

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 12 JULY 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 12 July 2023
via teleconference
Commencing at 10:00 AM**

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1.0 APOLOGIES

Nil.

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETING

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

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 14 JUNE 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 14 June 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2022/1326 - 4 & 6 RAYNER ROAD WHALE BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/323154
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/1326 for demolition works and construction of a dwelling house including swimming pool on land at Lot 104 & Lot 105 DP 11933, 4 & 6 Rayner Road WHALE BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1326
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 104 DP 11933, 4 Rayner Road WHALE BEACH NSW 2107 Lot 105 DP 11933, 6 Rayner Road WHALE BEACH NSW 2107
Proposed Development:	Demolition works and construction of a dwelling house including 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:	Angus Harcourt Coupland
Applicant:	Megan Burns
Application Lodged:	18/08/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	01/09/2022 to 15/09/2022
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 10,660,752.00

EXECUTIVE SUMMARY

This development application seeks consent for the demolition of two dwellings (across two lots), and the construction of a new dwelling.

The application is referred to the Development Determination Panel (DDP) as there were 8 submissions received after the application was notified.

The proposed structure complies with the development standard for building height, steps well with the topography of the land and provides articulation. As such, the proposal does not cause any

unreasonable visual or amenity impact (subject to conditions).

The non-compliance with the front setback planning control has been found to be reasonable as it is consistent with the overarching objectives of the control. In particular, the garage structure is well set down from Rayner Road and takes up a small proportion of the width of the site so as to not cause any unreasonable visual or amenity impact.

Amended plans were provided on 24 March 2023 and 2 May 2023. These plans involved a number of changes; including a reduction of overall excavation, a shift of the building 1.09m to the east, and an increase to deep soil areas.

Internal or external referrals raise no objection to the application, subject to conditions.

Concerns raised in the 8 submissions have been addressed in this report and conditions have been imposed to ensure appropriate integration of the built form with the natural environment, mitigation of construction impact, and minimisation of environmental impact.

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 demolition of two dwellings (across two lots), and the construction of a new dwelling. In detail, the proposal involves the following:

Lower Ground

- Four bedrooms with ensuites
- Bunk room with bathroom
- Laundry
- Rumpus
- Linen
- Cinema room
- Bathroom
- Rear balcony

Ground Floor

- Entrance hall
- Library
- Open plan Kitchen/living/dining
- Pantry/ powder room/ rear balcony

First Floor

- Master suite with study, walk-in-robe and balcony

External

- Swimming pool, spa and associated spaces
- Double garage with storage
- Terrace and courtyards
- Outdoor dining area

- Landscaping

Amended Plans - 24 March 2023

Amended plans were provided on 24 March 2023 and involved the following:

- Shift of dwelling 1090mm east
- Outdoor dining area removed and replaced with deep soil
- 1.5m landscape strip at the foreshore
- Privacy screen to eastern balcony
- Removal of services zone to allow for deep soil
- Landscape screening to rear wall
- Excavation reduced
- Dark earthy tones

Further amended plans - 2 May 2023

Further amended plans provided on 2 May 2023 involved deletion of the comms + utilities room.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - D12.5 Front building line

SITE DESCRIPTION

Property Description:	Lot 104 DP 11933 , 4 Rayner Road WHALE BEACH NSW
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	2107 Lot 105 DP 11933 , 6 Rayner Road WHALE BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of an allotment located on the northern side of Rayner Road.</p> <p>The site is irregular in shape with a frontage of 36.58m along Rayner Road and a depth of 45-47m. The site has a surveyed area of 758.4m².</p> <p>The site is located within the C4 Environmental zone and accommodates a dwelling on each site.</p> <p>The site has a slope from the front to the rear toward the foreshore with an approximate crossfall of 14m.</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	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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 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>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 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 01/09/2022 to 15/09/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Ms Virginia Anne Pursell	43 Ferry Road GLEBE NSW 2037
Howard Tanner	240 Whale Beach Road WHALE BEACH NSW 2107
Michael Robilliard & Associates	64 Goodhope Street PADDINGTON NSW 2021
Mr Michael Haynes	1 / 9 Narabang Way BELROSE NSW 2085
Ms Nicola Patrice Waite Vasilis Karbouris	8 Rayner Road WHALE BEACH NSW 2107
Mark Edward Marriott	PO Box 657 AVALON BEACH NSW 2107
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108
Prue Rydstrand	1102 Barrenjoey Road PALM BEACH NSW 2108

The above issues are addressed as follows:

- Excavation**

The submissions raised concerns that the excavation is excessive in depth and extent. It is suggested that the excavation is not in line with the objectives of the zone.

Concern is also raised with regard to wildlife corridors and ecological impact.

Concern is also raised with regard to Geotechnical risk caused by the excavation.

Comment:

Amended plans have been provided to reduce the overall excavation depth to be generally no more than one storey across the site. Further, the extent of excavation across the site is reasonable as it is replaced with deep soil planting, and these deep soil areas generally follow the natural topography of the area.

Council's Biodiversity Officer has reviewed the application and provides no objection, subject to conditions. In particular, appropriate planting is required, and this will appropriately contribute to natural corridors and mitigate ecological impact.

A Geotechnical report has been provided with the application. This report provides appropriate recommendations which are to be adhered to in accordance with conditions.

- **Landscaped area**

The submissions raised concerns that amount of Landscaped area is inappropriate for site.

Concern Lawn areas have low chance of survival.

Comment:

The proposal complies with the numerical control for Landscaped Area. This includes areas with sufficient soil depths to allow for planting to surround the site.

- **Construction impacts**

Concern is raised with regard to access and safety including to the shared private road.

Comment:

A condition has been imposed to require a Construction and Traffic Management Plan (prepared by a TfNSW accredited person) prior to the issue of a Construction Certificate. A further condition also requires adherence to the plan during works. Further standard conditions are also imposed to mitigate construction impacts including restriction on work hours.

- **Removal of existing vegetation and flora; impact on fauna**

The submissions raised concerns with regard to removal of vegetation and flora.

Comment:

Council's Landscape Officer and Biodiversity Officer have reviewed the application, and raise no objection to the application subject to the amended plans and various recommended conditions. These conditions include planting of trees and requirements for the protection of wildlife.

The proposal also provides a compliant amount of Landscaped Area in accordance with the P21DCP, to allow opportunity for new vegetation on the site.

As such, the proposal is appropriate, subject to conditions.

- **Inadequate display of notification sign**

The submissions raised concerns that the notification sign was not displayed correctly.

Comment:

Sufficient evidence has been provided to Council to show that a notification sign was placed at the front of each site during the notification period.

- **Character; size and scale; overdevelopment; does not fit in with environmental values of the zone**

The submissions raised concerns with the size and scale of the proposal.

Rayner Road is listed in Council's "Pittwater's Most Scenic Street Register."

Comment:

The proposal complies with the development standard for Building Height, and also complies with built form controls for side setbacks and building envelope. Along with this, the built form is well distributed across the site and is well articulated. As such, the proposal provides a reasonable bulk and scale, and will integrate appropriately with the character of the area (having regard to what can be reasonably expected given the planning controls for the site).

An assessment in this report has also found that the proposal is consistent with the objectives of the zone.

- **Impact on neighbours amenity (including views, solar access, and privacy)**

Submissions raise concerns with regard to impact of building bulk on amenity,

The submissions raised concerns with regard to overlooking from deck and balcony areas.

Submissions also raise concerns with regard to view loss.

Comment:

The proposal complies with the requirements for Solar Access under the P21DCP.

Subject to conditions, the proposal provides reasonable design for privacy including separation and screening from neighbours.

An assessment in this report against the Land and Environment Court established Planning Principle for views has found the proposal to be reasonable. In particular, the compliant Building Height and compliant side boundary envelope, provides a situation in which substantial view corridors are maintained over and through the site.

Overall, the design is well separated from neighbours, and building bulk is well controlled and distributed so as to have no unreasonable impact on amenity

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>SUPPORTED (with conditions)</p> <p>The proposal is supported with regard to landscape issues.</p> <p><u>Additional Information Comment 04/04/23:</u> The amended plans are noted.</p> <p>The landscape buffer between the property boundary and the proposed pool is supported and all planting in this buffer zone shall be native species. An amended Landscape Plan shall be submitted removing the proposed <i>Bougainvillea</i> in this buffer area. PDCP requires native tree planting in the front setback, and as such one native tree shall be included on the amended Landscape Plan, subject to the imposed conditions.</p>

Internal Referral Body	Comments
	<p>The Arboricultural Impact Assessment (AIA) identified 37 trees of which 10 trees (3, 10, 12-16, 25, 26, and 35) are located on neighbouring properties and must be retained and protected during works. Trees 1, 4-9, 11, 17-24, 27, 28, 30, 34, 37 are exempt by species, height or proximity to an approved dwelling and as such do not require consent for removal. Tree 2 shall be retained to maintain privacy for the applicant and neighbour. Trees 29 and 36 are exotic species and as such their removal can be supported. Trees 31 (medium retention), 32, and 33 (low retention) can be supported for removal. To offset any canopy loss from the proposed tree removal, 7 native trees shall be installed within the property boundary, subject to the imposed conditions.</p> <p><u>Previous Comment Summary:</u> Outstanding concerns:</p> <ul style="list-style-type: none"> • clear indication of soil depth for any landscape areas on-slab (for example; above the rumpus and bathrooms on the Lower Level Plan and above the pool equipment room on the Pool Level Plan as they are shown in the landscaped area calculations), • the definition of landscaped area as per the Pittwater LEP is "...a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area". The large expanse of gravel terrace does not support satisfactory planting to be classified as landscaped area, • drawing DA450 shows excavation along the boundary adjoining Council land and the neighbouring properties. The excavation plan shall show depth of excavation at the boundaries to allow an accurate assessment of the impact to neighbouring vegetation, • drawing DA451, Excavation Section 1 shows the required excavation red hatched. 1350mm of excavation is shown at the boundary and more information is required to explain how this boundary interface is resolved. No excavation is permissible beyond the boundary. <p>Additional concerns raised:</p> <ul style="list-style-type: none"> • As per Pittwater DCP D12.6 swimming pools are permissible in the rear setback with a 1 metre offset from the boundary if the requirements outlined in D12.6 are met, and in particular "<i>satisfactory landscaping within the setback from the pool or spa coping to the side or rear boundary</i>" and "<i>the pool or spa is not more than 1 metre above ground level (existing)</i>". The proposed pool is 1.8 metres above the adjoining public land (drawing DA350) and no landscape buffer is provided, and as such a landscaped buffer shall be provided between the pool (and spa) and the boundary. It is suggested this buffer shall be at least 1.5 metres wide.

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>SUPPORTED (with conditions)</p> <p>Updated Biodiversity Referral (5 April 2023) The amended plans and documentation are noted.</p> <p>The planting schedule included in the amended Landscape Plan has not been updated to account for additional plantings in the 1500mm landscaped rear buffer; this will be conditioned. In addition, given the site's location adjoining native coastal headland vegetation in the Careel Headland Reserve, it is considered that further amendments to the planting schedule are required in order to protect the biodiversity corridor and ecological values on the site and the bushland reserve.</p> <p>Conditions are also recommended to avoid impacts to native wildlife which may be inhabiting the large number of exempt trees proposed for removal. This includes preparation of a Tree Removal Protocol by a qualified ecologist.</p> <p>Original Biodiversity Referral (13 October 2022) The proposal in its current form cannot be supported due to insufficient information and inconsistency with applicable biodiversity-related provisions, which include:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) - Coastal Environment Area, specifically s.13(1)(d) • Pittwater LEP Clause 7.6 - Biodiversity Protection • Pittwater DCP Clause B4 - Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor <p>PLEP Clause 7.6 requires developments to be designed, sited and managed to avoid adverse environmental impact. In addition, PDCP Clause B4.4 controls stipulate that development shall:</p> <ul style="list-style-type: none"> • Retain and enhance habitat for threatened species, endangered populations, endangered ecological communities and other locally native species. • Provide an adequate buffer to wildlife corridors • Provide flora and fauna habitat and wildlife corridors by active restoration, regeneration, and/or creation. • Result in no significant onsite loss of canopy cover or net loss in native canopy trees • Ensure that at least 60% of any new planting incorporates native vegetation (as per species listed in <i>Native Plants for Your Garden</i> available on Council's website) • Ensure that landscaping is to be outside areas of existing bushland and does not include environmental weeds • Ensure that planting maximises linkages to the wildlife corridor.

Internal Referral Body	Comments
	<p>The proposal to remove the majority of existing vegetation on the site and replace it with a substantially reduced landscaped area composed predominantly of exotic and cultivated species is inconsistent with these objectives. The submitted Landscape Plan includes multiple species which are known to spread to and proliferate within bushland areas, and does not comply with the requirement for a minimum of 60% native species in any new landscaping.</p> <p>In addition, there is concern regarding the impact of proposed excavation within the foreshore building line on the adjoining bushland reserve. It remains unclear how this area will be stabilised following excavation and construction on the pool, and how vegetation within the reserve will be protected.</p>
NECC (Coast and Catchments)	<p>SUPPORTED (with 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 Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated July 2022 and also as assessed in the submitted Coastal Engineering Advice prepared by Horton Coastal Engineering Pty. Ltd. dated 1 August 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>

Internal Referral Body	Comments
	<p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Coastline Bluff Hazard Management</p> <p>The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site.</p> <p>A Geotechnical Assessment Report by JK Geotechnics dated 5 August 2022 assessing coastline (bluff)/ coastal cliff or slope instability has been submitted with the DA. An impact assessment of the long term coastal processes on the coastline (bluff)/ coastal cliff or slope instability, prepared by Horton Coastal Engineering Pty. Ltd. dated 1 August 2022 has been appended with the Geotechnical Report. The report assessed that our risk analysis has shown that the site and existing and proposed development can achieve the 'Acceptable Risk Management' criteria in the Pittwater Risk Management Policy provided that the recommendations given in Section 6 below are adopted. These recommendations form an integral part of the Landslide Risk Management Process.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Development on Foreshore Area</p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes construction of a pool in the foreshores area. The proposed works are consistent with Clause 7.8(2)(b).</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated July 2022, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>SUPPORTED (with conditions)</p> <p>The proposal does not require OSD and the disposal of stormwater is to be via a spreader within the site. The existing shared driveway is to remain. The proposed level of the garage is acceptable. The submitted Geotechnical report addresses the relevant DCP controls.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
Parks, reserves, beaches, foreshore	<p>SUPPORTED (with conditions)</p> <p>The proposal is supported with regard to Parks, Reserves and Foreshore issues.</p> <p><u>Additional Information Comment 04/04/23:</u> The amended plans are noted.</p> <p>The property adjoins Careel Headland Reserve downslope. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.</p> <p><u>Original Comment Summary:</u> Concern was raised as to how the interface between the property and the reserve would be treated as excavation was shown along the property boundary, and in particular on drawing DA301 Section B, drawing DA450 Excavation Plan GF, and drawing DA451 Excavation Section 1. Furthermore, information was requested for any retaining walls along the boundary to include top and bottom (existing ground levels in the reserve) wall heights so an accurate assessment could be made.</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>Supported, with 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.</p>

External Referral Body	Comments
	<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. 132490S_02 dated 2 August 2022). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0007927619 dated 1 August 2022).

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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
4.3 - Height of Buildings	8.5m	8.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

An assessment is made against 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 proposed dwelling is limited in size and extent across the site, through compliance with landscaped area, building height, setback and envelope controls. Subject to conditions for planting, it is ensured that extensive natural features will be maintained. 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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building	(south) 6.5m	Garage - 0.5m - 4.2m	up to 93%	No (see

line		House - 5.2m - 20m	up to 20%	comments)
Rear building line	(north)Foreshore Building Line (FBL)	Pool -Within	-	Yes (subject to condition)
		House - 9.6m - 18m (landward of FBL)	-	Yes
Side building line	East: 2.5m	2.5m	-	Yes
	West: 1.0m	1.0m-3.5m	-	Yes
Building envelope	East: 3.5m	Within	-	Yes
	West: 3.5m	Within	-	Yes
Landscaped area	60% (895.2sqm)	65% (929.7sqm)	-	Yes
Site area: 1429sqm				

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Merit Consideration

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

- ***A reasonable sharing of views amongst dwellings.***

Comment:

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

2 Rayner Road

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:

This property has views toward Whale Beach to the west and the ocean to the east. The ocean views are made somewhat partial by a hedge between this property and subject site (adjacent to the rear deck of 2 Rayner Road).



Photo 1: View from upper level over the subject site (with yellow tip on height pole showing rear corner of upper level)



Photo 2: Unaffected views toward Whale Beach

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:

Views are obtained over the rear boundary to the ocean, partly over the side and rear boundary to Whale beach, and over the side boundary of the subject site toward the ocean.

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:

Extensive ocean and beach views are maintained to the rear of the property from living areas and other spaces. There will be a relatively small impact to views to the east (including views already affected by an existing hedge). As such, the overall impact is assessed as being **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 complies with the development standard for Building height and planning control for side boundary envelope. Along with the negligible overall impact, this provides a reasonable outcome for view sharing.

1 Rayner Road, Whale Beach

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:

This property has extensive views toward Whale Beach over the subject site, and toward the ocean (east of the subject site). A relatively small section of ocean view will be obstructed by the proposed development. Views to Whale Beach and the ocean to the east are unaffected.

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:

Views are obtained over the front boundary from living areas and other spaces, and can be obtained from sitting and standing position.

3. Extent of impact

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

Given the extensive ocean views maintained and the relatively small slither of ocean view affected, the overall impact is assessed as being **negligible-minor**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The negligible-minor impact is caused by a proposed building that complies with the development standard for building height, and planning control for building envelope. As such, a reasonable outcome is provided for view sharing.

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

Comment:

The compliance with the Building Height development standard and the stepping of the built form with the topography of the site ensures appropriate public views and vistas are provided for.

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

Comment:

The proposal complies with the development standard for Building height and sufficient planting is required (subject to conditions). This ensures canopy trees in the surrounding area take priority over views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

D12.5 Front building line

Description of Non-compliance

The proposal involves a varied front setback of 0.5m-4.2m to the garage, and 5.2m-20m to the house. As such, the proposal does not comply with the numerical requirement of 6.5m.

Merit Consideration

Notwithstanding, the proposal is considered to be acceptable, based on the following merit assessment:

Achieve the desired future character of the Locality.

The proposal provides landscaping to surround the dwelling, and has built form that is well distributed across the site. In addition to this, the compliant building height, compliant side setbacks to the dwelling, and stepping of the built form with the topography of the land, provides a situation in which the proposal will meet the desired future character.

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

The proposed dwelling is well setback from the street and the proposal complies with the development standard for Building height as well as controls for side setbacks and side building envelope. This provides a situation in which adequate view corridors are maintained through and over the site.

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

The proposed dwelling and living spaces remain well separated from the road such that appropriate amenity is retained.

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

The proposal provides a compliant landscaped area and conditions are imposed for new planting to reduce the visual presentation of the built form.

Vehicle maneuvering in a forward direction is facilitated.

Opportunity for vehicle maneuvering is sufficient, having regard to the topography of the site.

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

The landscaped setting will be maintained through the provision of extensive landscaping and vegetation (subject to conditions), and compliant landscaped area.

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

The proposal complies with the development standard for building height, provides landscaped area, and distributes built form well across the site. As such, the proposal will be in keeping with the height of the natural environment.

To encourage attractive street frontages and improve pedestrian amenity.

The street frontage maintains landscaping and vegetation and the built form steps down with the topography below the ridge of the road. Further to this the garage presents as a single storey structure in the street, and extends across a relatively small proportion of the width of the site.

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

The proposal respond to the spatial characteristics of the existing environment by providing sufficient building articulation, stepping, and landscaped features across the site.

In light of the above, the proposed variation is considered appropriate and **supported** on merit.

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 \$106,608 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$10,660,752.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

PLANNING CONCLUSION

This proposal, for a new dwelling (across two lots) has been referred to the Development Determination Panel (DDP) due to 8 submissions having been received.

The submissions received have been addressed and conditions imposed where relevant.

The 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 Council as the consent authority grant Development Consent to DA2022/1326 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 104 DP 11933, 4 Rayner Road, WHALE BEACH, Lot 105 DP 11933, 6 Rayner Road, WHALE BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA010 - Site Plan and Site Analysis Plan - Issue B	18.01.2023	Cm
DA011 - Waste Erosion and Sediment Control Plan - Issue B	18.01.2023	Cm
DA100 - Garage Level Plan - Issue B	18.01.2023	Cm
DA101 - First Level Plan - Issue B	18.01.2023	Cm
DA102 - Ground Level Plan - Issue B	18.01.2023	Cm
DA103 - Lower Level Plan - Issue B	18.01.2023	Cm
DA104 - Pool Level Plan - Issue B	18.01.2023	Cm
DA105 - Roof Plan - Issue B	18.01.2023	Cm
DA200 - South (Street) Elevation - Issue B	18.01.2023	Cm
DA201 - West Elevation - Issue B	18.01.2023	Cm
DA203 - North Elevation - Issue B	18.01.2023	Cm
DA204 - East Elevation - Issue B	18.01.2023	Cm
DA300 - Section A - Issue B	18.01.2023	Cm
DA301 - Section B - Issue B	18.01.2023	Cm
DA302 - Section C - Issue B	18.01.2023	Cm
DA303 - Section D - Issue B	18.01.2023	Cm
DA304 - Extended Section - Issue B	18.01.2023	Cm
DA350 - Pool Plan + Section - Issue B	18.01.2023	Cm
DA351 - Driveway Plan + Section - Issue B	18.01.2023	Cm
DA450 - Excavated Plans - Issue B	18.01.2023	Cm
DA451 - Excavation Sections - Issue B	18.01.2023	Cm

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Costal Engineering Advice	3 August 2022	Horton Coastal Engineering
Arboricultural Impact Assessment	20/07/2022	Advanced Treescape Consulting
Geotechnical Assessment	5 August 2022	JK Geotechnics

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
DA401 - Landscape Plan	18.01.2023	Cm

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	25.07.2022	MAB

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	1/09/2022

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

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

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following

information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are

- breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
 - (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
 - (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
 - (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
 - (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$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 sewerage areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$106,607.52 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 \$10,660,752.00.

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

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the

Subdivision Certificate (whichever occurs first).

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **Amended Landscape Plan**

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

- a) only native plant species shall be installed in the 1500mm wide landscaped buffer along the rear (northern) boundary; remove all *Bougainvillea* species,
- b) one locally native tree (selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or Council's Tree Guide) shall be installed within the front setback, to achieve a mature height of at least 6 metres,
- c) one locally native tree (selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or Council's Tree Guide) shall be installed in the position of the proposed *Pandanus* species, to achieve a mature height of at least 6 metres; the *Pandanus* may be relocated or deleted from the proposal.

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

Reason: Landscape amenity.

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, 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. Preparation of a Tree Removal Protocol

A qualified ecologist is to prepare a Tree Removal Protocol which includes the provision of (at a minimum):

- a pre-clearance survey
- direct supervision of tree removal
- protocol for rescue of fauna and relocation of log hollow sections onsite to provide fauna habitat

The Tree Removal Protocol must also include procedures for stop work and formal impact assessment in the event that threatened fauna species are found during the pre-clearance survey.

The Tree Removal Protocol is to be submitted to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native wildlife.

10. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

11. Fencing for Wildlife Passage

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

Plans are to be certified as complying with this condition and provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

12. **Amended Landscape Plan**

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

- a) only locally native plant species shall be installed in the 1500mm wide landscaped buffer along the rear (northern) boundary. All species in the landscaped rear (northern) buffer are to be selected from the Coastal Headland Clay Heath Plant Community Type (PCT 1817) and/or an offspring PCT from the Eastern PCT reclassification system.
- b) the planting schedule is to be updated to include the species, size and numbers of all plants proposed to be planted in the 1500mm wide rear landscaped buffer.
- c) the 3 x *Howea forsteriana* in the rear yard are to be replaced with 3 x advanced *Livistona australis*.

Amended plans are to be certified by a qualified ecologist as complying with this condition and provided with the ecologist's certification to the Certifier prior to Construction Certificate.

Reason: Landscape amenity and retention of biodiversity values of the site and adjoining bushland.

13. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

14. **Stormwater Disposal**

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnics Pty Ltd, dated 5 August 2022 Ref: 35262BrptRev1 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

16. **Amendments to the approved plans**

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

- The lawn terraces and retaining walls at the north- west corner of the site are to be reduced in size so that there is no encroachment of these features in to the foreshore area.
- On Section B (DA301), a notation is to be provided to confirm the area between the lawn terraces and the proposed pool is for deep soil planting.

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

Reason: To ensure natural features dominate and ensure consistency between plans.

17. **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.

18. **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.

19. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

20. **Coastal Bluff Engineering Assessment Implementation**

The advice and recommendations contained in the approved Coastal Engineering Assessment report prepared by Horton Coastal Engineering Pty. Ltd. dated 1 August 2022, must be addressed as necessary through the Geotechnical Risk Management Report prepared by JK Geotechnics dated 5 August 2022 in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

21. **Coastal Bluff Engineering Assessment Implementation**

All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes; they will not be adversely affected by coastal processes.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

22. **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.

23. **Construction Traffic Management Plan (CTMP)**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite.

- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

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

24. **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

25. **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 29 - *Duranta repens*, tree 31, 32, 33 - *Waterhousea floribunda*, and tree 36 - *Dracaena draco*,
- 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.

26. **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

27. **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.

28. **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,
- 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.

29. **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.

30. **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 or qualified ecologist must be contacted for advice.

Reason: To protect native wildlife.

31. **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.

32. **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.

33. **Works on Land Owned or Managed By Council**

No works are to be carried out on land owned or managed by Council.

Reason: To protect the land owned or managed by Council.

34. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

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

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

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

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

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

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

36. **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.

37. **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.

38. **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.

39. **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.

40. **Adherence to Construction Traffic Management Plan (CTMP)**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

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

41. **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.

42. **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.

43. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

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

44. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved amended Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved

similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; 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 amended Landscape Plan(s),

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

e) 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.

45. **Tree Removal Protocol to be Certified as Completed**

The Project Ecologist is to provide written and photographic evidence of implementation and completion of the Tree Removal Protocol to the Principal Certifier prior to issue of Occupation Certificate.

Reason: To protect native wildlife.

46. **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.

47. **Fencing for Wildlife Passage**

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

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

Reason: To preserve wildlife corridors.

48. **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.

49. **Stormwater Disposal**

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

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

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

50. **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.

51. **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.

52. **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.

53. **Geotechnical Certification Prior to Occupation Certificate**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

54. **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

55. **Landscape Maintenance**

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

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 landscaped area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

56. **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.

57. **Control of Domestic Dogs/Cats**

Domestic dogs and cats are to be kept from entering the adjoining bushland reserve at all times.

Reason: To protect native wildlife.

58. **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.

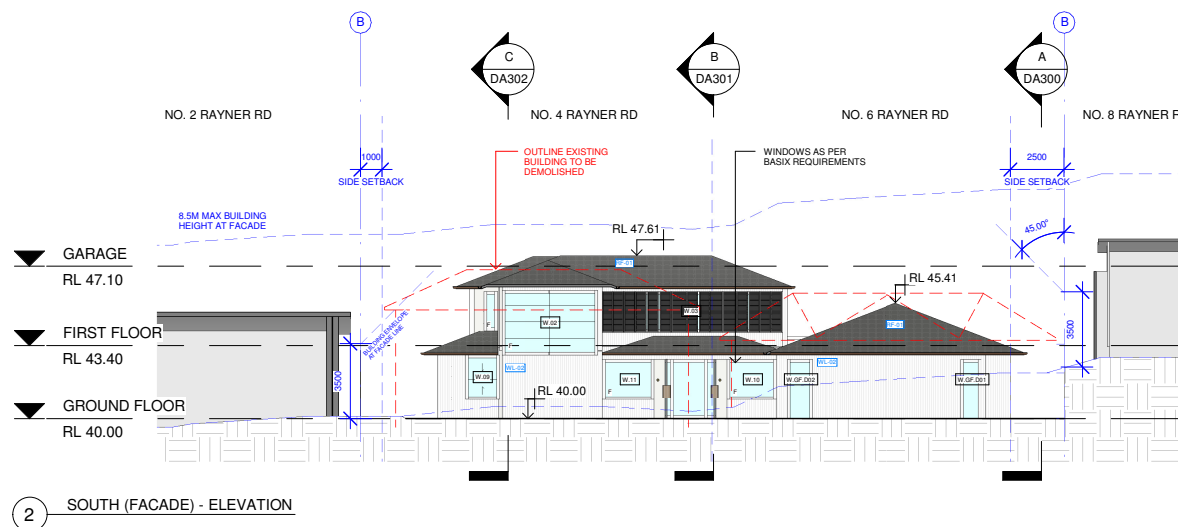
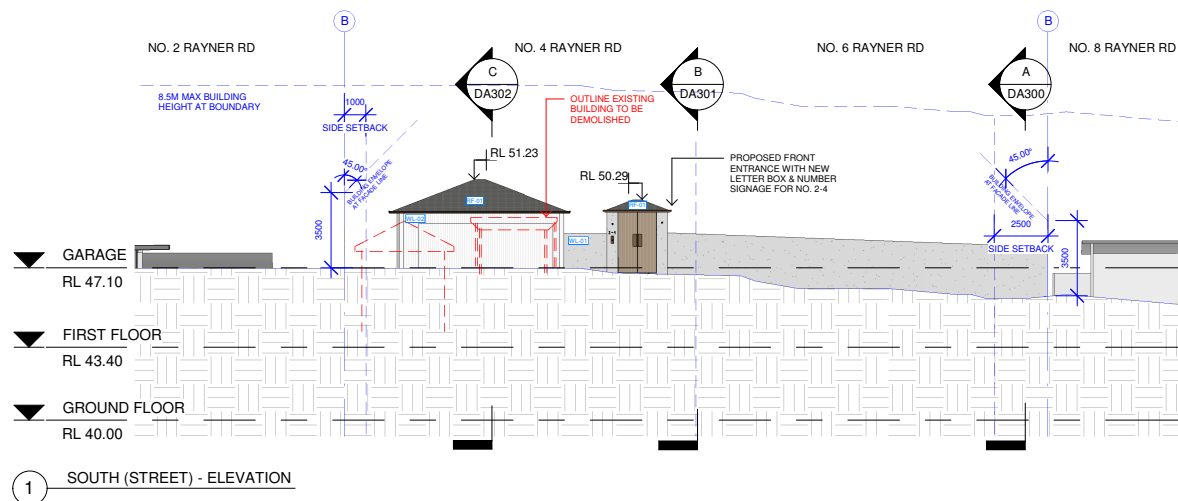
Reason: To ensure geotechnical risk is mitigated appropriately.

59. **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.





MATERIAL FINISHES SCHEDULE	
CODE	DESCRIPTION
RF-01	ROOF SHINGLES
WL-01	RENDERED WALL - NATURAL EARTHY COLOUR
WL-02	CLAD WALL - NATURAL EARTHY COLOUR
WL-03	NATURAL STONE WALL
FL-01	NATURAL STONE FLOOR

cm

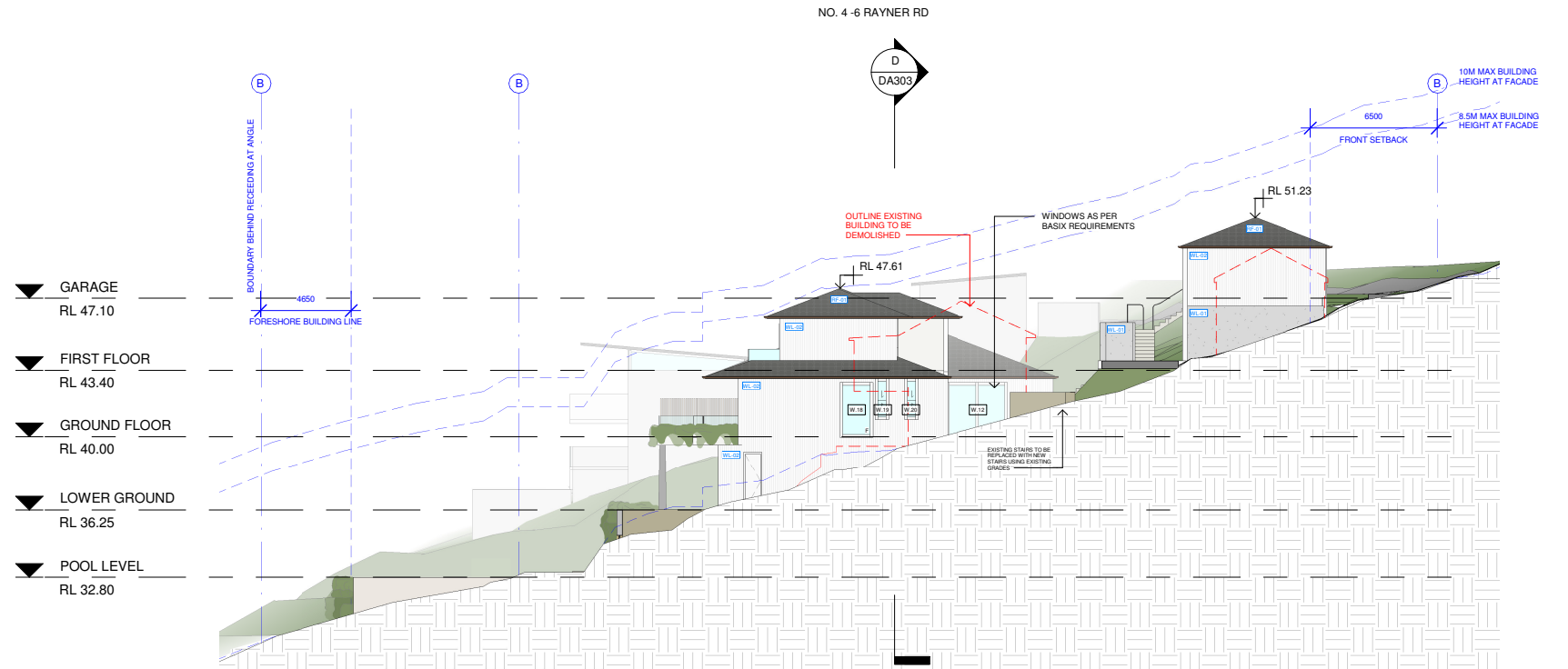
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Project:
Rayner House
4-6 Rayner Rd,
Whale Beach, NSW, 2107
Project number 2022_141

Revisions		
No.	Description	Date
A	Issue for DA	25.07.2022
B	Issue for RFI	18.01.2023

Client:
Angus and Julia Coupland
Drawing Number: Issue B
DA200
Date 18.01.2023

Drawing:
South (Street) Elevation
Scale 1 : 200 @ A3
Drawn by: MVB Checked by: EP/MB



MATERIAL FINISHES SCHEDULE	
CODE	DESCRIPTION
RF-01	ROOF SHINGLES
WL-01	RENDERED WALL - NATURAL EARTHY COLOUR
WL-02	CLAD WALL - NATURAL EARTHY COLOUR
WL-03	NATURAL STONE WALL
FL-01	NATURAL STONE FLOOR

cm

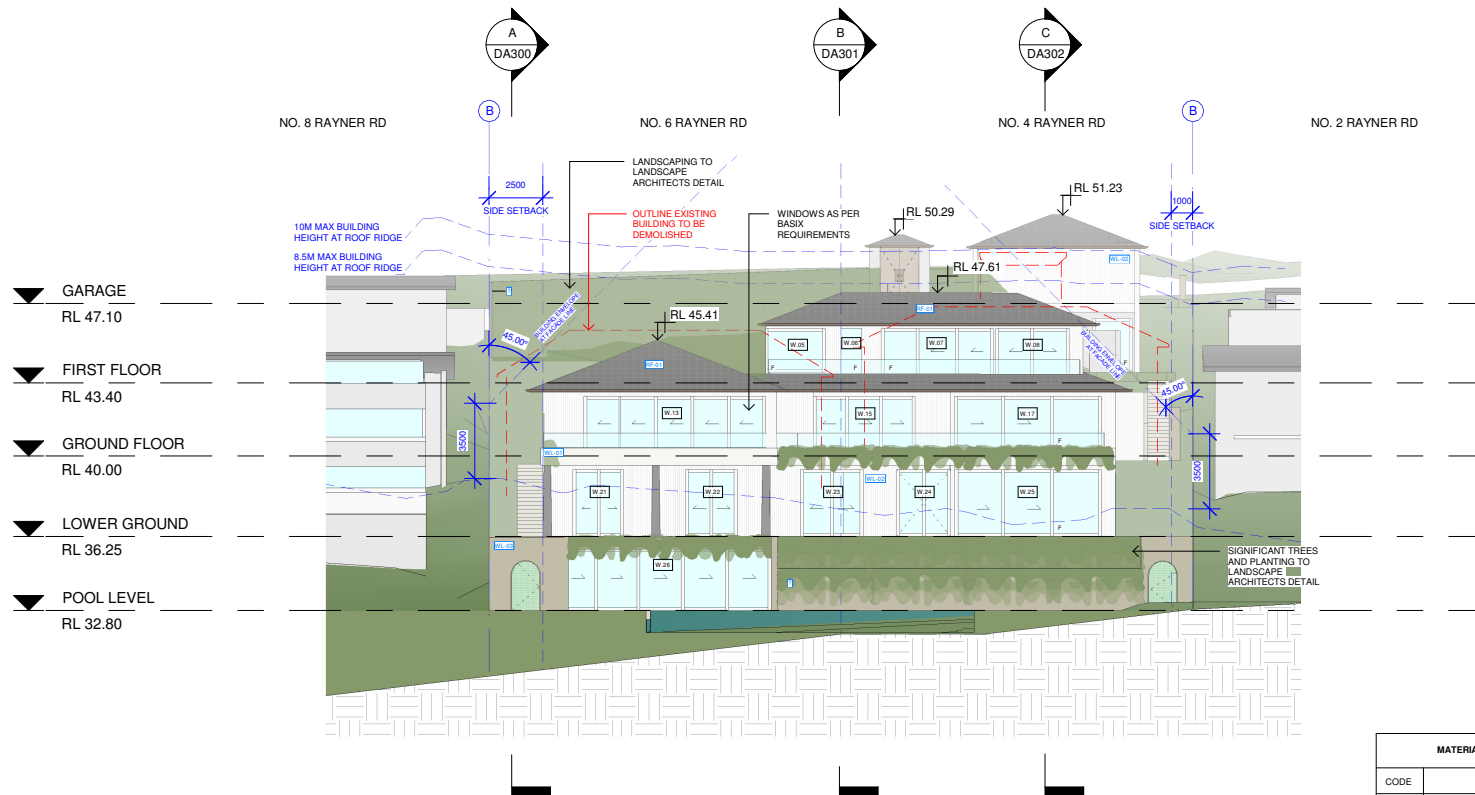
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Project:
Rayner House
4-6 Rayner Rd,
Whale Beach, NSW, 2107
Project number 2022_141

Revisions		
No.	Description	Date
A	Issue for DA	25.07.2022
B	Issue for RFI	18.01.2023

Client:
Angus and Julia Coupland
Drawing Number: Issue B
DA201
Date 18.01.2023

Drawing:
West Elevation
Scale 1 : 200 @ A3
Drawn by: MVB Checked by: EP/MB



MATERIAL FINISHES SCHEDULE	
CODE	DESCRIPTION
RF-01	ROOF SHINGLES
WL-01	RENDERED WALL - NATURAL EARTHY COLOUR
WL-02	CLAD WALL - NATURAL EARTHY COLOUR
WL-03	NATURAL STONE WALL
FL-01	NATURAL STONE FLOOR

cm

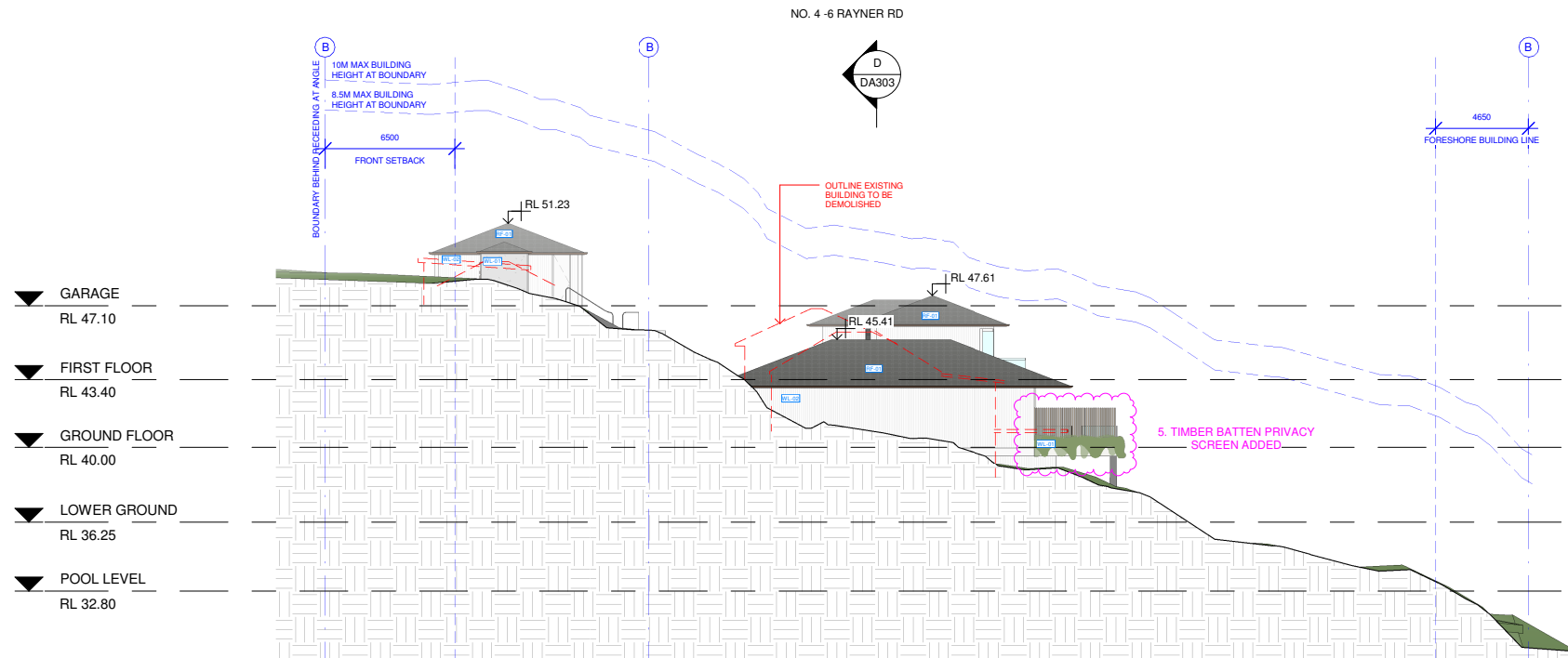
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Project:
Rayner House
4-6 Rayner Rd,
Whale Beach, NSW, 2107
Project number 2022_141

Revisions		
No.	Description	Date
A	Issue for DA	25.07.2022
B	Issue for RFI	18.01.2023

Client:
Angus and Julia Coupland
Drawing Number: Issue B
DA203
Date 18.01.2023

Drawing:
North Elevation
Scale 1 : 200 @ A3
Drawn by: MVB Checked by: EP/MB



MATERIAL FINISHES SCHEDULE	
CODE	DESCRIPTION
RF-01	ROOF SHINGLES
WL-01	RENDERED WALL - NATURAL EARTHY COLOUR
WL-02	CLAD WALL - NATURAL EARTHY COLOUR
WL-03	NATURAL STONE WALL
FL-01	NATURAL STONE FLOOR

cm

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Project:
Rayner House
4-6 Rayner Rd,
Whale Beach, NSW, 2107
Project number 2022_141

Revisions		
No.	Description	Date
A	Issue for DA	25.07.2022
B	Issue for RFI	18.01.2023

Client:
Angus and Julia Coupland
Drawing Number: Issue B
DA204
Date 18.01.2023

Drawing:
East Elevation
Scale 1 : 200 @ A3
Drawn by: MVB Checked by: EP/MB

ITEM 3.2**DA2022/2280 - 47 BEATTY STREET BALGOWLAH HEIGHTS -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL AND GARAGE****REPORTING MANAGER**

Rod Piggott

TRIM FILE REF

2023/416578

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/2280 for demolition works and construction of a dwelling house including swimming pool and garage on land at Lot 14 DP 11774, 47 Beatty Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2280
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 14 DP 11774, 47 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool and garage
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Rodney Stuart Jamieson Bruce Stuart Jamieson Barbara Gail Jamieson
Applicant:	Rodney Stuart Jamieson
Application Lodged:	10/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	16/01/2023 to 30/01/2023
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.4 Floor space ratio: 17.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,540,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to an exceedance of the Floor Space Ratio (FSR) development standard of more than 10%. The Manly LEP 2013 prescribes an FSR of 0.4:1 for the site and the proposal has an FSR of 0.47:1, a departure of 17.5% from the control. The application is accompanied by a Clause 4.6 variation request which explains that the variation to the FSR standard arises due to the site being an 'undersized allotment' as identified within the Manly

DCP. It is noted that the FSR is consistent with the FSR variations permitted within Manly DCP for undersized allotments and as such, the exceedance is supported.

The application was notified and received four (4) unique submissions from the surrounding properties. Concerns raised in the objections predominantly relate to view loss, privacy (acoustic and visual) impacts from the roof terrace, excessive excavation, stormwater and non-compliance with the building form controls within the DCP. Each of these issues are addressed in detail throughout the report. Of note, subject to the recommended condition which requires the roof top terrace to be deleted, the application will result in a reasonable view sharing outcome and privacy is resolved to a high level. A condition is also recommended to require a portion of the ground floor excavation to be reduced for the proposal. The remaining level of excavation is supported on merit because the excavation allows view sharing and solar access to be maintained for the surrounding properties and improves vehicular access for the site by removing the existing driveway which sits within the road reserve.

Critical assessment issues relate to view sharing, excavation and the garage design, each of these are addressed within the report in detail.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks demolition of the existing dwelling and construction of a new dwelling house and swimming pool. Specifically, the proposal consists of the following:

Lower Ground Floor

Double garage, with workbench/watercraft storage and storage room (building materials etc) with rainwater tank at rear; lift and side stairs to upper levels;

Ground Floor

Two bedrooms with ensuites, deck, plant & equipment room, large landscape area, lift and side stairs;

First Floor

Master bedroom with WIR, ensuite and deck; 2 bedrooms with ensuites, pool plant room, lift and stairway;

Second Floor

Combined kitchen (with pantry), dining and living room with large deck with landscaped surrounds; rear deck, powder room, stairway and lift to other levels;

Roof

Roof terrace, access stairs to roof terrace, retractable pergola and landscaping across the roof.

Ancillary

New pool at rear of dwelling

Internal lift to provide access to all levels of the dwelling.

New driveway access off Beatty Street.

Removal of existing driveway from Wellings Reserve land and reinstatement of vegetation (as detailed in the landscape plan).

Landscaping across the site, as per Landscape plans.

Stormwater drainage, as per stormwater management plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 14 DP 11774 , 47 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Beatty Street.</p> <p>The site is regular in shape with a frontage of 15.55m along Beatty Street and a depth of 41.9m. The site has a surveyed area of 671m².</p> <p>The site is located within the R2 Low Density zone and accommodates a one and two storey dwelling house. At present, the site is accessed via a driveway which sits to the north of the lot within the unformed Road Reserve. This road</p>

reserve appears to be an informal extension of the adjoining bushland area.

The site has a relatively steep topography, particularly at the front (eastern) part of the site, with the site falling away steeply towards the street.

The survey plan shows on tree on the front boundary, however, this tree has been removed previously and is not present. The remainder of the site consists of low and medium height vegetation.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached one, two and three storey dwelling houses. Immediately to the south is a three storey dwelling house. To the west is a one storey dwelling house and to the south-west a two storey dwelling house. To the north is an unformed road reserve adjoining the site and to the north of that, a bushland reserve. Across the road to the east are two storey dwellings adjoining the foreshore area.

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:

- PLM2021/0211 - Prelodgement meeting held with Council on 2 September 2021.

History of DA assessment

On 5 April 2023 Council wrote to the applicant requesting additional information and amendments. The RFI sought clarification of the calculation of FSR, requested changes to the garage design in relation to width and landscape treatment, and request for deletion of the roof terrace.

On 1 June 2023, the applicant provided an amended set of plans and a response to Council's RFI. The amended plans clarified the calculation of FSR in accordance with recent Case Law and the definitions of GFA within the Manly LEP 2013. The garage design and associated landscaping either side of the garage was addressed. The roof terrace was substantially reduced in size (halved in size), however not deleted.

As the changes to the proposed development reduced the proposal overall and had lesser impact, the amended plans were not required to be formally re-notified, which is consistent with Council's Community Participation Plan. However, the amended plans were distributed to the adjoining properties who made a submission to allow them to comment on the amended plans. Three of those properties made further comments and this has been considered as part of the DA assessment.

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>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>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> <p>Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to floor space, garage design and the roof terrace. An amended set of plans have been provided in response to the request for information which has been considered as part of the assessment of this application.</p>

Section 4.15 Matters for Consideration	Comments
	<p>Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <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 (prepared by Andrew Murhead, dated 17/01/2022). The report stated that the bushfire attack level of the site is "Flame Zone".

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 16/01/2023 to 30/01/2023 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 4 submission/s from:

Name:	Address:
Mrs Lucy Ellen Machart	46 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mr Geoffrey Charles Quick Mrs Robyn Janet Quick	45 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Mrs Irene McDonald Mrs Judith Frances McDonald	16 Tutus Street BALGOWLAH HEIGHTS NSW 2093
Mr Alexander Robert Matthews Mrs Kathleen Margaret Matthews Bill Tulloch	18 Tutus Street BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- View impact for 18 Tutus Street as a result of the building.
- View impacts from the proposed vegetation as part of the landscape plan. All landscaping shall not exceed RL 35.7.
- View impact for 16 Tutus Street as a result of the retention of an existing Palm Tree.
- The excavation is excessive and portions of excavation should be deleted.
- Construction impacts upon the adjoining properties from damaging vibrations caused by hydraulic rock hammering and heavy rock excavators.
- Non-compliance with the built form controls under the Manly DCP.
- Visual, privacy and acoustic impact as a result of the roof terrace.
- Concern about increase stormwater run off

The above issues are addressed as follows:

- **View impact for 18 Tutus Street as a result of the building.**

Comment: The view impact of the proposed building is discussed in detail later in this assessment report within the view sharing assessment. Overall, the proposal is found to have a

reasonable view sharing outcome, subject to the deletion of the roof terrace which will form part of a consent condition.

- **View impacts from the proposed vegetation as part of the landscape plan. All landscaping shall not exceed RL 35.7.**

Comment: The suggestion to limit all landscaping height to RL 35.7 across the whole site would be onerous, noting the roof level of the proposal is RL36.2. Given the sloping nature of the site, the landscape height at the rear of the property (high point) is the place where there is most utility in managing landscape height to retain views. In the submission, it has been shown that the 5m height planting at the rear of the site will not actually impact water views. As such, the 5m height planting at the rear of the site is considered reasonable to provide privacy and retain views. The other planting shown as 3 x Lilly Pilli's at the north-western corner is shown as a maximum 8m height and could have some additional view impacts. The submission raises concern these could grown to 8m-15m. As such, a condition of consent is recommend that the landscape plan be amended to have a species with maximum height of 6m to retain views.

The submission raises concern with the landscape screening along the southern side of the property, which is proposed with a mature height of up to 8m-15m. To ensure views are not unreasonably impacted, a condition is recommended that the landscape screening along the southern portion of the site be a maximum mature height of 6m. This will screen the southern elevation, whilst minimising view impacts.

- **View impact for 16 Tutus Street as a result of the retention of an existing Palm Tree.**

Comment: This is an existing situation and the impact of an existing tree upon views is a private matter to be dealt with through the *Trees (Dispute Between Neighbours) Act*. This is discussed in the view sharing section of this report.

- **The excavation is excessive and portions of excavation should be deleted.**

Comment: Excavation is addressed later in this report, with a portion of the lowest level storage area recommended to be deleted via condition.

- **Construction impacts upon the adjoining properties from damaging vibrations caused by hydraulic rock hammering and heavy rock excavators.**

Comment: Conditions are recommended for a dilapidation report and the application is accompanied by a geotechnical report which explains how impacts will be minimised.

- **Non-compliance with the built form controls under the Manly DCP.**

Comment: The assessment against the built form controls and any non-compliances are addressed within this assessment report. The minor non-compliances are not a reason to refuse the application.

- **Visual, privacy and acoustic impact as a result of the roof terrace.**

Comment: As discussed later within this report, a condition of consent is recommended to delete the roof terrace for the reasons discussed later in this report regarding privacy.

- **Concern regarding increased stormwater run off**

Comment: Council's engineers have reviewed the proposal and are satisfied with the method of

stormwater management which includes on-site detention.

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>It is noted retaining walls are proposed within the Beatty Street road reserve and this matter shall be deferred to Council's Road Reserve Referral Team.</p> <p>The Arboricultural Impact Assessment (AIA) identifies three trees, of which tree 1 has previously been removed and trees 2 and 3 are located within the adjoining road reserve. The AIA concludes that trees 2 and 3 will not suffer any tree protection zone encroachment, thus not be impacted by the works. All trees to be retained shall be protected in accordance with the tree protection requirements outlined in the conditions of consent.</p> <p>The landscape proposal is generally supported and shall be installed as per the Landscape Plan's provided. All <i>Pennisetum</i> species shall be substituted with a suitable alternative as Council deems this species an environmental threat. All on slab landscaping shall meet Council's minimum soil depth requirements.</p>
NECC (Bushland and Biodiversity)	<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"> • Manly Local Environmental Plan 2013 cl. 6.5 Terrestrial Biodiversity <p>The proposal seeks approval for demolition works and construction of a dwelling house including swimming pool and garage and associated landscaping.</p> <p>The Arboricultural Impact Assessment (Treehaven Environscapes 2022) identified that one (1) native tree will require removal from within the lot as a result of the development. This tree has since been removed and will be conditioned for replacement. It is noted that the Landscape Plan (Melissa Wilson, 2022) generally provides a suitable species list however one (1) <i>Angophora costata</i> is required for like-for-</p>

Internal Referral Body	Comments
	<p>like replacement in addition to the species selected.</p> <p>Subject to conditions, Council's Biodiversity Referrals team raise no objections to the application.</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"> • Plans and reports lodged in support of the DA; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • State Environmental Planning Policy (Biodiversity and Conservation) 2021 ; • Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005; and • Manly LEP 2013 and Manly DCP 2013. <p>Coastal Management Act 2016 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 largely 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 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). However, as the site is located in the Foreshores and Waterways Area (as identified in SEPP B&C), Divisions 3 and 4 do not apply and only Division 5 of SEPP R & H applies to this DA. As the proposed development is not located on the foreshore and management plans for stormwater and erosion and sediment control adequately address these matters to reduce negative impacts on the surrounding environment and receiving waters, the development is not likely to cause increased risk of coastal hazards on that land or other land. Consequently, the development proposal is considered to satisfy the relevant requirements of SEPP R & H, subject to conditions.</p> <p>State Environmental Planning Policy (Biodiversity & Conservation) 2021 Harbour Foreshores & Waterways Area As the subject site is located within the Sydney Harbour Catchment, Chapter 6 of State Environmental Planning Policy (Biodiversity & Conservation) 2021 (SEPP B&C) applies to the assessment of this DA. The subject site is located within the Foreshores and Waterways Area and Part 6.3 of SEPP B&C applies to land that is in or abuts the Foreshores and Waterways Area. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by J V Urban dated December 2022 , the proposal is</p>

Internal Referral Body	Comments
	<p>consistent with the intent and with the planning principles for land within the Foreshores and Waterways Area. As such the DA is considered to satisfy the relevant requirements of SEPP B&C, subject to conditions.</p> <p>Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 The Sydney Harbour Foreshores and Waterways Area DCP 2005 applies to the proposed development. The design principles and performance criteria of the DCP are adequately addressed by the proposal, which is considered to satisfy the relevant provisions of the DCP.</p> <p>Manly LEP 2013 and Manly DCP 2013 Foreshores Scenic Protection Area Management The subject site is shown on the Manly Foreshores Scenic Protection Area Map and is therefore subject to the provisions of the "Manly Foreshores Scenic Protection Area" in Council's Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to any proposed development on the site. On internal assessment the proposed development:</p> <ul style="list-style-type: none"> • is unlikely to cause additional impacts that are detrimental to the visual amenity of the harbour or coastal foreshore; • improves the scenic quality of the coastline with landscaping utilising endemic plant species; and • is suitably located with no impacts on the foreshore and produces no conflict between land-based and water-based coastal activities. <p>In accordance with Section 5.4.1 of Manly DCP 2013, Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat while minimising cumulative impacts on escarpment rock shelves and other natural landscape features. The proposal is considered to satisfy the provisions of Section 5.4.1 of Manly DCP 2013.</p> <p>No other coastal planning or development controls relevant to the subject DA were identified.</p>
NECC (Development Engineering)	<p>The proposal is or demolition works and construction of a new dwelling.</p> <p><u>Stormwater</u> The site in Region 3 Zone 1 and hence OSD is required. The submitted stormwater plan proposes an OSD system however no calculations are provided. OSD shall be designed in accordance with Section 9.3.3.1 of Council's Water Management for Development Policy. Additional Information required for assessment:</p> <ul style="list-style-type: none"> • The pre developed and post development flows, including

Internal Referral Body	Comments
	<p>bypass flows, are to be shown on plan for all storms.</p> <ul style="list-style-type: none"> • The PSD shall be calculated based on an impervious area of 35% or 250m² (whichever is the lessor) – if the total existing site impervious area exceeds either of these. • The discharge to kerb shall be limited to 25l/s. • Areas draining to the OSD are to be shown on plan • Drains model shall be submitted for assessment <p>The proposed OSD tank is located within the storage area which is not supported. The OSD system shall not be located under habitable floors or in enclosed spaces and shall have 24/7 access for maintenance and ventilation.</p> <p><u>Access</u> AS the proposal includes a new vehicular crossing Beatty Street with retaining walls in the road reserve and reinstatement of existing driveway along unformed section of New Street comments and concurrence from Council's Road Asset Team is required prior to further assessment by Development Engineering.</p> <p><i>Note to Planner: Please refer to Council's Road Asset Team for comments regarding the proposed works in the road reserve and along the unformed section of New Street.</i></p> <p>Additional Information Provided on 1/6/2023 Amended plans have been reviewed. No objections to approval subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<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; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. <p><u>Riparian</u> The site is within the littoral rainforest buffer and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the littoral rainforest, or the quantity and quality of surface and ground water flows that it receives.</p> <p><u>Sediment Management</u> 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. 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.</p>

Internal Referral Body	Comments		
	<i>Water Management</i> Rainwater tank as per BASIX certificate. <i>Swimming pool water management</i> Pool water from the swimming pool must drain to the sewerage system to allow water to be correctly processed and to protect the receiving environment.		
Road Reserve	The impact on existing road assets is low. The proposed driveway crossing and wall across the verge must leave 1.5m clear space from the kerb alignment and be reduced in height to reduce impact on sight distance. Development Engineering requiring a s138 Application for Civil Works in order to detail the proposed retaining walls (which shall include reinstatement of landscaping across the old driveway). Development Engineering to provide suitable conditions.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the subject site is within proximity to a heritage item		
	I28 - Wellings Reserve - Gourlay Avenue and New Street		
	Details of heritage items affected		
	Statement of Significance Natural landscape, scientific and aesthetic significant.		
	Physical Description Remnant natural bushland of low woodland character. Some intrusions of weed species adjacent to roads and suburban development. Generally in good condition. Commemorative reserve named after former Shire Clerk.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
Other	N/A		
Consideration of Application			

Internal Referral Body	Comments
	<p>The proposal seeks consent for a new dwelling on the subject site, as well as the removal of the existing driveway from the New Street East road reserve and its replacement with landscaping. The heritage item is located to the north of the subject site across the New Street East road reserve. This road reserve itself is mostly unformed and asides from the aforementioned driveway, appears like part of the reserve although it is not heritage listed. Given the unformed road reserve provides a buffer to the heritage item, and the removal of the existing driveway, Heritage raises no objections to the proposal and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</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.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The application was referred to the NSW rural fire service as the proposed BAL level is 'Flame Zone'. The RFS have reviewed the proposal and provided their support, subject to conditions.
Aboriginal Heritage Office	<p>There are known Aboriginal sites in the area although no sites are recorded in the current lot and the area has been subject to previous disturbance reducing the likelihood of unrecorded Aboriginal sites.</p> <p>If areas of in situ sandstone outcrop are in the proposed development area (such as overhangs over 1m in height or level platforms over 2m square), the Aboriginal Heritage Office would recommend a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional prior to any development. If there are no existing sandstone outcrops present (or if any outcrops that were present were properly excluded from future impacts), then no further assessment is required and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal.</p> <p>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council</p>

External Referral Body	Comments
	<p>should be contacted.</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> <p><i>*Planner Note - There is an existing rock outcrop which sits at the western side of the dwelling, however the new dwelling is setback well away from this rock outcrop and it is proposed to be retained. A condition will be recommended for the protection of this natural site feature. Therefore, Council is satisfied that a due diligence assessment is not needed as the proposal will not directly impact the rock outcrop.</i></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. 1213720S_02 dated 9 January 2023).

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

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

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

SEPP (Transport and Infrastructure) 2021Ausgrid

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

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

Comment:

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

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

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

Division 1 Coastal Wetlands and littoral rainforest area**2.7 Development on certain land within coastal wetlands and littoral rainforests area**

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
 - c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
 - d) any other development

Comment: Not within coastal wetlands or littoral rainforest area.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment: Not within proximity to coastal wetlands or littoral rainforest area.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

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

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

Comment: Not within coastal vulnerability area.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

- g) the use of the surf zone.

Comment: Council is satisfied the proposal will not have an adverse impact on the matters listed a) to g) above.

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

Comment: Council is satisfied the development has been designed to avoid and minimise impacts.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
- a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock 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 proposal does not impact foreshore access, does not cause unreasonable overshadowing or visual impacts and the general form and bulk of the building remains as per the surrounding character. The proposal has been considered by the Aboriginal Heritage Office who supports the proposal. The proposal will not have adverse impacts on cultural or built heritage. Council is satisfied the proposal has been designed to avoid and minimise impacts. The proposal is consistent with the scale of the surrounding buildings and is consistent with the existing building bulk on the site.

Division 5 General

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

hazards

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

Comment: Proposal does not increase coastal risks.

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

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

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

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.4m max	N/A	Yes
Floor Space Ratio	FSR: 0.4:1 (250.8m ²)	FSR: 0.47 (298m ²)	17.5%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 FSR (250.8m ²)
Proposed:	0.47:1 FSR (298m ²)
Percentage variation to requirement:	17.5%

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 site-specific environmental planning grounds that support the proposed variation to the floor space ratio development standard in this circumstance are:

- *The slope of the land which can accommodate a basement level and terracing of the house;*
- *The siting of the new dwelling down the site, with sustainable and area appropriate excavation and compliant height of the new dwelling;*
- *The additional excavation of the site does not contribute to bulk and scale impacts of the development, external/discernable impacts are minimised;*
- *The view of the new dwelling from the northern reserve will appear as a two storey residence with swimming pool at the rear and planting is proposed around the building and within the setbacks to blend and transition the built form with landscaping to this interface. The proposal protects planting for the reserve;*
- *The bulk and scale of the new dwelling is subordinate to the one direct side neighbour and provides for a reasonable transition between the large height and scale of residences immediately south of the site to the reserve to the north and therefore from any wider views of the site, including from the waterway to the east;*
- *The minor nature of the proposed variation – less than 10% and only 20m² above the development standard for the site. This is not considered excessive in the context and as discussed in the SEE, the proposal is consistent with planning controls for view sharing, privacy protection, setbacks, landscaping and open space. The proposal provides an appropriate fit to the area and is sympathetically architecturally design to provide high amenity living, to take in beautiful views, to respond to the heritage reserve and to respond to the site and adjoining homes.*
- *In this regard, the proposal is generally consistent with the balance of applicable scale and design controls and provides for a quality planning and design outcome.*
- *Manly DCP Section 4.1.3.1 provides for an exception to FSR for undersized lots. The minimum lot size for this site is 1150m². This subject site is 627.4m². The proposal would comply with this provision.*
- *The proposal provides for sustainable development, BASIX consistency, consistency with scenic quality matters, water management control and provides for the reasonable redevelopment and residential upgrading of the site, with a new contemporary residence to contribute to the streetscape and adjoining reserve;*
- *The utilisation of the site slope which creates the opportunity for consequential absorption of additional volume and floor space which is ultimately concealed, importantly allows for parking*

and access to be removed from the reserve and the natural attributes of the reserve augmented with additional planting by removal of the existing driveway.

Council Comment on Planning Grounds

The fact the this site is identified as an 'undersized allotment' within Clause 4.1.3.1 of the Manly DCP is a sufficient environmental planning ground to warrant departure from the development standard. The DCP clearly states that the undersized nature of the lot may be an 'environmental planning ground' relied upon for exceeding the FSR standard, stating that the 0.4:1 FSR can be calculated based on a lot size of 750m² for sites identified as having a minimum lot size of 1150m² and therefore, allowing a maximum floor area of 300m². The proposal, having a floor area of 298m² falls within the DCP concession and therefore can be used as an environmental planning ground.

Council generally agrees with the other statements provided by the applicant above, in particular the proposed additional floor area within the excavated levels do not provide additional building bulk and scale and allows view corridors to be maintained over the development.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

streetscape character,

Comment:

The proposal is much lower in scale when compared to the adjoining properties at 45 and 43 Beatty Street, with a two storey presentation at the side elevations and the upper level stepping back with the site topography to mitigate bulk and scale.

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

Comment:

The proposal will not obscure any important landscape feature and the low scale nature of the design allows the adjoining properties to retain some views to the bushland as well.

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

Comment:

The proposal provides a compliant quantum of landscaping around the building footprint to compliment the bushland character of the reserve to the north. The low scale building, as viewed from the reserve and shown in the montage, provides a well resolved relationship as the building is low scale due to the excavated floor level to minimise visual impact.

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

Comment:

The proposal demonstrates that view sharing is achieved given the low scale design of the building (well below the height limit at the rear), solar access is maintained and privacy will be maintained (subject to the condition requiring deletion of the roof terrace).

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

Comment:

Not relevant to the proposal.

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 a new dwelling within a landscape setting, consistent with the surrounding character of detached residential dwellings.

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

residents.

Comment: Not applicable to this development.

Conclusion:

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

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

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

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

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

- (c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

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

6.4 Stormwater management

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

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

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

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

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

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

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.5 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider:

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

Comment:

The proposal has been designed to avoid impact to significant native trees and will rehabilitate existing parts of the adjoining road reserve. Council's biodiversity team support the proposal.

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

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

Comment:

The proposal has been designed to avoid impacts to biodiversity.

6.9 Foreshore scenic protection area

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

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

activities.

Comment: The proposal is low scale when compared to the surrounding development and will integrate into the landform. The dwelling does not impact the foreshore directly given the location.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 627.3m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 750m ²	1 dwelling	N/A	Yes
4.1.2.1 Wall Height	N: 7.7m (based on gradient 1 in 5)	4.5m to 8m	3.8%	No
	S: 7.7m (based on gradient 1 in 5)	4.7m to 6.5m (7m to top of privacy wall)	N/A	Yes
4.1.2.2 Number of Storeys	3	2 and 3	50%	No
4.1.4.1 Street Front Setbacks	6m	Garage - 1m to 3.3m Ground Facade - 8m First floor deck 6.1m First Floor Facade - 8m Second Flor Deck - 9m Second Floor Facade - 11.95m	83% N/A N/A N/A N/A	No Yes Yes Yes Yes Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	S: 1.5m to 2.1m (based on varied wall height)	2m	5%	No
	Windows: 3m	South boundary no windows	N/A	Yes
	Secondary street frontage: Prevailing setback 2m	3m and behind prevailing setback	N/A	Yes
4.1.4.4 Rear Setbacks	8m	4.7m deck 9.3m facade	N/A	No Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (376m ²)	62.8% (394.5m ² - does not include roof terrace)	N/A	Yes
	Open space above ground 25% of total open space	21.3% (84.3m ² Deck L1 + L2 and Terrace at ground level over garage - excluding roof terrace)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	70% (260m ²)	N/A	Yes
	3 native trees	3 trees	N/A	Yes

4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.2m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.5m	N/A	Yes
	1m curtilage/1.5m water side/rear setback	3m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The building (with the exception of the roof terrace) is well designed with regards to privacy and results in a high level of privacy being maintained for the surrounding sites. The building is orientated towards the street (east) and the reserve to the north, with the rear of the site being single storey only.

Concern has been raised by all three adjoining properties regarding the roof terrace in regards to visual and acoustic privacy. The two properties at the rear are orientated towards the east to capture harbor views, with the roof terrace being in the direct line of sight for these properties. The roof terrace will also be visible from the adjoining property at 45 Beatty Street to some degree.

In order to achieve a satisfactory view sharing outcome, the building has been set down into the site and is lower than the surrounding properties. As a consequence, the roof terrace becomes exposed to the line of site for the surrounding properties and does not minimise impacts to privacy, therefore not meeting the objectives of the control. The roof terrace is unable to be screened as this would result in further view impacts. Roof terraces are not a common feature in the R2 Low Density Zone and could only be supported if visual or acoustic impacts have minimised. Given the exposed location of the roof terrace, the design of the roof terrace in this circumstance is not appropriate for the context and cannot be supported. There are ample areas within the dwelling that provide elevated outdoor terraces which allow views to be enjoyed to offer a high level of amenity, without unreasonably compromising privacy.

Therefore, a condition is recommended that the roof terrace is deleted, along with the stairs leading to the roof area, associated balustrade, pergola and privacy screens/walls.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs*

Warringah Council (2004) NSWLEC 140, are applied to the proposal.

The applicant has provided a Visual Impact Assessment (VIA) using photomontages of the proposal, as viewed from the surrounding properties 16 and 18 Tutus Street and 45 Beatty Street (the three adjoining sites). The montages have been prepared in accordance with the Land and Environment Court guidelines for preparing visual impact assessment and montages.

Two of the adjoining properties have raised concerns about views in their submissions, being 16 and 18 Tutus Street (properties to the rear). The submission received from 45 Beatty Street did not raise view impact as an issue and upon review of the photomontages, any impact upon 45 Beatty Street is considered negligible with expansive water views maintained from this property.

The concerns raised by 16 Tutus in regards to views relate only to the concern that an existing palm tree is not proposed to be removed as part of the application, with this palm tree impacting some of the view at present. The montages provided show that the proposed development will not have a further impact upon water views from 16 Tutus. The issue in relation to existing trees causing view impacts is a matter to be dealt with under *The Trees (Disputes Between Neighbours) Act 2006*.

Therefore, the view sharing assessment focuses on 18 Tutus Street, who have raised concerns in the submission about the direct impact upon views as a result of the proposed building.

Tenacity Assessment

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 views to be impacted are water views of the Harbour, some views to trees and some of the foreshore area as shown in Figure 1 and 2 below. Portions of the view of the foreshore area are impacted as a result of the roof top terrace structures, particularly from the lower balcony (figure 2). The VIA describes the view as:

"From this location, the existing view is above the roof of the existing building and across the boats moored in Jilling Cove and from there across North Harbour towards the residential development on the eastern side of Manly Cove. To the south of Manly Cove, the shoreline continues to Smedleys Point and Manly Point with the Eastern Hill behind this in the far distance. This is the rear of the house and the main views from the living areas are all towards the east."



Figure 1 - Extract from view impact assessment, photo taken from upper level balcony of 18 Tutus Street – 1m inside balcony balustrade. Looking east-southeast over subject site. Source: Urbaine Design Group



Figure 2 - View from mid-level balcony– 1m inside the balcony balustrade. Looking east-southeast over subject site. Source: Urbaine Design Group.

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

Comment:

The views are obtained over the rear boundary of the site from both a sitting and standing position. The views are obtained from the living room at the rear of the site and the terrace/balcony which adjoins the primary living space. As the views are obtained over the rear boundary, are the primary views available from the site and are obtained from a living area/primary private open space area in the form of a balcony, there is a reasonable expectation that some of the views should be retained.

The view in Figure 1 is the view from the primary open space area adjoining the living room on the upper level. The view in Figure 2 is from a lower level balcony (not adjoining the primary living space) and is more susceptible to view impacts given it is located at the lower level.

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:

From the upper level balcony and living area at the same level (Figure 1) the view impact is considered to be moderate given there is a reasonably large area of water view being impact which includes moored boats in Jilling Cove. Areas of land/water interface are retained over the roof.

From the lower level balcony a larger portion of the water and moored boats within Jilling Cove are impacted, with a narrow strip of water views retained above. There is also obstruction of the land-water interface of harbour foreshore which is impacted as a result of the structures associated with the roof terrace including the balustrading, privacy screening, stairwell wall and retractable pergola. The view impact from this level (figure 2) is considered more severe.

Overall, as the eastern facing views over the rear boundary are the only views available, the overall impact is considered moderate to severe.

However, previously in this report it has been discussed the visual and acoustic impact of the roof terrace and as such, a condition will be recommended to delete the roof terrace and associated structures. This will also result in an improved view sharing outcome whereby an increased portion of the water views are maintained and retention of views to the foreshore area/landwater interface.

Therefore, given the recommended condition to delete the roof terrace and associated structures the overall view impact is considered to be moderate, given a reasonable portion of water views will be maintained and there will be retention of the land/water interface along the foreshore area.

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

Comment:

The proposal has been designed with a low scale, below the LEP height limit, by relocating the garage entrance off the street frontage and utilising excavation to provide the desired quantum of floor space (within the 300m² DCP allowance) whilst still retaining views for the rear property. The proposal has kept a single storey height at the rear of the site which has provided a suitable outcome for view sharing. The flat roof design promotes view sharing and the roof planter provides a softened outlook for the property at the rear.

It would be unreasonable to require future reduction of the building height given the low scale of the design at the rear (single storey only) and the application demonstrating the a reasonable portion of views to the harbour and foreshore are maintained. The deletion of the roof terrace and associated structures is considered necessary to achieve a reasonable view sharing outcome and mitigate the overall visual impact of the proposal.

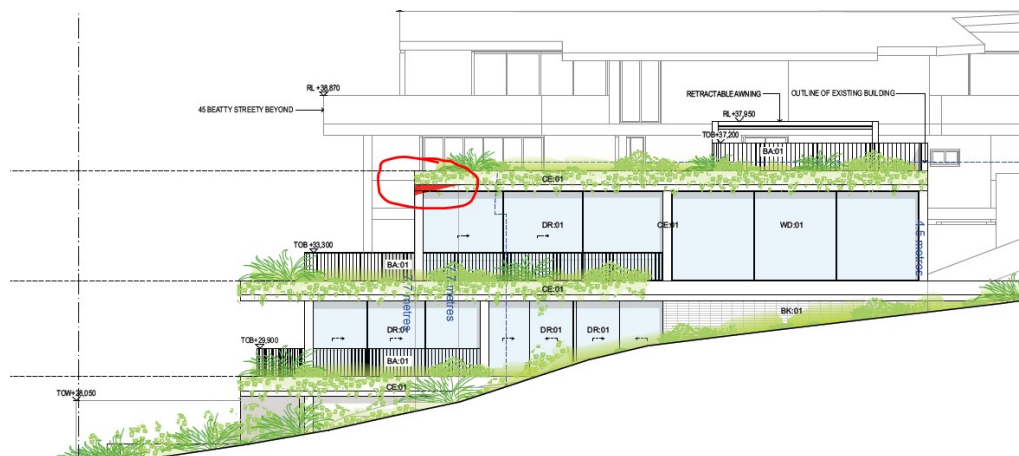
The proposal is considered to have demonstrated a sufficient skillful design, is sited well below the LEP height limit and is consistent with the DCP built form controls (save form minor exceedance to northern wall height/setback which is does not directly impact water views). The proposal is well below the height of the adjoining property at 45 Beatty Street, which is the necessary response in this circumstance to achieve view sharing for 18 Tutus Street. With the roof terrace deleted, the proposal design is a well considered response to view sharing based on the available 8.5m height limit that applies to the 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.

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

Description of non-compliance

The northern facade has a minor exceedance of the wall 7.7m wall height control, as shown in the below extract:



The proposed development is also technically three (3) stories in the same location, non-compliant with the 2 storey control.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

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

Comment: As shown in the above image, the proposal is well below that of the adjoining property at 45 Beatty Street and the surrounding buildings on the western side of Beatty Street. The minor non-compliance does not render the proposal inconsistent. The building has been suitably stepped with the site topography and largely presents as a maximum 2 storey dwelling. The surrounding dwellings on the western side of Beatty Street present as three storey dwellings and therefore, the proposal is not out of character with these dwellings (however it is noted that building is less in scale and only presents as two stories from the side elevation).

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

Comment: The building has been kept to a low scale to minimise bulk presenting to the adjoining properties and viewed from the reserve to the north. The proposal is articulated to mitigate bulk and is of less scale than those building surrounding.

(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: View sharing is discussed elsewhere within this report and the proposal has been found to provide a suitable view sharing outcome.

(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 access diagrams demonstrate solar access will be maintained to the primary private open space and living room windows of the dwelling to the south.

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

Comment: The site is not located within a recreation or environmental protection zone. Notwithstanding this, the building integrates well into the adjoining reserve.

Council is satisfied the objectives of the control have been met despite the numerical non-compliance and as such, the proposal can be supported in this circumstance.

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

Description of non-compliance

Front Setback

The surrounding sites have varied front setbacks and as such, the front setback control requires 6m.

The proposal has varied front setbacks for each element of the building, with the garage and associated terrace on top of the garage sitting within the 6m front setback.

The remainder of the elements of the building exceed the front setback requirement.

It is noted that Clause 4.1.6.1 'Parking Design and the Location of Garages, Carports and Hardstand Areas' of the MDCP provides the following regarding garages forward of the building line:

b) Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:

i) garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;

In regards to the proposed garage the following is noted:

a) The site access at present is unusual, in that the site is accessed via a driveway which sits within the adjoining Road Reserve. This driveway is proposed to be removed and the area reinstated with native planting to compliment the adjoining bushland reserve.

b) Relocating the site access directly from the street frontage has the effect of allowing the floor levels of the building to be significantly dropped to allow for a more low scale building that has less impact of view corridors.

c) It is considered that the alternative to a low, excavated garage would be a poorer outcome for surrounding amenity and view sharing.

d) The requirement to push the garage deeper into the site to comply with a 6m front setback would create a large void and further excavation of the front setback area.

e) The gradient at the front of the site is very steep and an at-grade driveway would lead to further engineering challenges or undesirable driveway gradients.

Therefore, a reduced setback garage that is 'buried' into the front of the site is considered an optimal outcome with regards to site access and maintaining amenity (solar access and view sharing) for the surrounding sites.

In consultation with Council, the design of the garage, access stairs and retaining walls has been improved by reducing the driveway width and maintaining the existing topography either side of the driveway entrance to minimise the visual impact on the street and allow opportunity for landscaping either side.

It is noted that the western side of Beatty Street is varied in regards to garages and vehicular access, with 41, 37, 35 and 33A having some form of reduced setback structure. Therefore, the streetscape is a mixture of steep driveways, retaining walls, parking structures and landscaping.

Side Setback

The proposal has a minor breach of the side setback for a minor portion of the southern façade. The control requires 2.1m for a wall height of 6.5, with the proposal providing a consistent 2m setback for the entire southern façade. The vast majority of the southern façade is compliant.

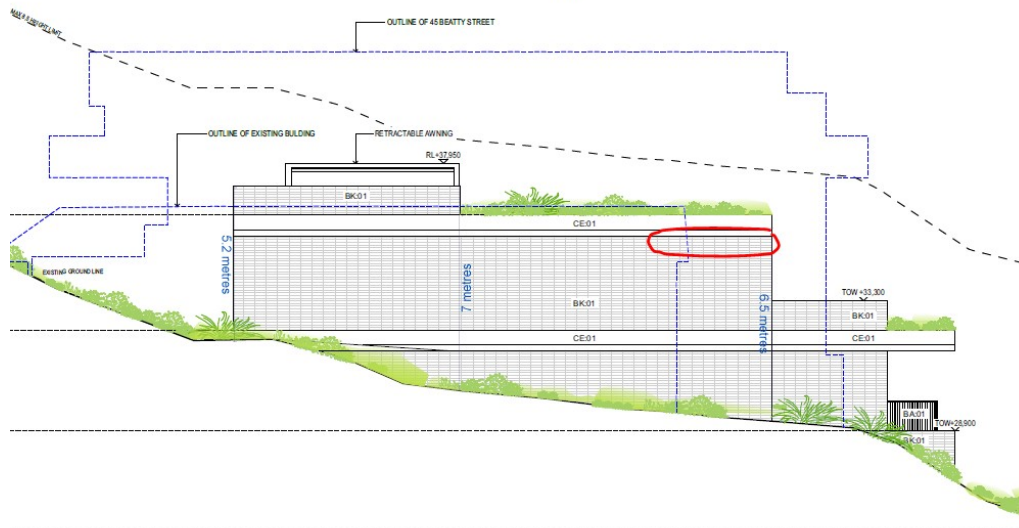


Figure 1 - Approximate area of 10mm non-compliance with southern side setback.

Rear Setback

The proposal includes a ground floor deck that is setback 4.7m from the rear boundary. The deck is not an elevated structure and will not cause any view or visual impacts for the surrounding sites.

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:

It is noted that the western side of Beatty Street is varied in regards to garages and vehicular access, with 41, 37, 35 and 33A having some form of reduced setback structure. Therefore, the streetscape is a mixture of steep driveways, retaining walls, parking structures and landscaping. The proposed buried garage, with landscaping either side, is compatible with the streetscape with the remaining portions of the dwelling setback in accordance with the 6m control.

The non-compliance with the side setback or rear setback does not render the spatial proportions of the building out of character for the area.

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 reduced setback garage is optimal for allowing a low scale building to preserve view corridors and solar access for adjoining sites. If a garage was to be provided at the natural ground level and setback 6m, this would likely result in a taller building and higher starting point for site levels, making view sharing much more difficult.

The minor encroachment to the site setback has no unreasonable amenity impacts with view sharing and solar access discussed elsewhere within this report, no windows provided on the southern elevation. The ground floor deck is an at grade structure which does not impact amenity for the surrounding sites.

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

Comment:

Flexibility has been exercised given the topography of the site.

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:

Deep soil zones are provided either side of the garage to enhance the landscape setting. No unreasonable impacts will occur upon the natural environment or biodiversity.

A consistent 2m deep soil zone is provided along the southern boundary.

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

Comment:

The non-compliances do not arise due to requirements to establish APZ's

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)

Garage design is discussed in detail under Clause 4.1.4 Front setbacks.

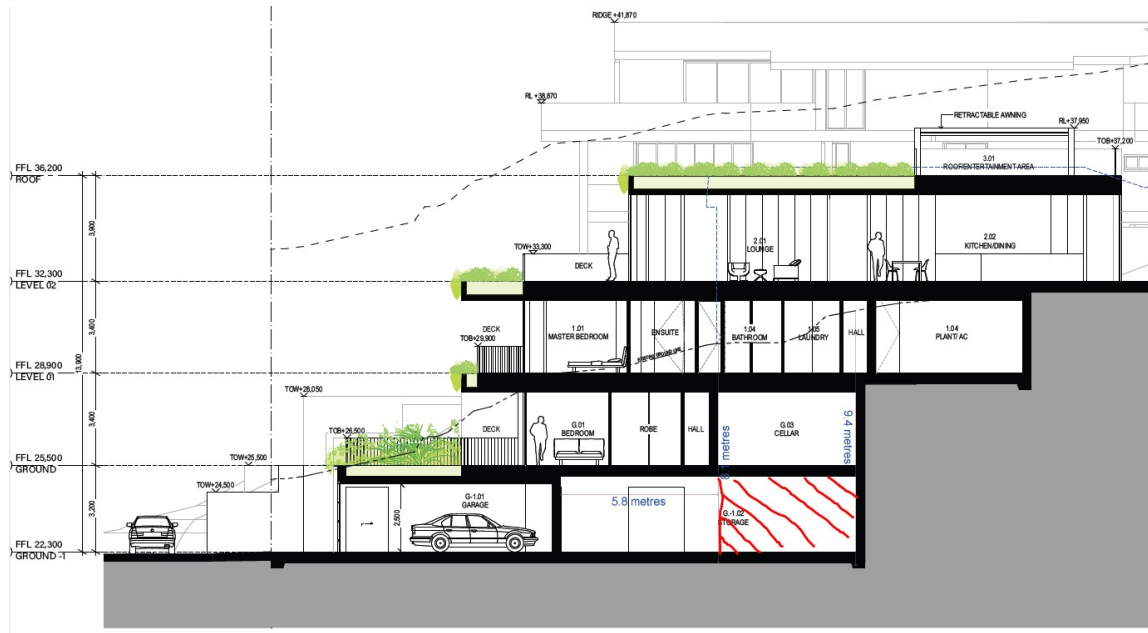
4.4.5 Earthworks (Excavation and Filling)

It is recognised that the proposal has a high level of excavation to achieve the desired outcome in relation to view sharing, vehicular access and the amenity requirements of the applicant. The following points are made in relation to the excavation:

- 1) The proposal to have vehicular access directly at the street frontage establishes the site levels and therefore, results in a higher level of excavation. For the reasons outlined previously in this report, the low level garage at the site frontage will result in a superior outcome in relation to view sharing, overall bulk and scale and solar access for the surrounding sites.
- 2) The FSR has been calculated in accordance with the definition of GFA under the Manly LEP and the relevant case law. Therefore, the storage areas are technically excluded from the FSR calculation and given their location as a basement, do not result in inappropriate bulk and scale.
- 3) The proposal does not excavate within the side setbacks and maintains natural ground level along the side boundary. This limits the visual impact of the excavation once the construction is completed.
- 4) The application is accompanied by a geotechnical report which addresses any geotechnical risks associated with the excavation. Compliance with the geotechnical report will form a condition of consent.

However despite the above, it is apparent that excavation could be further reduced to a more reasonable degree and have a better relationship with the site topography and therefore meet the 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"*.

Therefore, it is recommended that a condition be included in the consent to restrict the size of the storage room G-1.02 to a maximum internal dimension of 5.8m, measured from the internal face of the walls in an east-west direction. The below figure describes the additional excavation to be deleted as a result of the condition. This will result in a more reasonable degree of excavation and less overall depth of excavation, whilst still allowing basement storage to be provided.



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 \$35,400 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,540,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

PLANNING CONCLUSION

This proposal for demolition of an existing dwelling and construction of a new dwelling house and swimming pool has been referred to the Development Determination Panel (DDP) due to the FSR exceeding the development standard by more than 10% (in this case 17.5%).

However, the site is identified as an 'undersized allotment' within the Manly DCP and is within the maximum 300m² GFA allowance permitted and therefore, establishes there to be sufficient environmental planning grounds to be supported. Furthermore, view sharing has been resolved to an acceptable level and subject to deletion of the roof terrace, the proposal will retain a high level of amenity for the surrounding sites.

The concerns raised in the objections have been addressed and resolved by conditions require reduction of the basement storage/excavation, deletion of the roof terrace and reduction in height for some of the landscape planting. Conditions have been recommended for a dilapidation report and compliance with the geotechnical report forms conditions of consent to ensure construction impacts from the excavation will be managed.

The critical assessment issues relating to views, privacy, front setback/garage design and excavation have been resolved to the satisfaction of Council and are detailed within this assessment report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of 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 DA2022/2280 for Demolition works and construction of a dwelling house including swimming pool and garage on land at Lot 14 DP 11774, 47 Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL 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
A1002 Rev 02	30/05/2023	ESS Lifestyle
A1003 Rev 01	25/05/2022	ESS Lifestyle
A2201 Rev 02	30/05/2023	ESS Lifestyle
A2202 Rev 02	30/05/2023	ESS Lifestyle
A2203 Rev 02	30/05/2023	ESS Lifestyle
A2204 Rev 02	30/05/2023	ESS Lifestyle
A2205 Rev 05	30/05/2023	ESS Lifestyle
A3101 Rev 02	30/05/2023	ESS Lifestyle
A3102 Rev 02	30/05/2023	ESS Lifestyle
A3103 Rev 02	30/05/2023	ESS Lifestyle
A3104 Rev 02	30/05/2023	ESS Lifestyle
A3201 Rev 02	30/05/2023	ESS Lifestyle
A3202 Rev 02	30/05/2023	ESS Lifestyle

A7001 Rev 02	30/05/2023	ESS Lifestyle
A8101 Rev 02	30/05/2023	ESS Lifestyle

Engineering Plans		
Drawing No.	Dated	Prepared By
SW-000 to SW-104 Rev C	25/02/2022	ADCAR Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	8 June 2022	Treehaven Envirosapes
Bushfire Assessment Report Ref 211395	17 January 2022	Bushfire Hazard Solutions
Geotechnical Stability Assessment Ref 34134Zrpt	7 June 2021	JK Geotechnics
BASIX Certificate No.1213720S_02	9 January 2023	Chapman Environmental Services

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LS01 to LS09 - Issue B	30/05/2022	Melissa Wilson

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Undated	Rodney Jamieson

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	2023/050750	24 January 2023
NSW RFS - DA20230110000127-Original-1	2023/052289	24 January 2023

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

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

3. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention

- to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no

hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

- system in sewerage areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$35,400.00 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 \$3,540,000.00.

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.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. 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; 600mm for shrubs.

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

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

8. 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.

9. Amendment of Landscape Plans

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

- Provision of one (1) *Angophora costata*

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifier prior to issue of the Construction Certificate.

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

10. 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. **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. **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 Adcar Consulting, project number ADC210410, drawing number SW-100., dated 25/5/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Stormwater plans to be updated to reflect amended location of OSD tank as per architectural plans dated 30/5/2023.
- ii. The OSD system shall not be located under habitable floors or in enclosed spaces and shall have 24/7 access for maintenance and ventilation.
- iii. The discharge to kerb shall be limited to 25l/s.

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.

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. **Amendments to the approved plans**

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

a) The roof terrace, retractable awning, stairs, balustrading, stairwell wall and raised parapet wall shall be deleted from the roof level. The roof level shall consist of roof planting, with species consistent with the submitted landscape plan, and have no structures exceeding RL 36.2 placed on the roof (apart from landscaping).

b) The Storage Room G 1.02 located on the ground floor - 1 shall have a maximum internal dimension of 5.8m (measured east to west). The remainder of the storage area shall be deleted from the plan.

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.

16. **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.

17. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of driveway, retaining walls and reinstatement of the existing driveway which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. A vehicular crossing 4.5 meters wide to be constructed in accordance with concept plans by JCO Consultants Pty Ltd, job number 20210197, drawing number DA-C400, dated 27/4/2022 and council specifications.
2. Details of the retaining structures in the road reserve.
3. The proposed driveway crossing and wall across the verge must leave 1.5m clear space from the kerb alignment and be reduced in height to reduce impact on sight distance.
4. Site distances are to be in accordance with AS2890.1.
5. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided.
6. Structural Engineer's certification of the design of all retaining walls.
7. Plans detailing the reinstatement of the existing driveway along the unformed section of New Street.

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 ensure engineering works are constructed in accordance with relevant standards and Council's specification.

18. **Swimming Pools**

The backwash of swimming pool water must be discharged to Sydney Water's sewer in accordance with Australian/New Zealand Standard AS/NZS 3500. Detailed plans and specification must be submitted prior to the issue of the Construction Certificate. The drawings must show the location of Sydney Water's sewer, the yard gully or any new connection to the sewer system including a detailed cross section of the connection complying with Australian/New Zealand Standard AS/NZS 3500.

Reason: To comply with legislation and Australian Standards and to protect public health, amenity as well as to ensure the protection and quality of receiving waters.

19. **Stormwater Management**

Stormwater shall be disposed of in accordance with Council's Policy. The stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifier for approval prior to issue of the Construction Certificate.

Reason: To make appropriate provisions for stormwater management and disposal arising from development, ensuring that the proposed works do not negatively impact receiving waters.

20. **Design Impact on Coastal Processes and Public/Private Amenity**

All development and/or activities must be designed and constructed so that they will not adversely impact on surrounding properties, coastal processes or the amenity of public foreshore lands.

Reason: To ensure that development does not impact on coastal processes or the public amenity of the foreshores and waterways areas

21. **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.

22. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- i) The 18 x *Elaeocarpus reticulatus* planting proposed along the southern side of the dwelling shall be replaced with a species with a maximum mature height of 6m.
- ii) The 3 x *Syzygium paniculatum* at the north-western corner of the site shall be replaced with a species with a maximum mature height of 6m

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

Reason: Landscape amenity and protection of views.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

23. **Pre-Construction Dilapidation Report**

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

Properties: 18 Tutus Street and 45 Beatty Street Balgowlah Heights

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

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

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

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

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 and receiving waters from the effects of sedimentation and erosion from the development site.

DURING BUILDING WORK

25. **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.

26. **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.

27. **Condition of Trees**

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

28. **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.

29. **Implementation of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plan and these conditions of consent.

The new landscaping is to be certified by a qualified landscape architect as being in accordance with the approved Landscape Plans and these conditions of consent

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

30. **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.

31. **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.

32. **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.

33. **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.

34. **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.

35. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

36. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) are to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste and debris are to be removed off site and disposed of as frequently as required in accordance with the Waste Management Plan and applicable regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

37. **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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

38. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (by Melissa Wilson dated 30/05/22), and inclusive of the following conditions:

- a) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1 metre from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
- c) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- d) 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,
- e) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- f) 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.

39. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifier prior to issue of the Occupation Certificate.

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

40. **Replacement of Canopy Trees**

At least 1 locally native canopy tree (*Angophora costata*) is to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Gardening Guide.

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.

41. **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.

42. **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.

43. **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.

44. **Retaining wall**

The retaining wall works within the road reserve shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Public and Private Safety

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

45. **Landscape Maintenance**

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

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

Reason: To maintain local environmental amenity.

46. **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.

47. **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.

48. **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.

49. **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.

50. **Stormwater Pollution Control Pits**

The Registered Proprietors of the property must maintain on a regular basis (every six months or after heavy rain events) stormwater pollution control pits, sumps and grated drains including the clearing of silt, debris and rubbish, in perpetuity. The Registered Proprietors must ensure the effective operation of pollution control pits to prevent pollution of Sydney Harbour by stormwater generated onsite.

Reason: To ensure appropriate provision is made for the treatment and management of stormwater generated by the development for the protection and preservation of the aquatic habitats and biota within receiving waters.



ess

Client
Rodney Jamieson

Project
**47 BEATTY STREET
BALGOWLAH HEIGHTS**

Project Start Date
-

Project Number
0158

Drawing Title
**PLAN :
SITE ANALYSIS**

Drawing Stage
DEVELOPMENT APPLICATION

Drawing No.
A1002

Drawing Scale
**1:200@A2
1:400@A4**

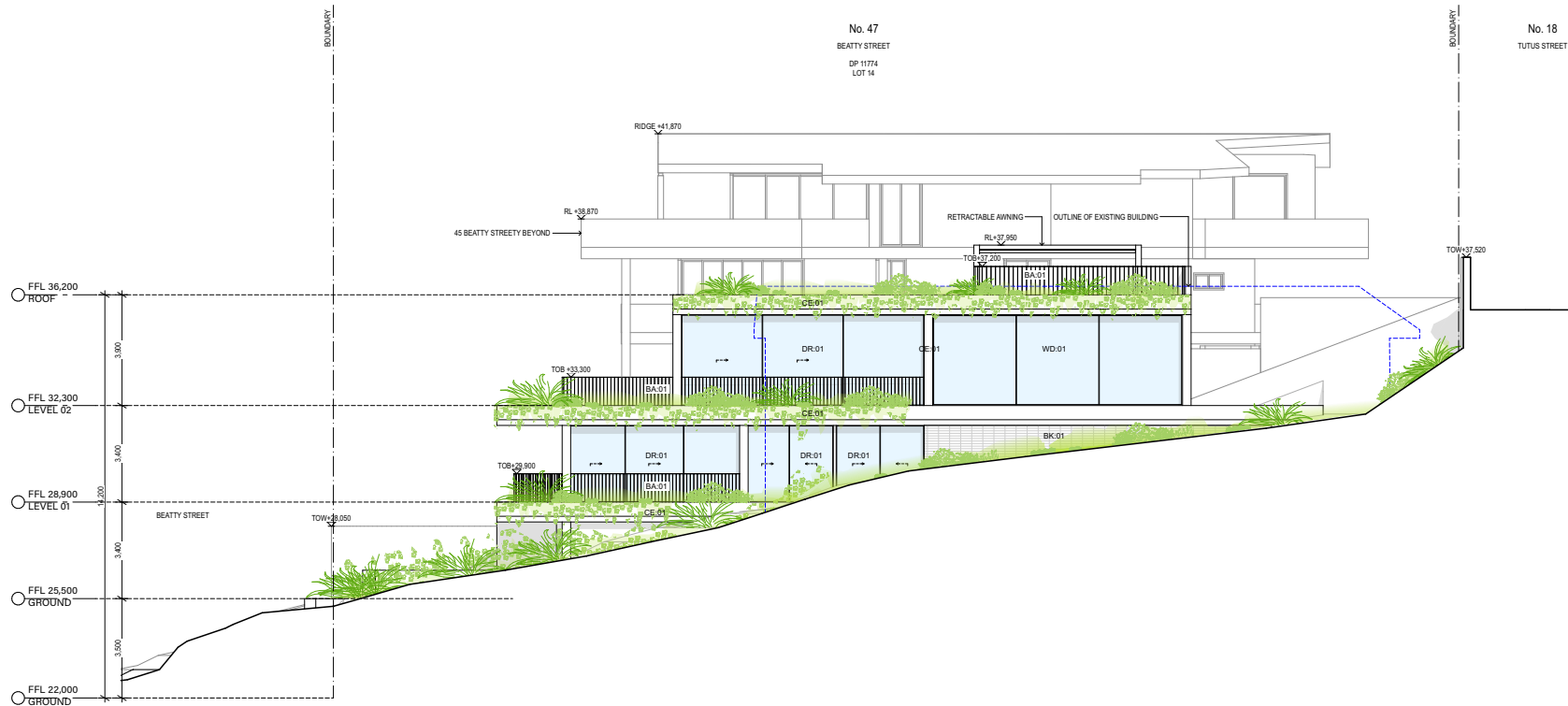
REV	DESCRIPTION	DATE
DA01	DEVELOPMENT APPLICATION	25.05.22
DA02	DEVELOPMENT APPLICATION	30.05.23

LEGEND

BA-01 Balustrade, aluminium flat bar, powdercoated Dulux Black Ace
BK-01 Austral Masonry G8 Smooth, porcelain finish
CE-01 Concrete, off-form
DR-01 Sliding door, clear glass aluminium framed, powdercoated Dulux Black Ace
DR-02 Not used
DR-03 Pivot door, clear glass aluminium framed, powdercoated Dulux Black Ace

DR-04 Garage door, aluminium batton 30x30mm, powdercoated Dulux Black Ace
WD-01 Fixed window, clear glass aluminium framed, powdercoated Dulux Black Ace
--- To be demolished





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Melb 32 146 661 100
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18/01/2023
Project: 47 Beatty Street
Balgovlah Heights

Client
Rodney Jamieson

Project
47 BEATTY STREET
BALGOVLAH HEIGHTS

Project Start Date
-

Project Number
0158

Drawing Title
ELEVATION
NORTH

Drawing Stage
DEVELOPMENT APPLICATION

Drawing No.
A3101

Drawing Scale
1:100@A2
1:200@A4

REV
DA01
DA02

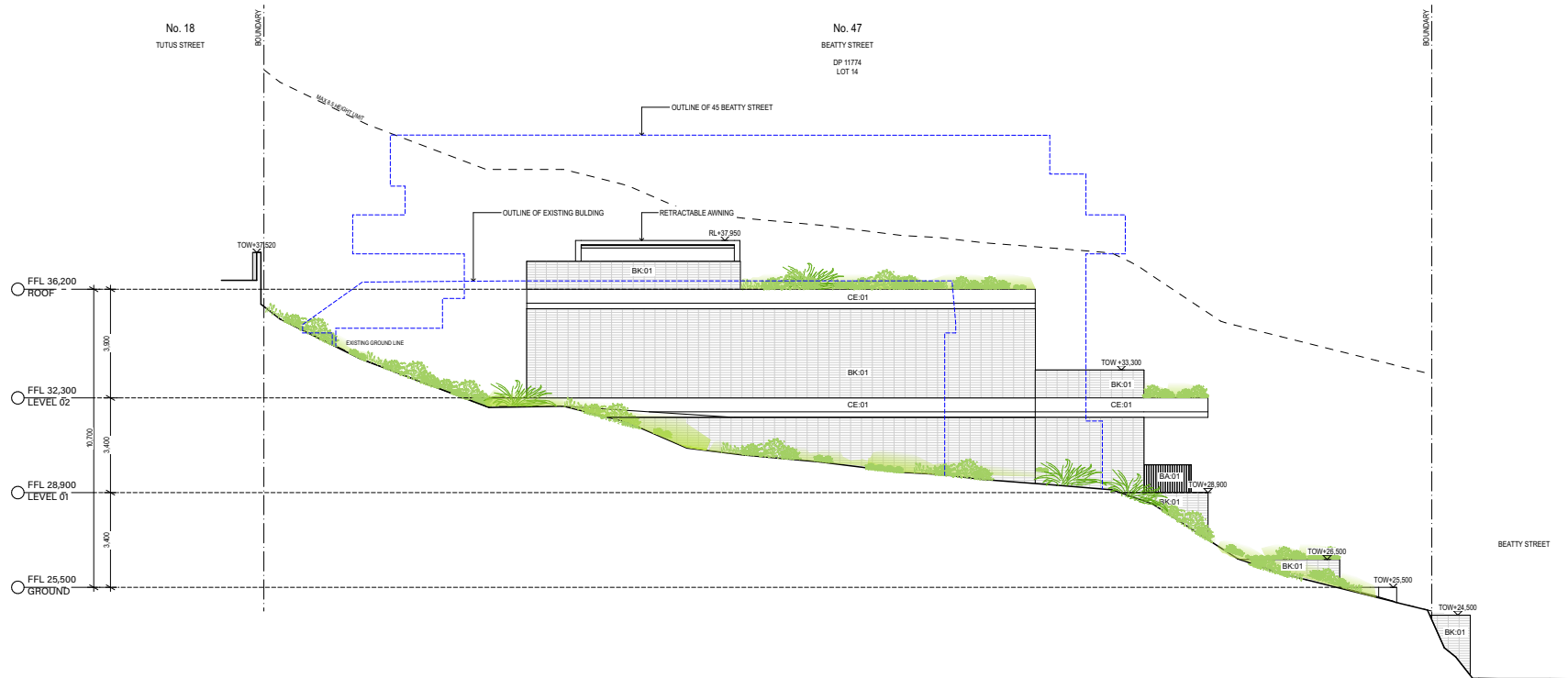
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DEVELOPMENT APPLICATION

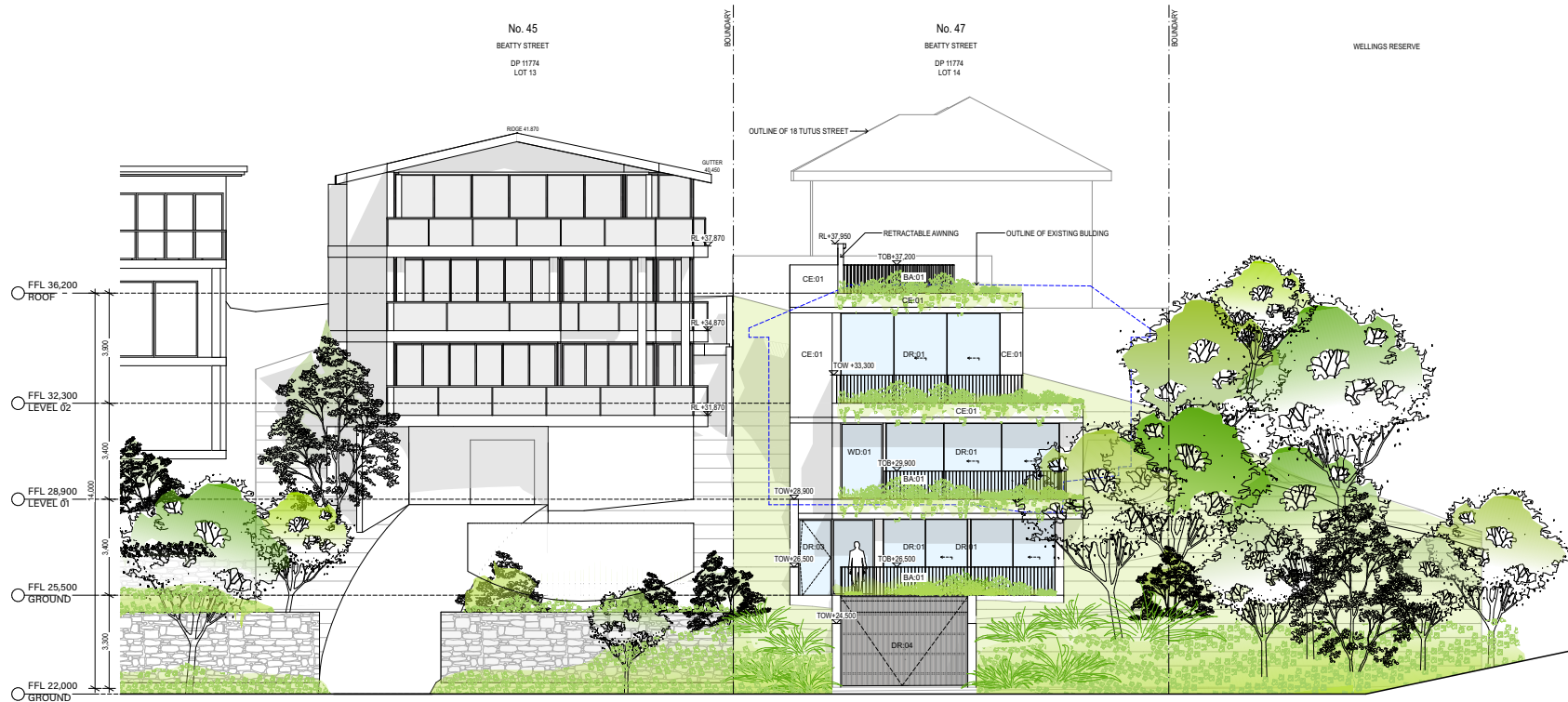
DATE
25.05.22
30.05.23

LEGEND

BA.01 Balustrade, aluminium flat bar, powdercoated Dulux Black Ace
BK.01 Austral Masonry G8 Smooth, porcelain finish
CE.01 Concrete, off-form
DR.01 Sliding door, clear glass aluminium framed, powdercoated Dulux Black Ace
DR.02 Not used
DR.03 Pivot door, clear glass aluminium framed, powdercoated Dulux Black Ace

DR.04 Garage door, aluminium batton 30x30mm, powdercoated Dulux Black Ace
WD.01 Fixed window, clear glass aluminium framed, powdercoated Dulux Black Ace
--- To be demolished





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Project: 47 Beatty Street

Client
Rodney Jamieson

Project
**47 BEATTY STREET
BALGOWLAH HEIGHTS**

Project Start Date
-

Project Number
0158

Drawing Title
**ELEVATION
EAST**

Drawing Stage
DEVELOPMENT APPLICATION

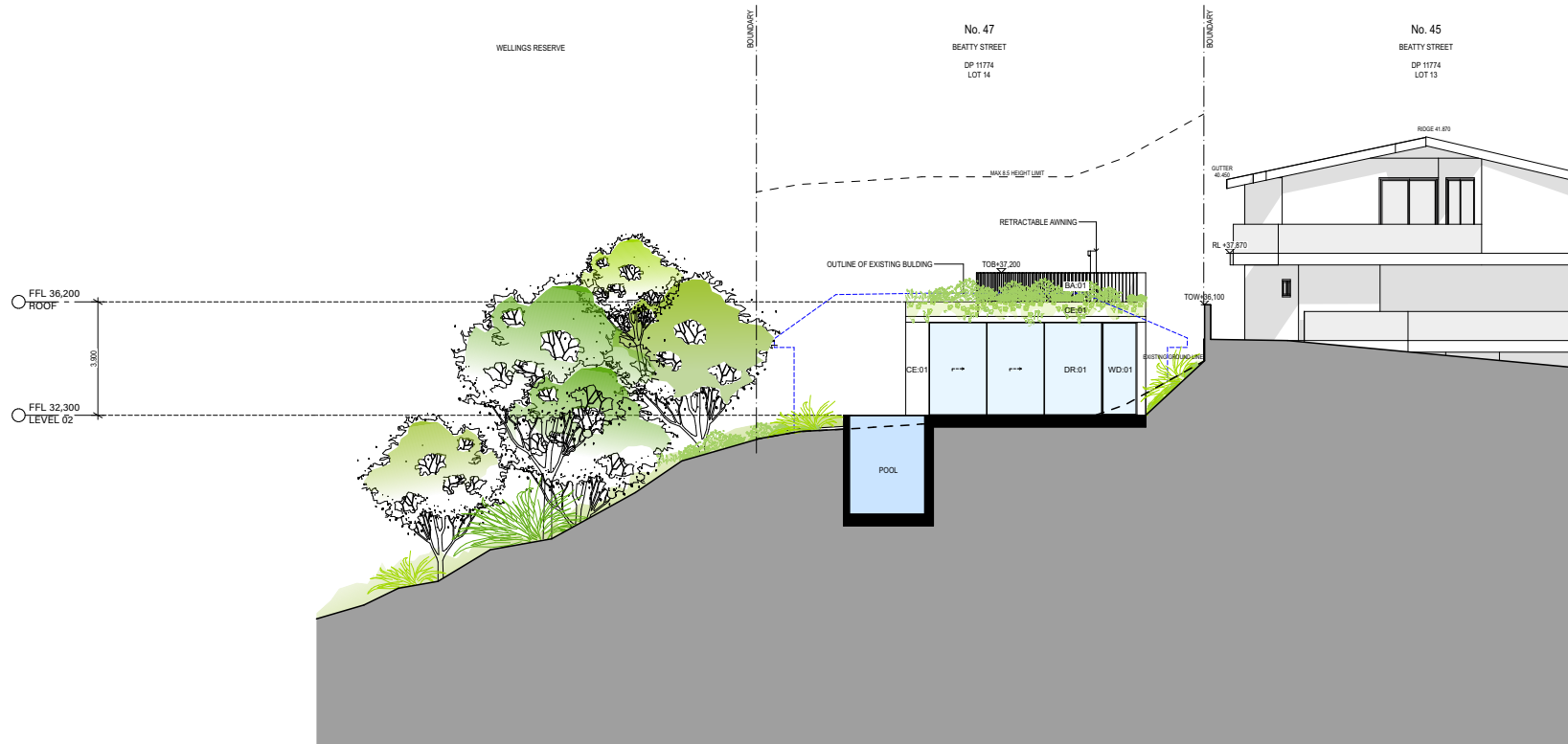
Drawing No.
A3103

Drawing Scale
**1:100@A2
1:200@A4**

REV DESCRIPTION APPLICATION DATE
DA01 DEVELOPMENT APPLICATION 25.05.22
DA02 DEVELOPMENT APPLICATION 30.05.23

LEGEND
BA-01 Balustrade, aluminium flat bar, powdercoated Dulux Black Ace
BK-01 Austrial Masonry G8 Smooth, porcelain finish
CE-01 Concrete, off-form
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DR-02 Not used
DR-03 Pivot door, clear glass aluminium framed, powdercoated Dulux Black Ace

DR-04 Garage door, aluminium batton 30x30mm, powdercoated Dulux Black Ace
WD-01 Fixed window, clear glass aluminium framed, powdercoated Dulux Black Ace
--- To be demolished



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Project
**47 BEATTY STREET
BALGOWLAH HEIGHTS**

Project Start Date
-

Project Number
0158

Drawing Title
**ELEVATION
WEST**

Drawing Stage
DEVELOPMENT APPLICATION

Drawing No.
A3104

Drawing Scale
**1:100@A2
1:200@A4**

REV	DESCRIPTION	DATE
DA01	DEVELOPMENT APPLICATION	25.05.22
DA02	DEVELOPMENT APPLICATION	30.05.23

LEGEND

- BA-01 Balustrade, aluminium flat bar, powdercoated Dulux Black Ace
- BK-01 Austral Masonry GB Smooth, porcelain finish
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- DR-04 Garage door, aluminium batton 30x30mm, powdercoated Dulux Black Ace
- WD-01 Fixed window, clear glass aluminium framed, powdercoated Dulux Black Ace
- - - To be demolished

**(Amended) Clause 4.6 Variation Request to the
Floor Space Ratio Development Standard under
Clause 4.4 of Manly LEP 2013**

Construction of New Dwelling and Swimming Pool

47 Beatty Street, Balgowlah Heights

Prepared by: Joe Vescio

Dated: 26 June, 2023

1 Introduction

1.1 Background

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) and generally comprises:

- Demolition of the existing dwelling and structures, including driveway access and construction of a new dwelling with an integrated basement garage and storage area (utilising the slope of the land);
- Construction of spa pool and landscaping

The Proposal exceeds the 0.4:1 maximum Floor Space Ratio (FSR) development standard under cl4.4 of the MLEP 2013, exhibiting a FSR of 0.47:1.

Notwithstanding the contravention of the development standard, the proposal is consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out.

There are sufficient environmental planning grounds to justify the contravention in this instance including a lack of adverse amenity impacts and positive environmental, social and economic considerations as a result of the development.

In summary, these are:

- The slope of the land which can accommodate a basement level and terracing of the house;
- The siting of the new dwelling down the site, with sustainable and area appropriate excavation and compliant height of the new dwelling;
- The additional excavation of the site does not contribute to bulk and scale impacts of the development, external/discernable impacts are minimised;
- The view of the new dwelling from the northern reserve will appear as a two storey residence with swimming pool at the rear and planting is proposed around the building and within the setbacks to blend and transition the built form with landscaping to this interface. The proposal enables for protection and enhancement of planting for the reserve;
- The bulk and scale of the new dwelling is subordinate to the one direct side neighbour and provides for a reasonable transition between the large height and scale of residences immediately south of the site to the reserve to the north and therefore from any wider views of the site, including from the waterway to the

1 Introduction

east;

- The nature of the proposed variation – less than 20% and 50m² above the development standard for the site. This is not considered excessive in the context and as discussed in the SEE, the proposal is consistent with planning controls for view sharing, privacy protection, setbacks, landscaping and open space. The proposal provides an appropriate fit to the area and is sympathetically architecturally design to provide high amenity living, to take in significant harbour views, to respond to the heritage reserve and to respond to the site and adjoining homes;
- In this regard, the proposal is generally consistent with the balance of applicable scale and design controls and provides for a quality planning and design outcome.
- Manly DCP Section 4.1.3.1 provides for an exception to FSR for undersized lots. The minimum lot size for this site is 1150m². This subject site is only 627.4m². The proposal would comply with this provision.
- The proposal provides for sustainable development, BASIX consistency, consistency with scenic quality matters, water management control and provides for the reasonable redevelopment and residential upgrading of the site, with a new contemporary residence to contribute to the streetscape and adjoining reserve;

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the FSR development standard.

1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by ESS Architects, dated 26 May 2022.

This Variation Request should be read in conjunction with the detailed environmental planning assessments contained in the DA documentation submitted with the DA and documents appended thereto.

2 The Relevant LEP Provisions

2.1 Manly Local Environmental Plan 2013

2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of the LEP provide that the entire Site is zoned R2 Low Density Residential and the Land Use Table in Part 2 of the LEP specifies the objectives of this zone 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.*

The proposed land use is defined as a dwelling house which is permissible with development consent in the R2 Zone pursuant to the MLEP 2013.

The proposal has been designed to respect the prevailing character of terraced homes which are constructed to access views and respond to the topography.

The proposal has been designed to meet DCP merit-based design guidelines and to address comments made at pre-DA consultation stage. These matters are discussed in detail within the SEE.

The proposed house provides for a low-density outcome which provides for open space and landscaping, steps with the topography in a similar way to adjoining homes and provides a low form roof line which can accommodate sharing of water views. This design is consistent with the objectives of housing within the R2 zone.

2.1.2 Clause 4.4 – Floor Space Ratio (FSR)

Clause 4.4 of the MLEP 2013 sets out the FSR development standard as follows:

- (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.*

The Floor Space Ratio Map designates a maximum FSR of 0.4:1 for the Site (see Figure 1).

2 The Relevant LEP Provisions

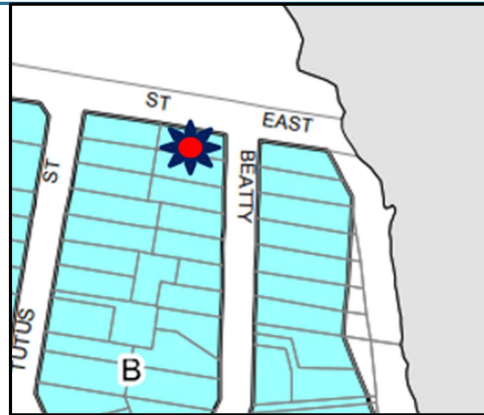


Figure 1: Extract of MLEP 2013 Map (FSR_004, "B" = 0.4:1)

The MLEP 2013 Dictionary contains the following definitions:

Floor Space Ratio Map means the Manly Local Environmental Plan 2013 Floor Space Ratio Map.

Gross floor area means:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a H of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement or an attic, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

The architectural plans provide a ratio/calculation of floor space in accordance with the above definition, to show how floor space is apportioned.

2 The Relevant LEP Provisions

2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause 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.*

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (“Initial Action”) (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard “*achieve better outcomes for and from development*”.

Accordingly, the remaining subclauses of cl4.6 provide the operable provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

Clause 4.6(2) provides that:

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

The FSR development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

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

The proposed development does not comply with the FSR development standard pursuant to cl4.4 of the MLEP 2013. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed in Section 5.2.1.

2 The Relevant LEP Provisions

The proposed dwelling house is consistent with the desired scale of the area, works with the site opportunities and constraints (including the slope) and allows reasonable protection of amenity, views, scale relationships and landscaping, in accordance with a range of the Council design and scale controls.

In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard. These grounds are detailed in Section 5.2.2.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (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.*

Sections 5.2 and 5.3 of this written request address the matters required under cl4.6(4)(a) of the LEP and Section 5.4 addresses cl4.6(4)(b).

Clause 4.6(5) provides that:

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

Section 5.5 of this written request addresses the matters required under cl4.6(5) of the LEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development and cl4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

3 The Nature of the Variation

Site area: 627.4m². Allowable GFA is 250.96m².

The proposed dwelling house has a gross floor area of 298m², equating to a maximum floor space ratio of **0.47:1**. This is a non-compliance of 47.04m² or 18.7% above the LEP standard.

The following figure outlines the GFA of each floor level - shaded yellow and the GFA summary for each level:

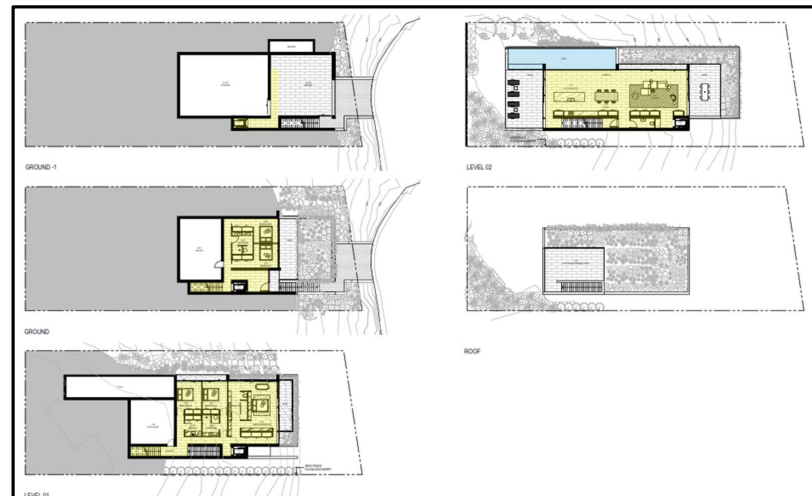


Figure 2: Extract of FSR drawing no. A2401 (Rev DA02- 30.5.23)

GFA AREA SUMMARY		
SITE AREA: 627M ²		
Levels	GFA	FSR
ROOF	0m ²	
LEVEL 2	118m ²	
LEVEL 1	107m ²	
GROUND	60m ²	
GROUND -1	13m ²	
TOTAL	298m²	0.47:1
LEP	300m²	

Figure 3: FSR summary for each floor level (Dwg A2401)

4 Case Law

4.1 Introduction

The proposed variation to the development standard has been considered in light of the evolving methodology and “tests” established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key Judgments in regard to variations under the former SEPP 1 and cl4.6 of the SILEP.

This request has been prepared having regard to various authorities on Clause 4.6, contained in the following guideline judgements including:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (‘Four2Five No. 1’)
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 (‘Four2Five No. 2’)
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 (‘Four2Five No. 3’)
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA
- *Abrams v Council of the City of Sydney* [2019] NSWLEC 1583

5 Assessment of the Variation

5.1 Step 1 - Is the planning control a development standard?

This question is the 1st 'test' in Winten. The FSR control in cl4.4 of the MLEP 2013 is a development standard, defined in Section 1.4 of the EP&A Act as follows:

“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:

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point.”

The development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted pursuant to cl4.6.

5.2 Step 2 – Pursuant to cl4.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?

5.2.1 Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case

To demonstrate that compliance with the floor space ratio development standard is unreasonable or unnecessary, this written request relies upon:

1. The 2nd 'test' in Winten and the 1st and 2nd 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and
2. The 4th 'way' in Wehbe - the development standard has been virtually abandoned or destroyed by the consent authority's own actions.

These aspects are discussed in the following paragraphs.

The underlying objectives or purpose of the standard

Clause 4.4(1) of the MLEP 2013 states the objectives of the FSR development standard 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*

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the public domain,

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

Objective (a) *is to ensure the bulk and scale of development is consistent with the existing and desired Streetscape.*

The proposed development on the subject site is fully height compliant and seeks approval of a variation for the floor area - less than 20% - on a site with significant slope. Clause 4.6 can be considered in the case of allowing some flexibility to resolve opportunities and constraints provided by sloping land, and where the proposal would not be unsympathetic with the direct setting, neighbouring buildings or the area character.

The design solution proposed in this case is to site the dwelling down the block, closer to the street level by excavating deeper into the site and moving the habitable areas to much lower levels on the site. The overall bulk and scale of the dwelling is therefore submitted to be less than other buildings which have developed higher on the sloping land along Beatty Street. The proposal seeks to nestle the building into the site, keeping the form low and allowing an outcome to maximise residential space as well as allowing the view sharing detailed in the Urbaine Visual Assessment Study. The view montages show that important water elements can be protected and available to key surrounding homes despite the proposed development. This is due to the compliant height, the excavation into the site, the slope of the land and the flat roof form roof which allows views over.

It is noted that Council has previously approved a number of large dwellings along Beatty Street, including the neighbouring site immediately south of the subject site – No. 45 Beatty Street. Therefore, in terms of consistency with the existing streetscape, Figure 4 below, an extract of Drawing No. A3103 of the DA plan set, shows the relative height and scale of No. 45 and the northern edge of No. 43 compared to the proposal. In each case the existing dwellings are considerably larger and are clearly relatively larger than the scale of the proposed dwelling. Therefore, the proposed scale would not be inconsistent nor overbearing in the direct context.

In relation to No. 45 which, as can be seen in the elevation below and the 3D models, is larger and higher, the proposed dwelling provides for a transition in height and scale and orientates living areas, windows and terraces away, being well spatially separated to avoid any overlooking. Reasonable side setback is proposed by the development along this site and the

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relative scale is not unreasonable. The planting proposed and the overall terraced and glazed design/impression provides a high quality architectural response to the area which is consistent with the desired area outcomes and is not considered to introduce excessive bulk.

The development presents as a three storey, stepped dwelling to Beatty Street that is connected to the street level, not elevated above it. From the rear and sides it reads as a one – two storey building. It is subordinate to the scale and proportions of residences immediately to the south of the site and connected to the reserve to the north, appearing as a modern two storey structure from the bushland (see Figure 6 below).

In this regard, the proposed scale and design are also considered to transition appropriately to the adjoining landscaped reserve area with planting along the side boundary and glazed stepped terrace areas facing this direction, reducing the appearance of building bulk and built form. The design allows an appropriate built form outcome whilst also providing reasonable and useable residential floor space and access to views/residential amenity for the building occupants.

Further to this, the proposed house does not have a residential home adjoining on the other side and the proposed house is well below the rear adjoining property and would therefore not create over-scaling or overlooking as the house is off-set and provides a flat and low roof form for looking over to share the available water views from up hill.

The extent of the additional scale/FSR is less than 20% of the standard and is not considered unreasonable in the context and given the merits. The form is excavated into the site to reduce external form and scale in accordance with the planning controls.

The additional GFA is less than 50m² above the development standard. Given the scale of development within the streetscape this is not discernable within the streetscape or locational context of the site. The setbacks, setting, excavation and design of the house was generally supported at pre-DA stage and a number of points to address have been considered and amended in the final design to address staff comments.

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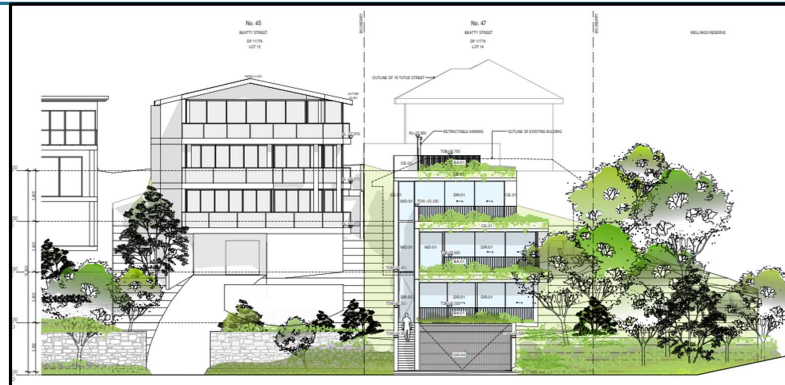


Figure 4: Beatty Street proposed streetscape and comparison of bulk & scale with neighbouring development (Dwg No. A3103)



Figure 5: Beatty Street streetscape (Dwg No. A8002)

Objective (b) is to control the density and bulk to ensure development does not obscure important landscape features.

The proposal includes the removal of the existing driveway from traversing part of the reserve to the north. This will provide for improvements to the bushland setting. The proposal does not obscure any existing important landscape features when viewed from the public domain.

As noted above, the two storey presentation to the bushland area, the additional boundary planting proposed, and the retention of significant trees on the adjoining site is provided and is appropriate to meet this objective.

Retention of the natural aspects of the road reserve area has been considered in the amended plans and the removal of encroaching undesirable driveway within the adjoining reserve has positive environmental impacts.

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Figure 6: Section plan looking from Beatty Street, showing height of new dwelling in comparison to reserve vegetation to the north and adjoining residence to the south - No. 45 Beatty Street (Dwg No. A3202)

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

The visual presentation to Beatty Street is modernised, similar to a number of redeveloped residential sites along the street and within this section of Balgowlah Heights and the Reef Bay foreshore area. (see Figure 5 above). The proposal does not seek to intrude into the streetscape, rather retaining a subordinate scale when compared with other residential development to the south. The front setback was essentially supported at pre-DA as it is consistent with buildings in the direct locality.

From a landscape perspective the proposal removes the driveway from Wellings Reserve to the north and replaces the existing domestic landscaping with new appropriate domestic plantings. When viewed from Beatty Street the new dwelling sits well into the slope of the land with the northern reserve vegetation able to be re-established as part of the reserve (See Figure 6 below). The impacts on the landform including rock outcrop and landscape on the road reserve has also been considered by reducing the width of the garage opening and driveway.

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Objective (d) is to minimise adverse environmental impacts on the use or enjoyment of adjoining land.

The proposal has been designed to take into account the height, scale and location of adjoining external wall openings and views of No. 45 Beatty (refer to the open space dwellings that identify the POS and solar access areas of the two properties – Dwg No. A2701). The privacy and amenity of adjoining residents has been addressed and is satisfactory.

A detailed assessment of privacy is provided in the SEE. The design incorporates sensitive layouts of areas, separation distance and fixed and landscaped screening measures to ensure mutual privacy protection and residential separation between the proposed house and the side and rear adjoining homes.

Privacy and view protection is provided in accordance with DCP controls.

The *Urbaine Design Group* visual/view study provides the following 3D models to show the views over the proposed building.

Most of the floor space is subterranean, a conscious consideration in the design to reduce the apparent form protruding above natural ground level to reduce amenity impacts on neighbours. None of the additional floor space is considered to be a catalyst for any external impacts.

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Viewpoint no.2: Existing site photo.
No.18, Tutus Street.
RL +39.32 From upper level balcony – 1m inside balcony, balustrade. Looking east-southeast over subject site.
Distance to site boundary: 6.2m. Distance to proposed buildings: 26.8m.



Viewpoint no.2: Photomontage of new proposal

No. 18 Tutus Street, view modelling



Viewpoint no.4: Existing site photo.
No.18, Tutus Street
RL +37.33 From mid-level balcony – 1m inside the balcony balustrade. Looking east-southeast over subject site.
Distance to site boundary: 2.5m. Distance to proposed buildings: 22.4m



No. 18 Tutus Street

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Viewpoint no.26: Existing site photo.
No.45, Beatty Street
RL +39.5 From balcony at second floor. Looking east-northeast over subject site.
Distance to site boundary: 1.58m. Distance to proposed buildings: 36.4m.



Viewpoint no.26: Photomontage of new proposal.

No. 45 Beatty Street

As demonstrated in the shadow diagrams, the proposal, being located directly north of No. 45 Beatty, does result in some minor impacts of POS areas of No. 45 Beatty, noting that those areas were constructed with north facing cross-boundary aspects. Any redevelopment of the subject site was likely to impact on parts of those spaces. The siting of the new dwelling has minimised impacts by development lower down the site with compliant height and more excavation. The design seeks to reduce the amount of overshadowing that could have been cast upon No. 45 Beatty and remained reasonable and in line with planning guidelines.

Importantly the public positive benefit of the development is the removal of the private driveway from within the reserve area and the opportunity to increase the effective landscape and use of the area for the public use.

Objective (e) relates to the viability of business zones and does not apply to this development.

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5.2.2 Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard

As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are “sufficient environmental planning grounds” such that compliance with the development standard is unreasonable or unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply to a similar development on any other land.

The site-specific environmental planning grounds that support the proposed variation to the floor space ratio development standard in this circumstance are:

- The slope of the land which can accommodate a basement level and terracing of the house;
- The siting of the new dwelling down the site, with sustainable and area appropriate excavation and compliant height of the new dwelling;
- The additional excavation of the site does not contribute to bulk and scale impacts of the development, external/discernable impacts are minimised;
- The view of the new dwelling from the northern reserve will appear as a two storey residence with swimming pool at the rear and planting is proposed around the building and within the setbacks to blend and transition the built form with landscaping to this interface. The proposal protects planting for the reserve;
- The bulk and scale of the new dwelling is subordinate to the one direct side neighbour and provides for a reasonable transition between the large height and scale of residences immediately south of the site to the reserve to the north and therefore from any wider views of the site, including from the waterway to the east;
- The nature of the proposed variation – less than 20% and only 20m² above the development standard for the site. This is not considered excessive in the context and as discussed in the SEE, the proposal is consistent with planning controls for view sharing, privacy protection, setbacks, landscaping and open space. The proposal provides an appropriate fit to the area and is sympathetically architecturally design to provide high amenity living, to take in beautiful views, to respond to the heritage reserve and to respond to the site and adjoining homes;

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- In this regard, the proposal is generally consistent with the balance of applicable scale and design controls and provides for a quality planning and design outcome.
- Manly DCP Section 4.1.3.1 provides for an exception to FSR for undersized lots. The minimum lot size for this site is 1150m². This subject site is 627.4m². The proposal would comply with this provision.
- The proposal provides for sustainable development, BASIX consistency, consistency with scenic quality matters, water management control and provides for the reasonable redevelopment and residential upgrading of the site, with a new contemporary residence to contribute to the streetscape and adjoining reserve;
- The utilisation of the site slope which creates the opportunity for consequential absorption of additional volume and floor space which is ultimately concealed, importantly allows for parking and access to be removed from the reserve and the natural attributes of the reserve augmented with additional planting by removal of the existing driveway.
- Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.
- As outlined in Section 5.2.1, there is considered to be a lack of adverse amenity impacts arising from the proposal as it will not result in adverse overshadowing, overlooking or unreasonable loss of views to adjoining properties.
- The additional floor space is subterranean and is not apparent and does not manifest itself in any external impacts. The proposal makes efficient use of the topography and internalized opportunities and results in a building with significantly lesser impacts than a compliant building erected above the existing natural ground.

5.3 Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone?

As outlined in Section 5.2.1, the proposal achieves and is therefore consistent with the relevant objectives of the floor space ratio development standard.

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However, the consent authority must also be satisfied that the development will be consistent with the objectives of the R2 Low Density Residential Zone which are expressed in the Land Use Table to cl2.3 of the LEP 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.*

The proposal is consistent with the objectives of the R2 Zone for the following reasons:

First objective is to provide for the housing needs of the community within a low-density residential environment.

The proposal is the construction of a new single detached dwelling. The resultant dwelling retains the low-density residential environmental and the objective is achieved. It is well accepted from a town planning perspective that a FSR up to 0.55:1 is deemed low density residential (*Technical Bulletin 3 - Planning Control of Residential Development*, November 1972).

Second objective is to enable other landuses that provide facilities or services to meet the day to day needs of residents.

This objective is not relevant to this proposal.

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the FSR development standard under the MLEP 2013 and the objectives of the R2 Low Density Residential Zone under the MLEP 2013.

5.4 Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the SILEP or SEPP 1 subject to certain conditions.

As MLEP 2013 adopts cl4.6 of the SILEP and the conditions of the Notice are not relevant in this instance, the consent authority for the Proposal may assume concurrence in respect of the variation requested to the FSR development standard under the LEP.

In addition, the Court has power to grant development consent to the proposed development even though it contravenes the FSR development standard, without

5 Assessment of the Variation

obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

5.5 Step 5 - Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

Furthermore, in Initial Action, Preston CJ clarified that, notwithstanding the Court's powers under s39(6) of the Court Act, the Court should still consider the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

Accordingly, the proposed contravention of the FSR development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of state or regional significance as it is peculiar to the design of the proposed development for this particular site;
- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. Accordingly, there would be no significant public benefit in maintaining the development standard in this instance; and
- It is considered that there are no other matters of relevance that need to be taken into consideration by the Court.

6 Conclusion

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.4 of the MLEP 2013 and is consistent with the relevant objectives of the R2 Low Density Residential Zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed dwelling will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties will be preserved and adverse impacts on the amenity of the locality will be minimised to a reasonable level.
- In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the FSR development standard including a lack of adverse environmental amenity impacts. The proposal is consistent in scale and design with surrounding homes and the character desired by the planning controls. The architectural design is responsive to the slope of the site, to blending scale transition and landscaping with the adjoining bushland reserve and has been designed with a roof form to promote water view sharing. The floor plan, location of balconies and terraces and setbacks has been designed to ensure mutual privacy protection. Reasonable solar access sharing is provided for this context in consistency with planning controls.
- With these matters considered, the environmental planning outcome is consistent with Clause 4.6 tests, the range of overarching planning objectives and controls and the development provides a desirable environmental planning outcome both for the subject site as well as the local and Manly context.

Accordingly, this written request can be relied upon by the consent authority in accordance with cl4.6(4) of the LEP.

The consent authority can assume the concurrence of the Secretary pursuant to the Notice issued on 21 February 2018. Alternatively, the Court can use its powers under s39(6) of the Court Act and be satisfied that contravention of the development standard doesn't raise any matter of significance for State or regional environmental planning, there is no

6 Conclusion

public benefit of maintaining the development standard and there are no other relevant matters required to be taken into consideration.

Accordingly, the consent authority can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.

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26.06.2023