portion of the site which drops steeply towards the rear. The height here reaches 12.6m. At the adjacent living room the height is 10.1m. This breach is also due to site constraints, as the roof is lifted to provide northern sunlight penetration from northern highlight windows. Also important to note is that the alterations and additions reduce the overall ridge height of the dwelling.

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 overall ridge height of the proposal is RL 19.481m AHD, which is lower than the existing ridge height of RL 20.54m AHD and neighbouring ridge height of RL 20.03m AHD. The existing dwelling exhibits a non-compliant maximum height of 11m. The proposal is of a comparable size, height and scale to surrounding development. Surrounding development is also restricted by the steeply sloping topography and orientation. The proposed development is considered to satisfy this objective.

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

Comment:

Refer to the section of this report on WDCP Clause D6 Sunlight Access for a detailed assessment of solar access. In summary, considering existing site conditions, natural topography and built form, the development is not considered to create unreasonable overshadowing on public or private spaces.

Refer to the section of this report on WDCP Clause D7 Views for a detailed assessment of views. In summary, amendments sought during the assessment process have resulted in a proposal which provides an acceptable level of view sharing.

Refer to the section of this report on WDCP Clause D8 Privacy for a detailed assessment of privacy. In summary, the development is not considered to create unreasonable privacy impacts.

In accordance with the above, the proposed development is considered to satisfy this objective.

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

Comment:

The alterations and additions are not considered to adversely impact on the scenic quality of Warringah's coastal and bush environments. The proposed development is considered to satisfy this objective.

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

Comment:

While the proposed development will be visible from the Manly Lagoon Reserve, the visual impact is considered commensurate with the surrounding built form and is not considered to result in any unacceptable impacts as a result. The proposed development is considered to satisfy this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.3 – ‘Height of buildings’.

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 result in a single dwelling house suitable for accommodating the needs of occupants and commensurate with the surrounding residential environment. The proposed development is considered to satisfy this objective.

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

Comment:

The site does not contain or propose any other land uses other than residential. As such, this objective is not relevant in this case.

- *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 maintains a landscaped area between the dwelling and the northern bank of the Manly Lagoon, consistent with surrounding development. Furthermore, the proposed built form is commensurate with the surrounding residential environment on this side of the lagoon and along Greycliffe Street. The proposed development is considered to satisfy 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 | 10.1m (eastern elevation balcony privacy screen) 9.5m (western elevation) | 40.3% 31.9% | No No |
| B3 Side Boundary Envelope | East 5m | Outside envelope (<i>Figure B3.1</i>) | Maximum 64.5% | No |
| | West 5m | Outside envelope (<i>Figure B3.2</i>) | Maximum 81.7% | No |
| B5 Side Boundary Setbacks | East 0.9m | 1.2m (to dwelling) | - | Yes |
| | West 0.9m | 1m (to southern portion of dwelling) Nil (to garage, laundry and bedroom 3 extension) | - 100% | Yes No |
| B7 Front Boundary Setbacks | 6.5m | Nil | 100% | No |
| B9 Rear Boundary Setbacks | 6m | 6m | - | Yes |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40% (143.5m ²) | 18.1% (65.1m ²) | 54.6% (78.4m 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 |
| B9 Rear Boundary Setbacks | Yes | Yes |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | Yes | Yes |
| C4 Stormwater | Yes | Yes |
| C6 Building over or adjacent to Constructed Council Drainage Easements | Yes | Yes |
| C7 Excavation and Landfill | Yes | Yes |
| C8 Demolition and Construction | Yes | Yes |
| C9 Waste Management | Yes | Yes |
| | | |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| D1 Landscaped Open Space and Bushland Setting | No | Yes |
| D2 Private Open Space | No | Yes |
| D3 Noise | Yes | Yes |
| D6 Access to Sunlight | No | Yes |
| D7 Views | Yes | Yes |
| D8 Privacy | Yes | Yes |
| D9 Building Bulk | No | Yes |
| D10 Building Colours and Materials | Yes | Yes |
| D11 Roofs | Yes | Yes |
| D12 Glare and Reflection | Yes | Yes |
| D14 Site Facilities | Yes | Yes |
| D20 Safety and Security | Yes | Yes |
| D21 Provision and Location of Utility Services | Yes | Yes |
| E1 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| E2 Prescribed Vegetation | Yes | Yes |
| E4 Wildlife Corridors | Yes | Yes |
| E6 Retaining unique environmental features | Yes | Yes |
| E7 Development on land adjoining public open space | Yes | Yes |
| E8 Waterways and Riparian Lands | Yes | Yes |
| E10 Landslip Risk | Yes | Yes |
| E11 Flood Prone Land | Yes | Yes |

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Clause B1 Wall Heights requires that walls are not to exceed 7.2 metres 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 presents a wall height of 10.1m measured to the eastern elevation balcony privacy screen. This represents a 40.3% variation to the control and is the maximum wall height of the proposal.

The proposal also presents a wall height of 9.5m measured on the western elevation. This represents a 31.9% variation to the control.

Merit consideration:

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

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

Comment:

The non-compliance with the wall height control relates to both the eastern and western elevations and is most pronounced toward the upper section of the lounge / dining / kitchen room and balcony at the rear of the Ground Floor. The roof of this section is raised to allow highlight windows to deliver northern sunlight. The overall ridge height of the proposal is RL 19.481m AHD, which is lower than the existing ridge height of RL 20.54m AHD and neighbouring ridge height of RL 20.03m AHD. The building is visible from the coastal zone (Manly / Queenscliff Beach and Manly Lagoon) but is consistent with the height / scale and density of surrounding dwellings. The established character is such that the proposed wall height would not contribute to a visual impact that is inappropriate or incompatible when viewed from adjoining properties, the streetscape, waterways or public recreation areas. The proposed development is considered to satisfy this objective.

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

Comment:

The onsite vegetation is limited to the rear (south) of the site, which is located considerably lower than the dwelling due to the steep drop off at the rear. The site also has very thin soil profile with bedrock close to the surface. This is part of the natural topography around Queenscliff with the pattern of surrounding development whereby most houses do not have large canopy trees. Due to the slope of the site and the limited canopy trees within the remainder of the site there are no trees to sit below. Nonetheless, the height of the development is commensurate to surrounding development. The proposed development is considered to satisfy this objective.

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

Comment:

Refer to the section of this report on WDCP Clause D7 Views for a detailed assessment of views. In summary, amendments sought during the assessment process have resulted in a proposal which provides an acceptable level of view sharing. Therefore, the proposed development is considered to satisfy this objective.

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

Comment:

Refer to the section of this report on WDCP Clause D6 Sunlight Access for a detailed assessment of solar access. In summary, considering existing site conditions, natural topography and built form, the development is not considered to create unreasonable overshadowing on public or private spaces.

Refer to the section of this report on WDCP Clause D8 Privacy for a detailed assessment of privacy. In summary, the development is not considered to create unreasonable privacy impacts.

The proposal is not considered to result in an unreasonable amenity impact on adjoining properties. Therefore, the proposed development is considered to satisfy this objective.

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

Comment:

The development is sited to minimise excavation depth. The dwelling responds appropriately to the topography given the steep gradient of the site and the nature of alterations and additions requiring response to the existing built form. The proposed development is considered to satisfy this objective.

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

Comment:

The overall ridge height of the proposal is RL 19.481m AHD, which is lower than the existing ridge height of RL 20.54m AHD and neighbouring ridge height of RL 20.03m AHD. The roof is articulated and designed to minimise overall height, whilst allowing for sunlight access from north facing highlight windows. The proposed development is considered to satisfy this objective.

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

Under this clause, buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 5m above ground level (existing) at the side boundaries.

The proposed development breaches the side building envelope on the eastern elevation as depicted in *Figure 1*. The breach runs for a horizontal length of 21.5m and has a maximum vertical height of 3.9m.

The proposed development breaches the side building envelope on the western elevation as depicted in *Figure 2*. The breach runs for a horizontal length of 25.2m and has a maximum vertical height of 3.7m.

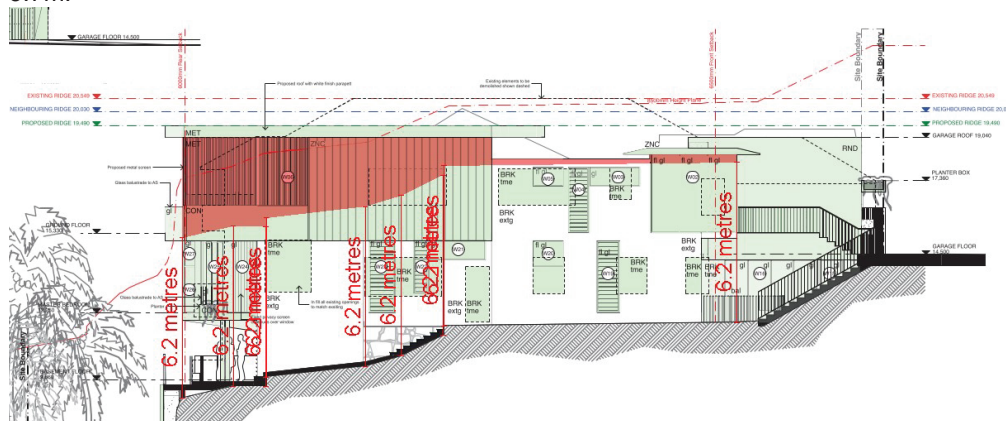


Figure B3.1 - Extract from the Eastern Elevation with side boundary envelope encroachment in red

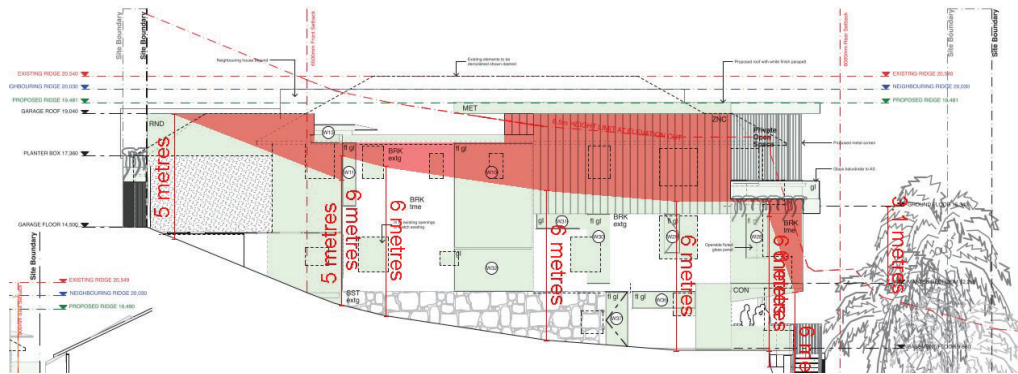


Figure B3.2 - Extract from the Western Elevation with side boundary envelope encroachment in red

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 non-compliance with the building envelope control relates to both the eastern and western elevations and is most pronounced toward the upper section of the lounge / dining / kitchen room, balcony at the rear of the Ground Floor and rear extension of the Master Bedroom and Ensuite. The roof of the rear Ground Floor is raised to allow highlight windows to deliver northern sunlight. The overall ridge height of the proposal is RL 19.481m AHD, which is lower than the existing ridge height of RL 20.54m AHD and neighbouring ridge height of RL 20.03m AHD. The building is consistent with the height / scale and density of surrounding dwellings. Furthermore, the steep slope at the rear of the site results in an increased breach at the rear. The established character and typography is such that the proposed building would not be considered to become visually dominant by virtue of its height and bulk. The proposed development is considered to satisfy this objective.

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

Comment:

Refer to the section of this report on WDCP Clause D6 Sunlight Access for a detailed assessment of solar access. In summary, considering existing site conditions, natural topography and built form, the development is not considered to create unreasonable overshadowing on public or private spaces.

Refer to the section of this report on WDCP Clause D8 Privacy for a detailed assessment of privacy. In summary, the development is not considered to create unreasonable privacy impacts.

The proposal is not considered to result in an unreasonable amenity impact on adjoining properties and is considered to provide adequate spatial separation between buildings, given the constraints of the site and existing built form. Therefore, the proposed development is

considered to satisfy this objective.

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

Comment:

The proposal does not include any significant excavation and is consistent with surrounding dwellings on similar topography. The proposal is for additions and alterations and also must contend with the constraints of designing around existing site structures. The proposed development is considered to satisfy this objective.

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

Under Clause B5 Side Boundary Setbacks of the DCP, development is to maintain a minimum setback from the side boundaries of 0.9m.

The proposed development has a setback from the eastern boundary of 1.2m, complying with this control.

The proposed development has a setback from the western boundary of 1m along the majority of the elevation, in compliance with the control. The existing garage has a nil setback to the western side boundary, abutting a structure in 28 Greycliffe Street that also has a nil setback to the shared side boundary. The garage is proposed to be extended at the south-west corner, with a nil setback to the boundary. This represents a 100% variation to the control. This extension will also abut the structure at 28 Greycliffe Street, extending no further south than the edge of that structure.

Merit consideration

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

- To provide opportunities for deep soil landscape areas.

Comment:

The proposal is generally compliant with the site setback requirements. The non-compliance does not create any unreasonable loss of opportunity for deep soil landscaping space. The proposed development is considered to satisfy this objective.

- To ensure that development does not become visually dominant.

Comment:

The overall bulk and scale of the building is consistent with the pattern of surrounding development. The proposed non-compliance is minor in size, on a portion of the existing dwelling with an existing nil setback, and along shared boundary that has a structure in the adjoining property (28 Greycliffe Street) that also has a nil setback. The proposed development

is considered to satisfy this objective.

- To ensure that the scale and bulk of buildings is minimised.

Comment:

The non-compliance to the side setback does not result in any adverse building bulk or scale to the proposal. The proposed development is considered to satisfy this objective.

- To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.

Comment:

The non-compliance to the side setback does not create any unreasonable level of privacy impact, or loss of amenity and solar access to surrounding land. Please see the relevant sections of this report concerning privacy and solar access for further comments on the proposal as a whole. The proposed development is considered to satisfy this objective.

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

Comment:

The non-compliance to the side setback does not create any unreasonable view sharing impacts on public or private properties. Refer to the section of this report on WDCP Clause D7 Views for a detailed assessment of views concerning the proposal as a whole. The proposed development is considered to satisfy this objective.

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

Under Clause B7 Front Boundary Setbacks of the DCP, development is to maintain a minimum setback from the front boundary of 6.5m.

The proposed development includes alterations to the existing garage, which has a setback from the front boundary of nil, representing a variation of 100%.

The proposal also includes other alterations and additions within the front setback area, including a new entry at the Ground Floor setback 5.7m from the front boundary, alterations to Bedroom 3 and Ensuite under the garage at the Lower Ground Floor, and a Tool / Mech Room at the Basement Floor.

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 site is heavily constrained by topography, existing structures and a narrow allotment. Due to the drop off in level from the road level to the front courtyard, only the double garage is fronting the public domain. The proposed configuration of the front setback is considered to satisfy this objective given the site constraints and existing layout.

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

Comment:

Due to the restricted access into Greycliffe Street (effectively a slip road), the consistent pattern of front setbacks consists of garage structures with nil setback to the front and some side boundaries. Predominantly, dwellings along this section of Greycliffe Street are focused to the south toward the lagoon with parking and access off Greycliffe Street. Accordingly, the proposed development is considered to adequately maintain the visual continuity and pattern of buildings and landscape elements in this location. The proposed development is considered to satisfy this objective.

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

Comment:

As above, this part of Greycliffe Street exhibits garage structures with nil front and side setbacks. The proposal enhances the quality of this streetscape. The proposed development is considered to satisfy this objective.

- To achieve reasonable view sharing.

Comment:

The non-compliance to the front setback does not create any unreasonable view sharing impacts on public or private properties. Refer to the section of this report on WDCP Clause D7 Views for a detailed assessment of views concerning the proposal as a whole. The proposed development is considered to satisfy this objective.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Clause D1 Landscape Open Space and Bushland Setting of the DCP requires the minimum landscaped open space (LOS) as being 40% (143.5m²) of the site area with minimum dimensions of 2 metres.

The proposed development includes 18.1% (65.1m²) landscaped open space, representing a variation of 54.6% (78.4m²).

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:

There is no proposed loss of landscaped open space, with the additions and alterations occurring largely within the footprint of the existing dwelling, or over existing hard surfaces. The proposed development is considered to satisfy this objective.

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

Comment:

The proposal does not require the removal of any significant vegetation to facilitate the development, with the additions and alterations occurring largely within the footprint of the existing dwelling, or over existing hard surfaces. The rear (south) of the site is heavily vegetated and is to be maintained as part of this proposal. The proposed development is considered to satisfy this objective.

- 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 natural topography, geology and existing building on site and surrounding makes the establishment of canopy trees and vegetation difficult. The rear (south) of the site is heavily vegetated and is to be maintained as part of this proposal. The proposed development is considered to satisfy this objective.

- To enhance privacy between buildings.

Comment:

Refer to the section of this report on WDCP Clause D8 Privacy for a detailed assessment of privacy. In summary, the development is not considered to create unreasonable privacy impacts.

The proposed privacy screening and layout of the proposed additions and alterations are considered to maintain and enhance privacy between buildings. Therefore, the proposed development is considered to satisfy this objective.

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

Comment:

Refer to the section of this report on WDCP Clause D2 Private Open Space. In summary, whilst some technical non-compliances arise with the provision of private open space, the proposal is considered acceptable due to existing site constraints. The proposal includes a rear balcony on the Ground Floor which will provide additional outdoor space off the principle living area to meet the needs of the occupants. The proposed development is considered to satisfy this objective.

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

Comment:

The proposal maintains adequate space for service functions.

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

Comment:

The proposed development lies mostly on existing hard surface area. The site has adequate permeable surfaces to ensure that water management and the natural infiltration of stormwater into the ground can occur. Council's Development Engineers have reviewed the proposal in regards to stormwater and support the proposal, subject to conditions. The proposed development is considered to satisfy this objective.

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.

D2 Private Open Space

Description of non-compliance

As a dwelling house with 3 or more bedrooms, this control requires a total private open space of 60m², with minimum dimensions of 5 metres.

The proposal does not technically meet this requirement, as areas are often less than 5 meters in dimensions where provided. The proposed Ground Floor rear balcony, Lower Ground Floor sunken courtyard, Basement sunken garden and Basement existing rear terrace together provide 71.6m² of private open space, but do not meet the dimensions requirement.

A further technical non-compliance arises as areas of private open space proposed do not obtain sufficient solar access, as outline in the section of this report on WDCP Clause D6 Access to Sunlight.

Furthermore, the Lower Ground Floor sunken courtyard and Basement sunken garden are within the front setback area. This clause requires private open space not be located in the primary front building 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 ensure that all residential development is provided with functional, well located areas of private open space.

Comment:

The proposed development increases the private open space provided within functional, well located areas, particularly noting the Ground Floor rear balcony extension. This balcony is located off the main living area and will meet the needs of the occupants. The proposed development is considered to satisfy this objective.

- To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.

Comment:

As noted above, the proposal expands private open space accessible from the Ground Floor main living area. The proposed development is considered to satisfy this objective.

- To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.

Comment:

The narrow lot width, site constraints and existing layout of buildings influence the ability to fully comply with built form controls. However, on merit the proposal responds to these issues and does not create any unreasonable impacts. Refer to the relevant sections of this report on amenity impacts such as Access to Sunlight, Views and Privacy. Suitable privacy screening has been included to maintain reasonable privacy. Areas of private open space are appropriately located consistent with the pattern of surrounding development (consisting of areas in the rear of properties to take advantage of the view to Queenscliff Beach and Manly Lagoon). The proposed development is considered to satisfy this objective.

- To ensure that private open space receives sufficient solar access and privacy.

Comment:

Whilst solar access to private open space does not meet the WDCP Clause D6 Access to Sunlight requirements, private open space areas are proposed that will support a range of private recreational activities. The narrow lot width, site constraints and existing layout of buildings influence the ability to fully comply with this control. The proposed development is considered to satisfy this objective, given the constraints of the site.

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.

D6 Access to Sunlight

Detailed Description of Non-Compliance

Clause D6 stipulates that 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 control also requires that development should avoid unreasonable overshadowing any public open space.

Submissions have raised concerns regarding solar and light access to surrounding properties, and of the proposals impact on the Manly Lagoon area.

The overshadowing of public space to the south of the development is considered reasonable, as the public space (Manly Lagoon and surrounds) is located to the south of significant embankment where the subject site is located. The overall ridge height of the proposal is RL 19.481m AHD, which is lower than the existing ridge height of RL 20.54m AHD and neighbouring ridge height of RL 20.03m AHD. Therefore, the impact on public space is considered reasonable.

The proposal does not meet the required solar access to private open space on the subject site. However, the overshadowing is considered existing to the site, resulting from the steep topography, which slopes to the south and is the least favorable for solar access. Furthermore, the proposal is for additions and alterations to an existing dwelling, and the dwelling as existing, and existing surrounding dwellings, contribute to overshadowing of the subject site.

Regarding solar access to neighbouring properties, the proposed development does not unreasonable contribute to additional overshadowing. Again, the overall ridge height of the proposal is RL 19.481m AHD, which is lower than the existing ridge height of RL 20.54m AHD and neighbouring ridge height of RL 20.03m AHD. Shadow Diagrams provided by the applicant show additional overshadowing to neighboring properties is very minimal, with any non-compliance with solar access requirements at neighboring sites an existing condition. Neighbouring properties are also impacted by the same natural topography and orientations constraints which limit solar access.

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:

As stated above, reasonable access to sunlight, both from private and public spaces, is considered to be maintained. The existing site constraints and topography contribute to solar access non-compliances. The proposed development is considered to satisfy this objective.

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

Comment:

Design amendments were requested during the assessment process to address various other concerns. The end design has resulted in a superior design outcome considering amenity of neighbouring sites. The overall ridge height of the dwelling has been reduced by the proposal, whilst incorporating highlight windows to deliver northern sunlight into the main living areas. The proposed development is considered to satisfy this objective.

- *To promote passive solar design and the use of solar energy.*

Comment:

The existing site constraints and topography contribute to difficulties obtaining solar access. However, the proposal includes design solutions incorporating passive solar design. The inclusion of highlight windows to deliver northern sunlight into the main living areas whilst reducing the overall ridge height incorporates passive solar design. The proposed development is considered to satisfy this objective.

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

D7 Views

Submissions from neighbouring properties raised concerns regarding view loss. The merit consideration below includes two view loss assessments, one from the adjoining neighbour to the east (24 Greycliffe Street) and one from the adjoining neighbour to the west (28 Greycliffe Street). Below are images taken during site visits to the neighbouring properties:

24 Greycliffe Street - East of the Subject Site

A site inspection was carried out from this adjacent property on 14 April 2023 to ascertain the extent of the view impact and other concerns raised. It is noted that the information submitted with the application was sufficient to enable an accurate view impact assessment based off the levels of the existing building. Height poles were not required to be erected in this instance.



Figure D7.1 - View from balcony 24 of Greycliffe Street looking West (towards subject site)



Figure D7.2 - View from balcony 24 of Greycliffe Street looking South



Figure D7.3 - View from balcony 24 of Greycliffe Street looking South-East



Figure D7.4 - View from living room of 24 Greycliffe Street looking South-South-West (towards subject site)

28 Greycliffe Street - West of the Subject Site

A site inspection was carried out from this adjacent property on 20 April 2023 to ascertain the extent of the view impact and other concerns raised. It is noted that the information submitted with the application was sufficient to enable an accurate view impact assessment based off the levels of the existing building. Height poles were not required to be erected in this instance. The view loss from this location was raised to the applicant and amended plans were received which considered concerns raised.



Figure D7.5 - View from upper floor bedroom/study 28 of Greycliffe Street looking East (towards subject site)



Figure D7.6 - View from upper rear patio 28 of Greycliffe Street looking East (towards subject site)



Figure D7.7 - View from lower rear patio 28 of Greycliffe Street looking East (towards subject site)

Merit consideration

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

- To allow for the reasonable sharing of views.

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1 (24 Greycliffe Street - East of the Subject Site):

It should first be noted that this view is described from the upper floor balcony and living room. Whilst there is a small area of grass below this balcony which could be considered private open space, this is not a substantial area, and the view effected from there is mainly of the sky. Furthermore, this upper balcony could be considered the main area of private open space, connected to the main living areas of 24 Greycliffe.

The view affected from 24 Greycliffe is one to the south-west. *Figure D7.1* provides a photograph taken looking towards the subject site from the edge of the balcony. Measured on plan DA002, Rev. C, the proposed privacy screen on the eastern elevation of the proposed balcony will extend 2m from where the existing balcony is at this elevation (which is obscured in *Figure D7.1* by a privacy screen on 24 Greycliffe). The proposed balcony angles outwards, and measured on the same plan will extend 1.4m further south at its southern most point than the furthest extent of the existing balcony.

The view affected is of the sky to the west (which as noted in submissions contains a view of the sunset), trees, and elements of Manly Lagoon seen through trees and vegetation. The land-water interface of Manly Lagoon could be viewed in this direction though trees and vegetation, however it is not entirely discernable.

Notably, the view in the direction of the subject site is on the edge of a sweeping panoramic view obtained from the balcony of 24 Greycliffe (see *Figures D7.1, D7.2, D7.3*). This view includes Queenscliff Beach to the south-east, where the land-water interface is clearly visible. The view also contains views of Manly Lagoon from south-east (where it connects with the ocean) to south-west. The land-water interface of the lagoon's southern bank is clearly discernable across most of this view. Whilst the Stuart Somerville Bridge obstructs some of this view, it is largely continuous, with the development only occurring at the western edge of the view.

Comment to Principle 1 (28 Greycliffe Street - West of the Subject Site):

It should first be noted the view was analysed from three places, the upstairs bedroom/study,

upper rear terrace, and lower rear terrace.

The view affected from 28 Greycliffe is one to the south-east. *Figures D7.5, D7.6, and D7.7* are photographs taken looking towards the subject site.

The view from *Figures D7.6 and D7.7* are taken from terraces to the rear of the dwelling, one upper and one lower. The view effected from these vantage points is mainly of the sky and of buildings located to the east of the subject site. The proposal had the greatest impact on the upper floor bedroom/study closest to the subject site. *Figure D7.5* depicts this view, which is obtained from one of two windows making up a set of corner windows. The view obtained from this point is one of Queenscliff Beach seen through some existing trees and obscured slightly by the existing dwelling on the subject site and the Stuart Somerville Bridge.

The original proposal would have seen an extended balcony, which due to an angled design, had its southern most point at the south-western end of the proposed balcony. Whilst no privacy screen was proposed on this side, the western elevation of the proposed balcony had concrete balustrade of 1.5m in vertical height (above Ground Floor level). Measured on plan DA002, Rev. A, this would have extended 4.4m further south and the existing edge of the western elevation wall.

As such, the view affected from the upper level bedroom/study would be of Queenscliff Beach, including the land-water interface between the ocean and the sand. Also effected would be ocean views and views over the ocean to the eastern portion of Manly Headland (around Shelly Beach). It should be noted that the view from this room also includes view south to Manly Lagoon, including the land-water interface on the southern shore of the lagoon, which would not be effected by the proposal. However, this spot is arguably the best spot to obtain views of Queenscliff Beach at 28 Greycliffe. As can be seen in *Figures D7.6 and D7.7*, the rear terraces at 28 Greycliffe, particular the upper rear terrace, do obtain some views of Queenscliff Beach, however, these views are more obscured by existing vegetation and the Stuart Somerville Bridge.

During the assessment process, view loss concerns were raised to the applicant, and plans were received which considered concerns. The amended proposal significantly reduces the size of the balcony. This effectively carves a view corridor out of the balcony for the view obtained from the bedroom/study window (and to some degree, to other windows on the upper floor). Whilst the rearward extension of the Lower Ground Floor remains proposed, this level is set lower. *Figures D7.8 and D7.9* show the amendments to the plans.

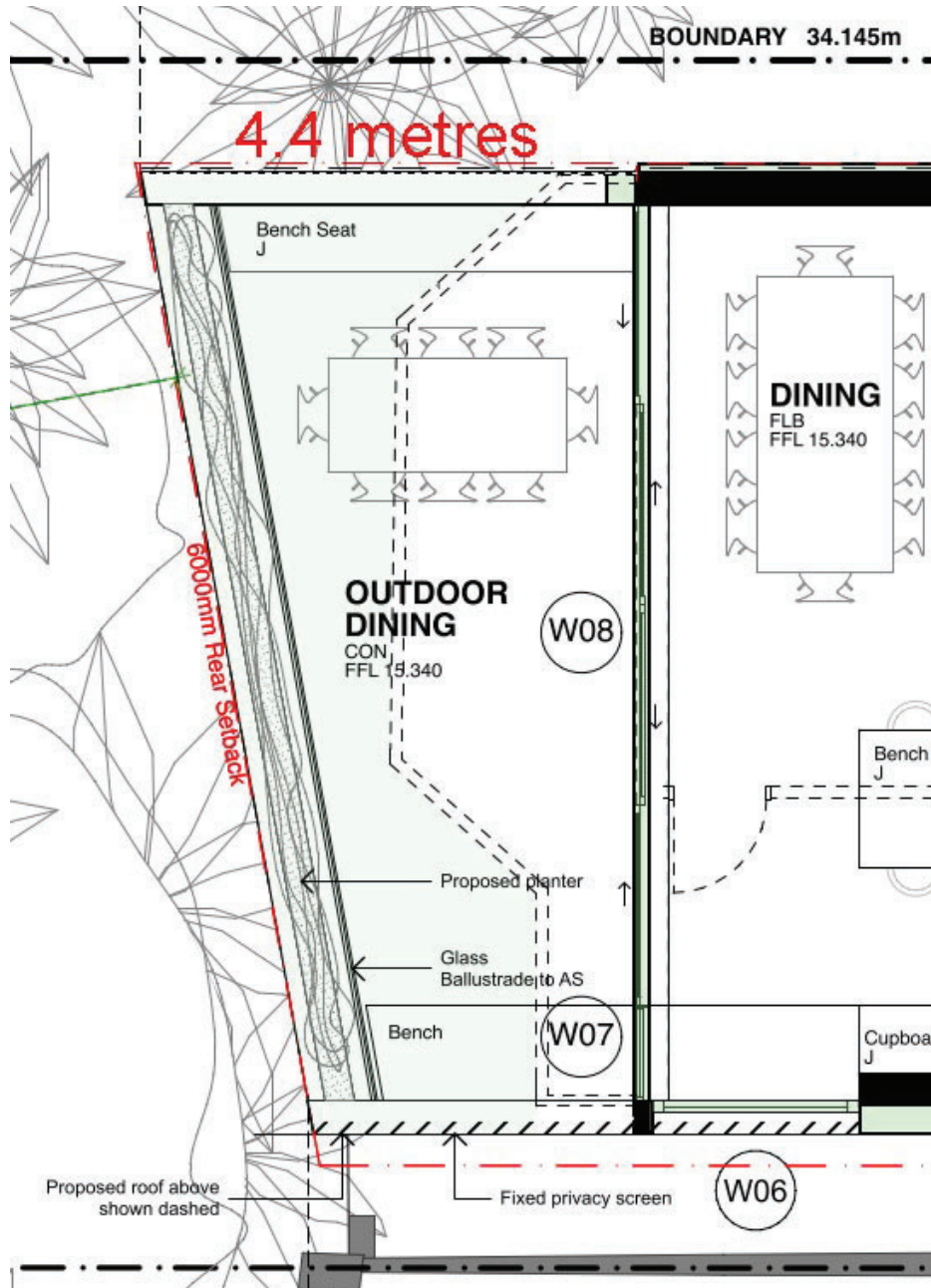


Figure D7.8 - Extract from plan DA002, Rev. A, showing proposed rear balcony prior to amendments.

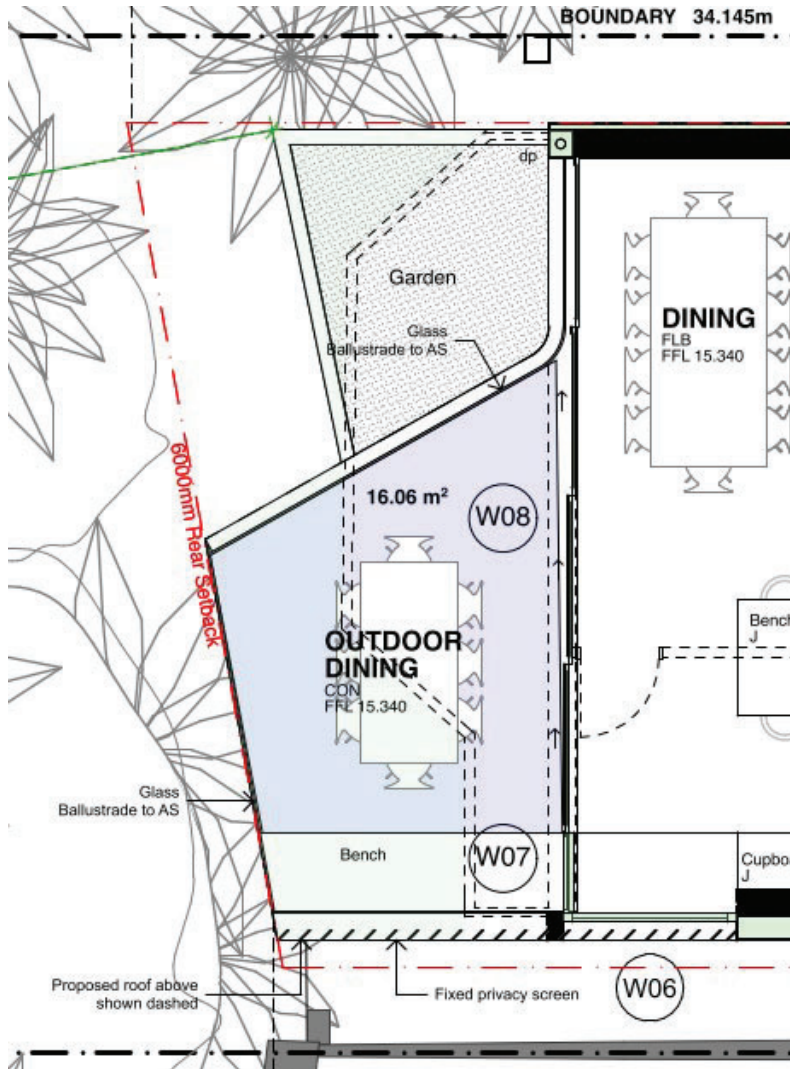


Figure D7.9 - Extract from plan DA002, Rev. C, showing proposed rear balcony after amendments.

2. What part of the affected property are the views obtained

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

Comment to Principle 2 (24 Greycliffe Street - East of the Subject Site):

The view in question is obtained over a side boundary. The view can be obtained both sitting and standing, however, the view is best obtained from standing position close to the edge of the balcony. The further away from the edge of the balcony one moves, and into the living room, the impact of the development is minimised. This is because the panoramic view narrows due to the sides of the balcony. The existing privacy screen on the west of the balcony particularly blocks the proposed development from the living room. As can be seen from Figure D7.4, which is

taken from the door between the balcony and living room, this privacy screen limits view of the subject site. As such, the view is best obtained from the balcony, with limited attainment from the living room.

It should also be noted that amendments sought during the assessment process reduced the size and scale of the proposed balcony, bringing in southern-most point. Whilst these amendments were primarily sought due to view loss concerns from 28 Greycliffe Street, the reduced scope of the balcony also reduces impact on 24 Greycliffe Street as the balcony is pulled in.

Comment to Principle 2 (28 Greycliffe Street - West of the Subject Site):

The view in question is best obtained from the upper floor bedroom/study closest to the subject site (at the south-eastern corner of 28 Greycliffe Street). *Figure D7.5* depicts this view, which is obtained from one of two windows making up a set of corner windows. The view is better obtained from a standing position, but is still visible seated. The view is over a side boundary.

3. Extent of impact

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

Comment to Principle 3 (24 Greycliffe Street - East of the Subject Site):

As has been discussed, the property obtains a sweeping panoramic view from the balcony. This view is described in the comments of Principle 1, and is primarily obtained from the balcony private open space and living room as described in the comments of Principle 2.

The development occurs at the western edge of this panoramic view. Whilst the evening sunset is seen to the west, the most significant elements of the view as a whole is Queenscliff Beach and Manly Lagoon to the south-east and south. Effect from the development is limited to over a side boundary and away from the significant features of the view. As such, the view loss is considered to be minor.

Comment to Principle 3 (28 Greycliffe Street - West of the Subject Site):

The view is obtained from a bedroom/study. At the window is a home office setup. Whilst the view loss principle states that views from bedrooms are less valuable, the principle states that views from a kitchen are highly valuable due to the time spent in them. If applying this approach to a study area, one could take that the view from a study is valuable, given changes to working arrangements within society that have seen working from home and utilising a home office become common place. Like a kitchen, one spends large amounts of time in a study, therefore, the view would be more valuable than that of a bedroom alone.

The impact on the view from 28 Greycliffe Street as a result of the original proposal was originally considered to be moderate to severe. The impact on the view from 28 Greycliffe Street as a result of the amended proposal is considered to be minor.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A

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

Comment to Principle 4 (24 Greycliffe Street - East of the Subject Site):

Regarding a more skillful design, the bulk of the view loss in question is caused by a privacy screen on the eastern elevation of the proposed balcony. Removing or changing this design would negatively impact on privacy. It is not considered that a more skillful design is feasible, whilst maintaining the same development potential and amenity, and considering the minor impact on views.

Comment to Principle 4 (28 Greycliffe Street - West of the Subject Site):

The redesigned proposal includes a more skillful design which carves a view corridor for the effected window of 28 Greycliffe Street, whilst maintaining the same development potential and amenity.

Comment to Principle 4 (Both Sides of Subject Site):

The proposal presents a number of breaches to planning controls, including building height, wall height, building envelope and landscaped open space. However, the proposal is for additions and alterations to an existing dwelling, meaning it is constrained by existing building layout and existing non-compliances. Furthermore, the subject site, and surrounding sites, are constrained by narrow allotments, natural topography and a steep slope to the south (the least favorable for sunlight access, which has required design solutions to obtain sunlight). The reasonableness of the proposed breaches to planning controls are assessed on merit within the various sections of this report, concluding the proposal is supported on merit. The proposed development is considered to satisfy this objective.

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

Comment:

The proposal has been redesigned to demonstrate adequate design solutions to issues raised concerning view loss. The proposal demonstrates adequate design solutions in an attempt to develop a proposal that incorporates modern and contemporary architecture that is responsive to the natural and urban environment of the vicinity. The proposed development is considered to satisfy this objective.

- To ensure existing canopy trees have priority over views.

Comment:

On-site vegetation is limited to the rear (south) of the site, which located considerably lower than the dwelling due to the steep drop off at the rear. This is part of the natural topography around Queenscliff, with the pattern of surrounding development not including large canopy trees. The trees and vegetation at the rear of the subject site are maintained and views are not considered to have taken priority over canopy trees. The proposed development is considered to satisfy this objective.

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.

D8 Privacy

Submissions raised concerns regarding the impact of the proposed development on the privacy of adjoining properties.

Submissions particularly included concerns that:

- The proposed alterations and additions, mainly the proposed Ground Floor deck extension, would create privacy impacts on the rear upstairs deck area and an ensuite bathroom of 26 Greycliffe Street (adjoining property to the east).
- The proposal created overlooking to areas of private open space at 28 Greycliffe Street (adjoining property to the west).
- The proposal created other privacy impacts to 28 Greycliffe Street (adjoining property to the west).

The proposal includes elements required by this control, including building layout to optimise privacy, orientation of private open space (in this case to Manly Lagoon), use of fixed privacy solutions (including obscured glass and privacy screening) and consideration of window location.

It should be noted that the surrounding area is substantially built up, and characterised by large houses on narrow allotments with steep topography. Landscaping is also limited between dwellings and separation is minimal. The proposal consists of alterations and additions to an existing dwelling, which as existing has floor levels which are roughly at the same level as neighbouring dwellings. Therefore, design choices and fixed privacy solutions are the optimal choice.

Merit consideration

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

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

Comment:

The proposed rear balcony at the Ground Floor level includes privacy screening on the eastern elevation. Due to the angled design, the balcony extends a further 0.4m south at its southernmost point. However, the angle and privacy screen are such that privacy is considered to be reasonably maintained between the proposed balcony and the upper floor balcony at 26 Greycliffe Street (also considering this existing balcony also has an existing privacy screen on its western elevation). Overlooking into the ensuite bathroom the next level down at 26 Greycliffe Street is also mitigated by the inclusion of a privacy screen on the proposed balcony (also noting existing privacy screens installed to the west of windows at 26 Greycliffe Street).

The original proposal presented privacy and overlooking concerns to 28 Greycliffe Street. The western elevation of the balcony did not contain a privacy screen, which would have worsened the impact on views from 28 Greycliffe Street (see the section of this report on WDCP Clause D7 Views). During the assessment process, privacy, among other concerns, were raised to the applicant and plans were received which considered these concerns. The amended proposal significantly reduces the size of the balcony. This reduction provides additional

separation between the balcony and areas of private open space and windows at 28 Greycliffe Street. Furthermore, the design of the balcony restricts the potential of overlooking through design (i.e. the existing western dwelling wall and proposed planter garden restrict overlooking potential from the proposed balcony to 28 Greycliffe Street).

The proposed development is considered to satisfy this objective.

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

Comment:

The amended proposal is considered to present innovative design solutions and a design that will successfully improve the existing urban environment and privacy. The proposed development is considered to satisfy this objective.

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

Comment:

The proposed development ensures an appropriate level of person and property security is maintained for the occupants of the subject site and any visitors to the site. The proposed development is considered to satisfy this objective.

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.

D9 Building Bulk

Detailed Description of Non-Compliance

Clause D9 Building Bulk stipulates that large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.

The proposed floors do not step in on either side elevation in as the height of the dwelling increases, therefore, not meeting the requirements of this clause.

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:

The design of the dwelling house and the spatial proportions of the proposed upper floor are consistent with a number of dwelling houses located within the immediate vicinity. Furthermore, the proposal is for additions and alterations to an existing dwelling which largely exhibits these characteristics as existing. For these reasons, the design is considered to encourage good design and innovative architecture to improve the urban environment. The proposed development is considered to satisfy this objective.

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

Comment:

Please see the relevant sections of this report on amenity impacts such as Access to Sunlight, Views and Privacy. In summary, the development is not considered to impose an unreasonable amenity impact on adjoining sites. The development is commensurate with the surrounding residential environment on this side of the lagoon and along Greycliffe Street. The proposed development is considered to satisfy this objective.

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 \$9,710 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$971,037.

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 the application proposing a variation to the Height of Buildings development standard of more than 10% (12.6m or 48.2%).

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 commensurate with the character of the area 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.

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 DA2023/0202 for Alterations and additions to a dwelling house on land at Lot 23 DP 6076, 26 Greycliffe Street, QUEENSCLIFF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|---|-------------|---|
| Drawing No. | Dated | Prepared By |
| 001, Rev. C, Site Analysis + Site Plan | 26 May 2023 | Andrew Donaldson Architecture & Design |
| 002, Rev. C, Ground Floor | 26 May 2023 | Andrew Donaldson Architecture & Design |
| 003, Rev. C, Lower Ground Floor | 26 May 2023 | Andrew Donaldson Architecture & Design |
| 004, Rev. C, Basement Floor | 26 May 2023 | Andrew Donaldson Architecture & Design |
| 005, Rev. C, Lower Landscaping Plan | 26 May 2023 | Andrew Donaldson Architecture & Design |
| 006, Rev. C, Roof Plan | 26 May 2023 | Andrew Donaldson Architecture & Design |
| 007, Rev. D, North + East Elevations | 29 May 2023 | Andrew Donaldson Architecture & Design |
| 008, Rev. C, South + West Elevations | 26 May 2023 | Andrew Donaldson Architecture & Design |
| 009, Rev. C, Sections A + B + Driveway | 26 May 2023 | Andrew Donaldson Architecture & Design |

| Engineering Plans | | |
|--|-----------------|-------------------------|
| Drawing No. | Dated | Prepared By |
| D01, Issue D, Stormwater Drainage General Notes | 25 May 2023 | NB Consulting Engineers |
| D02, Issue D, Creek Reserve & Basement Stormwater Drainage Plan | 25 May 2023 | NB Consulting Engineers |
| D03, Issue D, Lower Ground & Ground Floor Stormwater Drainage Plan | 25 May 2023 | NB Consulting Engineers |
| D04, Issue D, Roof Stormwater Drainage Plan & Details Sheet 1 | 25 May 2023 | NB Consulting Engineers |
| D05, Issue B, Sediment & Erosion Control Plan | 7 February 2023 | NB Consulting Engineers |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|-------------|---|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| BASIX Certificate No. A478433_03 | 29 May 2023 | Andrew Donaldson Architecture and Design |

| | | |
|----------------------------|-------------------|-------------------------------|
| Geotechnical Report, J4614 | 10 February 2023. | White Geotechnical Group |
| Waterway Impact Statement | February 2023 | GIS Environmental Consultants |

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

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

| Waste Management Plan | | |
|-----------------------|-----------------|-------------|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | 8 February 2023 | ADAD |

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

| Other Department, Authority or Service | EDMS Reference | Dated |
|--|---------------------------|----------------------|
| Ausgrid | Ausgrid Referral Response | 27/03/2023 (on EDMS) |

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

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

3. Prescribed Conditions

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

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

completed.

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

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

5. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,710.37 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 \$971,036.92.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

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

8. **On Slab Landscape Works**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, grasses and lawn; 600mm for shrubs; and 1m for small trees. Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are

designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

9. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

10. **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.

11. **Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with Northern Beaches Council's policy by an appropriately qualified Civil Engineer 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.

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

The recommendations identified in the Geotechnical Report prepared by White Geotechnical Group dated 10/02/2023 are to be incorporated into the construction plans. 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.

13. **Erosion and Sediment Control Plan**

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

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

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

Reason: Protection of the receiving environment.

14. **Water Quality Management**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

15. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct a vehicle crossing 5.75 metres wide in accordance with Northern Beaches Council Standard Vehicle Crossing Profile - Normal 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.

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

Reason: To facilitate suitable vehicular access to private property.

16. **Erosion and Sediment Control Plan**

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points

- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

17. **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.

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. **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:

- 28 Greycliffe Street QUEENSCLIFF

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 and to comply with a recommendation of the Geotechnical Report included in Condition 1.

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

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

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

Reason: Preservation of significant environmental features.

22. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree

protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

23. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

24. **Road Reserve**

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

Reason: Public safety.

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

Council proactively regulates construction sites for sediment management.

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

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

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

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

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

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

27. **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.

28. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

29. **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.

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.

31. **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**

32. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

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

Reason: To protect wildlife habitat.

33. **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.

34. **Stormwater Disposal**

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

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

35. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit certification 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 Geotechnical Engineering. Certification is to be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately

36. **House / Building Number**

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

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

Reason: Proper identification of buildings.

37. **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

38. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

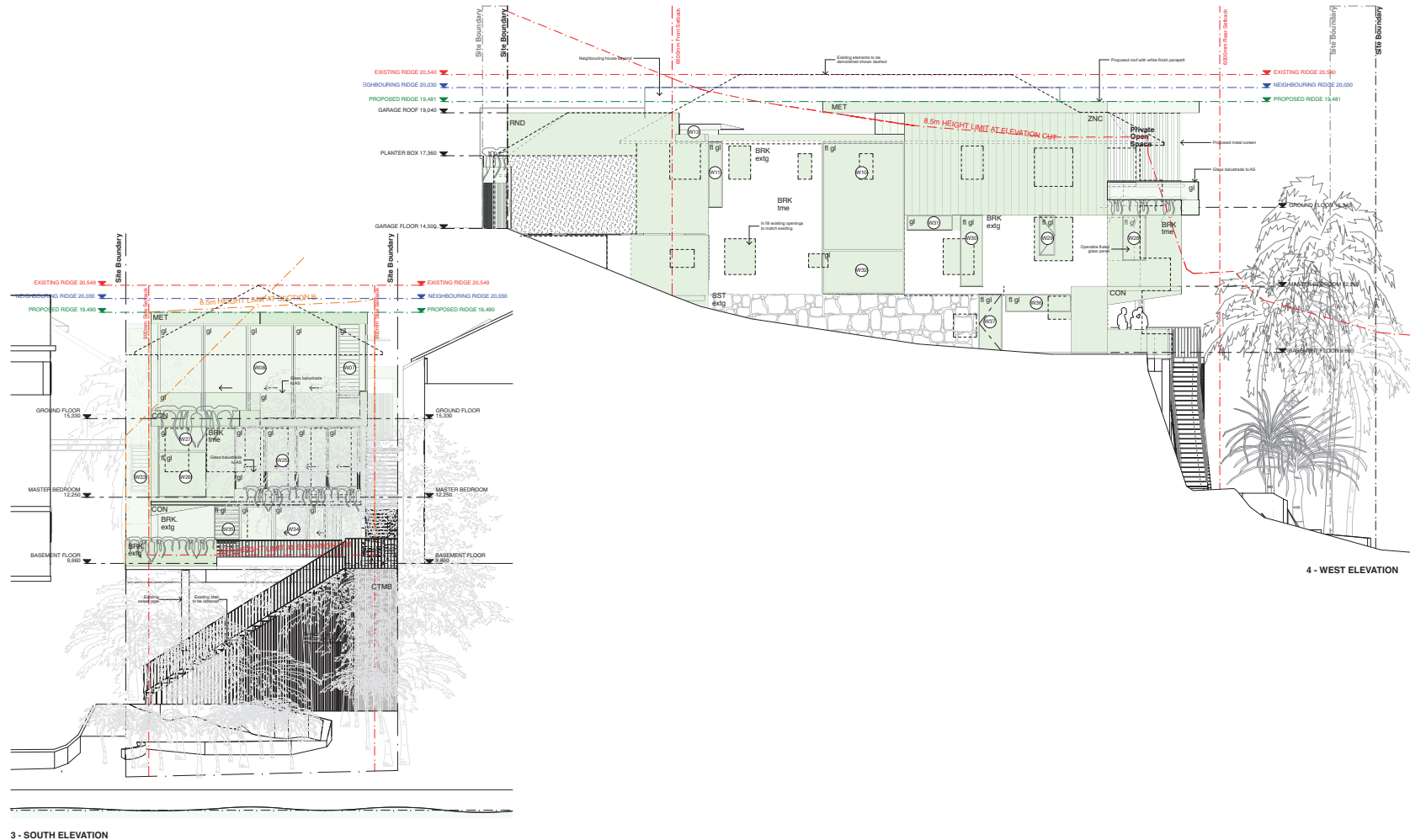
Reason: Protection of the receiving environment.

39. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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|---------------|-----------------------|-----|----------------------|------|------------------------|---------------------------|--|--|--------------------------------|--|--|----------------------------------|--|--|
| LEGEND | | | | | | PROPOSED NEW WORKS | | | EXISTING WORKS RETAINED | | | ELEMENTS TO BE DEMOLISHED | | |
| BFS | Bushfire Shutters | SKY | Skylight | col | column | | | | | | | | | |
| BWK | Brick Work | SND | Sandstone | extg | existing | | | | | | | | | |
| CTMB | Open Screen | SPL | Steel Plate | fl | fluted glass | | | | | | | | | |
| CON | Concrete Slab | SST | Stainless Steel | g | glass | | | | | | | | | |
| CMD | Colorbond Metal Deck | STN | Stone | nts | not to scale | | | | | | | | | |
| FCS | Fiber Cement Sheeting | TCL | Timber Cladding | rfs | to match existing | | | | | | | | | |
| MET | Misc. Metalwork | TMB | Timber | rts | unless noted otherwise | | | | | | | | | |
| PAV | Paving | TSF | Tiled Surface Finish | vcs | verify on site | | | | | | | | | |
| PBD | Plasterboard | TVN | Timber Veneer | | | | | | | | | | | |
| PNT | Paint Finish | WTN | Watermark | | | | | | | | | | | |
| RFS | Metal Roof Sheeting | ZNC | Metal Cladding | | | | | | | | | | | |

| | | |
|------------|---|--|
| 22.02.2023 | A | DEVELOPMENT APPLICATION |
| 1.03.2023 | B | FINAL - REVISED HEIGHT PLANE AND DIMENSIONS FROM EXISTING EXCAVATED GROUND LEVEL |
| 26.05.2023 | C | RFP - REVISED DESIGN FOR INCREASED VIEW SHARING AND REDUCED IMPACT ON NEIGHBOURING VIEW CORRIDOR |

SCALE @ A2 UNO

1:100

PROJECT PHASE DRAWING NO. REVISION

S2 DA 008 C

©

AD

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SESTIC RESIDENCE

SOUTH + WEST ELEVATIONS

0753 594767



CLAUSE 4.6 VARIATION REQUEST

For Alterations and Additions

SESTIC RESIDENCE

26 GREYCLIFFE STREET QUEENSLIFF 2096 / LOT 23 DP 6076

Revision A: 22.2.23

Revision B: 26.5.23

Prepared by

ANDREW DONALDSON ARCHITECTURE & DESIGN

For Submission to

NORTHERN BEACHES COUNCIL

1.0 Introduction

1.1 Terms of Reference

This Clause 4.6 Variation Request – Height of Buildings has been prepared on behalf of Daniel and Melanie Sestic to accompany the Development Application for the Alterations and Additions to the residence on their property at 26 Greycliffe Street, Queenscliffe.

This Clause 4.6 Variation Request aims to:

- Demonstrating that compliance with Clause 4.3 *Height of Buildings* of the *Warringah Local Environment Plan 2011* is unreasonable and unnecessary under the circumstances
- Demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

It should be read in conjunction with the following drawings and reports forming part of this application:

| Drawing | Description | Prepared |
|------------------------|--|-----------|
| • S2 DA 000 C | LOCATION PLAN + DRAWING LIST | ADAD |
| • S2 DA 001 C | SITE ANALYSIS + SITE PLAN | ADAD |
| • S2 DA 002 C | GROUND FLOOR PLAN | ADAD |
| • S2 DA 003 C | LOWER GROUND FLOOR PLAN | ADAD |
| • S2 DA 004 C | BASEMENT FLOOR PLAN | ADAD |
| • S2 DA 005 C | LOWER LANDSCAPING PLAN | ADAD |
| • S2 DA 006 C | ROOF PLAN | ADAD |
| • S2 DA 007 C | NORTH + EAST ELEVATIONS | ADAD |
| • S2 DA 008 C | SOUTH + WEST ELEVATIONS | ADAD |
| • S2 DA 009 C | SECTIONS A + B + DRIVEWAY SECTION | ADAD |
| • S2 DA 010 C | SHADOW DIAGRAMS | ADAD |
| • S2 DA 011 C | SITE WASTE STORAGE + RECYCLING MANAGEMENT PLAN | ADAD |
| • S2 DA 012 C | EXTERNAL FINISHES SCHEDULE + BASIX COMMITMENTS | ADAD |
| • 20335 | SURVEY | CMS |
| • 2210022 D01 D | STORMWATER DRAINAGE GENERAL NOTES | NB |
| • 2210022 D02 D | CREEK RESERVICE & BASEMENT STORMWATER DRAINAGE PLAN | NB |
| • 2210022 D03 D | LOWER GROUND & GROUND FLOOR STORMWATER DRAINAGE PLAN | NB |
| • 2210022 D04 D | ROOF STORMWATER DRAINAGE PLAN & DETAILS SHEET 1 | NB |
| • 2210022 D05 B | SEDIMENT & EROSION CONTROL PLAN | NB |
| • Revision B | STATEMENT OF ENVIRONMENTAL EFFECTS | ADAD |
| • Revision B | CLAUSE 4.6 VARIATION REQUEST | ADAD |
| • A478433_02 | BASIX CERTIFICATE | ADAD |
| • Revised | COST SUMMARY REPORT | D Hedges |
| • | WASTE MANAGEMENT REPORT | ADAD |
| • J4614 | GEOTECHNICAL REPORT | White Geo |
| • | WATERWAY IMPACT STATEMENT | GIS |

2.0 Clause 4.6 Variation Request – Height of Buildings

5.1 Overview

Clause 4.3 *Height of Buildings* of the *Warringah Local Environment Plan 2011* specifies that the height of a building on land is not to exceed the maximum height shown from the land on the Height of Buildings Map.

The previous proposal did exceed the maximum height of buildings by 7m for a small 1050mm extent of external space measured from the southern most portion of the roof over the outdoor dining area / balcony to the storage area under the rear stairs and by 1180mm for a very small segment of the southern most Living / Dining / Kitchen space evident in elevation 9,680mm at that small segment of internal space.

Through the skillful redesign resubmitted which sculpts the view corridor to the beach for No 24 Greycliffe's top study corner window via roof pullback and balcony reduction, the overall maximum height at the southern most portion of the roof over the previous outdoor dining area is reduced from 15.5m down to 9.92m at that south western building corner.

The highest point of the overall maximum heights highest point of this redesign is now 10,070mm as shown in section A and Western Elevation. This represents a maximum variation on 18.5% of the development standard.

Clause 4.6 *Exceptions to Development Standards* of the *Warringah Local Environment Plan 2011* specifies that Development Consent may be granted through the applicants written request demonstrating that compliance is unreasonable or unnecessary under the circumstances and that there are sufficient environmental planning grounds to justify contravening the development standard.

Accordingly, we illustrate below the justification for the departure to the Height of Buildings controls applicable under the LEP, as all Height of Buildings LEP Objectives can be met.

5.2 Proposed Variation

Is compliance necessary and reasonable?

After an extensive design optioning process for our clients, we have further sculpted, further compressed, and expanded every possible variation of their sustainability driven wish to retain the bulk of the existing dwelling mass, to make it habitable, functional, introduce passive cooling via cross ventilation; that is absent currently; and introduce precious natural sunlight to the internal living spaces; that is also absent currently.

This is in direct alignment to the Objectives of Warringah Council within Zone R2, being:

- *To provide for the housing needs of the community within a low-density residential environment*
- *To ensure that low-density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

This height outcome is due to the proposed development retaining the current internal built living setback, and gently lifting an elegant roof plane: essential to this steeply south facing site, to allow precious northern sunlight within the living space for the family.

This essential roof plane adjustment is in itself 1059mm below the current dark heavy ridgeline.

CLAUSE 4.6 VARIATION REQUEST
26 GREYCLIFFE STREET QUEENSLIFFE

The Riparian sandstone cave that the house rests on steeply descends to Manly lagoon, and the retention of it and all vegetation from the cliff to the lagoon foreshore leave an impossible task of allowing natural light and cross ventilation to a topographically and existing-size constrained family home site.

To pull the living / dining / kitchen space built line back towards the higher street far enough to allow natural northern light into the home *and* fully comply with the height plane over this steep natural section of site, would require:

- a 5.4m reduction of the southern most existing living room extent, resulting in
- this family of 5's primary living space to be reduced from 58sqm to a 16sqm, 2m wide living space.

With this redesign, we have further reduced the family's primary outdoor dining space from 30sqm down to 17sqm, resulting in the additional green roof, roof reduction, height decrease, bulk decrease and neighboring 24 Greycliff view corridor increase.

It is therefore deemed to be unnecessary and unreasonable on these grounds to enforce compliance on this occasion.

Are there sufficient Environmental Planning grounds to justify the Variation?

The very small breach of the height plane within the primary living / dining / kitchen space proposed produces no additional overshadowing to the neighboring properties or public domain, no overlooking of private space, no reduction of landscaped open space, no removal of vegetation or altering of riparian lands, no view loss.

The proposal conserves indigenous vegetation, topographical features and protects and enhances the urban forest of the Northern Beaches.

5.3 Warringah LEP 2011 4.3 Height of Buildings Objectives

- (a) *To ensure that buildings are compatible with the height and scale of surrounding and nearby development*

This minor breach of the height plane at the southern most extent of the development is 1,059mm lower than the existing ridgeline on the existing underlying building.

In addition, the proposed development is also 665mm lower than the adjoining property to the west, and 540mm lower than the adjoining property to the east.

As the lowest of its neighbors, It is therefore compatible with the height and scale of the surrounding and nearby development.

- (b) *To minimise visual impact, disruption of views loss, loss of privacy and loss of solar access*

The ridgelines are not visible from Greycliffe Street to the North, and the reduced overall current height increases views for the houses on streets further up the hill to the north.

There is no loss of privacy – there is only a single side elevation window within this Living / Dining space, and this is permanently screened with full height privacy blades. With this redesign privacy is further increased between 24 Greycliff and the subject sites reduced outdoor dining space.

There is no loss of solar access at all, as the ridge is lower than currently on a steep descent to the south as evidenced on the shadow diagrams.

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

CLAUSE 4.6 VARIATION REQUEST
26 GREYCLIFFE STREET QUEENSLIFFE

This proposed height is visible only from the lagoon foreshore through the mature Riparian Zone trees. The bulk is reduced from the existing bulk, and therefore further minimises any adverse effects of the current built form.

With this redesign, perceived bulk is further reduced, articulating both the sculpted roof plan and balcony / roof garden below

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

As it is lower than the existing house, and lower than both its eastern and western neighbors, the proposal demonstrates minimization of current visual impact especially when viewed from either the immediately adjoining public lagoon foreshore, or Manly Lagoon Reserve Playground on the opposite southern bank of the lagoon.

The highly visually obstructive Stuart Somerville Bridge obscures the site from Queenscliff Beach itself furthest to the East.

5.4 Summary

This proposal is considered appropriate and consistent with the Objectives and intent of Clause 4.3 *Height of Buildings* of the *Warringah Local Environment Plan 2011*. Strict compliance with the LEP in this case is considered to be unreasonable and unnecessary.

To reduce to the proposed small height plane breach to meet the 8.5m Height of Buildings control would mean removal of the primary family Living / Dining / Kitchen space altogether to gain any direct northern solar access within the living spaces, or retention of the zero direct natural sunlight existing floorplan.

Alteration works would then not rectify the dark, lightless and poorly ventilated condition of the existing site for the long-term owners, and this is deemed to be both unnecessary and unreasonable.

The reduction in previously submitted height proposed produces no additional overshadowing to the neighboring properties or public domain, no overlooking of private space, no reduction of landscaped open space, no removal of vegetation or altering of riparian lands, and no view loss. In addition this redesign increases view corridor amenity to top study corner window of neighboring 24 Greycliffe, further articulates and reduces visual bulk from the Manly lagoon foreshore

The proposal conserves indigenous vegetation, topographical features and protects and enhances the urban forest of the Northern Beaches.

All Warringah Council LEP Height of Building objectives are met even in light of this minor localised Height of Buildings variation increase.

It is requested that council give favorable consideration for the variation request as outlined.

Report prepared by:



Andrew Donaldson
Principal / Architect 8472

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andrew@andrewdonaldson.com.au / www.andrewdonaldson.com.au / 0412 839 465

ITEM 3.4

**REV2023/0012 - 2 CURBAN STREET BALGOWLAH HEIGHTS -
REVIEW OF DETERMINATION OF APPLICATION DA2022/1442
FOR DEMOLITION WORKS AND CONSTRUCTION OF A
DWELLING HOUSE INCLUDING SWIMMING POOL**

REPORTING MANAGER

Rod Piggott

TRIM FILE REF

2023/332042

ATTACHMENTS

- 1 Assessment Report**
- 2 Site Plan and Elevations**
- 3 Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to REV2023/0012 for Review of Determination of Application DA2022/1442 for demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 758044, 2 Curban Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

| | |
|---|--|
| Application Number: | REV2023/0012 |
| Responsible Officer: | Jordan Howard |
| Land to be developed (Address): | Lot 1 DP 758044, 2 Curban Street BALGOWLAH HEIGHTS NSW 2093 |
| Proposed Development: | Review of Determination of Application DA2022/1442 for Demolition works and construction of a dwelling house including swimming pool |
| Zoning: | Manly LEP2013 - Land zoned R2 Low Density Residential |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | Jordana Heather Jean Bowen Michael John Bowen |
| Applicant: | Michael John Bowen |
| Application Lodged: | 03/05/2023 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Single new detached dwelling |
| Notified: | 10/05/2023 to 24/05/2023 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 2.4% |
| Recommendation: | Approval |
| Estimated Cost of Works: | \$ 1,407,776.00 |

EXECUTIVE SUMMARY

This review application seeks to review the determination of DA2022/1442, which was lodged for demolition works and construction of a dwelling house including swimming pool, and subsequently refused under delegation on 6 January 2023.

This application is referred to the Development Determination Panel (DDP), as it is a Review of Determination, which is required to be determined by the DDP.

Critical assessment issues include; building height, wall height, northern side setback and garage width.

This assessment finds that the applicant has made suitable amendments to the proposed development, while it still constitutes substantially the same development.

The merits of the revised design have been reviewed and the reasons for refusal of DA2022/1442 have been satisfactorily addressed.

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

PROPOSED DEVELOPMENT IN DETAIL

This Review of Determination seeks to review the determination of DA2022/1442 for demolition works and construction of a dwelling house including swimming pool. This application was refused under delegated authority on 6 January 2023.

DA2022/1442 proposed the demolition of the existing dwelling and the construction of a new dwelling and a swimming pool.

Under the s8.2A Review Application, the proposal remains substantially the same as the original proposal, with the following differences:

- Reconfigure ground floor plan to include a WC.
- Relocate the Pool Filter Box under the pool deck.
- Relocate the external shower from the fence line to the South Western Corner of the dwelling.
- Minor dimensional changes to the kitchen.
- Relocate laundry chute into the family bathroom & new WC,
- Drop the entire proposed dwelling house 200mm, reducing the maximum height.
- Revised driveway, entry steps, and landscaping as a result of the 200mm drop in dwelling height.

Additional information was requested in relation to MLEP 2013 Clause 4.3 Height of Buildings, as well as MDCP Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), Clause 4.1.4 Setbacks (front, side and rear) and Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities). Additional information and amended plans were provided which satisfied this request. This additional information and amended plans did not require renotification in accordance with the Northern Beaches Council Community Participation Plan. Amended plans received under this request added the additional following difference:

- Reconfiguration of the northern walls of the dwelling along the northern elevation 300mm south and away from the northern boundary.

The proposal remains for the demolition of the existing dwelling and the construction of a new dwelling and a swimming pool. The proposed new dwelling consists of:

Basement Floor

- Double garage and workshop and plant room
- WC
- Mudroom and cellar
- Tank room and subfloor

- New concrete driveway, bin store and landscaping

Ground Floor

- Entrance path from the street to a porch and entry
- Guest room
- Bathroom
- Playroom / study
- Living room
- Combined kitchen and dining with access to a rear alfresco
- Inground pool and landscaping

First Floor

- Master Bedroom, WIR & Ensuite
- Bedroom 1, Bedroom 2 & Bedroom 3
- Bathroom
- Kids zone

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

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

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 1 DP 758044 , 2 Curban Street BALGOWLAH HEIGHTS NSW 2093 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the western side of Curban Street.</p> <p>The site is slightly irregular in shape, with a frontage of 18.9m along Curban Street, a north side boundary of 37.67m, a south side boundary of 37.92m and a rear boundary of 18.96m. The site has a surveyed area of 715.3m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site slopes from the rear (west) towards the front (east), with an approximate crossfall of 4.8m.</p> <p>The site contains lawn areas, garden beds, trees and rocks. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses.</p> |

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:

- **BC2022/0027** - Building Information Certificate for unauthorised boundary fence replacement.
- **DA2022/1442** - Development Application for demolition works and construction of a dwelling house including swimming pool. This application was refused on 6 January 2023 and is the subject of this Review of Determination.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 6 January 2023 and the notice of determination was issued on 6 January 2023. The review was lodged (submitted on the Planning Portal) on 18 April 2023, was accepted by Council on 3 May 2023 and is to be considered by DDP on 28 June 2023, which is within 6 months of the date of determination (6 July 2023).

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

is satisfied that the development, as amended, is substantially the same as the development described in the original application.

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

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

DA2022/1442 was refused under delegated authority on 6 January 2023. The following is a list of the reasons for refusal and how each have been addressed in the amended scheme proposed in this review:

1. **Clause 4.6 Written request to vary a development standard**

Refer to the section of this report on MLEP Clause 4.6 Exceptions to development standards for a detailed assessment. The amended proposal includes a number of differences, most significantly the entire proposed dwelling house is reduced in maximum height by 0.2m. Furthermore, amendments sought during the assessment resulted in the reconfiguration of the northern walls of the dwelling along the northern elevation 0.3m further south and away from the northern boundary. Whilst a breach of 0.2m or 2.4% over the 8.5m control is still proposed, this is smaller than that proposed in DA2022/1442. Amendments made and the 4.6 request provided have satisfied Council that sufficient environmental planning grounds to justify the variation have been demonstrated.

2. **4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height)**

Refer to the section of this report on MDCP Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height) for a detailed assessment. The amended proposal includes a number of differences, most significantly the entire proposed dwelling house is reduced in maximum height by 0.2m. Furthermore, amendments sought during the assessment resulted in the reconfiguration of the northern walls of the dwelling along the northern elevation 0.3m further south and away from the northern boundary. Whilst the high non-compliance of the northern elevation wall has not changed, a number of other amendments have been made regarding other reasons for refusal, which have changed the size and scale of the proposal. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3. **4.1.4 Setbacks (front, side and rear) and Building Separation**

Refer to the section of this report on MDCP Clause 4.1.4 Setbacks (front, side and rear) and Building Separation for a detailed assessment. The amended proposal includes a number of differences, most significantly the entire proposed dwelling house is reduced in maximum height by 0.2m. Furthermore, amendments sought during the assessment resulted in the reconfiguration of the northern walls of the dwelling along the northern elevation 0.3m further south and away from the northern boundary. These amendments have reduced the non-compliances proposed with side setback along the northern elevation. Whilst non-compliances with side setbacks still exist on both the southern and northern elevations, amendments have changed the size and scale of the proposal. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4. 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Refer to the section of this report on MDCP Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) for a detailed assessment. The amended proposal includes a number of differences, most significantly the entire proposed dwelling house is reduced in maximum height by 0.2m. Furthermore, amendments sought during the assessment resulted in the reconfiguration of the northern walls of the dwelling along the northern elevation 0.3m further south and away from the northern boundary. These amendments have reduced the proposed garage width from 7.2m to 6.9m. Whilst still non-compliant with the maximum garage width control of 6.2m, these amendments have changed the size and scale of the proposal. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

This assessment finds that the applicant has made substantive amendments to the proposed development, while still constituting substantially the same development. The reasons for refusal of DA2022/1442 have been satisfactorily addressed and, therefore, this report concludes with a recommendation that the DDP grant approval to the review application, subject to conditions.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/05/2023 to 24/05/2023 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: |
|----------|----------------------------|
| Withheld | BALGOWLAH HEIGHTS NSW 2093 |

The following issues were raised in the submission:

- **Building height**

The submission raised concerns that the building exceeds the 8.5m height of buildings development standard established by the MLEP 2013.

Comment:

The applicant has made a 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. The breach is minor, 0.2m or 2.4% over the 8.5m control, due to existing excavation on site. The breach has also been reduced from what was original proposed in DA2022/1442.

Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for a detailed assessment of building height and the 4.6 request. In summary, Council is satisfied that:

- 1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:
 - a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - b) There are sufficient environmental planning grounds to justify the contravention.
- 2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Therefore, this report recommends the approval of the variation request.

- **Bulk and scale of the proposed development**

The submissions raised concerns that the proposed development is excessive in bulk and scale.

Comment:

Whilst building bulk and scale is subjective, the development has been considered in regards to planning controls. Regarding height, please see the above comments. Where non-compliances with MDCP controls are proposed, the development has been considered to meet the underlying objectives of the controls. Overall, the proposed development is not considered to create any unreasonable amenity impacts on surrounding and adjoining properties, and is considered commensurate to surrounding residential development. The built form is similar to that of surrounding residential development. Therefore, the proposed development is not considered to be excessive in terms of bulk and scale.

- **Height of northern elevation wall**

The submission raised concern with the height of the northern elevation wall.

Comment:

Refer to the section of this report on MDCP Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) for a detailed assessment of wall height. The proposed dwelling is pulled in at the first floor on the northern elevation, with a setback of 4.2m between the first floor and the northern boundary. This wall is where the maximum wall height of 8.3m occurs as measured on the northern elevation. The design of the dwelling and increasing steeped in setback of the first floor softens reduces the visual appearance of bulk and scale. The assessment of wall height has found that the proposal is supported, in this particular circumstance.

REFERRALS

| Internal Referral Body | Comments |
|------------------------|----------|
|------------------------|----------|

| Internal Referral Body | Comments |
|--------------------------------|---|
| Landscape Officer | <p>The application is for S8.2 Review of determination of DA2022/1442. The Landscape Referral component of the review is undertaken by an alternate Landscape Officer to DA2022/1442.</p> <p>It is noted that the documents under REV2023/0012 do not include any updated Landscape Plans and hence the Landscape Plans under DA2022/1442 remains for assessment by Landscape Referral.</p> <p>The Statement of Environmental Effects notes that the S8.2 Application includes the following amendments from those refused under DA2022/1442: reconfigure ground floor plan to include a wc; relocate the pool filter box under the pool deck; relocate the external shower from the fence line to the south western corner of the dwelling; minor dimensional changes to the kitchen to improve circulation; relocate laundry chute into the family bathroom & new wc; drop the entire proposed dwelling house 200mm into the ground; and revised driveway, entry steps, and landscaping as a result of the 200mm drop in dwelling height.</p> <p>On review of the Master Set plans for the S8.2 Review with the Landscape Plans under DA2022/1442, the proposed landscape outcomes are not altered. On review of the Landscape Plan therefore, in consideration of the landscape outcomes required under Manly DCP controls, Landscape Referral raise no concerns subject to conditions, as follows:</p> <ul style="list-style-type: none"> • increase garden bed width along the rear western boundary and the rear northern boundary, to support proposed planting and new tree planting at the north west corner, and to incorporate the existing tree into garden (and not within lawn), • all other landscape proposals as shown on the Landscape Plans are to be installed as per the plan. |
| NECC (Development Engineering) | <p>The application is a Review of determination of DA2022/1442. No revised stormwater plans or geotechnical report have been provided. Hence Stormwater Plans and Geotechnical Report under DA2022/1442 are still valid.</p> <p>No objections to approval subject to conditions as recommended.</p> |

| External Referral Body | Comments |
|---|---|
| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48 | <p>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.</p> |

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. 1255786S_06, issued on 13 April 2023).

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

| Commitment | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water | 40 | 41 |
| Thermal Comfort | Pass | Pass |
| Energy | 50 | 54 |

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for

a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

| Standard | Requirement | Proposed | % Variation | Complies |
|----------------------|----------------------------|---------------------------------------|-------------|----------|
| Height of Buildings: | 8.5m | 8.7m | 2.4% | No |
| Floor Space Ratio | FSR: 0.45:1 (321.89sqm) | FSR: 0.44:1 (313.8m ²) | - | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 2.7 Demolition requires development consent | Yes |
| 4.3 Height of buildings | No |
| 4.4 Floor space ratio | Yes |
| 4.5 Calculation of floor space ratio and site area | Yes |
| 4.6 Exceptions to development standards | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Stormwater management | Yes |
| 6.8 Landslide risk | Yes |
| 6.12 Essential services | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 8.7m |
| Percentage variation to requirement: | 2.4% |

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard,

has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) *the consent authority is satisfied that:*

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The development complies with the relevant objectives of the R2 Low Density Residential Zone of the MLEP 2013.
- The development complies with the relevant objectives of the Height of Buildings development standard of the MLEP 2013.
- The proposed development has been designed with respect for neighbouring amenity.
- The non-compliance is minor, resulting from existing excavation and site slope.

It is considered that the arguments provided by the applicant are acceptable. Whilst non-compliance with this development standard was included as a reason for refusal within the assessment of DA2022/1442, the proposal presented within this review has reduced the height of the breach by bringing the building down 0.2m and making other design changes concerning other reasons for refusal. The minor non-compliance is considered to arise from existing excavation on site. The proposal is considered commensurate to surrounding residential development within the area and is not considered to be excessive in terms of bulk and scale. Furthermore, the proposal does not create any unreasonable amenity impacts to surrounding properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The minor variation arises from existing site excavation, creating the height breach in a small area of the proposed dwelling. The majority of the building complies with the maximum height control and is commensurate to surrounding residential development within the area.

b) to control the bulk and scale of buildings,

Comment:

As above, the minor variation arises from existing site excavation, creating the height breach in a small area of the proposed dwelling. This is inconsequential to the visual appearance of the dwelling, and it is considered to be of acceptable bulk and scale.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

No concerns have been raised in regard to views. The development is considered to meet the requirements MDCP Clause 3.4.3 Maintenance 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:

Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for a detailed assessment of solar access. In summary, the development is not considered to create unreasonable overshadowing on public or private spaces.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The subject site is not a recreation or environmental protection zone. Nonetheless, the height and bulk of the proposal are not considered to impact on existing vegetation. No significant trees or vegetation are required to be removed as a result of the increase in overall height.

Zone objectives

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

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

Comment:

The proposal provides for the needs of current and future occupants within a low density residential environment. The proposed development is considered to satisfy this objective.

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

Comment:

Non-residential land uses are not proposed on the subject site. However, the proposal includes adequate indoor and outdoor areas to provide for the residential needs of current and future occupants. The proposed development is considered to satisfy 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).

Manly Development Control Plan

Built Form Controls

| Built Form Controls - Site Area: 715.3sqm | Requirement | Proposed | % Variation* | Complies |
|--|---|---|---------------------|-------------------------|
| 4.1.1.1 Residential Density and Dwelling Size | Density: 1 dwellings | 1 | - | Yes |
| | Dwelling Size: 146sqm (6 bed, 5 bath) | 321.87sqm | - | Yes |
| 4.1.2.1 Wall Height | N: 7.5m (based on gradient 1:6) | 8.3m | 10.7% | No |
| | S: 6.9m (based on gradient 1:15) | 6m | - | Yes |
| 4.1.2.2 Number of Storeys | 2 | 3 | 50% | No |
| 4.1.2.3 Roof Height | Height: 2.5m | 1.2m | - | Yes |
| | Pitch: maximum 35 degrees | 12 degrees | - | Yes |
| 4.1.4.1 Street Front Setbacks | Prevailing building line / 6m | 7.5m | - | Yes |
| 4.1.4.2 Side Setbacks and Secondary Street Frontages | North: Garage: 1.0m Ground Floor: 2.0m First Floor: 2.8m | Garage: 1.5m-2.7m Ground Floor: 1.6m-2.7m First Floor: 4.2m | - 20% - | Yes No Yes |
| | South: Garage: 0.3m Ground Floor: 1.2m First Floor: 2m | Garage: 1.5m Ground Floor: 1.5m First Floor: 1.6m-2.7m | - - 20% | Yes Yes No |
| | No windows within 3m of | 11 windows within | N/A | No |

| | | | | |
|---|--|---|----------------------|------------------------|
| | side boundaries | 3m of the side boundaries | | |
| 4.1.4.4 Rear Setbacks | 8m | 10.3m | - | Yes |
| 4.1.5.1 Minimum Residential Total Open Space Requirements | Open space 55% of site area (393.42sqm) | 60% (429.6sqm) | - | Yes |
| Residential Open Space Area: OS3 | No more than 25% of total open space above ground (107.4sqm) | 0% (0sqm) | - | Yes |
| 4.1.5.2 Landscaped Area | Landscaped area 35% of open space (150.4sqm) | 67.9% (291.8sqm) | - | Yes |
| | 1 native trees | >1 tree | - | Yes |
| 4.1.5.3 Private Open Space | 18sqm per dwelling | >18sqm | - | Yes |
| 4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas | Maximum 50% of frontage up to maximum 6.2m | 6.9m | 11.3% | No |
| 4.1.9 Swimming Pools, Spas and Water Features | 1m height above ground | 0m | - | Yes |
| | 1m curtilage/1.5m water side/rear setback | West: Curtilage - 0.9m Water line - 1.7m South: Curtilage - 0.9m Water line - 1.5m | 10% - 10% - | No Yes No Yes |
| Schedule 3 Parking and Access | Dwelling 2 spaces | 2 spaces | - | Yes |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.1 Streetscapes and Townscapes | Yes | Yes |
| 3.1.1 Streetscape (Residential areas) | Yes | Yes |
| 3.3.1 Landscaping Design | Yes | Yes |
| 3.3.2 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| 3.3.3 Footpath Tree Planting | Yes | Yes |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) | Yes | Yes |
| 3.4.1 Sunlight Access and Overshadowing | No | Yes |
| 3.4.2 Privacy and Security | Yes | Yes |
| 3.4.3 Maintenance of Views | Yes | Yes |
| 3.4.4 Other Nuisance (Odour, Fumes etc.) | Yes | Yes |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes | Yes |
| 3.5.1 Solar Access | Yes | Yes |
| 3.5.3 Ventilation | Yes | Yes |
| 3.5.5 Landscaping | Yes | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| 3.5.7 Building Construction and Design | Yes | Yes |
| 3.6 Accessibility | Yes | Yes |
| 3.7 Stormwater Management | Yes | Yes |
| 3.8 Waste Management | Yes | Yes |
| 3.9 Mechanical Plant Equipment | No | Yes |
| 3.10 Safety and Security | Yes | Yes |
| 4.1 Residential Development Controls | Yes | Yes |
| 4.1.1 Dwelling Density, Dwelling Size and Subdivision | Yes | Yes |
| 4.1.1.1 Residential Density and Dwelling Size | Yes | Yes |
| 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) | No | Yes |
| 4.1.3 Floor Space Ratio (FSR) | Yes | Yes |
| 4.1.4 Setbacks (front, side and rear) and Building Separation | No | Yes |
| 4.1.5 Open Space and Landscaping | Yes | Yes |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) | No | Yes |
| 4.1.8 Development on Sloping Sites | Yes | Yes |
| 4.1.9 Swimming Pools, Spas and Water Features | No | Yes |
| 4.4.1 Demolition | Yes | Yes |
| 4.4.5 Earthworks (Excavation and Filling) | Yes | Yes |

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The development will create additional overshadowing on the property to the south (4 Curban Street).

For context, 2 and 4 Curban Street are oriented east-west, with areas of private open space to the western rear ends of the properties. 4 Curban Street is uphill to 2 Curban Street, which is favorable for sunlight access, however, the dwelling at 2 Curban Street is immediately south of the subject site at 4 Curban Street.

Areas of private open space are not overshadowed unreasonable by the proposal, with the proposed development complying with the controls of Clause 3.4.1.1 Overshadowing Adjoining Open Space. The proposal is also generally compliant with other stipulated controls relating to solar access.

On the northern elevation of 2 Curban Street is one (1) window, which will be overshadowed by the proposed development. This window is 1.4m from the shared side boundary and is on the lower floor. It is unknown if this window is to a living room. As such, the proposal is considered against the underlying Objectives of the Control below.

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

The adjoining property to the south is particularly vulnerable to overshadowing based on its southerly positioning. The proposed development maintains adequate solar access to adjoining areas of private open space and does an adequate job at considering solar access to surrounding properties. Notwithstanding, Council is satisfied the proposed development will provide equitable access to light and sunshine.

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:

As detailed above, the proposed development achieves compliance with the requirements as detailed under Clause 3.4.1.1 Overshadowing Adjoining Open Space. As detailed above, the proposed development includes overshadowing of one window on the northern elevation of 4 Curban Street. However, it is noted that along the eastern and western elevations of 4 Curban Street, there are windows and doors to the internal areas, which are unaffected by the proposed works and will receive sunlight. On balance, it is considered that adequate solar access is able to penetrate the rear living areas of 4 Curban Street.

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

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

Comment:

The proposal includes articulation and stepped in design of levels. This report has considered that proposed non-compliances with controls stipulated are supported on merit. The impact on solar access to 4 Curban Street is not considered unreasonable.

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.

3.9 Mechanical Plant Equipment

The proposed development includes a plant room / store on the Garage Floor.

Consideration has been given to the requirements of Clause 3.9.1 of MDCP 2013 in relation to the provision of plant rooms for low density residential development. Whilst the proposed plant room is

slightly larger than permitted under this control, it is considered to be of appropriate dimensions.

The entire plant room / store has been excluded from the calculation of the gross floor area of the building for the calculation of the floor space ratio, consistent with the definition of 'gross floor area' within the Dictionary of MLEP 2013, which states that plant rooms and basement storage are to be excluded.

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed:

- 7.5m (based on gradient 1:6) for the northern elevation.
- 6.9m (based on gradient 1:15) for the southern elevation.

The proposal presents a compliant wall height on the southern elevation of 6m.

The proposal presents a non-compliant wall height on the northern elevation of 8.3m at the northern wall of the proposed first floor (a wall that is located significantly in from the northern boundary as the design pulls in at the upper floor), representing a variation of 10.7% to the control.

The control also requires that buildings must not exceed two (2) storeys. The proposed dwelling contains three (3) storeys.

This control was included as a reason for refusal within the assessment of DA2022/1442. Whilst the high non-compliance of the northern elevation wall has not changed, a number of other amendments have been made regarding other reasons for refusal, which have changed the size and scale of the proposal.

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 proposal is of a comparable size, height and scale to surrounding development. The breach is not considered to contribute to additional bulk and scale considering surrounding development. The proposal also does not result in any unreasonable amenity impacts. Furthermore, the proposal has made amendments to what was proposed in DA2022/1442 which have reduced the overall building height and reduced other non-compliances.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance:

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front

building line of neighboring properties and the prevailing building lines in the immediate vicinity, or 6m where a pattern is not established. The proposed dwelling is setback 7.5m from the front boundary complying with this control.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height.

Side setbacks were included as a reason for refusal within the assessment of DA2022/1442. Amendments were requested during the assessment of this review which moved northern elevation walls 0.3m further south and away from the northern side boundary.

The proposed development is compliant with side setback requirements at the garage level on both the north and south sides.

At the Ground Floor the dwelling requires:

- A 2m setback from the northern boundary, exhibiting a partially non-compliant setback of 1.6m - 2.7m, representing a maximum 20% variation to the control.
- A 1.2m setback from the southern boundary, complying with a setback of 1.5m.

At the First Floor the dwelling requires:

- A 2.8m setback to the northern boundary, complying with a setback of 4.2m.
- A 2m setback from the southern boundary, exhibiting a partially non-compliant setback of 1.6m - 2.7m, representing a maximum 20% variation to the control.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposal includes eleven (11). It should be noted that these windows are well-located or high-sill, and are designed considering privacy.

Clause 4.1.4.4 Rear Setbacks stipulates that the distance between any part of a building and the rear boundary must not be less than 8m. The proposed dwelling presents a compliant rear setback of 10.8m.

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 streetscape is not considered to be adversely impacted. The front setback is compliant. Landscaped area is compliant with the requirements of the MDCP and landscaping, planting and lawn areas are proposed at the south-eastern corner of the site within the front setback to enhance the streetscape, soften the built form and maintain a landscaped street character. Non-compliances with side setbacks do not compromise the desired streetscape and the built form is similar to surrounding development.

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:

No concerns have been raised in regard to overshadowing, privacy, security or views. The development is considered to meet the requirements of relevant clauses of the MDCP relating to amenity, including Clause 3.4.2 Privacy and Security and Clause 3.4.3 Maintenance of Views. Refer to the section of this report on MDCP Clause 3.4.1 Sunlight Access and Overshadowing for a detailed assessment of solar access. In summary, the development is not considered to create unreasonable overshadowing on public or private spaces. The proposal is also considered to maintain the existing streetscape characteristic and not detrimentally impact on traffic conditions.

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

Comment:

The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and has demonstrated it meets the underlying objectives of controls where non-compliance arise. As such, flexibility is warranted, in this instance. The proposed development is considered to satisfy 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:

The proposal is compliant with the landscape area provisions of the MDCP and maintains adequate landscaping and vegetation.

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

Comment:

The site is not classified as bush fire prone land.

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

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

Description of non-compliance

For dwelling houses, semi-detached and secondary dwellings, this Clause requires the provision of two (2) off-street parking spaces. The proposed development is compliant with this requirement, providing two (2) off-street parking spaces.

Clause 4.1.6.1 requires the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m. This was a reason for refusal within the assessment of DA2022/1442, which included a proposed garage width of 7.2m. This was not originally changed when first submitted for review. Amendments were requested during the assessment of this review which moved northern elevation walls 0.3m further south and away from the boundary.

The proposal includes a garage with a width of 6.9m, representing a 11.3% variation to the control.

Merit consideration:

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

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

Comment:

The proposed garage provides accessible and adequate parking on-site for two (2) cars and is consistent with requirements. The size and width of the garage is considered appropriate, within the context of other changes, in this instance.

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

Comment:

The proposal provides two (2) off-street parking spaces which meets the requirements and reduces the demand for on-street parking.

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

Comment:

The location and design of the garage is considered to be efficient, safe and convenient. The size and width of the garage is considered appropriate, within the context of other changes, in this instance.

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

Comment:

The proposed garage requires site excavation, however is sited at existing excavation, so only a minimal amount is required. The works are unlikely to cause site instability or interruption to ground water flows.

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

Comment:

The width and number of footpath crossings remains unchanged.

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 garage is located with the excavated area for an existing garage on site. The proposal meets landscape area requirements of the MDCP.

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

Comment:

The site is located within a residential area and the proposal complies with the required number of parking spaces.

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.

4.1.8 Development on Sloping Sites

The subject site is located in Manly DCP 2013 Landslip Hazard Area G4. The application has not been accompanied by a Checklist for Preliminary Assessment of Site Conditions. However, the DA that is being reviewed (DA2022/1442) was submitted with a Geotechnical Report. The amended development proposal is substantially the same as the original proposal. As such, the Geotechnical Report submitted with under DA2022/1442 is still valid and has been included in the recommended conditions of consent.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9.2 Location and Setbacks requires that the outer edge of any pool/spa curtilage must be setback from the side and rear boundaries at least 1m, and the water line must be at least 1.5m from the boundary.

The proposed pools curtilage is setback 0.9 m from the west and south boundary, representing a 10% variation to the control.

The water line is setback 1.7m from the west boundary and 1.5m from the south boundary, compliant with this control.

Merit consideration

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

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

Comment:

Existing fencing along the boundaries will assist in screening the pool from adjoining properties. Furthermore, a condition of consent concerning Swimming Pool/Spa Motor Noise will be imposed to ensure the acoustic privacy of adjoining and surrounding dwellings is maintained.

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 inground swimming pool will be located in the rear yard and not perceptible from the public domain which ensures the proposal will not adversely impact on the streetscape. The proposal is consistent with the established character of the locality and similar swimming pool locations within the locality.

Objective 3) To integrate landscaping.

Comment:

The proposal meets landscape area requirements of the MDCP. As such, the pool is not considered to diminish the quality of the proposed landscaped solution for the site.

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

Comment:

The site is not classified as bush fire prone land.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$14,078 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,407,776.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This review application, which seeks to gain an approval for an amended scheme in response to the refusal of DA2022/1442 for demolition works and construction of a dwelling house including swimming pool, has been referred to the Development Determination Panel (DDP), due to it being a review application under section 8.2 of the Environmental Planning and Assessment Act 1979 No 203, requiring determination by the DDP.

Critical assessment issues included; building height, wall height, northern side setback and garage width.

This assessment finds that the applicant has made substantive amendments to the proposed development, while still constituting substantially the same development.

Overall, the development is a high quality design 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 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 REV2023/0012 for Review of Determination of Application DA2022/1442 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 758044, 2 Curban 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 |
| DA03, Site Analysis | 14 June 2023 | Action Plans |
| DA04, Site / Roof / Sediment Erosion / Waste Management / Stormwater Concept Plan | 14 June 2023 | Action Plans |
| DA05, Proposed Garage Floor Plan | 14 June 2023 | Action Plans |
| DA06, Proposed Ground Floor Plan | 14 June 2023 | Action Plans |
| DA07, Proposed First Floor | 14 June 2023 | Action Plans |
| DA08, Elevations | 14 June 2023 | Action Plans |
| DA09, Sections | 14 June 2023 | Action Plans |
| DA15, Pool Plan & Section, Driveway Plan & Section | 14 June 2023 | Action Plans |
| DA17, Excavation & Fill Plan | 14 June 2023 | Action Plans |

Reports / Documentation – All recommendations and requirements contained within:

| | | |
|--|--|--|
| | | |
|--|--|--|

| Report No. / Page No. / Section No. | Dated | Prepared By |
|--|------------------|--------------------------------|
| BASIX Certificate No. 1255786S_06 | 13 April 2023 | Action Plans |
| Geotechnical Assessment, Ref. AG 21364 | 19 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:

| Engineering Plans | | |
|--|---------------|-------------------------|
| Drawing No. | Dated | Prepared By |
| D01, Issue A, Stormwater Drainage General Notes | November 2021 | NB Consulting Engineers |
| D02, Issue A, Garage Level Stormwater Drainage Plan | November 2021 | NB Consulting Engineers |
| D03, Issue A, Ground Floor & Roof Stormwater Drainage Plan | November 2021 | NB Consulting Engineers |
| D04, Issue A, Stormwater Drainage Details | November 2021 | NB Consulting Engineers |

| Landscape Plans | | |
|------------------------------|--------------|----------------|
| Drawing No. | Dated | Prepared By |
| L/02, Rev. A, Landscape Plan | 25 July 2022 | Aspect Designs |

| Waste Management Plan | | |
|-----------------------|-------------------|---------------|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | 16 September 2022 | Michael Bowen |

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 | 05/05/2023 (on EDMS) |

(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 \$14,077.76 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 \$1,407,776.00.

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

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

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

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

6. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE****7. Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

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

The recommendations 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 the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Standard Drawing Normal High in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

A Council 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. 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 Northern Beaches Consulting Engineers, drawing number 2110138 D01, D02, D03 and D04 Issue A dated 05/11/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The 450 x 450 grated pit containing the orifice plate must be located outside of the proposed 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.

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. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works. The proposed front planters and retaining walls, to the south of the driveway, shall be integrated into the natural rock outcrop, and any existing rock which is located beyond the front boundary must be retained and protected.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council (MLALC) are to 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 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, including the provision of temporary fencing to protect existing trees within 5 metres of development, and any recommendations of an approved Arboricultural Impact Assessment,

- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

15. **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.

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:

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

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

18. **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.

19. **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.

20. **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.

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. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plans by Aspect Designs, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) the garden width along the rear western boundary and the rear northern boundary shall be increased to be a total width of at least 1.0 metre, and around the existing tree within the rear at least 1.0m to all sides of the trunk, and to the new tree planting in the rear north-west corner the garden bed area shall be at least 2.5m x 2.5m in area,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located within garden bed,
- 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 75mm depth of mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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.

23. **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.

24. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal 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.

25. **House / Building Number**

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

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

Reason: Proper identification of buildings.

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

26. **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.

27. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

28. **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.

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.

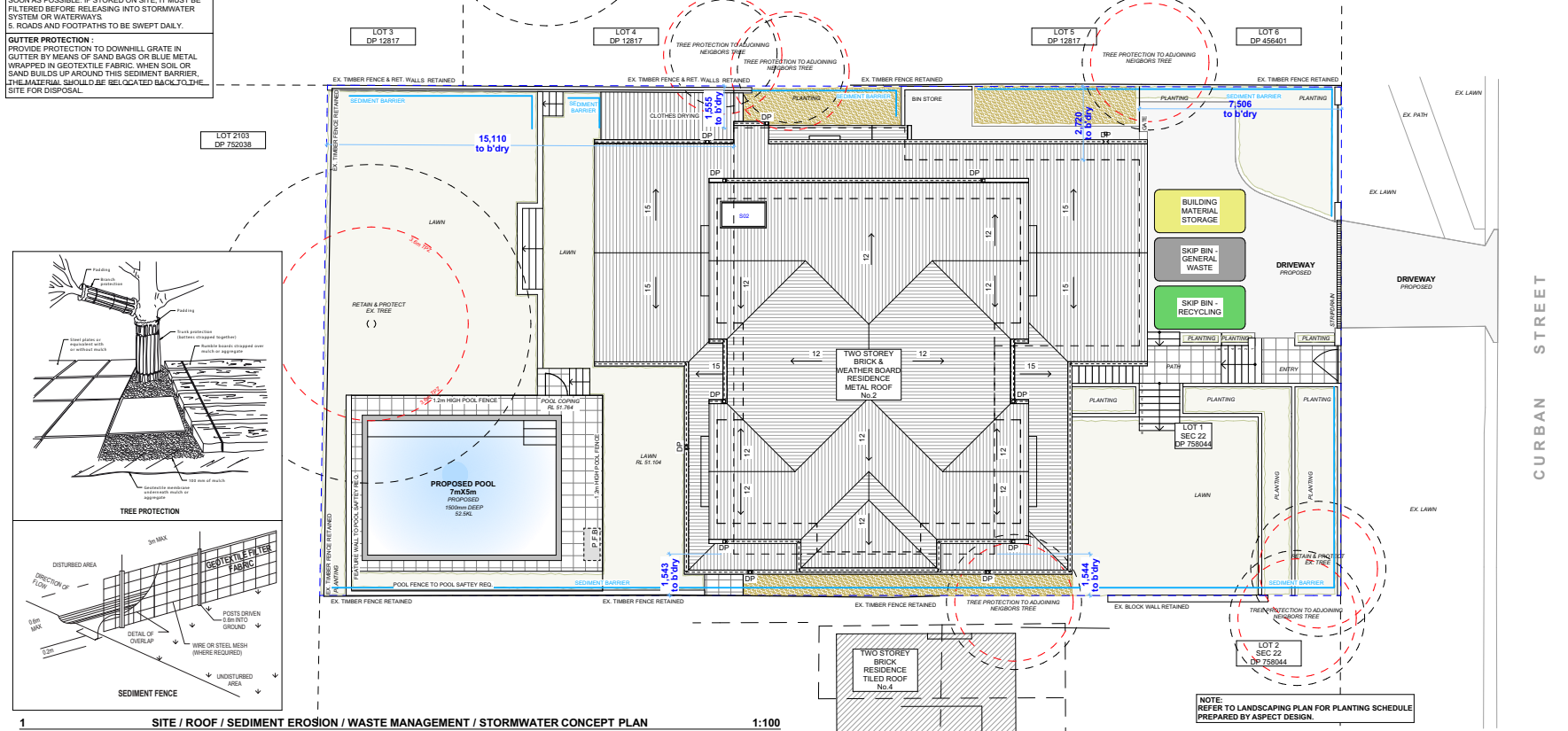
SEDIMENT NOTE:
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS. REMOVE EXCESS SOIL FROM EXCAVATED AREAS AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATERS 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 SWEEPED DAILY.

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.

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.

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.

NOTE: ALL PLANS ARE TO BE READ IN CONJUNCTION WITH THE STORMWATER MANAGEMENT PLAN PREPARED BY NB CONSULTING ENGINEERS



ACTION PLANS

tel: 0426 957 518
e: operations@actionplans.com.au
w: www.actionplans.com.au

| REV. | DATE | COMMENTS | DRWN | NOTES |
|------|------------|----------------------|------|-------|
| A | 28/05/2023 | Initial Design Phase | ANB | |
| B | 14/06/2023 | Design Phase 1 | ANB | |
| C | 14/06/2023 | Design Phase 2 | ANB | |
| D | 07/06/2023 | DA | ANB | |
| E | 16/06/2023 | DA REV A | ANB | |

LEGEND

— PROPOSED
--- DEMOLISHED

CLIENT
JORDANA & MICHAEL
BOWEN

PROJECT ADDRESS
2 CURBAN STREET
BALCONGLAN HEIGHTS
NSW 2093

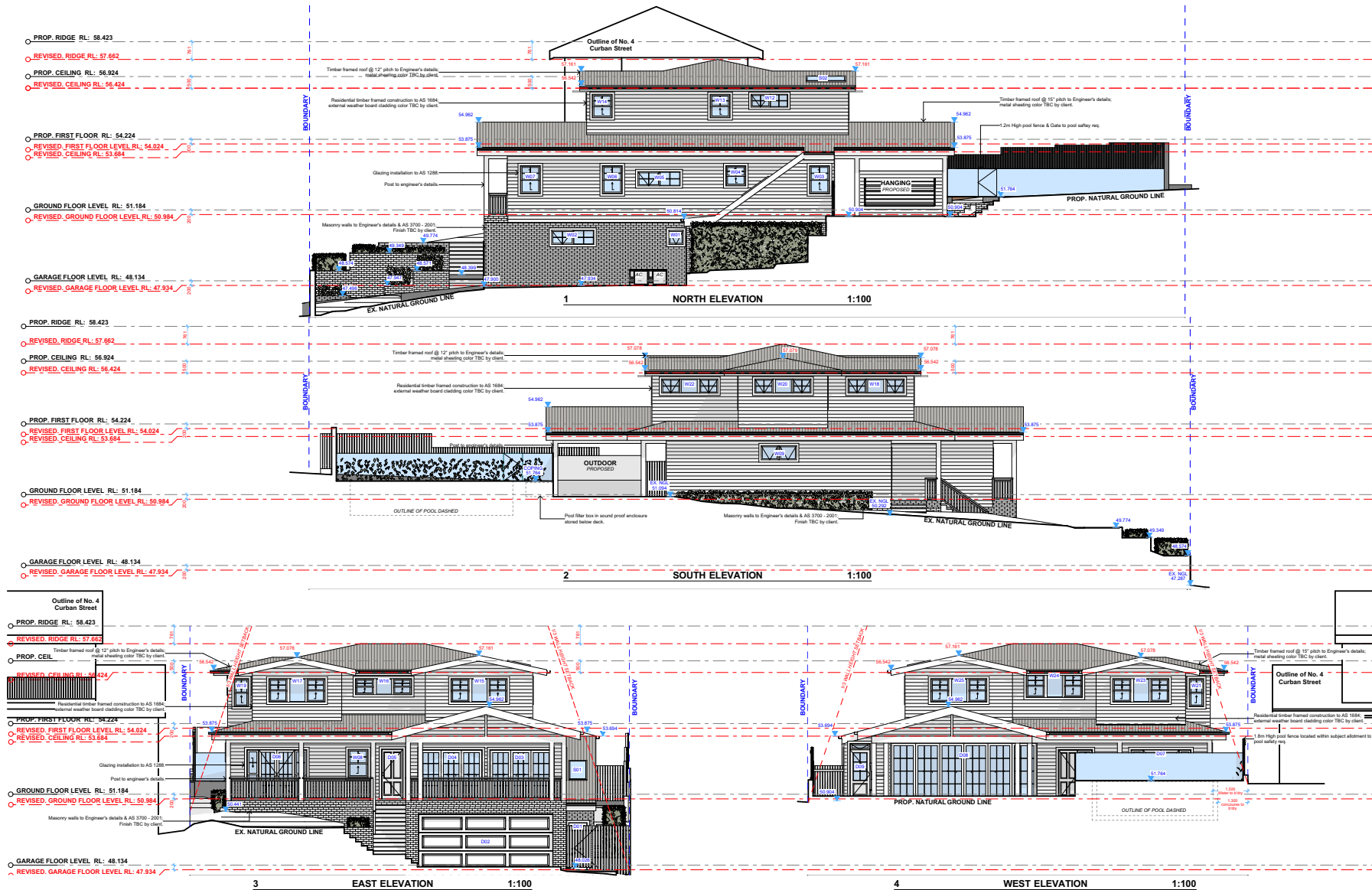
DRAWING NO.
DA04

DATE
14 June 2023

DRAWING NAME
SITE / ROOF / SEDIMENT EROSION /
WASTE MANAGEMENT
STORMWATER CONCEPT PLAN

SCALE
1:100 @A2





ACTION PLANS

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| REV. | DATE | COMMENTS | DRWN | NOTES |
|------|------------|----------------------|------|-------|
| A | 28/07/2023 | Initial Design Phase | JBW | |
| B | 14/08/2023 | Design Phase 1 | JBW | |
| C | 14/08/2023 | Design Phase 2 | JBW | |
| D | 07/09/2023 | DA | JBW | |
| E | 16/10/2023 | DA REV A | JBW | |

| LEGEND |
|------------|
| EXISTING |
| PROPOSED |
| DEMOLISHED |

CLIENT
JORDANA & MICHAEL
BOWEN

PROJECT ADDRESS
2 CURBAN STREET
BALCONVILL HEIGHTS
NSW 2093

DRAWING NO.
DA08

DATE
14 June 2023

DRAWING NAME
ELEVATIONS

SCALE
1:100 @A2

Clause 4.6 Exceptions to Development Standards

Height of Buildings

2 Curban Street, Balgowlah Heights

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?

R2 – Low Density Residential

2.3 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.*

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:*

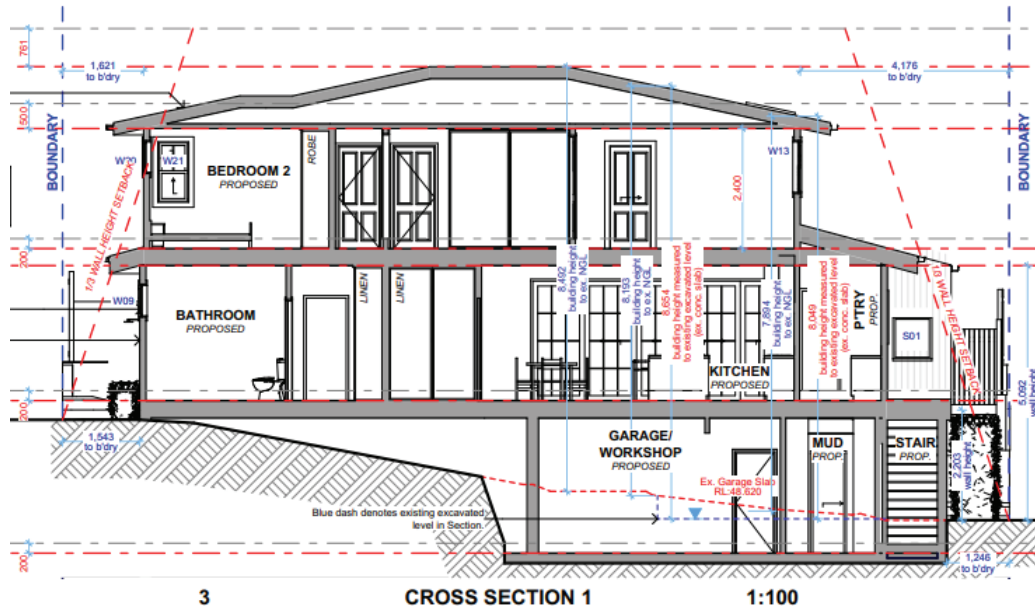
- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following—*
 - (i) views 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 development proposes a maximum height of 8.654 metres. This calculation is taken from the excavated ground level formed by the existing garage slab.



2.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation between the proposal and the environmental planning instrument is 1.8% or 0.154 metres.

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

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:

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 minor variation is largely the result of the stepping of previous excavation relative to the pitching roof. The area of non-compliance is located above the part of the site where the land falls both toward the street and across the site and coincides with the excavated slab level. The vast majority of the building complies with the maximum height control and presents to the street and neighbours as 2 storeys in a stepped configuration. The variation is so minor that it will not be perceived externally as the excavated level is within the building footprint.

The resulting dwelling is of a similar scale as the neighbouring dwellings and presents as a compliant residence to Curban Street. Consideration of the heights of neighbouring dwellings clearly demonstrates higher roof forms consistently in the area.



Figure 3. No. 1 Curban Street – the property adjacent the site to the east.



Figure 4. No. 4 Curban Street – to the south of the site.

The proposed variation is considered minor at just 1.8% or 0.154 metres. The small breach allows for the proposed development to include a pitched roof consistent with remainder of the dwelling and dwellings along the streetscape. It is considered this objective is met, despite the numerical variation.

(b) to control the bulk and scale of buildings,

Comment

The variation is contained with the roof pitch and accordingly, is for a very insignificant area, and located where it is not evident to neighbours or persons walking through the streetscape. For the variation to be able to be seen by the naked eye, a person would need to stand above



the roofline. For the neighbour closest to the non compliance, the small variation sits with a very significant setback and will be inconsequential in impact on the overall bulk of the building.

The proposed height exceedance of 1.8% or 0.154 metres is considered to be negligible in relation to bulk and scale given the existing character of the street and the desired character of the locality.

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

The proposed variation in height has no impact on any views. The small section of central roof is not in the site line of any other dwelling and is appropriate.

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. Solar access for neighbours is fully compliant with the vast majority of the dwelling well under the height control and the site and dwelling being located along the east-west axis.

Further reduction of the roof form to compliance would have no discernible impact on the solar access achieved to northern windows of the southern neighbour as the solar access lost is primarily for the ground floor. Given that compliant solar access is achieved for the neighbour, with rear living room windows retaining ample solar access, 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

The proposed variation does not result in the requirement to remove or prune trees on the subject site or on adjoining properties. The small area of roof form is located with no impact on vegetation evident or relevant. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure. The site is not within 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.

DA2022/1442 was refused in part because the proposed dwelling does not meet the 8.5m height limit. Failure to meet the objectives of the development standard was not a formal reason for refusal however the assessment report upon which the decision is based states in relation to objective (a) that, inter alia:



the proposed building height is higher than that of surrounding dwellings. The proposed development contains three storeys which is in breach of the storeys control of the MDCP and is not compatible with the scale of surrounding development.

This is not factually true. No. 4 immediately to the south of the subject site has an upper ridge level more than 2m above the proposed ridge at No. 2 Curban Street. No. 4 also presents a third level to the street, although presents significantly less modulation to the street or to neighbours.

In relation to objective (b) the assessment report claims that:

The proposed development also presents noncompliant side setbacks which result in a dwelling that is excessive for the site in terms of bulk and scale.

The side setbacks are addressed in detail within the accompanying Statement of Environmental Effects. The side setbacks are:

- very small in magnitude (<700mm); and
- present in only small portions of the side elevations; and
- are in the context of other portions of the side elevations which significantly exceed the setback requirements; and,
- Being measured to the wall, the setbacks are not relevant to the height breach which occurs in the central roof form.

Given these circumstances, we cannot agree with the report conclusions that the dwelling is excessive in bulk and scale. As discussed previously, the central location of the additional height of the roof form is not able to be readily perceived from neighbours or the street and cannot therefore contribute to an excessive bulk and scale.

We encourage Council to reconsider the previous assessment of the objectives and find that the proposed design does in fact meet the objectives of the Height standard.

4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning 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:

Compliance with height calculation as measured from natural ground.

- *Merman investments Pty Ltd v Woollahra Municipal Council* established that
the prior excavation of the site and the consequent distortion of the height of buildings plane over the site, when compared to the topography of the hill, is an environmental planning ground sufficient to justify contravening the development standard.

The proposal has been reduced in height to ensure that relative to the natural ground levels of the site, the dwelling achieves compliance. The excavated levels of the site produce the small variation to the height limit as the proposed roof pitches above these excavated levels.

Detail of Variation

- The proposed variation between the proposal and the building height control is minor at just 1.8% or 0.154 metres. It is for a very limited area, at the upper central component of the roofline, which will not be perceived from the street or side neighbours. The apparent bulk through the variation is negligible and not to the detriment of the apparent scale of the dwelling from any point satisfying Cl1.3(g).
- The small variation to the height occurs in the roof form where the ground level immediately below is excavated for the existing garage slab. It allows for the proposed development to include a pitched roof consistent with remainder of the dwelling and dwellings along the streetscape satisfying Cl1.3(g).

For the majority of the first-floor length, the height is well under the height limit. The design allows for the amenity in the dwelling house to be achieved, providing liveable accommodation. The breach is required in this instance to achieve amenity and compliance with the development standard would be unreasonable.

Neighbour Amenity

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The variation is provided with an extensive setback to the rear boundary of 10.2 metres, ensuring the impact on the rear neighbours is of nil consequence with regard to the apparent bulk. To the northern elevation, setbacks are provided in excess of the requirements. In addition to extensive setbacks, there is also substantial landscape



screening proposed. The small height variation will have no impact the neighbours to the or closest side elevation. Compliance with the development standard would be unreasonable.

- Compliance with the height control would not result in a building which has a significantly lesser bulk and the impact to neighbours of compliance would be barely discernible to the side and rear 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 the development is proposed as is detailed in the accompanying solar access diagrams. Accordingly, compliance with the development standard based on this would be unreasonable.
- The small variation to the roof form has no impact on privacy for neighbours. Accordingly, the variation is reasonable in the circumstances of the case.

Site Constraints

- The final design with a minor variation to the height, is a result of the existing site constraints and it would be unreasonable to require compliance with the development standard, when the variation result allows for the orderly and economic use of the site and allows for an ecologically sustainable development revitalising an existing underdeveloped site satisfying C11.3(g) and (f).
- In particular we note the fall of the site from west to east, and the sharp crossfall evident within the proposed dwelling footprint. Additionally, there has been excavation on the site which creates further constraint on providing acceptable building plates. The consequences of requiring compliance would be that the northern side of the dwelling would be required to be stepped. Given the complete absence of impact of the minor additional height, it is not reasonable to force the design to step in both directions across either floor plate.

Design and Streetscape Appeal

- Strict numerical compliance with the height control would not result in a better urban design outcome. The inclusion of the roof form is consistent with the architectural character proposed and will complete a very appealing design. 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 the sloping topography of the site resulting in the roof form being difficult to view from Curban Street satisfying Cl1.3(g). The streetscape appeal is unaffected by the small variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.

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 and the development standard ensuring that appropriate and reasonable housing suitable for the local community is proposed. Compliance with the development standard based on this would be unreasonable.

Natural Environment

- The inclusion of the small height variation to facilitate the raked ceiling and gable roof form has not impact on the natural environment. The small variation sits above the lower level and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the minor varied roof form and height 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 as is detailed earlier in the report.
- The variation does not result in a roof form or height beyond that which is found in the immediate context, including the immediately neighbouring sites. 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 result in alter the perceived bulk and scale due to the minor nature, siting and topography.

The variation, confined to a very small central portion of the roof, is minor and the discussion above reflects 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.

Council's refusal of DA2022/1442 includes in part that the Clause 4.6 does not demonstrate sufficient environmental planning grounds. The assessment report provides the following comments relating to this position:

The proposed development provides a large three storey dwelling that presents considerable bulk and scale. Whilst, the area of variation is minor, it is considered that the proposal is capable of complying with the development standard with a more skillful design. The proposal is for a new dwelling and there is not considered to be significant site constraints to restrict the development from complying. The ground floor and garage floor of the dwelling provide floor to ceiling heights of 2.7m which are in excess of the 2.4m standard for a habitable room, and more than 2.1m required by AS2890.1. The site (and height control) is also subject to a maximum of two storeys under the Manly DCP and the proposed dwelling is three storeys in part. Given this, the proposed dwelling is therefore deemed excessive for the site and locality, despite the argued case that there is an absence of impact. It is considered that a more skillful design can easily be achieved that complies with the building height which includes the level of amenity sought by the applicant.



We disagree with these comments noting:

- That the argument that the proposal is *capable of compliance* is not by itself evidence of insufficient planning grounds. Such a position would be contrary to the stated objectives of Clause 4.6, which seeks to allow flexibility around compliance with development standards subject to certain tests being met. Compliance for compliance sake is contrary to the purpose of Clause 4.6 of MLEP 2012. Ability to comply must be considered in the context of site constraints and absence or otherwise of impact; and,
- In concluding there are *not significant site constraints to restrict compliance*, we think the assessment has not reasonably taken into account the sudden change in levels that occur in two directions over the north eastern portion of the site, which is where the height breaches arise (See Figure 5). We also think that the assessment has not given sufficient consideration to the consequences of requiring compliance and has incorrectly assessed that the proposed design is larger than neighbouring development.

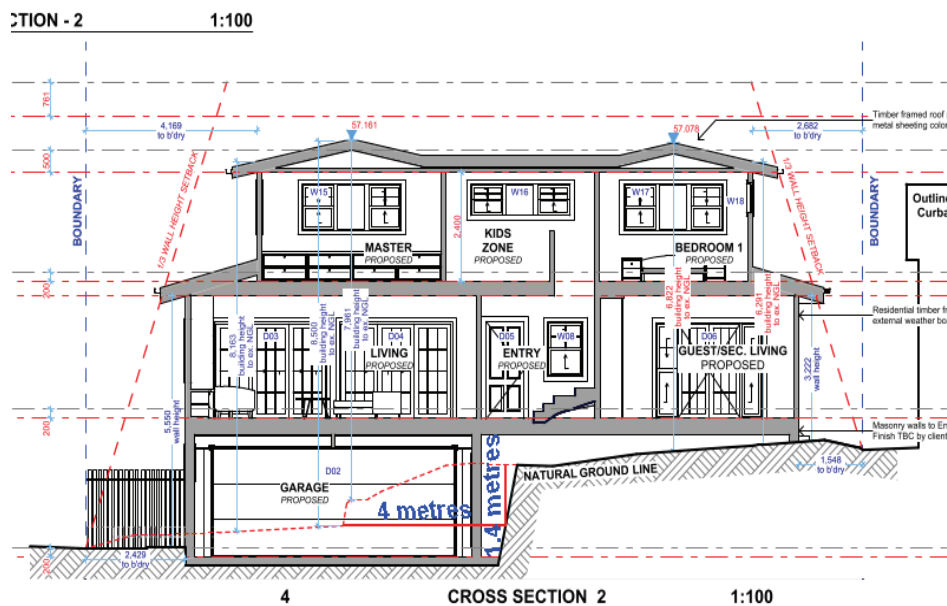


Figure 5: The fall in the land achieves 1 in 3 within the building footprint.

- The proposed design incorporates floor to ceiling heights of between 2.4 and 2.7m, which are industry standards, are regularly approved heights in the northern beaches, and do not reflect an excessive scale.



- The small portion of the design that reaches three storeys is above an excavated garage and is minor in comparison to other adjoining and nearby development that is clearly three storeys in scale. Of relevance and in addition to the three storey dwelling immediately adjoining at No. 4 Curban Street is the recent approval of No. 13 New Street Balgowlah Heights which presents undeniably as three storeys to the street, as depicted below:

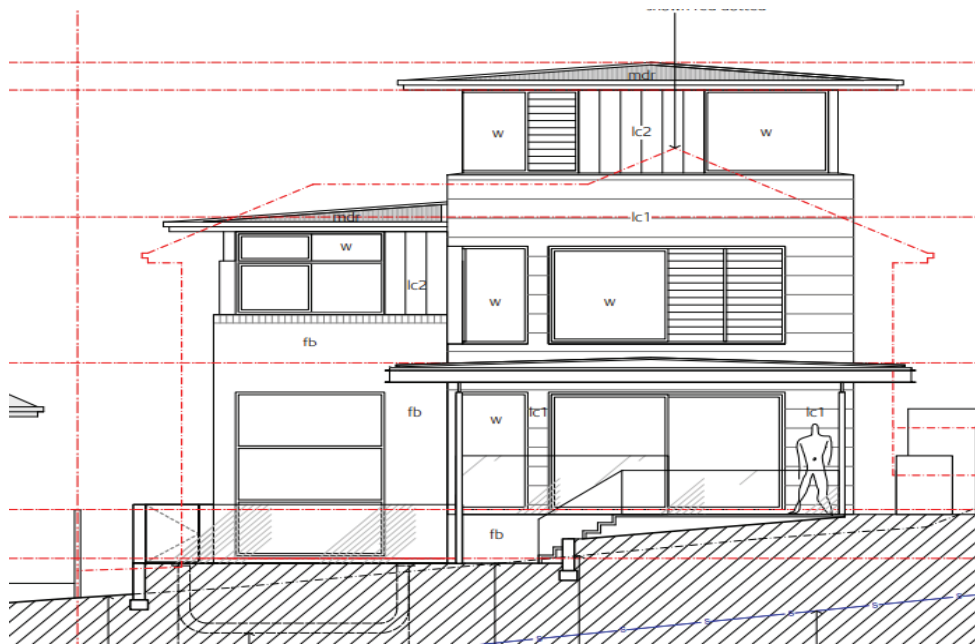


Figure 6: Recently approved at 13 New Street Balgowlah Heights, a three storey dwelling DA2022/1628 **Source:** Hobbs Jamieson

Approval of the above development suggests that a three storey dwelling with minimal stepping is not considered excessive for the locality. The existing dwelling at No. 4 Curban Street demonstrates that the proposed dwelling at No. 2 at more than 2m lower is not inconsistent with development adjoining the site.



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 a new single detached dwelling that provides housing for the residents.

- *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 a new 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 confined to the rear peak of the roof, 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.

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. The variation is reasonable, with the vast majority of the development easily complying and small component where the variation is sought being central and not easily visible from any viewpoint.

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.*

As proposed the development allows for all of the above objects to be achieved. In particular it is noted that there is no social or economic impact other than the benefit of a small amount of employment through the works which will be undertaken.

The redevelopment of an existing residential site to an improved standard is a positive environmentally sustainable result.

The development proposed a good design which is achieved partly though the minor development standard variation.



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 a new residential dwelling on land zoned R2 – Low Density Residential.

As stated above the proposed non-compliance is minor at just 1.8% or 0.154 metres.

The variation does not result in any unreasonable impacts and is largely the result of existing excavation and taking into account the slope of the site. It is of a very limited area and located such that it is not easily visible from any location, and appearing appropriate and consistent from those areas where it may be viewed.

The proposed development presents with a compliant height to Curban Street and does not present with excessive bulk in comparison to surrounding properties. There will not be any view loss and solar access is fully compliant with Council controls. Amenity is retained for all neighbours.

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 height variation. When measured from natural ground levels, the development complies.

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 | DA2022/1719 - 150 QUEENSCLIFF ROAD QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE |
| REPORTING MANAGER | Adam Richardson |
| TRIM FILE REF | 2023/379908 |
| 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 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 DA2022/1719 for alterations and additions to a dwelling house on land at Lot 6 DP 8260, 150 Queenscliff Road QUEENSCLIFF, subject to the conditions set out in the Assessment Report

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|---|---|
| Application Number: | DA2022/1719 |
| Responsible Officer: | Megan Surtees |
| Land to be developed (Address): | Lot 6 DP 8260, 150 Queenscliff Road QUEENSCLIFF NSW 2096 |
| 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: | Antony Graham Clarke Christina Marie Clarke |
| Applicant: | Antony Graham Clarke |
| Application Lodged: | 26/10/2022 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - New second occupancy |
| Notified: | 17/05/2023 to 31/05/2023 |
| Advertised: | Not Advertised |
| Submissions Received: | 1 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 14.1% |
| Recommendation: | Approval |
| Estimated Cost of Works: | \$ 969,830.00 |

EXECUTIVE SUMMARY

DA2022/1719 seeks consent for alterations and additions to the existing dwelling house on the subject site.

The application is referred to the Development Determination Panel (DDP) as the extent of alteration to the existing dwelling breaches the maximum building height standard of the WLEP of 8.5 metres by more than 10%. The additions to the existing dwelling at the rear results in a maximum building height of 9.72 metres, which presents a variation of 14.1%. The breach in building height is attributed to the steep topography of the site and position of the existing dwelling.

Concerns raised in the objections predominantly relate to the proposed secondary dwelling (which has since been deleted from the proposal), as well as amenity impacts from the secondary dwelling.

Critical assessment issues included Clause 4.3 Height of Buildings of the WLEP 2011, as well as variation to the wall height, side boundary envelope, front boundary setback, access to sunlight and building bulk controls of the WDCP 2011. The breach in building height has been supported by a written Clause 4.6 variation request for the non-compliance with the height standard of the WLEP.

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

PROPOSED DEVELOPMENT IN DETAIL

The amended application seeks consent for alterations and additions to a residential dwelling, pursuant to the *Warringah Local Environmental Plan 2013* (WLEP 2013), comprising the following works:

External

- Elevated two (2) vehicle carport with bin storage area, external access stairs to the entry level of the principal dwelling, and gated access to the rooftop of the principal dwelling.
- Landscaping works
- External stairs along the western elevation with access from Aitken Avenue
- Amendments to the window and door schedule
- 1.55 metres high front fence along the northern front boundary along Queenscliff Road
- 1.3 metres high front fence along the southern secondary street frontage along Aitken Avenue

Ground Floor Plan

- Partial enclosure of the terrace to the northern elevation and extension to the building footprint to accommodate an entry foyer, office, guest bedroom with access to bathroom 1
- Partial enclosure of the existing balcony for internal floor space to facilitate a dining area to result in an open plan kitchen, dining and living room
- Extension to the existing balcony along the southern elevation

Lower Ground Floor Plan

- New internal staircase to connect this level to the ground floor level above
- Extension of the building footprint to facilitate larger rooms for Bedroom 2 and 3
- Balcony with access from Bedroom 1

Garage

- Demolition of the existing garage along Aitken Avenue and replaced with a two (2) car garage with storage

Multiple issues were noted with the initial proposal from a planning perspective, as well as from Council's internal referrals. Amended plans were provided on 31 March 2023 which sought to address these issues. However, the outstanding issue (being the proposed secondary dwelling) remained on the amended plans. The Applicant was advised of such, and confirmation to remove the proposed

secondary dwelling through amended plans was confirmed by the Applicant on 2 May 2023.

A final set of amended plans were provided on 11 May 2023, which showed the following amendments:

- Reduced off-street parking to the elevated car space along Queenscliff Road from two (2) spaces to one (1)
- A long section through the proposed driveway to Aitken Avenue has been provided
- Increase to the floor level of the proposed garage to Aitken Avenue of RL3.15
- Design amendments to the proposed fencing along Aitken Avenue to adhere to flooding requirements, as well as a reduced maximum height from 1.8 metres to 1.2 metres
- Increased secondary street frontage setback distance to the proposed garage from 0.96m to 1.91 metres
- Deletion of the secondary dwelling

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 - Zone R2 Low Density Residential
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

| | |
|------------------------------|---|
| Property Description: | Lot 6 DP 8260 , 150 Queenscliff Road QUEENSCLIFF NSW 2096 |
|------------------------------|---|

Detailed Site Description:

The subject site consists of one (1) allotment located on the southern side of Queenscliff Road.

The site is irregular in shape with a primary frontage of 15.90m along Queenscliff Road, a secondary frontage of 18.035m along Aitken Avenue and a maximum depth of 38.365 metres. The site has a surveyed area of 534.8m².

The site is located within the R2 Low Density Residential zone within the *Warringah Local Environmental Plan 2011* (WLEP 2011) and accommodates a two (2) and three (3) storey residential dwelling with a detached two (2) vehicle garage with access from Aitken Avenue.

The site has a northerly orientation toward Queenscliff Road, and a southerly orientation toward Aitken Avenue. The subject site is located on a slope of approximately 15.91m (or 41.5%), falling from the northern front boundary toward the rear south-western corner.

The site is not known to have any threatened species.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one (1), two (2) and three (3) storey dwellings within a landscaped setting.

Map:



SITE HISTORY

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

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

APPLICATION HISTORY

Additional information was requested in relation to the provision of amended plans and documentation to address concerns identified during the preliminary assessment, as well as issued identified within the specialist referrals including Council's Development Engineer, Flood Engineer and Landscape Officer. This information was requested via a Request for Further Information (RFI) letter on 7 February 2023.

A meeting was held on 21 February 2023 between Council officers and the applicant to discuss conceptual amendments.

Preliminary amendments were provided for review prior to finalisation on 10 March 2023, and notes on the preliminary amendments were provided to the Applicant on 13 March 2023.

Amended plans and documentation were uploaded to the NSW Planning Portal on 30 March 2023. As the amendments are considered to be of a reduced or lesser environmental impact, formal renotification is not required, in accordance with Council's Community Participation Plan. The amended plans retained the proposed secondary dwelling. The Applicant was, again, advised that the secondary dwelling could not be supported due to unreasonable impacts upon the streetscape of Aitken Avenue. As such, the Applicant was given one last opportunity to address this. Amended plans were provided to Council, and uploaded to the NSW Planning Portal, on 11 May 2023. While this is a reduced or lesser environmental impact, a substantial portion of the proposed development has been amended and, as such, the amended proposal required renotification.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration | Comments |
|---|---|
| Section 4.15 (1) (a) (i) – Provisions of any environmental planning instrument | See discussion on "Environmental Planning Instruments" in this report. |
| Section 4.15 (1) (a) (ii) – Provisions of any draft environmental planning instrument | There are no current draft environmental planning instruments. |
| Section 4.15 (1) (a) (iii) – Provisions of any development control plan | Warringah Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a) (iiia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a) | <u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to |

| Section 4.15 Matters for Consideration | Comments |
|---|---|
| (iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021) | <p>consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the provision of amended plans and documentation to address concerns identified as part of the preliminary assessment as well as issues identified by, Council's Development Engineer, Flood Engineer and Landscape Officer. This information was requested via a Request for Further Information (RFI) letter on 7 February 2023. The Applicant requested a meeting with Council to address the concerns raised within the RFI. This meeting was held on 21 February 2023. Preliminary amendments were provided for review prior to finalisation on 10 March 2023, and notes on the preliminary amendments were provided to the Applicant on 13 March 2023. Amended plans and documentation were uploaded to the NSW Planning Portal on 30 March 2023. Council's referrals were notified of the amended documentation on the same day. As the amendments are considered to be of a reduced or lesser environmental impact, formal renotification is not required, in accordance with Council's Community Participation Plan. The amended plans retained the proposed secondary dwelling. The Applicant was, again, advised that the secondary dwelling could not be supported due to unreasonable impacts upon the streetscape of Aitken Avenue. As such, the Applicant was given one last opportunity to address this. Amended plans were provided to Council, and uploaded to the NSW Planning Portal, on 11 May 2023. While this is a reduced or lesser environmental impact, a substantial portion of the proposed development has been amended and, as such, the amended proposal requires renotification.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.</p> |
| Section 4.15 (1) (b) – the likely impacts | <p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built</p> |

| Section 4.15 Matters for Consideration | Comments |
|--|---|
| of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p> |
| 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 17/05/2023 to 31/05/2023 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: |
|-----------------|---|
| Peter Bakalidis | 152 Queenscliff Road QUEENSCLIFF NSW 2096 |

The following issues were raised in the submissions:

- Amenity impacts
- Secondary dwelling - building bulk, solar access and privacy

The above issues are addressed as follows:

- **Amenity impacts**

The submissions raised concerns that the proposed alterations to the principal dwelling will create unreasonable amenity impacts upon the property to the west, being 152 Queenscliff Road. It must be noted that this submission raises concern regarding privacy and view loss as a result of the extension to the rear of the principal dwelling. However, given the owners of 152 Queenscliff Road were consulted and given the opportunity to provide feedback on the proposed development, they do not, in principle, have any objection on these grounds. The submission, however, states that the non-compliances should be noted with regard to the loss of privacy.

Notwithstanding, the submission raised concern regarding the ground level balcony and the fact there is no privacy screen along the western elevation, which allows for a direct line of sight into the main bedroom of 152 Queenscliff Road. The submission requests that a reasonable condition be applied to ensure the lower ground level balcony aligns with the extension of the ground floor level above.

Comment:

As the view loss concern do not formally form part of the suite of issues identified in the submissions, a view loss assessment has not been undertaken as part of this assessment. The request to align the lower ground level balcony with the ground floor above has been considered, however, this balcony is located within 11.25 metres to the bedroom window of 152 Queenscliff Road. In accordance with the requirements for privacy mitigation as stipulated within D8 Privacy of the Warringah Development Control Plan (WDCCP), the proposed bedroom 1 balcony on the lower ground floor level is located outside of the 9.0 metre parameter which would require a privacy screen or require alteration to the design. Notwithstanding, the proposed depth of this balcony shall remain, and a condition will be recommended requiring the erection of a privacy screen along the western elevation of the balcony with a maximum height of 1.65 metres.

The application and compliance with the requirements of the DCP and has been assessed as resulting in an acceptable amenity outcome for the subject site and adjoining properties.

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

- **Secondary dwelling - building bulk, solar access and privacy**

The submissions raised concerns that the proposal includes a two-storey secondary dwelling along Aitken Avenue. The plans are not clear as to whether this structure complies with the relevant WDCCP requirements. This submission states that any non-compliance should be considered with regards to over-development of the site and loss of amenity upon adjoining properties.

Additionally, the submissions raised concerns that the proposed development constitutes an overdevelopment of the site, with adverse and unreasonable impacts upon the occupants of adjoining properties. Further, this submission notes that the proposed building bulk will impact upon the character of the area, where developments are predominantly made up of detached dwellings which are set back in a staggered layout from both the front and rear building line

allowing each property to benefit from views, privacy, and access to sunlight. As a result, the proposed secondary dwelling fails to meet the objectives of D9 Building Bulk control.

Further, the submissions raised concerns that as a direct result of the secondary dwelling, there will be significant loss in access to sunlight to the enclosed private rear open space of 152 Queenscliff Road. The shadow diagrams provided do not show additional overshadowing resulting from the secondary dwelling.

Comment:

The preliminary assessment of the application found the proposed secondary dwelling to be unacceptable, notwithstanding compliance with relevant WDCP and WLEP 2011 controls. As such, amended plans were provided which deleted the secondary dwelling from the application.

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

REFERRALS

| Internal Referral Body | Comments |
|--|--|
| Building Assessment - Fire and Disability upgrades | <p>Supported, subject to Conditions</p> <p>The proposal is supported.</p> |
| Landscape Officer | <p>Supported, subject to recommended conditions</p> <p>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):</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation <p>The landscaped open space areas includes one area of 3.2m² that does not satisfy the requirements for calculation under D1 including: open space areas with a dimension of less than 2 metres; and additionally includes areas under building structure as landscape area.</p> <p>A conceptual landscape plan is submitted and indicates areas of retained existing garden, new garden areas, trees to be removed, trees to be retained including exempt species (by height), and new tree planting. The exempt species are native Banksia trees and these shall be preserved as identified in the landscape plan. Conditions shall be imposed for an amended Landscape Plan.</p> <p>The Arboricultural Impact Assessment recommends the removal of one tree within the property impacted by proposed building works and one tree within the road reserve impacted by driveway works and exhibiting existing arboricultural issues. No objections are raised subject to canopy tree replacement within the property as well as replacement street tree planting, and conditions shall be imposed.</p> |

| Internal Referral Body | Comments |
|----------------------------------|---|
| NECC (Bushland and Biodiversity) | <p>Supported, subject to Conditions</p> <p>Council's Biodiversity Referrals Team have assessed the Development Application for compliance against the following applicable biodiversity related provisions:</p> <ul style="list-style-type: none"> • Warringah DCP cl. E2 Prescribed Vegetation • Warringah DCP cl. E4 Wildlife Corridors • Warringah DCP cl. E6 Retaining Unique Environmental Features • State Environmental Planning Policy (Resilience and Hazards) 2021 Chapter 2 - Coastal Management <p>The Development Application seeks consent for alterations and additions to the existing dwelling.</p> <p>The Arborist Report submitted with the application recommends the removal of one <i>Callistemon viminalis</i> due to the location of the proposed driveway. As the property is mapped within a Wildlife Corridor under the Warringah DCP, cl. E4 of the WDCP applies. One of the objectives of the clause is to retain and enhance native vegetation and the ecological functions of wildlife corridors. As the tree proposed for removal is native and provides habitat for native fauna, Council's Biodiversity referrals team recommend retention of the tree where possible. Where retention is not possible, the tree is to be replaced with an advanced stock <i>Callistemon viminalis</i>.</p> <p>Subject to conditions, Council's Biodiversity Referrals team are satisfied that the proposed development complies with the above listed controls.</p> |
| NECC (Coast and Catchments) | <p>Supported, subject to Conditions</p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> |

| Internal Referral Body | Comments |
|--------------------------------|--|
| | <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Nolan Planning Consultants dated October 2022 the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>Supported with conditions:</p> <ul style="list-style-type: none"> • Erosion and Sediment Control Plan (prior to construction) • Installation and Maintenance of Sediment and Erosion Control (prior to commencement) <p>Warringah LEP 2011 and Warringah DCP 2011</p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p> |
| NECC (Development Engineering) | <p><i>Supported, subject to Conditions</i></p> <p>20/04/2023: Development Application is for alterations and additions including secondary dwelling (southwest corner-down hillside).</p> <p>Access Site have dual frontages, towards North to Queenscliff Road (uphill side) and towards South to Aitken Avenue (downhill side) Proposal is for</p> <ul style="list-style-type: none"> • a new hardstand parking area for two cars with in the front setback to Queenscliff Road (and a new pedestrian stair for access from Queenscliff Road to cater main dwelling. • Demolish the existing garage on the downhill side of the property and construct a new garage with secondary dwelling over in the same location by excavating to a maximum depth of ~6.9m. <p>Stormwater: Proposal is to discharge all collected stormwater to the existing</p> |

| Internal Referral Body | Comments |
|------------------------|--|
| | <p>stormwater system in Aitken Avenue.</p> <p>For planner An excavating to a maximum depth of ~6.9m is proposed and a Geotech Report by White Geotechnical Group, Ref: J4286, Dated 14th July 2022 is provided. Please recommend the use of this report at design & construction phase.</p> <p>07/12/2022: Details regarding access to the proposed double garage at the south west corner of the property has not been provided. The details such as position, width and section profile through edge of the driveway will be required to assess the application. Therefore application is not supported.</p> <p>Development Engineering does not support the application due to insufficient information to address vehicle access in accordance with clause C3 of the DCP.</p> |
| NECC (Flooding) | <p>Supported, subject to Conditions</p> <p>Flood Referral Response - 11th April 2023 The development generally complies with the flood related controls in the Manly DCP and LEP.</p> <ul style="list-style-type: none"> • The proposed secondary dwelling garage floor level has been raised to 3.13m AHD and is located at the 1% AEP flood level. • The proposed floor level of the secondary and main dwelling are above the FPL and PMF level • The recommendations outlined in section 2.1 of the 'Flood Risk Report' prepared by Approved Consulting Engineers are to implemented to ensure there is no reduction in flood storage. • The proposed 1.2m high boundary fence on the southern boundary is to comply with prescriptive control F1. <p>Flood Referral Response - 25th January 2023 (superseded) The proposed development includes alterations and additions to an existing dwelling and construction of a new detached secondary dwelling with a ground floor garage adjacent to the southern property boundary.</p> <p>The southern edge of the property is affected by the Medium Risk Flood Precinct, a 1% AEP Flood Level of 3.13m AHD and a H4 Flood Life Hazard.</p> <p>The development is not supported due to the following reasons:</p> <ul style="list-style-type: none"> • The proposed secondary dwelling garage floor level of 2.54m AHD is located below the 1% AEP flood level of 3.13m AHD. Refer related prescriptive control D5 from Section E11 of the |

| Internal Referral Body | Comments |
|---|--|
| | <p>Warringah DCP.</p> <ul style="list-style-type: none"> The proposed new 1.8m boundary fence on the southern boundary does not comply with the prescriptive control F1 from section E11 of the Warringah DCP. <p>The development does not meet the requirements outlined in the Pittwater LEP 2014 clause 5.21 (2) Flood Planning. The development is deemed:</p> <ul style="list-style-type: none"> Not to be compatible with the flood function and behaviour on the land. Have potential to adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties. To not incorporate appropriate measures to manage risk to life in the event of a flood. |
| NECC (Riparian Lands and Creeks) | <p>Supported, subject to Conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> Supplied plans and reports; State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.8 and 2.12); Northern Beaches Water Management for Development Policy (WM Policy); and Relevant LEP and DCP clauses. <p>No comments in relation to riparian referral. Subject to water quality requirements.</p> |
| NECC (Water Management) | <p>Supported, subject to Conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> Supplied plans and reports; State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.8 and 2.12); Northern Beaches Water Management for Development Policy (WM Policy); and Relevant LEP and DCP clauses. <p>The site is adjacent to Manly Lagoon, the stormwater system must include a filtration device that removes organic matter and coarse sediments.</p> <p>Rain Water tank as per BASIX certificate.</p> |
| External Referral Body | Comments |
| Ausgrid - SEPP (Transport and Infrastructure) 2021, | Supported, subject to Conditions |

| External Referral Body | Comments |
|----------------------------|--|
| s2.48 | The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent. |
| Aboriginal Heritage Office | <p>Supported, subject to Conditions</p> <p>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. According to the Due Diligence Code of Practice, any land within 200m of water is considered to have Aboriginal heritage sensitivity and the potential to contain Aboriginal sites.</p> <p>Under the <i>National Parks and Wildlife Act 1974</i> (NPW Act) all Aboriginal objects are protected. Should anything thought to be Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office be contacted. In line with our normal advice for sandy areas, the Aboriginal Heritage Office recommends that the development conditions should provide for stop work provisions (unexpected discovery protocol) in the unlikely event that human remains are uncovered. Should human remains be uncovered, works must cease and the NSW Police must be contacted.</p> |

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. 1311187S_04, 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 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The subject site is located within the Coastal Environment Area. As such, the application was referred to Council's Coast and Catchments Officer for review and comment, and no issues were raised, subject to recommended conditions.

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

Comment:

The subject site is located within the Coastal Environment Area. As such, the application was referred to Council's Coast and Catchments Officer for review and comment, and no issues were raised, subject to recommended conditions.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The subject site is located within the Coastal Use Area. As such, the application was referred to Council's Coast and Catchments Officer for review and comment, and no issues were raised, subject to

recommended conditions.

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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

| Standard | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|--------------------------|-------------|----------|
| Height of Buildings: | 8.5m | Dwelling 9.72m | 14.1% | No |
| | | Garage 3.08m | N/A | Yes |

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 |
| 5.21 Flood planning | Yes |
| | |

| Clause | Compliance with Requirements |
|---------------------------------|------------------------------|
| 6.1 Acid sulfate soils | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Development on sloping land | Yes |

Detailed Assessment

Zone 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 continue to provide for the housing needs of the community by maintaining the R2 Low Density Residential land use of the subject site.

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

Comment:

The proposed development seeks to retain the existing principal dwelling, and construct a new secondary dwelling. In this instance, the proposed development can enable other land uses that provide facilities or services that can 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.*

Comment:

The proposed development includes additional landscape planting. As such, the low density residential environment will be characterised by landscaped settings that are in harmony with the natural environment of Warringah.

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 9.72m |
| Percentage variation to requirement: | 14.1% |

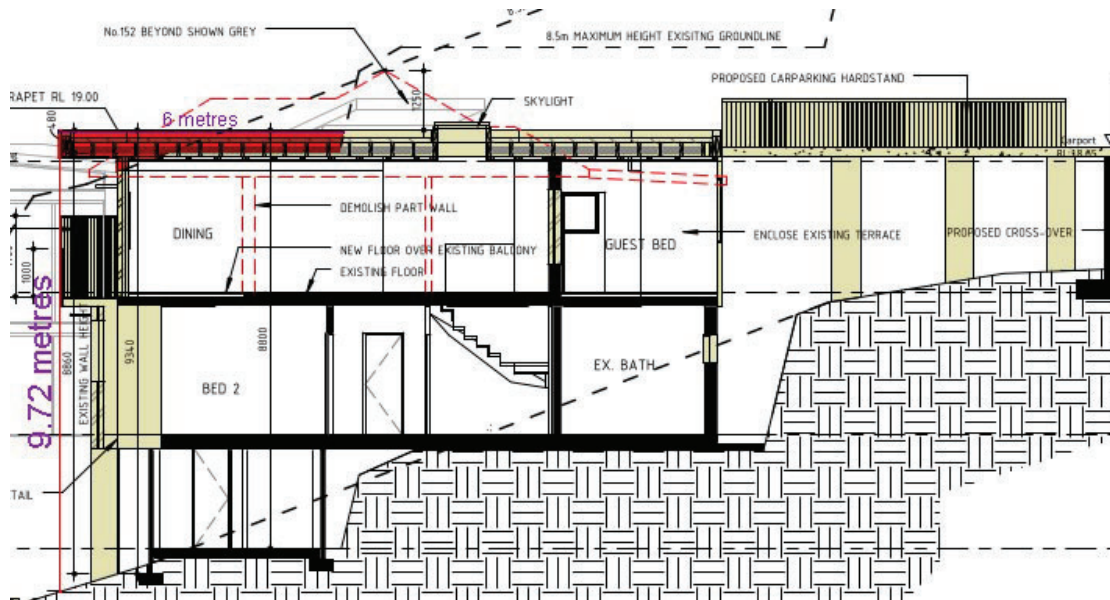


Figure 1. Maximum building height breach.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the

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

The applicants written request argues, in part:

- *"Compliance with the standard is unreasonable because, the underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.*
- *The non-compliance with the height controls is a result of the significant slope of the site, the previous excavation and location of the existing dwelling on site.*
- *The site has a total fall of 16.7m and previous excavation has been carried out. The proposal seeks to reduce the non-compliance with the building height. The existing dwelling has a large pitched roof form with a height of RL20.35 with the proposed additions incorporating a new lower pitched roof form with a height of RL 19.0. As such the non-compliance is unreasonable given the reduction in the height of the existing building.*
- *The proposed additions result in a significant reduction in the existing building height by 1.35m. The proposal will improve the existing noncompliance and will reduce bulk and scale.*
- *No unreasonable impacts upon the amenity of the adjoining properties particularly in relation to visual and acoustic privacy, views or overshadowing result from the noncompliant height of building.*
- *The amended design promotes an objective of the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the "good design and amenity of the built environment".*
- *The area of non-compliance is not prominent in the streetscape and does not result in any detrimental impacts. The reduction in the existing building height will improve the presentation to the public domain.*
- *The proposal is consistent with the objectives of the R2 Low Density Residential zone] as the proposal is consistent with the relevant objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).*
- *contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard."*

It is considered that the Applicant's reasoning to vary Clause 4.3 Height of Building of the *Warringah Local Environmental Plan 2011* (WLEP 2011) is acceptable given the site experiences a substantial slope, falling from the northern boundary at Queenscliff Road toward the southern boundary at Aitken Avenue. Additionally, the site has experienced substantial excavation over the years that has

manipulated the existing ground levels. Collectively, these create site constraints that make strict compliance with the requirements of Clause 4.3 difficult.

The scope of non-compliance is sited to the principal dwelling for a length of 6.0 metres and is sited entirely to the roof form over the dining room and balcony located off the dining room (along the southern elevation) (as indicated in red in Figure 1, above), where the site slopes with the existing excavation and topography of the land. As the scope of non-compliance is setback 16.25 metres from the front boundary line, and 13.6 metres from the secondary frontage, the non-compliance is unlikely to be easily discernible from the dual street frontages. Notwithstanding the non-compliance, when viewed from Aitken Avenue, the building mass of the proposed principal dwelling will not be dissimilar to the buildings located within the visual catchment adjoining the subject site (being 152 Queenscliff Road to the west of the subject site, and 146-148 Queenscliff Road to the east of the subject site). In this instance, the overall building height will not adversely or unreasonably impact upon the existing character of the streetscape of both Queenscliff Road and Aitken Avenue.

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 dwelling will result in a two (2) and three (3) storey residential dwelling, which shall achieve visual consistency with the properties immediately adjoining the subject site to the east and west. As such, the building mass of the principal dwelling will be compatible with the height and scale of surrounding and nearby developments.

The proposed development **can achieve** this objective.

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

Comment:

Shadow diagrams (including elevation shadow diagrams) have been prepared and submitted with this application. The proposed development does not create unreasonable additional overshadowing. Additionally, the proposal provides for an acceptable and appropriate visual outcome with a consistent and compatible building mass. As the proposed alterations to the principal dwelling are sited behind 152 Queenscliff Road, it is unlikely to result in the disruption of views from 152 Queenscliff Road (the property to the west of the subject site). The proposal has been designed to maintain views to the adjoining properties. The development on the northern side of Queenscliff Road are well elevated above street level and the proposed works given the change in levels will not obstruct existing views from these properties. The development to the east of the site, No. 146-148 Queenscliff Road is a residential apartment building which is well elevated from the proposed development. Views from these apartments are towards the east and southeast over Manly Lagoon and Queenscliff Beach. The views from these apartments will not be affected by the proposed development, sited to the west.

The proposed development **can achieve** this objective.

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

Comment:

The subject site is located to the north of Manly Lagoon and the extent of non-compliance to Clause 4.3 sited to the principal dwelling will not adversely or unreasonably impact upon the scenic quality of Manly Lagoon. Further, the alterations to the principal dwelling are well setback from Aitken Avenue and the overall reduction in height is a positive planning outcome.

The proposed development **can achieve** this objective.

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

Comment:

The site is visible from both Queenscliff Road and Aitken Avenue. The presentation to Queenscliff Road is a single storey dwelling with a new flat roof to replace the existing pitched roof form. When viewed from Aitken Avenue, the principal dwelling will present as a two (2) and three (3) storey residential dwelling which will remain consistent with surrounding residential developments. In this instance, the visual impact of the proposal will be appropriately managed when viewed from Manly Lagoon, Aitken Avenue and Queenscliff Road.

The proposed development **can achieve** 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 maintaining the R2 Low Density Residential land use of the subject site.

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

Comment:

The proposed development seeks to retain the existing principal dwelling, and construct a new secondary dwelling. In this instance, the proposed development can enable other land uses that provide facilities or services that can 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.*

Comment:

The proposed development includes additional landscape planting. As such, the low density residential environment will be characterised by landscaped settings that are in harmony with the natural environment of Warringah.

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 | Dwelling <i>Eastern Elevation</i> 5.97m - 9.53m | 32.3% max. | No |
| | | <i>Western Elevation</i> 3.54m - 8.64m | 20% | No |
| | | Garage 2.7m | N/A | Yes |
| B3 Side Boundary Envelope | Eastern Elevation 5m | Dwelling Encroachment | N/A | No |
| | | Garage No encroachment | N/A | Yes |
| | Western Elevation 5m | Dwelling Encroachment (existing) | N/A | Yes |
| | | Garage No encroachment | N/A | Yes |
| B5 Side Boundary Setbacks | Eastern Boundary 0.9m | Elevated Car Space 6.97m - 7.25m | N/A | Yes |
| | | Dwelling Ground floor: 0.9m - 3.65m Lower ground floor: 1.35m - 2.0m (existing) Basement: 1.34m - 2.13m (existing) | N/A N/A N/A | Yes Yes Yes |
| | | Balcony Ground floor: 1.34m - 2.3m Lower ground floor: 1.1m - 1.3m | N/A N/A | Yes Yes |
| | | Garage 7.05m - 7.77m | N/A | Yes |
| | Western Boundary 0.9m | Elevated Car Space 1.9m - 3.05m | N/A | Yes |
| | | Dwelling Ground floor: 3.3m - 3.7m Lower ground floor: 3.05m - 3.4m Basement: 2.2m - 3.1m (existing) | N/A N/A N/A | Yes Yes Yes |
| | | Balcony Ground Floor: 6.9m - 7.25m Lower ground floor: 10.25m | N/A N/A | Yes Yes |
| | | Garage 1.24m - 3.12m | N/A | Yes |
| | | Elevated Car Space Nil | 100% | No |
| | | | | |
| B7 Front Boundary Setbacks | Primary Frontage | Elevated Car Space Nil | 100% | No |

| | | | | |
|---|---|---|------------|------------|
| | Queenscliff Road 6.5m | Dwelling Ground floor: 7.9m - 12.6m Lower ground floor: 7.9m - 12.6m | N/A N/A | Yes Yes |
| | Secondary Frontage Aitken Avenue 3.5m | Dwelling Ground Floor: 13.3m - 14.1m Lower ground floor: 11.5m - 13.3m | N/A N/A | Yes Yes |
| | | Balcony Ground Floor: 10.95m - 11.45m Lower ground floor: 9.65m - 10.75m | N/A N/A | Yes Yes |
| | | Garage 1.91m | N/A | Yes |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40% (213.92m ²) | 45.5% (243.5m ²) | N/A | 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 |
| B5 Side Boundary Setbacks | Yes | Yes |
| B7 Front Boundary Setbacks | No | Yes |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | Yes | Yes |
| C4 Stormwater | Yes | Yes |
| C6 Building over or adjacent to Constructed Council Drainage Easements | Yes | Yes |
| C7 Excavation and Landfill | Yes | Yes |
| C8 Demolition and Construction | Yes | Yes |
| C9 Waste Management | Yes | Yes |
| D1 Landscaped Open Space and Bushland Setting | Yes | Yes |
| D2 Private Open Space | Yes | Yes |
| D3 Noise | Yes | Yes |
| D6 Access to Sunlight | No | Yes |
| D7 Views | Yes | Yes |
| D8 Privacy | Yes | Yes |
| D9 Building Bulk | Yes | Yes |
| D10 Building Colours and Materials | Yes | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| D11 Roofs | Yes | Yes |
| D12 Glare and Reflection | Yes | Yes |
| D13 Front Fences and Front Walls | Yes | Yes |
| D14 Site Facilities | Yes | Yes |
| D20 Safety and Security | Yes | Yes |
| D21 Provision and Location of Utility Services | Yes | Yes |
| D22 Conservation of Energy and Water | Yes | Yes |
| E1 Preservation of Trees or Bushland Vegetation | Yes | Yes |
| E2 Prescribed Vegetation | Yes | Yes |
| E4 Wildlife Corridors | Yes | Yes |
| E6 Retaining unique environmental features | Yes | Yes |
| E8 Waterways and Riparian Lands | Yes | Yes |
| E10 Landslip Risk | Yes | Yes |
| E11 Flood Prone Land | Yes | Yes |

Detailed Assessment

B1 Wall Heights

Description of non-compliance

This control requires development to result in a maximum wall height of 7.2 metres. The proposed development will result in a dwelling that exceeds the maximum wall height requirement along both the eastern and western elevations, as indicated in the figures below.

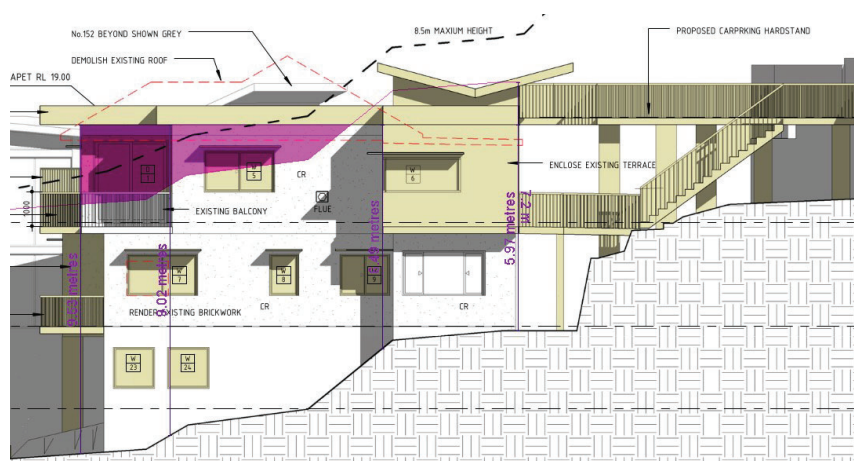


Figure 2. Eastern elevation wall height breach (indicated in pink).

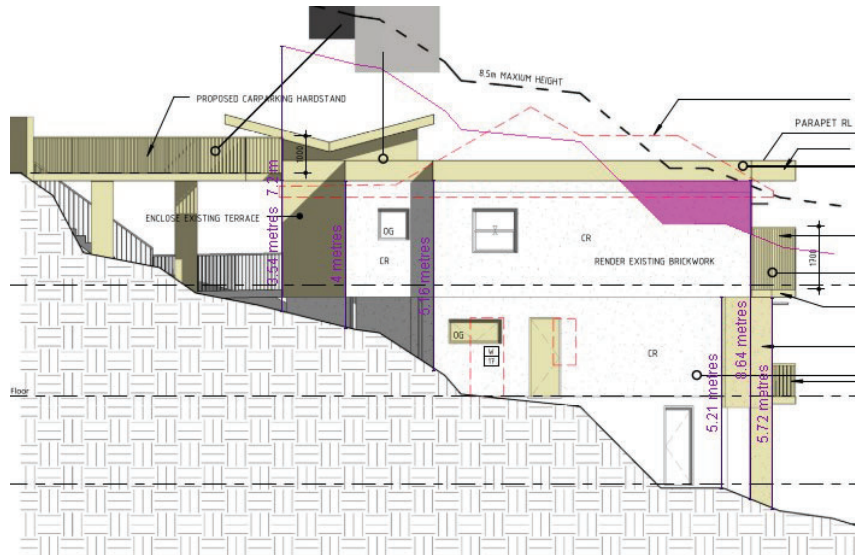


Figure 3. Western elevation wall height breach (indicated in pink).

An exception may be permitted which allows the requirements of this control to be varied on sites with slopes greater than 20% below the building footprint, provided that the building does not exceed 8.5 metres, is designed and located to minimise the bulk and scale and has a minimal visual impact when viewed from the downslope sides of the land. As the proposed maximum height exceeds 8.5 metres, the exception cannot be applied, notwithstanding the fact the building footprint is sited on a slope of approximately 39.9% along the western elevation and 28.5% along the eastern elevation.

In this instance, the proposed development has been assessed against the underlying objectives of this 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 minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The existing dwelling ranges between two (2) and three (3) storeys where the land significantly slopes to the south. The existing site constraints and the siting of the dwelling means that strict compliance with this control is difficult. Amended plans were received which removed the proposed secondary dwelling. As amended, the visual impact of the built form of the dwelling is consistent with the existing built form of the dwelling on the subject site, and those of single residential dwellings on adjoining and surrounding properties. Further, the proposal includes replacement tree planting in the southern portion of the site (that is, between the dwelling house and garage), which contributes to providing visual relief of the built form when viewed from Aitken Avenue and the nearby waterway. The extent of non-compliance will not be discernible from the Queenscliff Road frontage.

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

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

Comment:

Due to the slope of the land, the proposed development, and the dwellings within the visual catchment of the subject site, could not be sited below the surrounding tree canopy. Notwithstanding, the proposed tree replacement planting throughout the site, and the retention of vegetation and trees, will provide visual relief of the built form.

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

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

Comment:

The proposed development, as shown on the architectural plans, is not sited forward of the building line of 152 Queenscliff Road. As such, a reason sharing of views of provided to and from public and private properties.

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

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

Comment:

Notwithstanding the numerical non-compliance to the wall height along the eastern elevation, the proposed development allows for the reasonable sharing of views between properties. Notwithstanding, a view loss assessment has been undertaken within this report under section **D7 Views**. Further, a reasonable level of privacy is provided to adjoining properties, and for the occupants of the subject site, thus achieving compliance with **D8 Privacy**.

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

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

Comment:

The proposed development is sited to the existing dwelling, thus appropriately responding to the site topography. A degree of excavation is required to facilitate the new proposed garage. In this instance, the proposal appropriately responds to the topography of the site.

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

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

Comment:

The proposed roof is flat which is commensurate with the design of the house, and contributes

to minimising the built form of the dwelling, and thus minimising the impact upon adjoining properties.

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

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

This control requires development to be sited within a side boundary envelope, which is measured at a height of 5.0 metres from the side boundaries, then angled inward at 45 degrees. The proposed development will encroach the side boundary envelope along the eastern elevation, as indicated in Figure 4 below.

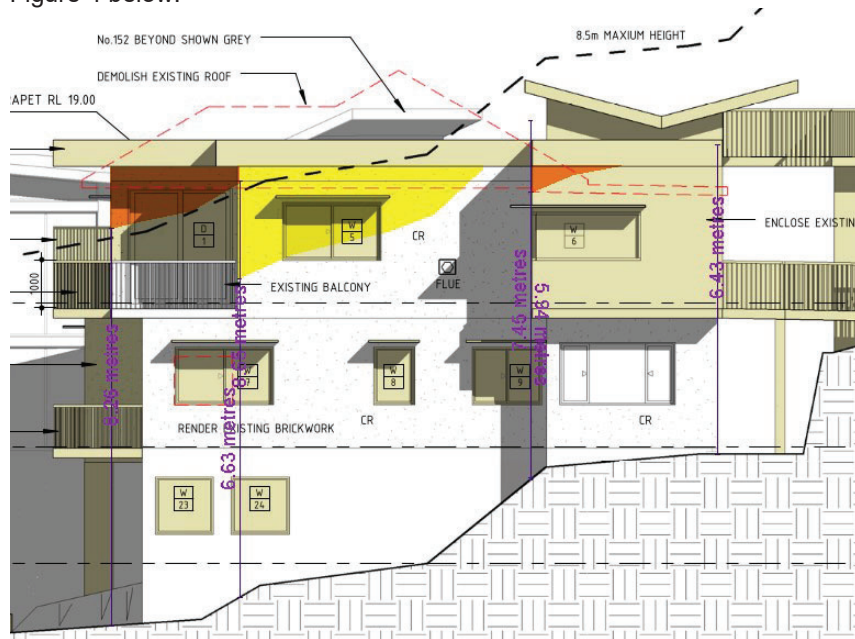


Figure 4. Eastern side boundary envelope breach (indicated in orange; yellow indicates existing breach).



Figure 5. Existing western side boundary envelope breach (indicated in yellow).

This control permits an exception that allows consent to be granted for the addition of a secondary storey to an existing dwelling house that to a minor extent does not comply with the requirement of this control. While the proposed development does not seek an entire second storey addition, the breach to the side boundary envelope is minor.

In this instance, the proposed development has been assessed against the underlying objectives of this 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 development does not become visually dominant by virtue of its height and bulk.*

Comment:

As a direct result of the steep topography of the site, the rear portion of the proposed development (along the southern elevation) results in non-compliances to the requirements of the wall height, side boundary envelope and the maximum wall height. The extent of encroachment is minor and sited only to the eastern elevation, as indicated in Figure 5 above. The greatest encroachment is sited 3.25 metres from the eastern side boundary. In this instance, and by virtue of it's height and bulk, the proposed development is considered acceptable with no unreasonable amenity impacts upon adjoining properties and the subject site.

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

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

Comment:

As detailed within this report under section D6 Access to Sunlight, while the proposed development does not achieve compliance with the requirements of D6, the proposed development does not unreasonably increase overshadowing to adjoining properties. As conditioned, the proposed development will result in a reasonable level of privacy between properties.

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

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

Comment:

As detailed elsewhere within this report, the proposed development appropriately responds to the topography of the site in that substantial excavation works are not required, thus the existing landform will generally be retained.

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

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

This control requires development to be setback 6.5m from the front boundary line. In the instance of a corner allotment, or double street frontage, this control permits a reduced front setback to 3.5 metres to the secondary street frontage. The assessment of a secondary street frontage must consider the character of the secondary street, as well as the predominant setbacks that exist to that street.

The subject site will result in the following primary and secondary street frontage setbacks:

- Primary street frontage: Queenscliff Road (6.5 metre requirement)

- Elevated car space: Nil (which presents a 100% variation)
- Principal dwelling: 7.9 metres - 12.6 metres

- Secondary street frontage: Aitken Avenue (3.5 metres)

- Garage: 1.9 metres (which presents a 45.71% variation)
- Principal dwelling: 11.5 metres - 13.3 metres (lower ground floor); 13.3m - 14.1m (ground floor)

It is noted that the proposal seeks an excess of on-site parking arrangements, with the requirement being two (2) and the proposal providing three (3) car spaces. However, due to the significant slope of the street and the orientation of the dwelling toward Queenscliff Road, a single car space with vehicular access from Queenscliff Road will improve access amenity for the occupants of the subject site, with no unreasonable impacts upon the streetscape. It is noted that dwellings with vehicular access from Queenscliff Road have enclosed garages with nil or significantly reduced front setbacks with carparking

in the front setback being characteristic of the site. In this instance, the visual outcome of the elevated car space to Queenscliff Road is acceptable.

In this instance, a detailed merit consideration of the variation to the primary street frontage against the underlying outcomes of this control is conducted below.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

Queenscliff Road

The proposed elevated car space for one (1) vehicle is an entirely open structure and thus a sense of openness is created.

Aitken Avenue

The proposed garage is a single storey structure that is in a similar location to the existing garage on the subject site. In this instance, there is no material change, or unreasonable impact, upon the streetscape character of Aitken Avenue as the garage is ancillary to the dwelling house, and is a common feature along Aitken Avenue, particularly within the visual catchment of the subject site.

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

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

Comment:

With regards to both parking structures along Queenscliff Road and Aitken Avenue, the proposed developments maintain the visual continuity applicable for the relevant streetscapes.

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

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

Comment:

As detailed above, the proposed garage and elevated car space will continue to adhere to the visual character, particularly with regards to on-site parking structures, of Queenscliff Road and Aitken Avenue. As such, the visual quality of these streetscapes is maintained.

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

- *To achieve reasonable view sharing.*

Comment:

The proposed parking structures do not cause any unreasonable impacts upon view sharing.

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

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.

D6 Access to Sunlight

Detailed description of non-compliance

This control requires at least 50% of the required area of private open space of the subject site and at least 50% of the required private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21 (which is the Winter Solstice).

Shadow diagrams have been provided with the amended plans, which highlights that, due to the steep topography of the land and the orientation of the subject site and adjoining properties (being north - south), the subject site and adjoining properties cannot benefit from full solar access to the main private open spaces to meet the requirements as prescribed within this control.

Notwithstanding, a merit assessment has been undertaken below.

Merit consideration

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

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

Due to the slope of the land and the siting of buildings, strict compliance with the requirements of this control is impossible. However, at 9am and 12noon, the shadow elevations show that there is no increased overshadowing to the private open space at 152 Queenscliff Road. At 3pm, however, the proposal results in a small increase to overshadowing to the residential flat building (RFB) to the east of the subject site, at 146-148 Queenscliff Road. However, the greatest overshadowing is sited over the garage for the RFB.

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

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

Comment:

The proposed development is considered to result in a built form that is acceptable for the context of the site and surrounding land. The proposed design of the building will be a contemporary built form that is commensurate with newer-style buildings within the Queenscliff locality. The design, therefore, is sufficiently innovatively and is not expected to have any unreasonable impacts upon the solar access of adjoining properties, as detailed above.

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

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposed dwelling is noted sited higher than adjoining properties. As such, if the adjoining properties have solar panels affixed to the top of the roof, the proposed development will not obstruct these receiving full solar access. As such, the proposal promotes passive solar design and the use of solar energy.

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

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.

D9 Building Bulk

Detailed description of non-compliance

This control requires the follow:

- *side and rear setbacks to be increased as the wall height increases,*
- *large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief of the built form,*
- *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 shall be reduced by designs which minimise the building footprint and allow the building mass to step down the slope,*
- *building height and scale needs to relate to the topography and site conditions,*
- *orientate the development to address the street,*
- *use colour, materials and surface treatment to reduce building bulk,*
- *landscape plantings are to be provided to reduce the visual bulk of new buildings and works,*
and
- *articulate walls to reduce building mass.*

The proposed development is constrained by the existing siting of the dwelling and the ability to 'step down' the slope is impractical. In any case, the proposal provides for articulated walls that break-up continuous wall planes to all elevations, which contributes to a reduction in the building mass. As such, and as detailed elsewhere in this report, the proposed built form appropriately responds to the steep topography of the site.

Notwithstanding the non-compliances to the relevant built form controls, the proposal provides for a reasonable building mass that is commensurate with adjoining and nearby properties within the visual catchment of the subject site, particularly those that are on sites with slopes greater than 20%.

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:

The proposed development provides articulated external walls, resulting in a building mass that is commensurate with residential dwellings within the visual catchment of the subject site. The proposal generally complies with the built form controls, in exception of the side boundary envelope, wall height and maximum building height - all of which are a direct result of the significant and steep topography, noting that these non-compliances are severe at the steepest part of the site. Based on the articulation provided, and the minimal amenity impacts upon adjoining properties, the resultant bulk of the built form is reasonable and acceptable, and provides good design and innovative architecture that positively contributes to the urban environment.

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

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

Comment:

The proposed development provides for ample spatial separation between buildings, particularly to the residential dwelling to the west of the subject site (being 152 Queenscliff Road). Further, where the proposal seeks to remove vegetation, replacement planting of trees has been proposed within the southern portion of the site. This encourages visual relief of the built form, particularly when viewed from the downslope street, waterways and land zoned for public recreation (being Aitken Avenue and Manly Lagoon).

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

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 \$9,698 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$969,830.

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 residential dwelling has been referred to the Development Determination Panel (DDP) as the maximum building height exceeds 8.5 metres by more than 10%.

The concerns raised in the objections have been addressed within the assessment report. The amended plans have deleted the secondary dwelling, as such the primary concerns raised within the submission have been resolved by virtue of this deletion. Where necessary, recommended conditions have been included to minimise amenity impacts upon adjoining properties.

The critical assessment issues included Clause 4.3 Height of Buildings of the WLEP 2011, Zone R2 Low Density Residential, wall heights, side boundary envelope, front boundary setbacks, access to sunlight and building bulk.

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 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 DA2022/1719 for Alterations and additions to a dwelling house. on land at Lot 6 DP 8260, 150 Queenscliff Road, QUEENSCLIFF, 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 |
| A01 Rev No. 3 Site Plan | 3 May 2023 | Scope Architects |
| A02 Rev No. 3 Carparking Plan | 3 May 2023 | Scope Architects |
| A03 Rev No. 3 Ground Floor Plan | 3 May 2023 | Scope Architects |
| A04 Rev No. 3 Lower Ground Floor Plan | 3 May 2023 | Scope Architects |
| A05 Rev No. 3 Basement & Secondary Dwelling | 3 May 2023 | Scope Architects |
| A06 Rev No. 3 Garage | 3 May 2023 | Scope Architects |
| A07 Rev No. 3 Elevations & Materials | 3 May 2023 | Scope Architects |
| A08 Rev No. 3 East Elevation | 3 May 2023 | Scope Architects |
| A09 Rev No. 3 West Elevation & Materials | 3 May 2023 | Scope Architects |
| A10 Rev No. 3 South Elevation & | 3 May 2023 | Scope Architects |

| | | |
|------------------------|------------|------------------|
| Materials | | |
| A11 Rev No. 3 Sections | 3 May 2023 | Scope Architects |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|------------------|-------------------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Geotechnical Investigation (Ref: J4286) | 14 July 2022 | White Geotechnical Group |
| Arboricultural Impact Assessment | 7 March 2023 | Complete Arborcare |
| A01 Rev 2 TPZ & SRZ Plan | 27 February 2023 | Complete Arborcare |
| Flood Risk Report (Job No. 2023025) | Not dated | Approved Consulting Engineers |
| BASIX Certificate 1311187S_04 | 3 May 2023 | Scope Architects |

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

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

| Landscape Plans | | |
|--------------------------------|--------------|--------------------|
| Drawing No. | Dated | Prepared By |
| A20 Rev No. 3 Landscaping Plan | 3 May 2023 | Scope Architects |

| Waste Management Plan | | |
|------------------------------|--------------|--------------------|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | August 2022 | Not dated |

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 |

(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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,698.30 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$969,830.00.

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. Amended Landscape Plan

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

- a) all documented 'existing trees' and native vegetation shall remain for retention, with the exception of the existing street tree within Queenscliff Road,
- b) one (1) street tree replacement (*Tristaniaopsis laurina* 'luscious') shall be planted within the road reserve of Queenscliff Road; at a minimum pre-ordered planting size of 75 litres; including four post and top and mid rail timber tree guard; generally located at least 2.0 metres from driveways, and shall generally be centralised within the road verge,
- c) a total of three (3) proposed trees shall be located on the plan; at a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; to achieve at least 6.0 metres height at maturity; located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) new garden areas planting species shall be identified and located, at a minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

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

Reason: Landscape amenity.

8. **Flooding**

In order to protect property and occupants from flood risk the following is required:

A: Flood Effects Caused by Development

A2 - There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 3.13m AHD.

B: Building Components and Structural Soundness

B1 - All new development below the Flood Planning Level of 3.63m AHD shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Flood Planning Level of 3.63 m AHD, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 3.63 m AHD, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

C: Floor Levels

C1 - New floor levels within the development shall be set at or above the Flood Planning Level of 3.63 m AHD.

C3 - The underfloor area of the dwelling below the 1% AEP flood level of 3.13m AHD is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

D: Car parking

D5 - The floor level of the proposed garage shall be set at or above the 1% AEP flood level of 3.13 m AHD.

E: Flood Emergency Response

E1 - The shelter-in-place refuge for the main and secondary dwelling must:

- a) Have a floor level at or above the Probable Maximum Flood level of 5.64 m AHD; and

- b) Have a floor space that provides at least 1m² per person; and
- c) Be intrinsically accessible to all people on the site, plainly evident, and self-directing, with sufficient capacity of access routes for all occupants without reliance on electrical means.

F: Fencing

F1 - New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area along any straight length, from the natural ground level up to the 1% AEP flood level of 3.13m AHD. Openings shall be a minimum of 75mm x 75mm.

G1 - Storage of Goods

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 3.63 m AHD unless adequately protected from floodwaters in accordance with industry standards.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

9. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

10. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's WATER MANAGEMENT for DEVELOPMENT POLICY. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

11. **Erosion and Sediment Control Plan**

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

- o Site Boundaries and contours
- o Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)

- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

12. **Stormwater Treatment Measures – Minor**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

13. **Amendments to the approved plans**

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

- The proposed access from the elevated car space to the roof, as indicated on A02 Rev No. 3 Carparking Plan (prepared by Scope Architects, dated 3 May 2023) is to be deleted from the approved plans.

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

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

14. **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.

15. **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.

16. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

17. **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.

18. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels for both vehicle crossings

- Along frontage of Queenscliff Road (uphill side) to cater main dwelling &
- Along frontage of Aitken Avenue (downhill side) to cater secondary dwelling

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.

19. **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.

20. **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.

21. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) T1 Bottlebrush
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

23. **Tree Removal Within the Road Reserve**

This consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

- a) T2 Bottlebrush, subject to street tree replacement,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

24. **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

25. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

26. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

27. **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.

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

Council proactively regulates construction sites for sediment management.

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

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

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

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

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

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

30. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

31. **Demolition Works - Asbestos**

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

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

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

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

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

32. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

33. **Vehicle Crossings**

The Applicant is to construct two vehicle crossings;

- along frontage of Queenscliff Road &
- along frontage of Aitken Avenue

Both crossings are to be 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 01N 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.

34. **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.

35. **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**

36. **Street Tree Planting**

All street trees shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees. All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be generally located at least 2.0 metres from driveways, and shall generally be centralised within the road verge.

Reason: To maintain environmental and streetscape amenity.

37. **Landscape Completion**

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

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan,
- c) where planting within existing gardens fail, replacement planting shall be installed.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

38. **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.

39. **Replacement of Canopy Trees**

At least 1 locally native canopy tree (*Callistemon viminalis*) is to be planted on site to replace protected trees approved for removal.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

40. **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.

41. **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.

42. **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.

43. **Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking

facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Compliance with this consent.

44. **Certification of Works as Executed**

A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

1. Floor levels for ground floor, shelter in place refuge and garage are set at or above the required level
2. There has been no filling on the land other than what has been approved
3. Openings are provided under floor areas where required for the free passage of flood waters
4. Openings are provided in fencing where required for the free passage of flood waters

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

45. **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.

46. **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

47. **Landscape Maintenance**

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

The approved landscape planted areas shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

48. **Flood Management**

A2 - There shall be no filling of the land below the 1% AEP flood level of 3.13 m AHD, blocking of areas required by DA consent to be left open, or any other obstruction of flow paths through the property.

G1 - Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level of 3.63 m AHD unless adequately protected from floodwaters in accordance with industry standards.

E1 - Appropriate access to the shelter in place refuge is to be maintained at all times from all areas within the development and it must contain as a minimum: sufficient clean water for all occupants; portable radio with spare batteries; torch with spare batteries; and a first aid kit.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

49. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

50. **Replacement of Canopy Trees**

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

51. **Maintenance of Stormwater Treatment Measures - Minor**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

52. **Geotechnical Recommendations**

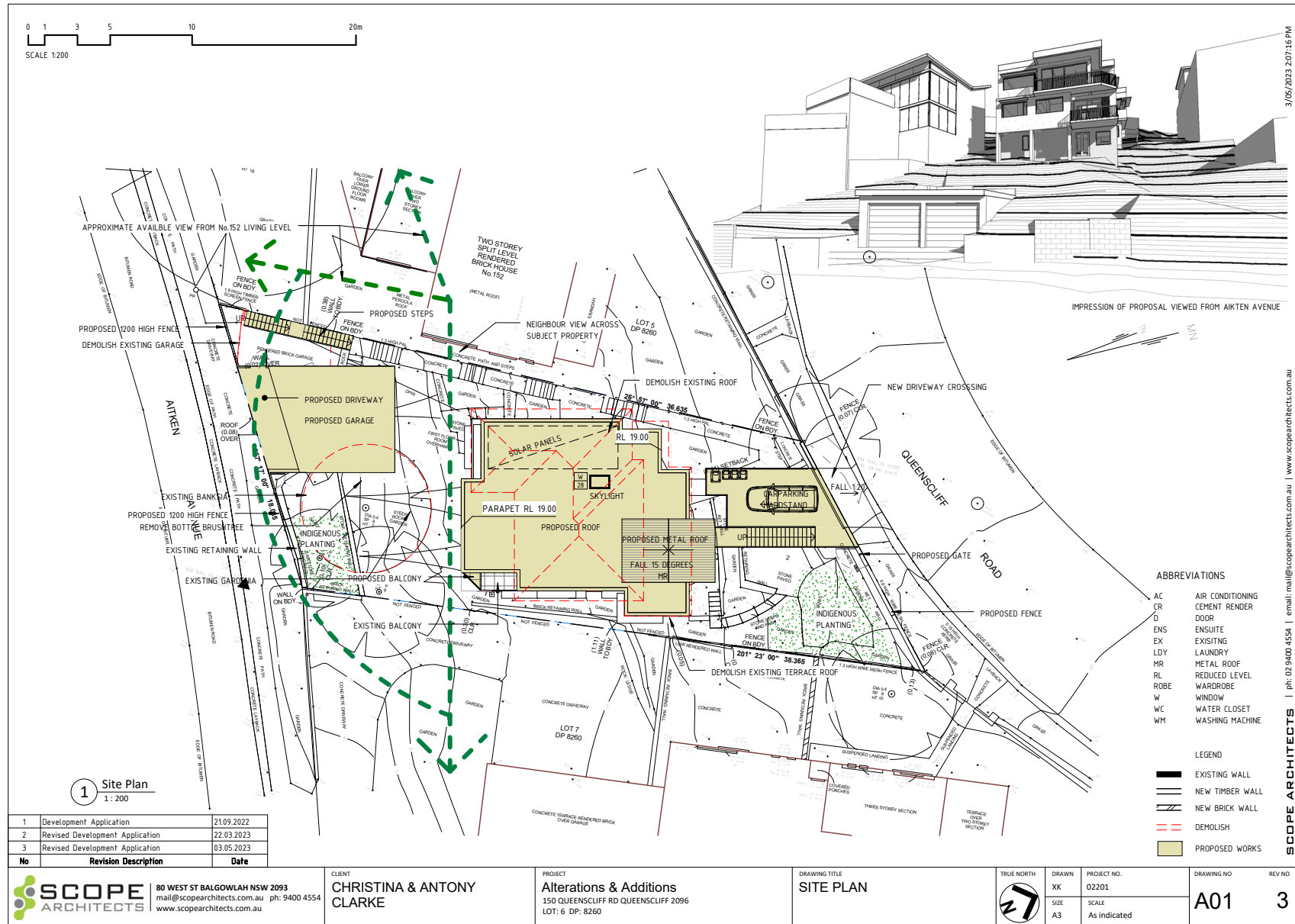
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

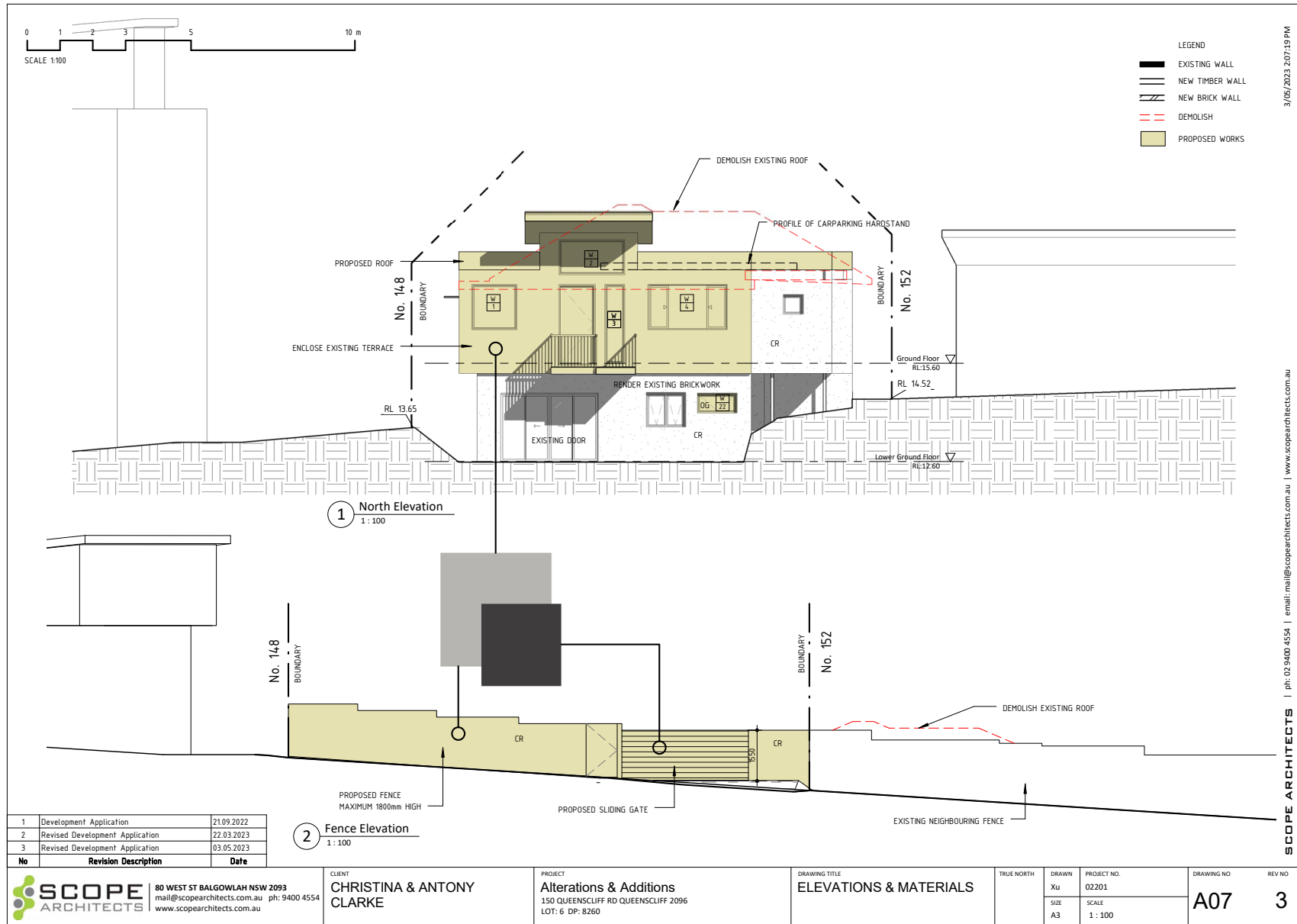
Reason: To ensure geotechnical risk is mitigated appropriately.

53. **Rooftop Access**

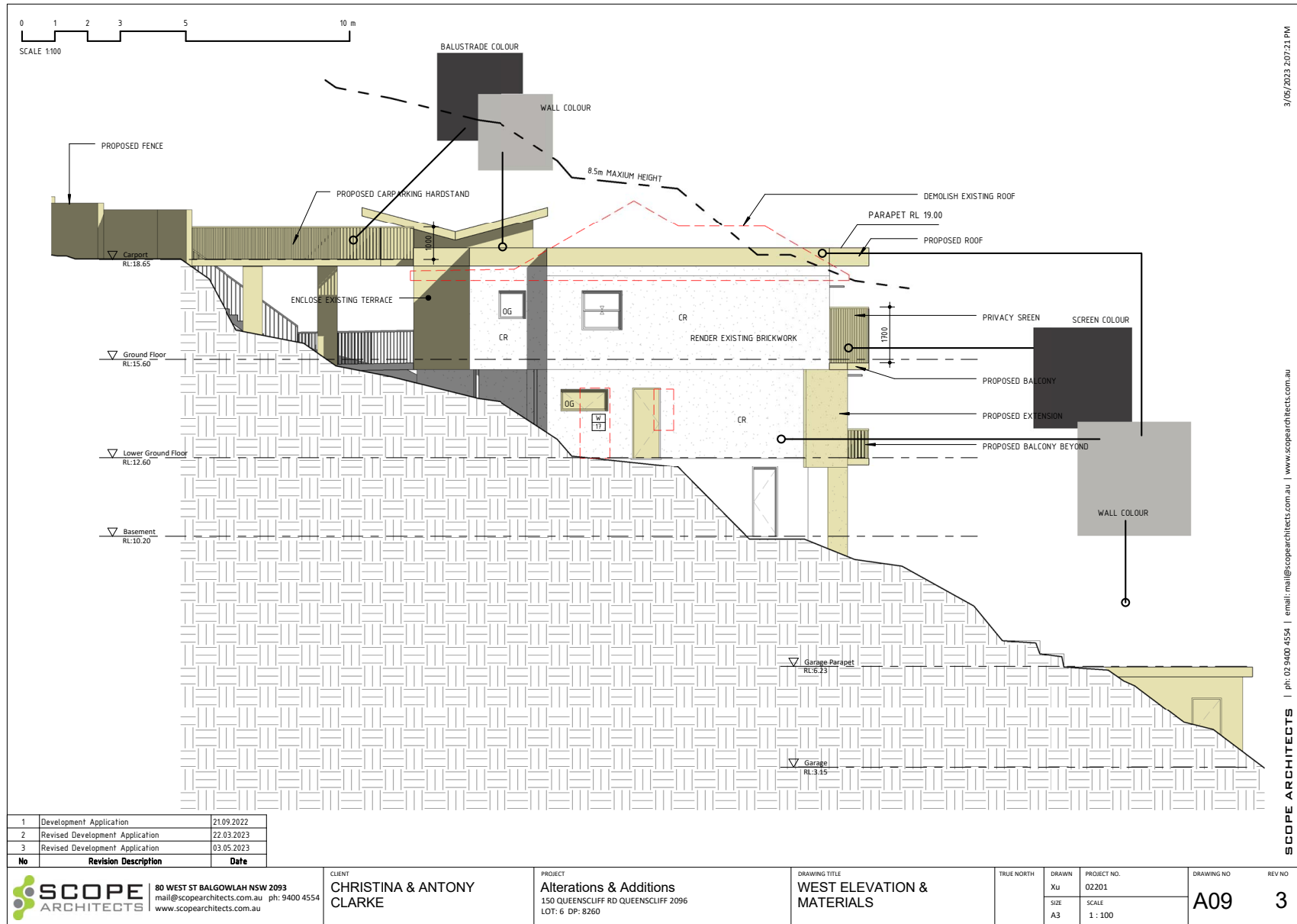
The proposed roof is to be non-trafficable for the life of the development.

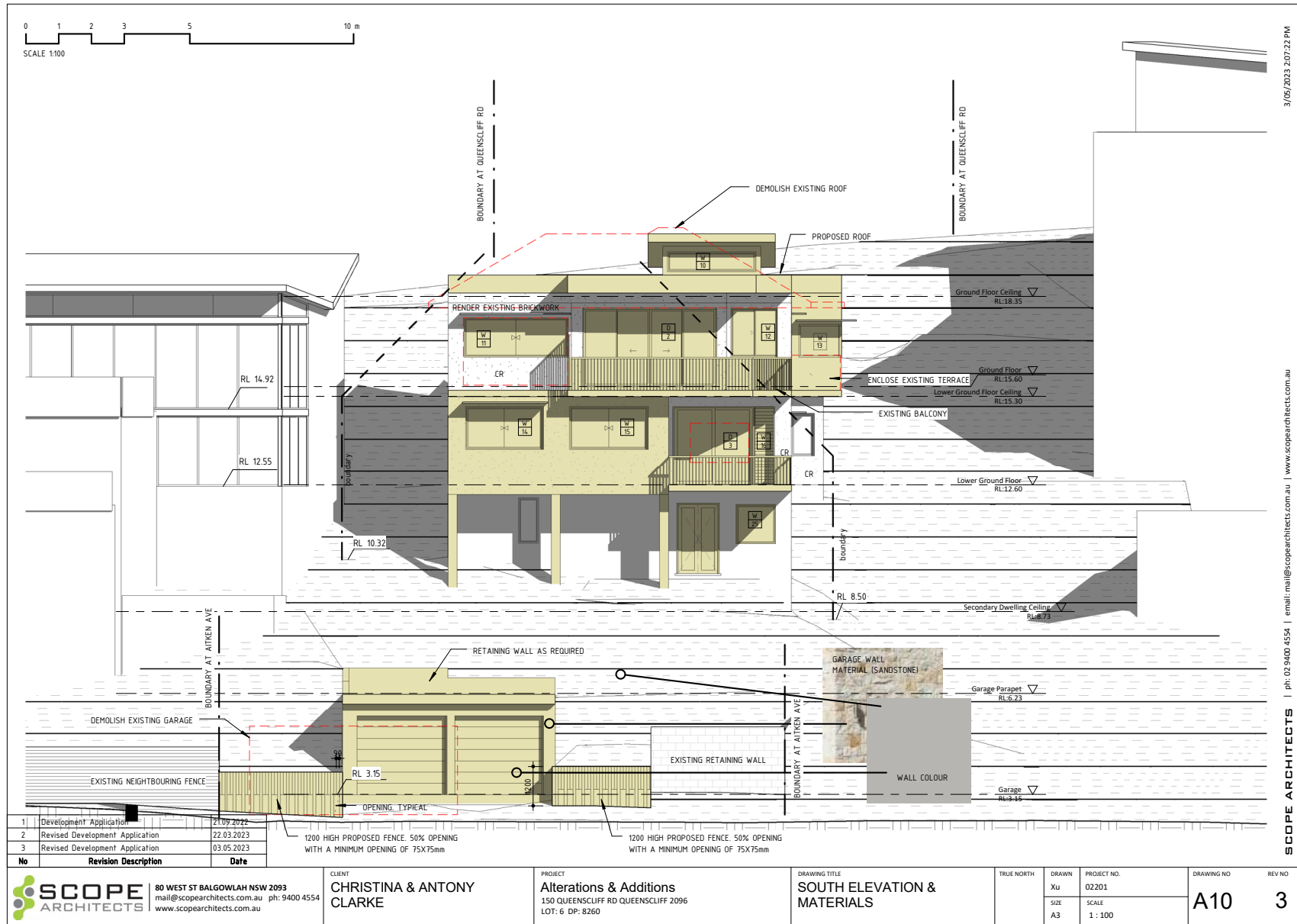
Reason: To ensure no unreasonable amenity impacts.











NOLAN PLANNING CONSULTANTS

Clause 4.6 – Exception to Maximum Height of Buildings Development Standard Proposed Dwelling Alterations/Additions 150 Queenscliff Road, Queenscliff

Introduction

The subject site is identified as Lot 6 in DP 8260 which is known as 150 Queenscliff Road, Queenscliff. The site located on the southern side of Queenscliff Road with the rear southern boundary fronting Aitken Avenue. The site is steeply sloping with a fall of approximately 16.7m from the front northeast corner to the rear southwest corner.

The non-compliance with the height of building development standard is a direct result of the significant slope of the site, previous excavation and floor levels of the existing dwelling. The non-compliance does not result in any detrimental impacts to the adjoining properties.

The proposal seeks approval for a variation to the maximum height of building (Height of Buildings) development standard in clause 4.3 of the Warringah Local Environmental Plan 2011.

4.3 Height of Buildings

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

The Height of Buildings Map indicates that the maximum building that applies to the Site is 8.5m.

The proposal results in a maximum building height of 9.34m, a non-compliance of 0.84m or 9.8% variation.

This clause 4.6 written request has been prepared having regard to clauses 4.3 and 4.6 of the Warringah Environmental Plan 2011 and recent judgments of the Land and Environment Court. It is concluded that the variation is well founded.

1. Objectives of Clause 4.6

The objectives of Clause 4.6 of the LEP are:

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

2. The standard to be varied is a Development Standard to which Clause 4.6 applies

Clause 4.3 of the Warringah Local Environmental Plan 2011 is contained within Part 4 and is titled Development Standards to be complied with. I am of the opinion that the wording of the clause is consistent with previous decisions of the Land & Environment Court in relation to matters which constitute development standards.

Clause 4.3 does not contain a provision which specifically excludes the application of clause 4.6 and vice a versa.

I consider that clause 4.3 is a development standard to which clause 4.6 applies.

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case

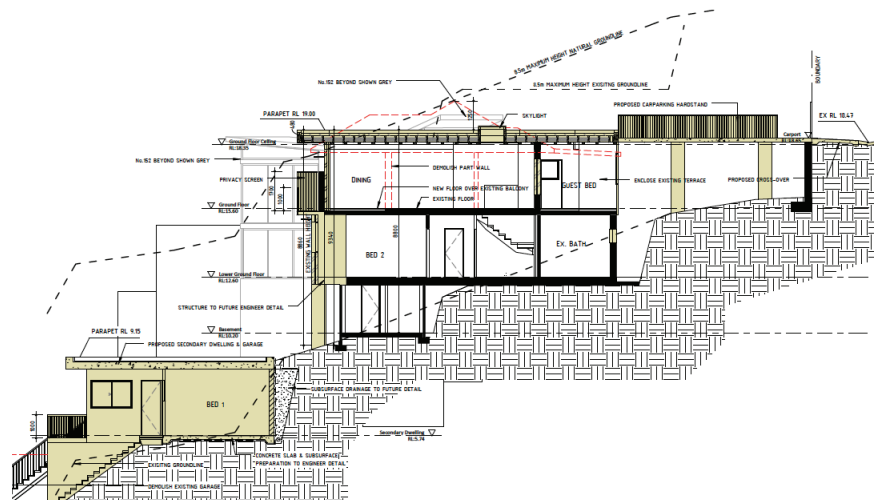
Sub-clause 4.6(3) sets out the matters that must be demonstrated by a written request seeking to justify a contravention of the relevant development standard:

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

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC118, Preston CJ sets out ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, although he emphasised that his list was not exhaustive. These include:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose of the standard is not relevant to the development.
- The underlying objective or purpose would be defeated or thwarted if compliance was required.
- The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard or
- The zoning of the land was unreasonable or inappropriate such that the standards for that zoning are also unreasonable or unnecessary.

The subject site is a steeply sloping allotment with the existing dwelling exceeding the maximum height controls. The proposal results in an overall reduction of the existing ridge height of RL20.35 to RL19.00. The proposal, whilst reducing the existing maximum height, does not comply with the building height development standard.



Extract of Architectural Plans depicting section depicting existing and proposed heights

The objectives of the Height of Buildings standard are set out in clause 4.3(1) of Warringah Local Environmental Plan 2011:

- to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

150 Queenscliff Road, Queenscliff

- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The objectives of the building height standard are achieved notwithstanding and because of the non-compliance, in light of the following:

- a. The proposal presents as a single storey dwelling when viewed from Queenscliff Road and as two storeys with subfloor area when viewed from Aitken Avenue. The proposed additions reduce the existing overall height from RL20.35 to RL19.00, a reduction of 1.35m through the introduction of a flat roof form. This is compatible with the existing surrounding development, with No. 152 Queenscliff Road to the west comprising a large three storey dwelling with low pitched roof and the adjoining eastern property, No. 146-148 Queenscliff Road, consisting of a large three storey residential flat building. The site is located within a portion of Queenscliff Road, that is characterised by a mixture of original housing stock, large two and three storey dwellings and multi level residential flat buildings. The proposal complies with objective (a).
- b. Shadow diagrams have been prepared and submitted with the application. The proposed additions do not result in any significant overshadowing. The proposed additions provide for an appropriate visual outcome with a well-articulated form and aesthetic external finishes.
The proposal will not disrupt existing views from the surrounding properties. The proposal has been designed to maintain views to the adjoining properties. The development on the northern side of Queenscliff Road are well elevated above street level and the proposed works given the change in levels will not obstruct existing views from these properties.

The development to the east of the site, No. 146-148 Queenscliff Road is a residential apartment building which is well elevated and separated from the proposed development. Views from these apartments are towards the east and southeast over Manly Lagoon and Queenscliff Beach. The views from these apartments will not be affected by the proposed development.

The proposal achieves objective (b).

- c. The subject site is located to the north of Manly Lagoon. The proposal will improve the presentation to Aitken Avenue which fronts Manly Lagoon. This has been achieved by activating the streetscape. The additions to the dwelling are well setback from Aitken Avenue and the overall reduction in height is a positive planning outcome. The proposal complies with objective (c).
- d. The site is visible from both Queenscliff Road and Aitken Avenue. The presentation to Queenscliff Road is a single storey dwelling with a new flat roof to replace the existing pitched roof form.

150 Queenscliff Road, Queenscliff

The presentation to Aitken Avenue is improved as discussed above in response to objective (c). The proposal complies with objective (d).

Compliance with the standard is unreasonable because, the underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.

The non-compliance with the height controls is a result of the significant slope of the site, the previous excavation and location of the existing dwelling on site. The site has a total fall of 16.7m and previous excavation has been carried out. The proposal seeks to reduce the non-compliance with the building height. The existing dwelling has a large pitched roof form with a height of RL20.35 with the proposed additions incorporating a new lower pitched roof form with a height of RL 19.0. As such the non-compliance is unreasonable given the reduction in the height of the existing building.

4. There are sufficient environmental planning grounds to justify contravening the development standard

The non-compliance is a direct result of the significant slope of the site and the design of the existing dwelling. The proposed additions result in a significant reduction in the existing building height by 1.35m. The proposal will improve the existing non-compliance and will reduce bulk and scale.

No unreasonable impacts upon the amenity of the adjoining properties particularly in relation to visual and acoustic privacy, views or overshadowing result from the non-compliant height of building.

The amended design promotes an objective of the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the “good design and amenity of the built environment”.

The contravention is justified by the following environmental planning grounds:

- The site is constrained by the significant slope with a total fall of approximately 16.7m from the Queenscliff Road frontage towards the Aitken Road frontage. The existing dwelling exceeds the building height development standard and the proposed additions reduce the existing non-compliance.
- The area of non-compliance is not prominent in the streetscape and does not result in any detrimental impacts. The reduction in the existing building height will improve the presentation to the public domain.

5. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the Height of Buildings development standard, which is demonstrated in the analysis in section 3.

The proposed development is also consistent with the R2 Low Density Residential Zone objectives in Warringah Local Environmental Plan 2011.

The objectives for the R2 – Low Density Residential zone are:

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

Objective 2 and 3 are not applicable. The proposal is consistent with the first objective given that:

1. The proposal provides for the housing needs of the community within a low density residential environment via the provision of additions to an existing detached dwelling house.

As the proposal is consistent with the relevant objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential Zone the proposed development is considered to be in the public interest in satisfaction of clause 4.6(4)(a)(ii).

6. Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

Sub-clause 4.6(4) requires that the consent authority is satisfied that the concurrence of the Planning Secretary has been obtained and sub-clause 4.6(5) enumerates matters that the Planning Secretary must consider in deciding whether to grant concurrence.

The Planning Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, that the Planning Secretary's concurrence may be "assumed" for exceptions to development standards, subject to certain conditions contained in the notice.

150 Queenscliff Road, Queenscliff

Further, it is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning and there is no identifiable public benefit in maintaining the development standard.

Natalie Nolan
Graduate Diploma (Urban & Regional Planning), Ba App Sci (Env. Health & Building).
NOLAN PLANNING CONSULTANTS
October 2022

ITEM 3.6

**MOD2022/0518 - 26 RALSTON ROAD PALM BEACH -
MODIFICATION OF DEVELOPMENT CONSENT DA2020/0096
GRANTED FOR DEMOLITION OF A DWELLING HOUSE AND
CONSTRUCTION OF TWO DWELLING HOUSES**

REPORTING MANAGER**Steve Findlay****TRIM FILE REF****2023/334832****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 **refuses** Development Consent to MOD2022/0518 for Modification of Development Consent DA2020/0096 granted for Demolition of a dwelling house and construction of two dwelling houses on land at Lot 4 and 5 Sec 10 DP 14048, 26 Ralston Road PALM BEACH, for the reasons for refusal set out in the Assessment Report.

MODIFICATION APPLICATION ASSESSMENT REPORT

| | |
|---|---|
| Application Number: | Mod2022/0518 |
| Responsible Officer: | Scott McInnes Creative Planning Solutions Pty Limited |
| Land to be developed (Address): | 26 Ralston Road, Palm Beach NSW 2108 Lot 4, Sec. 10, DP 14048 Lot 5, Sec. 10, DP 14048 |
| Proposed Development: | Modification of Development Consent DA2020/0096 granted for demolition of a dwelling house and construction of two dwelling houses. |
| Zoning: | C4 Environmental Living |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Tony Melhem Nassif |
| Applicant: | Tony Nassif |
| Application Lodged: | 04/10/2022 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Refer to Development Application |
| Notified: | 11/10/2022 to 25/10/2022 |
| Advertised: | Not Advertised |
| Submissions Received: | Three (3) submissions received |
| Clause 4.6 Variation: | No |
| Recommendation: | Refusal |

EXECUTIVE SUMMARY

The s.4.55(2) application seeks modification of DA2020/0096, which granted consent for demolition of a dwelling house and construction of two dwelling houses.

The modifications proposed include:

- Changes to the design of the Lot 4 pool terrace, in accordance with consent condition 20.
- Changes to the size of the entry stairway from the driveway/urban entry court for Lot 5.
- Changes to proposed floor levels which result in an increase in building height.

The proposed modification also seeks to increase the height of the building's approved parapet walls, despite Condition 18 of the development consent imposed by Development Determination Panel (DDP) to limit the height of such parapets. Accordingly, the subject modification application is being referred to the DDP for determination.

Three submissions objecting to the proposed modifications were received following notification of the application. The objections generally relate to view loss, visual privacy, solar access, adverse



acoustic impacts, visual bulk and scale of the development, and that the proposed development as modified is not 'substantially the same' as that which was approved.

The application was originally lodged as a s.4.55(1A) modification, but subsequently amended to a s.4.55(2) following a preliminary assessment of the impacts associated with the proposal.

Requests for additional information from the Applicant were sought, including amended shadow diagrams, the erection of surveyed height poles, and a view impact analysis.

Shortcomings were identified with the photomontages relied upon by the Applicant for the purposes of their view impact analysis. Nonetheless, an assessment of the expected view loss from the proposed modifications has been undertaken based on observations of the surveyed height poles installed at the objector site inspections.

The assessment has concluded the views from openings to the north facing living room on the second storey at 8 Ebor Road will be adversely affected by the proposed building height increase. This includes obstruction of more than 50% of the Broken Bay water view, and degrading the land/water interface view which is currently enjoyed from the living area. This outcome fails to comply with Part C1.3 of the P21 DCP and forms the first reason for refusal of the application.

The proposed increase to the overall wall heights also generates additional bulk and scale to the western elevations the proposed dwellings at Lots 4 and 5, and on the eastern elevation of the dwelling proposed for Lot 4. This contravenes the building height plane prescribed by control 2 of the P21 DCP.

The ability to satisfactorily screen and soften the offending building envelope cannot occur given the RFS asset protection zone requirements (Condition 1 and 5) which limit tree canopy spread across the site to 15% and within 2m of the dwelling. This prevents any genuine softening of the non-compliant building envelope from within the site, and compounds the development's bulk and scale when viewed from the neighbouring properties. This will be particularly evident in the rear yard of 28 Ralston Road. This is contrary to Part D12.8 outcome 1, 2, and 3, and control 2 of the P21 DCP. This forms the second reason for refusal of the application.

This assessment has taken into consideration the submitted plans and all other documentation supporting the application. Having regard to section 4.55 of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are deemed unsatisfactory.

Based on the detailed assessment contained in this report, it recommended that the request to modify development consent DA2020/0096 be refused for the reasons summarised above, and as detailed within this report.

PROPOSED DEVELOPMENT IN DETAIL

The subject s.4.55(2) Modification Application seeks to modify Development Consent Noo. DA2020/0096, which approved the demolition of a dwelling house and the construction of two dwelling houses at 26 Ralston Road, Palm Beach.

The modifications proposed by the s.4.55(2) application are as follows:

- Changes to the design of the Lot 4 pool terrace, in accordance with consent Condition 20.
- Changes to the size of the entry stairway from the driveway/urban entry court for Lot 5.
- Changes to proposed floor levels and overall roof height, which are detailed within the following table:

| Lot 4 | Approved (DA2020/0096) | Proposed |
|--------------------|------------------------|-----------|
| Lower ground floor | RL 99.00m | No change |

| | | |
|---------------------------|---|--|
| Ground floor | Terrace: RL 100.55 Internal: RL 100.7 | No change |
| First floor | RL 103.4 | Terrace: RL 103.615 Internal: RL 103.7 |
| Roof/terrace | Terrace: RL 106.25 Parapet: RL 106.25m (per consent condition no. 18) | Terrace: RL 106.7 Parapet: RL 107.2 |
| Lot 5 | Approved (DA2020/0096) | Proposed |
| Lower ground floor | RL 99.00 | No change |
| Ground floor | Terrace: RL 100.7 Internal: RL 101.85 | No change |
| First floor | RL 104.55 | Terrace: RL 104.765 Internal: RL 104.85 |
| Roof/terrace | Terrace: RL107.4 Parapet: RL 107.85 (other than eastern elevation) Parapet eastern elevation: RL107.4 (per consent condition no. 18) | Terrace: RL 107.85 Parapet: RL 108.35 Parapet RL108.35 |

As a result of the above changes, the subject application will require modifications to consent Condition 1, to reference the amended plans now submitted.

Further, the subject application also proposes to delete consent condition 18, which for reference reads as follows:

18. Roof Parapet

The proposed roof at the western elevation of Lot 4 is to be deleted. The maximum height of the western wall/elevation is to be RL106.25.

The proposed roof parapet to the east of the roof terrace of Lot 5 is to be reduced in height by 450mm.

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

Reason: To reduce the bulk and visual impact of the dwelling at the western elevation.

Aside from the above, no other changes are proposed to Development Consent No. DA2020/0096.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (the Act) and the *Environmental Planning and Assessment Regulation 2021* (Regulations). With regard to the Regulations:

- An assessment report and recommendation has been prepared (the subject of this report) considering all relevant provisions of the Act and the associated Regulations;



- Notification of adjoining and surrounding properties has been undertaken in accordance with the Act, Regulations, and relevant Community Participation Plan (CPP);
- In accordance with the criteria at page 11 of the CPP, Council has formed a view that notification of the amended plans submitted on 29 March 2023 was not required as the submitted material was to supplement the assessment of the application and is unlikely to result in a reduction of environmental impacts.
- 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 has been undertaken.

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan – C1.3 – View Sharing

Pittwater 21 Development Control Plan – C1.4 – Solar Access

Pittwater 21 Development Control Plan – C1.5 – Visual Privacy

Pittwater 21 Development Control Plan – C1.6 – Acoustic Privacy

Pittwater 21 Development Control Plan – D12.8 – Building Envelope

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | 26 Ralston Road, Palm Beach NSW 2108 Lot 4, Sec. 10, DP 14048 Lot 5, Sec. 10, DP 14048 |
| Detailed Site Description: | <p>The street address of the site is 26 Ralston Road, Palm Beach. It comprises of two allotments identified by title as Lot 4, Sec. 10, DP 14048 and Lot 5, Sec. 10, DP 14048.</p> <p>The site is irregularly-shaped, with an angled western-side boundary and slightly angled front and rear boundaries. The front (i.e. northern) boundary adjoins the Ralston Road, and all other boundaries adjoin residential allotments.</p> <p>The site has a combined area of 1,497.9m², and contains an east-to-west (i.e. a side-to-side) downhill slope, that varies between 2.7 and 3.9 metres.</p> <p>The site is located within the C4 Environmental Living zone under the <i>Pittwater Local Environmental Plan 2014</i> (PLEP 2014); part of the rear boundary adjoins a C2 Environmental Conservation zone; however all other boundaries adjoin C4-zoned sites/areas.</p> <p>The site is mapped as being bushfire prone, affected by class 5 acid sulphate soils, and as being within an area of biodiversity significance. The subject site is not mapped as containing a heritage item, being within a Heritage Conservation Area or near a mapped heritage item.</p> <p>Development on the site consists of a part one-and-two storey dwelling that is located towards the rear; other development consists of paved areas and retaining walls. Other parts of the site consist of landscaped areas, with numerous trees located around the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> |

| | |
|--|---|
| | <p>Except for MacKay Reserve located to the southwest (32A Ralston Road) which is zoned C2 Environmental Conservation development on surrounding sites is zoned C4 Environmental Living and comprises of dwelling houses and ancillary structures (e.g. swimming pools, parking facilities, etc.).</p> <p>The adjoining site to the east at 24 Ralston Road contains a two-storey dwelling house. The adjoining site to the west at 28 Ralston Road contains a two-storey dwelling house that is located towards the rear of the site, with a swimming pool and garage (attached to the dwelling via a covered walkway) being located towards the front of that site. The adjoining site to the south at 8 Ebor Road contains a part two-and-three storey dwelling house, with a secondary-dwelling type structure and a swimming pool located within the rear setback.</p> <p>Development on the opposite (i.e. northern) side of Ralston Road (i.e. 27, 29 and 31 Ralston Road) comprises of two-storey dwellings houses.</p> <p>Other land within the surrounding area contains a variety of low-density residential development (i.e. dwelling houses and associated development such as swimming pools, outbuildings, etc.).</p> |
|--|---|



Figure 1: An aerial photograph of 26 Ralston Road, Palm Beach (subject site outlined in red).

Source: Nearmap, 23 November 2022

SITE HISTORY



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

- 9 September 2020: Development Application no. DA2020/0096 approved for the demolition of a dwelling house and construction of two dwelling houses.
- 4 October 2022: Subject Section 4.55 Modification Application lodged.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Act and associated Regulations;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0096 in full, with amendments detailed and assessed as follows:

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

| Section 4.55(2) – Other Modifications | Comments |
|---|--|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if- | |
| (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | <p>Yes</p> <p>The development, as modified is substantially the same development as that approved. The proposed modifications do not alter the essence or character of the development in any material way. It remains as a two dwelling development with no changes to the overall building footprint; however, it is noteworthy that changes to the approved building envelopes are proposed.</p> |
| (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the | Not applicable. |

| Section 4.55(2) – Other Modifications | Comments |
|---|--|
| modification of that consent, and | |
| (c) it has notified the application in accordance with: (i.) the regulations, if the regulations so require, or (ii.) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and | The application has been publicly exhibited in accordance with the Act, the Regulations and the Northern Beaches Community Participation Plan. |
| (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | Three (3) submissions were received in response to the notification of this application. Refer to the notification and submissions section of this report for an assessment of submissions received in relation to this application. |
| (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. | This assessment report includes consideration of the matters specified in section 4.15 of the Act (see discussion following this table below). The Development Determination Panel, in its determination on 9 September 2020, provided the following reason for the decision to grant consent to DA2020/0096: <i>Further conditions have been applied to the roof terraces to restrict structures and lighting.</i> <i>The roof parapet on Lot 5 has been conditioned to be reduced in height to reduce the impact of view loss.</i> <i>Conditions have also been included to provide noise attenuation for the pool filters.</i> <i>1. The amendment of the following conditions:</i> 18. Roof Parapet <i>The proposed roof parapet at the western elevation of Lot 4 is to be deleted. The maximum height of the western wall/elevation is to be RL106.25. The proposed roof parapet to the east of the roof terrace of Lot 5 is to be reduced in height</i> |

| Section 4.55(2) – Other Modifications | Comments |
|---------------------------------------|--|
| | <p><i>by 450mm. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.</i></p> <p><i>Reason: To reduce the bulk and visual impact of the dwelling at the western elevation.</i></p> <p>20. Pool Terrace Planter <i>The planter box to the Lot 4 Pool Terrace is to extend along the western elevation of the terrace. The extension of the planter box is to have a minimum width and height of 1000mm and is to contain plantings with a minimum height of 400mm. The plantings to be maintained for the life of the development.</i></p> <p><i>Details including species, mature height, planting, pot size and spacing to provide continuous screening are to be submitted to Certifying Authority prior to the issue of the Construction Certificate.</i></p> <p><i>Reason: To maintain visual privacy between the subject site and No. 28 Ralston Road.</i></p> <p><i>2. The addition of the following conditions:</i></p> <p>Roof terraces <i>All lighting on the roof terraces is to be low voltage and not to be located above balustrade height. No fixtures or temporary structures, such as shade structures, umbrellas etc or other items with a height greater than 1200mm are to remain on the roof terraces.</i></p> <p><i>Reason: To reduce the bulk and visual impact of the dwelling</i></p> <p>Acoustic Treatment of Pool Filter <i>The pool filter is to be enclosed within a housing and acoustically treated so that it does not emit any noise louder than 5dB(A) above background noise at the nearest residential receiver. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.</i></p> <p><i>Reason: To ensure the acoustic amenity of the neighbouring residents.</i></p> <p>The proposed modifications would increase the bulk and visual impact of the dwellings, and increase view loss impacts. As such the proposed modifications confute the Development Determination Panel reasons for granting development consent to DA2020/0096. This is discussed further below within the DCP compliance section of the report.</p> |

Section 4.15 Assessment

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

The relevant matters for consideration under Section 4.15 of the Act, 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 draft Environmental Planning Instruments that are of relevance to this proposal. |
| 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 Regulations | <p>Part 4, Division 2, Subdivision 1 to consider conditions prescribed by the Regulations. These matters have been addressed via a condition in the original consent.</p> <p>Clause 36 of the Regulations allow Council to request additional information. Additional information was requested during the assessment process and subsequently provided. The information provided by the applicant is however insufficient to enable a proper assessment of the development's impacts. This is discussed further later within this report.</p> <p>Clause 61 of the Regulations requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Such a matter has been addressed via a condition in the original consent.</p> <p>Clause 69 of the Regulations requires the consent authority to consider insurance requirements under the <i>Home Building Act 1989</i>. This matter has been addressed via a condition in the original consent.</p> |
| 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 | <p>(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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the low density residential character of the proposal.</p> <p>(iii) Economic Impact</p> |

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| | The proposed development will not have a detrimental economic impact on the locality considering the low density residential 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 unsuitable 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 | For the reasons discussed in this report the proposed modification is not 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. The nature of the proposed modifications are such that the subject modification application does not seek to alter the recommendations of the bush fire assessment report approved as part of Development Consent No. DA2020/0096.

NOTIFICATION & SUBMISSIONS RECEIVED

The modification application was publicly exhibited from 11 October 2022 to 25 October 2022 in accordance with the Act, the Regulations, and the Community Participation Plan. Amended information submitted in response to a request for additional information was not publicly re-notified. The amendments included supporting information for Council's assessment and did not amount to physical changes to the proposed modifications. Therefore re-exhibition is not required.

As a result of the public exhibition of the application, Council is in receipt of three (3) submissions objecting to the proposal. The details of these submissions and the addresses they relate to are as follows:

| Name: | Address: |
|---------------------------|-----------------------------|
| Danielle and Kevin Wallis | 28 Ralston Road, Palm Beach |
| David Plank | 8 Ebor Road, Palm Beach |
| Therese Burke | 24 Ralston Road, Palm Beach |

The following list is a summary of the issues raised within the submissions:

- View loss,
- Visual privacy,
- Solar access,
- Adverse acoustic impacts,
- Visual bulk and scale of the development, and
- The proposed development as modified is not 'substantially the same' as that which was approved.

The above issues are addressed as follows:



- **View loss**

Comment – Multiple site inspections were undertaken at all properties from which submissions were received, and these inspections helped form part of Council's view loss analysis. A photomontage and report was provided to Council by the Applicant to assist with the view loss analysis; however the document has been found to be missing key information and cannot be relied upon. This forms a reason for refusal. Reference is made to the assessment of Part C1.3 (View Sharing) within Section C1 of the P21 DCP within this assessment report for a detailed assessment of view impact.

The amendment to Condition 18 was imposed by the Development Determination Panel (DDP) to reduce the impact of view loss. The proposed modification is contrary to the DDP's recommendation, and this also forms a reason for refusal.

- **Visual privacy**

Comment – Reference is made to the assessment of Part C1.5 (Visual Privacy) within Section C1 of the P21 DCP within this assessment report for a detailed assessment of visual privacy. To summarise, despite the proposed increase to the roof top terrace FFL, the approved locations, dimensions, and separation to adjoining swimming pools and living rooms remains unchanged and is reasonably protected from direct overlooking.

- **Solar access**

Comment – Reference is made to the assessment of Part C1.4 (Solar Access) within Section C1 of the P21 DCP within this assessment report for a detailed assessment of solar access to adjoining sites. To summarise, the shadow diagrams submitted indicate the proposed development will maintain a minimum of 3 hours of solar access to adjacent private open space and living areas at no. 28 Ralston Road (to the west), no. 24 Ralston (the east), and no. 8 Ebor Road (the south). Internally, both Lot 4 and Lot 5 of the proposed development will also maintain a minimum of 3 hours of solar access to adjacent private open space and living areas according to the submitted shadow diagrams.

- **Adverse acoustic impacts**

Comment – The residential nature of the two-approved dwellings is unlikely to result in adverse and unreasonable noise impacts. While their floor levels will be raised, the locations and sizes of the rooftop terraces are not proposed to be altered; the proposed modifications will therefore not facilitate changes that may unduly increase residential noise impacts on surrounding sites (i.e. increasing the height of the terraces will not alter the volume and distribution of noise from these areas).

Noise associated with plant equipment (i.e. pool filters) was addressed by condition 21 within Development Consent no. DA2020/0096. This condition is to remain as part of the proposed modifications.

- **Visual bulk and scale of the development**

Comment – Lot 4 breaches the building height plane controls contained in D12.8 of the DCP which results in unacceptable bulk and scale impacts to the property at 28 Ralston Road, particularly the rear yard. This forms a reason for refusal (refer to the DCP assessment section of this report for additional details).

Lot 5 also breaches the building height plane controls and will result in unacceptable bulk and scale impacts on the property at Lot 4, particularly the rear yard. This also forms a reason for refusal (refer to the DCP assessment section of this report for additional details).



- The proposed development as modified is not 'substantially the same' as that which was approved

Comment – The development, as modified, is substantially the same development as that approved. The proposed modifications do not alter the essence or character of the development in any materially significant way. The modifications will maintain residential development on the site in the form of two dwellings houses that are substantially the same as that which was originally approved.

REFERRALS

| Internal Referral Body | Comments |
|------------------------|---|
| Biodiversity | The proposed modifications are limited to the existing and/or approved building footprint, and therefore will not result in additional impacts to native vegetation or wildlife habitat. There are no objections, subject to retention of existing biodiversity conditions. The proposal is therefore supported. |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)

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

In this regard, whilst the provisions of each applicable Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant to the proposed modifications.

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)

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The approval of Development Consent no. DA2020/0096 required that the development satisfy the provisions of two BASIX certificates that were submitted with that application. The proposed modifications do not seek to change the commitments of the as-approved BASIX certificates.

Pittwater Local Environmental Plan 2014

| Standard | Requirement | Approved | Proposed | Complies |
|---------------------|-------------|-------------------------------|--|----------|
| Height of buildings | 8.5m | Lot 4: 7.7m top of parapet | Lot 4: 8m (top of glass balustrade) | YES |
| | | Lot 5: 6.6m top of parapet | Lot 5: 7.13m (top of glass balustrade) | YES |

Pittwater 21 Development Control Plan

Built form Assessment:

Lot 4

| Built Form Control | Requirement | Approved | Proposed | Complies |
|---------------------|-------------|--------------------------------|-------------------------------------|-----------|
| Front building line | 6.5m | 14.3m | No change | N/A |
| Rear building line | 6.5m | 6.7-7.2m | No change | N/A |
| Side building line | East: 1m | Garage: 1.1m Dwelling: 2.5m | No change | N/A |
| | West: 2.5m | 2.9-3.9m | No change | N/A |
| Building envelope | 3.5m | East: Within envelope | 0.2m projection outside of envelope | NO |
| | 3.5m | West: Outside envelope | 1.8m projection outside of envelope | NO |
| Landscaped area | 60% | 61.1% (468.2m ²) | No change | N/A |

Lot 5

| Built Form Control | Requirement | Approved | Proposed | Complies |
|---------------------|-------------|--------------------------------|--------------------------------------|-----------|
| Front building line | 6.5m | 14.5m | No change | N/A |
| Rear building line | 6.5m | 7.5-8m | No change | N/A |
| Side building line | East: 2.5m | 2.8-3.3m | No change | N/A |
| | West: 1m | Garage: 1.1m Dwelling: 2.5m | No change | N/A |
| Building envelope | 3.5m | East: Within envelope | No change | N/A |
| | 3.5m | West: Outside envelope | 0.47m projection outside of envelope | NO |
| Landscaped area | 60% | 64.6% (472.7m ²) | No change | N/A |

***Note:** The percentage variation is calculated on the overall numerical variation (i.e.: for LOS – Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| B3.2 Bushfire Hazard | Yes | Yes |
| B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor | Yes | Yes |
| B5.15 Stormwater | Yes | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| C1.3 View Sharing | No | No |
| C1.4 Solar Access | Yes | Yes |
| C1.5 Visual Privacy | Yes | Yes |
| C1.6 Acoustic Privacy | Yes | Yes |
| C1.16 Swimming Pool Safety | Yes | Yes |
| D12.1 Character as viewed from a public place | Yes | Yes |
| D12.8 Building envelope | No | No |

C1.3 View Sharing

Views to Pittwater, Broken Bay, Barrenjoey Head, Lion Island, Umina and Ettalong Beaches, and associated land/water interfaces are currently enjoyed from the site and neighbouring properties. Some of these views from neighbouring properties are obtained across the subject site. In response to the notification of the application, submissions have been received objecting to potential view loss impacts from the owners of dwellings at 24 Ralston Road and 8 Ebor Road (while a submission was also received from 28 Ralston Road, it did not raise issues regarding view loss).

Height poles were erected as part of Council's additional information request to demonstrate the building height of the modified proposal. The heights of the erected poles have also been certified by a qualified surveyor. Photographs of views captured across the subject site from the objector's living areas and private open space areas by Council were provided to the Applicant. A view sharing assessment has been provided by the Applicant below, and is supported by three photomontages referred to by the Applicant as Annexure 1, 2, and 3 (see below):

24 Ralston Road

24 Ralston Road is located to the east and uphill of the subject site. The photos provided by Council indicate distant water views are obtained in a westerly direction from the upper floor side balcony over the common side boundary. The views are heavily filtered by vegetation and are highly vulnerable to future vegetation growth, including the extensive landscaping approved at the subject site in the original development consent.

It is unknown if any other views are available in a northerly direction from the dwelling at 24 Ralston Road.

Based on the height poles erected on site (Annexure One), it appears that these distant and heavily vegetated views will not be affected by the increased height proposed in the subject modification application, with no additional adverse impact associated with the modifications proposed.

However, even if these views were to be removed as a consequence of the development, such an impact cannot be said to be unreasonable in consideration of the vulnerability of the views, the obtainment of the views over a side boundary, and noting that the impact is not associated with a dwelling that is located centrally on the site that is maintained well below the maximum height limit.

28 Ralston Road

28 Ralston Road is located to the west and downslope of the subject site. The photos provided to Council do not demonstrate the obtainment of any views available over the subject site, and as such, the proposed modified development does not result in any adverse view impacts in relation to 28 Ralston Road.

8 Ebor Road



8 Ebor Road is located to the south and uphill of the subject site. The photos provided by Council indicate distant water views are obtained in a northerly direction from the second storey living area, the third floor study and the third floor bedroom. The views are obtained across the side boundary of 8 Ebor Road, are heavily filtered by vegetation and are highly vulnerable to future vegetation growth, including the extensive landscaping approved at the subject site in the original development consent.

It is unknown if any other views are available in a westerly direction from the dwelling at 8 Ebor Road.

Based on the height poles erected on site (Annexure Two), it appears that the proposed development will impact upon views from the second storey living room. However, as demonstrated, the view from this area was also lost as a consequence of the approved development, and in this respect, the impact remains the same as that originally approved.

The height poles also confirm that the views from the third floor will be wholly retained, with no additional impact arising as a consequence of the proposed modifications.

The landscaping approved under DA2020/0096 is also relevant for the discussion of view loss. 10 Cheese Trees, with a maturity height of 8m, and 27 Cabbage Tree Palms, with a maturity height of 20m, are to be planted across the site in accordance with the Approved Landscape Plan referenced in DA2020/0096. The approved trees are predominately to be located in a linear arrangement around the perimeter of the development and will ultimately grow to obscure any views through or across the site. The subject modification does not seek to alter this approved landscaped outcome.

Overall, the proposed modified development will not result in any new or intensified impacts upon views and view sharing between properties is achieved.

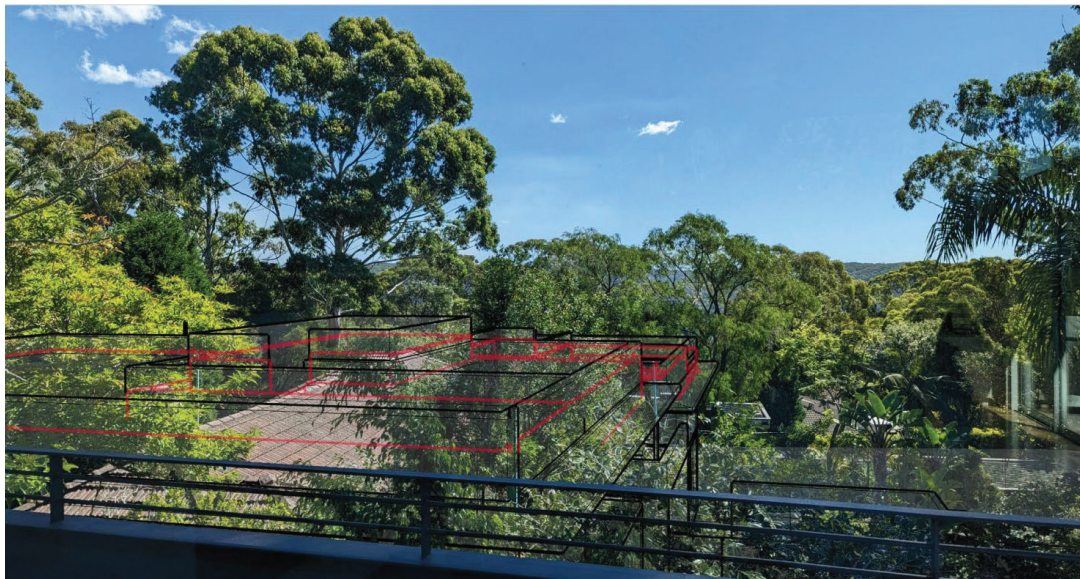


Figure 1 - View from standing position of second floor living area at 24 Ralston Road (as described/identified by Council) with red lines indicating the development as approved and the black lines indicating the modified proposal

Figure 2: Photomontage from standing position of second floor living area at 24 Ralston Road, Palm Beach. Red lines indicating approved building envelope and black lines indicating the proposed modifications.

Source: Applicant



Figure 2 - View from sitting position at western windows of second floor living area at 8 Ebor Road (as described/identified by Council with red lines indicating the development as approved and the black lines indicating the modified proposal)

Figure 3: Photomontage from sitting position at western window of second floor living area of at 8 Ebor Road, Palm Beach. Red lines indicating approved building envelope and black lines indicating the proposed modifications.
Source: Applicant



Figure 3 - View from sitting position at eastern windows of second floor living area at 8 Ebor Road (as described/identified by Council with red lines indicating the development as approved and the black lines indicating the modified proposal)

Figure 4: Photomontage from sitting position at eastern window of second floor living area of at 8 Ebor Road, Palm Beach. Red lines indicating approved building envelope and black lines indicating the proposed modifications.
Source: Applicant

Comment on Photomontages



The Applicant's photomontages are lacking the following critical information preventing Council from relying on the photomontages for an accurate view share analysis:

- A copy of the existing photograph with the wire frame lines depicting the existing surveyed elements which correspond with the same elements shown in the existing photograph
- A 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken.
- Confirmation that accurate 3D survey data has been used to prepare the photomontages,
- The applicant has not included the name and qualifications of the surveyor who prepared the survey information.

View Share Analysis:

Despite the insufficient photomontages described above, a simple view share analysis can be undertaken based on the surveyed height poles erected by the Applicant on site, along with observations made by the assessing officer during the site inspections. The four-step planning principle established by *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* has been undertaken for the above property. For reference, the four tests are as follows:

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

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.

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.

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.

While they were considered, it was determined that views from public areas will not be affected by the development. As such, views from public areas will not be discussed further by this assessment.



Figure 5: Aerial photograph of the subject site (denoted by the green border) and its relation to the sites from where submissions raising view loss were received (denoted by the red borders).

Source: Nearmap, 23 November 2022

24 Ralston Road

This property adjoins the eastern side of the subject site. Development on this site comprises of a two-storey dwelling house (approved by Development Consent no. DA2018/1972).

The design of this dwelling enables it to enjoy views to the north and west. Aspects to the north provide distant views of Pittwater, Broken Bay, Barrenjoey Head, Lion Island and Umina Ettalong Beaches and some foreshore areas. Views to the west are achieved from the side setback include some glimpses of Pittwater, however these are heavily filtered by existing structures and established trees located within McKay Reserve, 30 and 32 Ralston Road (refer to **Figure 6**).

The views detailed above are obtained from areas on the first floor, and include a large open plan living area at the front (i.e. northern end) of this level, a bedroom and balconies and decks that wrap around the northern and western sides of the aforementioned living areas. Views to the west are obtainable from mostly standing perspectives and are considered partial views (visible between branches), while views to the north are obtainable from both standing and seated positions.

Views to the north are not assessed, given that the location of the proposed works will not affect views in this direction.

With regards to the western views, the established trees will continue to screen the views despite the proposed height increase and therefore the impacts are considered negligible. Part C1.3 of the PDCP is satisfied.



Figure 6: Photograph from standing position of second floor living area at 24 Ralston Road, Palm Beach and the three blue height poles in the background
Source: CPS March 2023

28 Ralston Road

This property adjoins the western side of the subject site. Development on this site comprises of a two-storey dwelling house and is located downslope from the subject site.

The design of this dwelling enables it to enjoy views to the north and west. Aspects to the north provide distant views of Pittwater, Broken Bay, Barrenjoey Head, Lion Island, Umina and Ettalong Beaches, and some foreshore areas. Views to the west include some glimpses of Pittwater, however these are heavily filtered by vegetation and existing development.

The photographs at **Figure 7, 8** and **11** indicate the property is noticeably lower than the subject site, and do not demonstrate the obtainment of any eastern views available over the subject site to the east. The dwelling layout is orientated to the north and south and window openings to living areas respond accordingly. As such, the proposed modifications do not result in any adverse view impacts from the private open space areas in relation to 28 Ralston Road. Part C1.3 of the DCP is satisfied.



Figure 7: Photograph taken from seated position in the front private open space at 28 Ralston Road and the blue height pole in the background
Source: CPS March 2023



Figure 8: Photograph taken from standing position in the front private open space at 28 Ralston Road and the blue height pole in the background
Source: CPS March 2023



8 Ebor Road

This property adjoins part of the subject site's southern rear boundary and contains a part-two-and-three storey dwelling house. A swimming pool and cabana are contained within the rear setback area, however there are no views obtainable from these features, they will not be discussed further. Distant views to Pittwater, Broken Bay, the western-most section of Barrenjoey Head, Lion Island and Umina/Ettalong Beaches and associated land/water interfaces are currently enjoyed by the upper two levels of this dwelling.

The views detailed above are obtainable from northern windows within a study, living area and an adjacent deck on the two upper levels. While some views are obtainable from a bedroom and study on the third floor, such views are limited to water views and land/water interface on the northern side of Broken Bay; views of other significant features from the bedroom are obscured by trees/vegetation and development on both the subject site and adjoining site at 24 Ralston Road. On the ground floor, the only significant views are of water glimpses thorough trees and vegetation on the subject site and adjoining site.

Views to the east, south and west are not assessed, given that the location of the proposed works will not affect views in this direction.

Regarding the above, the openings to the north facing living room on the second storey will be adversely affected by the proposed height increase. Based on the height pole in **Figure 9** and **10** the existing view is likely to be adversely impacted by obstructing more than 50% of the Broken Bay water view and degrading the land/water interface which is currently enjoyed from the living area. It is important to note that the top of the height pole level is RL107.14 and is 60mm lower than the maximum proposed parapet level of RL107.20 for Lot 4 and also does not include the levels for the roof top glass balustrade and is therefore not an accurate reflection of the proposed height shown on the section drawings. Despite this inconsistency, Council's view share analysis can still reach a reasonable conclusion regarding view impact.

The view in question is from a side boundary and the Tenacity planning principle provides that views across side boundaries are difficult to protect. However, when the Development Determination Panel (DPP) deliberated over the approved development they considered that views could be reasonably protected and amended Condition 18 requiring the lowering of the parapet walls to reduce the view impact. The proposed modification seeks to confute this outcome which will result in an adverse view loss impact to the second storey living room at 8 Ebor Road. This is unacceptable.

The impacts of the proposal upon the views currently enjoyed at 8 Ebor Street would be adverse and is contrary to Part C1.3 of the PDCP. This forms a reason for refusal.

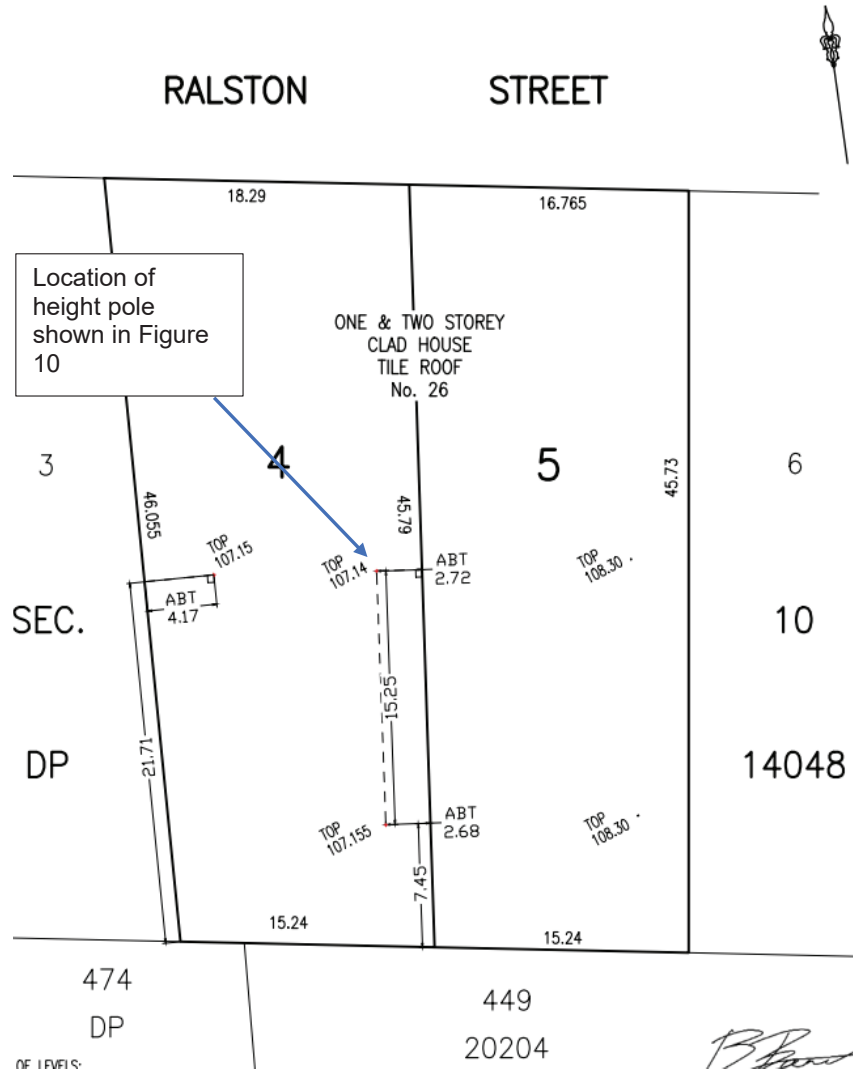


Figure 9: Height pole location survey at the subject site
Source: Brandon Bowd, registered surveyor (Surveyor ID No. 9122), dated 01/03/2023
(provided on behalf of the Applicant)



Figure 10: Photograph from standing position of second floor living area at 8 Ebor Street, Palm Beach and the blue height pole for Lot 4 in the background
Source: CPS March 2023

C1.4 Solar Access

The orientation of the site is such that on June 21, the proposed development (if modified as proposed) will cause:

- Notable overshadowing of the site to the west (i.e. 28 Ralston Road) prior to 12:00pm,
- Some overshadowing of the site to the rear from 9am to 12pm (i.e. 8 Ebor Road)
- Notable overshadowing of the site to the east (i.e. 24 Ralston Road) after 12:00pm.

Despite causing overshadowing of adjoining sites, the dwellings will allow for at least three hours of and solar access to private open space and living areas of adjoining sites on June 21. The development (as modified) therefore satisfies the provisions of Part C1.4 of the DCP.

C1.5 Visual Privacy

Apart from increasing the FFL of the rooftop terraces from RL106.250 to RL106.700 (450mm) for Lot 4 and from RL107.400 to RL107.850 (450mm) for Lot 5, the following design features remain unchanged:

- both roof terraces are located centrally within their respective lots
- both roof terraces are stepped in from the level below on the northern, western and southern elevations
- minimum physical separation to adjoining private open spaces of 15m to the south (No. 8 Ebor), 11m to the west (No. 28 Ralston) and 7m to the east (No. 24 Ralston) is retained
- despite the 0.45m increase in FFL, the relative height between the Lot 4 and 5 rooftop terraces is retained as approved at 1.15m, and does not increase the extent of overlooking.

The proposed modification increases the depth of the parapet wall on the eastern elevation for Lot 4, and western elevation for Lot 5 to 0.33m, thus increasing the separation between the rooftop terraces to 5.7m. This further prevents direct overlooking from the Lot 5 rooftop terrace into Lot 4. The development (as modified) therefore satisfies the provisions of Part C1.5 of the DCP.



D12.1 Character as viewed from a public place

The approved 14.30m and 14.50m front setbacks for Lot 4 and 5 respectively remain unchanged. These setbacks are considered generous and suitable for absorbing the increased building height and parapets when viewed from Ralston Road.

D12.8 Building envelope

The modification to Lot 4 proposes an increased wall height, including an increase in the parapet height from RL106.70 to RL107.20, creating additional bulk and scale which breaches the building envelope by 1.8m on the western elevation and 0.2m on the eastern elevation. The ability to satisfactorily screen and soften the offending building envelope cannot occur given the RFS asset protection zone requirements (Condition 1 and 5) limit tree canopy spread across the site to 15% and within 2m of the dwelling. This will prevent any genuine softening of the non-compliant building envelope from within the site, and compound the development's bulk and scale when viewed from the neighbouring properties. This will be particularly evident (refer to Figure 11) in the rear yard of 28 Ralston Road, and is contrary to Part D12.8 outcome 1,2, and 3, and control 2 of the P21 DCP. This forms a reason for refusal of the application.



Figure 11: Photograph of the rear yard at 28 Ralston Road and the first floor of the existing dwelling (ridge: RL106.58) at the subject site in the background, the height of the proposed parapet wall (RL108.35) at this location will be 1.77m higher than the existing dwelling.

Source: CPS November 2022

The modification to Lot 5 proposes an increase to the overall wall height including an increase in the parapet height from RL107.85 to RL108.35, creating additional bulk and scale which breaches the building height plane by 0.47m on the western elevation. The ability to satisfactorily screen and soften the offending building envelope for Lot 5 cannot occur given the RFS asset protection zone requirements (Condition 1 and 5) as discussed above. The proposed breach will result in unacceptable bulk and scale impacts on the property at Lot 4, particularly the rear yard, and is contrary to Part D12.8 outcome 1,2, 3 and control 2 of the P21 DCP. This forms a reason for refusal of the application.



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 2021

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

PLANNING CONCLUSION

The proposed modification is for internal and external changes, including changes to the approved floor levels increasing the height and bulk and scale of both dwellings on Lots 4 and 5.

The key planning issues considered within the assessment are the amenity impacts relating to view sharing, visual bulk and scale, and numerical non-compliances relating to the building height plane controls prescribed by P21 of the PDCP.

The three submissions received have been considered and are addressed within this report. The issues raised relating to view sharing were considered to be pre-eminent.

Condition 18 was imposed by the DDP to reduce the impact of view loss. The proposed modification would confute this outcome, which is contrary to the DDP's recommendation. Pursuant to s.4.55(3) of the Act, this forms a reason for refusal.

The proposed increase to the overall wall heights also generates additional bulk and scale to the development which contravenes the building height plane prescribed by control 2 of the P21 DCP.

The ability to satisfactorily screen and soften the offending building envelope cannot occur given the RFS asset protection zone requirements. This prevents any genuine softening of the non-compliant building envelope from within the site, and compounds the development's bulk and scale when viewed from the neighbouring properties. This is contrary to Part D12.8 outcome 1, 2, and 3, and control 2 of the P21 DCP. This forms the second reason for refusal of the application.

This assessment has taken into consideration the submitted plans and all other documentation supporting the application. Having regard to section 4.55 of the *Environmental Planning and Assessment Act 1979*, the proposed modifications are deemed unsatisfactory.

Based on the detailed assessment contained in this report, it recommended that the request to modify development consent DA2020/0096 be refused for the reasons summarised above, and as detailed within this report.

GENERAL 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 Environmental Planning Instruments;
- *Pittwater Local Environment Plan 2014*;
- Pittwater 21 Development Control Plan; and
- Relevant 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 concludes that having regard to section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, the proposed modifications to the development consent are unsatisfactory.

RECOMMENDATION

THAT Council, as the consent authority refuse the modification application for the following reason:

Adverse View Loss

1. The proposed increase height will adversely affect the sharing of views with 8 Ebor Road, Palm Beach.

Particulars:

- a) Part C1.3 of the Pittwater Part 21 Development Control Plan requires that new development is designed to achieve a reasonable sharing of views available from surrounding and nearby properties.
- b) The openings to the north facing living room on the second storey at 8 Ebor Road will be adversely affected by the proposed Lot 4 height increase. Based on the submitted height poles the existing view is likely to be adversely impacted by obstructing more than 50% of the Broken Bay water view and degrading the land/water interface which is currently enjoyed from the living area and is unacceptable.
- c) Despite the adverse view loss impacts the height poles shown on the survey plan, prepared by Brandon Bowd and dated 01/03/2023 do not reflect the proposed parapet levels or include the glass balustrade shown on Section Drawings A310 (Issue 04) prepared by Crawford Architects and dated 26/09/2022.
- d) The approval of DA2020/0096 by the Development Determination Panel was subject to Condition 18 requiring the lowering of the parapet walls to reduce the view impact. The proposed modification seeks to confute this outcome which will result in an adverse view loss impact to the second storey living room at 8 Ebor Road and is unacceptable.
- e) The impacts of the proposal upon the views currently enjoyed by 8 Ebor Street would be adverse and is contrary to Part C1.3 of the P21 DCP and forms a reason for refusal.

Excessive Bulk and Scale

2. The proposed increase in building height will result in excessive built form that is unable to be satisfactorily screened and softened.

Particulars:

- a) Part D12.8 of the Pittwater Part 21 Development Control Plan requires buildings to be sited with the building envelope for development other than residential flat buildings and multi dwelling housing.
- b) The modification to Lot 4 proposes an increased overall wall height including an increase in the parapet height from RL106.70 to RL107.20, creating additional bulk and scale which breaches the building height plane by 1.8m on the western elevation and 200mm on the eastern elevation. This results in an overbearing visual impact to the neighbouring property.
- c) The modification to Lot 5 proposes an increased overall wall height including an increase in the parapet height from RL107.85 to RL108.35, creating additional bulk and scale which breaches the building height plane by 470mm on the western elevation. This results in an overbearing visual impact to Lot 4 within the proposed development.



- d) The ability to satisfactorily screen and soften the offending building envelope for both Lot 4 and 5 cannot occur given the approved RFS asset protection zone requirements (Condition 1 and 5) limit tree canopy spread across the site to 15% and within 2m of the dwellings. This will prevent any reasonable landscape softening of the built form from within the site. This further contributes to the overbearing visual impact of the building to neighbouring property, and within the development.
- e) The development control breaches associated with the dwelling house on Lot 4 will result in unacceptable bulk and scale impacts on the property at 28 Ralston Road, particularly the rear yard. This is contrary to Part D12.8 outcome 1,2, and 3, and control 2 of the P21 DCP.
- f) The development control breaches associated with the dwelling house on Lot 5 will result in unacceptable bulk and scale impacts on the property at Lot 4, particularly the rear yard. This is contrary to Part D12.8 outcome 1,2, and 3, and control 2 of the P21 DCP.
- g) The amendment to Condition 18 was imposed by the Development Determination Panel as part of the approval for DA2020/0096, with the reason for the condition being *"To reduce the bulk and visual impact of the dwelling at the western elevation"*. When considering Pursuant to s.4.55(2)(3) of the Act, the proposed modifications would confute the Development Determination Panel's reasons for granting consent to DA2020/0096.

Insufficient Information

- 3. The documentation submitted is inadequate and cannot be relied upon.

Particular:

- a) The applicant's reliance on the photomontages depicting the proposed built form the living area at 24 Ralston Road and from the second floor living area at 8 Ebor Road are lacking critical information preventing Council from relying on the view share analysis. The photomontages have not been prepared in accordance with the best practice guidelines established by the NSW Land and Environment Court for the use of photomontages.
- b) The applicants view share analysis cannot be relied upon because the following information was not provided with the photomontages:
- c) An existing photograph showing the current unchanged view of the location;
- d) A copy of the existing photograph with the wire frame lines depicting the existing surveyed elements which correspond with the same elements shown in the existing photograph;
- e) A 2D plan showing the location of the camera and target point that corresponds to the same location the existing photograph was taken;
- f) Confirmation that accurate 3D survey data has been used to prepare the photomontages;
- g) To rely on the photomontages the applicant has not included the name and qualifications of the surveyor who prepared the survey information;
- h) the camera type and field of view of the lens used for the purpose of the photograph from which the photomontage has been derived; and
- i) Without reliable photomontages the Council is unable to verify the Applicants view impact analysis and therefore the proposal is contrary to Part C1.3 of the P21 DCP.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed

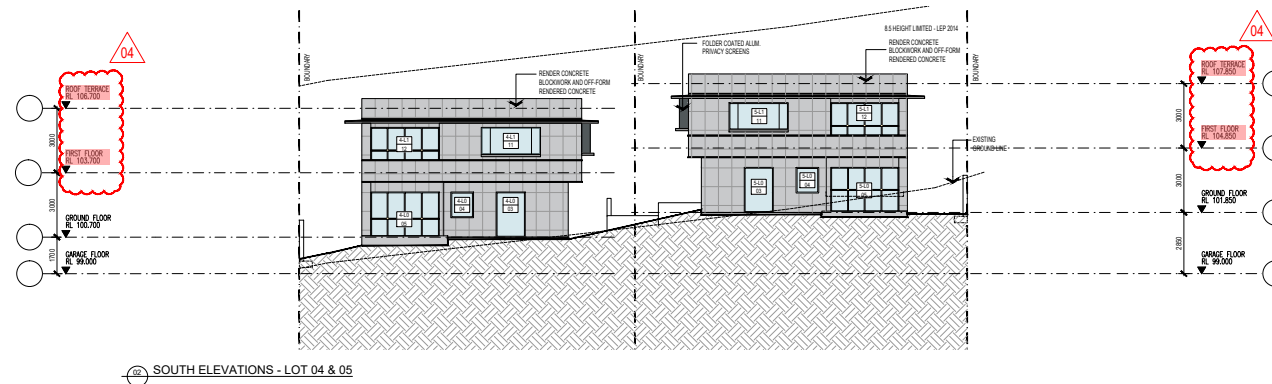
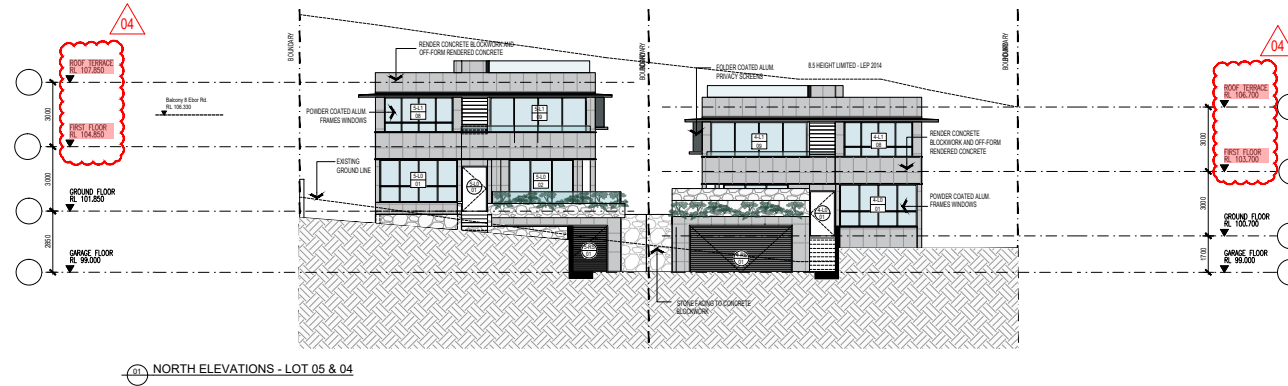


Scott McInnes
Principal Planner, Creative Planning Solutions Pty Ltd



NOTES:

1. BUILDING HEIGHT INCREASED FOR FLOOR TO FLOOR & CEILING HEIGHT COMPLIANCE

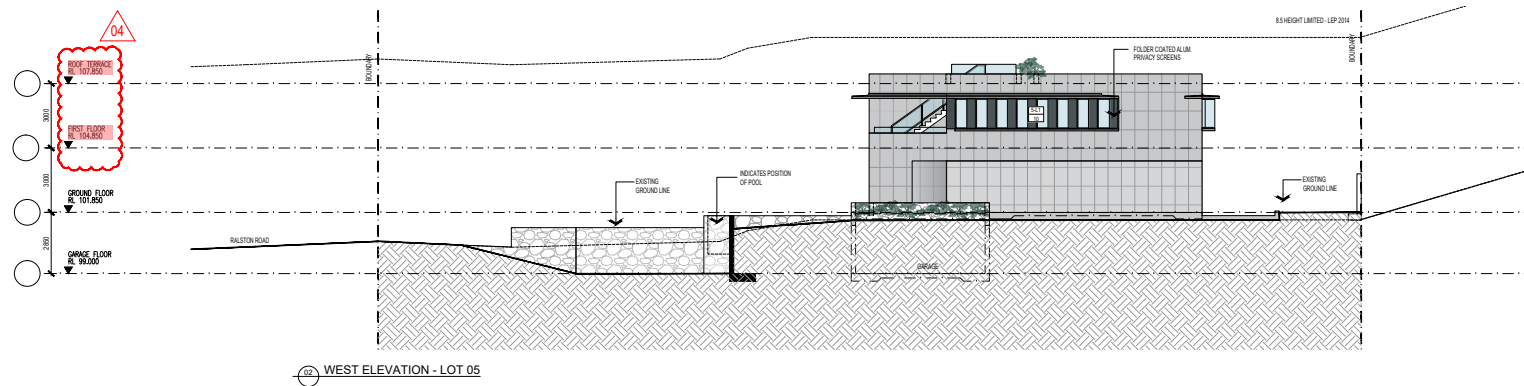
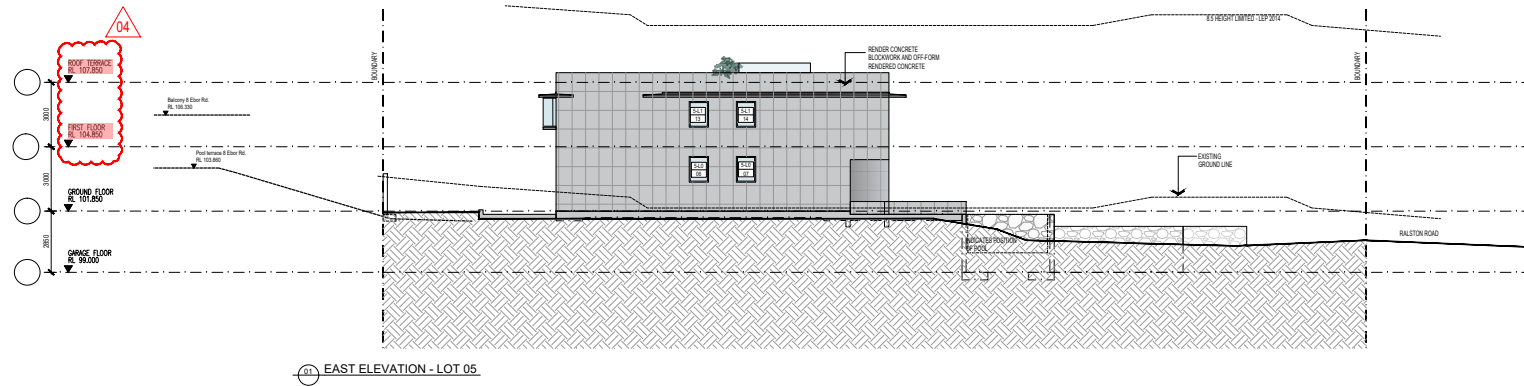


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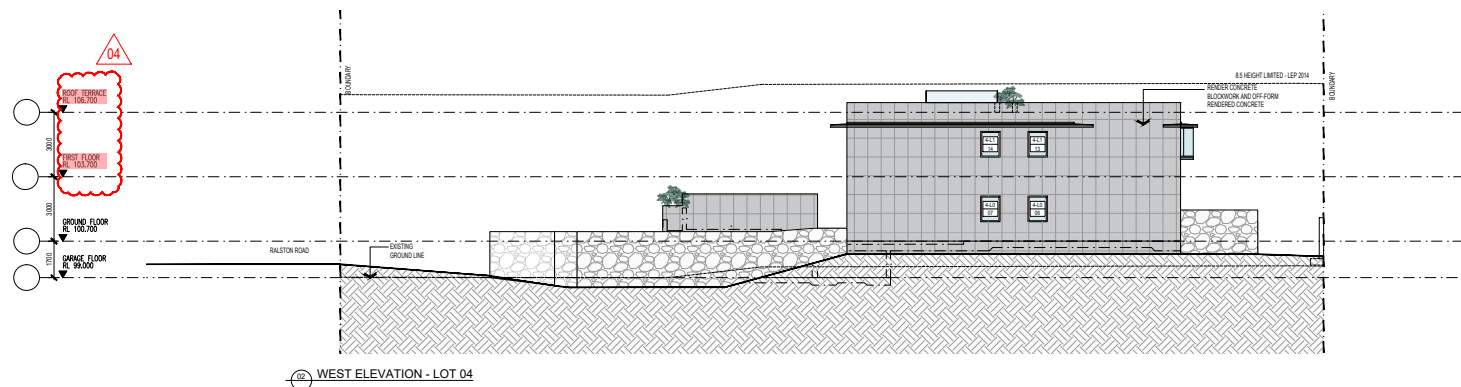
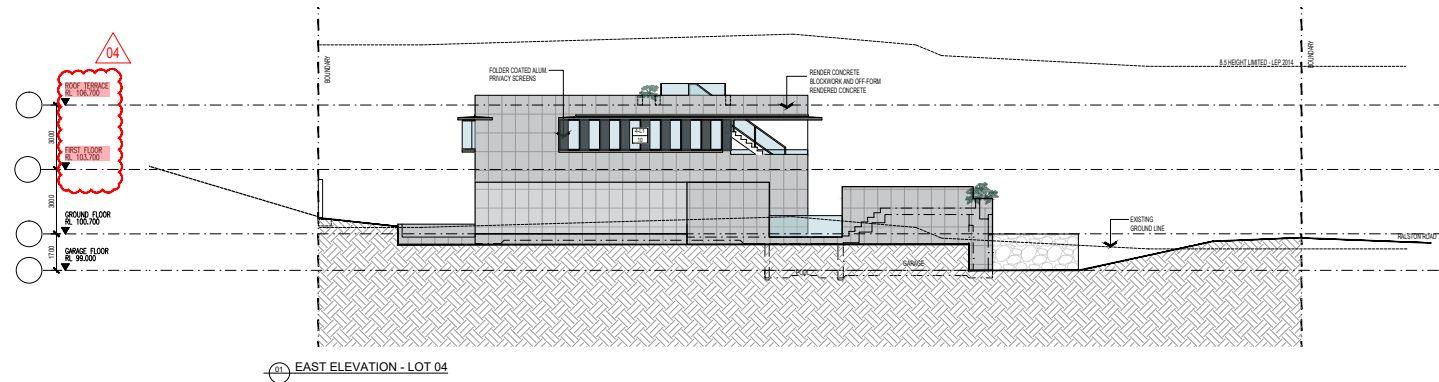
1. BUILDING HEIGHT INCREASED FOR FLOOR TO FLOOR & CEILING HEIGHT COMPLIANCE



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| THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION UNLESS APPROVED BY A DIRECTOR OF CRAWFORD ARCHITECTS PTY LTD. | | P 22 3862 3644 www.crawford.com.au t.g. a.g. @crawford.com.au | | REVISIONS | | Lot 4 & Lot 5 DP 14048, 28 Ralston Road, PALM BEACH NSW 2108 | | APPROVED SIGNATURE JC | | CHECKED TG | | DATE APRIL 2022 | | STATUS S4:55 | | | | | |

NOTES:

1. BUILDING HEIGHT INCREASED FOR FLOOR TO FLOOR & CEILING HEIGHT COMPLIANCE



| | |
|-------------------|---|
| ITEM 3.7 | DA2023/0099 - 30 UTINGU PLACE BAYVIEW - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL |
| REPORTING MANAGER | Steve Findlay |
| TRIM FILE REF | 2023/341050 |
| 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 DA2023/0099 for alterations and additions to a dwelling house including a swimming pool on land at Lot 17 DP 248062, 30 Utingu Place BAYVIEW, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|---|---|
| Application Number: | DA2023/0099 |
| Responsible Officer: | Nick Keeler |
| Land to be developed (Address): | Lot 17 DP 248062, 30 Utingu Place BAYVIEW NSW 2104 |
| Proposed Development: | Alterations and additions to a dwelling house including a swimming pool |
| Zoning: | C4 Environmental Living |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | Hannah Lucie Bee Peter James Goodall |
| Applicant: | Aleksija Pavett |
| Application Lodged: | 15/02/2023 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 20/02/2023 to 06/03/2023 |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 13.5% |
| Recommendation: | Approval |
| Estimated Cost of Works: | \$ 753,500.00 |

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) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling. The building height of the proposed development has been measured at 9.65m which represents a variation of 13.5% to the maximum prescribed building height of 8.5m.

The clause 4.6 variation request for the non-compliance with height standard arises from the site being partially excavated underneath the existing dwelling. Based on extrapolated natural ground levels

the height would only be measured at a maximum of approx. 7.9m. The remainder of the building is under the 8.5m building height limit.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. No submissions have been received.

Despite being technically non-compliant with the prescribed building height requirement, the proposal represents a built form compatible with the prevailing character of the locality and would not result in unreasonable amenity impacts to neighbouring properties. The non-compliant elements of the proposal will be commensurate with the built form of the existing dwelling.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to a dwelling house including a first floor addition, swimming pool, rear deck, driveway and internal layout changes.

AMENDED PLANS

During assessment, Council's Biodiversity Officer raised concern that the application did not provide an Arboricultural Impact Assessment as some proposed works were located within 5m of existing trees.

To address this concern, the applicant submitted amended plans to remove all new works proposed within 5m of existing trees. This included revision to the size and siting of the swimming pool and deletion of all proposed works forward of the existing dwelling. Council's Biodiversity Officer was satisfied that the amendments did not require the submission of an Arboricultural Impact Assessment.

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

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D4.8 Building envelope

SITE DESCRIPTION

| | |
|-----------------------------------|---|
| Property Description: | Lot 17 DP 248062 , 30 Utingu Place BAYVIEW NSW 2104 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the southeastern side of Utingu Place.</p> <p>The site is irregular in shape with a frontage of 26.35m along Utingu Place and a ,maximum depth of 35.27m. The site has a surveyed area of 700m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates a part one and two storey residential dwelling.</p> <p>The site falls approx. 6m from the north towards the south>.</p> <p>The site contains a large landscaped rear yard with a large grassed area and a large canopy tree. The front setback area contains gardens, a small grassed area and several canopy trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and outbuildings.</p> |

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration | Comments |
|---|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on "Environmental Planning Instruments" in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | There are no current draft environmental planning instruments. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Pittwater 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) | <p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>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.</p> |

| Section 4.15 Matters for Consideration | Comments |
|--|--|
| | <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to providing amended architectural plans and a clause 4.6 variation request.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> |
| 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 | <p>(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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

| Internal Referral Body | Comments |
|----------------------------------|--|
| NECC (Bushland and Biodiversity) | <p>Revised Comments 19/05/23</p> <p>Minor amendments to the Plans indicate that impacts to the trees in question is limited. Therefore the development proposal is unlikely to have a significant impact on the endangered ecological community Pittwater Wagstaff Spotted Gum Forest.</p> <p>Original Comments</p> <p>The proposal seeks approval for alterations and additions to a dwelling including a swimming pool.</p> <p>The comments on this referral relate to the following controls and provisions:</p> <ul style="list-style-type: none"> • Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest <p>The works proposed include external works that will take place within 5 metres of existing trees. Therefore, an Arboricultural Impact Assessment (AIA), which has not been submitted with the application, is required in order to complete the Biodiversity assessment.</p> |

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. A481215 dated 19/11/2022). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

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 | 9.65m | 13.5% | No |

Compliance Assessment

| Clause | Compliance with Requirements |
|---|------------------------------|
| 4.3 Height of buildings | No |
| 4.6 Exceptions to development standards | Yes |
| 7.1 Acid sulfate soils | Yes |
| 7.2 Earthworks | Yes |
| 7.6 Biodiversity protection | Yes |
| 7.7 Geotechnical hazards | Yes |

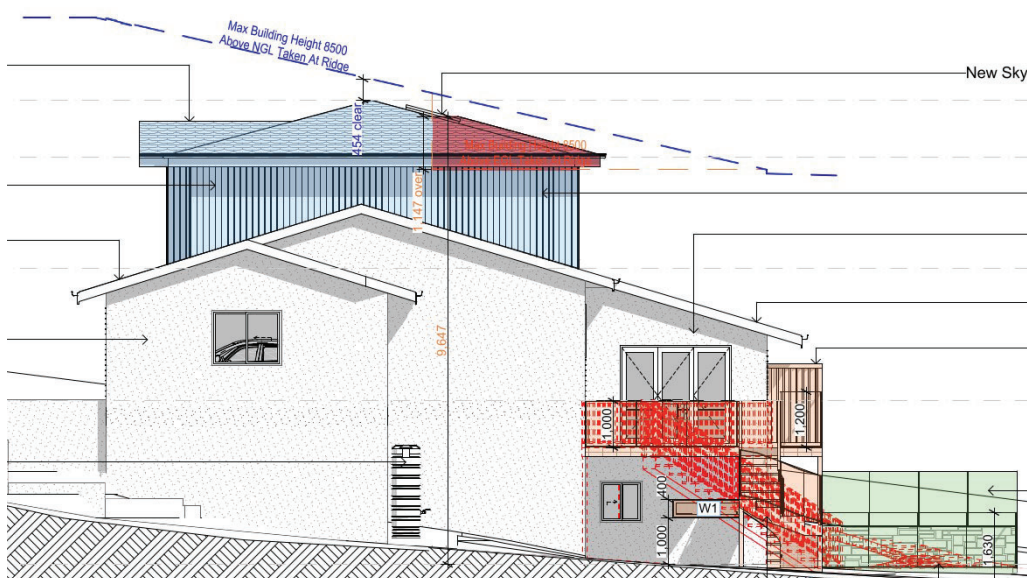
| Clause | Compliance with Requirements |
|-------------------------|------------------------------|
| 7.10 Essential services | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 9.65m |
| Percentage variation to requirement: | 13.5% |



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

(2) Development consent may, subject to this clause, be granted for development even though the

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's

written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The location of the proposed new works will be mostly hidden from the public domain as it is situated towards the rear of the property and integrated into the existing built form and site topography that slopes away from the street to the south east. When using the Bettar v Council of City of Sydney [2014] NSWLEC 1070 at [39]-[41]. The court expressly rejected different heights resulting from the same development standard preferring the natural ground level as this method provides for increased equity and visual consistency.*
- *The proposed upper floor works are moderate in nature and maintain the existing built form and character of the site. The proposed works will be in keeping with the existing character and the desired future development in the area.*
- *The design and location of the proposed works are located to the front north eastern portion of the existing dwelling. This location limits the height noncompliance and bulk of the dwelling as viewed from the public domain and maintains the building mass and scale. This option promotes improved amenity and sustainable design capable of maintaining the objectives of the LEP, Height of Buildings 4.3, and is compatible with the adjacent dwellings.*
- *As depicted within the proposal's shadow diagrams, there is minimal impact on the private open space to the adjoining dwellings.*
- *This style of design limits any potential impacts that a more substantial addition would create, with this design limiting new windows to reduce impacts on views from adjoining dwellings with little impact from the public domain.*
- *Promoting good sustainable design and reduced costs for construction, this proposal utilizes*

existing structures and areas of the site. This is far more cost-effective as it uses the existing roof and deck planes to connect to the existing structure.

- *The proposal provides improved private open space and landscaping through improved outdoor open space areas that complement the existing deck area, providing access and safety to indoor-outdoor living.*
- *The proposal provides improved housing in a environmental living environment. The proposed development provides for increased amenity and improved housing development in this environmental living while maintaining the character of the existing dwelling.*

Council concurs with the applicant's justification to vary the building height development standard. It is considered the proposed development will not unreasonably impact the amenity of the site, adjacent properties or public domain by way of building bulk, privacy, solar access and view impact. The excavated area beneath the existing dwelling exasperates the numerical non-compliance. However, the material impacts on this non-compliance are considered to be minor and in keeping with existing and approved development in the locality.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

While the proposal includes some numerically non-compliant built form elements, the bulk and scale of the development is considered to be reasonably managed to limit impact on other properties, given the geographical characteristics of the site and surrounds. The proposed development will not unreasonably impact upon the existing and desired streetscape character.

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

Comment:

The height and scale of the proposed garage and dwelling is generally consistent with that of similar structures and dwellings in the site vicinity.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development will not cause unreasonable overshadowing of adjacent properties.

d) to allow for the reasonable sharing of views,

Comment:

No views or vistas are expected to be unreasonably impacted as a result of the development.

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

Comment:

The proposed development is appropriately stepped to respond with the steep topography of the site while also ensuring functional residential development can be provided on the site.

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

Comment:

Majority of the existing trees and vegetation are to be retained. The existing canopy trees and vegetation on and around the site will soften the built form and its visual impact on the natural environment.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

Through its design and siting, the proposed development is considered to have low impact on the ecological and aesthetic values of the site.

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

Comment:

The proposed development is not expected to cause adverse impacts to the ecological and aesthetic values on the site.

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

Comment:

The proposed development provides for a low density residential dwelling with ancillary structures that provide greater functionality than the existing conditions.

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

Comment:

The proposed development is not expected to cause unreasonable impact to wildlife corridors that the site may contain.

Conclusion:

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

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

| Built Form Control | Requirement | Proposed | % Variation | Complies |
|---------------------|-------------|------------------|-------------|----------|
| Front building line | 6.5m | 7.9m | N/A | Yes |
| Rear building line | 6.5m | Dwelling - 11.5m | N/A | Yes |

| | | | | |
|--------------------|--------------------------|------------------------------|-------|-----------|
| | | Swimming pool - 7.6m | N/A | Yes |
| Side building line | SW - 2.5m | 3.5m | N/A | Yes |
| | NE - 1m | 1m | N/A | Yes |
| Building envelope | SW - 3.5m | Within envelope | N/A | Yes |
| | NE - 3.5m | Outside envelope | 55.5% | No |
| Landscaped area | 60% (420m ²) | 60.2% (421.7m ²) | N/A | Yes |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted | Yes | Yes |
| A4.4 Church Point and Bayview Locality | Yes | Yes |
| B1.3 Heritage Conservation - General | Yes | Yes |
| B1.4 Aboriginal Heritage Significance | Yes | Yes |
| B3.1 Landslip Hazard | Yes | Yes |
| B3.6 Contaminated Land and Potentially Contaminated Land | Yes | Yes |
| B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community | Yes | Yes |
| B4.22 Preservation of Trees and Bushland Vegetation | Yes | Yes |
| B5.15 Stormwater | Yes | Yes |
| B6.1 Access driveways and Works on the Public Road Reserve | Yes | Yes |
| B6.2 Internal Driveways | Yes | Yes |
| B6.3 Off-Street Vehicle Parking Requirements | Yes | Yes |
| B8.1 Construction and Demolition - Excavation and Landfill | Yes | Yes |
| B8.3 Construction and Demolition - Waste Minimisation | Yes | Yes |
| C1.1 Landscaping | Yes | Yes |
| C1.2 Safety and Security | Yes | Yes |
| C1.3 View Sharing | Yes | Yes |
| C1.4 Solar Access | Yes | Yes |
| C1.5 Visual Privacy | Yes | Yes |
| C1.6 Acoustic Privacy | Yes | Yes |
| C1.7 Private Open Space | Yes | Yes |
| C1.12 Waste and Recycling Facilities | Yes | Yes |
| C1.13 Pollution Control | Yes | Yes |
| C1.17 Swimming Pool Safety | Yes | Yes |
| C1.23 Eaves | Yes | Yes |
| C1.25 Plant, Equipment Boxes and Lift Over-Run | Yes | Yes |
| D4.1 Character as viewed from a public place | Yes | Yes |
| D4.2 Scenic protection - General | Yes | Yes |
| D4.3 Building colours and materials | Yes | Yes |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| D4.5 Front building line | Yes | Yes |
| D4.6 Side and rear building line | Yes | Yes |
| D4.8 Building envelope | No | Yes |
| D4.10 Landscaped Area - Environmentally Sensitive Land | Yes | Yes |
| D4.13 Construction, Retaining walls, terracing and undercroft areas | Yes | Yes |

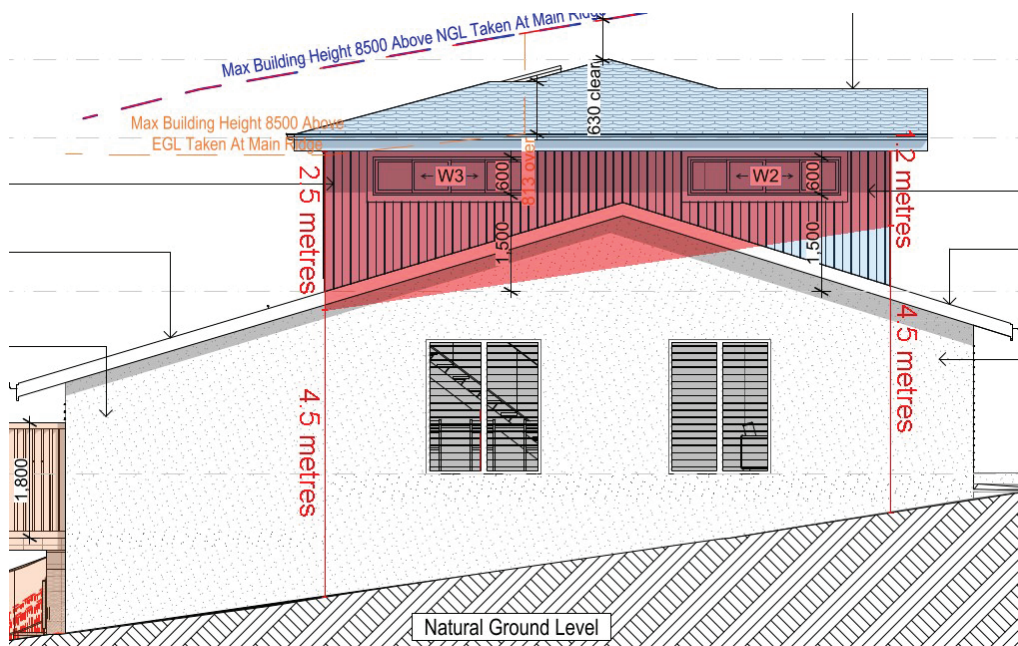
Detailed Assessment

D4.8 Building envelope

Description of non-compliance

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

The proposed first floor addition encroaches beyond the building envelope along the northeast elevation up to 2.5m (55.5%).



Merit consideration

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

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

Comment:

The proposed development generally maintains the existing footprint of the dwelling. It is considered that the proposal is consistent with the desired future character of the Church Point and Bayview locality.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment:

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

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

Comment:

The proposal appropriately relates to the spatial characteristics of the existing development and the natural environment.

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

Comment:

The proposed development is not considered to unreasonably increase the bulk and scale of the built form of the existing dwelling and demonstrates consistency with the bulk and scale of existing development in the locality.

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

Comment:

No views or vistas will be unreasonably impacted as a result of the proposal. Adequate building separation will be maintained between adjoining and surrounding properties which will contribute to the equitable preservation of views and vistas to and/or from public/private places.

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

Comment:

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

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

Comment:

Existing and proposed vegetation is considered to adequately reduce the visual bulk of the built form.

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

with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$7,535 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$753,500.

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;
- 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 Environment Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and

demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including a swimming pool has been referred to the Development Determination Panel (DDP) due to the development exceeding the building height development standard by more than 10%.

The Clause 4.6 is considered to be well founded and is supported. Additionally, the side boundary envelope non-compliance is supported on the basis of no demonstrable impacts and the character and bulk and scale are satisfactory.

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 DA2023/0099 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 17 DP 248062, 30 Utingu 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 |
| DA1003 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA1004 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA1005 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA1009 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA1010 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA1011 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA2001 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA2002 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA2003 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA2004 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA3000 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA3001 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA3002 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA4000 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA4001 Rev 1 | 13/11/2022 | Designs by Leksi |
| DA4002 Rev 1 | 13/11/2022 | Designs by Leksi |

| Engineering Plans | | |
|--------------------|------------|-------------------------------|
| Drawing No. | Dated | Prepared By |
| 2022145 SW01 Rev A | 07/12/2022 | Approved Consulting Engineers |
| 2022145 SW02 Rev A | 07/12/2022 | Approved Consulting Engineers |
| 2022145 SW03 Rev A | 07/12/2022 | Approved Consulting Engineers |
| 2022145 SW04 Rev A | 07/12/2022 | Approved Consulting Engineers |
| 2022145 SW05 Rev A | 07/12/2022 | Approved Consulting Engineers |
| 2022145 SW06 Rev A | 07/12/2022 | Approved Consulting Engineers |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|--|------------|------------------|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| BASIX Certificate No. A481215 | 19/11/2022 | Designs by Leksi |
| Geotechnical Assessment (Ref: AG 23024) | 02/03/2023 | Ascent Geo |

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

| Landscape Plans | | |
|-----------------|------------|------------------|
| Drawing No. | Dated | Prepared By |
| DA1015 Rev 1 | 13/11/2022 | Designs by Leksi |

| Waste Management Plan | | |
|-----------------------|---------|-------------|
| Drawing No/Title. | Dated | Prepared By |
| Waste Management Plan | Undated | Unnamed |
| DA1017 Rev 1 | | |

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. 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 Pittwater Local Environmental Plan 2014.

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.

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 \$7,535.00 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 \$753,500.00.

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.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **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. **Compliance with Standards**

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

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

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

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

13. **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.

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

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

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

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

15. **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.

16. **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.

17. **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.

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.

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

19. **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.

20. **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.

21. **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.

22. **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

23. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

24. **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

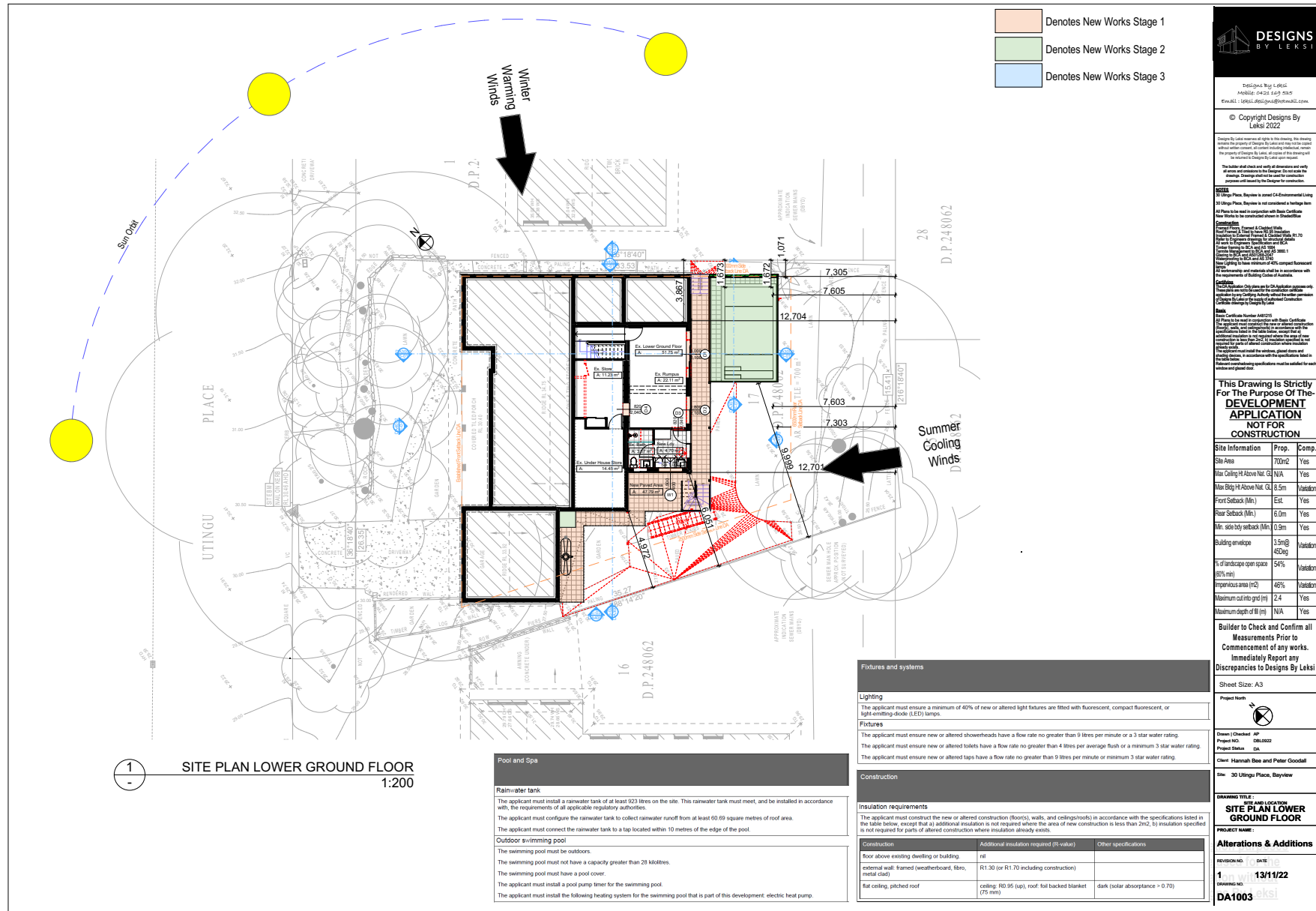
maintained and adhered to for the life of the development.

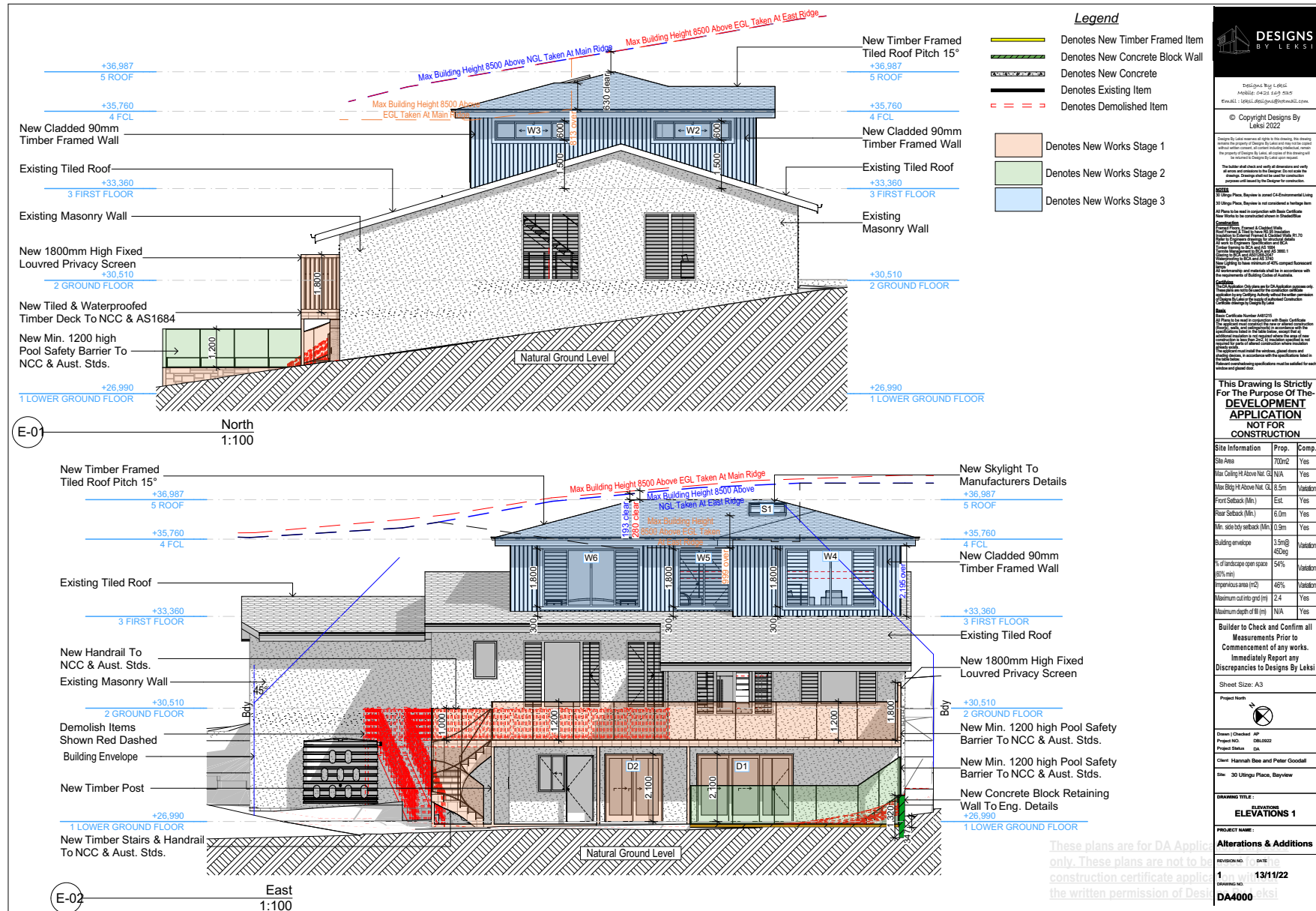
Reason: To ensure geotechnical risk is mitigated appropriately.

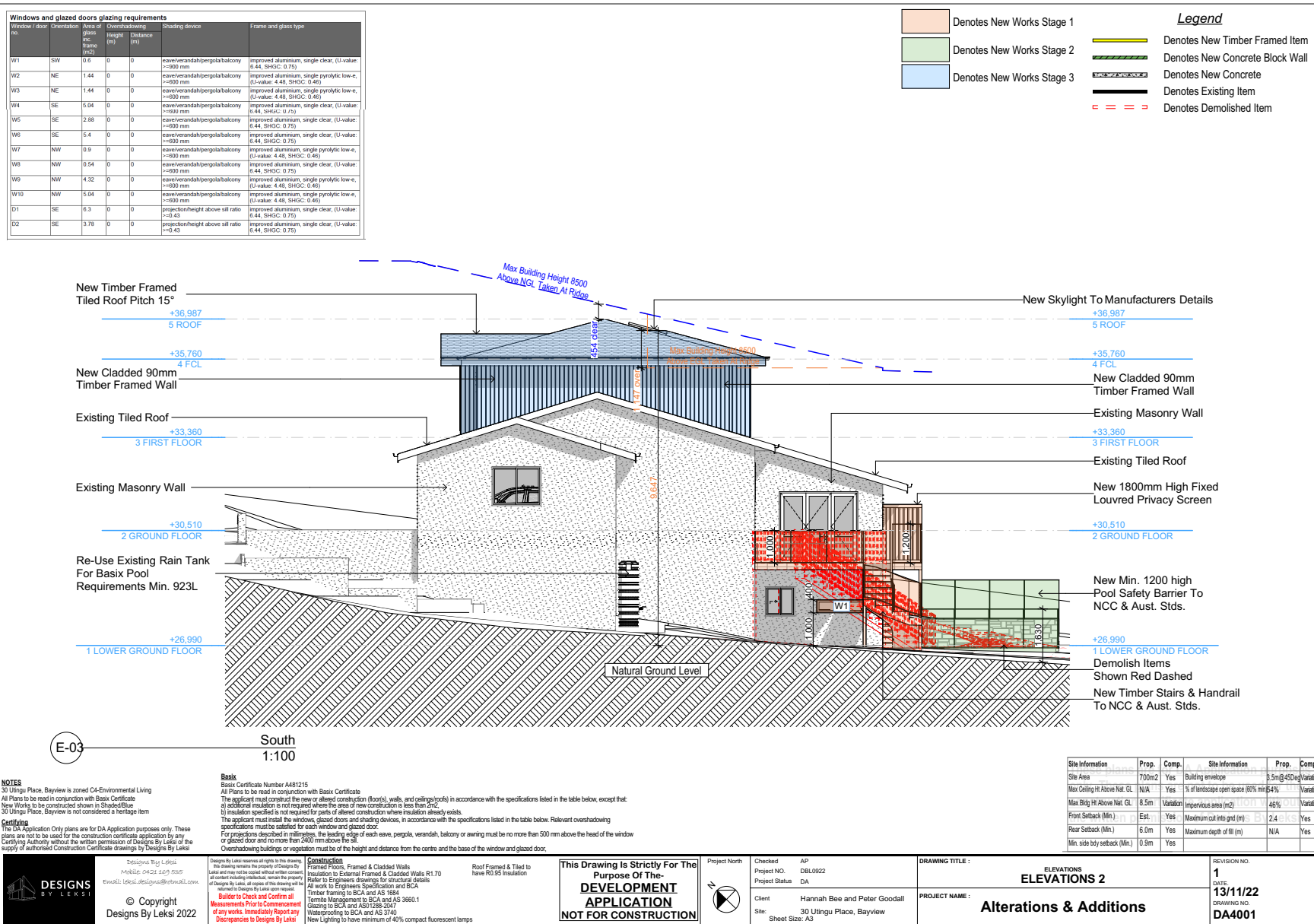
25. **Swimming Pool/Spa Motor Noise**

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.



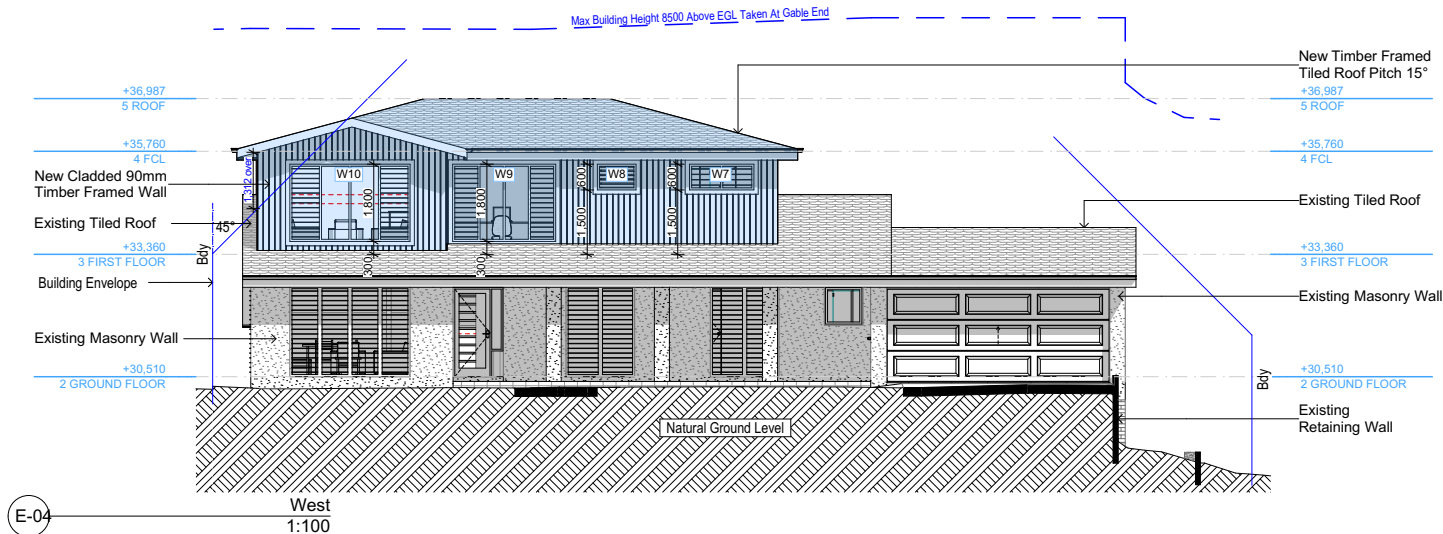




| Windows and glazed doors glazing requirements | | | | | | |
|---|-------------|--|------------|--------------|---|---|
| Window / door no. | Orientation | Area of glass inc. frame (m ²) | Height (m) | Distance (m) | Shading device | Frame and glass type |
| W1 | SW | 0.6 | 0 | 0 | eave/verandah/pergola/balcony >=600 mm | improved aluminium, single clear, (U-value: 6.44, SHGC: 0.75) |
| W2 | NE | 1.44 | 0 | 0 | eave/verandah/pergola/balcony >=600 mm | improved aluminium, single pyrolytic low-e, (U-value: 4.48, SHGC: 0.46) |
| W3 | NE | 1.44 | 0 | 0 | eave/verandah/pergola/balcony >=600 mm | improved aluminium, single pyrolytic low-e, (U-value: 4.48, SHGC: 0.46) |
| W4 | SE | 5.04 | 0 | 0 | eave/verandah/pergola/balcony >=600 mm | improved aluminium, single clear, (U-value: 6.44, SHGC: 0.75) |
| W5 | SE | 2.88 | 0 | 0 | eave/verandah/pergola/balcony >=600 mm | improved aluminium, single clear, (U-value: 6.44, SHGC: 0.75) |
| W6 | SE | 5.4 | 0 | 0 | eave/verandah/pergola/balcony >=600 mm | improved aluminium, single clear, (U-value: 6.44, SHGC: 0.75) |
| W7 | NW | 0.9 | 0 | 0 | eave/verandah/pergola/balcony >=600 mm | improved aluminium, single pyrolytic low-e, (U-value: 4.48, SHGC: 0.46) |
| W8 | NW | 0.54 | 0 | 0 | eave/verandah/pergola/balcony >=600 mm | improved aluminium, single clear, (U-value: 6.44, SHGC: 0.75) |
| W9 | NW | 4.32 | 0 | 0 | eave/verandah/pergola/balcony >=600 mm | improved aluminium, single pyrolytic low-e, (U-value: 4.48, SHGC: 0.46) |
| W10 | NW | 5.04 | 0 | 0 | eave/verandah/pergola/balcony >=600 mm | improved aluminium, single pyrolytic low-e, (U-value: 4.48, SHGC: 0.46) |
| D1 | SE | 6.3 | 0 | 0 | projection/height above sill ratio >=0.43 | improved aluminium, single clear, (U-value: 6.44, SHGC: 0.75) |
| D2 | SE | 3.78 | 0 | 0 | projection/height above sill ratio >=0.43 | improved aluminium, single clear, (U-value: 6.44, SHGC: 0.75) |

- Denotes New Works Stage 1
- Denotes New Works Stage 2
- Denotes New Works Stage 3

- Legend**
- Denotes New Timber Framed Item
 - Denotes New Concrete Block Wall
 - Denotes New Concrete
 - Denotes Existing Item
 - Denotes Demolished Item



**DESIGNS
BY LEKSI**

D:\01\04\21\Bsp L 49612
M:\01\04\21\Bsp L 49612
Email : lpsl.040121@designsbyleksi.com

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The holder and user of this drawing shall be responsible for the accuracy and validity of the information and data provided in this drawing. Designs By Leksi shall not be held responsible for any errors or omissions in this drawing.

NOTES
1. All drawings shall be based on the latest CA Environmental Living 2019 Update. Bayview is not considered a heritage item.
2. All Plans to be used in conjunction with Bayview Certificate.
3. New Works to be constructed above the existing ground level.

CONSTRUCTION
1. All Plans to be used in conjunction with Bayview Certificate.
2. All Plans to be used in conjunction with Bayview Certificate.
3. All Plans to be used in conjunction with Bayview Certificate.

DISCLAIMER
This drawing is strictly for the purpose of the development application. It is not to be used for construction. The drawing is not to be used for construction. The drawing is not to be used for construction.

Builder to Check and Confirm all Measurements Prior to Commencement of any works. Immediately Report any Discrepancies to Designs By Leksi

Sheet Size: A3

Project North

Drawn / Checked: JAP
Project No.: 041-0022
Project Status: DA
Client: Hannah Bee and Peter Goodall
Site: 30 Ullingui Place, Bayview

DRAWING TITLE:
ELEVATIONS 3

PROJECT NAME:
Alterations & Additions

REVISION NO.: DATE:
1 13/11/22
DRAWING NO.: DA4002

These plans are for DA Application only. These plans are not to be used for construction certificate application without the written permission of Designs By Leksi

Clause 4.6 Variation To Development Application 30 Utingu Place, Bayview NSW



**Clause 4.6 Variation
To Development Application
For
30 Utingu Place
Bayview
NSW
For
Hannah Bee & Peter Goodall**

Designs By Leksi

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EMAIL: leksi.designs@hotmail.com

Issue 1.00
Friday, July 2, 2021
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1 INTRODUCTION

This report pertaining to Clause 4.6 Variation accompanies the Development Application for the proposed alterations & additions at 209 Headland Road, North Curl Curl

1.1 Site

The residence is located on the North Western side of Utingu Place in the residential neighbourhood of Bayview.

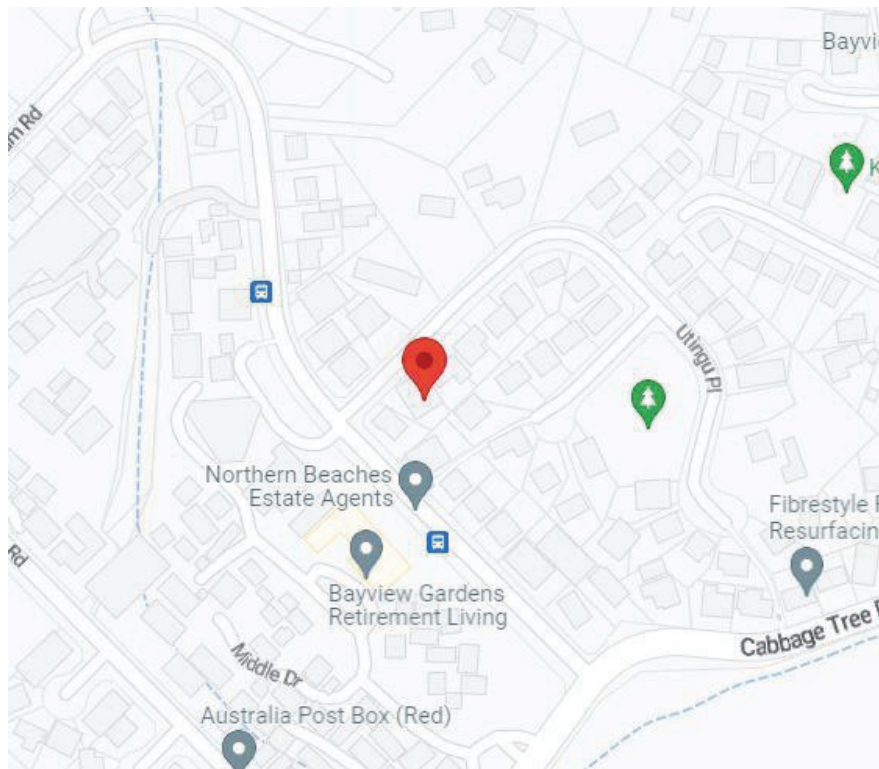


FIGURE 1: LOCATION PLAN 30 Utingu Place, Bayview ¹ Source Google Maps.

1.2 Local Authority

The local authority for this site is:
Northern Beaches Council (Pittwater)

[https://www.google.com/maps/place/30+Utingu+Pl,+Bayview+NSW+2104/@-](https://www.google.com/maps/place/30+Utingu+Pl,+Bayview+NSW+2104/@-33.6657666,151.2958482,19.46z/data=!4m6!3m5!1s0x6b0d549d8dd75ee7:0x30022be6726030fd!8m2!3d-33.6658712!4d151.2959164!16s%2Fg%2F11c4v1wrxt)

[33.6657666,151.2958482,19.46z/data=!4m6!3m5!1s0x6b0d549d8dd75ee7:0x30022be6726030fd!8m2!3d-](https://www.google.com/maps/place/30+Utingu+Pl,+Bayview+NSW+2104/@-33.6657666,151.2958482,19.46z/data=!4m6!3m5!1s0x6b0d549d8dd75ee7:0x30022be6726030fd!8m2!3d-33.6658712!4d151.2959164!16s%2Fg%2F11c4v1wrxt)

[33.6658712!4d151.2959164!16s%2Fg%2F11c4v1wrxt](https://www.google.com/maps/place/30+Utingu+Pl,+Bayview+NSW+2104/@-33.6657666,151.2958482,19.46z/data=!4m6!3m5!1s0x6b0d549d8dd75ee7:0x30022be6726030fd!8m2!3d-33.6658712!4d151.2959164!16s%2Fg%2F11c4v1wrxt)

Civic Centre, 725 Pittwater Road,
Dee Why NSW 2099
DX 9118 Dee Why
Telephone: 9942 2111

1.3 Environmental Planning Instrument that Applies to the Land

Pittwater Local Environment Plan 2014

1.4 Zoning of the land

C4 Environmental Living

1.5 Objectives of the Zone

- To provide for the housing needs of the community within a low-density, environmental living 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

Comment:

It is considered that the proposed development meets the objectives of the Zone C4 Environmental Living. This opinion is justified on the basis that this application provides for the owner's housing needs within the environmental living area that is consistent with surrounding properties elevated developments. The proposal allows currently unusable areas to be usable for the owners to assist in day to day living without adversely impacting the low-density environmental aspects as no substantial vegetation is proposed for removal. The works proposed will significantly improve the design and aesthetic quality of the site with the built form outcome complimenting properties along Utingu place.

There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.

2 Clause 4.6 Variation to Development Application

4.6 Exceptions to development standards

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

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

2.1 Development Standard Being Varied

After reviewing Pittwater LEP 2014 we advised that a Clause 4.6 Exception to Development Standard is required due to:

- This development is classified as a non-complying development. This is due to the excavated external levels and level located within the existing excavated lower ground floor and sub-floor void being over the 8.5m building height
- The favourable option for Council is a Development Application with a Clause 4.6 Variation for the structures to be considered for approval.

2.2 Clause of the Development Standard listed in the Environmental Planning Instrument

- Pittwater LEP 2014 Part 4 4.3 Height of Buildings

2.3 Objectives of the Development Standard

- to ensure that buildings are compatible with the height and scale of surrounding and nearby development.
- to minimise visual impact, disruption of views, loss of privacy and loss of solar access.
- to minimise any adverse impact of development on the scenic quality of Pittwater's coastal and bush environments
- to manage the visual impact of development when viewed from public places such as parks and reserves, roads, and community facilities.

Comment:

It is considered that the proposed development meets the objectives of the height of buildings development standard. This opinion is justified on the basis that this application is compatible with surrounding properties that have similar height & scale. The visual impacts are minimised as there is existing vegetation used to soften the streetscape from the public domain as well “tiering” the stories to articulate each floor from Utingu Place. With the existing location of the subject & adjacent dwellings enjoying an elevated position there is no adverse impact of view lines with privacy improved as well as the shadow cast from the proposed works having only a minor impact on the adjacent properties. The visual impacts are minimised as existing construction has been excavated reducing overall height along Utingu Place. This provides a stepping down the site following the existing topography, this assisting in maintaining the scenic quality & built form of the Bayview area.

2.4 Numeric value of the development standard in the environmental planning instrument

LEP2014 Height = 8.5m

2.5 Proposed numeric value of the development standard in your development application

Proposed Height = 9.647m Existing Excavated Ground (Measured at the highest point - Southwest edge of roof ridge of upper floor)

Proposed Height = 8.046m Natural Ground level. (Measured from the highest point - Southwest edge of roof ridge of upper floor.)

2.6 Percentage variation between the proposal and the environmental planning instrument

Proposed Height = 13% (Existing Ground Level)

Proposed Height = 8.046m (Natural Ground Level = Compliant)

2.7 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The variation in this case is unreasonable as its reference is to the excavated

lower ground floor area level and sub-floor void. If the method of measuring from the natural ground level were to be used, we would have a compliant dwelling in terms of height. Ref, *Bettar v Council of City of Sydney* [2014] NSWLEC 1070 is adopted using the natural ground levels located on the western and southern elevation, we would also see compliance reached with the remainder of the roof clear of the height limit.

This variation is considered moderate in comparison to other recent developments along Utingu Place. This application is in keeping with a environmental living residential environment desired by Council in this area as well as the objectives of the zone. The development has no negative consequence of significance as a result of this noncompliance, further it meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

In this circumstance, it is unreasonable and unnecessary to strictly comply with the building height standard given that the resulting development will be absent of any negative environmental or planning outcomes. The proposal would be indiscernible to a development that strictly complied with the numerical control. For the reasons stated above, it is argued that a variation be supported as it ultimately results in an improved planning outcome for the streetscape and general locality along Utingu Place.

- *Streetscape* – The visual quality of the streetscape is to be enhanced with the alterations to the property in keeping with the adjacent property with the proposed landscaping maintained improving the streetscape to complement the existing built form along Utingu Place. The height encroachment for the upper floor is to the rear of the block, with the intention for the rear addition to the dwelling to match the existing and surrounding designs & present a dwelling that is consistent front to back. The proposed roof increases the height slightly but does not detract from the streetscape along Utingu Place. The proposed additions provide a generally consistent pattern of development with regard to adjoining building setbacks, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape & is not out of character for the neighbourhood. These characteristics for the building height conform to the C4 Environmental Living residential requirements for the Bayview area & modifying the structure would, in our opinion, contravene the C4 zoning

objectives by adversely affecting the streetscape along Utingu Place & the desired future character of the area.

- *Bulk & Scale* is maintained for the area. Although the bulk & scale of the building is slightly increased, the overall size & bulk in relation to the surrounding neighbourhood is to be maintained throughout the development as shown by the similar development on the adjacent northeastern property below



FIGURE 2: Adjacent property, 29 Utingu Place, Bayview ² Source Google Maps.

And;



FIGURE 3: Adjacent property, 1 Utingu Place, Bayview ³ Source Google Maps.

There is no adverse visual impact with surrounding developments to maintain their existing visual amenity. The new roof that has been added to the design matches the existing to prevent the design from visually dwarfing surrounding properties as the roof height is only 0.047m higher than the north easterly dwellings roof at its highest point. It is in our opinion that the pitched roof design allows for a seamless finish and for a more appealing streetscape, with the design in keeping with other properties along Utingu Place.

The existing topography & built form prevents the proposed ridges from adhering to the 8.5m building height. This is largely due to the existing dwelling being previously excavated on a sloping site. The proposal is a design option that supports a preferred planning outcome to compliment other dwellings in the Bayview area, as well as complimenting the existing dwelling & the surrounding neighbourhood.

In addition, the proposed works are justified as the addition is barely visible from the street as it is set back well behind the boundary line & provides for existing vegetation to the front of the property, this visually maintains the bulk of the upper

portion of the dwelling without adversely affecting the streetscape. The intention is to provide a balance between the proposed additions to the existing built form with the majority of the improvements to the rear of the property.

- **Openness** - A sense of openness has been created with landscaping to the front of the property with the proposed new decks to integrate in with the exiting topography. The proposed design to the upper portion of the dwelling allows the low levels to create flow between the internal & open space areas for the owners with minor elements of the proposal over the height limit due to the excavated areas, to continue to allow for a sense of openness to support the desired future character of the Bayview environmental living area. The openness to the front of the property is maintained with the landscaped area & access to compliment the proposed structures to assist in adequate usable outdoor recreation space & water infiltration.
- **Site Access & Circulation** is improved with vehicular access provided to Utingu Place to allow for parking & the pedestrian access and a path and grassed area to the front door. It is anticipated that the proposed development will have no detrimental impact on traffic flow.
- **Planting** – There has been generous amount of area maintained for the provision of planting in the front & rear areas of the property. The proposal enhances the amenity of the site by providing a usable garden space that softens the visual amenity of the front of the property. The proposed works to the front of the property are in keeping with the adjacent properties. The existing vegetation softens the streetscape & allows the development to blend in with the existing environment along Utingu Place.

2.8 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

The proposal extends the existing built form of the subject property with well-designed additions improving on the ageing dwelling & maintains landscaping onsite. The proposed works add to the already renovated & rebuilt dwellings along Utingu Place and as such strict compliance in this regard would limit the objectives being fully attained. The proposed works provide a more efficient and orderly development on the steeply sloping land that is of high-quality architectural design which

maximises the sites development potential along with providing appropriate housing stock within the locality.

2.9 Is the development standard a performance-based control?

The objectives of the development standard provide the controls to allow a performance-based solution. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider “compliance to the standard unreasonable in the circumstances of the development”.

2.10 Would strict compliance with the standard be unreasonable or unnecessary?

Yes, please refer to answer in 2.7, 2.8 and 2.9 preceding.

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

Yes, Section 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and legislation are put forward to support the variation.

1.3 Objects of Act

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

The following environmental planning grounds justify contravening the development standard.

- The location of the proposed new works will be mostly hidden from the public domain as it is situated towards the rear of the property and integrated into the existing built form and site topography that slopes away from the street to the south east. When using the *Bettar v Council of City of Sydney* [2014] NSWLEC 1070 at [39]-[41]. The court expressly rejected different heights resulting from the same development standard preferring the natural ground level as this method provides for increased equity and visual consistency.

- The proposed upper floor works are moderate in nature and maintain the existing built form and character of the site. The proposed works will be in keeping with the existing character and the desired future development in the area.
- The design and location of the proposed works are located to the front north eastern portion of the existing dwelling. This location limits the height noncompliance and bulk of the dwelling as viewed from the public domain and maintains the building mass and scale. This option promotes improved amenity and sustainable design capable of maintaining the objectives of the LEP, *Height of Buildings* 4.3, and is compatible with the adjacent dwellings.
- As depicted within the proposal's shadow diagrams, there is minimal impact on the private open space to the adjoining dwellings.
- This style of design limits any potential impacts that a more substantial addition would create, with this design limiting new windows to reduce impacts on views from adjoining dwellings with little impact from the public domain.
- Promoting good sustainable design and reduced costs for construction, this proposal utilizes existing structures and areas of the site. This is far more cost-effective as it uses the existing roof and deck planes to connect to the existing structure.
- The proposal provides improved private open space and landscaping through improved outdoor open space areas that complement the existing deck area, providing access and safety to indoor-outdoor living.
- The proposal provides improved housing in a environmental living environment. The proposed development provides for increased amenity and improved housing development in this environmental living while maintaining the character of the existing dwelling.

Discussion.

The case of *Bettar v Council of City of Sydney* [2014] NSWLEC 1070 at [39]-[41]. The court expressly rejected different heights resulting from the same development standard. The Bettar approach inferred the existing ground level was taken from an extrapolated coordinate of natural ground level prior to excavation that had taken

place on the site. This saw a much more uniform approach and provided for a far better level of equity for owners, and importantly, better outcomes in terms of good planning measures for the preservation of Streetscapes and consistent visual access from the public domain.

The methodology provided for in the Bettar case has been widely used by council(s) as an appropriate way for calculating building height, as it provided for a more uniform outcome of development and made far better sense in terms of building design and planning outcomes.

However, the current case in Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC1582 has also addressed the issues of determining maximum heights of buildings. Although the Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC1582, case did not apply the Bettar decision but instead said at [73] that⁴

- the existing level of the site at a point **beneath** the existing building is the level of the land at that point.

and

- the 'ground level (existing)' within the footprint of the **existing** building is the existing excavated ground level on the site.

The result was the Court found the new building was over the maximum height control based on the above, but there was also an environmental planning ground that may justify the noncompliance under a section 4.6 variation to the standard, importantly in terms of the findings of the court in the case. The clause 4.6 submitted with the case was upheld and the development consent was subsequently granted.

There is limited explanations as to why the Bettar approach was not used in the Merman case, possibly it was not applied as the floor levels excavated in the Merman case did not use the same characteristics. This may also be further explained with the first point of the Merman conclusion noting that the case at [138] was not to be used as a precedence.

⁴ Referenced from Lexology October 10, 2021.

Extract from; Merman Investments Pty Ltd v Woollahra Municipal Council [2021]
NSWLEC1582 [138]

*“The granting of consent to the proposal does not create a planning precedent,
because the characteristics of the site and the merits of the proposal are unique.”*

From [145]

(2) The appeal is upheld.

*(3) Development Application No. 325/2020/1 for the demolition of all the existing
structures, removal of existing vegetation, excavation to accommodate two levels of
basement parking and construction of a three and four storey residential flat building
comprising four apartments, a plunge pool for one apartment and associated
landscaping, is approved, subject to the conditions of consent at Annexure A.*

The preceding information and the following environmental planning grounds justify
contravening the development standard. Furthermore, that also add the following.

- The proposal provides a more environmentally friendly dwelling.
- The proposal utilizes existing services.
- The proposal provides private open space and landscaping.
- The proposal provides onsite parking.
- The proposal provides improved housing in a low-density environment.

The variation to the maximum building height requirements is, in our opinion,
acceptable and there are appropriate planning grounds in support of the non-
compliance.

As noted above, strict compliance with the building height is unreasonable as the
proposed works are of a moderate nature and have been designed to limit the
environmental planning impacts of the development through the use of the existing
floor areas to create the new space that vastly improves the amenity of the dwelling.

Clause 4.6 allows for strict compliance with the development standard to be varied if
unreasonable or unnecessary in the circumstance of the case. *Wehbe v Pittwater
Council* [2007] NSW LEC 827 expressed that there are five different methods in
which a variation of the development standard may be considered unreasonable or
unnecessary. Only one of the five methods is sufficient to demonstrate that
adherence is unnecessary or unreasonable (Ref *Wehbe v Pittwater*).

As detailed within section 2.7 of this clause 4.6, the development utilizes the existing areas of the dwelling. This is far more cost-effective in terms of construction as it uses the existing structural walls below to connect to the existing structure and provides for a more environmentally effective dwelling. As increased shading is provided to the dwelling, specifically to the eaves that protect the wall facades and glazed components of the structure.

Furthermore, and most importantly, the proposed development provides for increased amenity and greatly improved housing development in this environmental living area in keeping with the locality and the objectives of the environmental living controls.

The nature of the proposed works is of little significance to the bulk and scale of the dwelling, with the proposed works providing for the increased articulation of the existing dwelling. These works have minimal impact on the surrounding neighbours with minimal effect on view lines, access to outdoor visual volume, and shadow lines.

As detailed above, the objective of the standards is achieved throughout the development, despite not strictly achieving compliance with the height requirements. Therefore, in this circumstance, the standards are unreasonable and unnecessary with the variation to the maximum building height requirements, in our opinion, acceptable, noting that there are appropriate planning grounds as detailed above in support of the noncompliance.

CONCLUSION

2.12 Summary

The resulting development has been designed to enhance the existing residential building by improving the amenity for the residents while maintaining, where possible, the conditions set out by Pittwater Local Environment Plan 2014. The proposed works included in this report are, in our opinion, reasonable in relation to the existing built works, & do not adversely impact the surrounding properties, whilst justifying the environmental planning grounds for Northern Beaches Council. We consider that

Clause 4.6 Variation To Development Application 30 Utingu Place, Bayview NSW

when applying both the of *Bettar v Council of City of Sydney* [2014] NSWLEC 1070 and the *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC1582 [138], the proposal will impose generally comply and will have minimal impact, improves the streetscape and character of the neighbourhood and request that council support the Clause 4.6 Variation of the Development Application.

ITEM 3.8**DA2023/0255 - 3 LAROO ROAD TERREY HILLS -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL****REPORTING MANAGER****Steve Findlay****TRIM FILE REF****2023/344072****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 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 DA2023/0255 for demolition works and construction of a dwelling house including swimming pool on land at Lot 218 DP 752017, 3 Larool Road TERREY HILLS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

| | |
|---|---|
| Application Number: | DA2023/0255 |
| Responsible Officer: | Grace Facer |
| Land to be developed (Address): | Lot 218 DP 752017, 3 Larool Road TERREY HILLS NSW 2084 |
| Proposed Development: | Demolition works and construction of a dwelling house including swimming pool |
| Zoning: | Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Delegation Level: | DDP |
| Land and Environment Court Action: | No |
| Owner: | Geoffrey Peter Garland Sophie Marie Garland |
| Applicant: | Cadence & Co Pty Ltd |
| Application Lodged: | 15/03/2023 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Single new detached dwelling |
| Notified: | 20/04/2023 to 04/05/2023 |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 25.18% |
| Recommendation: | Approval |
| Estimated Cost of Works: | \$ 3,690,000.00 |

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house including a swimming pool and tennis court.

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% (2.14m or 25.18%).

The 4.6 request for the non-compliance with the building height development standard arises due to the site being partially excavated and the proposed dwelling's upper roof form being situated over the excavated footprint of the existing swimming pool terrace.

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 proposal comprises of the following works:

- Demolition of the existing dwelling, swimming pool and detached garage
- Construction of a new dwelling house with attached garage
- New access crossing and internal driveways
- New Swimming Pool
- New tennis court
- Earthworks and the construction of retaining walls
- Tree removal of 7 trees and landscaping

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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 - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - D16 Swimming Pools and Spa Pools
Warringah Development Control Plan - D17 Tennis Courts

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 218 DP 752017 , 3 Larool Road TERREY HILLS NSW 2084 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the western side of Larool Road and the northern side of Coolowie Road.</p> <p>The site is irregular in shape with a frontage of 141.505m along Larool Road, a 96.66m frontage along Coolowie Road and a depth of 125.10m. The site has a surveyed area of 1.702 hectares.</p> <p>The site is located within the RU4 Primary Production Small Lots zone from WLEP 2011 and accommodates a one and two storey dwelling house and swimming pool. Vehicular access to the dwelling's detached garage is via Coolowie Road. The site also accommodates a one and two storey stables building with separate vehicular access to Coolowie Road.</p> <p>The slope of the site falls gently across the eastern quarter of the site before increasing to angles of approximately 20 degrees and then decreasing to an average angle of approximately 5 degrees across the remainder of the site.</p> <p>The site contains lawn areas, trees, garden beds, a dam and horse grazing paddocks. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by rural residential properties on large lots.</p> |

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:

MOD2000/4300/1

Addition of Space to East Side of Barn & Terrace
Approved 31 May 2002

DA2001/0719

Construction of a Pavillion
Approved on 11 July 2001

DA2000/4300

Horse Stables with Bedrooms & Pool
Approved on 1 August 2002

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration | Comments |
|--|--|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on “Environmental Planning Instruments” in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | There are no current draft environmental planning instruments. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Warringah Development Control Plan 2011 applies to this proposal. |
| Section 4.15 (1) (a)(iia) – Provisions of any planning agreement | None applicable. |

| Section 4.15 Matters for Consideration | Comments |
|--|---|
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021) | <p>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.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> |
| 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 | <p>(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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p> |

| Section 4.15 Matters for Consideration | Comments |
|--|---|
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 22 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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/04/2023 to 04/05/2023 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 of the application Council received no submissions.

REFERRALS

| Internal Referral Body | Comments |
|--|--|
| Environmental Health (Solid Fuel/Oil Heater) | We have received advice from the Architectural Designer that one heater will be gas and the other a compliant Jetmaster solid fuel heater. We support the proposal with conditions relating to a solid fuel heater to comply with standards. . |
| Landscape Officer | The application is assessed by Landscape Referral against Warringah Local Environmental Plan (WLEP) 2011 zone RU4 Primary Production Small Lots, and the following Warringah Development Control Plan (WDCP) 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed |

| Internal Referral Body | Comments |
|----------------------------------|--|
| | <p>Vegetation</p> <p>The objectives of WLEP zone RU4 Primary Production Small Lots, applicable to Landscape Referral includes: to minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland; to maintain and enhance the natural landscape including landform and vegetation; and to maintain the rural and scenic character of the land.</p> <p>Landscape Plans and a Arboricultural Impact Assessment are submitted with the application and no concerns are generally raised. There are seven existing trees proposed for removal in the Arboricultural Impact Assessment (T9, T10, T11, T19, T20, T21 and G37) as listed in section 9.0 Recommendations, and this is also documented on the Landscape Plans. All trees within adjoining properties and the road reserve are not impacted and are to be protected. It is noted that the property supports eighteen native canopy trees typical of the natural landscape, as well as other ornamental trees typical of the locality, and these are to be protected and managed under the provisions of Planning for Bush Fire Protection.</p> <p>The Landscape Plans indicate retention of existing canopy trees and hedges around the property perimeter, and provide for additional tree planting (ornamental in the majority), and ornamental mixed understorey planting, enhancing the typical landscape setting of the property typical of properties in the locality. No concerns are raised subject to the retention of the existing native canopy trees.</p> |
| NECC (Bushland and Biodiversity) | <p>The proposal seeks approval for alterations and additions to a dwelling house including a swimming pool.</p> <p>The comments on this referral relate to the following controls and provisions:</p> <ul style="list-style-type: none"> • Planning for Bushfire Control 2019 • Warringah DCP Clause E2 Prescribed Vegetation • Warringah DCP Clause E4 Wildlife Corridors • Warringah DCP Clause E5 Native Vegetation • Warringah DCP Clause E6 Retaining unique environmental features <p>The proposal has been submitted with an accompanying Arboricultural Impact Assessment (AIA) and a Bushfire Report.</p> <p>The AIA has assessed a total of 57 trees found within the property boundary and have also assessed an additional 11 trees found outside of the site boundary. The proposed removal of native canopy trees 3, 4, 38, 41 and 53 is not objected to on the grounds of their like for like replacement. However, the arborist report states that only 9, 10, 11, 19, 20, 21 and 37 will be removed. As these are exotic tree species, no objections are raised.</p> |

| Internal Referral Body | Comments |
|--------------------------------|--|
| | The Bushfire report has established that the level of risk awarded to the site is BAL 19 and has recommended that the site be treated as an Asset Protection Zone (Inner Protection Area) in perpetuity. |
| NECC (Development Engineering) | The site falls away from the road frontage and cannot drain to the street. The development requires on-site detention, which is addressed in the stormwater plans. The development proposes to discharge stormwater from the site via an absorption trench at the rear of property. This is acceptable. There is considerable excavation works proposed for the development and a Geotechnical report has been provided to guide this. |

| External Referral Body | Comments | | | | | | |
|---|---|-------------------------|--|--|--|----------|-------------------------|
| Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48 | The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent. | | | | | | |
| Aboriginal Heritage Office | <p>Conclusion / General Comments</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>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.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>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.</p> <table><tr><th colspan="3">Recommendation</th></tr><tr><td></td><td>APPROVAL</td><td>· Subject to Conditions</td></tr></table> | Recommendation | | | | APPROVAL | · Subject to Conditions |
| Recommendation | | | | | | | |
| | APPROVAL | · Subject to Conditions | | | | | |

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1372326S dated 8 March 2023). The BASIX Certificate is supported by a NatHERS Certificate (see Certificate No.HR-OK2LFQ-01 dated 8 March 2023).

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

| Commitment | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water | 40 | 40 |
| Thermal Comfort | Pass | Pass |
| Energy | 50 | 51 |

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been

included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 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 | 10.64m | 25.18% (2.14m) | 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 |
| 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: | 10.64m |
| Percentage variation to requirement: | 25.18% |

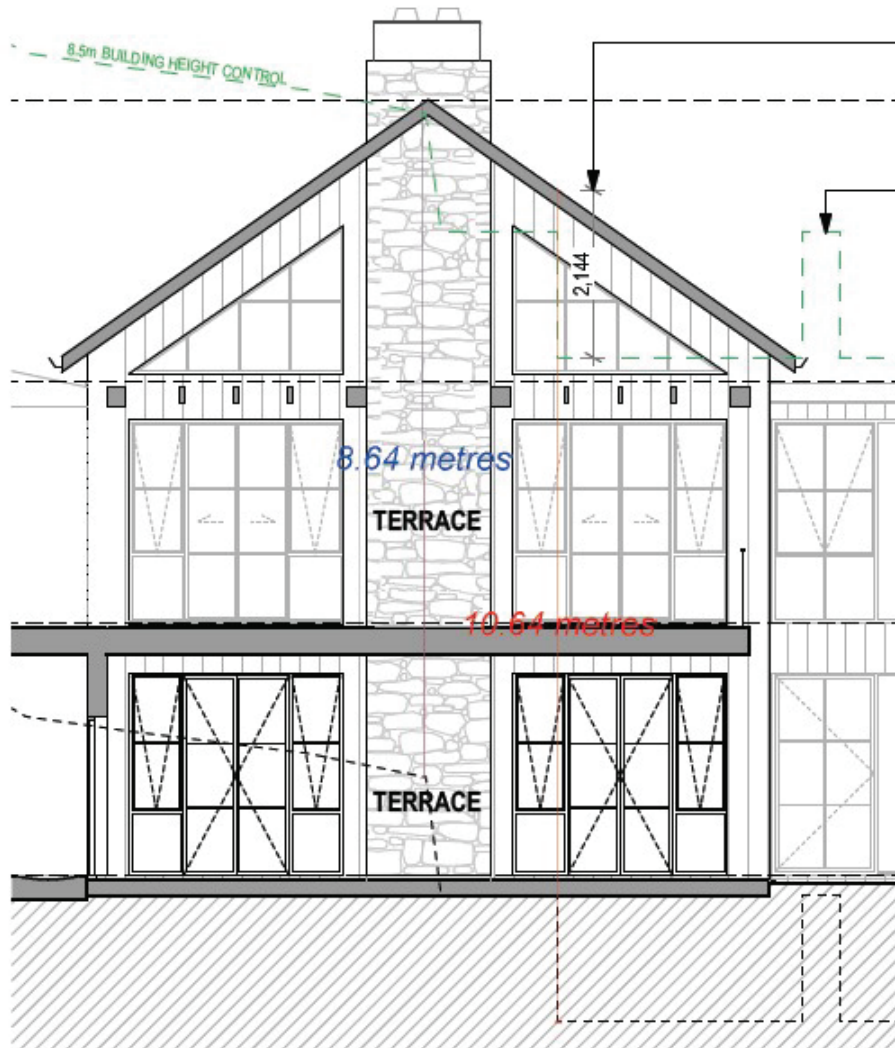


Figure 1 - Building Height Non-Compliance at northern end of gable

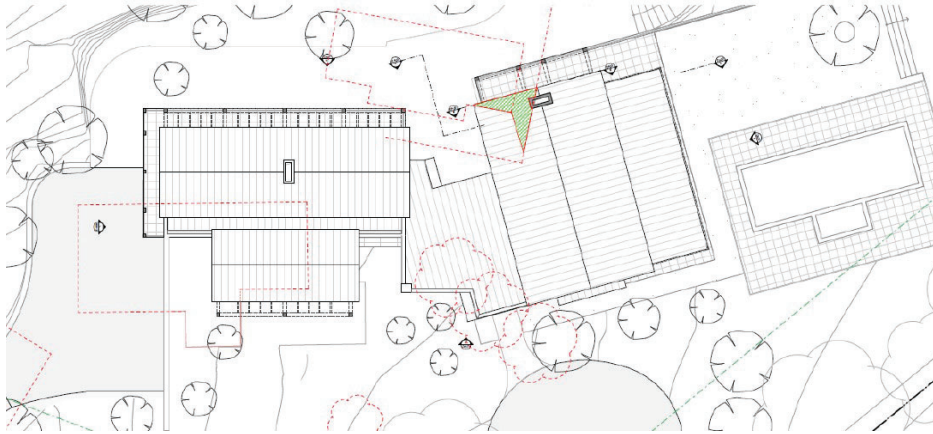


Figure 2 - Roof Plan with area of height non-compliance highlighted in green (provided by the Applicant)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

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

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

The applicants written request argues, in part:

- *The prior excavation of the site, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of WLEP 2011.*
- *The non-compliance occurs at a point where it will not be visible from the public domain*
- *The minor portion of the roof form that protrudes above the height plane does not result in a development that could be said to be incompatible with the height and scale of surrounding and nearby development*
- *The non-compliance does not attribute to any adverse impacts upon privacy of adjoining properties*

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 portion of the dwelling where the maximum numerically non-compliant building height occurs, arises 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 RU4 Primary Production Small Lots 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 maximum height breach occurs over the excavated footprint of the existing swimming pool on the site, which results in an exacerbated numerical non-compliance. Due to the substantial setbacks provided and existing landscaping on the site, the area of non-compliance will not be readily visible from adjoining properties or the public domain. The majority of the proposed dwelling, in particular the height of the proposal along both street frontages, demonstrates compliance with the building height development standard. The proposed development is limited to one and two storeys in height and is 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,

Comment:

The numerically non-compliant element of the proposed dwelling house does not create any unreasonable amenity impacts to neighbouring properties in relation to views, privacy or overshadowing. Sufficient spatial separation is provided to neighbouring properties and the streetscape to ensure the residential amenity of the area is maintained and to minimise the proposal's visual impact.

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

Comment:

The proposed development is not anticipated to be visually dominant within the natural environment and incorporates articulation and varied setbacks to reduce the bulk and scale within a rural residential setting. In this regard, the scenic quality of the locality will be maintained.

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

Comment:

When viewed from Larool Road and Coolowie Road, the proposal will largely present as a single storey dwelling with the two storey elements oriented towards the side boundaries. Existing landscaping within the road reserve and on the subject site will further reduce the visual impact of the development when viewed from the streetscape.

Zone objectives

The underlying objectives of the RU4 Primary Production Small Lots zone are addressed as follows:

- ***To enable sustainable primary industry and other compatible land uses.***

Comment:

The proposal is compatible with sustainable primary industry.

- ***To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.***

Comment:

The site will be used for residential purposes, therefore this objective is not relevant to this application.

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

Comment:

The proposal will maintain the residential use of the land, which is compatible with surrounding zones.

- ***To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.***

Comment:

There are no known significant view corridors across the site that will be adversely impacted by the proposed development.

- ***To maintain and enhance the natural landscape including landform and vegetation.***

Comment:

The proposal has been sited to retain existing vegetation and mature trees on the subject site. There will be minimal changes to the natural landform with the proposed dwelling being located largely within the same footprint of the existing dwelling.

- ***To ensure low intensity of land use other than land uses that are primary industry enterprises.***

Comment:

The use of the site for residential purposes to accommodate a single detached dwelling house is considered to be a low intensity land use.

- ***To maintain the rural and scenic character of the land.***

Comment:

The proposed development is compatible with the character of the locality. The development on the site is considered to be relatively small in scale in comparison to the size of the lot, therefore the rural and scenic qualities of the land will be maintained.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the RU4 Primary Production Small Lots 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 development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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 | 8.3m | 15.28% (1.1m) | No |
| B5 Side Boundary Setbacks | 10m (North) | Dwelling: 66.7m Tennis Court: 8.6m | Tennis Court: 14% (1.4m) | No |
| | 10m (West) | 65.8m | - | Yes |
| B7 Front Boundary Setbacks | Primary Frontage (Coolowie Road): 20m Secondary Frontage (Larool Road): 10m | Primary Frontage (Coolowie Road): Dwelling: 30.7m Secondary Frontage (Larool Road): Dwelling: 17.4m Pool (water line): 11.2m Pool Coping: 6.4m Tennis Court: 5.3m | Pool Coping: 36% (3.6m) Tennis Court: 47% (4.7m) | No |
| B9 Rear Boundary Setbacks* | N/A | N/A | N/A | N/A |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 30% (5106m ²) | 79.24% (13486.9m ²) | - | Yes |

*The subject site has two frontages, therefore there is no rear boundary in this instance.

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------|------------------------------|-----------------------------|
| A.5 Objectives | Yes | Yes |
| B1 Wall Heights | No | Yes |
| B5 Side Boundary Setbacks | No | Yes |
| B7 Front 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 |

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| C8 Demolition and Construction | Yes | Yes |
| C9 Waste Management | Yes | Yes |
| D1 Landscaped Open Space and Bushland Setting | 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 | No | Yes |
| D17 Tennis Courts | 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 |
| E4 Wildlife Corridors | Yes | Yes |
| E5 Native 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 on the north-eastern and western side of the dwelling where it exhibits a wall height of 8.3m, resulting in a variation of 15.2% (1.1m) to the control. This occurs along a portion of the dwelling where gable roof forms are proposed with raked ceilings that follow the pitch of the roof.

Merit consideration:

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

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

Comment:

The proposed development has been designed and located to minimise bulk and scale with the portions of the dwelling that are numerically non-compliant with the wall height control being located towards the rear of the dwelling and not fronting the primary or secondary frontages. It is noted that the eastern and southern elevations of the dwelling largely present as single storey and comply with the wall height control. As such, the proposal will not appear visually dominant when viewed from the public domain. Due to the location of the dwelling being sited towards the south-eastern front corner of the lot, there is substantial spatial separation between the proposal and the adjoining properties to the north and west to soften its visual impact.

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

Comment:

The height of the proposed development will be maintained beneath the height of the existing tree canopy level. There is adequate vegetation along the boundaries of the property to visually reduce the bulk and scale of the built form.

- ***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:

The minor areas of non-compliance will not result in any adverse amenity impacts on adjoining or nearby properties.

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

Comment:

The extent of site disturbance has been minimised by locating the dwelling within the general location of the existing dwelling on the subject site. The slope of the site falls downwards from the eastern boundary to the western boundary and the natural landform contributes to the numerically non-compliant wall height.

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

Comment:

The proposal incorporates a varied roof form that is consistent with the architectural style and scale of surrounding residential properties.

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.

B5 Side Boundary Setbacks

Description of non-compliance

Clause B5 of the DCP requires development on land zoned RU4 Primary Production Small Lots to maintain a minimum setback of 10m to side boundaries. The proposed tennis court is setback 8.6m from the northern side boundary, presenting a variation of 14% (1.4m) to the control. However, it is noted that Clause D17 of the DCP permits the fences of tennis courts to be setback 1.5m from front, side and rear boundaries, with which the proposal complies. As such, it can be implied that tennis courts are permitted within the 10m side setback area, although they are not explicitly excluded from the side boundary setback control under Clause B5. Accordingly, with regard to the consideration for a variation, the development has been considered against the underlying Objectives of the Control as follows:

Merit consideration

- ***To provide opportunities for deep soil landscape areas.***

Comment:

The siting of the proposed tennis court on the subject site will not require the removal of any significant vegetation. The site will maintain areas of landscaped open space in excess of the requirements of the DCP. Therefore, opportunities for deep soil landscaping will be retained on the site.

- ***To ensure that development does not become visually dominant.***

Comment:

The extent of the numerical non-compliance occurs only along the north-western corner of the tennis court and the proposed development demonstrates compliance with the setback control along the majority of its northern side and its north-eastern corner. The tennis court is a low lying structure that will be finished in colours to complement the surrounding natural environment to ensure that the development will not result in visual dominance.

- ***To ensure that the scale and bulk of buildings is minimised.***

Comment:

The proposed tennis court is not anticipated to result in excessive bulk or scale when presenting to the streetscape or adjoining properties as the development will be screened by existing boundary fencing and mature trees.

- ***To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.***

Comment:

Sufficient spatial separation will be maintained between the proposed development and the neighbouring dwellings to the north, Lot 215/Cooyong Road and 1 Larool Road. Existing vegetation which be retained along the northern side boundary to provide an adequate level of privacy to adjoining sites. In addition, the proposed tennis court will not contribute to any

additional overshadowing.

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

Comment:

The proposed tennis court 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

The subject site has two frontages with the primary frontage along Coolowie Road and the secondary frontage along Larool Road. As vehicular access is obtained via Coolowie Road and the existing and proposed dwelling house face this road, Coolowie Road has been assigned as the primary frontage. Clause B7 of the DCP requires development on lots zoned RU4 to be setback 20m from the primary frontage and 10m from the secondary frontage. The proposed dwelling house demonstrates full compliance with the front setback control along both frontages. However, the proposed pool and tennis court encroach within the front setback area along the secondary frontage (Larool Road). The proposed pool coping is setback 6.4m from the front boundary line and the proposed tennis court is setback 5.3m, thereby exhibiting variations of 36% (3.6m) and 47% (4.7m), respectively. The pool waterline and play area of the tennis court are compliant with the 10m setback control. It is also noted that Clause D17 of the DCP permits the fences of tennis courts to be setback 1.5m from front, side and rear 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 create a sense of openness.***

Comment:

The proposed tennis court is sited perpendicular to Larool Road with its shortest edge presenting to the public domain to minimise its visual impact. The inground swimming pool will not contribute to excessive bulk or scale, thus maintaining a sense of openness on the site.

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

Comment:

Surrounding development displays evidence of structures within the front setback area, in particular Lot 214/Cooyong Road which has a swimming pool and tennis court within the front setbacks. In this regard, the proposed numerical non-compliances are consistent with the existing pattern of buildings and landscape elements. It is noted that the existing stables, pond, landscaping and paddocks on the site result in limited opportunities to locate the swimming pool and tennis court without some degree of encroachment into the secondary frontage. The

proposed structures have been sited to largely preserve existing vegetation on the site and create visual continuity across Larool Road that is complementary to the natural environment of the locality.

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

Comment:

The proposed dwelling house is oriented to face Coolowie Road and presents a front setback in excess of the requirements of the DCP from the southern front boundary. Notwithstanding the numerically non-compliant setbacks of the ancillary structures to Larool Road, existing boundary fencing and vegetation will be maintained to protect the visual quality of the streetscape. The proposed developments will not be readily visible from the public domain through the established vegetation on the subject site.

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

Comment:

There are no significant view corridors across the portions of the site where development is proposed, therefore reasonable view sharing will be maintained.

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.

D16 Swimming Pools and Spa Pools

Description of non-compliance

Clause D16 of the DCP stipulates that pools are not to be located in the front building setback. Additionally, where there are 2 frontages, swimming pools are not to be situated in the primary street frontage.

The proposed swimming pool will be located in the secondary frontage (along Larool Road) and is therefore non-compliant with the requirements of this 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 is located in the secondary frontage and its location will be largely behind the dwelling house which has been designed to face Coolowie Road. The proposed pool's location in the front setback is considered appropriate due to the site being a corner lot and exhibiting two frontages. Furthermore, swimming pools within the front setback are not uncommon on corner lots within the vicinity of the site. Landscaping along the front boundary will be maintained so the proposal will remain largely unseen from the street elevation. Therefore, the streetscape character of the locality and natural environment will be preserved.

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

Comment:

It is noted that there is an existing swimming pool on the site and the proposal is a contemporary pool design that is consistent with other similar developments observed on adjoining and surrounding sites. As such, the proposed development is considered to improve the urban environment.

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.

D17 Tennis Courts

Description of non-compliance

The control requires that tennis courts are to be located behind the front building setback and where there are 2 frontages, the location of the tennis court is not to be in the primary street frontage. The proposed tennis court results in an encroachment into the front setback area along the secondary frontage, being setback 5.3m from the Larool Road front boundary line. Notably, this Clause also stipulates that fences are to be setback a minimum of 1.5m from front, side and rear boundaries, with which the proposed tennis court fully complies.

Merit consideration

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

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

Comment:

The proposed tennis court is characteristic of development observed within surrounding properties. Notwithstanding the non-compliance with this control, substantial spatial separation from the proposal to adjoining properties and the public domain will be maintained. Vegetative screening along the front boundary and planting within the road reserve will ensure the proposed tennis court will not create unreasonable visual dominance when viewed from the streetscape. The Arborist Report accompanying the application confirms that no trees surrounding the proposed tennis court will be removed, thus adequately preserving the natural environment to soften the built form of the development.

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 \$36,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,690,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal for demolition works and construction of a dwelling house including a swimming pool and tennis court 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% (2.14m or 25.18%).

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 DA2023/0255 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 218 DP 752017, 3 Larool Road, TERREY HILLS, 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 |
| Existing Demolition Plan - Drawing No.DA02 Issue 01 | 9 March 2023 | Cadence & Co |
| Site Plan - Drawing No.DA03 Issue 01 | 9 March 2023 | Cadence & Co |
| | | |

| | | |
|--|--------------|--------------|
| Lower Ground Floor Plan - Drawing No.DA04 Issue 01 | 9 March 2023 | Cadence & Co |
| Ground Floor Plan - Drawing No.DA05 Issue 01 | 9 March 2023 | Cadence & Co |
| Roof Plan - Drawing No.DA06 Issue 01 | 9 March 2023 | Cadence & Co |
| Northern and Southern Elevations - Drawing No.DA07 Issue 01 | 9 March 2023 | Cadence & Co |
| Western and Elevations - Drawing No.DA08 Issue 01 | 9 March 2023 | Cadence & Co |
| Section Plans - Drawing No.DA09 Issue 01 | 9 March 2023 | Cadence & Co |
| Excavation and Fill Plan - Drawing No.DA10 Issue 01 | 9 March 2023 | Cadence & Co |
| Driveway Entry & Tennis Court Plans - Drawing No.DA11 Issue 01 | 9 March 2023 | Cadence & Co |
| External Finishes Schedule - Drawing No.DA13 Issue 01 | 9 March 2023 | Cadence & Co |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|------------------|---|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Arboricultural Impact Assessment Report | 27 February 2023 | Martin Peacock Tree Care |
| NatHERS Certificate No.#HR-OK2LFQ-01 | 8 March 2023 | Efficient Living |
| BASIX Certificate No.1372326S | 8 March 2023 | Efficient Living |
| Geotechnical Report | 30 January 2023 | White Geotechnical Group |
| Bushfire Assessment Report | 22 February 2023 | Building Code & Bushfire Hazard Solutions Pty Limited |

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 | 31 January 2023 | Cadence & Co |

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 | 3 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 (Demolition):**

(a) 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 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
- (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

4. **General requirements (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) 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.

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 \$36,900.00 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 \$3,690,000.00.

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of in accordance with Northern Beaches Council's "Warringah Water Management Policy PL 850" in particular the Stormwater Drainage from Low Level Properties Technical Specification. An Absorption Trench shall be provided in accordance with the concept drainage plans prepared by NB Consulting Engineers, drawing number 210601, dated 23.02.2023. The Absorption Trench shall be a minimum of 10 m long. Details demonstrating that the proposed system is in compliance with the Northern Beaches Council's "Warringah Water Management Policy PL 850" are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the Geotechnical Report prepared by White Geotechnical Group dated 30th January 2023 are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **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.

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 **WARRINGAH WATER MANAGEMENT POLICY PL850**, and generally in accordance with the concept drainage plans prepared by **NB Consulting Engineers**, drawing number **210601**, dated **23.02.2023**. 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 Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

12. **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.

13. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

14. **Compliance with standards (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.

15. **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.

16. **Sydney Water "Tap In"**

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

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

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

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

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

17. **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

18. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) T9, T10, T11, T19, T20, T21 and G37
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised building works.

19. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Tree and Vegetation Protection**

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

- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on

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

Reason: Tree and vegetation protection.

21. **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.

22. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

23. **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.

24. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing a minimum of 3 and a maximum of 4.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 1 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.

25. **Site filling - Virgin Excavated Natural Material (VENM)**

Where site fill material is necessary, fill materials must:

1. Be Virgin Excavated Natural Material (VENM) only, as defined in: The Protection of the Environment Operations Act 1997

2. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
3. The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifier for approval prior to importation of material.

Reason: To ensure protection of the natural environment.

26. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

27. **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**

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

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

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

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

29. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (688-DA-01 to 04, 688-DA-10 to 17, 688-DA-45, and 688-DA-50), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth or greater, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located in consideration of Planning for Bush Fire Protection guidelines; 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), except where conditioned otherwise,
- d) the nominated Rhipiolepis species shall be substituted with an alternative non self-seeding species,
- e) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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.

30. **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.

31. **Native Landscaping**

Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

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

32. **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.

33. **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.

34. **Stormwater Disposal**

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

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

35. **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.

36. **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.

37. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

38. **Retaining wall**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Public and Private Safety

39. **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.

40. **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

41. **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.

42. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

43. **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.

44. **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.

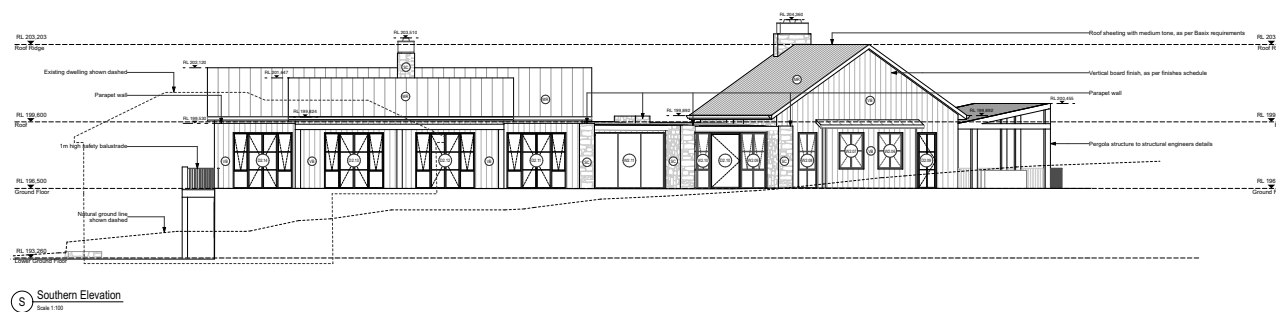
45. **Operation of solid fuel burning heaters**

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.



[illegible]



5.4
MATHS
HOUSE
MATHS
59.4
MARKS

SHR-CKLQF-01 08/03/2023

Accession Shreeta Sompson
Accession No. H20A 10035

Address
3 Linton Road, Carrey Hills,
NSW, 2058



<http://www.here-entire.com.au/shr-cklqf-01>



*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD

3 LAROO ROAD
TERREY HILLS NSW 2084

March 2023

Disclaimer

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northern beaches planning

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introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of Cadence & Co in relation to a development application for demolition of the existing dwelling and swimming pool and the construction of a new dwelling house, swimming pool and tennis court at 3 Larool Road, Terrey Hills (**site**). This request is made pursuant to clause 4.6 of Warringah Local Environmental Plan 2011 (**WLEP 2011**) and with regard to relevant case law.

standard to be varied

With a maximum building height of 10.644m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of WLEP 2011. The height limit prescribed by clause 4.3 of WLEP 2011 is a development standard, as defined by the EP&A Act:

***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...

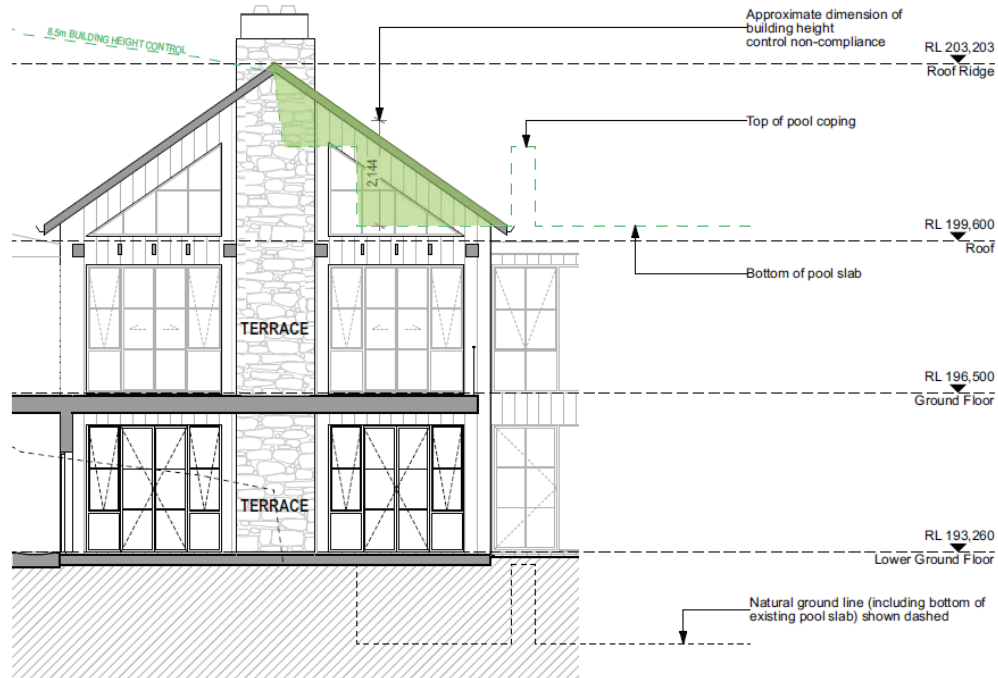
Accordingly, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the building height development standard of clause 4.3 of WLEP 2011 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The proposed development reaches a maximum height of 10.644m, representative of a 2.144m or 25.2% variation to the 8.5m maximum building height development standard. The maximum height exceedance occurs where the roof of the living room (Pavilion 2) extends over the location of the existing excavated swimming pool terrace.

The extent of non-compliance with the 8.5m maximum building height development standard is highlighted in the extracts of Section B (**Figure 1**), the Roof Plan (**Figure 2**) and the Height Blanket Diagram (**Figure 3**) prepared by Cadence & Co on the following pages.



B Section B
Showing maximum building height non-compliance at northern end of gable

Figure 1: Extract of Section B with height non-compliance highlighted in green

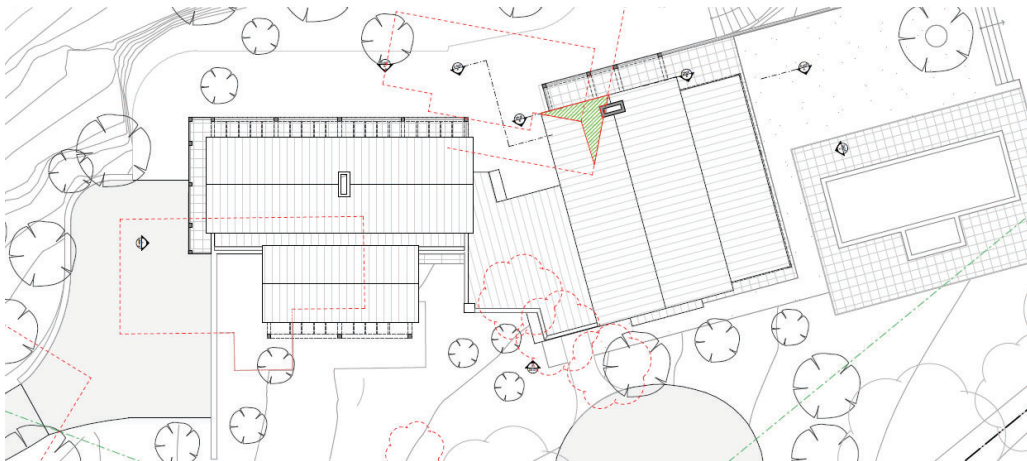


Figure 2: Extract of Roof Plan with area of height non-compliance highlighted in green

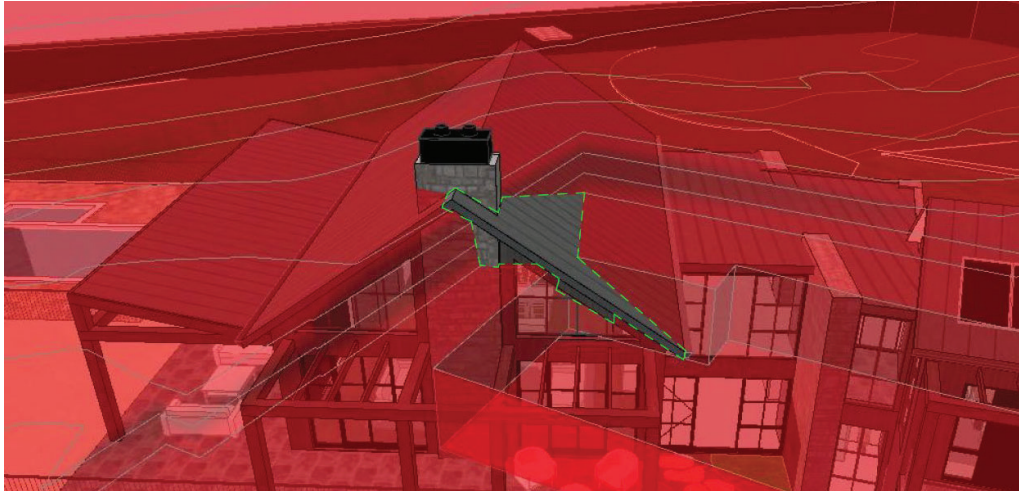


Figure 3: Height Blanket Diagram

Note: Consistent with the height of buildings definition of WLEP 2011, chimneys are excluded from the height of buildings calculation.

unreasonable or unnecessary

Pursuant to clause 4.6(4) of WLEP 2011, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of WLEP 2011. Clause 4.6(3)(a) of WLEP 2011 requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 and as confirmed in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the building height development standard, as prescribed by clause 4.3(1) of WLEP 2011, as follows:

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

Comment: Consistent with the findings of the NSW LEC in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, to be compatible in an urban design context is to be capable of existing in harmony together.

The proposed development is limited to one-two storeys in height, with the non-compliance occurring at a point where it will not be visible from the public domain. The one-two storey scale of the development is entirely consistent with that of surrounding and nearby

development, with the proposed new dwelling designed in harmony with the existing streetscape setting.

The minor portion of the roof form that protrudes above the height plane does not result in a development that could be said to be incompatible with the height and scale of surrounding and nearby development, particularly in circumstances where the vast majority of the roof form is compliant with the 8.5m height plane.

The non-compliance associated with a minor portion of the roof form, does not detract from consistency with this objective.

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

Comment: The proposed development has been designed to minimise the visual appearance of the development, with a high degree of articulation and varied setbacks to ensure that the bulk and scale of the development is appropriate for the setting.

The proposed development provides sufficient spatial separation to neighbouring properties and will not result in adverse or unreasonable overshadowing of adjoining dwellings.

The non-compliant portion of the development are limited to the roof, which does not attribute to any adverse impacts upon privacy of adjoining properties. Further, the development as a whole will not result in any unreasonable impacts upon views.

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

Comment: The proposed development is compatible with the form and scale of surrounding and nearby development and will not be visually offensive in the streetscape context or when seen at a distance from neighbouring properties.

(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 development presents as a one and two storey dwelling to the public domain. However, given existing and proposed landscaping, it is questioned as to whether the dwelling will be readily observed from the public domain at all.

As such, strict compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Clause 4.6(3)(b) of WLEP 2011 requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the height standard are as follows:

1. Historical excavation

The height breach occurs where the proposed upper roof form is situated over the excavated footprint of the existing swimming pool terrace. In accordance with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation of the site, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of WLEP 2011.

2. Lack of Impact

In consideration of the scale of the development as a whole, the proposed variations are reasonably described as minor. The non-compliant elements do not attribute to any unreasonable impacts upon the amenity of future occupants of the development, neighbouring sites or the wider public domain. The non-compliance will not be readily perceived from the public domain, particularly as the height of the development along both street frontages is maintained well below the maximum height plane.

Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSWLEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

Allowing for the development to appropriately respond to the individual context of the site, including the levels of the existing dwelling and the irregular terrain of the site, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.

Furthermore, allowing for a variation to the height plane that is consistent with the height and scale of nearby development promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the maximum height development standard.

public interest

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

As identified above, the proposed development is consistent with the objectives of the building height development standard. Furthermore, the proposal is consistent with the objectives of the RRU4 Primary Production Small Lots zone, as follows:

- *To enable sustainable primary industry and other compatible land uses.*

Comment: The proposed dwelling house is permissible on the land, being a form of development that is compatible with sustainable primary industry.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Comment: Not applicable to residential property.

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

Comment: The proposed development seeks to replace an existing dwelling with a new dwelling, with no new conflicts regarding the use of the land.

- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*

Comment: There are no known view corridors across the portions of the site where development is proposed. Furthermore, the site is not in a location that is visually prominent. Nonetheless, the proposed development is a high-quality architectural response that will positively contribute to the locality.

- *To maintain and enhance the natural landscape including landform and vegetation.*

Comment: The proposed development will result in the enhancement of landscaping at the site, with the majority of the land remaining free of development. The proposed new dwelling is largely retained within the footprint of the existing dwelling, such that a balance is achieved between the development of the site and the retention of the natural features of the land.

- *To ensure low intensity of land use other than land uses that are primary industry enterprises.*

Comment: The proposed single dwelling house is a low intensity development.

- *To maintain the rural and scenic character of the land.*

Comment: The proposed development is consistent with the rural residential character of the locality and the proposed development will positively contribute to the area.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the maximum height limit.

concurrence

Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Council's DDP Charter (in response to advice received from the Department of Planning, Industry and Environment, dated 2 November 2021), applications for Class 1 buildings with a variation greater than 10% to the building height development standard within WLEP 2011 may be determined by the DDP.

As such, the Secretary's concurrence can be assumed by the DDP in this instance.

conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of WLEP 2011 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the building height development standard.



Rebecca Englund
B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning