



northern
beaches
council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 26 JULY 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 26 July 2023
via teleconference
Commencing at 10:00 AM**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 28 June 2023	3
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	5
3.1	REV2023/0009 - 9A Amiens Road CLONTARF - Review of Determination of Application DA2022/0663 for Demolition works and construction of a dwelling house including swimming pool	5
3.2	DA2022/1471 - 8B Beatty Street BALGOWLAH HEIGHTS - Alterations and additions to a dwelling house including a swimming pool and spa	97
3.3	DA2022/2021 - 108 Anzac Avenue COLLAROY - Demolition of an existing dwelling and the construction of a new dwelling with swimming pool	205
3.4	DA2023/0706 - 19 Harvey Street SEAFORTH - Alterations and additions to a dwelling house	243
3.5	DA2023/0186 - 42 White Street BALGOWLAH - Demolition works, subdivision of one lot into two and construction of one dwelling house on each allotment.....	283
3.6	DA2023/0451 - 6 Greenwood Avenue NARRAWEENA - Demolition works and construction of a dwelling house including a secondary dwelling and swimming pool.....	329
3.7	Mod2023/0241 - 123 Victor Road DEE WHY - Modification of Development Consent DA2022/1553 granted for alterations and additions to a dwelling house including a swimming pool	372

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 28 JUNE 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 28 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 **REV2023/0009 - 9A AMIENS ROAD CLONTARF - REVIEW OF DETERMINATION OF APPLICATION DA2022/0663 FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL**

REPORTING MANAGER **Steve Findlay**

TRIM FILE REF **2023/442662**

ATTACHMENTS **1** [↓](#) **Assessment Report**
 2 [↓](#) **Site Plan and Elevations**
 3 [↓](#) **Clause 4.6 - BHS**
 4 [↓](#) **Clause 4.6 - FSR**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
 - B. THAT Council as the consent authority **approves** Development Consent to REV2023/0009 for Review of Determination of Application DA2022/0663 for demolition works and construction of a dwelling house including swimming pool on land at Lot 222 DP 737476, 9A Amiens Road CLONTARF, subject to the conditions set out in the Assessment Report.
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REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0009
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 222 DP 737476, 9 A Amiens Road CLONTARF NSW 2093
Proposed Development:	Review of Determination of Application DA2022/0663 for Demolition works and construction of a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Nicolene Wessels
Applicant:	Nicolene Wessels
Application Lodged:	28/04/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	08/05/2023 to 22/05/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 13.4% 4.4 Floor space ratio: 11.6%
Recommendation:	Approval
Estimated Cost of Works:	\$ 6,370,000.00

EXECUTIVE SUMMARY

This application seeks a review of determination of Development Application DA2022/0663 which was determined by DDP by way of refusal on 8 February 2023.

The application is referred to the Development Determination Panel (DDP) as any Review of Determination under Section 8.2 for a development previously determined by a Manager is required to be determined by the DDP.

DA2022/0663 was refused for the following reasons:

1. Floor space

The gross floor area of the development has not been calculated in accordance with the definition of Gross Floor Area as defined within the Manly Local Environmental Plan 2013, contrary to the considerations of Clause 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979.

2. Public interest

Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not within the public's interest.

Under this review application, plans have been amended to reduce the size of the basement, reduce some floor area and provide greater setbacks to the southern boundary. In addition to this, the floor space ratio has been measured in accordance with the definition under the Manly LEP as in the previous application, the applicant did not measure the whole of the visitor car parking space.

A condition is also imposed to require a greater landscaped setback to the reserve, with a requirement for the minimum southern setback to be 2m.

This proposal, for demolition work and construction of a dwelling house, basement area and swimming pool is also referred to the *Development Determination Panel* (DDP) due to the proposal seeking consent for a height variation of 13.4% (1.14m) above the 8.5m building height for the existing (excavated) ground line. Additionally, the proposal seeks a variation of 11.9% (or 43.6sqm) to the Floor Space Ratio (FSR) development standard applicable to the site. Under the circumstances, both variations are considered reasonable given the existing excavation line that affects the height measurement and effective distribution of floor space to provide a design that is appropriate for the site.

One (1) submission raised concerns including view impacts and construction impacts. An assessment in accordance with the Land and Environment Court established planning principle for views has found the proposal provides for reasonable view sharing, and a number of conditions have been imposed to mitigate construction impacts.

This report concludes with a recommendation that the DDP should alter its original decision and grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

This Review Application is for the review of determination of Development Application No. DA2022/0663 which sought consent for demolition of the existing site structures and construction of a new dwelling with ancillary site works.

The proposed amendments under this application include the following:

- Reduction in floor space at ground level and level 1
- Reduction to basement level to allow for 2 residential spaces and 1 visitor car space, vehicle turning space, plant rooms and storage
- Increased setbacks to the reserve

In summary, the Review Application has addressed the reasons for refusal of DA2022/0663 as detailed below:

1. Floor Space

The gross floor area of the development has not been calculated in accordance with the definition of Gross Floor Area as defined within the Manly Local Environmental Plan 2013, contrary to the considerations of Clause 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979.

Particulars:

- i. There are areas within the basement that have been excluded from the gross floor area calculation, which, when considered against the definition of Gross Floor Area, must be included. As such, the floor space ratio is understated.*
- ii. As the development relies upon a written Clause 4.6 objection and the objection refers to an incorrect FSR, the written Clause 4.6 objection is not well founded.*
- iii. The sufficient environmental planning grounds are inadequate as they understate the minor nature of the breach and rely on the 'superior architectural design', which is contrary to the design outcomes envisaged by the C3 zone objectives.*
- iv. The proposed development is considered to be of a significant bulk and scale which does not accord with the matters for consideration prescribed by Clause 6.9 of the Manly LEP 2014, particularly that the bulk and scale of the development will impact the visual amenity of the harbour and coastal foreshore. In addition to this, the visual bulk of the dwelling is contrary to the considerations of Clause 6.28 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.*
- v. The breach in floor space is considered to contribute to the breach of building height, noting that the written Clause 4.6 objection in relation to building height asserts that the 'superior architectural design' as a primary reason for variation, whereas a more skillful design could be achieved where both compliant FSR and building height is achieved.*

Comment:

The Gross Floor Area under this review application has been calculated in accordance with the definition under the MLEP 2013.

The basement plan has been amended so that the gross floor area to be included is limited to an additional 'visitor' car parking space that is in excess of the parking required under the Manly DCP. As further discussed under the FSR section of this report, a visitor car parking space is an appropriate addition to the site, given the characteristics of the lot including the distance from on-street parking due to it being a battle-axe style allotment.

A condition is imposed to require a continuous 2m setback along the southern boundary. The proposal has also reduced the Gross Floor area at Level 1 by providing an additional 600mm setback to the southern boundary.

An updated Clause 4.6 application for FSR has been provided and is supported for the reasons provided in this report.

2. Public Interest

Particulars:

- i. The failure to accurately calculate the gross floor area and that additional FSR contributing to the height breach, is such that approval of the developments bulk and scale is not within the public's interest, given its C3 zoning and foreshore interface.*

Comment:

Gross floor area has been accurately calculated under this application, with the inclusion of the extra parking space (more than what is required by the MDCP) in the basement.

The plans under this review application have provided greater setbacks (as outlined above), and this reduces the overall bulk and scale of the proposed dwelling. A condition is also imposed to require a greater landscaped setback at the south, adjacent to the foreshore.

The variation to Building Height and Floor Space Ratio is supported for the reasons outlined in this report.

As such, the proposed bulk and scale is appropriate and is not inconsistent with the public interest.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 222 DP 737476 , 9 A Amiens Road CLONTARF NSW
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	2093
Detailed Site Description:	The site is irregularly shaped, with an 83.23 metres (m) long x 1.595m wide battle-axe handle extending to Amiens Road, a maximum width of 49.835m, a maximum depth of 38.675m and a total area of 941.1 square metres (sqm). The site adjoins a public reserve, the Duke of Edinburgh Reserve, to the south which then adjoins the waterway. The bulk of the site is situated approximately 18m below the level of the street and experiences a fall of approximately 5m below the footprint of the existing dwelling from the driveway at the base of the battle-axe handle towards the south and west. The subject site is currently occupied by a large two storey rendered brick residence with tiled pitched roof and a swimming pool. The site gains access via an existing driveway on adjoining land, which is protected by right of carriageways. The site is also burdened by a driveway and associated right of carriageway that benefits the adjoining property to the north (9B Amiens Rd). Development adjoining the property comprises large residential dwellings. The subject site is located on a headland/point known as Clontarf Point. Dwellings to the north of the property are primarily oriented with an outlook towards the west. The subject site and proposed dwelling is primarily oriented towards the south-west, to take advantage of the available views across Middle Harbour. The site is identified as being bushfire prone.

Map:



SITE HISTORY

Development Consent No.5546/92 for a spa and privacy screen was approved by Council on 28.1.1993.

Development Consent No.38858/90 for construction of a boundary wall was approved by Council on 7.1.1991.

Development Consent No.3428/89 for a pool and surrounds was approved by Council in 1989.

Pre-lodgement Meeting No.PLM2021/0343 was held with Council on 8.2.2022 for the construction of a dwelling house. Concluding remarks of the PLM were:

"Overall, the proposal is considered sophisticated and sensitive to its surrounding landscape. However, many of the minor breaches discussed above need to either be resolved or demonstrated as positively contributing toward the objectives of the controls, as this is indeed a highly sensitive site. Of critical importance is the retention of views in the Foreshore Scenic Protection Area"

Comment: Refinements and additional view analysis and minor changes were made to the plans in response to the PLM advice.

DA2022/0063

A report recommending approval was referred to the Development Determination Panel on 8 February 2022. The panel determined the application by way of Refusal on this date. This application seeks a review on that determination.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 8 February 2023 and the notice of determination was issued on 14 February 2023. The review was lodged on 22 April 2022 and is to be considered by **DDP** on 26 July 2023, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended

land use remains the same. Therefore, it is concluded that the amended scheme is substantially the same as the original proposal.

Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The applicant has provided an expert Bushfire Consultant report to address *Planning for Bushfire Protection 2019* requirements with recommendations which address Section 1.14 of the Environmental Planning and Assessment Act 1979. (See condition 1 reference that recommendations will be satisfied as part of the approval plans and documentation)

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 08/05/2023 to 22/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr David Jeremy Harrold	11 Amiens Road CLONTARF NSW 2093

The above issues are addressed as follows:

- **Impact on views**

A submission raises concerns that the proposal will impact on views and requests height poles to be erected.

Comment:

An assessment of view sharing in this report has been made in accordance with the Land and Environment Court established planning principle for views. This assessment concludes view sharing is reasonable.

It can be determined from the information provided that there will be some impact to harbour views over the existing hedge and existing dwelling. However, it can also be determined that there will be no impact to the land water interface at the opposite side of the harbour, and that view corridors to the side of the site will be maintained toward the harbour. As such, height poles are not necessary to ascertain the extent of impact.

- **Impact to right of way during construction**

The submissions raised concerns that hedging will be removed, and that the sandstone wall belonging to 11 Amiens Road could be impacted.

Comment:

A condition requires a Dilapidation Report to be provided prior to Construction. A further condition is imposed to require the right of way to be reinstated to its pre-construction form, prior to the issue of an Occupation Certificate.

A condition also requires the provision of a Construction Traffic Management Plan. This plan includes a requirement to show proposed protection of the right of way and adjoining properties, and also requires certification from a structural engineer for any excavation adjacent to adjoining properties.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is supported with regard to landscape issues. <u>Additional Information Comment 29/06/23:</u> As stated in the bushfire letter by Bushfire Hazard Solutions dated 18/03/23 "We are satisfied that the Landscape Plan for 9A Amiens Road, Clontarf prepared by Sitedesign + Studios, drawing 1412 revision F, dated 17.02.2023 can satisfy recommendations 1 & 3 of the Bushfire Assessment Report prepared by Building Code & Bushfire Hazard Solutions, Report No. 220486, Dated 30th March 2022". Landscape Referral mainly supports the landscape proposal; however, in order to help satisfy the the MDCP and MLEP controls a continuous 2 metre wide vegetated buffer shall run for the entirety of the southern boundary. The <i>Acmena smithii</i> 'Minor' (or species with the same mature height) shall extend for the full width of the pool. The pool fence must be located as to not hinder the mature height potential of the buffer planting, and installed in accordance with the Australian Standards; the 2 metre width will allow this. As previously conditioned 2-3 metre high buffer planting shall be installed along the entirety of the southern boundary, which is supported by the bushfire specialist as the proposed Landscape Plan (drawing L-01) already shows this. The proposed <i>Acmena smithii</i> 'Minor' has a mature height of 2-3m as shown on drawing L-05. Finally, it shall be noted the 2 metre wide buffer is most important adjacent to the pool as this is the highest area above natural ground in the adjacent public reserve. A wall or wall like symbol is shown on the Landscape Plan along the southern boundary, and to avoid confusion the comment to remove this wall remains. <u>Original Comment:</u> <i>The Arboricultural Statement (dated 15/04/22) indicates that all trees within the property boundary are exempt and as such they can be managed or removed without consent. Three trees 5, 12, and 16, located outside the property boundaries, will not be impacted by the works as outlined in the Arboricultural Statement. All trees shown to be retained, and all neighbouring trees shall be protected during works, subject to the imposed conditions.</i>

Internal Referral Body	Comments
	<i>The proposed ground floor level RL16.80 is consistent with the level of the pool area, and as such the proposed pool will sit approximately 2 metres or higher above the existing surrounding ground levels. Although a landscaped buffer of 1 metre between the boundary and the pool is provided, the 1 metre provision is not sufficient to allow for the establishment of significant screen planting to mitigate the height of the pool. Furthermore, the location of the pool fence will limit the height of planting available to screen the pool structure in this area. The 2 metre wide vegetated buffer provided to the east allows for substantial screen planting to be installed and this width shall continue for the entire length of the southern boundary. Amended Plans shall be submitted prior to issuing a Construction Certificate showing the 2 metre wide landscaped buffer along the entirety of the southern boundary. The relationship with the southern boundary and the adjoining public reserve requires sensitive treatment to satisfy the MDCP and MLEP controls.</i> <i>All on slab landscaping shall meet Council's minimum soil depth requirements, and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent.</i> <i>Existing physical encroachment within Clontarf Reserve is noted, including gardens, and lawn area, as shown on the Survey Plan. No prior application nor approval to encroach upon public land is found and any approval of this development application does not grant approval for the existing encroachments. Council reserves the future right to seek removal of any encroachment for public safety or for any other public capital works.</i>
NECC (Bushland and Biodiversity)	The proposal seeks approval for Demolition works and construction of a dwelling house including swimming pool. The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Development within the coastal environment • Manly LEP - Clause 6.5 Terrestrial Biodiversity An arboricultural impact assessment has been submitted with the application indicating that no prescribed trees are located within the subject site and native trees found outside of the property boundary will not be impacted by the proposed development. The bushfire report submitted with the application has confirmed that the Asset protection zones required for compliance with PBP 2019 will all be contained within the site, with no need to remove additional vegetation. Lastly, the provided landscape plan is compliant with applicable

Internal Referral Body	Comments
	controls and the removal of Weeds identified on the property during the ecological surveys will be conditioned.
NECC (Coast and Catchments)	This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; • Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.12); and • Relevant LEP and DCP clauses. The application meets the requirements of the relevant Environmental Planning Instruments and policies. It is noted that sections 2.10 & 2.11 of the SEPP (Resilience and Hazards) 2021 do not apply as the site is located within the Foreshore and Waterways Area. The application is supported provided that the referral comments from Landscape and Parks & Reserves are addressed in relation to MLEP 6.9 Foreshore Scenic Protection Area. This will also ensure that the SEPP (Biodiversity and Conservation) 2021 relating to foreshore and waterways scenic quality has been appropriately considered. All proposed development is retained within the property boundary and as such is unlikely to impact on foreshore access and / or adjacent wetland protected areas. No additional conditions are recommended beyond those that have already been applied to DA2022/0663. No further coastal planning or development controls relevant to subject development were identified.
NECC (Development Engineering)	No objections to approval subject to conditions as recommended.
NECC (Water Management)	Supported This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses. The revisions do not raise any new water management concerns. Water Quality The proposed stormwater system integrates an online rainwater tank. Subject to installing a filtration device, such as a sediment control pit or absorption trench, to capture organic matter and coarse sediments prior to discharge of stormwater from the land, the proposal will

Internal Referral Body	Comments
	address water quality requirements. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance. Dewatering Tailwater (surface water, rainwater, minor seepage): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A Council dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater. Sediment management An erosion and sediment control plan has been provided. Due to the sensitivity of the adjoining environment, it is imperative that this plan is fully implemented to ensure environmental protection during construction. Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.
Parks, reserves, beaches, foreshore	The property adjoins Clontarf Reserve downslope. A vegetated buffer between the proposed pool/dwelling and the public reserve is required to satisfy MLEP. It is noted this matter has been addressed by Landscape Referral and as such no further concerns are raised. Existing encroachments are noted, which are not supported, and Council reserves the future right to seek removal of any encroachment for public safety or any other public's capital works. No physical encroachments over the site boundaries are permitted as part of this proposal, 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.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject property is within proximity to a heritage item: Item 11 Harbour Foreshores - Municipal Boundary adjacent to the harbour
	Details of heritage items affected
	Statement of Significance: Natural landscape type - Aesthetic. Physical Description: Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.
	Other relevant heritage listings

Internal Referral Body	Comments		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
The proposal seeks consent for the demolition of the existing dwelling and construction of a new dwelling, including a basement car park level. This application seeks a review after the refusal of the previous proposal on the site. The heritage item is located to the south and south west of the subject property. Given the setback between the proposal and the heritage item, and the reserve in between, the proposal is considered to not impact upon the heritage item or its significance. Therefore Heritage raises no objections and requires no conditions. Consider against the provisions of CL5.10 of MLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No			

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported with conditions. The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for included work near powerlines and cables. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Supported with conditions. The proposal was referred to Aboriginal Heritage Office (AHO) who provided a response stating that the proposal is acceptable subject to conditions to ensure if any items of aboriginal significance are uncovered during works then appropriate notification and actions are undertaken. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1295361S).

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

Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	50	91

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Biodiversity and Conservation) 2021

(previously under SEPP 71 and Sydney Harbour Regional Environmental Plan)

This assessment accepts and concurs with the assessment made under the Development application which follows:

Chapter 10 the SEPP (Biodiversity and Conservation) 2021 (addresses the Sydney Harbour Catchment)

Comment:

The proposal is consistent with Part 10.1 and Part 10.2 of the Act including the Aims and Planning principles for development control in proximity to the foreshore area.

Part 10.3 of the SEPP (Biodiversity and Conservation) 2021 addresses development in the proximity of foreshore area.

10.23 Foreshore and waterways scenic quality

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows—

(a) the scale, form, design and siting of any building should be based on an analysis of—

(i) the land on which it is to be erected, and

(ii) the adjoining land, and

(iii) the likely future character of the locality,

(b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,

(c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.

Comment:

The proposal is consistent with the pattern and scale of surrounding development and does not seek to encroach on public land (i.e access points, clearing, excavation or other)

10.24 Maintenance, protection and enhancement of views

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows—

(a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,

(b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,

(c) the cumulative impact of development on views should be minimised.

Comment:

The height and scale of the building does not cause unreasonable view impacts for properties overlooking the site and the position of the building is consistent with the pattern of adjacent development. The proposal does not obstruct views of landmarks and glazed areas are shaded by wide eaves to minimise solar reflection and for the most part are south or south westerly, which reduces opportunity for direct solar reflection across the open water of Middle Harbour.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed under DA	Proposed	% Variation	Complies
Height of Buildings	8.5m	6.7m-9.64m	6.7m-9.64m	13.4%	No (see comments)
Floor Space Ratio Site area: 941.1sqm	FSR: 0.4:1 (376.3sqm)	FSR:0.447:1 421sqm (as per Assessment Report) 423sqm (with whole third car parking space included in measurement)	FSR: 0.446:1 419.9sqm	11.6%	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes

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

Detailed Assessment

4.6 Exceptions to development standards

There is no proposed change to the height of the building under this Review application. The Clause 4.6 application provides the same arguments for variation as the original DA assessment. As such, this assessment adopts the previous assessment under DA2022/0663 which follows:

(i) HEIGHT OF BUILDINGS - Clause 4.6 Variation

Description of Non-compliance

Development standard:	Building Height
Requirement:	8.5m
Proposed:	9.64m
Percentage variation to requirement:	13.4%

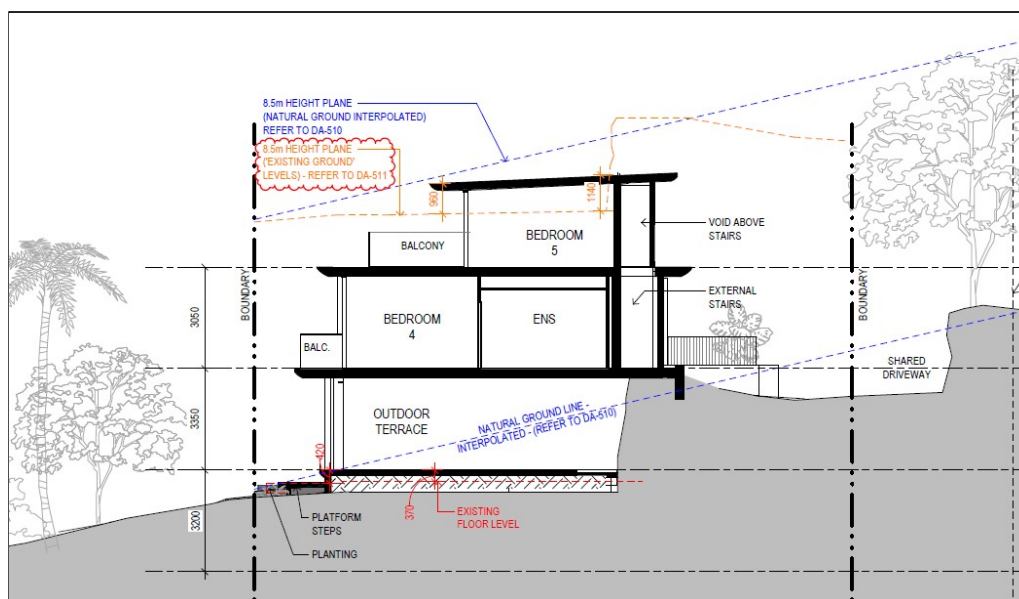


Image: Height line to extrapolated (blue line) and non-compliance with the (excavated) existing ground level line at 8.5m height (red line).

The maximum breach occurs at the Level 2 roof area, over Bedroom 5.

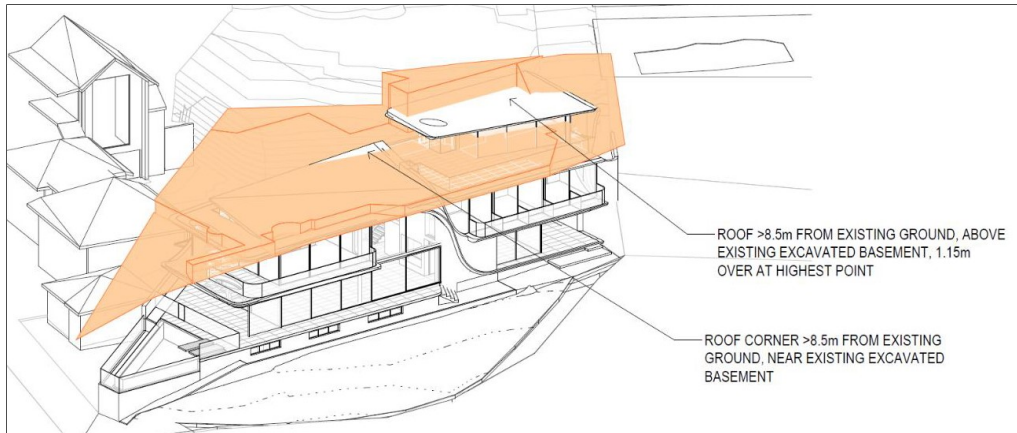


Image: Height plane (8.5m) pursuant to existing ground (excavated) ground level. Note that the the roof form over Level 1 at the lower level also marginally extends beyond the 8.5m height plane, with a maximum height of approximately 8.75m, representing a variation of 0.25m or 3%.

Assessment of request to vary a development standard

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

Clause 4.6 Exceptions to development standards

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

Clause 4.6 (4)(a)(i) (Justification) Assessment

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has been provided seeking an exception under Clause 4.6.

In summary, the Applicant's written request is considered below within this report, and the applicant 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.*

Applicants Written Request

The applicants written request argues, in part:

- *"The non-compliance arises as a consequence of existing excavation on the lower ground floor. The proposed development is limited to a maximum of two storeys in height and appears as a one and two storey dwelling that is stepped down the slope of the land. When measured from the perimeter of the building, the development is wholly maintained below the building height plane and will not appear to be inconsistent or non-compliant with the height prescribed.*
- *The proposed new dwelling is located at a distance in excess of 90m from Amiens Road, more than 18m below the level of the street, and is screened by adjoining upslope dwellings. As such, the proposed height non-compliance will not result in any adverse impact upon the streetscape.*
- *When seen from the waterway, the proposal is highly articulated, appearing as a two storey dwelling that steps up the slope of the land.*
- *The height of the proposed development is entirely commensurate with that of surrounding dwelling houses, the majority of which have three storeys presenting to the waterway. The proposed development has been sensitively designed to respond to the topography of the land and the availability of views over the existing roof form. The application is supported by a detailed view analysis in relation to the potential impact upon views from 7, 9 and 11 Amiens Road."*

Consideration and Comment

The applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, in that the new dwelling would otherwise comply with the height plane were it not for the existing excavated garage area. Mainly DCP controls allow for appropriate design responses to be achieved in managing variations to building height. This includes exceptions and objectives for steep sites, particular lot size areas and environmental considerations. The applicant has provided detailed analysis of the design response and including acknowledgement of the anomaly in height lines from excavated sections of the site. Overall the non-compliance does not create unreasonable intrusion on views, solar access or the amenity of the surrounding urban or natural environment. The variation therefore satisfies cls 1.3 (c) and (g) of the EPA Act.

The distribution of building height, changes in wall planes and ancillary elements that are in an elevated position (terraces / awnings) does not raise unreasonable impacts of privacy (acoustic or visual) or

overshadowing to surrounding land, including the public domain.

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

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

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the *Height of Buildings* development standard and the objectives of the C3 *Environmental Management Zone*. An assessment against these objectives is provided below.

Objectives of Development Standards

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

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

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

Comment:

The proposal maintains a similar visible exposure to the topographic landscape as surrounding development due to the backdrop of the site rising toward Amiens Road. The site has a steep public reserve in front of the site and there partly screened by the existing tree canopy. The building is consistent with the prevailing building height of surrounding dwellings and when measure from the unexcavated ground level the building would otherwise be compliant with the height of building control. The dwelling is not readily visible from Amiens Road however from the public waterway the building sits across the site similar to the existing dwelling. The contemporary new dwelling design steps up the slope with a low profile roof form to respond to the prevailing building height.

b) to control the bulk and scale of buildings,

Comment:

The elements of the building that protrude above the height plane do not create unreasonable impacts of bulk and scale due to the anomaly of the vertical excavation line and the main floors of the building stepping up the site.

It is considered that the proposal is consistent with this objective.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

Detailed view considerations have been made within the view sharing section of this report, including consideration made by the applicant to future reduce potential view impacts with selected minor changes made to address concerns raised with regard to views from nearby residential development across the site toward any harbour, foreshore or district views and the like. The site is in a location where the building can be viewed from public waterways and adjacent reserve. Access to the reserve is limited due to the steep and rugged nature of the land along the foreshore. The building is part two storeys and steps up the slope with the foreshore reserve affording some natural screening of the building when viewed from Middle Harbour. It is considered that the proposed building height variation maintains consistency with this objective of visual impact and views.

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

Comment:

Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create unreasonable impacts of overshadowing in terms of solar access to adjacent land. (See shadow diagrams drawn by *Squillace Architects*). Additionally the private open space areas and terraces are positioned toward the south-west (viewing across public waterway) and therefore reasonable privacy amenity is maintained to adjacent residential properties. The height non-compliance relates to a limited proportion of bedroom "5" roof and the tip of the mid roof and does not create unreasonable amenity impacts on adjacent land.

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

Comment:

The dwelling is adjacent a bushland reserve and views of the site from the harbour area and surrounding land are not unreasonably impacted by the non-compliance with the building height. It is considered that the proposed height variation maintains consistency with this objective. The non-compliance with the building height not readily discernible in the broader view of the pattern and density of surrounding development when viewed from the foreshore or Middle Harbour areas. including views over the site from neighbouring properties in Amiens Road.

Zone Objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

With regard to this objective several exempt smaller species trees are proposed to be removed and replaced with native species. A landscape plan has been prepared which provides for replacement landscaping for disturbed areas of the site during work including appropriate native trees and plants. The additional height and bulk does not impact the ecological values of the foreshore. It is considered that the development satisfies this objective.

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

Comment:

The proposed height variation does not offend this objective of the zone for protecting or restoring ecological, scientific, cultural values in that the use of the remains (for detached housing) and is provided within a landscape setting that is compatible with the height, density and pattern of surrounding development. No other (non-residential services or facilities) are proposed.

It is considered that the development satisfies this objective.

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

Comment:

Some smaller exempt species trees are to be removed and replaced with native trees. Suitable landscape planting is to be provided along the side setback area in selected spaces to screen the side wall elements and maintain a landscape setting. It is considered that the development satisfies this objective.

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

Comment:

The proposal requires no works within the foreshore area and excavation confined to the existing building structure and footprint. The height variation does not raise any inconsistency with this objective.

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

Comment:

The new house will not create long term adverse impact on vegetation along the foreshore or natural rock area in that native species have been used for the landscaping area and access across the adjacent reserve is not required. Additionally, replacement landscape planting will be provided for the new landscape works. The elements that are in breach of the building height do not have any unreasonable impact on water quality of the natural runoff to surrounding land.

- ***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 elements that are in breach of the height plane for the dwelling house do not impact on the existing vegetation of the foreshore area. The additional height and bulk does not impact on adjacent land use by way of unreasonable building bulk with the non-compliance essentially created by an excavated ground line used for the foundation and garage area of the existing house, to be demolished. The site is affected by bushfire protection and therefore large canopy trees are not proposed to be planted for the site in order to comply with NSW RFS requirements.

For the reasons detailed above, the non-compliant component of the development, as it relates to building height and demonstrates consistency with objectives of the C3 Environmental Management zone and therefore the proposed variation is supported.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

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

(ii) FLOOR SPACE RATIO - Clause 4.6 Variation

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (376.3sqm)
Proposed:	419.9 sqm (0.446:1)
Percentage variation to requirement:	13.4%

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 (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The distribution of building bulk and FSR above the height plane is satisfactory regarding the scale of the dwelling and associated concerns for managing visual privacy and avoiding unnecessary overshadowing impacts associated with the distribution of the additions to the building in response to the topography and established pattern of adjacent development.

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.*

Applicants Written Request

The applicant's written request argues, in part:

- *A visitor car parking space contributes to the FSR non-compliance but this also provides an additional car parking space for the site, which is appropriate given the long battle access handle preventing easy access to on- street parking.*
- *The new dwelling is located at a distance in excess of 90m from Amiens Road, more than 18m below the level of the street, and is screened by adjoining upslope dwellings.*
- *The proposed dwelling house is generally limited to two storeys in height, is well articulated, and is of a scale that is commensurate with that of surrounding and nearby dwellings.*

- *The application is supported by a detailed view analysis, and sensitively designed to allow for views.*
- *Despite non-compliance with the maximum FSR prescribed, the proposed development achieves consistency with the landscaped area control"*

Consideration of the applicant's reasons provided above is made below. In summary, 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).

Consideration and comment

It is agreed that the provision of a visitor car parking space (which contributes to FSR non-compliance), is a positive addition to the site given the site characteristics and access constraints.

It is also agreed that the dwelling is well designed with articulation, stepping, and landscaping so as to provide an appropriate use of the site and positive element within the area.

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 C3 Environmental Management zone. In consideration of the public interest no public submissions of objection were received with respect to the development application from any surrounding properties.

An assessment against these objectives is provided below.

Objectives of Development Standard

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

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

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

Comment:

The proposed dwelling is set well below the level of the street and is surrounded by landscaping, including landscaped area to be compliant with the numerical control. As such, the 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,***

Comment:

A number of non-native trees and non-native palms will be removed with replacement planting being dominated by native plant species suitable for the coastal location. The proposed scale and bulk does not remove any important landscape features or obstruct townscape features from overlooking properties adjacent the site.

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

Comment:

The proposed dwelling is well articulated, steps down with the topography of the land, and is surrounded by landscaped area. As such, an appropriate visual relationship will be maintained.

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

Comment:

The stepping with topography, articulation of the built form and appropriate separation from neighbours, ensures minimisation of environmental impact so that appropriate enjoyment of adjoining land and the public domain, is fostered.

The proposal also complies with the requirements for Solar access under the Manly DCP.

- ***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:

This objective is not applicable to the dwelling house as the land is not in a business zone.

Zone Objectives

The assessment of the underlying objectives of the C3 Environmental Management (previously E3) zone made under the previous assessment report (DA2022/0663) is accepted as follows:

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

Comment:

The FSR variation does not offend this objective of the zone as the habitable floor area does not encroach into the foreshore building line and is set well back from the water edge on an elevated peninsula of land. A landscape setting will be maintained that is compatible with the height,

density, and site constraints that influence the pattern of surrounding development.

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

Comment:

The current use of the site for a family home will remain and the proposal does not seek to introduce other forms of land use development in terms of ecological, scientific or cultural change.

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

Comment:

The FSR variation does not offend this objective of the zone in that the use of the remains, for detached housing in a low density environment, and is provided within a landscape setting is maintained that is compatible with adjacent land and the foreshore environment. The proposal is consistent with surrounding development in being consistent with this objective in that elements along the foreshore and wall and pool setbacks to the foreshore (southern boundary) remain consistent to the way they currently are.

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

Comment:

The alterations and additions are situated well back from the foreshore area and have minimal excavation works. The FSR variation does not evoke any negative impacts on geological features, the foreshore quality and surrounding bushland. No major trees are required to be removed.

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

Comment:

The proposal includes a large basement area however no works are near the foreshore building setback line however the land is within the foreshore scenic protection area. The dwelling will generally maintain the natural values of the foreshore area, and does not affect lower bushland foreshore and suitable drainage will be provided to minimise sedimentation and maintain water quality of Middle Harbour.

- ***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 alterations and additions are generally confined to the main structure of the existing house with no adverse impact on foreshore natural rock area. Replacement landscape planting will be provided for the new landscape works. The building bulk associated with the bedroom and basement area however no unreasonable impacts privacy, views or sunlight will be created.

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

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 940.8sqm	Requirement	DA Proposed	Amendments in Review	% Variation*	Complies
4.1.2.1 Wall Height	North: 7.7m (based on gradient 1:5)	6m	No change	N/A	Yes
	East 7.2m	6.2m-7.6m	No change	N/A	Yes
	North West 7.2m	6.1m	No change	N/A	Yes
	South: 7.7m (based on gradient 1:5)	7.6m	No change	N/A	Yes
4.1.2.2 Number of Storeys	2	3	No change	N/A	No (see comments)
4.1.2.3 Roof Height	Height: 2.5m	1.8m	No change	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 1.0m (Ground) 2.0m (Upper storey)	North: 1.0m Driveway wall 1.2m to 10.0m Ground Floor 7.1m to 10.0m Level 1 9.4m to 5.5m	No change to North, east and north-west setbacks	N/A	Yes
	South:			N/A	No (see

35

4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 60% of site area	58% (544sqm)	No change	N/A	No (see comments)
	Open space above ground 25% of total open space	15.6% (85sqm)	No change	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (212sqm)	40.3% (213sqm)	No change	N/A	Yes
4.1.5.3 Private Open Space	18sqm	544sqm	No change	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	3 spaces	No change	N/A	Yes

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit Consideration

The development is considered against the Objectives of the Control:

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

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

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

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

11 Amiens Road, Clontarf

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

Comment:

The view to be affected is a section of harbour view over the existing site, and partly above the existing hedge. The views to the opposite site of the harbour with land water interface will be unaffected from standing position.

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

Comment:

Views are obtained from the rear of the property from living spaces including a balcony, as taken from in the photo below:



Photo 1: Taken from the rear of 11 Amiens Road



Diagram 1: Indicative view analysis provided by applicant

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:

There will be some loss of view toward the harbour over the existing dwelling and hedge (at 11 Amiens Road). Views will be maintained to the land water interface on the opposite side of the harbour, and view corridors will be maintained to the sides of the proposed development including some additional harbor views as a result of tree removal. The maintenance of the land water interface and the extensive harbor views to the sides of the proposed dwelling, provides a situation in which overall impact is assessed as being **minor**.

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 section of building that does not comply with the building height standard impacts a relatively minor section of view toward the harbour, having regard to the extensive views available. Along with this, the overall minor extent of view loss provides a situation in which view sharing is reasonable.

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

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

There is no change to the height of the building under this Review proposal, and the assessment made under DA2022/0663 is accepted and adopted as follows:

Merit Assessment

The DCP height requirements and objectives, pursuant to *Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height)*, are addressed as follows:

The LEP contains Height of Buildings development standard and special height provisions, these paragraphs control the wall and roof height and the number of storeys within and in support of the LEP provisions in relation to residential development.

Variation to the maximum number of storeys may be considered:

- i) where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and*
- ii) to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.*

Comments:

- The property has been excavated for a carparking level along the eastern side of the existing house and therefore the existing ground level does not equate to the natural ground level. The natural ground level has a moderate to low slope for the building footprint area but the excavated line creates a vertical drop in the site levels. The proposal house level steps up to a master bedroom level at the north-eastern corner and this influences the height variation created by the existing excavated ground level.
- Overall the height and "number of storeys" variation is limited to a minor section of the dwelling and does not create any unreasonable impact on view, amenity, overshadowing. The building bulk and scale is generally much higher than the existing dwelling shape. This issue is adequately addressed by stepping back bedroom "5" element, general shape of the dwelling and landscaping curtilage for the dwelling.
- The building is part 2 storey along the main elements using the slope of the land basement areas and a smaller third level that steps the upper storey toward back away from the foreshore area. The principal usable private open space is the ground level terrace areas the the upper balcony area but does not create any unreasonable encroachment into the boundary setbacks area given the wide foreshore and changes in topography to adjacent properties. The maximum wall height of in the order of 11.7m (measured to ceiling level) is located where the building is part 2 part 3 storeys associated with the upper bedroom and creates additional wall height.
- The requirements of this clause permits roof parapets to extend / merge with the actual wall height elements and in this case the contemporary roof shape and building profile does not unreasonably protrude in to existing view line. The proposal satisfies the objectives of this

clause under the DCP with a general profile that conforms the height line of the land and does not create unreasonable view sharing impact as demonstrated by the detailed view analysis provided by *Squillace Architects*.

- In summary, the proposal is considered to be of a satisfactory architectural design and built form with regard to wall height considerations pursuant to the Manly DCP. The non-compliance to the wall height controls does not create any unreasonable impacts of overshadowing, views, bulk, foreshore impact or general amenity to adjacent land.

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

A condition is imposed to require a greater Landscaped setback to the southern boundary, being a minimum of 2.0m along the entire southern boundary.

In addition to this condition, the assessment made under DA2022/0663 is accepted and adopted as follows:

Merit Assessment

Setback requirements and objectives, pursuant to *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are addressed as follows:

Comments:

- The proposal has maintained the existing streetscape by the amended design, including the desired spatial residential proportions of the street, including the street edge and the landscape character of the street for Amiens Road, to which the property is addressed, and will maintain the existing vehicle access from Amiens Road. The principal vehicle access is from Amiens Road via a battle axe handle for the lot to basement carpark.
- The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like). Overall the building maintains suitable access to natural light, direct sunlight and air circulation for the given the internal division for the semi-detached dwellings. The basement parking arrangement and driveway parking does not create any unreasonable impact on surrounding amenity including landscaping and continuity with the streetscape in terms of setbacks and heritage and character which is integrated into the building design.

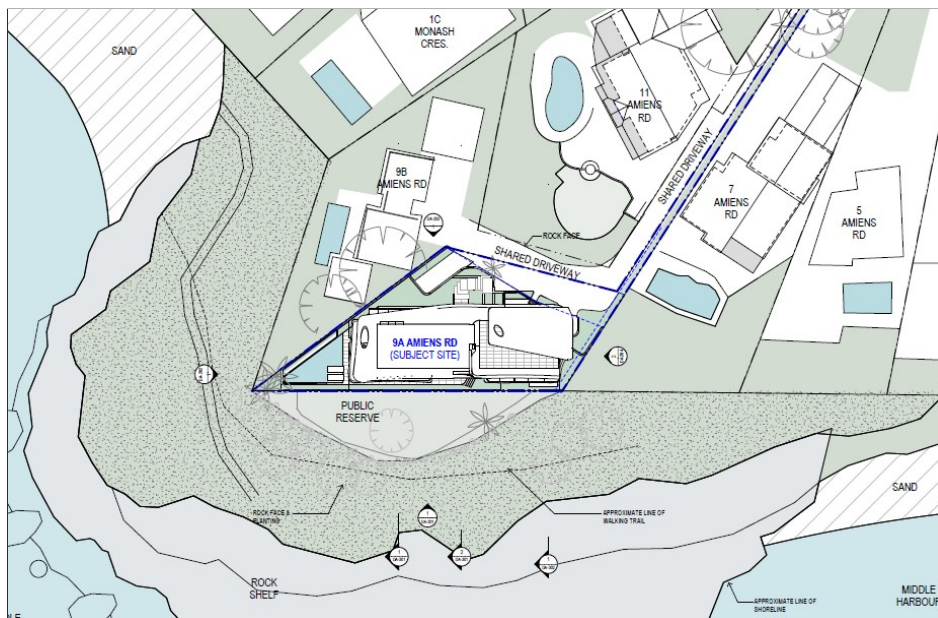


Image: Position of proposed building, separation and setbacks to adjacent land and adjacent private open space.

- The proposal is consistent with the DCP objective to allow for the flexibility in housing styles and renewal including modern styling, and consideration for suitable private open space. While the proposal has no setback to the middle along the separating (common wall) between adjacent dwellings this does not create an inconsistent precedent to the residential amenity and the variations along the outer side setbacks are minor (e.g. wall height, wall setback).
- Adequate side setbacks have been proposed to maintain reasonable solar access, privacy and deep soil zones with appropriate planting to the front and rear setbacks. The proposed setbacks allow for compliance with the *Building Code of Australia* for maintenance, access, drainage work and emergency requirements (fire safety). The nature of the development does not unduly detract from the context of the site, street character, the shared driveway handle to Amiens Road and particular setbacks for dwelling with windows and private open space.
- Consistency is maintained to the rear building line of neighbouring properties, including the minimum rear setback. The pool has a deep soil setback to the fence to allow for landscape buffer and safety fencing. The new pool (and its position) is a triangular shape similar to the existing pool to be replaced.
- A two storey storey and hip-and-valley or gable roof form character is common for dwellings in the street where the original housing has been substantially renovated or fully re-developed. In this case a contemporary part curved, part flat roof form is proposed. The existing pattern of significant areas of landscaped open space are retained with smaller elements of landscaping used to provide visual interest and reasonable amenity in consideration of the irregular shaped lot, inter-relationship to adjacent dwellings, width of the foreshore buffer.

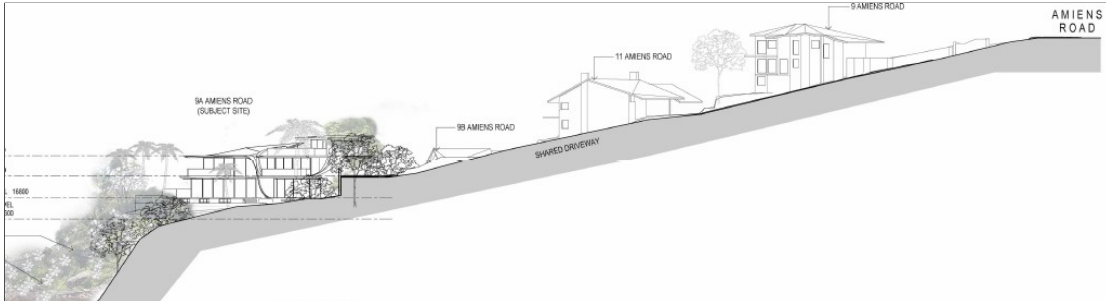


Image: Position of house (far left side) in relation to adjacent dwellings closer to Amiens Road.

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

4.1.5 Open Space and Landscaping

There is no change to the calculable open space under this Review proposal, and the assessment made under DA2022/0663 is accepted and adopted as follows:

Merit Assessment

The objectives and requirements of *Clause 4.1.5 Open Space and Landscaping*, are addressed as follows:

- *To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*
- *To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*
- *To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*
- *To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*
- *To minimise the spread of weeds and the degradation of private and public open space.*
- *To maximise wildlife habitat and the potential for wildlife corridors.*

Comments:

- The site does not achieve compliance for 55% total open space distributed between the front and rear yard area, noting that it is a battle-axe shaped lot and attributing landscaping along the extensive driveway edge is inconsistent with the intent of the control. The retention of landscaping along the driveway does provide an amenity buffer to the access handle but is remote from the private open space and curtilage of the building. Notwithstanding this the proposal will increase the overall open space area from the existing situation, including minor improvement (refurbishment) to landscape elements in the "front", side and rear setbacks. Renewal / refurbishment of ground level landscape elements will be provided to complement the redevelopment work and maintain long term biodiversity of native flora and fauna (e.g Long nosed bandicoot and other fauna) appropriate to the local area.
- The renewal of landscaping space will provide native and endemic plant for habitat or food

sources for fauna. New landscaping is responsive to the NSW Rural Fire Service bushfire restrictive requirements and therefore large canopy trees are not proposed total open space is a shortfall of 93.4sqm. In this regard, an influencing factor is the small area of the site and the existing building footprint remaining consistent with the current building footprint and proportional ground level open space area. Planting has been included for the above ground levels to introduce landscape elements in the form of terrace planter boxes and assist to soften the appearance of the building when viewed from the public domain or from properties that overlook the site.

- Appropriate areas of deep soil soft landscaped areas and open space at ground level is provided to support tree planting and the maintenance of outdoor areas for the absorption of rainfall and runoff. The landscape plan will not create any unreasonable risk to the spread of weeds and the degradation of private and public open space and the landscape plan has been updated to reflect the changes in the boundary setback area allowing for the protection of the existing trees in Clontarf foreshore reserve.
- A suitable landscaping plan has been designed to maintain reasonable levels of amenity including sunlight, privacy and neighbours outlook and addressing the harbourside outlook and views from surrounding properties of No.11 Amiens and No.7 Amiens Road. In this regard, the plans have been amended to ensure minimal structures in the foreshore setback (e.g. additional *Lilli Pilly* planting). Tree protection is addressed by condition as per the Landscape referral response.

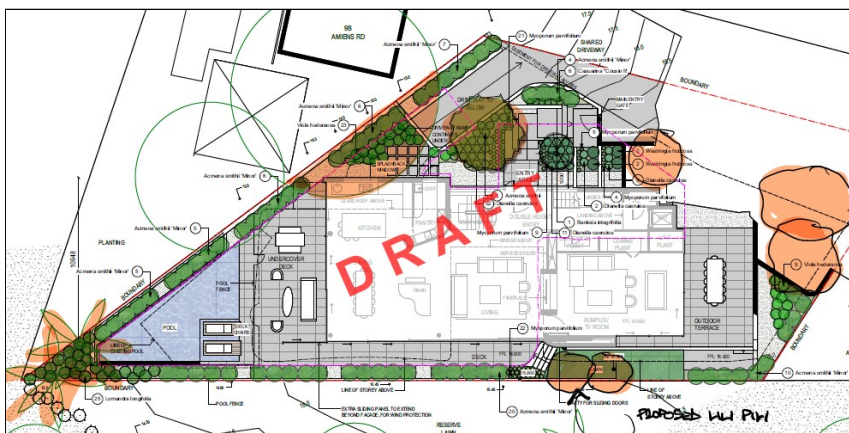


Image: Landscape concept plan at ground level. Additional planting also provided for upper terrace areas.

- Deep soil zones are proved at the rear for garden areas to be maintained as an extension of the rear terrace redevelopment and work in unison with existing stormwater connections to be used. No additional OSD elements are required and the proposal meets BASIX requirements for water savings, rainwater tanks and inclusion of landscaping elements.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the 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, subject to conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$63,700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,370,000.

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 4.3 Height of Buildings* and *Clause 4.4 Floor Space Ratio* has adequately addressed and demonstrated that:

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

2) The proposed development will not be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This Review application, for demolition work and construction of a dwelling house and swimming pool and is referred to the *Development Determination Panel* (DDP) due to the previous Development Application (DA2022/0663), having been referred to the panel. This is due to the requirement under Clause 8.3 of the EPA Act requiring a determination by a delegate "who is not subordinate to the delegate who made the determination or decision."

This proposal, for demolition work and construction of a dwelling house, basement area and swimming pool and is referred to the DDP due to the proposal seeking consent for a height variation of 13.4% (1.14m) above the 8.5m building height for the existing (excavated) ground line. Additionally, the proposal seeks a variation of 11.9% (or 43.6sqm) to the Floor Space Ratio (FSR) development standard applicable to the site. Under the circumstances both variations are considered reasonable given the existing excavation line that affects the height variation and effective distribution of floor space to provide a design appropriate for the site.

One (1) submission raised concern regarding view impacts and construction impacts. An assessment in accordance with the Land and Environment Court established planning principle for views has found the proposal provides a reasonable view sharing, and a number of conditions have been imposed to mitigate construction impacts.

Overall, the development is a considered and reasonable design, that is satisfactory in terms of the MLEP and MDCP controls and will not result in unreasonable impacts on the amenity of adjoining or nearby properties, or the natural environment.

The reasons for refusal under the previous application have been addressed and the conclusion of this Review assessment is that the application should be approved.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 *Height of Building* and 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 REV2023/0009 for Review of Determination of Application DA2022/0663 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 222 DP 737476, 9 A Amiens Road, CLONTARF, 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 (including external materials schedule) must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-011 - Site Plan - Rev A	14.04.22	Squillace
DA-020 A Demolition Plan Ground Level - Rev A	14.04.22	Squillace
DA-021 A Demolition Plan Level 1 - Rev A	14.04.22	Squillace
DA-022 A Roof Existing Plan - Rev A	14.04.22	Squillace
DA-099 A Floor Plan Basement Level - Rev C	8.03.23	Squillace
DA-100 A Floor Plan Ground Level - Rev C	8.03.23	Squillace
DA-101 A Floor Plan Level 1 - Rev B	8.03.23	Squillace
DA-102 A Floor Plan Level 2 - Rev A	14.04.22	Squillace
DA-103 A Roof Plan - Rev A	14.04.22	Squillace
DA-201 A Elevations Sheet 1 (including external materials schedule) Rev B	8.03.23	Squillace
DA-202 A Elevations Sheet 2 (including external materials schedule) - Rev A	8.03.23	Squillace
DA-203 A Elevations Sheet 3 (including external materials schedule) - Rev A	8.03.23	Squillace
DA-204 A Elevations Sheet 4 (including external materials schedule) - Rev A	8.03.23	Squillace
DA-301 C Sections Sheet 1 - Rev D	8.03.23	Squillace
DA-302 C Sections Sheet 2 - Rev D	8.03.23	Squillace

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Letter	18 March 2023	Bushfire Hazard Solutions
Geotechnical Assessment	6 April 2022	Douglas Partners
Ecological Assessment	22 March	Narla Environmental Pty

	2022	Ltd
Arboricultural Report	15 April 2022	All Arbor Solutions

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L-01 - Ground Floor Landscape Plan	17/02/2023	Site Design + Studios

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	14.04.2022	Applicant

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

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

2. 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	21.6.2022
Aboriginal Heritage Office	AHO Referral Response	19.5.2022

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$63,700.00 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 \$6,370,000.00.

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. **Amended Plans**

Amended Plans, including amended Landscape Plans, shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- i) a continuous 2 metre wide planted landscape buffer shall be included along the entirety of the southern boundary, (deck and pool area to be reduced in size; proposed dwelling/outdoor terrace setback to remain at 3.25m-3.43m)
- ii) a mix of groundcover, grass and shrub planting shall be installed in the buffer; shrub planting shall be capable of attaining a mature height between 2-3 metres and installed along the entire length of the boundary in accordance with the bush fire requirements. This planting is approved by the bushfire consultant and shown on drawing L-01; however, the *Acmena smithii* 'Minor' (or a suitable alternative species with the same mature height) shall continue to at least the western end of the pool.
- iii) the pool fence shall be located in a position as to not inhibit the 2-3m height potential of

- the shrub planting in the buffer area adjacent to the pool,
- iv) delete the low retaining wall shown along the southern boundary.

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 Principal 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 Principal 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:

- i) 300mm for groundcovers, perennials, and grasses,
- ii) 600mm for shrubs,
- iii) 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 secure waterproofing and drainage is installed.

9. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), 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 erosion and scour device in accordance with Council's Water Management for Development Policy.

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

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

10. Erosion and Sediment Control Plan

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

- o Site Boundaries and contours
- o Approximate location of trees and other vegetation, showing items for removal or

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

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

Reason: Protection of the receiving environment.

11. **Stormwater Treatment Measures – Minor**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

12. **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 routes 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 including the Right of way easement

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.

13. 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.

14. Waste Management Plan

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

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

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

15. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

17. **Protection of Trees on Land Owned or Managed by Council**

Unless identified by the development consent, existing trees on Council Land 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.

Reason: Tree protection and management.

18. **Pre-Construction Dilapidation Report**

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

Property / Properties:

- Shared Right of Way driveway area servicing site and No.11 and No.9B Amiens Road.
- No.9B Amiens Road, Clontarf

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.

DURING BUILDING WORK

19. Tree and Vegetation Protection

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

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

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

20. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

21. **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.

22. **Road Reserve**

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

Reason: Public safety.

23. **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.

24. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

25. **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.

26. **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.

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

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

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

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

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

28. **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.

29. **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.

30. **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.

31. **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.

32. **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.

33. **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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

34. **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; 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 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) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
- e) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

35. **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.

36. **Priority Weed Removal and Management**

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

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

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

37. **Stormwater Disposal**

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

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

38. **Restoration of Right of way**

The right of way to be reinstated to its pre-construction form, prior to the issue of an Occupation Certificate.

Reason: To ensure neighbourhood amenity.

39. **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.

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

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

41. **Landscape Maintenance**

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

42. **Maintenance of Stormwater Treatment Measures - Minor**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate

maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

43. **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.

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

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

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



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STATUS
DEVELOPMENT APPLICATION

Do not scale drawing. Verify all dimensions on site. Report any discrepancies in documentation to architect. This drawing is for the purpose of council approval and as such is not suitable for construction.



DRAWING NOTES

A	14.04.22	DA SUBMISSION
ISS	DATE	PURPOSE OF ISSUE

CLIENT
Wessels Residence

squillace

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INTERIORS

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NOMINATED ARCHITECT
Vince Squillace Reg No. 6468 (NSW),
17219 (VIC), 3877 (QLD), 441173 (NT)

PROJECT
WESSELS RESIDENCE

9A AMIENS ROAD
CLONTARF NSW 2093

DRAWING NO. **DA-011** ISSUE **A**

JOB NO. WES2105 SCALE 1:250@A1 DATE 14.04.22

DRAWING TITLE
SITE PLAN

DRAWN BY RB CHECKED BY VS



1 SITE PLAN.
1:250 @ A1



1 ELEVATION - SOUTH
1:100 @ A1

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STATUS
DEVELOPMENT APPLICATION
Do not make drawings, verify all dimensions in situ. Report any discrepancies in documentation to architect. This drawing is for the purpose of council approval and as such, is not suitable for construction.

B 08.03.23 DA REVISION
A 14.04.22 DA SUBMISSION

ISS DATE PURPOSE OF ISSUE

GRAPHIC SCALE
1:500 @ A3 0 2000 5000
1:100 @ A1

DRAWING NOTES

PROJECT
WOGGEOLO RESIDENCE
8A AMENS ROAD
CLONTARF NSW 2093

CLIENT
Wessels Residence

squillace

**ARCHITECTURE /
INTERIORS**

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NOMINATED ARCHITECT
Vivian Squillace Pty Ltd, 6468 (NSW),
17219 (VIC), 3877 (QLD), 481173 (NT)

DRAWING NO.
DA-201
ISSUE
B
JOB NO.
WVG21405
DRAWN BY
RB
CHECKED BY
VS
SCALE
**1:100@
A1**
DATE
08.03.23
DRAWING TITLE
ELEVATIONS SHEET 1



1 ELEVATION - west
1:100 @ A1

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A	14.04.22	DA SUBMISSION

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DRAWING NOTES

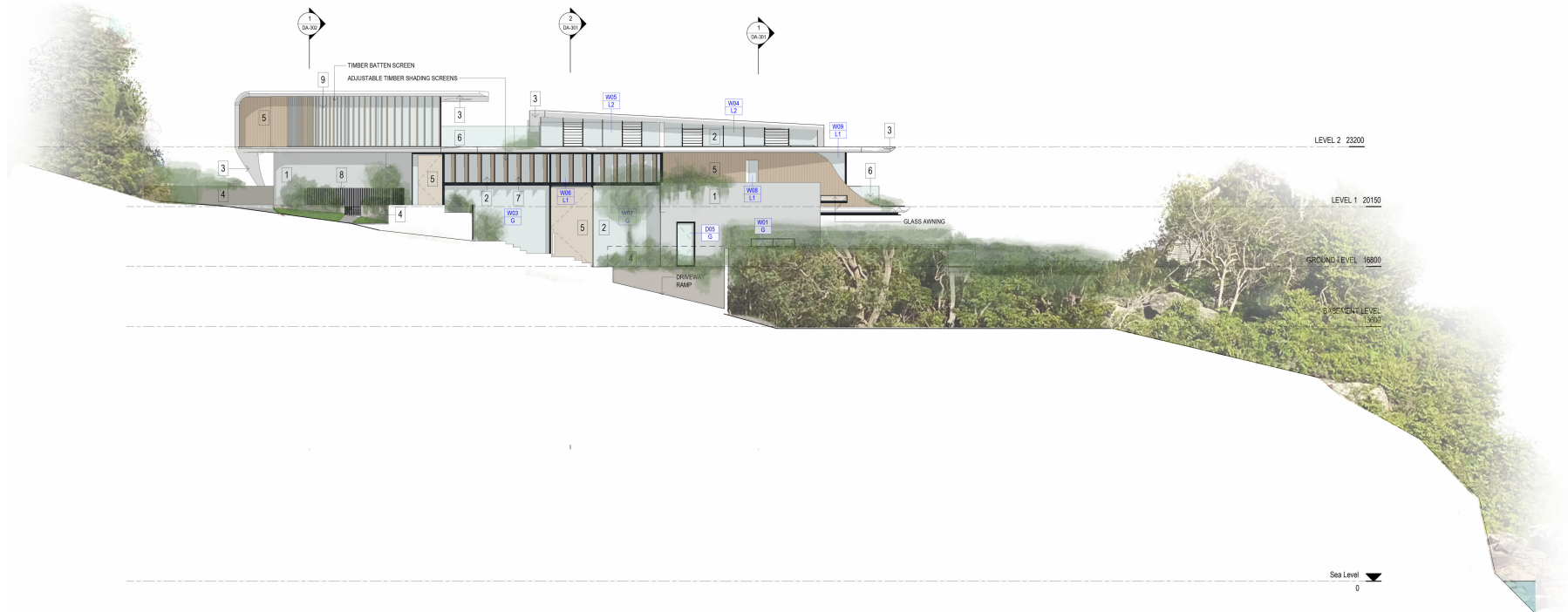
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BA AMENS ROAD
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CLIENT
Wessels Residence

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DA-202	A	1:100@ A1	14.04.22

DRAWING TITLE
ELEVATIONS SHEET 2



1 ELEVATION - NORTH
1:100 @ A1

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ISS DATE PURPOSE OF ISSUE

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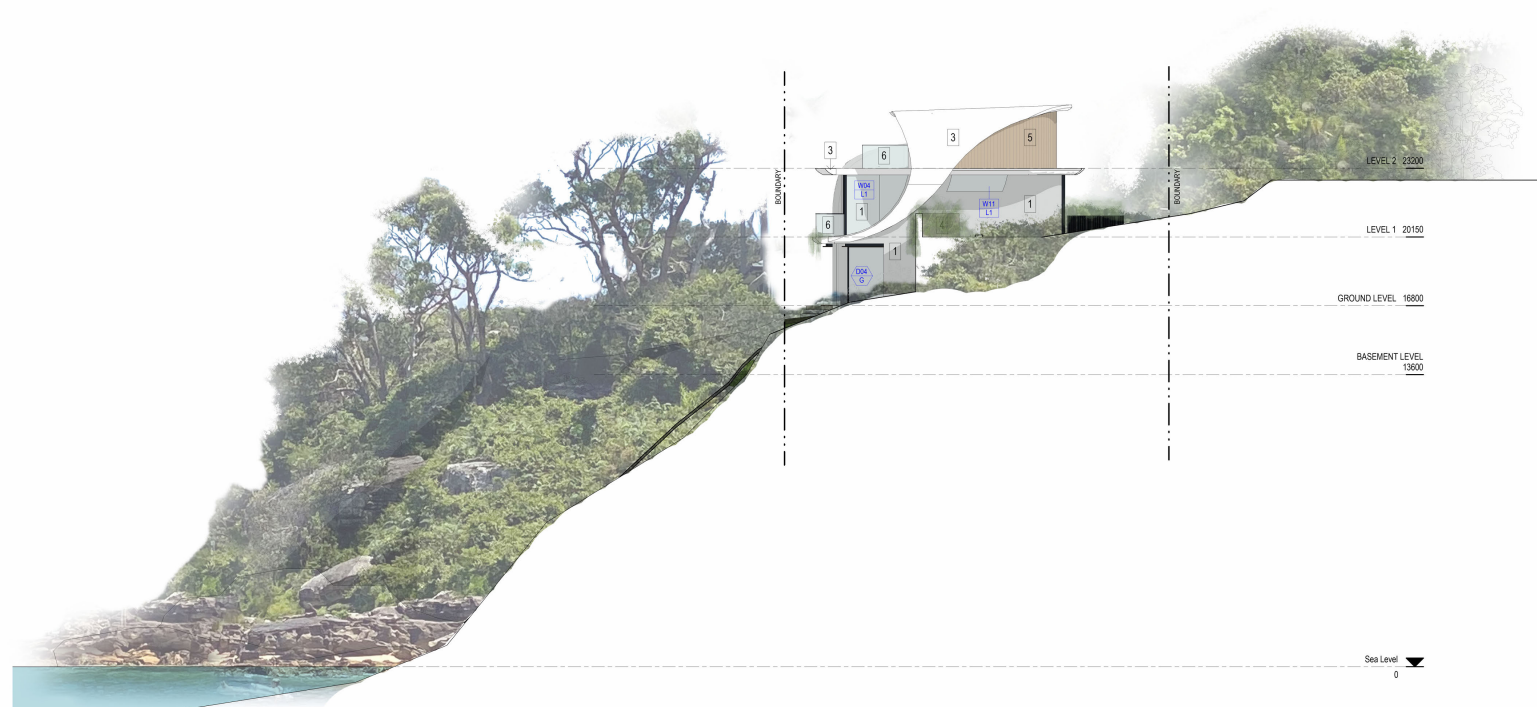
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DA-203
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SCALE
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A1
DRAWING TITLE
ELEVATIONS SHEET 3
DATE
14.04.22
JOB NO.
WES2105



2 ELEVATION - EAST
1:100 @ A1

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DA-204	A	WES2105

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ELEVATIONS SHEET 4

Updated Clause 4.6 variation request – Height of buildings

1.1 Introduction

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

1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

1.2.1 Clause 4.3 – Height of Buildings

Pursuant to Clause 4.3(2) of MLEP 2013, the height of a building is not to exceed the maximum height shown for the land on the Height of Buildings Map, being 8.5m with respect to the subject site. The objectives of this control are as follows:

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

Building height is defined as follows:

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

Ground level existing is defined as follows:

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

Minor portions of the proposed development protrude beyond the 8.5m height plane as measured to existing excavated ground levels below the existing dwelling house, as shown in the Height Plane Blanket in Figure 1.



Figure 1: Height Plane Blanket
Source: Squillace

The maximum breach occurs at the Level 2 roof over Bedroom 5, where the proposed development reaches a maximum height of 9.64m above existing ground level, measured from existing excavated areas below the existing dwelling house. The extent of the breach, as shown in Figure 2 is 1.14m or 13.4% of the building height development standard.

The roof form over Level 1 also marginally extends beyond the 8.5m height plane, with a maximum height of approximately 8.75m, representing a variation of 0.25m or 3%, as shown in Figure 3.

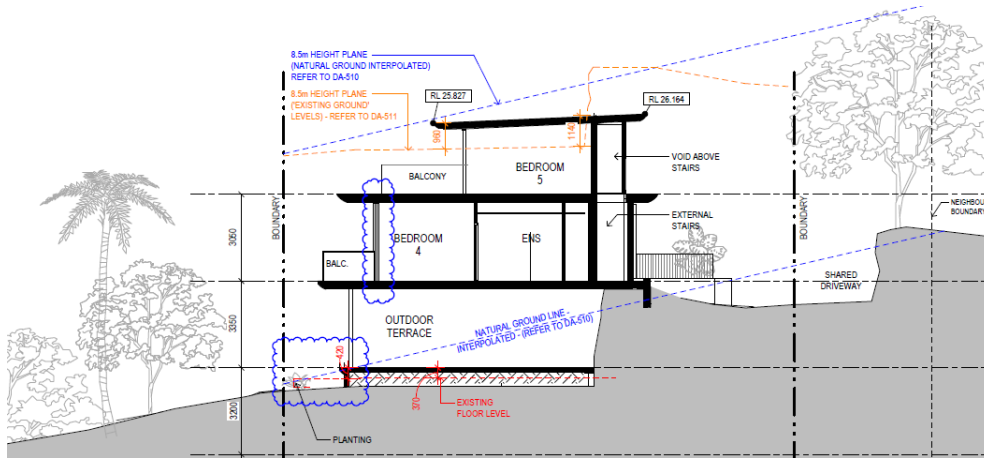


Figure 2: Extract of Section A.3
Source: Squillace

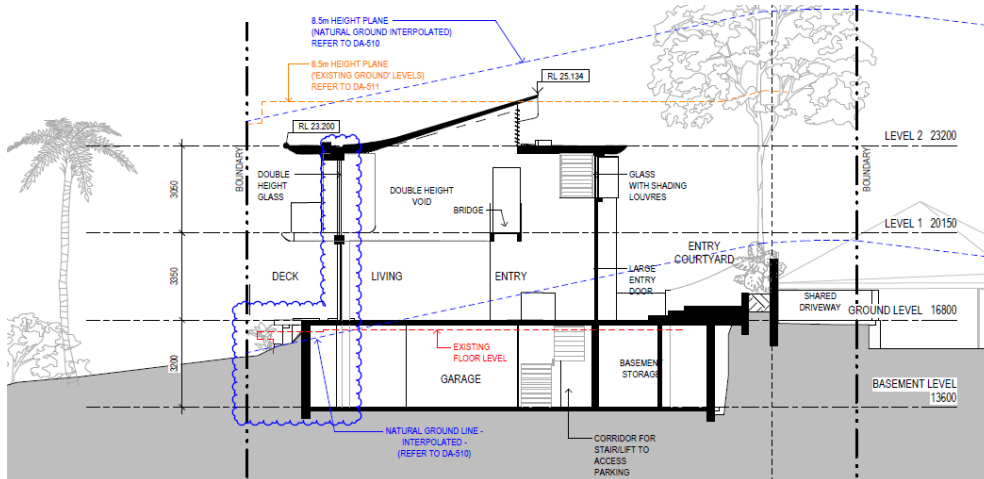


Figure 3: Extract of Section A.1
Source: Squillace

1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

The objectives of this clause are:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by clause 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP 2013 provides:

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

This clause applies to the height of building development standard in clause 4.3 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

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:

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

The proposed development does not comply with the height of buildings development standard at clause 4.3 of MLEP 2013 which specifies a maximum height of 8.5m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP 2013 provides:

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

- (c) 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*
- (d) the concurrence of the Planning Secretary has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021), development applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures.

Clause 4.6(5), which relates to matters that must be considered by the Secretary in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP 2013 from the operation of clause 4.6.

1.3 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

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

A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate

so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

6. Is clause 4.3 of MLEP 2013 a development standard?
7. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (c) compliance is unreasonable or unnecessary; and
 - (d) there are sufficient environmental planning grounds to justify contravening the development standard
8. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 of MLEP 2013 and the objectives for development for in the zone?
9. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
10. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP 2013?

1.4 Request for variation

1.4.1 Is clause 4.3 of MLEP 2013 a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision 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:

- (e) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

Clause 4.3 of MLEP 2013 prescribes provision that seeks to control the height of development. Accordingly, clause 4.3 of MLEP 2013 is a development standard.

1.4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings development standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: The non-compliance arises as a consequence of existing excavation on the lower ground floor. The proposed development is limited to a maximum of two storeys in height and appears as a one and two storey dwelling that is stepped down the slope of the land. When measured from the perimeter of the building, the development is wholly maintained below the building height plane and will not appear to be inconsistent or non-compliant with the height prescribed.

The proposed new dwelling is located at a distance in excess of 90m from Amiens Road, more than 18m below the level of the street, and is screened by adjoining upslope dwellings. As such, the proposed height non-compliance will not result in any adverse impact upon the streetscape.

When seen from the waterway, the proposal is highly articulated, appearing as a two storey dwelling that steps up the slope of the land, as shown in the photomontage, below.



Figure 4: Photomontage of proposed development as seen from the waterway
Source: Squillace

The height of the proposed development is entirely commensurate with that of surrounding dwelling houses, the majority of which have three storeys presenting to the waterway.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

(b) to control the bulk and scale of buildings

Comment: The proposed development is highly articulated and is of a scale that is consistent with that of surrounding and nearby dwellings, and that anticipated by the desired future character of the locality. The portions of the proposal that protrude above the height plane are centrally located and setback from the primary facades, such that they are not the dominant feature of the development when viewed from adjoining properties or the public domain.

The proposed new dwelling is of superior architectural design and is an appropriate contextual response to the individual characteristic of the subject site and its context.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

(c) *to minimise disruption to the following—*

- i. views to nearby residential development from public spaces (including the harbour and foreshores),*
- ii. views from nearby residential development to public spaces (including the harbour and foreshores),*
- iii. views between public spaces (including the harbour and foreshores),*

Comment: The proposed development has been sensitively designed to respond to the topography of the land and the availability of views over the existing roof form. The application is supported by a detailed view analysis in relation to the potential impact upon views from 7, 9 and 11 Amiens Road.

Whilst the proposed new dwelling may result in impacts upon the foreground waterway as currently enjoyed by properties upslope, the dwelling has been skilfully designed to maximise views over the roof line, with elevated portions of the development in areas that would be currently screened/filtered by existing vegetation.

The proposed development seeks to remove a number of exempt canopy trees from the site, which will result in the enhancement of views from properties upslope.

The non-compliant portions of the roof form are screened by compliant built form and do not give rise to any unreasonable impacts upon existing views. In this regard, I am of the opinion that this objective is satisfied notwithstanding the non-compliance with the building height development standard.

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

Comment: The proposed development will not result in any unreasonable impacts with regard to overshadowing, noting that there are no dwellings or areas of private open space to the south-east, south or south-west of the subject property.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

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

Comment: The proposed development has had appropriate regard to existing vegetation and topography, with no conflict arising as a consequence of the proposed development. In particular, the non-compliance associated with the upper roof forms to not result in any conflicts with bushland and surrounding land uses.

I am satisfied that the objective is achieved notwithstanding the non-compliance with the building height development standard.

Consistency with zone objectives

The subject property is zoned C3 Environmental Management pursuant to MLEP 2013. The developments consistency with the stated objectives of the C3 zone is as follows:

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

Comment: The proposed dwelling house is of superior architectural design, that is an appropriate response to the special aesthetic values of the subject site. The proposed development will result in the enhancement of landscaping, to complement landscaping in the adjacent public reserve. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed dwelling house is permissible with consent in the zone and will not result in any adverse impacts upon the special values of the site. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed development requires the removal of exempt species only, with the retention of all nearby trees of significance. The application also proposes a significant enhancement of landscaping across the site, with a net increase in canopy resulting from the proposal. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed development does not result in any adverse impacts on nearby foreshores, the geology of the site or surrounding bushland. The application is supported by a Geotechnical Report, a Biodiversity Report and Stormwater Management Plans to confirm that a suitable outcome will be achieved in this regard. The proposed height non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The application does not involve works to the immediate foreshore. However, the application is supported by Stormwater Management Plans demonstrating a suitable stormwater management solution for the site. The proposed height non-compliance does not detract from consistency with this objective of the zone.

- *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 height of the proposed new dwelling is generally limited to 2 storeys in any one place and is maintained below the 8.5m maximum building height plane when measured from assumed natural ground levels. The proposed development has been designed to step down the slope of the site and is of a scale that is commensurate with that of surrounding dwelling houses.

The height and bulk of the proposed dwelling will not have any unreasonable or adverse impacts upon surrounding dwellings or the use of the adjoining public reserve.

The non-compliant development, as it relates to building height, demonstrates consistency with objectives of the zone and the height of buildings development standard objectives. Adopting the first option in *Wehbe*, strict compliance with the height of buildings development standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

1.4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In *Initial Action* the Court found at [23]-[25] that:

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.

The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

Ground 1 – Existing excavation

The proposed height breach is a direct consequence of existing excavation at the lower ground level. As demonstrated in Figure 2 and Figure 3, the proposed upper floor is maintained below the 8.5m height plane when measured to extrapolated/assumed pre-existing ground levels.

Consistent with the findings of Commissioner O’Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation within the building footprint that distorts the height of buildings development standard plane can be properly described as an environmental planning ground within the meaning of clause 4.6(3)(b) of the LEP.

Ground 2 – Superior architectural design

The apparent size of the proposed development will be compatible with dwellings in the visual catchment of the site, which features a number of buildings of significantly greater bulk and scale. The building is of exceptional design quality with the variation facilitating a building height that provides for contextual built form compatibility, consistent with Objectives 1.3(c) and (g) of the Act.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments*, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider C3 Environmental Management Zone.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

1.4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the C3 Environmental Management zone

The consent authority needs to be satisfied that the proposed development will be in the public interest. A development is said to be in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest.

1.4.5 Secretary's concurrence

Following advice received from the Department of Planning, Industry & Environment (letter dated 2 November 2021), development applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures.

1.5 Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

1 Updated Clause 4.6 variation request - Floor space ratio

Introduction

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

Manly Local Environmental Plan 2013 (MLEP 2013)

Clause 4.4 – Floor Space Ratio

Pursuant to Clause 4.4 of MLEP 2013, the floor space ratio of development on the subject land is not to exceed 0.4:1 or 376.32sqm of GFA. The objectives of this control are as follows:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

In accordance with the provisions of clause 4.5(2) of MLEP 2013, floor space ratio is defined as follows:

*The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

The accompanying plans confirm that the proposal has a gross floor area, as defined, of 400sqm representing an FSR of 0.425:1. This represents a variation of 23.68m² or 6.3%.

The non-compliant floor space is generally limited to the area of the visitor car parking space and immediately adjacent circulation located within the basement of the development as depicted in Figure 1.

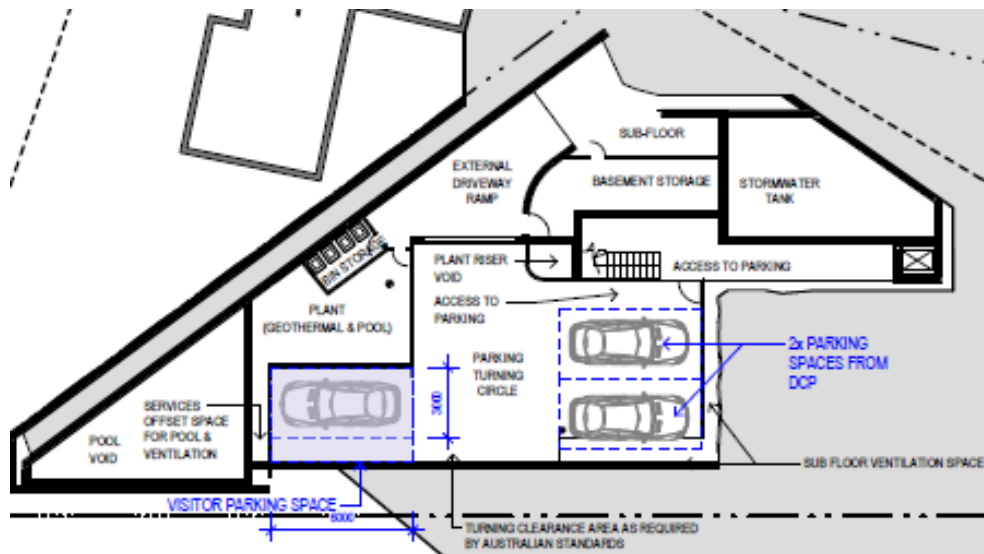


Figure 1 - Plan extract showing non-compliant basement floor space associated with the proposed visitor car space and immediately adjacent circulation.

Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

The objectives of this clause are:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by clause 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP 2013 provides:

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

This clause applies to the floor space ratio development standard in clause 4.4 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

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

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

The proposed development does not comply with the floor space ratio development standard at clause 4.4 of MLEP 2013 which specifies a maximum floor space ratio of 0.40:1. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP 2013 provides:

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

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Planning Circular PS20-002 dated 5 May 2020 confirms that the consent authority may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6 that involve a numerical non-compliance less than 10%.

Clause 4.6(5), which relates to matters that must be considered by the Director-General in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP 2013 from the operation of clause 4.6.

Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

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

A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP 2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 of MLEP 2013 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP 2013?

Request for variation

Is clause 4.4 of MLEP 2013 a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (d) *the cubic content or floor space of a building,*

Clause 4.4 of MLEP 2013 prescribes a bulk and scale provision that seeks to control the floor space ratio of certain development. Accordingly, clause 4.4 of MLEP 2013 is a development standard.

Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the floor space ratio development standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: The proposed new dwelling is located at a distance in excess of 90m from Amiens Road, more than 18m below the level of the street, and is screened by adjoining upslope dwellings. As such, the proposed new dwelling will not be readily visible from the street. The existing street frontage of the subject property is shown in Figure 1, below.



Figure 1: The subject property as seen from Amiens Road.

To the extent that the proposed dwelling may be visible in a streetscape context I note that the non-compliant floor space is located in the basement of the proposed development where it will not contribute to aboveground bulk and scale as viewed from any vantage point external to the site.

The above ground floor space is compliant with the FSR standard with the dwelling house generally limited to two storeys in height, well-articulated and of a scale that is commensurate with that of surrounding and nearby dwellings and that anticipated by the desired future character of the locality. The proposal achieves this objective notwithstanding the non-compliant FSR proposed.

- (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: As previously indicated, the above ground floor space is compliant with the FSR standard with floor space carefully distributed to respond to the topography of the land and the availability of views over the existing roof form. The application is supported by a detailed view analysis in relation to the potential impact upon views from 7, 9 and 11 Amiens Road. The dwelling has been skilfully designed to maximise views over the roof line with elevated portions of the development in areas that would be currently screened/filtered by existing vegetation.

The proposed development seeks to remove a number of exempt canopy trees from the site, which will result in the enhancement of views from properties upslope.

The proposed FSR non-compliance does not contribute to any unreasonable impacts upon views and 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,*

Comment: Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments*, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider C3 Environmental Management Zone.

The visual impact of the development as seen from the waterway is demonstrated by the photomontage prepared to accompany the application, shown in Figure 2 below.

Furthermore, despite non-compliance with the maximum FSR prescribed, the proposed development achieves consistency with the landscaped area control of MDCP 2013, enabling the provision of a high-quality landscaped solution for

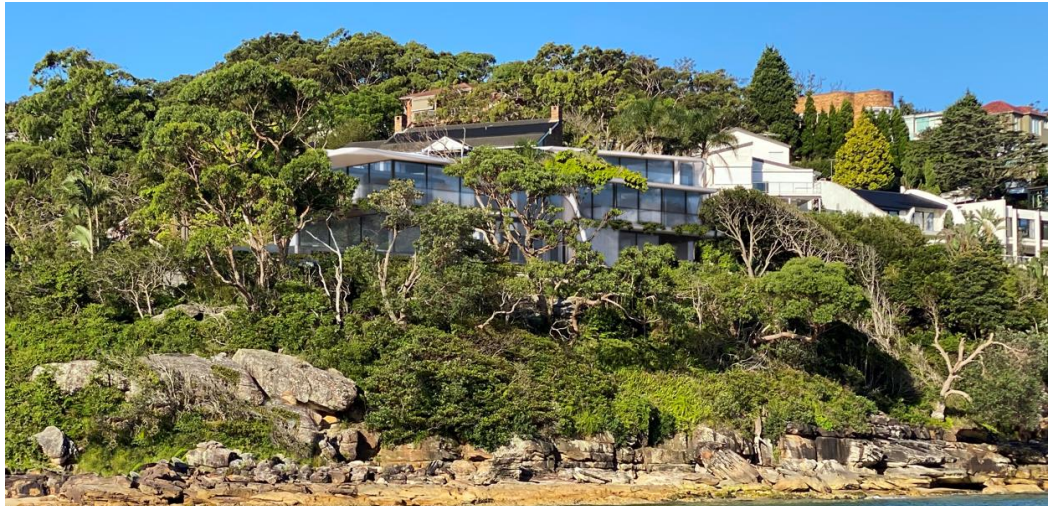


Figure 2: *Photomontage of proposed dwelling as seen from the waterway (west)*

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

Comment: The above ground floor space is compliant with the FSR standard. The proposed development does not result in any unreasonable impacts upon neighbouring properties with regards to overshadowing, visual or acoustic privacy.

The proposed built form is highly articulated, by virtue of recessed elements, varied setbacks, differing materials and landscaping, and will not be overly dominant as seen from the street, the waterway or adjoining properties. The non-compliant FSR does not detract from consistency with this objective.

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

Comment: Not Applicable.

Consistency with zone objectives

The subject property is zoned C3 Environmental Management pursuant to MLEP 2013. The developments consistency with the stated objectives of the C3 zone is as follows:

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

Comment: The proposed dwelling house is of superior architectural design, that is an appropriate response to the special aesthetic values of the subject site. The proposed development will result in the enhancement of landscaping, to complement landscaping in the adjacent public reserve. The proposed FSR non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed dwelling house is permissible with consent in the zone and will not result in any adverse impacts upon the special values of the site. The proposed FSR non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed development requires the removal of exempt species only, with the retention of all nearby trees of significance. The application also proposes a significant enhancement of landscaping across the site, with a net increase in canopy resulting from the proposal. The proposed FSR non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The proposed development does not result in any adverse impacts on nearby foreshores, the geology of the site or surrounding bushland. The application is supported by a Geotechnical Report, a Biodiversity Report and Stormwater Management Plans to confirm that a suitable outcome will be achieved in this regard. The proposed FSR non-compliance does not detract from consistency with this objective of the zone.

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

Comment: The application does not involve works to the immediate foreshore. However, the application is supported by Stormwater Management Plans demonstrating a suitable stormwater management solution for the site. The proposed FSR non-compliance does not detract from consistency with this objective of the zone.

- *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 height of the proposed new dwelling is generally limited to 2 storeys in any one place and is maintained below the 8.5m maximum building height plane and the height of surrounding canopy trees. The proposed development has been designed to step down the slope of the site and is of a scale that is commensurate with that of surrounding dwelling houses.

The height and bulk of the proposed dwelling will not have any unreasonable or adverse impacts upon surrounding dwellings or the use of the adjoining public reserve.

The non-compliant development, as it relates to floor space ratio, demonstrates consistency with objectives of the zone and the floor space ratio development standard objectives. Adopting the first option in *Wehbe*, strict compliance with the floor space ratio development standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In *Initial Action* the Court found at [23]-[25] that:

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.

The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

*The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

Sufficient environmental planning grounds

Ground 1 – Provision of appropriate off-street visitor car parking

The FSR non-compliant floor space is now limited to the subterranean basement level where an additional visitor car space has been provided in response to the site’s unique characteristics being its 100m long battle axe handle and the easement for driveway access which burdens the northern portion of the site preventing the provision of at-grade ground level visitor parking on the subject allotment. The provision of an on-site visitor car parking space within the basement level of the dwelling is not an unreasonable proposition under such circumstances with approval of the FSR variation facilitating the provision of appropriate off-street visitor car parking.

Ground 1 – Minor nature of breach

The extent of the floor space ratio breach is limited to 23.68m² or 6.3% with the non-compliant floor space associated with the visitor car space and immediately adjacent circulation area located within the basement of the proposal where it will not contribute to above ground bulk and scale. The non-compliant floor space ratio does not give rise to any unreasonable impacts upon the amenity of adjoining sites or the wider public domain.

Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [202] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the C3 Environmental Management zone

The consent authority needs to be satisfied that the proposed development will be in the public interest. A development is said to be in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest.

Secretary's concurrence

Planning Circular PS20-002 dated 5 May 2020 confirms that the consent authority may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6 that involve a numerical non-compliance less than 10%. Concurrence of the Secretary can therefore be assumed in this case.

Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1471
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 2 DP 558244, 8 B Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool and spa
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Justin Eric Andrew Fengels Caroline Grace Fengels
Applicant:	Third Wave Design Pty Ltd
Application Lodged:	26/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/10/2022 to 24/10/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 54.1% 4.4 Floor space ratio: 20%
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,945,158.00

EXECUTIVE SUMMARY

This development application seeks consent alterations and additions to a dwelling house including, new (replacement) swimming pool landscaping and ancillary site works.

The application is referred to the Development Determination Panel (DDP) due to height of building and FSR non-compliances that exceed a 10% variation. The 4.6 request for the non-compliance with building height standard arises from the existing building wall height, steep land and existing part 4 storey dwelling structure. The new (replacement) roof will lower the overall building height and due to

existing ground levels whereby the maximum building height is to be reduced from 13.7m (61.1% variation) to 13.1m (54.1% variation). The 'clause 4.6' request for the non-compliance with FSR arises from the existing multi-storey floor plate and the proposed alterations seeking to rationalise the internal connectivity between floors as well as from minor excavation and new reconfigured room space. The change to FSR is minor and will increase from 0.46:1 (17.6% variation) to 0.47:1 (20% variation) but does not create unreasonable change to the surrounding amenity.

Concerns raised in the submitted objections predominantly relate to building bulk and view impacts which have been addressed. Amended plans were received to assist in addressing landscape assessment concerns regarding tree protection and landscaping works. The amended plans were also required to clarify building height and reduced minor elements of the building additions for an upper balcony.

Critical assessment issues included consideration of the FSR variation and height variation as well as setbacks, building bulk, foreshore work and view 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 to carry out alterations and additions to the existing residence including:

Roof Level

- Replace existing pitched roof to the dwelling with a new low pitched metal roof with new skylights above the stairwell and dwelling entry;
- Replace existing pitched roof above the garage with a new flat metal roof with solar panels above.

Entry - Level 3

- Extend existing garage on southern side;
- New entry area linked to garage on south-eastern side including new metal clad entry wall;
- Reconfigure existing dwelling entry including new lift;
- New centrally located balcony on north eastern side facing Forty Baskets Beach;
- Existing tiled roof to be removed and replaced with a new flat pebble roof;
- Reconfigure internal floorplan to relocate main bedroom from Level 1 below.

Living Rooms - Level 2

- Extend laundry into existing undercroft space below garage;
- Extend kitchen partially into existing undercroft space and below new entry above;
- New pond between lounge & family room;
- Reconfigure internal living areas.

Bedroom - Level 1

- Demolish existing pool and extend new balcony to match existing;
- New lift shaft and associated access area;

- Reconfigure internal areas with 3 bedrooms relocated from Entry Level 3 with ensuites.

Lower Level

- New excavated area to include extended stairway, new lift shaft and associated access area;
- New swimming pool and outdoor deck, new tiered landscaped area and garden stairs;
- Reconfigure internal living areas.

Gym and boat store level

- Demolition of existing two storey studio above boat store to allow Gym & sauna with pool above. The proposed alterations and additions do not contain cooking facilities in the gym area and there is no intention to include a secondary dwelling as part of the works.

Ancillary Works

- New access stairs from pool deck;
- New tiered landscaped area and stairs to boat store & beach.
- Part demolition, drainage, site preparation, clearing and ancillary site work.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone C3 Environmental Management
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.3.1 Landscaping Design
Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.7 First Floor and Roof Additions
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 2 DP 558244 , 8 B Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The site has an area of 1033 square metres (sqm) and is connected to Beatty Street by a 3.0 metre (m) wide concrete driveway approximately 64m long. The site has a north-western side boundary of 108.7m, a south-eastern side boundary of 45.55m and a northern (rear) boundary of 16.6m. Excluding the driveway, the lower rectangular part of the site has an area of approximately 800sqm. The driveway has a fall from Beatty Street (RL 39.60) to the elevated concrete ramp/parking area (RL 23.8). The site then continues to fall steeply to the boundary with Forty Baskets Beach (RL 4.24). The elevated concrete ramp/parking area includes a carport with pitched roof on the southeastern side. Adjoining and below the carport and associated parking area is a 4 storey sandstone residence with pitched roof set in the middle of the site, with balconies and lawn area oriented towards the north (Forty Baskets Beach). Further below the main residence is a boathouse located close to the north-western side boundary. A curved concrete ramp and associated stone retaining walls lead from the south-eastern edge of the boathouse across the rear part of the site down towards a gate facing the beach. Established stone paths and stairs along part or all of both side boundaries in the area of the dwelling lead down towards the beach. The lower part of the site, below and on the northern side of the dwelling contains established vegetation including mature trees. The neighbouring part one, part two storey residence on the north western side (No 10 Beatty Street) is located close to the bottom of the driveway, between 4m and 7m from the common side boundary. The remainder of No 10, below the existing residence towards Forty Baskets Beach is covered with mature vegetation. A one and two storey stone and weatherboard residence (No 8A Beatty Street), is located directly behind and above the site.

The neighbouring dwelling on the south-eastern side is located above the site and close to Beatty Street. The dwelling is oriented towards Forty Baskets Beach, with a number of terraces leading down towards a what appears to be a recently refurbished studio/boathouse.

The immediate Beatty Street locality is characterised by large residences in landscaped settings with views commonly available across Harbour areas.

Map:



SITE HISTORY

Building Application No.603/80 for a new dwelling was approved by Council in 1980.

Development Application No.137/99 for alterations and additions including landscaping works was approved by Council on 30/11/1999.

Development Application No.512/05 for alterations and additions to an existing dwelling, new boatshed and swimming pool and associate landscaping works was approved by Council on 27/4/2006.

Development Application No.301/06 for alterations and additions to an existing boatshed , new pool and stairs was approved by Council on 5/12/2006.

Pre-lodgment Meeting No.PLM2022/0066 for alterations and additions to a dwelling house was not held with Council and cancelled by the applicant. (The diagrams closely align with DA2022/1421)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to tree protection and landscaping / garden structures near the foreshore. The applicant also elected to make a minor change to reduce the balcony element on the upper storey during the assessment period with minor change to the roof. The amended plans do not create any adverse amenity impacts and reduce the building height as well as a better landscape design. Therefore the changes do not require re-notification as per the <i>Community Participation Plan</i>. Renotification has not be made by the plans remained viewable online via Councils DA portal during the assessment period. All submissions have been considered in full and in context with the amendments. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the	(i) Environmental Impact The environmental impacts of the proposed development on the natural

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

A detailed bushfire assessment has been completed by an appropriately accredited expert to address bushfire risk. The assessment is made pursuant to the NSW RFS publication *Planning for Bushfire Protection* (PBP) and recommendations are included as part of the conditions to ensure compliance with PBP.

In summary, The proposed works will be constructed to section 3 & 6 (BAL 19) under AS3959 – 2018 and the additional construction requirements detailed in section 7.5 of PBP. All new works facing northwest can be downgraded to BAL 12.5 due to shielding provided by the building itself.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Withheld	BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

1. Views
2. Building height and bulk
3. Right of way

The above issues are addressed as follows:

- *1. Concern that the alterations and additions will impact views over the site from No.8A Beatty Street, including the height of the new roof, skylight and lift overrun*

Comment:

This issue is addressed in detail under the heading 3.4.3 *Maintenance of Views* within this report. In summary the site has been inspected and the alterations and additions reduce the overall roof height with negligible impact on views. Views from No.8B Beatty Street are from well above (higher) than No.8B Beatty Street and expansive toward Seaforth and Manly area. The applicant has reduced the roof elements during the assessment period and conditions are included to address roof attachments such as solar panels.

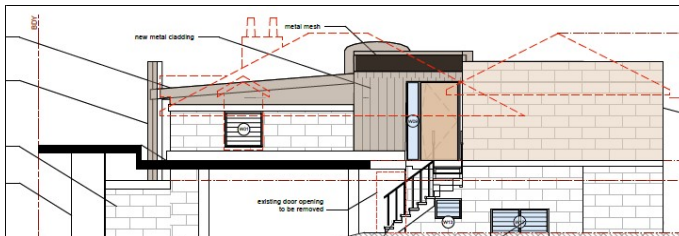


Image: Broad view over the site from ground level at rear of house No.8A Beatty Street. Roof of house will be lowered to low pitch style. Change to roof profile (red dotted line) can be seen in adjacent drawing insert. Garage element of right hand site obscured by dense vegetation.

This issued does not warrant refusal of the application.

- *2. Concern that the wall height, building bulk and change to the garage will impact setbacks and views.*

Comment:

When viewed from No.8A Beatty Street the garage is single storey and partly excavated below natural ground level. The setback change is against a retaining wall and enable better parking maneuvering for visitors and occupants. This assists to ensure turn around space and cars leaving the steep long driveway in a forward direction that is safer than if they could not turn around. The building bulk and wall height are consistent with the existing setbacks for the main

dwelling and do not affect the foreshore area. The site has a separate existing outbuilding (marine boathouse) near the foreshore that will remain in situ. The change to building bulk and wall height will have a negligible impact on views. The main rear balcony of No.8A Beatty Street is 6.46m higher, at RL33.82 with the apex of the proposed new stair skylight at RL27.36. The site and surrounds have been inspected to review this consideration and confirm the potential view impact is negligible.

This issued does not warrant refusal of the application.

- *3. Concern that the works may impact the right of way access from Beatty Street to the shared access for the garage space within No.8A Beatty Street.*

Comment:

The main access is a steep driveway and would only be limited (as it is now) if an approaching car was on the top half of the driveway as someone was exiting the garage for No.8A Beatty Street. There is no space for parking along the ROW and there is also a gate entry point for No.8B Beatty Street that restricts access. No change to the ROW access is proposed and use / arrangements of the ROW is a civil matter between the associated parties.



Image: Driveway and gate along steep ROW between No.8A Beatty Street and the site below.

This issued does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	Supported with conditions. <u>General Comments</u> Council's Environmental Health Team has been requested to provide comment on this proposal for "Alterations and additions to a dwelling house including a swimming pool and spa" in respect of the installation of a solid fuel heater. The plan supplied with the proposal note a provision to "relocate

Internal Referral Body	Comments
	existing chimney" however there are no other details provided with the proposal to outline the make, model and specifications of the heater that is proposed to be installed. Based on the information provided, the location and height of the proposed chimney appears to comply with Australian Standards and seems to be appropriately site. Environmental Health supports the proposal with a recommendation that the development be conditioned with the requirement for further details of the heater to be installed, and how compliance with <i>Australian Standards</i> will be demonstrated.
Landscape Officer	Supported with conditions. <u>General</u> Council's Landscape Referral section have considered the application against the zone C3 Environmental Management objectives of Manly Local Environment Plan (MLEP), and the following Manly Development Control Plan (MDCP) controls (but not limited to): • DCP section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation, • DCP section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Planting. The landscape outcome of the zone C3 Environmental Management objectives include protection and management of the ecological and aesthetic landscape values, protection of tree canopies to maintain the natural scenic qualities of the foreshore, revegetate and rehabilitate the foreshore, and ensure that the bulk and scale of development integrates with the natural environment. An amended Landscape Plan is submitted in response to previous concerns from Landscape Referral. The Landscape Plan indicates proposed hard and soft landscape works. The arrangement of the proposed retaining walls as amended within the rear of the property are re-designed to provide a native landscape buffer from the walling to the foreshore, and additionally the existing native Coast Banksia tree (T1) is able to be preserved. It is noted that the walling layout is not co-ordinated in documentation with other plans under the application, and should the application be approved, the walling arrangement on other plans is not to apply, and rather the walling arrangement in the amended Landscape Plan shall be the approved walling alignment. It is noted that T1 (Coast Banksia) located on the rear boundary is documented for retention as is another Coast Banksia within the public foreshore zone, and conditions of consent shall be imposed for protection.

Internal Referral Body	Comments
	The proposed planting indicated on the Landscape Plan indicates a combination of native and some exotic planting. Conditions shall be imposed to ensure the following: all planting within the foreshore landscape buffer to be 100% native planting, and all other landscape areas to be a minimum of 60% by quantity native planting.
NECC (Bushland and Biodiversity)	Supported with conditions. <u>Biodiversity Referral</u> (8 March 2023) The arboricultural impact assessment and amended landscape plans are noted. Tree 1 (<i>Banksia integrifolia</i>) is now proposed to be retained, while almost all other trees proposed for removal are exempt by virtue of being exotic species. Amendments to the proposed planting schedule of the landscape plan are still required in order to replace habitat approved for removal. This will be conditioned by the Landscape referrals body. <u>Biodiversity Referral</u> (29 November 2022) There is insufficient information to assess the proposal against Manly LEP Clause 6.5 Terrestrial Biodiversity. The submitted plans indicate extensive groundwork which is likely to result in the loss of most (if not all) existing trees on the site. No arboricultural report has been submitted to justify or quantify the extent of tree loss or the species to be removed. In addition, the planting schedule for the submitted Landscape Plan is predominantly composed of exotic species which will further reduce the value and connectivity of the existing biodiversity corridor linkages to nearby bushland. The biodiversity referral will recommence upon receipt of an arboricultural report and amended landscape plan. The additional information should be prepared with a view to demonstrating how the proposal has been designed to achieve compliance with Manly LEP Clause 6.5 Terrestrial Biodiversity.
NECC (Coast and Catchments)	Supported with conditions. This application was assessed in consideration of: • Plans and reports (as amended) lodged in support of the DA; • <i>Coastal Management Act 2016</i>; • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>; • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> ; • <i>Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005</i>; and • <i>Manly LEP 2013 and Manly DCP 2013</i>. 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

Internal Referral Body	Comments
	with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). 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 in the foreshore area, 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. 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, the proposal is consistent with the intent and with the planning principles for land within the Foreshores and Waterways Area. Subject to conditions the DA is considered to satisfy the relevant requirements of SEPP B & C. 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. 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. Therefore Clause 6.9 Foreshores scenic protection area and section 6.10 Limited development on foreshore areas of the Manly LEP 2013 apply to this DA. Part 5, section 5.4.1 Foreshores scenic protection area of the Manly DCP 2013 will apply to any proposed development on the site.

Internal Referral Body	Comments
	The proposed development: • 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. 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 and in this regard, the assessment and conditions applied in the Parks, Reserves and Foreshores Referral Response are wholly endorsed and supported. No other coastal planning or development controls relevant to the subject DA were identified.
NECC (Development Engineering)	Supported with conditions. The submitted stormwater plan indicates connection of stormwater from the site into the Council pipeline adjoining the site. As there is no easement and the site backs onto the ocean, stormwater is to be discharged via a level spreader within the site which is conditioned. The protection of the Council pipeline has also been conditioned. The existing driveway crossing and internal crossing is to remain. The submitted traffic report demonstrates that the proposed widening of the garage and alteration to the driveway will permit adequate turning for all three vehicles to exit the site in a forward direction. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	Supported with conditions. This application was assessed in consideration of: • Supplied plans and reports; • <i>Coastal Management Act 2016</i>; • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>; • <i>Relevant LEP and DCP clauses</i>; and • <i>Northern Beaches Water Management for Development Policy</i> The site abuts Sydney Harbour and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the harbour, or the quantity and quality of surface and ground water flows that it receives. Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is

Internal Referral Body	Comments																					
	complete and groundcover re-established. On assessment the application on assessment meets the requirements of the relevant Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater.																					
Parks, reserves, beaches, foreshore	Supported with conditions. Council's Parks Reserves and Foreshores Referral section have considered the application against Manly Local Environment Plan (MLEP) clause 6.9 Foreshore scenic protection area, clause 6.10 Limited development on foreshore area, and Manly Development Control Plan (MDCP) part 5: 5.4.1 Foreshore Scenic Protection Area. The development site adjoins the North Harbour foreshore that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the foreshore area. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. To satisfy clause 6.9 of MLEP, the visual amenity of the foreshore that exhibits natural landscape features such as rock ledges, and native trees and vegetation shall be preserved and amended Landscape Plans indicate retention of the existing native Coast Banksia trees. Additionally it is noted that the Landscape Plan provides native vegetation enhancement to the foreshore zone of the property.																					
Strategic and Place Planning (Heritage Officer)	Supported with conditions. <table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3">This application has been referred as it is within the vicinity of a heritage item, being - <i>Item 11 - Harbour foreshores</i>, listed in Schedule 5 of Manly LEP 2013.</td></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><td colspan="3">Details of this heritage item, as contained within the Heritage Inventory are: Item 11 - Harbour foreshores <u>Statement of Significance</u> Natural landscape type - Aesthetic. <u>Physical Description</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.</td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>Sydney Regional Environmental Plan</td><td>No</td><td>Comment if applicable</td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			This application has been referred as it is within the vicinity of a heritage item, being - <i>Item 11 - Harbour foreshores</i> , listed in Schedule 5 of Manly LEP 2013.			Details of heritage items affected			Details of this heritage item, as contained within the Heritage Inventory are: Item 11 - Harbour foreshores <u>Statement of Significance</u> Natural landscape type - Aesthetic. <u>Physical Description</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures.			Other relevant heritage listings			Sydney Regional Environmental Plan	No	Comment if applicable
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Internal Referral Body	Comments		
	(Sydney Harbour Catchment) 2005		
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
This application proposes alterations and additions to an existing multi-storey dwelling house and boathouse. Changes are proposed on each level of the dwelling as well as changes to the boathouse. The proposal also includes a pool and landscaping. The heritage item in the vicinity is the natural harbour foreshore. This application does not propose any works on the foreshore area, which is outside the property boundary of 8B Beatty Street. The proposed works will not greatly change the bulk and scale of the dwelling and boathouse, as viewed from the foreshore. As a result, it is considered that there will be no adverse visual impact upon the heritage significance of the heritage item. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of MLEP 2011:</u> Is a Conservation Management Plan (CMP) Required? Has a CMP been provided? Is a Heritage Impact Statement required? Has a Heritage Impact Statement been provided?			

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a written referral response that the proposal is acceptable subject to compliance with the relevant <i>Ausgrid Network Standards</i> and <i>SafeWork NSW Codes of Practice</i> . These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	The proposal was assessed by the Aboriginal Heritage Office. Referral response recommendations are included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council

Policies have been considered in the merit assessment of this application.

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A464926 dated 10.7.2022).

The BASIX Certificate indicates that the development will achieve the following for both dwellings:

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

Other Service Infrastructure Authorities

The application was not required to be referred to *Transport for NSW* and no other service

infrastructure authority referral issues are raised pursuant to the SEPP.

Requirements of *Sydney Water* are addressed by separate processes administered directly through *Sydney Water* for assets / services owned or managed by *Sydney Water*.

SEPP (Biodiversity and Conservation) 2021

(previously under SEPP 71 and Sydney Harbour Regional Environmental Plan)

Chapter 10 the SEPP (Biodiversity and Conservation) 2021 addresses the Sydney Harbour Catchment

Comment:

The proposal is consistent with Part 10.1 and Part 10.2 of the Act including the Aims and Planning principles for development control in proximity to the foreshore area.

Part 10.3 of the SEPP (Biodiversity and Conservation) 2021 addresses development in the proximity of foreshore area.

10.23 Foreshore and waterways scenic quality

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of the scenic quality of foreshores and waterways are as follows—

- (a) the scale, form, design and siting of any building should be based on an analysis of—
 - (i) the land on which it is to be erected, and
 - (ii) the adjoining land, and
 - (iii) the likely future character of the locality,
- (b) development should maintain, protect and enhance the unique visual qualities of Sydney Harbour and its islands, foreshores and tributaries,
- (c) the cumulative impact of water-based development should not detract from the character of the waterways and adjoining foreshores.

Comment:

The proposal is consistent with the pattern and scale of surrounding development and does not seek to encroach on public land (i.e access points, clearing, excavation or other)

10.24 Maintenance, protection and enhancement of views

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are as follows—

- (a) development should maintain, protect and enhance views (including night views) to and from Sydney Harbour,
- (b) development should minimise any adverse impacts on views and vistas to and from public places, landmarks and heritage items,
- (c) the cumulative impact of development on views should be minimised.

Comment:

The height and scale of the building does not cause unreasonable view impacts for properties

overlooking the site and the position of the building is consistent with the pattern of adjacent development. The proposal does not obstruct views of landmarks and glazed areas are shaded by wide eaves / balconies to minimise solar reflection and for the most part are easterly facing, which reduces opportunity for direct solar reflection across the open water of the harbour toward Manly / Seaforth.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The site has been inspected with regard to the natural foreshore area and the works proposed. The changes to the site and construction works will not create an unreasonable environmental impact in the coastal environment, subject to conditions for erosion control and landscaping.

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

Comment:

The proposed works can be suitably managed to avoid adverse impacts on the foreshore. The major

trees near the foreshore will be retained and landscaping works including planting will provide suitable protection for the foreshore area.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The development will retain the existing approved use of the site for a single dwelling. The building bulk and scale an external appearance will remain substantially similar to the existing house and existing boatshed.

Division 5 General

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

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

Comment:

The proposal is not in a location that is at increased risk of coastal hazard due to the natural topography and sandstone / hillside landscape.

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:

The proposal does not adversely affect the coastal management of the foreshore area and suitable "extended" sediment control plan has been provided by the applicant (as included in Condition 1).

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, being continued on the site. Site inspection during the assessment period did not identify any obvious visible signs of contaminate or hazardous material.

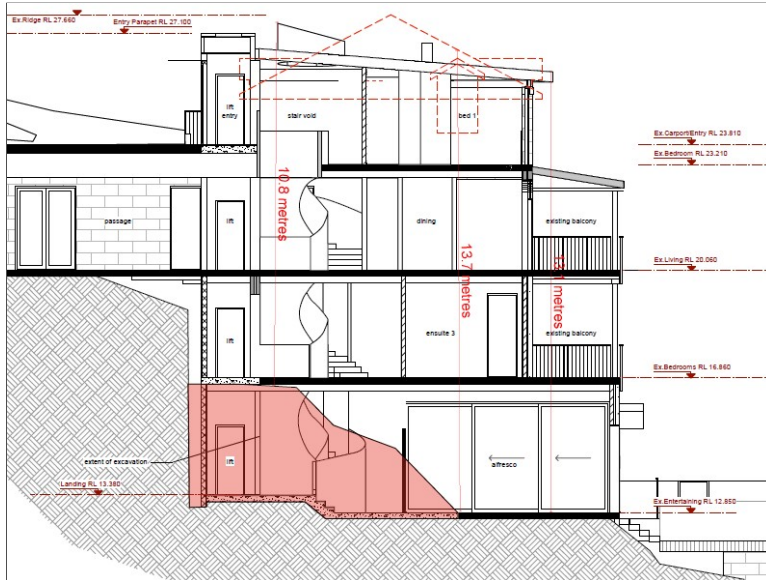
Concern regarding potential asbestos or lead paint is managed by standard practice and statutory laws for the safe handling of asbestos and demolition material, including compliance with *Australian Standards*, *WorkCover* and waste management conditions.

Manly Local Environmental Plan 2013

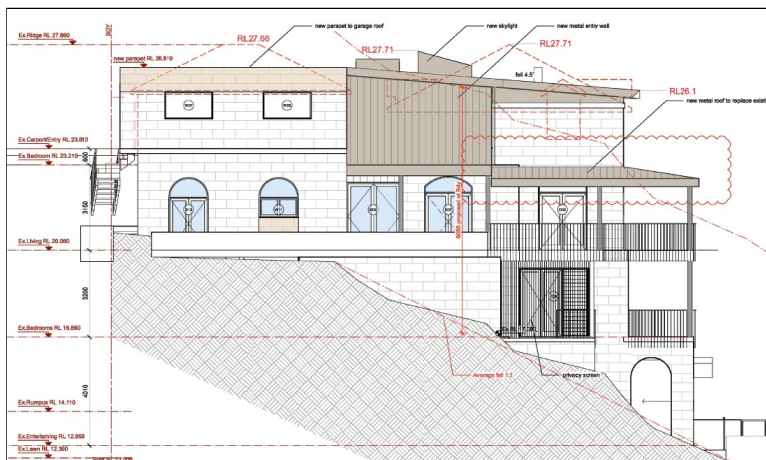
Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Existing roof structure 13.7m	61.1%	No (Existing)
		New roof structure 13.1m	54.1%	No
Floor Space Ratio (Site area 1,033sqm included access handle, as per Clause 4.5 of MLEP)	FSR:0.4:1 (413sqm)	Existing FSR 0.47:1 (485.7sqm)	17.6%	No (Existing)
		Proposed FSR 0.48:1 (496sqm)	20%	No



Existing ground level (including excavated) consistent with the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. General height plane & natural ground slope comparison of excavated area also shown and shaded ground section across the drawing.



Building height RL heights shown. Note the highest point is technically below the eastern edge of roof (RHS) due to EGL as per section.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes

Clause	Compliance with Requirements
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone C3 Environmental Management

The proposal is considered against the objectives of the Zone as follows:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
Comment:
 The alterations and additions are generally confined to the existing building footprint and, the house, in its altered form will contribute to the visual amenity of the locality without changing its existing character, and will not negatively impact on nearby foreshores, significant geological features or bushland. Changes to landscaping will refurbish garden areas and remove weeds and replace dilapidated (deteriorated) garden elements. Native trees are to be retained and coastal species replanted. The landscaping accommodated bushfire requirements.
- To provide for a limited range of development that does not have an adverse effect on those values.*
Comment
 The development work retains the substantial built form of the house and boat shed without having an adverse impact on landscape elements. The proposal does not adversely impact the environmental management values of the zone.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
Comment
 The locality is characterised by large residences with water frontage but substantially screened by tree canopies which soften the visual impact of the existing built form. Canopy trees are to be retained and landscaping element refurbished along the lower garden areas near the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
Comment
 The external appearance of the dwelling including materials and new garden planting have been selected to reflect the coastal setting and ensure that the dwelling in its altered form will contribute to the visual amenity of the locality without changing its existing character or being detrimental to the visual amenity of the harbour or coastal foreshore.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate,*

and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.

Comment:

The foreshore will not be overshadowed and there will be no additional view loss from public places as a result of the alterations. The development will also not result in any additional conflicts between land based and water-based activities.

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

Comment:

Overall the building will be lower in height and the building bulk of the new additions are minor and not readily visible from the harbour area or road and do not adversely impact the amenity of surrounding land.

4.6 Exceptions to development standards

HEIGHT OF BUILDINGS - Clause 4.6 Variation

Description of Non-compliance:

Description of Non-compliance:	
Development standard:	Building Height
Requirement:	8.5m
Proposed:	13.1m
Percentage variation to requirement:	54.1%

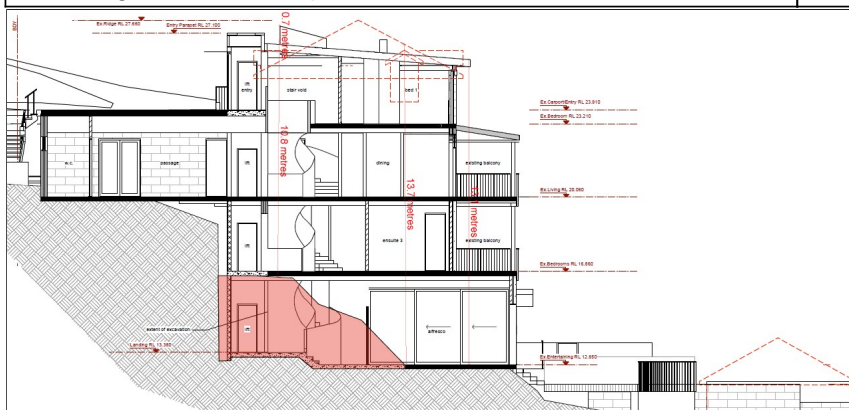


Image: Height of the dwelling house roof apex is being reduced overall from RL27.66 to RL27.36 due to lower roof profile however the maximum height is actually attributed to the north-eastern wall (facing the foreshore).

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has been provided seeking an exception under Clause 4.6.

In summary, the Applicant's written request is considered below within this report, and the applicant 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 existing tiled roof to be removed and replaced with a new low pitched metal roof already breeches the 8.5m height control. The overall height of the building in the area of the existing pitched roof will be reduced as a result of the new work. The new roof form will be consistent with other roof forms in the local area and will not change the existing visual character of the locality.*
- *The height non-compliance will not disrupt existing views towards the harbour from adjoining residences.*
- *Areas where the height non-compliance is evident such as the small infill area at Entry Level 3 on the south eastern side and the new centrally located balcony on north eastern side are a result of the steep topography of the site and are located well away from side boundaries to limit impacts.*

- *Solar access to adjoining dwellings, habitable rooms and open spaces will not be detrimentally affected by the slight height non-compliance since the distribution of building bulk across the site is not significantly different to that which already exists.*
- *The proposed changes are designed to improve access and the functionality of living spaces within the dwelling including lift access for its residents.*
- *The proposed design and materials to be used will enhance the appearance of the dwelling, reflect the coastal setting and improve the visual presence of the building when viewed from Sydney Harbour, thereby promoting good design and amenity of the built environment,"*

Consideration and Comment:

The applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, in that the current dwelling does not substantially comply with the height plane due to the steep easterly slope. New excavated area does not change the building bulk and overall the maximum height being reduced. Minor elements of the skylight and lift overrun do not adversely impact views, solar access or amenity of adjacent land. Manly DCP controls allow for appropriate design responses to be achieved in managing variations to building height. This includes exceptions and objectives for steep sites, particular lot size areas and environmental considerations. The applicant has provided detailed analysis of the design response and including acknowledgement of the anomaly in height lines from previous development the land. Overall the changes to the upper storey, garage and roof elements do not create unreasonable intrusion on views, solar access or the amenity of the surrounding urban or natural environment. The variation therefore satisfies cls 1.3 (c) and (g) of the EPA Act.

The distribution of building height, changes in wall planes and ancillary elements that are in an elevated position (terraces / awnings) does not raise unreasonable impacts of privacy (acoustic or visual) or overshadowing to surrounding land, including the public domain.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the *Height of Buildings* development standard and the objectives of the C3 *Environmental Management Zone*. An assessment against these objectives is provided below.

Objectives of development standards

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of Buildings' of the MLEP

2013 are:

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

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

Comment:

The proposed maintains a similar visible exposure to the topographic landscape as surrounding development due to the backdrop of the site rising steeply toward Beatty Street. The site has a public reserve in front of the site and there partly screened by the existing tree canopy that sits in the landscaped spaces between adjacent dwellings. The building is consistent with the prevailing building height of surrounding dwellings and when measured from the unexcavated ground level in that many dwelling nearby a similarly 2 to 4 storey on the downhill side of their lot. The existing house is non-compliant with the height of building control and the finished level height is in effect being reduced. The dwelling is not readily visible from Beatty Street however from the public waterway the house sits across the site and will retain a similar bulk and scale as the majority of external walls will remain unchanged with the sandstone cladding retained. The contemporary new roof design adopts a low profile roof form to respond to the prevailing building height.

b) to control the bulk and scale of buildings,

Comment:

The elements of the building that protrude above the height plane (including the new lift overrun and staircase lightwell) do not create unreasonable impacts of bulk and scale due to the larger mass of the building and the main floor levels of the building being unchanged.

It is considered that the proposal is consistent with this objective.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

Detailed view considerations have been made with the assessment of the proposal with regard to views from nearby residential development across the site toward any harbour, foreshore or district views and the like. The site is in a location where the building can be viewed from public waterways and adjacent reserve. Access to the reserve is limited due to the high water mark and rugged (rocky) nature of the land along the foreshore. The building is part 4 storeys and steps up the slope, however the narrow foreshore reserve affords limited natural screening of the building when viewed from the Harbour. New landscaping works will refurbish the main landscape space lower down the slope where the landscaping has fallen into disrepair and become inaccessible space to the occupants. It is considered that the proposed building height variation maintains consistency with this objective of visual impact and views.

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

Comment:

Detailed solar access diagrams are provided to demonstrate that the proposed height variation

does not create unreasonable impacts of overshadowing in terms of solar access to adjacent land. (See shadow diagrams drawn by *Third Wave*). Additionally the private open space areas and terraces are positioned facing the foreshore (viewing across public waterway) and therefore reasonable privacy amenity is maintained to adjacent residential properties. The height non-compliance relates to a limited upper level but does not create unreasonable amenity impacts on adjacent land as from the uphill side the dwelling appears as only part 2 storey.

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 dwelling is adjacent a foreshore reserve and views of the site from the harbour area and surrounding land are not unreasonably impacted by the non-compliance with the building height. It is considered that the proposed height variation maintains consistency with this objective. The non-compliance with the building height not readily discernible in the broader view of the pattern and density of surrounding development when viewed from above the site (dwellings such as No.8, 8A, 6 or No.10 Beatty Street due to the difference in floor levels for dwelling that site on higher ground overlooking the site.

Zone Objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

With regard to this objective several exempt smaller species trees are proposed to be removed and replaced with native species. A landscape plan has been prepared which provides for replacement landscaping for disturbed areas of the site during work including appropriate native trees and plants. The additional height and bulk does not impact the ecological values of the foreshore. It is considered that the development satisfies this objective.

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

Comment:

The proposed height variation does not offend this objective of the zone for protecting or restoring ecological, scientific, cultural values in that the use of the remains (for detached housing) and is provided within a landscape setting that is compatible with the height, density and pattern of surrounding development. No other (non-residential services or facilities) are proposed.

It is considered that the development satisfies this objective.

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

Comment:

Some smaller exempt species trees are to be removed and replaced with native trees. Suitable landscape planting is to be provided along the side setback area in selected spaces to screen the side wall elements and maintain a landscape setting. It is considered that the

development satisfies this objective.

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

Comment:

The proposal requires no works within the foreshore area and excavation confined to the existing building structure and footprint. The height variation does not raise any inconsistency with this objective.

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

Comment:

The alterations and additions will not create long term adverse impact on vegetation along the foreshore or natural rock area of the foreshore reserve in that the landscaping has been refined to reduce impact of structures near the adjacent foreshore including retaining a large Bankisa tree. Additionally, replacement landscape planting will be provided for the new landscape works. The elements that are in breach of the building height do not have any unreasonable impact on water quality of the natural runoff to surrounding land.

- *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 elements that are in breach of the height plane for the dwelling house do not impact on the existing vegetation of the foreshore area. The additional height and bulk does not impact on adjacent land use by way of unreasonable building bulk with the non-compliance essentially created by the steep land and architecture of the existing sandstone house with the main external walls to be retained. The site is affected by bushfire requirements of the NSW RFS and an appropriate bushfire hazard assessment has been prepared to accompany the application (see report No.221166 by Building Code and Bushfire Hazard Solutions Pty Ltd).

For the reasons detailed above, the non-compliant component of the development, as it relates to building height and demonstrates consistency with objectives of the C3 Environmental Management zone and therefore the proposed variation is supported.

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

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

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

building).

FLOOR SPACE RATIO - Clause 4.6 Variation

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1
Proposed:	0.48:1
Percentage variation to requirement:	20%

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 (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The distribution of building bulk and FSR above the height plane is satisfactory regarding the scale of the dwelling and associated concerns for managing visual privacy and avoiding unnecessary overshadowing impacts associated with the distribution of the additions to the building in response to the topography and established pattern of adjacent development.

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 applicant's written request argues, in part:

- *"The existing residence is not visible from the street. The bulk and scale of the development will not substantially change when viewing the development from surrounding properties or Sydney Harbour.*
- *The increase in FSR is marginal and generally associated with infill spaces and rationalising access / room layouts and connectivity of the rooms within the building.*
- *The overall floor space of the reconfigured dwelling will be similar to that which is already existing. The existing tiled roof is to be removed and replaced with a new flat pebble roof. The overall height of the building in the area of the existing pitched roof will be reduced as a result of the new work. The new roof form will be consistent with other roof forms in the local area and will not change the existing visual character of the locality..*
- *The locality is characterised by large residences with water frontage but substantially screened by tree canopies which soften the visual impact of the existing built form. The proportioning, palette of materials and planting have been selected to reflect the coastal setting and ensure that the dwelling in its altered form will contribute to the visual amenity of the locality without changing its existing character or being detrimental to the visual amenity of the harbour or coastal foreshore.*
- *Despite non-compliance with the maximum FSR prescribed, the proposed development achieves consistency with the landscaped area control"*



Image: Photomontage of the site and surrounding properties viewed from the Harbour.

Consideration of the applicant's reasons provided above is made below. In summary, 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).

Consideration and comment:

- The proposal has not been required to be amended to in response to any submission issues (non were received) and the attributable floor space of basement area and overall floor space is distributed in a manner that responds to the amenity aspects of the site (foreshore location) and similarity with the existing building on the site. Opportunity to increase the landscape open space planting on the site have been incorporated to assist with screening and softening the appearance of the dwelling to be in a landscape setting.
- The non-compliance with the FSR does not have a material impact on tree clearing or bushfire protection due to the bushfire (BAL) category and *Planning for Bushfire Protection* requirements applied to the site. These are addressed in context with the landscape amenity of the Sydney Harbour Foreshore area.
- Pursuant to *Clause 4.1.3.1* of the DCP the proposal is not affected by the FSR exception allowed for area "U" based on a 750sqm lot size since the site already has sufficient usable site area and the battle axe shape of the lot has been appropriately applied in terms of "usable area" for the purpose of calculating FSR.
- The revised design contributes to the associated impacts of building bulk toward adjacent dwellings in terms of continuity with the height plane and impacts of privacy and overshadowing in terms of spatial separation and wall height.

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C3 Environmental Management zone. In consideration of the public interest no public submissions of objection were received with respect to the development application from any surrounding properties.

An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed façade dwelling will retain a similar appearance but overall the height of the building is reduced. The change to the carport and front entry area of the dwelling does not create any adverse impact on the streetscape or foreshore..

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

Comment:

The proposed FSR does not cause any obstruction of views for any significant environmental features (including landscape heritage) and does not require any additional bushland clearing. A number of non-native trees and non-native palms will be removed with replacement planting being dominated by native plant species suitable for the coastal location. The proposed scale and bulk does not remove any important landscape features or obstruct townscape features from overlooking properties adjacent the site. Council's landscape officer has reviewed the proposal and ensured the landscaping structures were refined (less impacting on the foreshore) and kept major native trees near the foreshore.

- *c) to maintain an appropriate visual relationship between new development and the existing*

character and landscape of the area,

Comment:

The development generally relies on floor space within the existing building footprint and some ground level landscaping for private open space. These ground level areas are consistent with the existing character and landscape of the foreshore area and the footprint of the dwelling is not substantially changing (expanding to spread into landscape space).

External materials and landscaping selections are responsive to the bushfire protection requirements and therefore the building relies on internal amenity and balcony space more than other properties where flatter urban land exists.

The natural site levels and landscape zones will be restored within disturbed areas from construction and with new native planting and ground covers to replace invasive plants where practicable as per the landscape plan.

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

Comment:

The FSR variation to the site area will not be responsible for any unreasonable loss of privacy, loss of water views or depreciation of amenities and it is noted it complies with the FSR variation allowance prescribed by the DCP. This factors in the battle axe shaped lot with houses adjacent and overlooking the land with the proposed house position that is on a steep foreshore location.

The proposed dwelling will not unreasonably affect the level of solar access to the adjacent neighbouring private open space. Details of solar access and natural light consideration have been made in direct consideration under the Manly DCP and changes to the roof awing elements would not necessarily have and impact on the FSR compliance.

- *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:

This objective is not applicable to the dwelling house as the land is not in a business zone.

Zone objectives

The underlying objectives of the C3 Environmental Management (previously E3) zone are:

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

Comment:

The FSR variation does not offend this objective of the zone as the habitable floor area does not encroach into the foreshore building line and is set well back from the water edge on an elevated peninsula of land. A landscape setting will be maintained that is compatible with the height, density, and site constraints that influence the pattern of surrounding development.

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

Comment:

The current use of the site for a family home will remain and the proposal does not seek to introduce other forms of land use development in terms of ecological, scientific or cultural change.

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

Comment:

The FSR variation does not offend this objective of the zone in that the use of the remains, for detached housing in a low density environment, and is provided within a landscape setting is maintained that is compatible with adjacent land and the foreshore environment. The proposal is consistent with surrounding development in being consistent with this objective in that elements along the foreshore and wall and pool setbacks to the foreshore (southern boundary) remain consistent to what they currently are.

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

Comment:

The alterations and additions are situated well back from the foreshore area and have minimal excavation works. The FSR variation does not evoke any negative impacts on geological features, the foreshore quality and surrounding bushland. No major trees are required to be removed.

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

Comment:

The proposal includes a large basement area however no works are near the foreshore building setback line however the land is within the foreshore scenic protection area. The dwelling will generally maintain the natural values of the foreshore area, and does not unreasonably affect adjacent foreshore space or remnant vegetation and suitable drainage will be provided to minimise sedimentation and maintain water quality of the Harbour.

- *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 alterations and additions are generally confined to the main structure of the existing house with no adverse impact on foreshore natural rock area. Replacement landscape planting will be provided for the new landscape works. The building bulk associated with the new bedroom changes and lower ground areas, however no unreasonable impacts privacy, views or sunlight will be created.

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

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

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

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

Mainly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density D9: 1 dwelling per 1,150sqm	1 dwelling per 1,033sqm (Existing lot)	10.1% (No change)	No (As approved)
4.1.2.1 Wall Height	Northwest: 8.0m wall (based on gradient 1:4+)	13.0m	62.5%	No
	Northeast 7.2m	13.0m	80.5%	No
	Southwest 7.2m	7.1m	N/A	Yes
	Southeast: 8.0m (based on gradient 1:4+)	12.8m	60%	Yes
4.1.2.2 Number of Storeys	2	4	200% (No change)	No (As approved)
4.1.2.3 Roof Height	Height: 2.5m	0.7m	N/A	Yes
	Pitch: maximum 35 degrees	0 to 4.5 degrees	N/A	Yes

4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	Battle Axe shaped lot 64m access handle.	N/A	Yes
4.1.4.2 Side Setbacks* and Secondary Street Frontages <i>*Based on wall height at that level.</i>	Northwest: 1.0m (Ground) 2.0m (Upper storey) Southeast: 1.0m (Ground) 2.0m (Upper storey) Southwest	Northwest: Lower Level / pool 1.5m / 3.3m Level 1 1.5m Level 2 1.5m to 4.9m Entry Level 4.0m to 16.6m Southeast: Lower Level /stairs 2.1m / 1.8m Level 1 / balcony 0.9m / 0.0m Level 2 0.9m to 4.6m Entry Level 0.45m to 1.7m Carport 0.22m House 11.8m	N/A (No change) N/A N/A N/A N/A N/A 50% 75% N/A	Yes No (As approved) Yes Yes No (As approved) No (As approved) No* No* Yes
	Windows: 3.0m	Northwest Level 2 1.6m to 4.9m Ensuite 4 1.5m Southeast 1.0m (Carport) 1.1m /1.2m (Laundry / kitchen) Bed 2	16% to 66% (existing wall line)	No No No No

		2.5m		
4.1.4.4 Rear Setbacks	15.0 metres (Foreshore area)	South: 6.4m to 7.6m to property boundary Marine store / Gym	2m (No change)	No* (As approved)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area (OS4):	Total Open Space 60% of site area 619.8sqm	54% (557.6sqm)	10%	No*
	Open space above ground max. 25% of total open space 155sqm	24% (149sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 248sqm	38% (239sqm)	N/A	No*
4.1.5.3 Private Open Space	18sqm	506sqm (main alfresco, living terrace and pool areas)	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	Battle axe lot shape (not visible from street)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	3 car spaces	N/A	Yes

* Refer to detailed merit assessment under the relevant DCP section heading within this report.

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	No	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes

Detailed Assessment

3.3.1 Landscaping Design

The objectives and requirements of Clause 3.3.1 Landscaping Design (including landscaping within the foreshore zone), are addressed as follows:

- *To encourage appropriate tree planting and maintenance of existing vegetation.*

- *To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

Merit Assessment Comments

- The proposal has been amended to ensure landscaping works within the foreshore area and lower slopes of the site will maintain the existing canopy trees (Banksia) and include suitable coastal species with landscaping works that do not unreasonably impact the open space and existing foreshore area.
- The existing lower slopes of the site are partially in disrepair and new sandstone low rise gabion walls will replace selected retaining walls within the private open space of the site. The lower foreshore area of the site transitions suitably with native landscaping, lawn and trees being retained or new planting to support populations of native fauna and support flora diversity (including remove weed species).
- Landscaping proposed is appropriate to meet the objectives of 5.4.1 Foreshore Scenic Protection Area.

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

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Merit Assessment

The DCP requirements and objectives, pursuant to *Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)*, are addressed as follows:

- *To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.*
- *To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.*

Comment:

- One submission was received with raising amenity concerns with respect to views building bulk and setbacks. Assessment consideration and site inspection has concluded that these environmental considerations will not be adversely impacted for the amenity of surrounding development. In summary, the proposal has been submitted with detailed plans and elevations, including survey data to demonstrate setbacks, view considerations, FSR, height and building bulk. The site and foreshore area has been inspected to gauge the overall position of the building, roof profile and building scale in its relationship to the surrounding environment as well as landscaping to be provided. Large new trees are not proposed that might obstruct views in the future.



Image: Principal view indication across site from ground level storey at No.8A Beatty Street.

- In appreciating views, the dwellings to the north of the property are primarily oriented towards the west (outlook toward Spit Bridge area), with the subject site and dwellings to the south-east primarily having an outlook toward the south and south west, to take advantage of the available views generally towards Forty Baskets and the broader area of Manly / Seaforth. It is recommended that conditions be applied to ensure the proposed roof height and floor levels are constructed as proposed. Details of the building height non-compliance and floor space (building bulk) are considered further within this report under the heading "Clause 4.6" which also addresses view and visual amenity impacts as per the zone objectives.



Image: Adjacent dwelling to northwest also overlooks site across driveway area.

- The proposal is consistent with the view impact considerations pursuant to the 4 part approach outlined in the Planning Principle established by Roseth SC for view sharing pursuant to *Tenacity Consulting v Warringah [2004] NSWLEC 140*.
- There are no dwellings or areas of private open space to the south-east, south or south-west of the subject property therefore the proposed development will not result in any unreasonable impacts with regard to overshadowing.
- The neighbouring dwelling at number 8A is sited upslope of the subject site with dense vegetation in the landscape space between the two properties in that any potential overlooking will be mitigated. In this regard the proposal maintains its primary outlook, including the orientation toward the east/north east. The pool area, entry point and northern boundary do not create any unreasonable overlooking or privacy (visual or acoustic) impact on adjacent land. The common boundary between No.8A and 8B is adequately protected by boundary landscaping, fencing and adjustable (or fixed) screening for the building windows.
- In summary the proposal maintains appropriate residential amenity to adjoining properties in relation to views, solar access and privacy to adjacent land.

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

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the objectives and requirements of *Clause 3.4.3 Maintenance of Views* as follows:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*
- *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).*
- *To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

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

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



Image: Easterly views from standing position ground level rear terrace across central part of site (parts of view interrupted by trees and landscaping elements and different levels in rear yard of No.8A Beatty Street).

Comment:

The views are gained from living areas balcony and terrace but the whole of the view is expansive (easterly toward the Manly / Seaforth and the harbour water area and associated foreshores). Foreshore on the nearside is not readily visible. There are various elements of tree canopies, moorings, boating activity and the like that form part of the views from various positions / vantage points (as per image above).

- *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.*



Image: View from side of house to show difference ground level, terrace levels and storey height comparative to the property alignment between No.8A and No.9B Beatty Street. Note the difference in ground levels between the properties affords minimal interference in the broad views by the roof line of the subject site (tiled hipped roof with gables and chimney).

Comment:

Views are enjoyed from deck areas principally facing easterly / northeast the harbour water, from ground level and above where open / glazed facades and open balconies / terraces are used for the easterly aspect. The views are across the rear garden area and rear setback / rear boundary of No.8A Beatty Street and directly over the roof line and whole of the dwelling at No.8B Beatty Street. View are enjoyed from standing and sitting position.

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

Comment:

The alterations and additions will reduce the upper bulk and afford a very similar quality of the view with negligible change. The site and surrounds have been inspected and in terms of view considerations and the change to the upper roof profile, including the lift and skylight the view loss is negligible.

- *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A*

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



Image: View from balcony level over the site from No.8A Beatty Street.

Comment:

View impacts have been considered in the assessment of the proposal and site inspection demonstrates that the minor non-compliance with the wall height does not have a negligible view impact. Similarly the design of the proposal includes a substantial non-compliance with the 8.5m height of building control. However overall the building is lower at the maximum high point of the roof with the height principally being part of the existing wall on the lower / far side of the building where the existing walls remain substantially the same (as approved). The alterations and additions will have a negligible impact on views from overlooking private land on higher terrain along Beatty Street, including No.8A Beatty Street. A condition is recommended that if solar panels are mounted to the finished (survey level) of the dwelling house roof they be set at a low profile of 5 degrees or less to minimise view and reflection impact from overlooking properties. The garage is not in a position that would create any significant view impact for solar panels on its (new) flat roof.

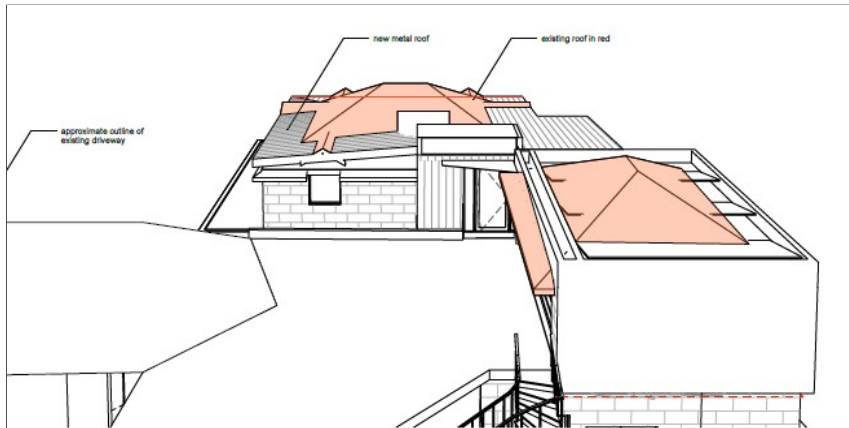


Image: Schematic diagram of roof profile changes (original shaded to be replaced by flatter roof). Skylight and lift shaft indicated.

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)

The objectives and requirements of Clause 4.1.2 Height of Buildings (incorporating Wall Height, Number of Storeys and Roof Height) are addressed as follows:

- *The LEP objectives for the Height of Buildings at clause 4.3 are particularly applicable to this DCP clause.*
- *Exceptions to Height: Where an existing building exceeds the maximum height controls in this plan or the height of building standards in the LEP, any alterations and/or additions to the building must not increase the overall height of the existing building.*
- *For the purpose of determining maximum wall height, the slope of the land is calculated at natural ground level along the full length of the proposed wall expressed as a ratio.*
- *Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.*
- *Pitched roof structures must be no higher than 2.5m above the actual wall height.*
- *Roof parapets may extend up to 0.6m above the actual wall height where Council considers appropriate.*
- *The maximum roof pitch must be generally no steeper than 35 degrees.*

Merit Assessment

- The objectives of the 'height of buildings' development standard pursuant to the MLEP are addressed in detail within this report under heading clause 4.6, in which wall height is also considered.
- The proposal is consistent with the exceptions allowance within this clause in that the overall building height has been reduced by 0.3m from the existing roof apex to the apex of the new skylight. Overall the majority of the roof space is lowered by as much as 1.3m. In this regard the proposal complies with this clause in that alterations and additions *must not increase the overall height of the existing building*. Therefore the proposal demonstrates a consistent counter-

response required by the DCP to the non-compliance with wall height and 2 storey limit.

- The DCP permits a maximum wall height of 8.0 metres (gradient 1:4+). The existing dwelling has a non-compliant wall height of 13 metres. The development will partly increase the existing non-compliance, resulting from an existing a maximum wall height of 12.3 metres. No adverse amenity impact is created on adjacent land.
- The proposal is 4 storeys and therefore does not comply with the 2 storey limit. The existing house is already approved as 4 storeys and the proposal seeks to expand and replace the existing upper storey, however toward the rear the proposal steps down to one storey and the 4 storey element at the north-eastern elevation is associated with the existing garage element of the building. In consideration of the non-compliant storey the proposal has adopted some similarities to the existing building in terms of the POS at the rear, corridor and habitable room layout, use of a 'circular' style skylight and limiting the main building bulk to the foreshore side of the dwelling. This allows for solar access and spatial bulk to be consistent with the existing amenity of adjacent land, without unreasonable additional environmental impact.
- The pitched roof gable is limited to 1.4m above the actual wall height and complies with the DCP requirement.
- No parapet element is proposed and eaves are not proposed at the upper level, however minor wall sections and selected windows protrude into the side setback / side boundary envelope. These are limited to selected windows and do not create adverse amenity impacts to adjacent land.
- The new gable roof has a 25 degree pitch (along the main span) and complies with the DCP roof pitch limitation.

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

4.1.3 Floor Space Ratio (FSR)

Floor Space Ratio objectives in the DCP pursuant to Clause 4.1.3, support the purposes of the Manly LEP in relation to maintaining appropriate visual relationships between new development and the existing character, view considerations and landscape area as follows:

- *To ensure the scale of development does not obscure important landscape features.*
- *To minimise disruption to views to adjacent and nearby development.*
- *To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

Merit Assessment Comment:

- The site has no significant natural features and the proposal does not obscure or require removal of any mature street trees. A landscape buffer at the rear will be refurbished and space retained along the side boundaries to allow for movement of fauna (e.g. bandicoots) between the landscape features on the site. In this regard, the building footprint will remain consistent with the existing open space and landscape areas of the site. Larger native trees near the foreshore will be retained as part of the amended design, including more sympathetic (amended) landscape refurbishment works near the foreshore.
- The proposal is consistent with this objective in that the principle change to FSR is concealed in the basement / lower floors and by the additional rationalised space near the entry areas to be provided as part of the upper storey.
- The proposal does not obstruct views and is situated toward the harbour / foreshore area, given the existing shape and bulk of the upper storey to be replaced with the new bedroom level that will be lower in the maximum roof height at present and uses a lower profile roof across the main section (that currently has a high pitched traditional hipped roof).
- The proposal will retain adequate sunlight to adjacent land and private open space within the development and does not give rise to any unreasonable environmental planning ground to the approval of the proposal pursuant to clause 1.3 (Aims) of the Act.

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

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

The objectives and requirements of *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are addressed as follows:

- *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.*
- *To ensure and enhance local amenity.*
- *To promote flexibility in the siting of buildings.*
- *To enhance and maintain natural features.*
- *To assist in appropriate bush fire asset protection zones.*

Merit Assessment Comments:

- A side boundary setback equivalent of 1/3 of the wall height is required on the site which equates to 4.3 metres for the upper wall height of 13.0 metres.
- The proposal does not impact the existing streetscape of Beatty Street due to the battle axe shaped lot and steep land whereby the house is not readily visible from the road. The principal vehicle access is to remain with a partial non-compliance for the position of the front of the garage / carport (side wall change) to 0.22m setback. In this regard the garage / carport is shielded by a retaining wall and no unreasonable impact is made on No.8A Beatty Street by the non-compliant wall setback.

- The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like). Overall the building maintains suitable access to natural light, direct sunlight and air circulation for the given that the main exterior wall lines for the dwelling house will remain on their original setback, except for some new minor incursions along the southern boundary (bbq and kitchen corner window). The non-compliance does not create any unreasonable amenity impact on No.6 Beatty Street since the dwelling house on that site is much (higher up) closer to the road.
- The proposal is consistent with the DCP objective to allow for the flexibility in housing styles and renewal including modern styling, and consideration for rationalising internal circulation space and bedroom areas is acceptable. While the proposal has a 13m height side wall element to the northwest (adjacent No.10 Beatty Street) this does not create an inconsistent precedent to the street, in that proposal maintains consistency with the existing wall line and the new upper storey levels involves only a fractional change to the create 'Bedroom 1' within the new roof space and minimised any change to the boundary envelope requirement.
- The proposal maintains a 2.7m side setback level 2 and with a wall height if 8.2m requires a setback of 2.7m however these existing dwelling and side walls curtailage (and will remain in situ. A new study window is a minor side window appropriate for the room in consideration of light, ventilation, privacy and general usage. The window overlooks lower very steep garden area that has limited accessibility from within No.10 Beatty Street.
- The nature of development does not unduly detract from the context of the site, street character and particularly in relation to street frontages and front and side setbacks, minor non-compliance with side facing windows (upper storey bathroom) and in consideration of the context of neighbouring properties and the prevailing building lines / setbacks in the immediate vicinity to allow for flexibility in the siting and development of buildings. The proposed setbacks allow for compliance with the *Building Code of Australia* for maintenance, access, drainage work and emergency requirements (fire safety egress).
- Consistency is maintained to the rear building line of neighbouring properties with natural features (trees / lawn / garden and deep soil zones). The main pattern of deep soil landscaped open space is retained with elements of landscaping near the foreshore zone and the external sandstone architecture of the building maintains visual interest and reasonable amenity to the private open space, rear setback areas and front entry space / garage area.
- An appropriate bushfire hazard assessment has been prepared to accompany the application (see report No.221166 by *Building Code and Bushfire Hazard Solutions Pty Ltd*) to address the use of asset protection zones.

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

4.1.5 Open Space and Landscaping

The objectives and requirements of *Clause 4.1.5 Open Space and Landscaping*, are addressed as follows:

- *To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*
- *To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*
- *To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*
- *To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*
- *To minimise the spread of weeds and the degradation of private and public open space.*
- *To maximise wildlife habitat and the potential for wildlife corridors.*

Merit Assessment Comments:

- The site does not achieve compliance for 60% total open space distributed between the available yard area, but will increase the overall open space area from the existing situation, including improvement (refurbishment) to landscape elements in the front, side and rear setbacks that have fallen into disrepair. Renewal / refurbishment of ground level landscape elements will be provided to complement the redevelopment work and maintain long term biodiversity of native flora and fauna (e.g Long nose bandicoot and other fauna) appropriate to the local area. The remaining variation to total open space is a shortfall of natural landscaping by 9 sqm (deep soil). In this regard, an influencing factor is the extensive paved areas of the site needed for access / pathways to connect safely between the main building elements, and the existing building footprint (driveway spaces approved) remaining consistent with the current building footprint and proportional ground level open space area.

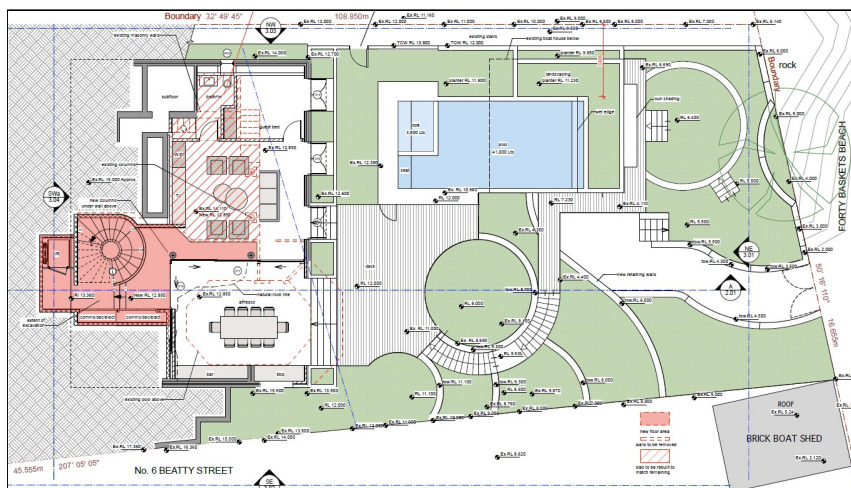


Image: Photomontage of rear private open space including foreshore area.

- Appropriate areas of deep soil soft landscaped areas and open space at ground level is provided to support tree planting and the maintenance of outdoor areas for the absorption of rainfall and runoff. The landscape plan will not create any unreasonable risk to the spread of weeds and the degradation of private and public open space and the landscape plan has been updated to reflect the changes in the front setback / driveway, allowing for the protection of the existing street trees along the foreshore.

- A suitable landscaping plan has been designed to maintain reasonable levels of amenity including sunlight, privacy and neighbours outlook and addressing the streetscape of Beatty Street. In this regard, the plans have been amended to ensure minimal structures in the foreshore front setback (e.g. deleted high retaining wall and changed to lower gabion style curves). Tree protection is addressed by condition as per the Landscape referral response.
- Deep soil zones are proved at the rear for garden areas to be maintained as an extension of the rear terrace redevelopment and work in unison with existing stormwater connections to be used. No additional OSD elements are required and the proposal meets BASIX requirements for water savings, rainwater tanks and inclusion of landscaping elements.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the 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, subject to conditions.

4.1.7 First Floor and Roof Additions

The objectives and requirements of *Clause 4.1.7 Floor and roof additions*, are considered as follows:

First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.

The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.

Merit Assessment:

- The alterations and additions involve using the main ground wall and overall existing building mass to support the roof change for the upper storey additions and changes to the entry area are not visible from the street. This will retain the existing 4 storey appearance to the foreshore, but retain part 2 storey appearance at the front entry. The shape and styling of the existing upper roof is being replaced and the new additions are consistent with the adjoining properties in terms of building bulk, height and general appearance including treatment to roof material to be dark to minimise solar reflection. Window replacements and new windows do not create unreasonable overlooking of adjacent dwelling due to large offset of neighbouring dwellings. Reasonable privacy is maintained.
- The proposed additions reduce the overall height but still vary the LEP building height control and FSR. This is addressed in detail under the heading "Clause 4.6" within this report. During the assessment period minor changes were made to reduce the variation to the roof profile and landscape area works, in particular balcony terrace elements. The position and area of the open rear terrace and front balconies is consistent with the pattern of development in the area for such narrow lots (with outlooks toward the harbour) and the style and shape of the roof is of an appropriate renovations / modernisation proposed for the house.

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

4.1.9 Swimming Pools, Spas and Water Features

A merit assessment against the objectives and requirement of *Clause 4.1.9 Swimming Pools, Spas and Water Features* is as follows:

- *To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*
- *To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*
- *To integrate landscaping; and*
- *To become an emergency water resource in bush fire prone areas.*

Comment:

- The proposal seeks to replace and existing small pool with with a larger repositioned pool. The existing pool is located in an undercroft space toward the south-eastern corner of the house. The new pool location is toward the northwestern side boundary and between the "boathouse" and the lower level living space. The new pool is situated above existing ground level and partly elevated due to the steep slope and positioning of the pool partly on the roof of the "boathouse". The side setbacks are protected by privacy measures for landscaping planter structures along the north-eastern side of the pool. Additionally the deck area for the pool access in the central part of the site with minimal elevated deck near a side boundary. Neighbouring properties overlook the site from a considerable distance way with no close private open space (less than 3m away) close to the pool on neighbouring land.

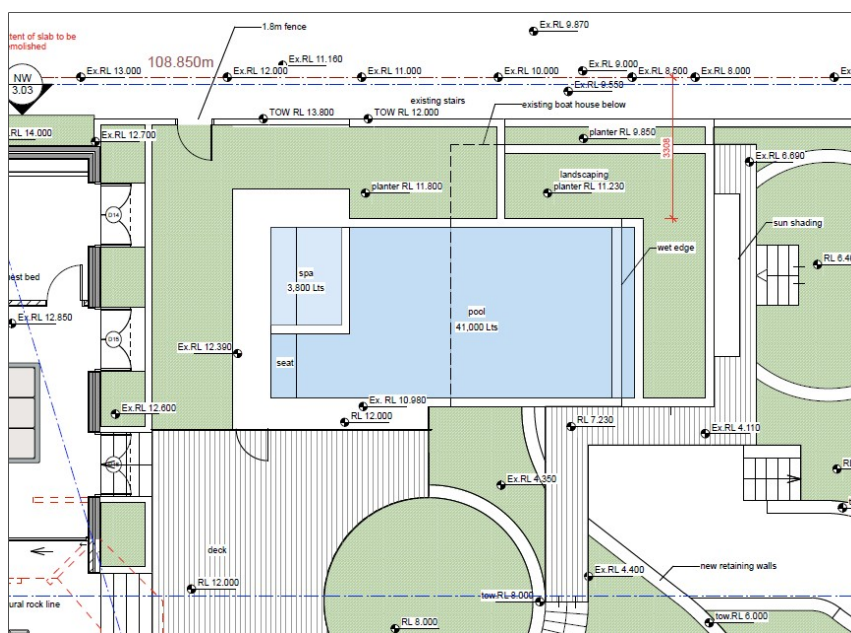


Image: Position of new pool structure on site partly at ground level as partly over the replaced roof for the 'boathouse' outbuilding.

- The location of the pool is not readily visible from the street or foreshore due to the position of the pool between the boatshed and the main dwelling. Landscape surrounds are also proposed adjacent the pool as shown in the image above.
- Suitable landscape planting is provided near the pool which include deep soil at ground level, mixed (low, medium and tall planting) as well as planter box structures. The landscaping regime is appropriate for the foreshore location in terms of use of native species and other plants, as assessed by Council's Landscape Officer.
- The site is affected by bushfire prone land / buffer but the availability of the pool due to the steep land and driveway by RFS firefighting would be limited, compared to other more accessible properties. An appropriate bushfire hazard assessment has been prepared to accompany the application (see report No.221166 by Building Code and Bushfire Hazard Solutions Pty Ltd).

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the 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.

5.4.1 Foreshore Scenic Protection Area

Merit Assessment

Development in the Foreshore Scenic Protection Area must not detrimentally affect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place.

Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.

Comment:

- The scale of development is commensurate with surrounding development along the foreshore area near the site and the renovations and landscape work appropriately respond to the existing conditions of the site, including access, excavated areas, slope and visual outlook. Works proposed in the immediate foreshore setback area have been refined to retain trees and ensure structures are appropriate to this zone.
- The bulk and scale of development is responsive to the design of the existing large dwelling house and consistent within the visual catchment of the site and the foreshore area for pattern of development. The change to height and FSR variations do not create unreasonable impacts to surrounding land or diminish the LEP objectives.
- The proposed dwelling maintains a residential outlook toward the foreshore and the overall

height of the building, use of materials and colours is consistent with existing development along the foreshore and will not result in an unreasonable visual impact when viewed from public places along the foreshore (Forty Baskets Beach) or the harbour.

- The proposed development requires the removal of exempt species only, with the retention of all nearby trees of significance. The application also proposes new native species landscaping across the site, with a net increase in canopy resulting from the proposal. Bushfire protection requirements are satisfactory for the bushfire buffer area (as detailed in the submitted bushfire assessment report).

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$39,452 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,945,158.

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 not satisfied that:

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

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

2) The proposed development will not be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house, including new (replacement) pool structure, landscaping and ancillary works. The proposal has been referred to the Development Determination Panel (DDP) due to changes to the existing building height and FSR that both currently exceed these development standards by more than 10%. While the proposal seeks to reduce the overall building height from 13.7m to 13.1m the variation sought is 54.1% for the new roof changes. The variation sought to the FSR is increasing from 0.46:1 to 0.47:1 (20%) which is attributed rationalising the internal room layout, bedroom change and the entry foyer / internal access.

The concerns raised in the objections regarding building bulk, height and views have been addressed and no special conditions are recommended except for requirements to ensure RL's are confirmed during construction (as a routine check to ensure expected views are maintained).

Other critical development assessment issues for involved consideration of setbacks, construction management, building bulk, landscaping along the foreshore and the natural interface between Forty Baskets Reserve and the site. Minor amendments were received during the assessment period to assist in addressing these issues.

Overall, the development is a high quality design that does not create unreasonable amenity impacts with regard to the planning controls and will result in satisfactory outcomes for the site when viewed from surrounding land and the harbour area. The proposal has therefore been recommended for approval, subject to conditions to address amenity considerations and standard requirements. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 *Height of Building* and 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 DA2022/1471 for Alterations and additions to a dwelling house including a swimming pool and spa on land at Lot 2 DP 558244, 8 B 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
S.01 B Site Plan	14.4.2023	Third Wave Design
1.01 A Gym / Boat Store	10.7.2022	Third Wave Design
1.02 A Lower Level and Pool	10.7.2022	Third Wave Design
1.03 A Bedrooms Level 1	10.7.2022	Third Wave Design
1.04 A Living Rooms Level 2	10.7.2022	Third Wave Design
1.05 B Entry Level 3	14.4.2023	Third Wave Design
1.06 A Roof Plan	10.7.2022	Third Wave Design
2.01 B Section A	14.4.2023	Third Wave Design
3.01 B North East Elevation	14.4.2023	Third Wave Design
3.02 B South East Elevation	14.4.2023	Third Wave Design
3.03 B North West Elevation	14.4.2023	Third Wave Design
3.04 A South West Elevation	10.7.2022	Third Wave Design
3.05 A Beach Elevation	10.7.2022	Third Wave Design
S.08 A Material & Finishes	10.7.2022	Third Wave Design

Engineering Plans		
Drawing No.	Dated	Prepared By
C00.01 General Notes	22.2.2023	Engineering Studio
C01.01 Sediment and Erosion Control Plan	22.2.2023	Engineering Studio

C01.02 Sediment and Erosion Control Details	22.2.2023	Engineering Studio
C02.01 Stormwater Drainage Plan	22.2.2023	Engineering Studio
C02.02 Stormwater Details Sheet	22.2.2023	Engineering Studio
C02.03 Stormwater Details Sheet 2	22.2.2023	Engineering Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX certificate A464926	10.7.2022	The House Energy Rating Company
Geotechnical Investigation J4291	10.8.2022	White Geotechnical Group
Arboricultural Impact Assessment Report	20.1.2023	Margot Blues Arborist
Flora and Fauna Assessment Report	22.8.2022	GIS Environmental Consultants
Bushfire Assessment Report 221166	24.8.2022	Building Code and Bushfire Hazard Solutions

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan - Issue C	2.3.2023	Michael Wayman Landscape Architect
Landscape Schedule - Issue C	2.3.2023	Michael Wayman Landscape Architect

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
S.10 Site Waste Management Plan	10.7.2022	Third Wave Design
S.11 Erosion and Sediment Control - Extension of Erosion Barriers	10.7.2022	Third Wave Design
Waste Management Plan	11.8.2022	Third Wave Design

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	5.10.2022
Aboriginal Heritage Office	AHO Referral Response	6.10.2022

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site / onsite structures / house as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

- ***dwelling house*** means a building containing only one dwelling.

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

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

4. **Prescribed Conditions**

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

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

that Act,

- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the

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

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval. Works and delivery of materials are not to unreasonably obstruct access to any adjacent private property (including Rights of Way).
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork

NSW Codes of Practice.

- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$39,451.58 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 \$3,945,158.00.

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

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

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or

on Council's website at Northern Beaches Council - Development Contributions.

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

7. **Security Bond**

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

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

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

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

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

8. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$10,000 as security against any damage to Council's stormwater drainage infrastructure as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **Amended Plans**

Amended Site Plans shall be submitted to adjust the retaining walling layout and alignment in accordance with the documented Landscape Plan issue C and dated 2nd March 2023.

10. **Preparation of a Tree Removal Protocol**

The Project 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 Certifier prior to issue of Construction Certificate.

Reason: To protect native wildlife.

11. **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 site to ensure no concentration of flows.

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

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

12. **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.

13. **Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's Water Management for Development Policy Section 6.

Details and certification prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

14. **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.

15. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

16. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the approval submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

17. **Estuarine Hazard Design Requirements**

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

Reason: To minimise risk associated with coastal hazards for development in an estuarine environment.

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 relevant legislation and Australian Standards, to protect public health and amenity and to ensure the protection 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 the issue of the Construction Certificate.

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

20. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. **Tree Removal Within the Property**

This consent approves the removal of existing tree(s) on the subject site as identified in the Arboricultural Impact Assessment, or as listed below:

- a) T13 - Lacy Tree Fern,
- b) a qualified AQF level 5 Arborist shall identify these tree(s) on site and tag or mark prior to removal,
- c) exempt species identified in the Arboricultural Impact Assessment (T2 to T12, T14 to T25) do not require Council consent.

Reason: To enable authorised development works.

22. **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, where they may be reasonably at risk of damage / dilapidation.

Property / Properties:

- o No. 8A Beatty Street, Balgowlah Heights
- o No.6 Beatty Street, Balgowlah Heights
- o No.10 Beatty Street, Balgowlah Heights
- o Any other adjacent private or public land assets that may be impacted by associated work activity to the development.

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

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

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

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

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

23. **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 site

DURING BUILDING WORK

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

All natural 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 (MLALC) are to be contacted.

Reason: Preservation of significant environmental features.

25. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

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

Reason: Tree and vegetation protection.

26. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

27. **Road Reserve**

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

Reason: Public safety.

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

Council proactively regulates construction sites for sediment management.

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

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

29. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

30. **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.

31. **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.

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

32. **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.

33. **Survey Certificate**

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

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

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

34. **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.

35. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is 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 is 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 enter receiving waters.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

36. **Installation and certification of solid/fuel burning heater**

The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide to the Principal Certifier certification that the solid fuel heater has been installed by an appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

37. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan issue C dated 2nd March 2023 and Landscape Schedule issue C dated 2nd March 2023, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) the foreshore landscape areas (below the Boast House and below retaining wall t.o.w RL 6.000) shall consist of 100% native vegetation planting and shall include selection from the following species: *Banksia integrifolia*, *Banksia ericifolia*, *Banksia spinulosa*, *Correa reflexa*, *Dodonaea triquetra*, *Hakea sericea*, *Kunzea ambigua*, *Leptospermum polygalifolium*, *Westringia fruticosa*, *Dianella revoluta*, *Goodenia hederacea*, *Hibbertia scandens*, *Lomandra glauca*,
- c) the nominated *Pandanus* species shall not be planted in the foreshore landscape area, and shall be replaced with a native tree as listed above in b),
- d) the remaining foreshore landscape area below the dwelling shall consist of at least 60% native vegetation planting,
- e) the following list of plant species are unsuitable within foreshore area due to self seeding and spreading, and shall be deleted: *Phoenix* and *Monstera*,
- f) all tree planting shall be a minimum pre-ordered planting size of 75 litres and 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,
- g) all planting shall be installed as indicated on the approved Landscape Plan unless otherwise conditioned, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- h) 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,
i) 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,
j) 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.

38. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

39. **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.

40. **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.

41. **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.

42. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian

Standards and Codes by a suitably qualified Civil Engineer.

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

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

43. **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.

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

The Geotechnical Inspection requirements as recommended within Part 17 of the Geotechnical Investigation by *White Geotechnical Group* are to be completed. Any further additional requirements recommended, if required by *White Geotechnical Group*, are to be completed to the satisfaction of their Geotechnical Expert Consultant.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

45. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans.

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

Reason: Protection of Council's Infrastructure.

46. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater

Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds.

Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Reason: Protection of Council's infrastructure.

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

47. **Landscape Maintenance**

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

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

Reason: To maintain local environmental amenity.

48. **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.

49. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

50. **Operation of solid fuel burning heaters**

The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place

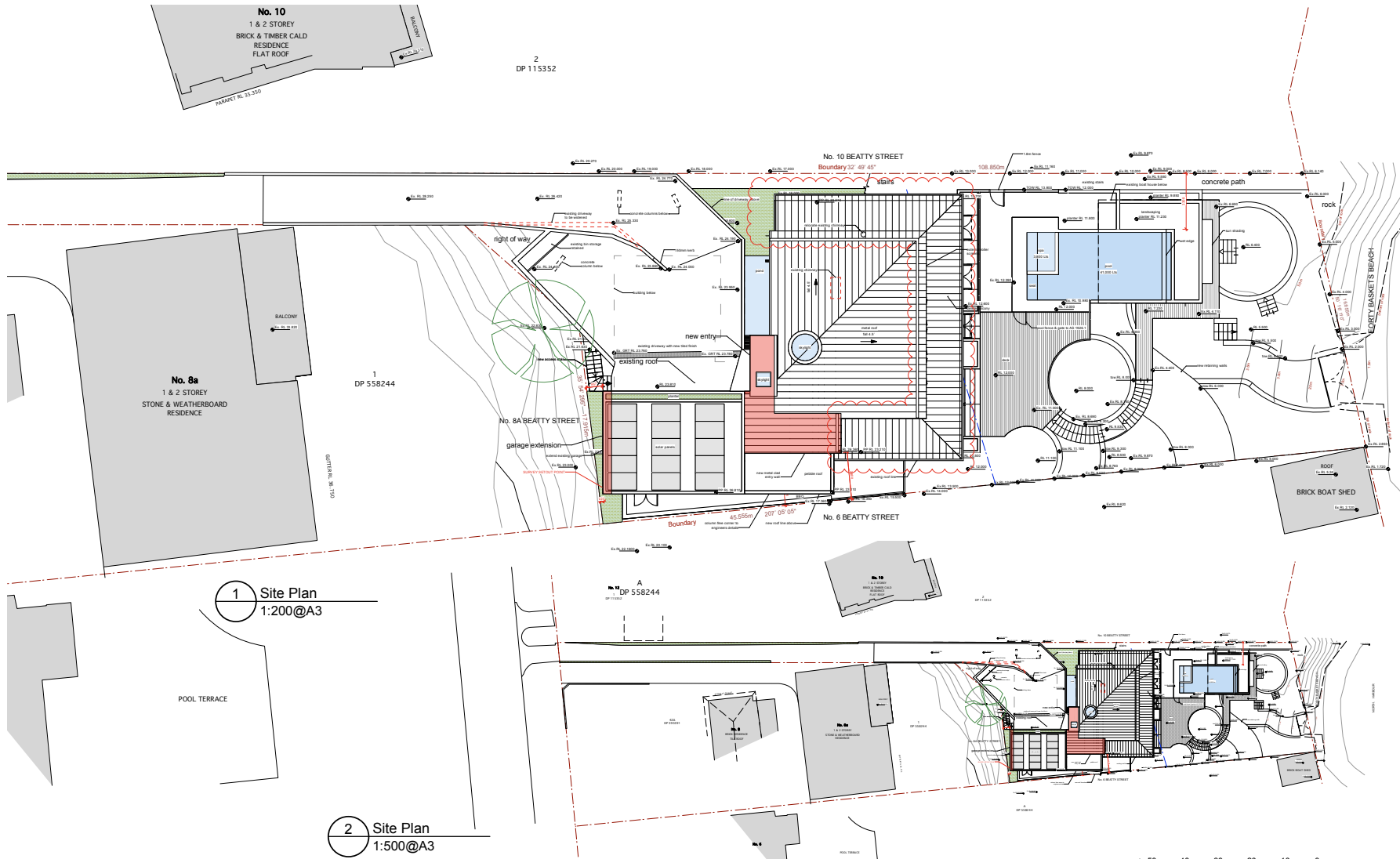
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

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

51. **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, grated drains and inlet pits 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 storm water generated by the development for the protection and preservation of the aquatic habitats and biota within receiving waters.



CLIENT Justin & Caroline Fengels		PROJECT NO. 2202		NOTE: CONTRACTOR TO CHECK ALL DIMENSIONS ON SITE PRIOR TO COMMENCING CONSTRUCTION		REVISION A 10/7/2022 Initial Issue B 14/4/2023 Upper balc. deleted, roof amd.		DATE 10/7/2022 14/4/2023		AMENDMENT DESCRIPTION Initial Issue Upper balc. deleted, roof amd.		TITLE Site Plan	
ADDRESS 8B Beatty St, Nth Balgowlah		1. DO NOT SCALE OFF THIS DRAWING 2. CONTACT TWD TO CONFIRM ANY DISCREPANCIES 3. ANY VARIATION OF THESE DRAWINGS REQUIRES WRITTEN PERMISSION FROM TWD		ALL BUILDING WORK TO COMPLY WITH AUSTRALIAN STANDARDS & THE BUILDING CODE OF AUSTRALIA		AMENDMENTS		SCALE		@ A3		TYPE S.01 NUMBER B AMENDT B	
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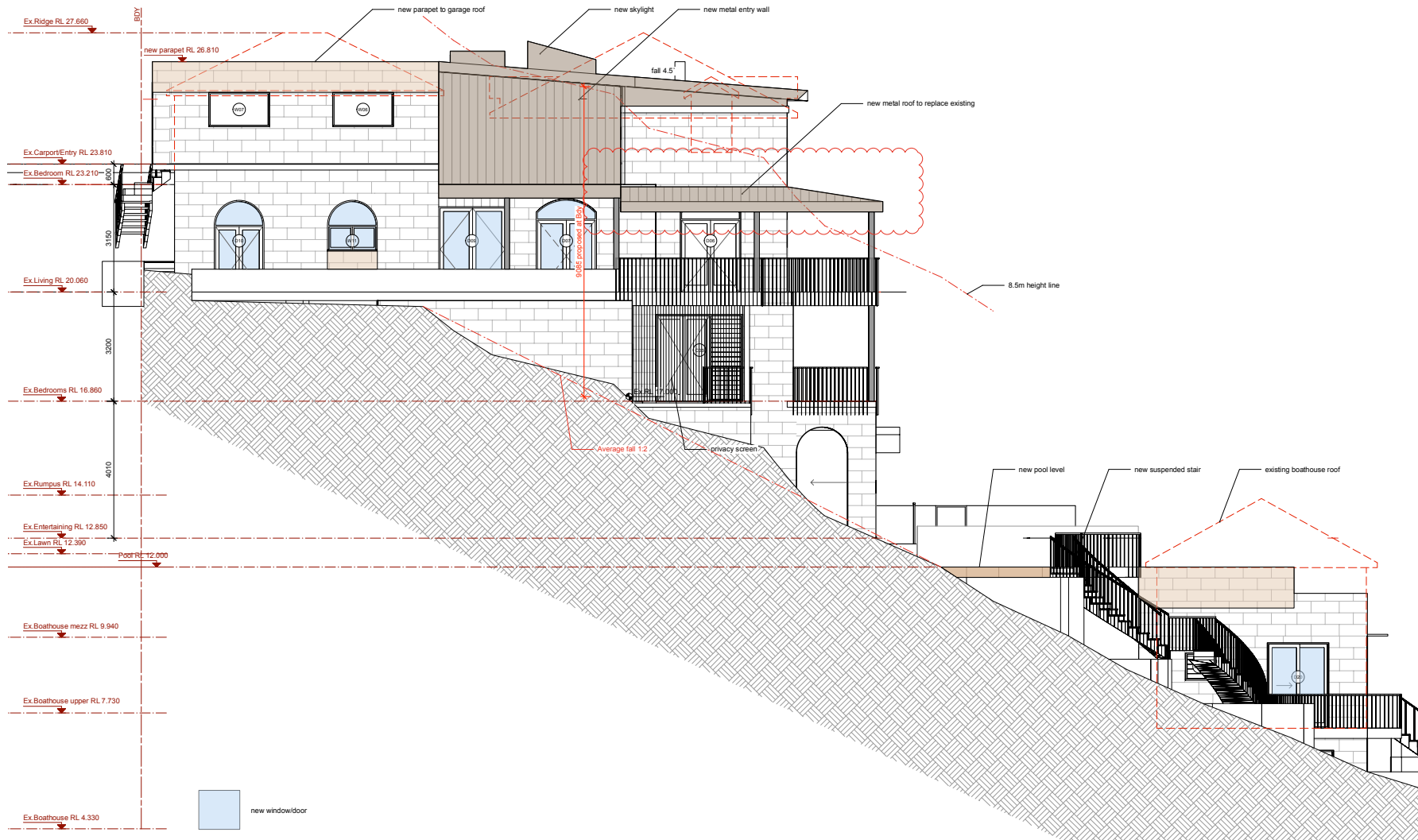
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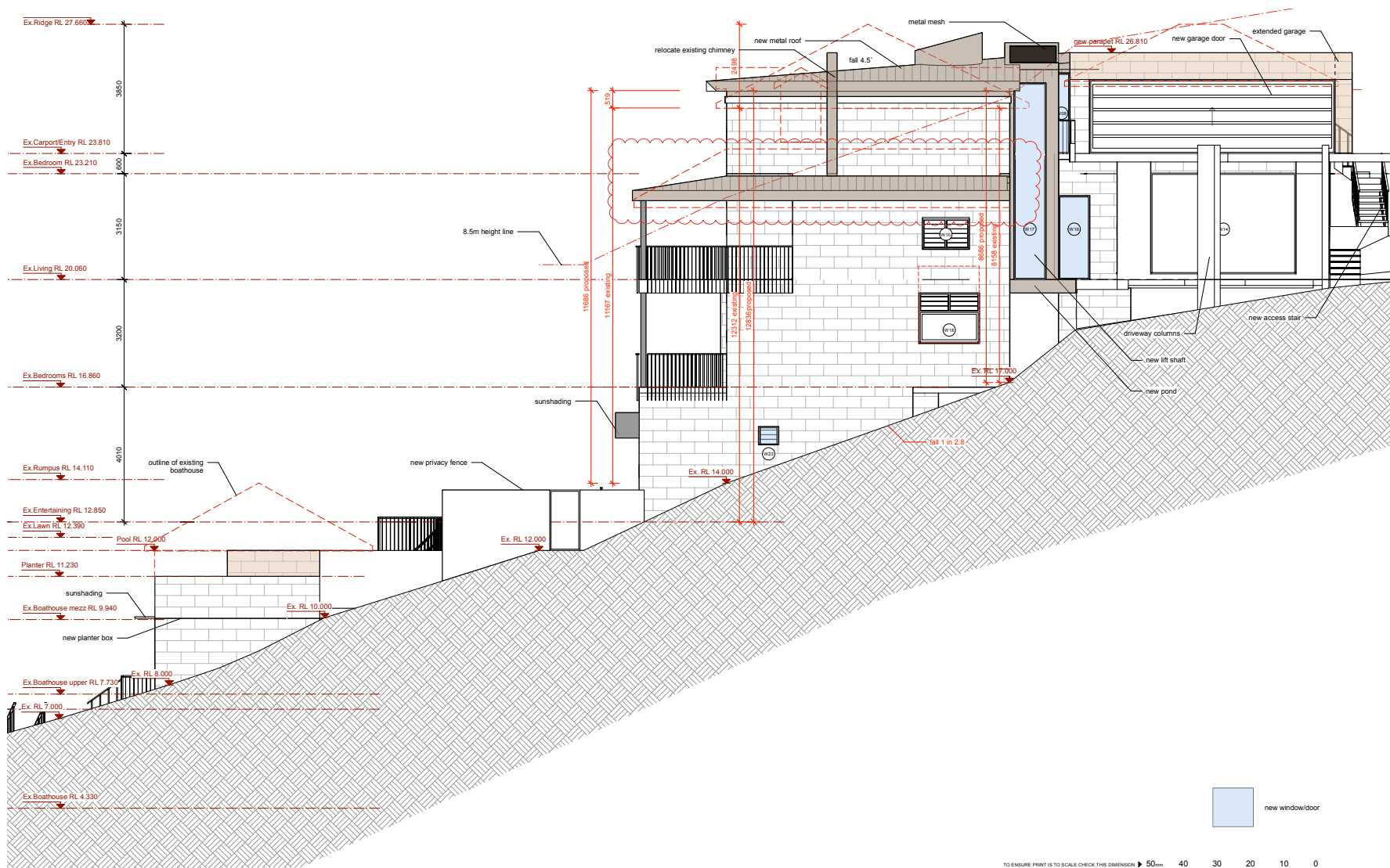
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Beatty St







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Justin & Caroline Fengels
PROJECT NO.
2202
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NOTE:
CONTRACTOR TO CHECK ALL DIMENSIONS ON
SITE PRIOR TO COMMENCING CONSTRUCTION
ALL BUILDING WORK TO COMPLY WITH
AUSTRALIAN STANDARDS & THE BUILDING CODE
OF AUSTRALIA

AMENDMENTS
REVISION DATE AMENDMENT DESCRIPTION
A 10/7/2022 Initial Issue
B 14/4/2023 Balcony deleted, roof amd, W31-33 amd

TITLE **North West Elevation**

SCALE **1:100 @ A3**

TYPE	NUMBER	AMENDT
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PURPOSE	Development Application	

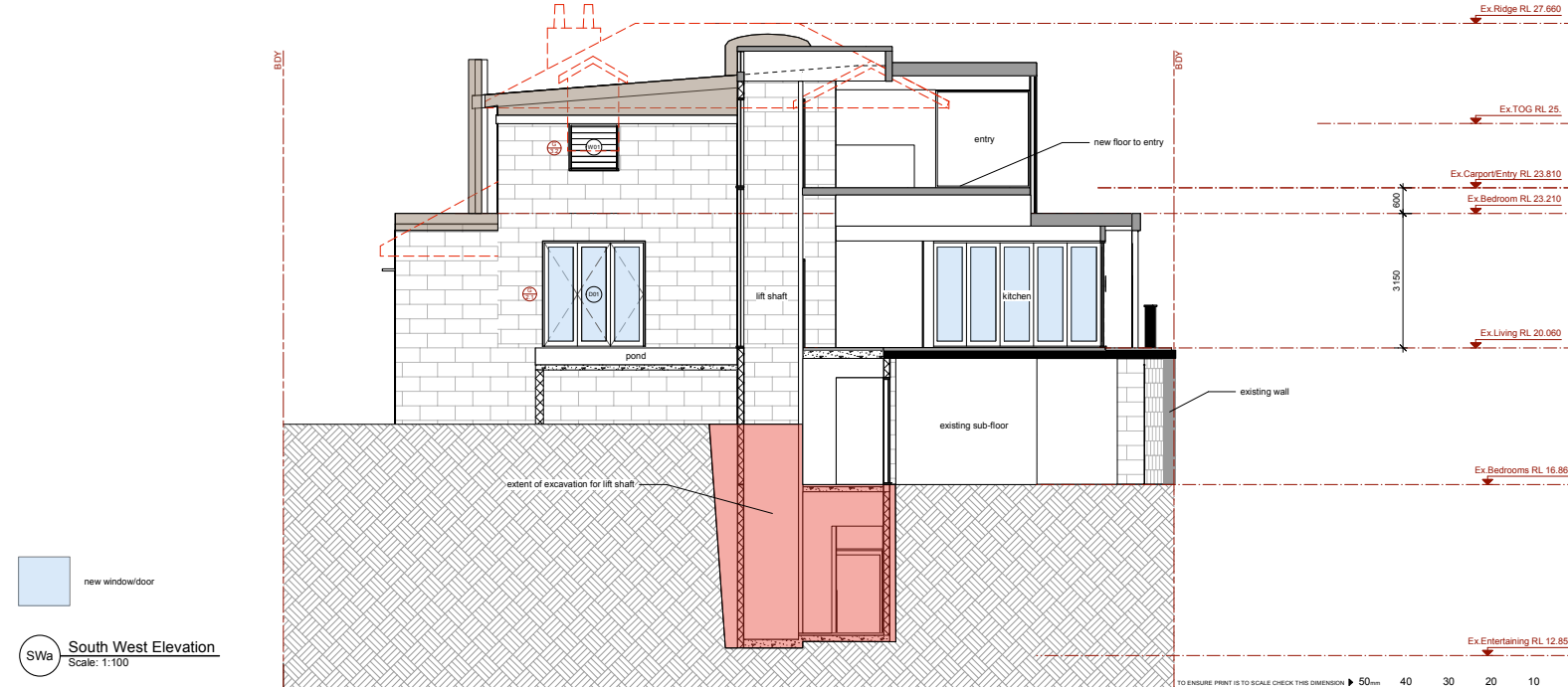
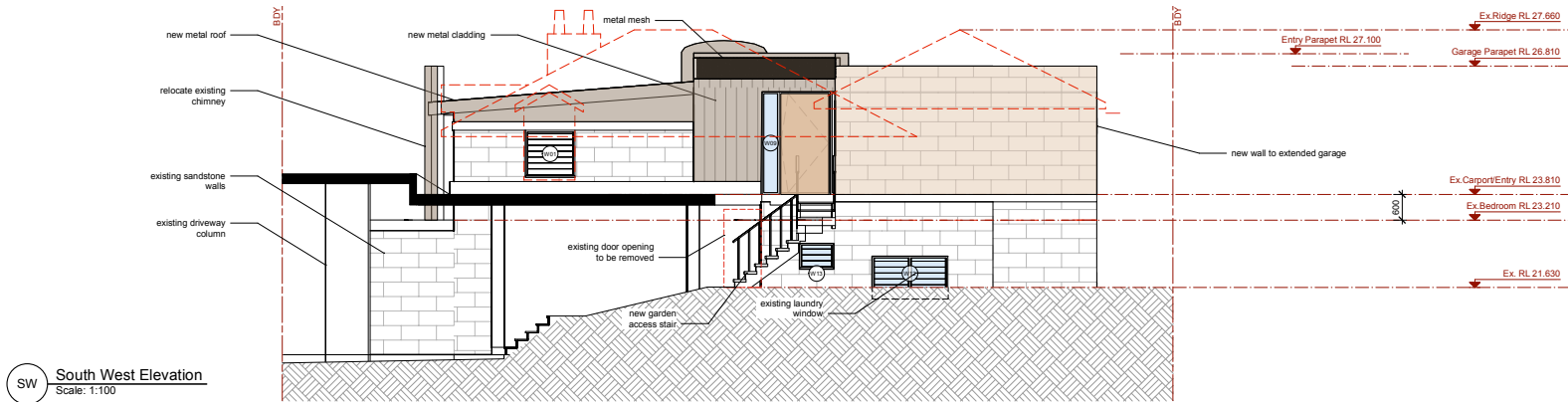
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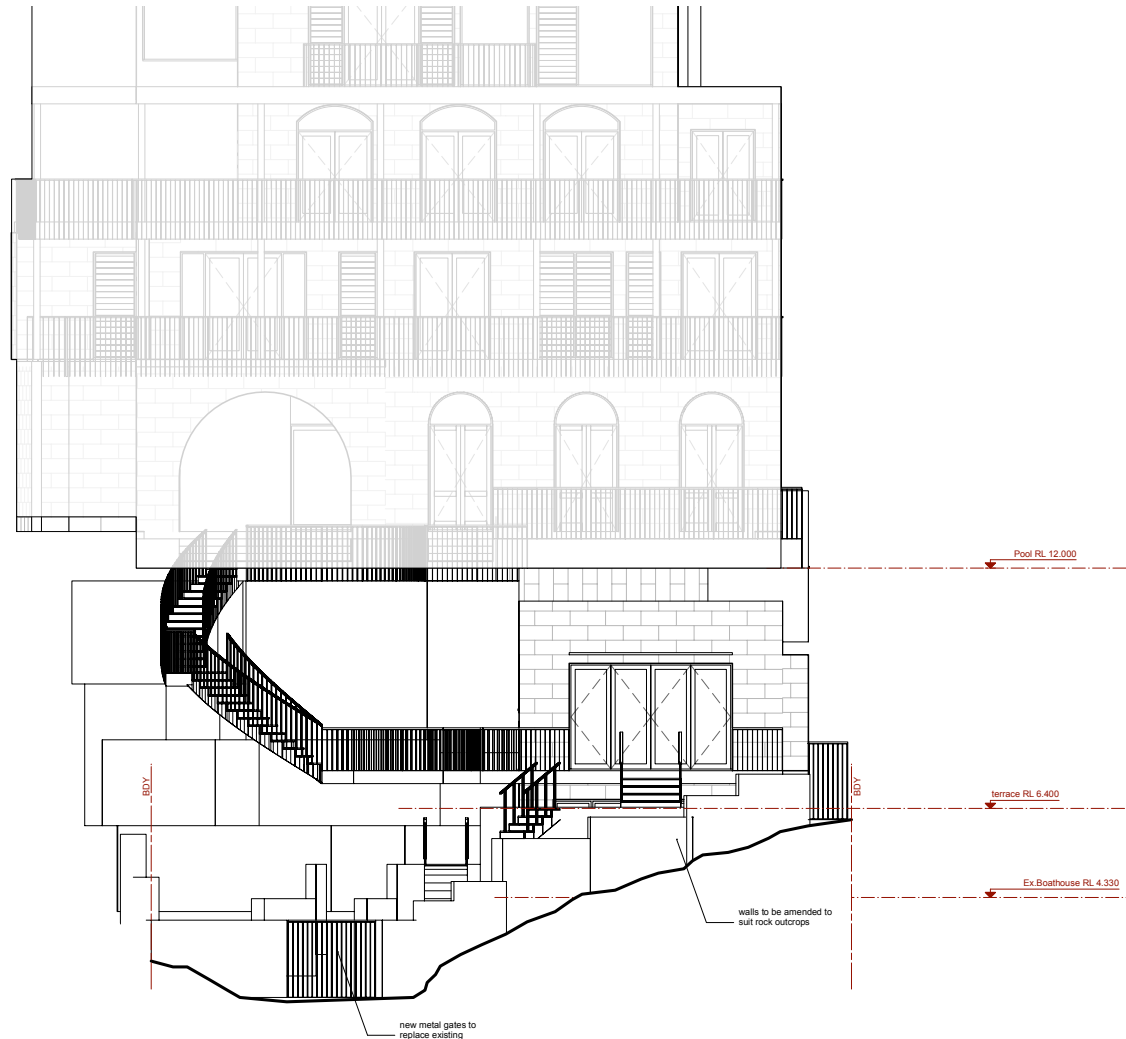


CLIENT Justin & Caroline Fengels PROJECT NO. 2202 ADDRESS 88 Beatty St, Nth Balgowlah		NOTE: CONTRACTOR TO CHECK ALL DIMENSIONS ON SITE PRIOR TO COMMENCING CONSTRUCTION ALL BUILDING WORK TO COMPLY WITH AUSTRALIAN STANDARDS & THE BUILDING CODE OF AUSTRALIA	REVISION A DATE 10/7/2022 AMENDMENT DESCRIPTION Initial Issue	TITLE South West Elevations SCALE 1:100 @ A3 SCALE BAR 50mm 40 30 20 10 0	<table border="1"> <tr> <td>TYPE</td> <td>NUMBER</td> <td>AMENDT</td> </tr> <tr> <td></td> <td>3.04</td> <td>A</td> </tr> <tr> <td colspan="3">PURPOSE Development Application</td> </tr> </table>	TYPE	NUMBER	AMENDT		3.04	A	PURPOSE Development Application		
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Beatty St



BCH Beach Elevation
Scale: 1:100

CLIENT Justin & Caroline Fengels		PROJECT NO. 2202	NOTE: CONTRACTOR TO CHECK ALL DIMENSIONS ON SITE PRIOR TO COMMENCING CONSTRUCTION ALL BUILDING WORK TO COMPLY WITH AUSTRALIAN STANDARDS & THE BUILDING CODE OF AUSTRALIA	AMENDMENTS	REVISION A	DATE 10/7/2022	AMENDMENT DESCRIPTION Initial Issue	TITLE Beach Elevation		TO ENSURE PRINT IS TO SCALE CHECK THIS DIMENSION 50mm 40 30 20 10 0		Beatty St		
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Metroplan Services

**8B BEATTY STREET BALGOWLAH (LOT 2
DP558244)**

**AMENDED REQUEST TO VARY HEIGHT
DEVELOPMENT STANDARD PURSUANT TO
CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

Prepared on behalf of:
Caroline and Justin Fengels

For submission to:

NORTHERN BEACHES COUNCIL

1 May 2023



CONTENTS

PURPOSE.....	2
INTRODUCTION	4
IS COMPLIANCE UNREASONABLE AND UNNECESSARY? – LEGAL FRAMEWORK.....	6
THE OBJECTIVES OF THE DEVELOPMENT STANDARD ARE ACHIEVED NOTWITHSTANDING NON-COMPLIANCE WITH THE STANDARD.	8
IS THE VARIATION IN THE PUBLIC INTEREST?	11
STATE OR REGIONAL ENVIRONMENTAL PLANNING MATTERS.....	12
CONCLUSION	12

Purpose

This written request has been prepared in accordance with clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP) and accompanies a development application (DA) for alterations and additions to an existing dwelling at **8B Beatty Street Balgowlah**. This request to vary a development standard within MLEP, relates to Height of Buildings under clause 4.3(2). Clause 4.3 (2) of MLEP states: -

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

The height of buildings map shows a maximum building height for the site of 8.5m.

An exception is sought under clause 4.6 of the MLEP 2013 to vary this development standard.

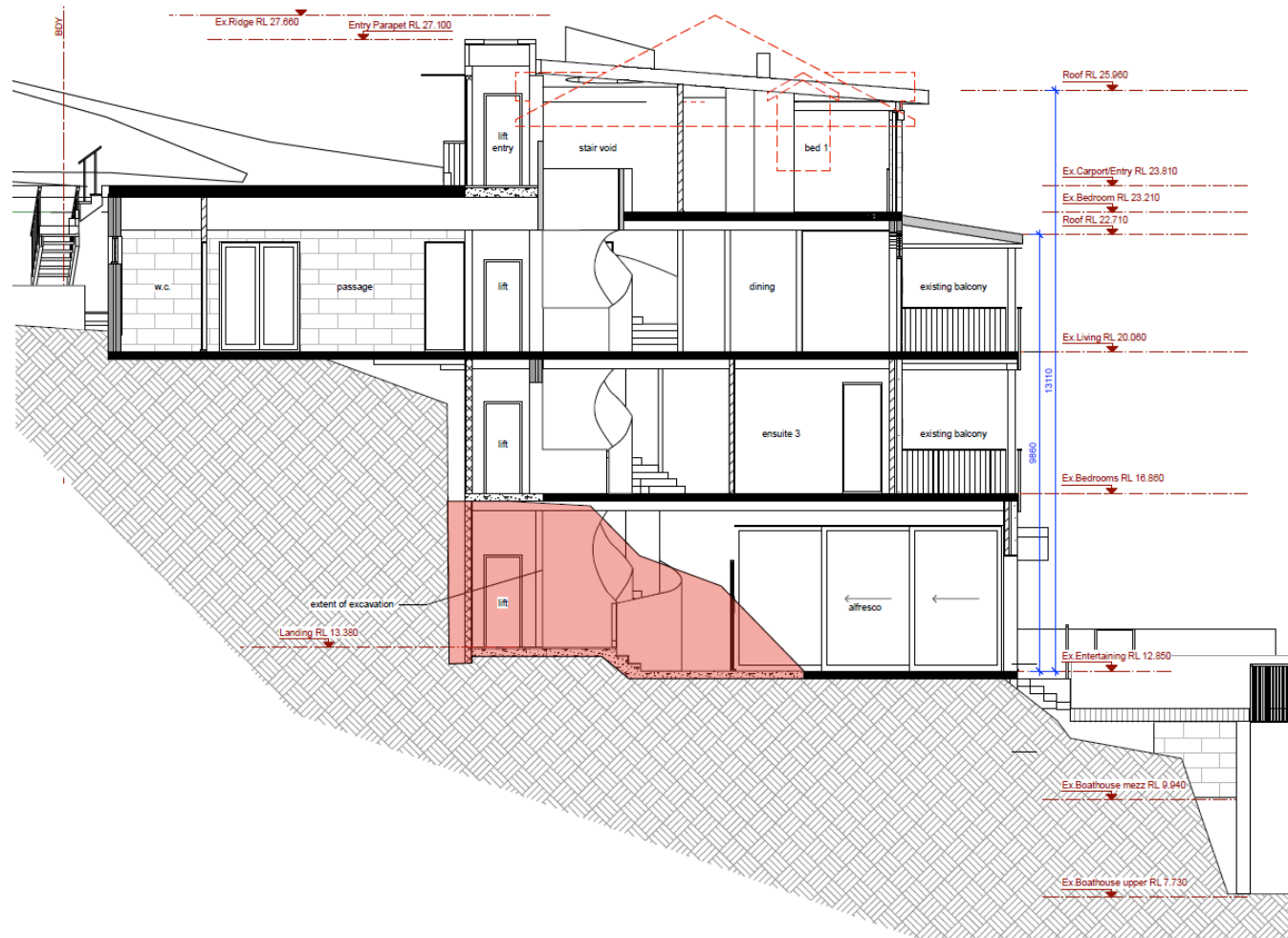
Building height is defined under the MLEP 2013 as:-

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

Extent of Variation

The driveway has a fall from Beatty Street (RL 39.60) to the elevated concrete ramp/parking area (RL 23.8). The site then continues to fall steeply to the north east (rear) boundary with Forty Basket Beach (RL 4.24), which accentuates the height of the building at the north east elevation. Using the definition of building height, the dwelling has an existing building height to the top of the roof ridge of 13.3m (RL 27.660) and 9.860m at the north east face of the building – refer extract from drawing 2.01 Section A below.

As part of the proposed work the existing pitched roof to the dwelling is to be replaced with a new low pitched metal roof with new skylights above the stairwell and dwelling entry. The overall height of the building in the area of the existing pitched roof will be reduced. The new building height will be a maximum of 13.110m when measuring the height from existing ground level below.



Extract of Drawing 2.01 Section A



CLAUSE 4.6 VARIATION REQUEST

Introduction

The non-compliance with the maximum 8.5m building height is most pronounced in the centre of the building where the existing roof is to be replaced with a lower roof. Using the definition of building height, the dwelling has an existing building height to the top of the roof ridge of 13.3m (RL 27.660) and 9.860m at the north east face of the building. The new building height will be a maximum of 13.110m when measuring the height from existing ground level below.

A complete list of the DA drawings relied upon in making this clause 4.6 request is as follows:

Table 1- Drawing Schedule

Drawings prepared by Third Wave Design		
Drawing Number	Drawing Title	Revision
1.01	Gym/Boat Store	A
1.02	Lower Level and Pool	A
1.03	Bedroom Level 1	A
1.04	Living Rooms Level 2	A
1.05	Entry Level; 3	A
1.06	Roof Plan	A
E1.01	Existing studio and boat store plans	A
E1.02	Existing Lower Level Plan and Proposed Excavation	A
E1.03	Existing Bedroom L1 Plan and Proposed Excavation	A
E1.04	Existing Living Rooms Level 2	A
E1.05	Existing Entry Level 3 Plan	A
E1.06	Existing Roof Plan	A
2.01	Section A	B
S.00	Site Analysis	A
S.01	Site Plan	A
S.02	GFA Proposed	A
S.03	GFA Existing	A
S.04	Landscaping and POS Proposed	A
S.05	Landscaping and POS Calculations Existing	A
S.06	Materials and Finishes	A

Clause 4.6 Variation request - Height, May 2023



CLAUSE 4.6 VARIATION REQUEST

S.07	Above Ground Existing Landscaping	A
S.08	Above Ground Proposed Landscaping	A
3.01	North East Elevation	A
3.02	South East Elevation	A
3.03	North West Elevation	A
3.04	South West Elevation	A
3.05	Beach Elevation	A
V01	Balcony View No 8A	A
V.02	View Forty Baskets Beach	A
Sh 1 Ex	Existing Shadow Winter Solstice 9am	A
Sh 1 Pr	Proposed Shadow Winter Solstice 9am	A
Sh 2 Ex	Existing Shadow Winter Solstice 12pm	A
Sh 2 Pr	Proposed Shadow Winter Solstice 12pm	A
Sh 3 Ex	Existing Shadow Winter Solstice 3pm	A
Sh 3 Pr	Proposed Shadow Winter Solstice 3pm	A

This request demonstrates that there are no environmental impacts as a consequence of this contravention of the maximum building height standard and that there are sufficient environmental planning grounds to justify the variation. The development as a whole satisfies the objectives of the C3 Environmental Management zone and is in the public interest. Strict adherence to the building height standard in this instance is therefore unreasonable and unnecessary.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.



CLAUSE 4.6 VARIATION REQUEST

This request has been prepared having regard to the Department of Planning and Environment's *Guidelines to Varying Development Standards* (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]):

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a));
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b));
3. That 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 (Clause 4.6(4)).

Is Compliance Unreasonable and Unnecessary? – Legal Framework

Several key NSW LEC planning principles and judgements have refined the manner in which variations to development standards are required to be approached. The correct approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) NSWLEC 118:

Preston CJ differentiated the consent authority's role in assessing a clause 4.6 written request from its role in assessing the development as a whole – something his Honour referred to as two “*positive states of satisfaction*”. The first state of satisfaction is “*indirect*” while the second is “*direct*”.

The first positive state of satisfaction begs the question, “*Does the written request adequately address the matters required to be demonstrated by clause 4.6(3)?*” The answer requires that: -



CLAUSE 4.6 VARIATION REQUEST

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (cl 4.6(3)(a))
 - This is typically demonstrated through one of the five *Wehbe* (*Wehbe v Pittwater Council* (2007) NSW LEC 827) “methods”. The most commonly used *Wehbe* method is to demonstrate that the objectives of the development standard are achieved, notwithstanding the non-compliance. This requires attention to the wording of the specific objectives of the development standard in the relevant EPI.
- There are sufficient environmental planning grounds to justify non-compliance with the development standard (cl 4.6(3)(b))
 - Many written requests considered by the Court post *Initial Action* have failed because the environmental planning grounds provided in the written request are unrelated to the subject matter, scope, and purpose of the EPA Act.
 - The focus is to be on the specific aspect of the development that does not comply with the development standard, and not on the development as a whole. For example, arguments that promote only the benefits of carrying out the development generally will struggle to withstand scrutiny by consent authorities.
 - Something more is needed that requires identification of grounds particular to the circumstances of the proposed development and demonstrates why the dispensation from compliance with the development standard is called for in any particular instance. A submission that there will be no significant amenity impacts as a result of non-compliance is not, of itself, a reason that justifies the non-compliance.

The second positive state of satisfaction requires the consent authority to consider that the proposed development is in the public interest (clause 4.6(4)(ii)) because it is consistent with:

- the objectives of the development standard; and
- the objectives of the zone.

The consent authority is not limited by the written request and a consent authority has broad discretion to allow a departure from development standards.

This exception to a development standard request is made using the relevant principles used by the Land and Environment Court to demonstrate that compliance with the development standards is unreasonable and unnecessary.

As set out in this request, the objectives of the development standards are achieved, notwithstanding the non-compliance; and in summary, there would be no significant difference in

Clause 4.6 Variation request - Height, May 2023

7 | Page



CLAUSE 4.6 VARIATION REQUEST

the size and scale of the building if the height of the building were reduced to achieve strict compliance with the numerical standards.

The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

This is the most commonly used of the five ways under *Wehbe* of establishing that compliance is unreasonable or unnecessary.

The objectives of the height of buildings standard as set out in Manly LEP 2013 are:

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

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

The existing tiled roof to be removed and replaced with a new low pitched metal roof already breeches the 8.5m height control. The overall height of the building in the area of the existing

**CLAUSE 4.6 VARIATION REQUEST**

pitched roof will be reduced as a result of the new work. The new roof form will be consistent with other roof forms in the local area and will not change the existing visual character of the locality.

Objective (b) - to control the bulk and scale of buildings

The existing dwelling already breeches the 8.5m height control. The height non-compliance associated with the new work is a result of the steep topography of the site and does not lead to a distribution of building bulk across the site which is significantly different from that which already exists.

The area of new work at Entry Level 3 on the south eastern side is a limited to a small infill area associated with the entry to the residence and has been designed and set back from the side boundary to ensure that there are no impacts on the amenity or existing views enjoyed by the adjoining residence.

Using the definition of building height, the dwelling has an existing building height to the top of the roof ridge of 13.3m (RL 27.660) and 9.860m at the north east face of the building. The new building height will be a maximum of 13.110m when measuring the height from existing ground level below.

Objective (c) – to minimise disruption to the following—

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),**
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),**
- (iii) views between public spaces (including the harbour and foreshores),**

The height non-compliance will not disrupt existing views towards the harbour from adjoining residences. The existing tiled roof to be removed and replaced with a new low pitched metal roof, already breeches the 8.5m height control and the overall height of the building in the area of the pitched roof will be reduced as a result of the new work.

Areas where the height non-compliance is evident such as the small infill area at Entry Level 3 on the south eastern side and the new centrally located balcony on north eastern side are a result of the steep topography of the site and are located well away from side boundaries to limit impacts on existing views.



CLAUSE 4.6 VARIATION REQUEST

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

Solar access to adjoining dwellings, habitable rooms and open spaces will not be detrimentally affected by the slight height non-compliance since the distribution of building bulk across the site is not significantly different to that which already exists.

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

The height and bulk of the residence is not materially different to that which already exists and will continue to respond to the natural features of the site such as the topography as well as respect the surrounding coastal and natural setting.

The proposal in its current form therefore satisfies the objectives of Clause 4.3 of LEP 2013 despite the existing numerical non-compliance.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the building height development standard is demonstrated to be unreasonable or unnecessary and the requirements of Clause 4.6(3)(a) have been met by this method alone.

Are There Sufficient Environmental Planning Grounds?

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the departure of the building height standard in this instance are as follows:

Clause 4.6 Variation request - Height, May 2023

10 | Page



CLAUSE 4.6 VARIATION REQUEST

- The height non-compliance associated with the new work is a result of the steep topography of the site and does not lead to a distribution of building bulk across the site which is significantly different from that which already exists.
- The proposed changes are designed to improve access and the functionality of living spaces within the dwelling including lift access for its residents. As such, the proposed works are consistent with object s.1.3(h) of the EP&A Act 1979 in relation to the protection of the health and safety of residents.
- The proposed alterations and additions respect the existing character of the location and respond to the opportunities and constraints of the site. As such, the design is consistent with object s.1.3(c) of the EP&A Act in relation to promoting the orderly use of land.
- There will be no loss to any significant views resulting from exceeding the building height development standard. Existing building bulk is not being substantially altered and the building height will also not result in any additional overlooking or loss of privacy for neighbouring properties, with views oriented towards the water, thereby promoting the orderly use of land - object s.1.3(c) of the EP&A Act.
- The proposed design and materials to be used will enhance the appearance of the dwelling, reflect the coastal setting and improve the visual presence of the building when viewed from Sydney Harbour, thereby promoting good design and amenity of the built environment, consistent with object s.1.3(g) of the EP&A Act.

Is the Variation in the Public Interest?

Clause 4.6(4)(a)(ii) of the MLEP 2013 requires that the proposal satisfy the objectives of the development standard (demonstrated above) and of the zone.

The proposal is consistent with the objectives of the C3 zone. The objectives of the zone are as follows:

- *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.*



CLAUSE 4.6 VARIATION REQUEST

- *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.*

The proposal will satisfy the above objectives for the following reasons:

1. The proposal provides improved accommodation and functionality for the occupants of this dwelling;
2. The dwelling in its altered form will contribute to the visual amenity of the locality without changing its existing character, and will not negatively impact on nearby foreshores, significant geological features or bushland. Existing tree canopies in the locality will be preserved;
3. The proposed alterations and additions are compatible with the proportions and finishes of the existing residence, add to the visual quality of the locality and enhance the residential character and amenity of the surrounding area;
4. The proposed development will be of a height and scale that will continue to contribute to the existing character of this locality.

Overall, the proposed development is consistent with the objectives of the zone, and the objectives of the development standard. According to Clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

State or Regional Environmental Planning Matters

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

Conclusion

This written request under clause 4.6 of MLEP 2013 accompanies the development application for alterations and additions to an existing dwelling house at 8B Beatty Street Balgowlah. An exception is sought, pursuant to Clause 4.6 of Manly Local Environmental Plan 2013 to the



CLAUSE 4.6 VARIATION REQUEST

maximum permissible building height prescribed by Clause 4.3 of Manly Local Environmental Plan 2013.

In summary:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with the objectives of the C3 Environmental Management zone;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

This request under clause 4.6 can be taken as a technicality because the exceedance above the maximum building height is already existing. The variation represents a technical non-compliance of the standard. The proposed variation to the development standard will not result in any impacts upon neighbouring properties or the public domain. The variation will enable a well-considered development that addresses the site constraints and relevant objectives of the development standard and the C3 Environmental Management zone. The variation will not result in unreasonable environmental impacts and will result in a better planning outcome for this site than alternative designs for achieving improved access, additional and functional living spaces on the site. In this case, a variation of the development standard is justified.

The concurrence of the Secretary can also be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.



Metroplan Services

**8B BEATTY STREET BALGOWLAH (LOT 2
DP558244)**

**REQUEST TO VARY FLOOR SPACE RATIO
DEVELOPMENT STANDARD PURSUANT TO
CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**Prepared on behalf of:
Caroline and Justin Fengels**

For submission to:

NORTHERN BEACHES COUNCIL

24 August 2022



CONTENTS

PURPOSE.....	2
INTRODUCTION	3
IS COMPLIANCE UNREASONABLE AND UNNECESSARY? – LEGAL FRAMEWORK.....	5
THE OBJECTIVES OF THE DEVELOPMENT STANDARD ARE ACHIEVED NOTWITHSTANDING NON-COMPLIANCE WITH THE STANDARD.	7
IS THE VARIATION IN THE PUBLIC INTEREST?	10
STATE OR REGIONAL ENVIRONMENTAL PLANNING MATTERS.....	11
CONCLUSION	11

Purpose

This written request has been prepared in accordance with clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP) and accompanies a development application (DA) for alterations and additions to an existing dwelling at **8B Beatty Street Balgowlah**. This request to vary a development standard within MLEP, relates to Floor Space Ratio (FSR) under clause 4.4 (2). Clause 4.4 (2) of MLEP states: -

(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 shows a maximum FSR for the site of 0.4:1

An exception is sought under clause 4.6 of the MLEP 2013 to vary this development standard. FSR is defined under the MLEP 2013 as:

*The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area*

Extent of Variation

Table 1 below provides an FSR comparison:

Table 1 – Floor Space Ratio

Control	Existing	Proposed
Site size- 1033m ²	0.47:1	0.48:1
FSR limit 0.4:1	GFA m ²	
	Boat House 45.9	30.9
	Lower Floor 53.1	54.9
	Bedrooms 136.2	122.3
	Living Rooms 175.5	186.4
	Entry Level 75	92.3
	Sub-Total m ² 485.7	486.8
		3 rd car space (if included) 9.9m ²
		496m ²



CLAUSE 4.6 VARIATION REQUEST

Introduction

The existing dwelling already exceeds the maximum 0.4:1 FSR control. The non-compliance with the maximum 0.4:1 FSR control is a result of the desire to improve access and the functionality of living spaces within the residence. The proposed increase in FSR is marginal (0.47:1 to 0.48:1).

A complete list of the DA drawings relied upon in making this clause 4.6 request is as follows:

Table 1- Drawing Schedule

Drawings prepared by Third Wave Design		
Drawing Number	Drawing Title	Revision
1.01	Gym/Boat Store	A
1.02	Lower Level and Pool	A
1.03	Bedroom Level 1	A
1.04	Living Rooms Level 2	A
1.05	Entry Level; 3	A
1.06	Roof Plan	A
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E1.05	Existing Entry Level 3 Plan	A
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2.01	Section A	A
S.00	Site Analysis	A
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S.02	GFA Proposed	A
S.03	GFA Existing	A
S.04	Landscaping and POS Proposed	A
S.05	Landscaping and POS Calculations Existing	A
S.06	Materials and Finishes	A



CLAUSE 4.6 VARIATION REQUEST

S.07	Above Ground Existing Landscaping	A
S.08	Above Ground Proposed Landscaping	A
3.01	North East Elevation	A
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Sh 3 Ex	Existing Shadow Winter Solstice 3pm	A
Sh 3 Pr	Proposed Shadow Winter Solstice 3pm	A

Drawings 1.01-1.06 in particular show the areas where additional floor space is proposed.

This request demonstrates that there are no environmental impacts as a consequence of this contravention of the maximum FSR standard and that there are sufficient environmental planning grounds to justify the variation. The development as a whole satisfies the objectives of the C3 Environmental Management zone and is in the public interest. Strict adherence to the FSR in this instance is therefore unreasonable and unnecessary.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.



CLAUSE 4.6 VARIATION REQUEST

This request has been prepared having regard to the Department of Planning and Environment's *Guidelines to Varying Development Standards* (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]):

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a));
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b));
3. That 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 (Clause 4.6(4)).

Is Compliance Unreasonable and Unnecessary? – Legal Framework

Several key NSW LEC planning principles and judgements have refined the manner in which variations to development standards are required to be approached. The correct approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) NSWLEC 118:

Preston CJ differentiated the consent authority's role in assessing a clause 4.6 written request from its role in assessing the development as a whole – something his Honour referred to as two “*positive states of satisfaction*”. The first state of satisfaction is “*indirect*” while the second is “*direct*”.

The first positive state of satisfaction begs the question, “*Does the written request adequately address the matters required to be demonstrated by clause 4.6(3)?*” The answer requires that: -



CLAUSE 4.6 VARIATION REQUEST

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (cl 4.6(3)(a))
 - This is typically demonstrated through one of the five *Wehbe* (*Wehbe v Pittwater Council* (2007) NSW LEC 827) “methods”. The most commonly used *Wehbe* method is to demonstrate that the objectives of the development standard are achieved, notwithstanding the non-compliance. This requires attention to the wording of the specific objectives of the development standard in the relevant EPI.
- There are sufficient environmental planning grounds to justify non-compliance with the development standard (cl 4.6(3)(b))
 - Many written requests considered by the Court post *Initial Action* have failed because the environmental planning grounds provided in the written request are unrelated to the subject matter, scope, and purpose of the EPA Act.
 - The focus is to be on the specific aspect of the development that does not comply with the development standard, and not on the development as a whole. For example, arguments that promote only the benefits of carrying out the development generally will struggle to withstand scrutiny by consent authorities.
 - Something more is needed that requires identification of grounds particular to the circumstances of the proposed development and demonstrates why the dispensation from compliance with the development standard is called for in any particular instance. A submission that there will be no significant amenity impacts as a result of non-compliance is not, of itself, a reason that justifies the non-compliance.

The second positive state of satisfaction requires the consent authority to consider that the proposed development is in the public interest (clause 4.6(4)(ii)) because it is consistent with:

- the objectives of the development standard; and
- the objectives of the zone.

The consent authority is not limited by the written request and a consent authority has broad discretion to allow a departure from development standards.

This exception to a development standard request is made using the relevant principles used by the Land and Environment Court to demonstrate that compliance with the development standards is unreasonable and unnecessary.

As set out in this request, the objectives of the development standards are achieved, notwithstanding the non-compliance, and in summary, there would be no significant difference in



CLAUSE 4.6 VARIATION REQUEST

the size and scale of the building if the FSR were reduced to achieve strict compliance with the numerical standards.

The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

This is the most commonly used of the five ways under *Wehbe* of establishing that compliance is unreasonable or unnecessary.

The objectives of the FSR standard as set out in Manly LEP 2013 are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

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

The existing residence is not visible from the street. The bulk and scale of the development will not change when viewing the development from surrounding properties or Sydney Harbour. The proposed increase in FSR is marginal (0.47:1 to 0.48:1). The area of new work at Entry Level 3 on the south eastern side is limited to a small infill area associated with the entry to the residence and has been designed and set back from the side boundary to ensure that there are no impacts on the amenity or existing views enjoyed by the adjoining residence. At bedroom level 1 an ensuite is proposed within an existing sub-floor space as well as excavation for lift access.



CLAUSE 4.6 VARIATION REQUEST

The overall floor space of the reconfigured dwelling will be similar to that which is already existing. The existing tiled roof is to be removed and replaced with a new flat pebble roof. The overall height of the building in the area of the existing pitched roof will be reduced as a result of the new work. The new roof form will be consistent with other roof forms in the local area and will not change the existing visual character of the locality.

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

The proposed increase in FSR is marginal (0.47:1 to 0.48:1). The building density and bulk in relation to site area will remain similar to existing. No important landscape and townscape features will be obscured as a result of the non-compliance.

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

The locality is characterised by large residences with water frontage but substantially screened by tree canopies which soften the visual impact of the existing built form. The proportioning, palette of materials and planting have been selected to reflect the coastal setting and ensure that the dwelling in its altered form will contribute to the visual amenity of the locality without changing its existing character or being detrimental to the visual amenity of the harbour or coastal foreshore. Existing tree canopies in the locality will be preserved.

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

The FSR non-compliance will not introduce any additional adverse environmental impacts on the use or enjoyment of adjoining land and the public domain. The reconfigured residence will continue to respond to the natural features of the site such as the topography as well as respect the surrounding coastal and natural setting.

Objective (e) - to provide for the viability of business zones and encourage the development expansion and diversity of business activities that will contribute to



CLAUSE 4.6 VARIATION REQUEST
economic growth, the retention of local services and employment opportunities in local centres.

This objective is not relevant to the proposed development.

The proposal in its current form therefore satisfies the objectives of Clause 4.4 of LEP 2013 despite the existing numerical non-compliance.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the FSR development standard is demonstrated to be unreasonable or unnecessary and the requirements of Clause 4.6(3)(a) have been met by this method alone.

Are There Sufficient Environmental Planning Grounds?

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the departure of the building height standard in this instance are as follows:

- The proposed changes are designed to improve access and the functionality of living spaces within the dwelling including lift access for its residents. As such, the proposed works are consistent with object (s.1.3 (h)) of the EP&A Act 1979 in relation to the protection of the health and safety of residents.
- The proposed alterations and additions respect the existing character of the location and respond to the opportunities and constraints of the site. As such, the design is consistent with object (s.1.3.(c) of the EP&A Act in relation to promoting the orderly use of land.
- There will be no loss to any significant views resulting from exceeding the FSR standard. Existing building bulk is not being substantially altered and the building height will also not



CLAUSE 4.6 VARIATION REQUEST

result in any additional overlooking or loss of privacy for neighbouring properties, with views oriented towards the water, thereby promoting the orderly use of land - object (s.1.3.(c) of the EP&A Act.

- The proposed design and materials to be used will enhance the appearance of the dwelling, reflect the coastal setting and improve the visual presence of the building when viewed from Sydney Harbour, thereby promoting good design and amenity of the built environment, consistent with object (s.1.3 (g) of the EP&A Act.

Is the Variation in the Public Interest?

Clause 4.6(4)(a)(ii) of the MLEP 2013 requires that the proposal satisfy the objectives of the development standard (demonstrated above) and of the zone.

The proposal is consistent with the objectives of the C3 zone. The objectives of the zone are as follows:

- *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.*

The proposal will satisfy the above objectives for the following reasons:

1. The proposal provides improved accommodation and functionality for the occupants of this dwelling;
2. The dwelling in its altered form will contribute to the visual amenity of the locality without changing its existing character, and will not negatively impact on nearby foreshores, significant geological features or bushland. Existing tree canopies in the locality will be preserved;



CLAUSE 4.6 VARIATION REQUEST

3. The proposed alterations and additions are compatible with the proportions and finishes of the existing residence, add to the visual quality of the locality and enhance the residential character and amenity of the surrounding area;
4. The proposed development will be of a height and scale that will continue to contribute to the existing character of this locality.

Overall, the proposed development is consistent with the objectives of the zone, and the objectives of the development standard. According to Clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

State or Regional Environmental Planning Matters

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

Conclusion

This written request under clause 4.6 of MLEP 2013 accompanies the development application for alterations and additions to an existing dwelling house at 8B Beatty Street Balgowlah. An exception is sought, pursuant to Clause 4.6 of Manly Local Environmental Plan 2013 to the maximum permissible FSR prescribed by Clause 4.3 of Manly Local Environmental Plan 2013.

In summary:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with the objectives of the C3 Environmental Management zone;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

This request under clause 4.6 can be taken as a technicality because the exceedance above the maximum FSR is already existing. The variation represents a technical non-compliance of the standard. The proposed variation to the development standard will not result in any impacts upon neighbouring properties or the public domain. The variation will enable a well-considered



CLAUSE 4.6 VARIATION REQUEST

development that addresses the site constraints and relevant objectives of the development standard and the C3 Environmental Management zone. The variation will not result in unreasonable environmental impacts and will result in a better planning outcome for this site than alternative designs for achieving improved access, additional and functional living spaces on the site. In this case, a variation of the development standard is justified.

The concurrence of the Secretary can also be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

ITEM 3.3

**DA2022/2021 - 108 ANZAC AVENUE COLLAROY -
DEMOLITION OF AN EXISTING DWELLING AND THE
CONSTRUCTION OF A NEW DWELLING WITH SWIMMING
POOL**

REPORTING MANAGER Steve Findlay

TRIM FILE REF 2023/448668

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

PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Development Consent to DA2022/2021 for demolition of an existing dwelling and the construction of a new dwelling with swimming pool on land at Lot 66 DP 212835, 108 Anzac Avenue COLLAROY, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2021
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 66 DP 212835, 108 Anzac Avenue COLLAROY NSW 2097
Proposed Development:	Demolition of an existing dwelling and the construction of a new dwelling with swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Robyn Hill Sigi Benjamin Hill
Applicant:	Artz 2 Design Pty Limited
Application Lodged:	25/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	23/12/2022 to 25/01/2023
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 5.29%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 2,777,042.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition of all structures on the site for the construction of a dwelling house and garage with a swimming pool.

The application is referred to the *Development Determination Panel* (DDP) due to Council's conflict of interest management policy where staff / consultants may be directly or indirectly linked. Referral to the DDP maintains an appropriate level of separation and impartial / objective consideration of the DA.

The Clause 4.6 Variation request for the non-compliance with height standard arises from the site

having a sandstone escarpment across the central area of the site creating a 5.29% variation for a small section of the building approximately 0.45 metres (m) above the 8.5m height line and limited to the eaves and north-western corner of the roof. The site topography substantially corresponds to natural ground level (NGL) therefore no comparison between existing (modified) ground level and NGL is required. The variation to the building height does not result in any unreasonable amenity impact and the building would likely not comply with the maximum building height even if compliance with the side boundary envelope was achieved.

Concerns raised in the public submissions predominantly relate to building bulk, privacy impacts, landscaping (tree removal), lack of screening protection from elevated outdoor open space, oversized elevated deck areas that permit overlooking / direct view lines and limited spatial separation to maintain reasonable amenity of adjacent neighbors. Critical assessment issues included the submission issues, building bulk, side boundary envelope, privacy and amenity impacts on adjacent land. Amendments received have not substantively changed the architectural plans to overcome (or achieve compliance) with the Warringah DCP on these issues.

The non-compliances do not satisfy the objectives of *Part B3 Side Boundary Envelope*, *Part D9 Building Bulk* and *Part D8 Privacy* pursuant to the Warringah DCP 2011 for the reasons outlined in the report and recommendation.

This report concludes with a recommendation that the DDP refuse to grant consent to the development application due to non-compliances with the side boundary envelope, building bulk and privacy, including associated concerns of overlooking and amenity impacts on adjacent neighbour's.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent to demolish the existing dwelling and to construct a new dwelling over three stepped levels. The new dwelling consists of:

Garage (RL46.375)

- Double garage with internal workshop/additional area.
- Amenities.
- Stairs and lift.
- Driveway

Lower Ground Floor (RL49.80)

- Living Room with kitchenette.
- Two bedrooms.
- Terrace.
- Office.
- Storeroom.
- Bathroom amenities.
- Stairs and lift.

Ground Floor (RL52.90)

- Open plan living/dining room and kitchen.
- Home theatre / TV room.

- 2 x terraces.
- Laundry.
- Pantry.
- Bathroom amenities.
- Stairs and lift.
- Fire place

First Floor (RL56.00)

- 4 x bedrooms.
- Living room.
- bathroom amenities.
- Stairs and lift.
- Swimming pool and deck at the rear.

Ancillary site works:

Demolition of all site structures, site preparation including selected native tree removal, excavation, drainage works, landscaping, stairs, paths retaining walls and incidental site works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 66 DP 212835 , 108 Anzac Avenue COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one (1) allotment located on the south-western side of Anzac Avenue. The site is irregular in shape with a frontage of 13.41m along Anzac Avenue. The site has a surveyed area of 695.9m². The site is located within the R2 Low Density Residential zone and accommodates weatherboard dwelling with hardstand parking area. The site slopes downward from the rear boundary to the front boundary by up to 11.9m. The site accommodates a variety of vegetation species including a stand of significant trees within the front setback area including 5 x <i>Angophora costata</i> (Sydney Red Gum). The largest of these is proposed to be removed and other selected minor trees. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by detached dwellings of various age, design and scale although it is noted that the dwellings located on the high side of Anzac Avenue are elevated and therefore, more significant in visual impact to the street.

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a) (iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2021 allows Council to request additional information. Following the completion of the notification period some additional information was requested on 14.2.2023 in relation to considerations regarding building height, dwelling configuration, side boundary envelope, landscaping, overshadowing, driveway design, amenity and the like. Amended plans were subsequently received to reduce potential impacts on the surrounding environment and reduce non-complying elements. The plan changes (dated 21.2.2023) made were potentially capable of being addressed by conditions as they relate to ancillary / minor elements of landscaping, minor wall sections or sought to clarify information with the design. The applicant sought make changes directly to the plans and to address concerns raised by submissions. Re-notification of the amended plans as the design changes affect only driveway levels or improve landscaping and do not create any increased amenity impacts on surrounding land. All submission remain relevant as the changes to the plans are insufficient to fully address the concerns raised. Further minor amendments to the plans were made to assist with refinements for privacy (see plans 31.5.2023) which again were very minor. <u>Clause 92</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been

Section 4.15 Matters for Consideration'	Comments
	addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development, subject to conditions. Considerations of slope, adjacent development, rock outcrops, streetscape, setbacks, views, shadowing, privacy, access and parking, drainage, topography, pattern of surrounding development and environmental factors have been considered, and where appropriate, conditions are recommended to be followed during the construction certification to ensure appropriate works management.
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	See discussion on “Notification & Submissions Received” in this report.

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 23/12/2022 to 25/01/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Evolution Planning Pty Ltd	Po Box 309 FRENCHS FOREST NSW 1640
Mr Bradley Charles Mills	110 Anzac Avenue COLLAROY NSW 2097
Mrs Nicole Kim Hurt	82 Suffolk Avenue COLLAROY NSW 2097

The following issues were raised in the submissions:

1. Height and views
2. Roof colour
3. Hedge planting
4. Tree removal
5. Building height
6. Insufficient plan details
7. Loss of privacy
8. Overshadowing
9. Noise (terrace areas)
10. Bulk and scale
11. Overlooking
12. Landscape screening
13. Dilapidation risk
14. Use (separate dwelling)

The above issues are addressed as follows:

- 1. *Concern that the new dwelling roof will affect views across the site from No.82 Suffolk Avenue*

Comment:

The existing dwelling roof is RL60.05 with the ridge of the new dwelling roof at RL59.43 and the chimney at RL59.63. Therefore the new dwelling will not be higher than the existing roof line which will allow views from No.82 Suffolk Avenue to be maintained. The rear of the site currently has a substantial hedge along the rear boundary which limits views and overlooking at ground level as can be seen in the photograph below. The new house presents as single storey toward the rear. This issue does not warrant refusal of the application.



Image: Rear yard of site well screened by existing hedge to be retained. Note the bedrock visible near the far corner.

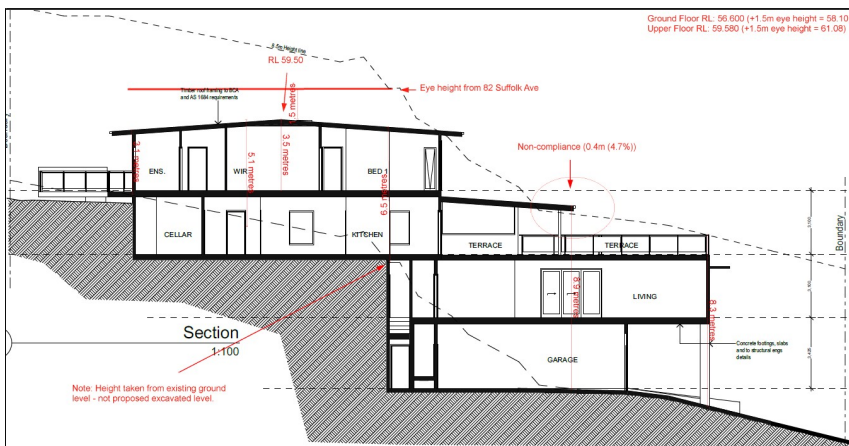


Image: Eye line (red) showing clear view over roof from rear storey in Suffolk Ave.

- 2. Concern that no detail has been provided for the roof colour for reflectivity impact.

Comment:

The architectural diagrams show "prefinished metal roof sheeting" and "timber fascia boards paint finish as specified". The architectural drawings do not include an external materials and colours schedule and the SEE does not specify colours either. This issue is suitable to be addressed by conditions for a medium to dark colour range.

- 3. Concern that the landscape plans show "Blueberry Ash" trees up to 10m high and 4 x Bungalow Palms up to 15m high along the property north-western boundary and rear setback area which can impact views over the site from No.82 Suffolk Avenue.

Comment:

This issue is suitable to be addressed by a landscape planting condition for an alternative native species that reaches a maximum natural height of 4.0m.

- 4. *Concern that the proposal seeks the removal of 3 x Angophora trees on site and the design does not seek to accommodate the retention of these mature canopy trees for flora and fauna habitat.*

Comment:

Tree removal has been subject to investigation by an Arborist and some adjustments have been made to the plans to ensure 40% landscape open space. The largest Angophora is close to the house and driveway footprint and the position of the tree is not within the 6.5m front setback area. The other 2 trees are in the side setback and the arborist report notes the constrained position of those trees with regard to boundary structures and impact on future works. Council's Landscape Officer Internal Referral has provided detailed comments on this issue and supports the revised landscape scheme that will only remove the largest Angophora and some minor smaller trees now. (See detailed comments within the Landscape Officer Internal referral. This issue is suitable to be addressed by conditions.

- 5. *Concern that the building does not comply with the 8.5m maximum building height and could comply with minor change to the building to reduce overhangs and the building scale / width.*

Comment:

The building non-compliance relates to a minor section of the roof as illustrated on the height blanket diagram. This non-compliance is influenced by the steep terrain and does not cause an unreasonable non-compliance to the height controls. In summary, the clause 4.6 variation is supported for the maximum building height. The building bulk is more significantly impacted by the side boundary envelope non-compliance as discussed in this report under *Part D3 Side Boundary Envelope* and *B9 Building Bulk*.

- 6. *The submissions raised concerns that the elevations and sections have inadequate details in relation to No.106 Anzac Parade*

Comment:

The submitted plans have survey information that shows the comparative levels of windows, decks, floors, boundaries, trees and the like for adjacent land. In addition No.106 Anzac Avenue has its own CC plans to reference from in relation to habitable rooms, pool location and the like. The subject plans for the proposed DA is drawn to scale and amendments have been made to assist with submission issues. (It should be noted that some annotated room dimensions such as Bed 2, Bed 3 and Bed 1 are different to the actual scalable dimension). In summary the front pool deck for No.106 Anzac Avenue is approximately 1.3m higher than the main kitchen / BBQ outdoor deck on the proposal. The principal amenity concern however is that this deck is mostly open sided and extends some 6.5m further forward than principal living deck of No.106 Anzac Parade. The lower level deck on No.106 Anzac Parade has a north-western side setback of 6.0m. In summary the sections, plans and survey details have sufficient details to assess this issue and site inspection assisted consideration of this issue.

- 7. *The submissions raised concerns that there will be a loss of privacy due to the adjacent POS area on the elevated front decks.*

Comment:

The principal deck off the kitchen area is some 13m deep and extends out from the kitchen front operable doors, includes a large BBQ area and alfresco dining, then a further open deck area up to the 6.5m front setback. A second deck is located out off the living area on the western side of the living level. In total the front terraces have a combined area of more than 85sqm and are up to 7.0m above existing ground level. The combined usability, capacity (for people to

congregate), openness and forward height of these decks will impact noise and visual privacy of adjacent land. It is noted that the deck is marginally lower than the living area deck for No.106 Anzac Parade, however there is limited protection in response to the adjacent open space to equalize potential impact. Solutions offered to the applicant have not been taken up with the amendments provided and therefore the proposal cannot be supported. Concerns have also been raised by the adjacent property of No.110 Anzac Parade and it is concurred that the decks allow easy overlooking or back viewing (by greater opportunity) into neighbouring land which at present does not exist. The proposal diminishes privacy to adjacent land and is not responsive to the existing pattern of surrounding development.

- *8. Concern that the proposal will create overshadowing to adjacent properties.*

Comment:

The shadow diagrams DA007 demonstrate that the proposal will not cause any unreasonable loss of sunlight to the private open space areas on adjacent land. This is attributed to the single storey nature of the proposal at the rear (bedroom level) and northerly aspect. An acceptable shadow regime will be cast between 9am and 3pm on the 21 June. This issue does not warrant refusal of the application.

- *9. The submissions raised concerns that noise activity from the front terrace area will affect the amenity of adjacent land, particularly No.106 Anzac Avenue.*

Comment:

Front decks are a feature of the streetscape, particularly along the northern side of Anzac Avenue due to the topography enabling distant ocean views from dwellings that are positioned high their respective properties. The total area and position of the front kitchen deck as proposed also includes a BBQ area and only a short open slatted screen. The screen angle and open slats afford limited privacy to No.106 Anzac Parade and additionally the deck areas proposed are substantially open and afford little acoustic protection to No.110 Anzac Parade either. The applicant has not been able to resolve this matter by amended plans (to substantially reduce the deck space / area) and the unprotected and semi-open separation distance remains as close as 3m between POS from the elevated decks and adjacent land.

- *10. Concern that the bulk and scale of the development is excessive and not in keeping with the streetscape.*

Comment:

This issue is addressed in detail under the heading *Part D3 Side Boundary Envelope* and *B9 Building Bulk* within this report. In summary the building bulk does exhibit non-compliances with related built form controls of the side boundary envelope and other expansive elements of the floor plate and elevated deck areas. The combined floor plate of all levels and outdoor terraces (including lift and stairs) exceeds the entire site area (695.9sqm) which is significant for low density areas with a minimum lot size of 600sqm. Surrounding houses along Anzac Avenue generally exhibit less excavation for similar bulk whereas the proposed design has deep areas of excavated floor plate and expansive rooms spaces and decks for the upper-mid levels as well. The applicant has not been able to resolve this matter by amended plans and overall massing of the building is significant which has resulted in amenity concerns for adjacent neighbors.

- *11. Concern that the north-western elevation will overlook adjacent land including direct line of sight into adjacent living room areas*

Comment:

The deck off the living areas is unprotected from being able to view and overlook No.110 Anzac

Avenue. Window hoods are shown for lower level windows of the living area but the forward side window is above fence height (near the fireplace) and may allow overlooking into the adjacent POS. The upper level windows for bedrooms on the northwestern elevation are highlight windows that will limit overlooking. The deck off the living / dining area is over 27sqm in area and is therefore highly accessible for activity at all times.

- 12. *Concern that the screen planting along the boundary will be unable to grow to effective height due to sandstone bedrock.*

Comment:

The landscape plan has been prepared by a qualified Landscape Architect and the site currently has high hedge planting along the rear boundary which demonstrates that suitable planting can be provided for effective screening. Conditions may be recommended to address this issue as it relates to other submissions whereby planting that grows too high will impact distant water views from Suffolk Avenue.

- 13. *Concern that the proposal will created dilapidation risks to adjacent land due to the amount of deep excavation and jackhammering required.*

Comment:

This issue may be addressed by conditions to ensure dilapidation surveys to be carried out before and after works so that any damage is documented. Additionally the works are required to follow geotechnical recommendations provided in the geotechnical report. Alternative methods of excavation may be suitable including the use of saw cutting and drilling combined with jackhammering.

- 14. *Concern that the proposal includes potential use for the lower area to be used for a separate (second) dwelling as it has separate entry and the lower living area can be adapted.*

Comment:

Secondary dwellings are permitted within the *R2 Low Density Residential* zone and do not require additional carparking. The applicant has amended the plans to maintain internal connection to the main dwelling and no kitchen is shown in the lower bedroom / living area. This issue is appropriate to address by a condition to limit the dwelling as a single house as the configuration would change the building to a Class 2 if a 'secondary' dwelling was retro-fitted into the lower storey.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported with conditions. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 (WLEP) and the following Warringah Development Control Plan 2011 (WDP) controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting, • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation.

Internal Referral Body	Comments			
	Updated Plans and Reports are submitted, including a Letter from <i>Gelder Group Architects</i> identifying that it "<i>is now proposed to keep both trees 1 and 2 at the front of the property as well as trees 5 and 6 at the side of the property ...</i>" and this is reflected in the updated <i>Architectural Site Plans</i> but not the Landscape Plans nor the <i>Arboricultural Impact Assessment</i> report, and condition shall be imposed. Should the application be approved as illustrated on the submitted plans removal of two native <i>Angophora</i> trees is unavoidable. The <i>Landscape Plan</i> submitted includes two replacement native trees within the property. Based on new landscape works shown on the Landscape Plans in combination with the retained existing trees, Landscape Referral raise no concerns subject to imposed conditions.			
NECC (Development Engineering)	Supported with conditions. <u>Original Referral Comments:</u> The submitted plans include the provision of a new driveway and garage for the proposed dwelling. A review of the driveway grades indicates that the proposed garage level is too high and must be lowered to comply with Council's Extra High driveway profile. Also the drawings include a parking area forward of the garage which must have a maximum grade of 1 in 20 (5%) to comply with the requirements of AS/NZS 2890.1:2004. If this grade cannot be achieved then the cars shown on the drawing are to be removed. A long section from the existing kerb invert on the low side of the crossing is to be provided using Council's Extra High profile. The existing driveway crossing is to be reconstructed as part of the works. The submitted stormwater design including OSD is acceptable. The changes to the proposed driveway will alter the levels of the OSD tank roof and amended plans are to be provided to ensure the design is consistent with the architectural plans. Development Engineering cannot support the proposal due to insufficient information to address vehicular access in accordance with clause C2 of the DCP. <u>Amended plans submitted 1/06/23</u> The revised driveway levels and garage level is acceptable. The stormwater plans have not been updated to suit however a condition has been provided so suit the revised driveway levels. Development Engineering support the proposal, subject to conditions as recommended.			
Strategic and Place Planning (Heritage Officer)	Supported without conditions. <table><tr><th>HERITAGE COMMENTS</th></tr><tr><th>Discussion of reason for referral</th></tr><tr><td>This application has been referred as it is in the vicinity of a heritage item, being <i>Item 1136 - Remnant street trees, Anzac</i></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	This application has been referred as it is in the vicinity of a heritage item, being <i>Item 1136 - Remnant street trees, Anzac</i>
HERITAGE COMMENTS				
Discussion of reason for referral				
This application has been referred as it is in the vicinity of a heritage item, being <i>Item 1136 - Remnant street trees, Anzac</i>				

Internal Referral Body	Comments		
	Avenue and Hendy Avenue, Collaroy , as listed in Schedule 5 of Warringah Local Environmental Plan 2011.		
	Details of heritage items affected		
	Details of this heritage item in the vicinity, as contained within the heritage inventory, are:		
	Item I136 - Remnant street trees, Anzac Avenue and Hendy Avenue, Collaroy		
	<u>Statement of Significance</u>		
	These trees are remnant components of the former open forest community on sheltered hill slopes (Sydney Sandstone Gully Forest) (Benson & Howell, 1994).		
	This ecological community has been largely cleared in the Collaroy area. This disjunct remnant native tree group in the upper middle section of Anzac Avenue and along Hendy Avenue creates a distinctive visual and aesthetic quality to these streetscapes. Notably, Sydney Pink Gums (<i>Angophora costata</i>) occur with Grey Ironbarks (<i>Eucalyptus paniculata</i>) indicating a transitional sandstone-shale surface geology.		
	This community is still common in Pittwater but rare in Warringah LGA. The group includes old growth trees including one outstanding specimen <i>Angophora costata</i> (No.57 Anzac Avenue). Remnant canopy trees (groups) in this area are under threat from inappropriate maintenance regimes and replacement by exotics and generic native species.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
National Trust of Aust (NSW) Register	No		
RAIA Register of 20th Century Buildings of Significance	No		
Other	No		
Consideration of Application			
This application is for demolition of the existing single storey dwelling and construction of a new four level dwelling. The proposal includes the removal of a number of substantial trees.			
There are no remnant street trees on the road verge in front of this property and therefore, no heritage listed trees are affected by this application. However, the application does require the removal of a number of substantial trees, including <i>Angophora costata</i> trees. Consideration could be given to the planting of an <i>Angophora</i>			

Internal Referral Body	Comments
	<i>costata</i> tree in the front yard or road reserve to compensate for the trees lost. No objections are raised on heritage grounds and no conditions required.
	Further Comments <u>Consider against the provisions of CL5.10 of WLEP 2011:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A

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	Assessment comment includes that no sites are recorded in the current development area the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Aboriginal Heritage Office provided a referral response on 27.6.2023 which can be included with any recommended conditions as applicable.

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. 1352518S dated 4 November 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	51

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment

The proposal was referred to Ausgrid who 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.

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. Concern regarding potential asbestos or lead paint is managed by standard practice and statutory law for the safe handling of asbestos and demolition material, including compliance with *Australian Standards*, *WorkCover* and waste management conditions.

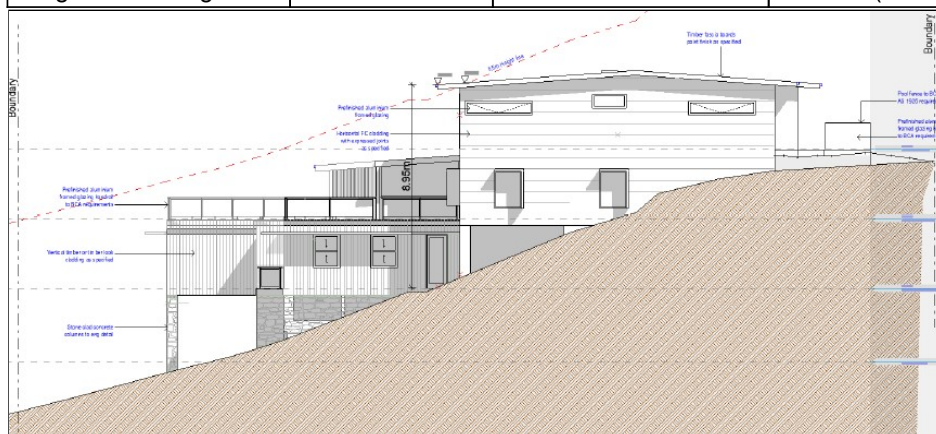
Warringah Local Environmental Plan 2011

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

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	Roof eaves :8.95m	5.29% (0.45m)	No



Height measured from existing ground level. The land currently has no significant excavation along the existing ground line at the high point.

Existing ground level (including excavated) consistent with the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Development standard:	Building Height
Requirement:	8.5m
Proposed:	8.95m
Percentage variation to requirement:	5.29%

The diagram below shows the non-compliance in association with existing ground level along the forward roof edge (upper storey) and corner of upper wall above the 8.5m height plane.

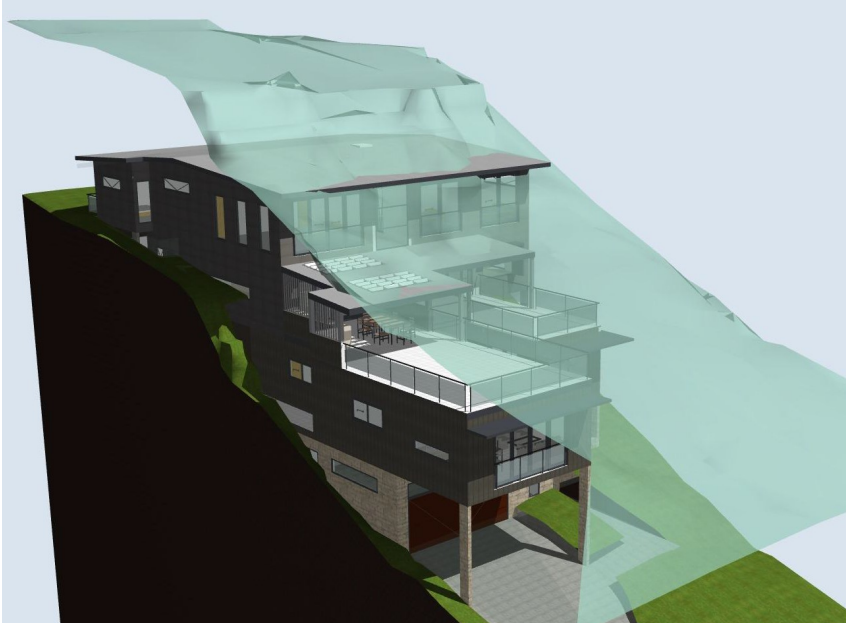


Image: Height plane variation for renewed building elements and new elements.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

- (a) *that compliance with the development standard is unreasonable or unnecessary in the*

circumstances of the case, and

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment: The Applicant's written request (attached to this report as an Appendix) 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:

- "Currently very small areas of the eaves overhang exceed the maximum height of 8.5m. These areas are considered beneficial to the thermal properties of the proposed dwelling and have no effect on the overall proposal when viewed from the public space or neighbouring properties.
- The proposal is for a new residence which sits back into and steps up the site due to the steeply sloping topography.
- The adjoining properties step back up their respective sites in a similar manner so disruption of existing views will be minimum as their existing living areas/terraces sit level with or in front of our proposal.
- Privacy has been addressed on the South-East side of the house with the use of highlight windows and privacy screens.
- Visual impact on Anzac Avenue will be minimal due to topography and stepped design of the proposed residence. The slight increase of the height due to the eaves on level 1 is set back over 23 metres from the road and existing established gums on site will soften or negate any impact."

Comment:

- The proposed height is consistent with the established streetscape along the south side of Anzac Parade.
- The height variation affects a corner of the roof as demonstrated in the height blanket diagram and therefore does not impact privacy or overshadowing or views from surrounding land. Privacy concerns are attributed by the large elevated open deck areas and narrow setbacks, not the non-compliance with the edge of roof eaves.
- The non-compliance is some 23 metres from the road frontage. The house still extends to the front setback line at a lower storey.
- The variation is minor in nature and only present at the north-western edge of the roof line (principally eave elements).
- Overshadowing of neighbouring properties is not caused by the 8.5m height non-compliance.

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 an acceptable design that will not unreasonably impact the amenity of the surrounding urban or natural 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).

In considering the proposal, it is noted that the bulk, height, setbacks and selected elements of the proposal have been designed in consideration to minimise elements that contribute to height and style the upper level to ensure non-complying elements do not contribute to unreasonable views and overshadowing. Generally the height of the building and distribution of built form has been made with regard to the Warringah DCP and WLEP. The subject land is a moderately steep slope (including existing excavation) that influence the design response such as floor levels, side and front setbacks, excavation, building footprint and future amenity considerations.

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

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

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

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

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

Objectives of development standards

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

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

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

Comment:

The subject site is similar to adjacent land due the hillside position, slope and orientation to other properties along the southern side of Anzac Parade. The steepness of the site changes through the central area of the land due to a rock escarpment running across the width of the property. The existing house is constructed toward the rear of the site to gain coastal views and the new house maintains a similar single storey appearance at the back and then with a larger building footprint steps down the site. In the vicinity of the rock escarpment the existing ground level influences the non-compliance with the roof eaves above. Similar situation occur with other houses nearby that are constructed across the rock escarpment that sits between the

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

Comment:

Detailed solar access diagrams are provided to demonstrate that the proposed height variation

does not create any unreasonable impact on solar access to adjacent land. View considerations have been made with the assessment of the proposal and the height of the building does not create any unreasonable view impact as the building remains single storey at the rear (as per the existing house) with a low pitch roof profile. Overall the non-compliant eaves, upper wall edge and partial roof section do not cause unreasonable amenity impacts. (Other considerations of privacy, bulk and building envelope DCP controls are addressed separately in this report)

It is considered that the proposal is consistent with this objective.

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

Comment:

The local terrain has a wide occurrence of bedrock close to the surface and is in an established urban area. Trees are therefore spaced between houses and generally limited to being near the road reserve. The site is not in a location where principal public views lines are gained across the site from a public beach / parkland reserve or similar. It is considered that the proposed height variation maintains consistency with this objective.

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

Comment:

The overall building height is acceptable with regard to the streetscape when viewed in context with adjacent dwellings. Visual inspection along the streetscape for the southern side of Anzac Avenue between Hendy Street and Kent Street demonstrates that most properties have at least an 8m to 10m contour variation between the front front and rear boundary. The subject site has a 12m variation between the front boundary and the rear boundary. It is considered that the proposed building height variation maintains consistency with this objective.

Zone Objectives

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

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

Comment:

The proposed height variation does not offend this objective of the zone in that the use of the remains (for single detached housing) and is provided with landscaping concentrated at the front that is compatible with the scale, density and pattern of surrounding development.

It is considered that the development satisfies this objective.

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

Comment:

This clause is not relevant to the proposal as no other (non-residential services or facilities) are proposed.

It is considered that the development satisfies this objective.

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

Comment:

The height variation does not impact the landscape setting of the site and the surrounding setting over the long term once landscaping is re-established for the garden areas. The higher houses to the south along Suffolk Avenue are 2m to 3m higher and overlook the roof areas of buildings / houses along Anzac Avenue. The non-compliance with the corner of the roof eaves does not adversely affect this objective.

Conclusion:

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

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

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

Planning Circular PS 20-002 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, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed by the Development Determination Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control (Site Area: 695.9m²)	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	East 3.0m to 7.9m West 3.7m to 8.5m	9.7m (0.7m) 15.3% (1.3m)	No No
B3 Side Boundary Envelope	4.0m x 45°	East Outside envelope West Outside envelope	28% (Up to 1.7m wall / screen / deck) 56% (up to 2.8m wall)	No No
B5 Side Boundary Setbacks	0.9m	East <u>Garage</u> 0.9m	N/A	Yes

		<u>Lower Ground</u> 2.1m to 2.7m (wall) <u>Ground</u> 2.1m (wall) to 2.7m (deck) <u>First Floor</u> 0.9m to 2.1m West <u>Basement</u> 2.6m (shower wall) to 6.9m (passage) <u>Lower Ground</u> 2.6m (office) to 5.7m (Living rm) <u>Ground</u> 1.0m (wall) to 2.8m (deck) 3.5m (exca.TV room) <u>First Floor</u> 1.0m to 3.5m (wall)	N/A N/A N/A N/A N/A N/A N/A	Yes Yes Yes Yes Yes Yes Yes
B7 Front Boundary Setbacks	6.5m	<u>Garage</u> 6.6m to 10.6m <u>Lower Ground</u> 6.6m (wall) to 11.8m (wall) <u>Ground</u> 6.6m (deck) to 19.8m (wall) 16m (stairs) <u>First Floor</u> 19.8m to 19.8m	N/A N/A N/A N/A	Yes Yes Yes Yes
B9 Rear Boundary Setbacks	6.0m	First Floor <u>Pool & Deck</u> 1.3m to 4.8m <u>Dwelling</u> 6.1m to 7.1m	N/A N/A	Yes* Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (278.36m²)	38.9% (270.7m²)	2.7%	No

***Note:** Swimming pool and deck does not exceed 50% of the rear setback area.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	N/A	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The maximum wall height is up to 8.2m for the western side wall and 7.8m along the eastern wall. In this regard a similar variation is being maintained as per the existing house.

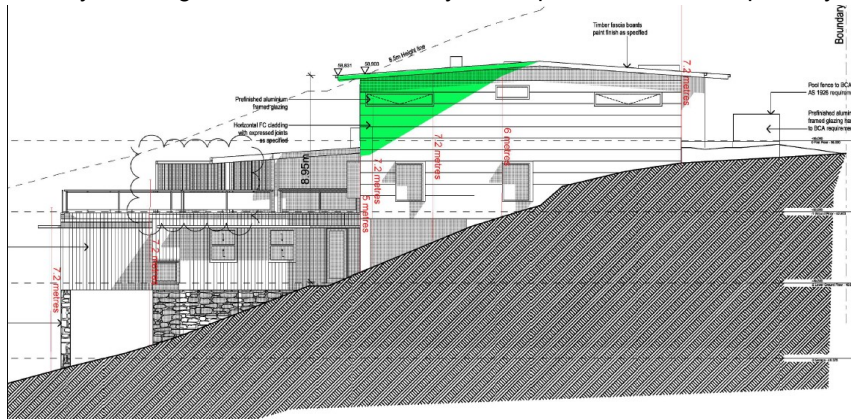
Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).

Merit consideration:

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

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

The non-compliance with the wall height control relates to the southern, eastern and western wall planes and is most pronounced toward the upper corner for the bedroom level (but also applies to Bedroom 2). The non-compliance with the wall height control extends for only a short section of the wall plane on either side of the building. Generally the building is visual impact from adjacent land is not unreasonable for the side wall plane. The wall height (measured to the upper ceiling) has a minimal impact on overshadowing despite the wall height non-compliance along the eastern and western side. The building achieves a minimal impact on views. (Privacy amenity, building bulk and side boundary envelope is addressed separately within this report).



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

The sandstone terrain allows limited opportunity for large canopy trees however the site contains some mature Angophora trees and the proposal seeks to remove one of the trees that would be within the building footprint. A detailed landscape plan is provided that has various tree and shrub planting of various heights suitable for the space provided. The proposal is consistent with this objective.



Image: Photo of current front of property with high canopy trees. Central large tree to be removed.

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

Comment:

The non-compliance with the wall height is limited to a small corner front side walls and across the front elevation due to the natural slope of the land toward Anzac Avenue. The wall height will have no unreasonable impact on view sharing with regard to public land.

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

Comment:

The non-complying sections of wall are limited to the corner of the side walls and across southern (front) elevation of the building and for a short section of the eastern and western end of the side walls. Impacts on views from public domain are not unreasonably impacted in the context of the pattern of surrounding development, proposed house design and distant water views available. No unreasonable amenity impacts of overshadowing arise from the non-compliant wall height with regard to adjoining private properties private open space. (Privacy amenity, building bulk and side boundary envelope is addressed separately within this report).

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

Comment:

The land is already has minor existing excavation with the new dwelling seeking to excavate up to 6.5m in order to accommodate the garage, storage, cellar lift and internal stair access.



- Image: Rock escarpment across mid area of site to be excavated for 2 lower storeys.
- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposal seeks to use a low pitched skillion style roof which will assist to minimise visual impacts for dwellings overlooking the site in Suffolk Avenue. The proposal is consistent with this objective.

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

B3 Side Boundary Envelope

Description of non-compliance

The control allows for a building a side boundary envelope of 4 metres (m) and 45 degrees. The development breaches the control along the eastern and western elevation.

Merit consideration

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

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

Comment:

The proposed development is generally consistent with the height of newer dwellings along Anzac Avenue. Amendments to the plans were made to address concerns regarding the non-compliance with the side boundary envelope toward the south-east corner of the building where building is proposed over 3 levels with a roof style terrace. The proposal is required to maintain consistency with *Part D9 Building Bulk* however this has not been satisfactorily achieved with the associated side boundary envelope non-compliance. The proposal has insufficient stepping in of the side walls to reduce visual dominance when viewed from adjacent land to the north-

west and south-east. In this regard the proposal is inconsistent with this objective.

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

Comment:

Submitted shadow diagrams (Drawing No.DA-002) demonstrate compliant solar sunlight is provided to adjoining properties pursuant to Warringah DCP. Adequate physical separation is not achieved between buildings due to the configuration of the large activity area and associated elevated open space selected sections which ensures no unreasonable loss of privacy or unreasonable solar amenity impacts on the adjoining land. The proposed development does not allow for a reasonable level of amenity, solar access and privacy to be obtained from adjoining or nearby dwellings. The proposal is not consistent with this objective due to the potential noise impact, expansive useable area off the kitchen space that includes BBQ and outdoor dining and viewing deck with in very close proximity and at an open height line adjacent No.106 Anzac Avenue. Potential noise, bbq cooking fumes, close viewing through screens and large elevated outdoor living deck does not "*ensure adequate*" privacy to the adjacent dwelling.

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

Comment:

The proposed development does not suitably respond to the site topography in that expansive excavation to exploit building space and provide limited setbacks for landscaped separation is available, given the present bedrock and pattern of surrounding development. Along the eastern and western side toward the front the building envelope includes non-compliance which even though significant excavation is proposed (up to 6.5m deep). This does not respond to the topography sufficiently to provide building bulk the steps away from the side boundaries as the site narrows along the natural slope. The close setbacks to the side elevations creates issues that raise appropriate concerns for adjacent properties. The natural rock escarpment on site bends further back than on No.106 Anzac Avenue and on adjacent land the natural shelf has been substantially retained intact. The built form of the subject proposal eliminates the rock shelf for basement rooms and also extends the building bulk well forward up the front boundary at two storey height with terrace above and then further steps up another storey to the rear due to the significant internal expansive floor plates.



Image: Side boundary envelope breaches at upper and mid/ levels.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The application proposes 38.9% of the site area as landscaped open space which is non-compliant with the 40% requirement.

To measure the area of landscaped open space:

- a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;*
- b) The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;*
- c) Landscaped open space must be at ground level (finished); and*
- d) The minimum soil depth of land that can be included as landscaped open space is 1 metre.*

Merit consideration

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

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

Comment:

The development proposes 280sqm in total for the new landscaping regime which complies with the 40% requirement of 278.4sqm for the site area (See site plan DA003 dated 31.5.2023). It is noted that along this section of Anzac Avenue has spaced tree canopies with the majority of landscaping concentrated toward the front yard of the property and larger trees along or near the road reserve. The site currently has broad landscaped front setback however the new dwelling extends from the rear 6.0m rear setback to the front 6.5m setback line. Generally the parking is in the same position for the new garage. The site has shallow soils with small / low planting due to the presence of local bedrock. In having to deal with the slope of the land additional terracing and pathways are required to allow for domestic access and within the site due to the sloping nature of the land. The proposal is acceptable with regard to this objective.

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

Comment:

There are no threatened species or remnant bushland on the site. The site contains some spaced canopy trees (*Angophora* spp) and a natural rock escarpment along the central part of the site. New planting will include a mix of native and exotic plants to support habitat for local wildlife and provide native planting. Screen planting along the boundary lines are suitable species that assist to provide a natural buffer at ground level.

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

Comment:

The establishment and retention of low lying shrubs, medium high shrubs and canopy trees that can serve to soften the built form of the development. A comprehensive referral response has been provided from Council's Landscape Assessment Officer detailing the suitability of the landscaping scheme proposed. Details provided under the heading Internal Referrals within this report). The general layout of the landscaping plan includes a range of species from small trees / shrubs to taller plants including palms, Coastal Banksia, Water Gum and Lilly Pilly. In summary, the proposal is acceptable with regard to this objective.

- *To enhance privacy between buildings.*

Comment:

At the rear of the site the single storey configuration and 6m rear setback enables adequate space for privacy between adjacent land. At the front the elevated decks do not contain sufficient setbacks, landscape buffers or natural screening to enhance privacy between buildings, particularly the living area of No.106 Anzac Parade (this issue is addressed separately under clause D8 Privacy) .

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

Comment:

The proposed development will continue to accommodate sufficient outdoor recreational

opportunities to meet the needs of the occupants. This include a pool and rear garden terraces.

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

Comment:

The site contains a sufficient amount of space to service functions, including clothes drying.

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

Comment:

Council's Development Engineer has reviewed the proposal with respect to stormwater management and raised no objections, subject to conditions.

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

D8 Privacy

Merit consideration

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

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

Comment:

The proposal generally maintains similar broad outlook to the road afforded by the elevated sloping topography of the site and distant ocean views obtainable from the dwelling. The balcony and terrace elements at the front of the house are additional open space to the rear yard. Two large balconies that form an extension to the living areas on level 2 are proposed. The western balcony is setback from the side boundary, is square in shape and generally has minimal privacy impacts on No.110 Anzac Avenue due to the position and built form of that house. On the eastern side the front elevated deck is significantly larger and protrudes as far forward as the 6.5m front setback and above the 7.2m wall plane. This create an unconventional appearance of the deck being as high a normal 2 storey roof level however with the built form of the adjacent dwelling on No.106 Anzac Avenue there is no realistic visual privacy and acoustic privacy. The front deck area proposed in front of the kitchen area is a high activity area, roofed and with only a slatted open screen 3.2m from the side of the house at No.106 Anzac Avenue. Potential impact also includes the use of the BBQ space as the screen would allow smoke, and dining area noise to easily affect the adjacent amenity of No.106 Anzac Avenue. While the screen appears to limit side views privacy it is configured to look across No.106 Anzac Avenue and therefore the effectiveness of the screen does not practically afford a *high level of acoustic and visual privacy* for the adjacent neighbour.

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

Comment:

The dwelling is of a suitable design solution with regard to views and casual visual privacy.

Landscape elements to assist with privacy at the rear of the property only due to adjacent hedging and the rear yard being at ground level with a single storey dwelling appearance when viewed from the rear. Side boundary fencing at the back of the house assists to maintain reasonable visual privacy. At the front of the house the large elongated deck off the kitchen area that include a roofed BBQ space and elevated deck, set above the lower 2 storeys does not demonstrate an innovative design to improve the urban environment in consideration of No.106 Anzac Avenue. The area is highly usable (due to large activity space, bbq and all weather usability of the kitchen) and is the large deck space is not sympathetic to the amenity of adjacent land.

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

Comment:

The design will include appropriate security including residential style fencing, garage parking, landscaped pathways (rear garden) as well as a well defined front entry area to the dwelling. The front entry area will enable personal and property security.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WDCP and the objectives of this clause and accordingly, this assessment finds that the proposal is not supported in this particular circumstance.

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal does not progressively increase the setbacks of the dwelling's solid side walls as wall height increases or sufficiently articulate side walls to reduce building mass or ensure that the scale of the building appropriately relates to its topography and site conditions in a sympathetic manner. This is demonstrated by the non-compliance with the side boundary envelope and influenced by the expansive room sizes on the upper storey (Note: measurement difference vs annotated room dimension on plan). Additionally, the expansive forward protruding decks create roof top style terraces that impact visual and acoustic amenity of adjacent land with the deck space not being comparable to the adjacent neighbouring deck spaces. As a result amenity between the neighbouring land is compromised and does not represent good design and innovative architecture to improve the environment. The proposal is not consistent with this objective.

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

Comment:

The visual impact of the proposal is when viewed from adjacent properties is substantial due to the expansive floor plate and for deck areas on the mid levels of the building. Additionally the upper level does not step in away from the side boundary in response to the change in height and topography which accentuates the building bulk when viewed from the street and adjacent

land. The proposal is not consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$27,770 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,777,042.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for demolition work and construction of a dwelling house, garage and a swimming pool has been referred to the Development Determination Panel (DDP) due to potential conflict of interest (consultant / staff).

The concerns raised in the objections have not been able to be addressed by the applicant for the most part due to the building bulk, non-compliant side boundary envelope and privacy impacts to adjacent land. While some amendments were made during the assessment period for landscaping, screens, dwelling configuration and the like sufficient changes have not been made overcome concerns and non-compliance with the Warringah DCP. The height variation to the 8.5m maximum height is minor and does not create unreasonable impact on views or solar access and the like. The variation arises from the site having a sandstone escarpment across the central area of the site creating a 5.29% variation for a small section of the building 0.45m above the 8.5m height line and limited to the eaves and north-western corner of the roof.

The critical assessment issues included , privacy, side boundary envelope, building bulk and amenity impacts on adjacent property by the large elevated decks and scale of the building comparative to adjacent development. Other Internal Referral issues associated with driveway levels, stormwater and landscaping (impact on native *Angophora* trees) have been resolved by supplementary information.

Overall, the development does not respond satisfactorily to the relevant controls and will not result in unreasonable impacts on adjacent land. The adverse amenity impacts are avoidable however sufficient changes have not been able to be achieved to effectively address neighbours amenity concerns. The non-compliances do not satisfy the objectives of *Part B3 Side Boundary Envelope*, *Part D9 Building Bulk* and *Part D8 Privacy* pursuant to the Warringah DCP 2011 for the reasons outlined in the report. Therefore, the proposal is not supported for approval.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/2021 for the Demolition of an existing dwelling and the construction of a new dwelling with swimming pool on land at Lot 66 DP 212835, 108 Anzac Avenue, COLLAROY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the

proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope of the Warringah Development Control Plan.

Particulars

- The proposal does not ensure privacy by providing spatial separation between buildings and the forward elements of the building including lack of stepping in along side walls creates a visually dominant outcome by virtue of the building height and bulk.
- Along the south-eastern and north-western side, toward the front, the building envelope is substantially breached even though significant excavation is proposed and the building bulk does not step away from the side boundaries sufficiently as the site narrows along the natural slope.

2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy of the Warringah Development Control Plan.

Particulars

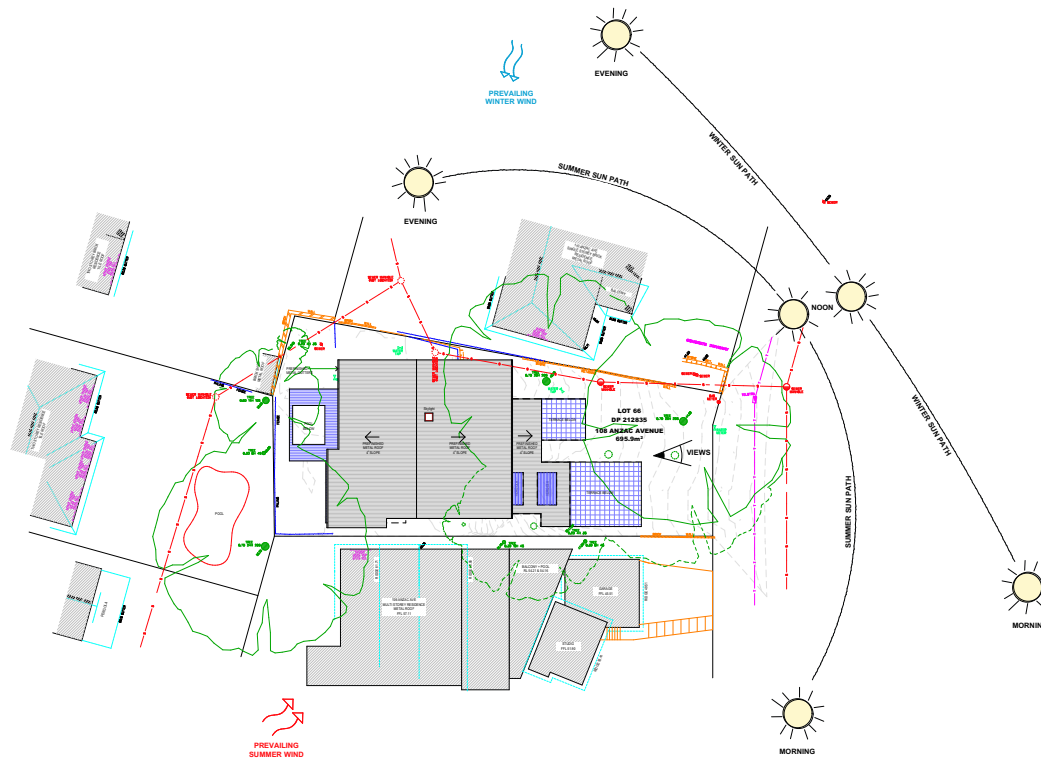
- The design of the building does not provides a high level of visual and acoustic privacy for neighbours. The expansive front deck areas have limited or no protection to adjacent properties. These forward elevated decks are expansive and connected to high activity areas of kitchen, outdoor BBQ living and dining areas with direct lines of sight into adjacent property at close viewing.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.

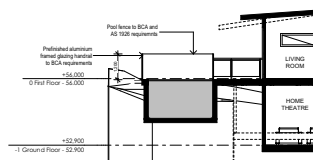
Particulars:

- The proposal does not progressively increase the setbacks of the dwelling's solid side walls as wall height increases or sufficiently articulate side walls to reduce building mass or ensure that the scale of the building appropriately relates to its topography and site conditions in a sympathetic manner.
- The expansive forward protruding decks create roof top style terraces that impact visual and acoustic amenity of adjacent land with the deck space in not being comparable to the adjacent neighbouring deck spaces.

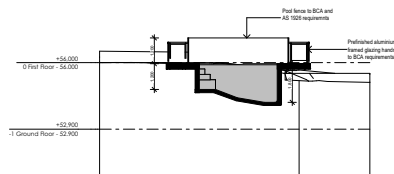
4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest for reasons outlined within the submissions received whereby the proposal is inconsistent with the Warringah DCP controls and objectives.



Newcastle 2022		ESR Access	Water
Newcastle 2022 Sustainability Assessment		Water	Water
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Pool Section 1
1:100



Pool Section 2
1:100

Q	Count DA submission	7/1/2020
F	Client issue	2/1/2020
E	Client issue	2/1/2020
D	Client issue	2/1/2020
C	Client issue	2/1/2020
B	Client issue	2/1/2020
A	Client issue	2/1/2020
Inbox	Accountant	Date

Proposed New Residence
at
108 Anzac Ave
Collaroy
for
R & S Hill



Level 2 19-23 Bridge Street PYMBLE NSW 2073 AUSTRALIA
t: (02) 9440 2455 e: info@gelder.com.au w: gelder.com.au
ABN 48 090 878 827 NSW ARB REG ARCHITECT: GELDER #6126

Sections

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Project No:	2054	Date:	June 2022
Drawing No:	DA005	Scale:	1:100
		Date Plotted:	22/11/2022

A1 ORIGINAL SIZE

ITEM 3.4	DA2023/0706 - 19 HARVEY STREET SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/448761
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0706 for alterations and additions to a dwelling house on land at Lot 15 DP 78434, 19 Harvey Street SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0706
Responsible Officer:	Grace Facer
Land to be developed (Address):	Lot 15 DP 78434, 19 Harvey Street SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Mark George John Burgess
Applicant:	JJ Drafting Australia Pty Ltd
Application Lodged:	16/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/06/2023 to 10/07/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 10.6%
Recommendation:	Approval
Estimated Cost of Works:	\$ 95,000.00

EXECUTIVE SUMMARY

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

The application seeks a variation to the Height of Buildings development standard pursuant to Clause 4.3 of the Manly LEP 2013. The proposal is referred to the Development Determination Panel (DDP) due to the application proposing a variation to the Height of Buildings development standard of more than 10% (0.9 metres or 10.6%).

The 4.6 request for the non-compliance with the building height development standard arises due to the steep site topography and existing excavation on the site. It is noted that the proposed alterations and additions will not increase the existing numerically non-compliant building height.

No submissions were received as a result of the public exhibition of the application.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

Ground Floor Level

- New ground floor rear deck
- Two new aluminium sliding doors on the southern elevation to provide access to deck. The existing sill to the south-facing window is to be lowered and opening widened to accommodate one of the sliding doors.
- Extension of existing west-facing balcony to connect with new rear deck
- External stair access to allow access from the new deck to the rear yard

First Floor Level

- Extended rear first floor deck with vergola over
- Extension of existing west-facing balcony
- New aluminium sliding door on southern elevation to provide access to deck
- Sill raised on the existing sliding doors on the western elevation to form a window to the master bedroom
- Extension of master bedroom and walk-in robe over existing deck and below the existing roof

ASSESSMENT INTRODUCTION

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

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

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

SITE DESCRIPTION

Property Description:	Lot 15 DP 78434 , 19 Harvey Street SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Harvey Street. The site is regular in shape with a frontage of 20.115 metres along Harvey Street and a depth of 56.085 metres. The site has a surveyed area of 1126m². The site is located within the R2 Low Density Residential zone from MLEP 2013 and accommodates a two storey dwelling house with a detached garage. A small basketball court is located on the eastern side of the dwelling house. The site slopes downwards from the north-eastern side of the lot towards the rear boundary by approximately 7 metres. The site contains lawn areas, garden beds, rock outcrops and trees. There are no details of any threatened species on the subject site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential dwelling houses of varying ages and architectural styles.

Map:



SITE HISTORY

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

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

Application History

Following the preliminary assessment of the application, the Applicant was requested to provide revised Section Plans to demonstrate the maximum building height. Subsequently, the Applicant provided an amended set of architectural plans.

No changes were proposed to the development in the amended plans and the amended plans did not alter the environmental impact. Therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	Part 4, Division 2 of the EP&A Regulation 2021 requires

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was request in relation the Plans - Master Set. Subsequently, the Applicant provided the requested information. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature

Section 4.15 Matters for Consideration	Comments
	of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning and Design, dated 22 May 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/06/2023 to 10/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported, subject to conditions The proposal is supported with regard to landscape issues. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping The tree protection recommendations outlined in the Arboricultural Impact Assessment are supported and all existing trees and

Internal Referral Body	Comments
	vegetation to be retained shall be protected during works, subject to the imposed conditions. All natural rock outcrops outside the approved construction footprint shall be retained and protected during works. No further concerns are raised.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A489817 dated 1 June 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.4m	10.6% (0.9m)	No
Floor Space Ratio	FSR: 0.4:1 (450.4m ²)	FSR: 0.2:1 (206.6m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5 metres
Proposed:	9.4 metres
Percentage variation to requirement:	10.6%

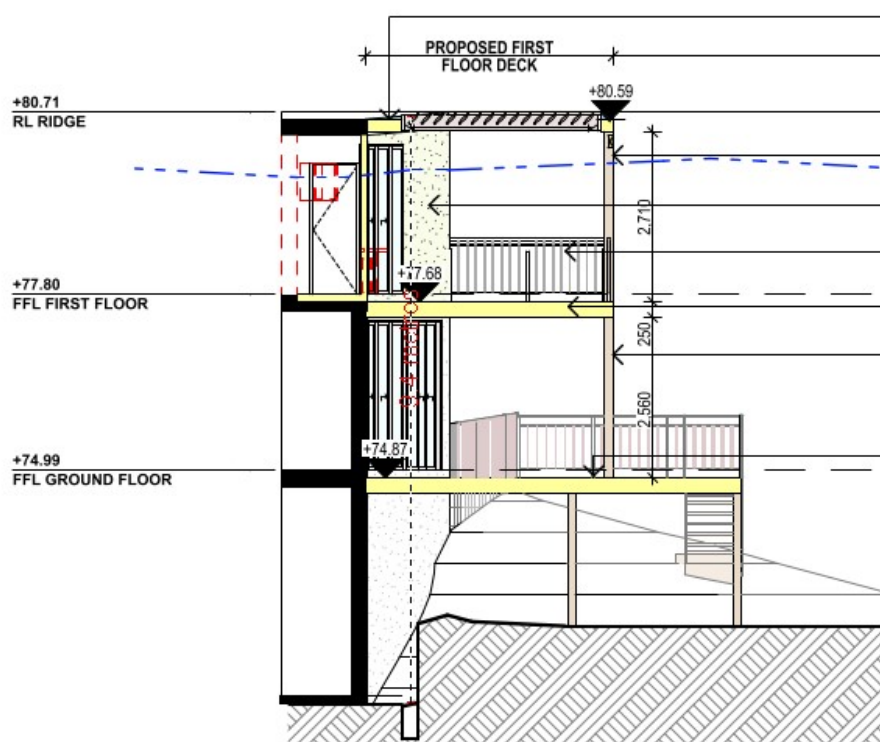


Figure 1 - Maximum Building Height Non-compliance

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

- (1) *The objectives of this clause are as follows:*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular*

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The proposed works will not increase the existing building height. It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the alterations and additions to an existing dwelling, which is constrained by the extent of the existing development on the site.*
- *The new works are modest in height and scale, with consistent materials and finishes, in order to provide for high quality development that will enhance and compliment the locality.*
- *The proposed setbacks are compatible with the existing dwelling and surround development.*
- *The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.*

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

design to preserve the residential low density setting. Furthermore, the portion of the dwelling and upper floor deck where the maximum numerically non-compliant building height occurs, arises largely due to existing excavation, and will be not result in any further increase to the existing numerically non-compliant height of the dwelling.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed works will be located in line with the existing roof and will not result in any changes to the maximum height of buildings on the site. As the proposed development will be located at the rear of the site, the existing streetscape character will be maintained.

b) to control the bulk and scale of buildings,

Comment:

The proposal is complementary to the bulk and scale of the existing building on the site. The proposed rear decks will be open structures that will not be visually dominant when viewed from

adjoining or surrounding properties. Furthermore, the proposed works will not be visible from the public domain. The proposed extension to the dwelling will maintain existing generous side and rear setbacks to neighbouring properties to minimise its perceived bulk.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),***
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),***
- (iii) views between public spaces (including the harbour and foreshores),***

Comment:

The open nature of the rear deck will allow for view corridors across the site to be maintained and the proposal will have minimal disruption on views to and from public places.

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 application is accompanied by Shadow Diagrams which demonstrate that the majority of additional shadows will fall within the subject site's rear yard, with minimal impacts on adjoining properties. Given the large setback to the rear boundary, adequate solar access to the site's private open space will be maintained. Windows to the habitable rooms of adjacent dwellings will only be marginally impacted at 3pm on winter solstice and will otherwise be unimpacted by the proposal in terms of sunlight access.

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

Comment:

The subject site is not located in a recreation or environmental protection zone, therefore this objective is not relevant to this application. Existing vegetation will be retained on the subject site to maintain the bushland character of the locality.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposal provides for the housing needs of the community within a low density residential environment, providing for additional outdoor recreational space whilst maintaining the landscaped character of the locality.

It is considered that the development satisfies this objective.

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

Comment:

The proposal retains the residential use of the site and therefore this objective is not relevant.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1126m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1 (Unaltered)	-	Yes
4.1.2.1 Wall Height	E: 8m (based on gradient 1:4)	6.7m	-	Yes
	W: 6.5m (based on gradient 0)	9.1m	40% (2.6m)	No
4.1.2.2 Number of Storeys	2	2 storeys (Unaltered)	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.3m	-	Yes
	Pitch: maximum 35 degrees	Flat roof	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	27.8m - proposal at the rear of the dwelling	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: First Floor: 2.23m (based on wall height) Ground Floor: 0.53m (based on wall height)	First Floor: 6.6m Ground Floor: 0.9m	-	Yes
	W: First Floor:	First Floor: 6.6m	-	Yes

	3.03m (based on wall height) Ground Floor: 1.53m	Ground Floor: 5.6m		
	Windows: 3m	All new windows >3m from boundaries	-	Yes
4.1.4.4 Rear Setbacks	8m	22.5m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (675.6m ²)	61.2% (689.6m ²)	-	Yes
	Open space above ground <25% of total open space (172.4m ²)	13.1% (90.3m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (275.84m ²)	75.7% (522.2m ²)	-	Yes
4.1.5.3 Private Open Space	18sqm / 12sqm per dwelling	> 18m ²	-	Yes

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of non-compliance

Clause 3.4.2.2 of the DCP stipulates that architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. No submissions in relation to visual privacy have been received during the notification period, nevertheless the proposed upper level deck's impact on potential privacy loss has been considered against the underlying Objectives of the Control as follows:

Merit consideration:

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

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

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

Comment:

The proposed deck on the upper floor level presents compliant setbacks to the side and rear boundaries, well in excess of the minimum requirements prescribed by the DCP. Adjoining dwellings located to the west of the site on the downslope are screened by existing boundary fencing and vegetation, with their windows largely directed towards the west away from the subject site in order to capitalise on water views. There is an existing upper floor balcony along the length of the dwelling's western elevation and, in the context of existing development within the site, the proposed rear deck is not anticipated to result in any additional unreasonable overlooking impacts.

To the east of the site, No.17 Harvey Street exhibits a rear balcony with no privacy screening, which overlooks the subject site's private open space in the current scenario. The proposed upper level deck to No.19 Harvey Street will be located closer to the subject site's western boundary and demonstrates a setback of 6.6m from the adjoining eastern side boundary, with further distance provided to the balcony of No.17 Harvey Street. In this regard, it is considered that adequate spatial separation has been provided to mitigate privacy impacts. As No.17 Harvey Street's rear balcony has been designed to obtain water views to the east, the imposition of a privacy screen on the proposed upper level deck would likely result in adverse view loss impacts and is not considered warranted or a positive design outcome in this instance. Given the generous setbacks provided and existing development within the

site, the proposal is considered to adequately minimise loss of privacy.

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

Comment:

The proposal will allow for the maintenance of outlook and views from the adjoining property to the east, without compromising privacy or access to light and air to occupants of the subject site.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not impact upon the site's ability to provide personal and property security for occupants, nor will it compromise casual surveillance of the neighbourhood.

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

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

Description of non-compliance

Clause 4.1.2.1 Wall Height of the DCP requires that the maximum permitted wall height is to be determined by the slope of the land under the wall. The proposed upper level deck and extended master bedroom result in a numerically non-compliant wall height along the western elevation with a proposed maximum height of 9.1m, presenting a variation of 40% (2.6m) to the control. It should be noted that the Clause permits a variation to the control where an existing building exceeds the maximum height controls so long as any alterations and/or additions to the building does not increase the overall height of the existing building. The existing wall heights and overall height of the dwelling house will be unchanged as a result of this Development Application.

Merit consideration

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

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

Comment:

The proposed deck is located at the rear of the existing dwelling house and will not be visible from the public domain. Therefore, the streetscape character in the locality will be unaltered as a result of this Development Application. The numerically non-compliant wall height arises due to existing excavation on the site. As the extended master bedroom will be extended over the existing rear balcony and within the existing roofline, the proposal is consistent with the prevailing building height and topographic landscape. The proposed upper level deck will be an extension of the existing western-facing balcony and will not result in any further variation to the wall height control.

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

Comment:

The proposal demonstrates compliant setbacks to the side and rear boundaries and will not be visually intrusive given the open nature of the proposed deck and the relatively minor extension to the rear master bedroom. The proposal follows the existing floor to ceiling heights of the dwelling house and is not considered to be excessive in height, notwithstanding the numerical non-compliance. The proposed wall height breach arises largely due to the topography of the land which slopes downwards towards the western boundary, noting that there is also existing excavation on the site. The proposal will maintain a built form that is compatible with the bulk and scale of the existing dwelling and is compatible with other developments within the surrounding locality.

(c) to minimise disruption to the following—

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

The numerically non-compliant wall height is not anticipated to result in any adverse impacts on views between to or from public and private places.

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

Comment:

Shadow Diagrams accompanying the application demonstrate that a compliant level of solar access will be maintained to the windows and private open spaces of adjoining dwellings.

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

Comment:

The site is not located in a recreation or environmental protection zone, therefore this objective is not relevant to this application

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house, has been referred to the Development Determination Panel (DDP) due to the application proposing a variation to the Height of Buildings development standard of more than 10% (0.9 metres or 10.6%).

No submissions were received during the notification period.

The proposed development is sympathetic to the character of the site and will maintain an appropriate visual relationship with the surrounding environment, noting that the proposal will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

Therefore, the application is recommended for approval (subject to conditions).

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/0706 for Alterations and additions to a dwelling house on land at Lot 15 DP 78434, 19 Harvey Street, SEAFORTH, 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
Site Plan - Drawing No.DA.01 Revision E	10 July 2023	JJ Drafting
Proposed Ground Floor Plan - Drawing No.DA.04 Revision E	10 July 2023	JJ Drafting
Proposed First Floor Plan - Drawing No.DA.05 Revision E	10 July 2023	JJ Drafting
Proposed East and West Elevations -	10 July 2023	JJ Drafting

Drawing No.DA.06 Revision E		
Proposed South Elevation - Drawing No.DA.07 Revision E	10 July 2023	JJ Drafting
Proposed North Elevation - Drawing No.DA.08 Revision E	10 July 2023	JJ Drafting
Section AA - Drawing No.DA.10 Revision E	10 July 2023	JJ Drafting
Section BB - Drawing No.DA.11 Revision E	10 July 2023	JJ Drafting
Roof Plan - Drawing No.DA.13 Revision E	10 July 2023	JJ Drafting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Report	22 May 2023	Bush Fire Planning Services
Arboricultural Impact Assessment Report	9 May 2023	Ezigrow
BASIX Certificate No.A489817	1 June 2023	JJ Drafting

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	4 May 2023	JJ Drafting

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response - OH and UG Cables	14 July 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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

7. **Waste Management Plan**

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

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

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

8. **Compliance with Standards**

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

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

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

DURING BUILDING WORK

9. **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.

10. **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.

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

Reason: Tree and vegetation protection.

11. **Survey Certificate**

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

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

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

12. **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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

13. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

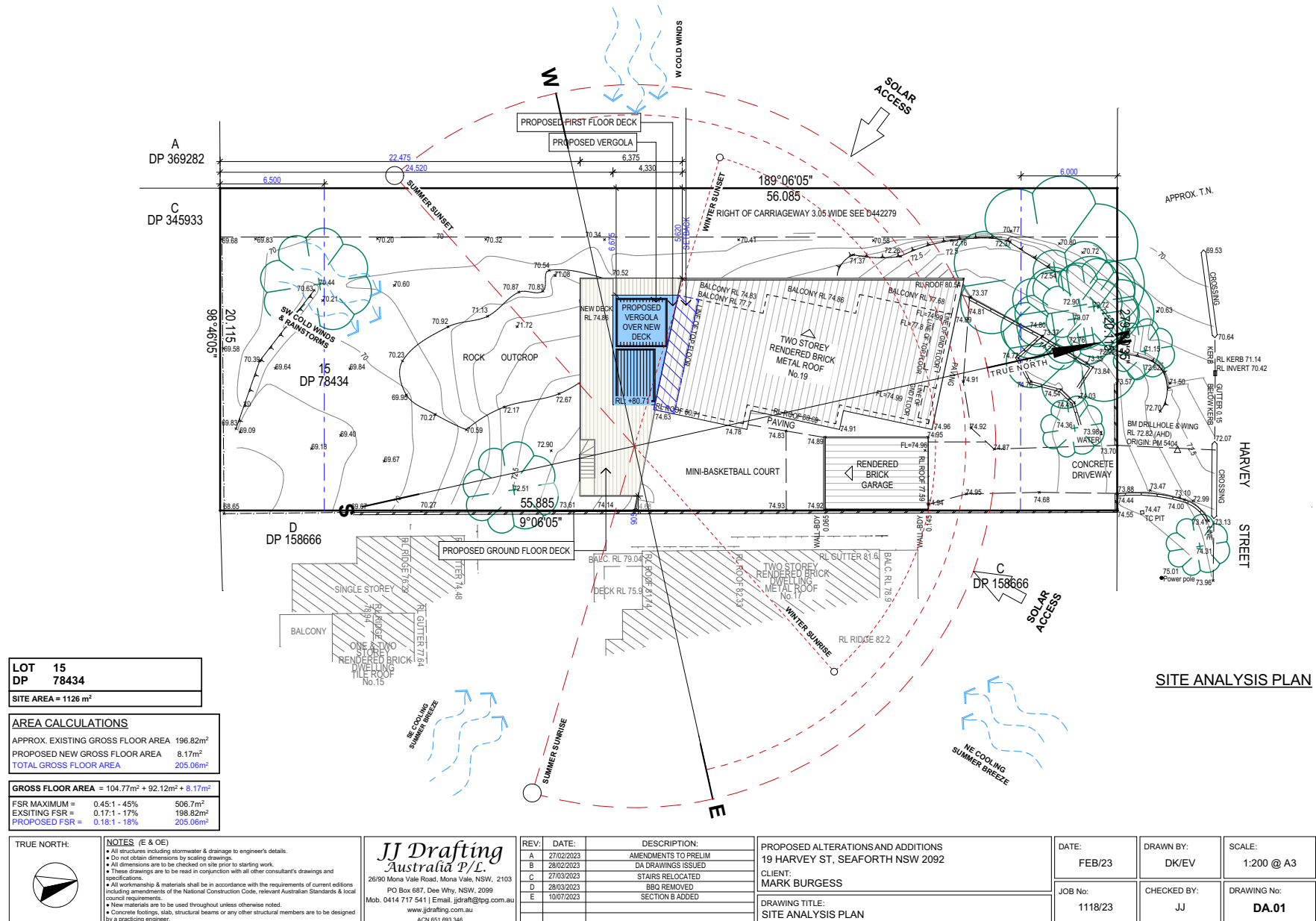
If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

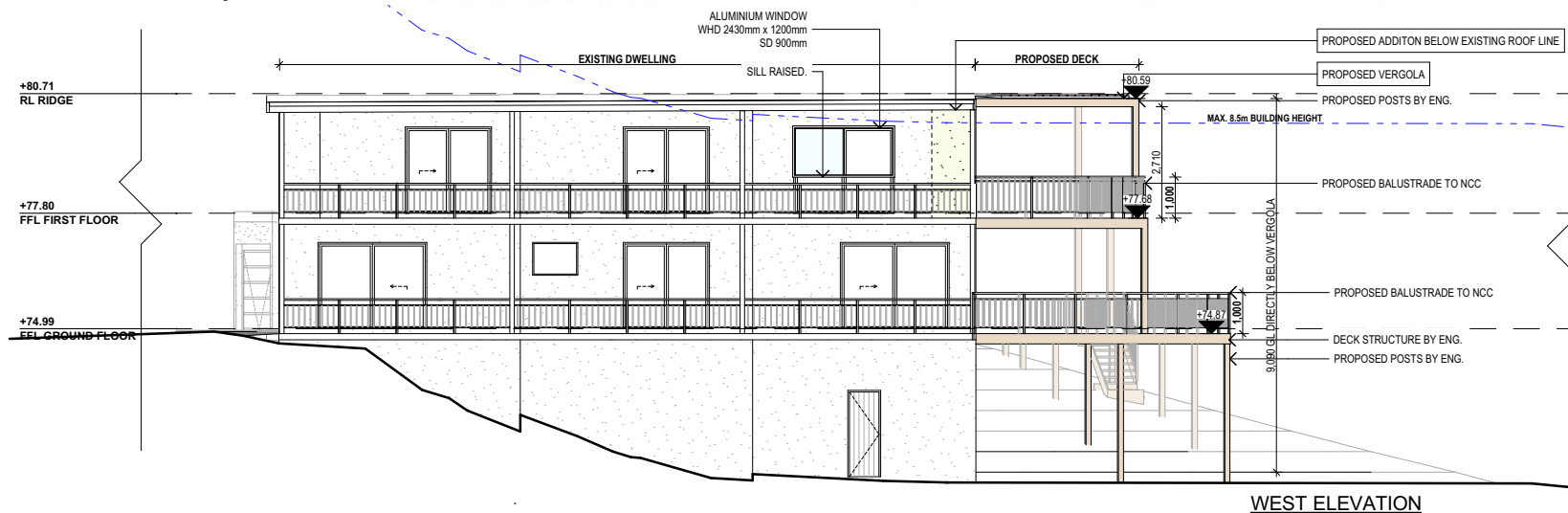
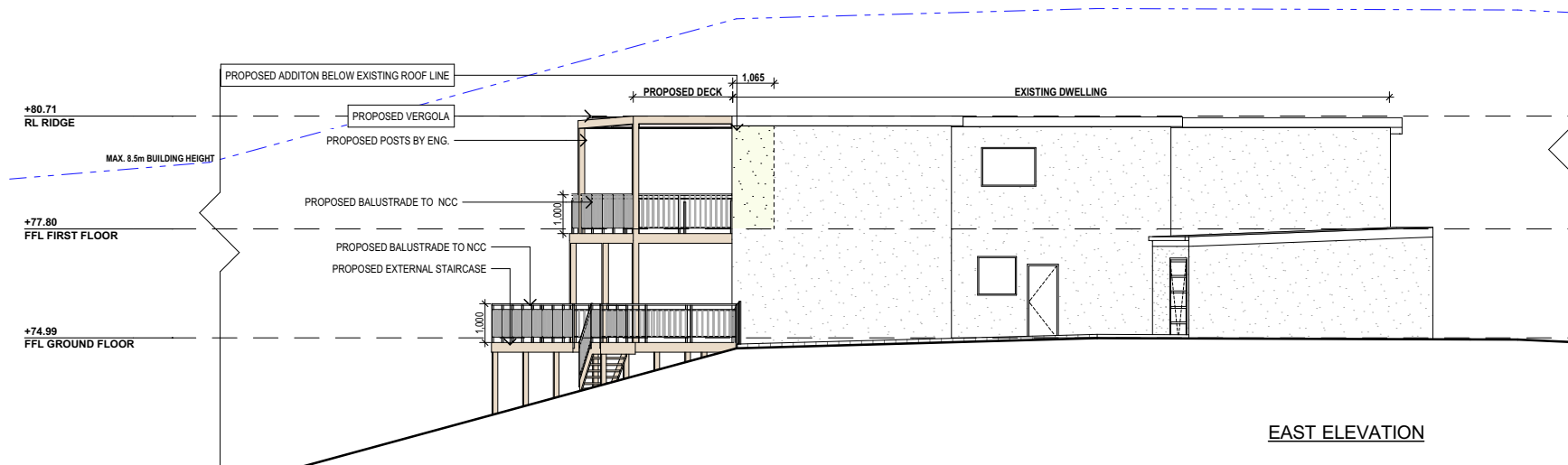
The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

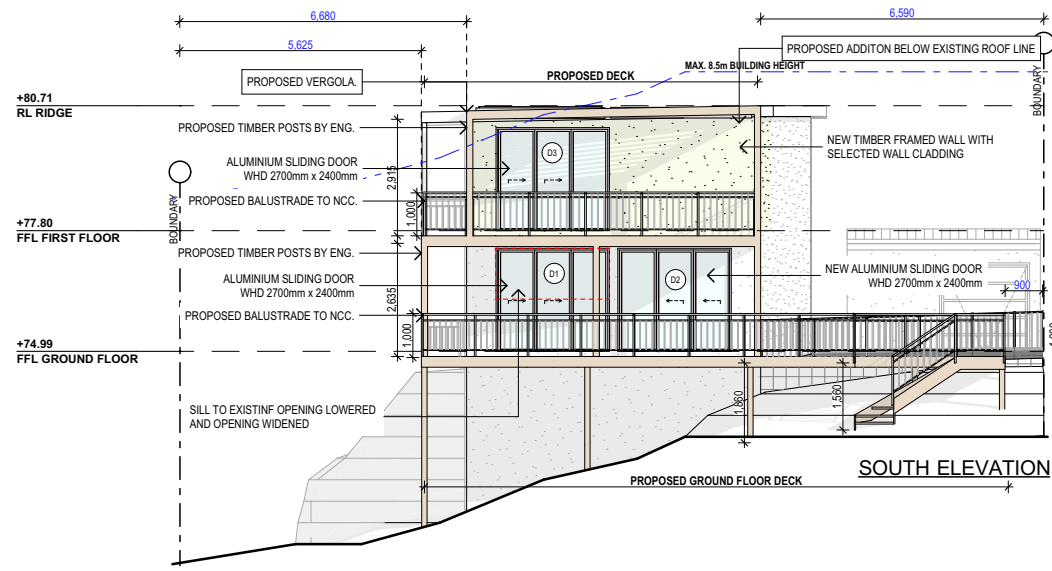
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

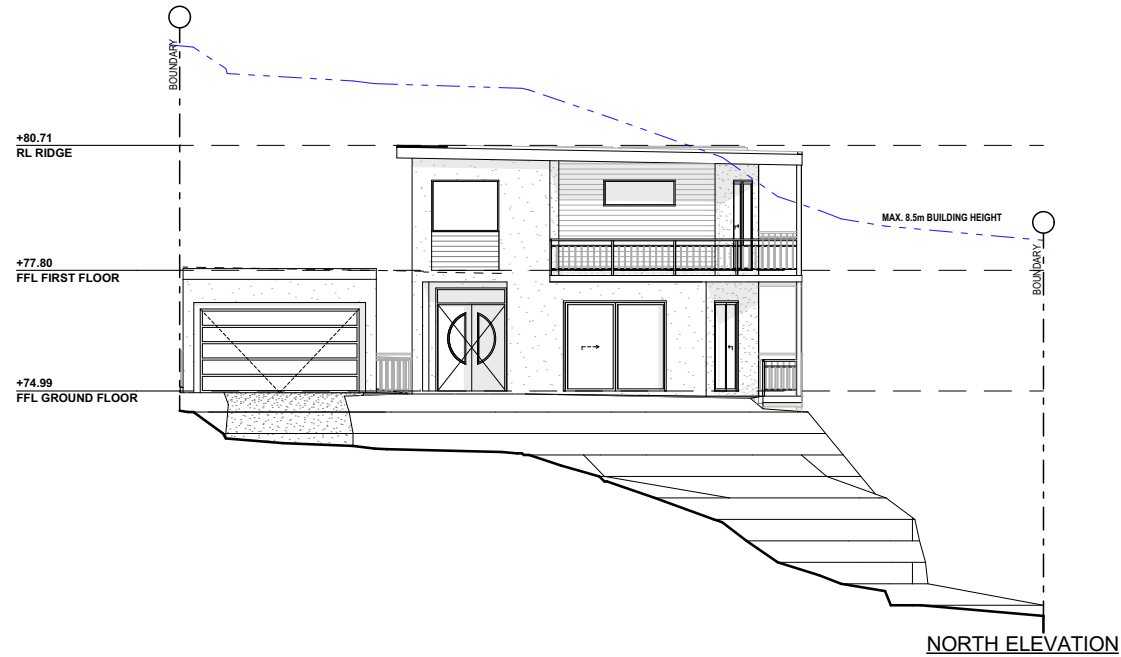




NOTES (E & OE) All structures including stormwater & drainage to engineer's details. Do not obtain dimensions by scaling drawings. All dimensions are to be checked on site prior to starting work. These drawings are to be read in conjunction with all other consultant's drawings and specifications. All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements. New materials are to be used throughout unless otherwise noted. Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.	JJ Drafting Australia P/L 26/90 Mona Vale Road, Mona Vale, NSW, 2103 PO Box 687, Dee Why, NSW, 2099 Mob. 0414 717 541 Email: jjdraft@tpg.com.au www.jjdrafting.com.au	REV: DATE: DESCRIPTION: A27/02/2023AMENDMENTS TO PRELIM B28/02/2023DA DRAWINGS ISSUED C27/03/2023STAIRS RELOCATED D28/03/2023BBO REMOVED E10/07/2023SECTION B ADDED	PROPOSED ALTERATIONS AND ADDITIONS 19 HARVEY ST, SEAFORTH NSW 2092 CLIENT: MARK BURGESS	DATE: FEB/23	DRAWN BY: DK/EV	SCALE: 1:100 @ A3
		JOB No: 1118/23	CHECKED BY: JJ	DRAWING No: DA.06		



NOTES (E & OE) • All structures including stormwater & drainage to engineer's details. • Do not obtain dimensions by scaling drawings. • All dimensions are to be checked on site prior to starting work. • These drawings are to be read in conjunction with all other consultant's drawings and specifications. • All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements. • New materials are to be used throughout unless otherwise noted. • Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.	JJ Drafting Australia P/L 26/90 Mona Vale Road, Mona Vale, NSW, 2103 PO Box 687, Dee Why, NSW, 2099 Mob. 0414 717 541 Email: jjdraft@tgg.com.au www.jjdrafting.com.au ACN 651 693 346	REV: DATE: DESCRIPTION:	PROPOSED ALTERATIONS AND ADDITIONS	DATE:	DRAWN BY:	SCALE:	
		A 27/02/2023	AMENDMENTS TO PRELIM		FEB/23	DK/EV	1:100 @ A3
		B 28/02/2023	DA DRAWINGS ISSUED				
		C 27/03/2023	STAIRS RELOCATED	CLIENT:			
		D 28/03/2023	BBO REMOVED	MARK BURGESS			
E 10/07/2023	SECTION 8 ADDED	DRAWING TITLE:		JOB No:	CHECKED BY:	DRAWING No:	
		PROPOSED ELEVATIONS SHEET 2		1118/23	JJ	DA.07	



TRUE NORTH: 	NOTES (E & OE) • All structures including stormwater & drainage to engineer's details. • Do not obtain dimensions by scaling drawings. • All dimensions are to be checked on site prior to starting work. • These drawings are to be read in conjunction with all other consultant's drawings and specifications. • All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements. • New materials are to be used throughout unless otherwise noted. • Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.	JJ Drafting Australia P/L 26/90 Mona Vale Road, Mona Vale, NSW, 2103 PO Box 687, Dee Why, NSW, 2099 Mob. 0414 717 541 Email. jjdraft@tpg.com.au www.jjdrafting.com.au ACN 651 693 346	REV: DATE: DESCRIPTION: A27/02/2023AMENDMENTS TO PRELIM B28/02/2023DA DRAWINGS ISSUED C27/03/2023STAIRS RELOCATED D28/03/2023BBO REMOVED E10/07/2023SECTION B ADDED	PROPOSED ALTERATIONS AND ADDITIONS 19 HARVEY ST, SEAFORTH NSW 2092 CLIENT: MARK BURGESS DRAWING TITLE: PROPOSED ELEVATIONS SHEET 3	DATE: FEB/23 JOB No: 1118/23	DRAWN BY: DK/EV CHECKED BY: JJ	SCALE: 1:100 @ A3 DRAWING No: DA.08

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P.O.Box 687 Dee Why 2099

0414 717 541

email: jjdraft@tpg.com.au**OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY ENVIRONMENTAL PLAN 2013****19 HARVEY ST, SEAFORTH****FOR ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING****1. INTRODUCTION**

This objection is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2. BACKGROUND

Clause 4.3 building height is not exceed 8.5m as shown on the height of building map and is considered to be development standard as defined by Section 4 of the environmental Planning and Assessment Act.

The proposal seeks to extend an existing first floor bedroom wall above an existing balcony and directly below an existing roof. Currently portion of the existing building slightly contravenes the building height. The proposal is constrained by the existing development on site, which presents an existing variation to the existing building height control.

The proposed works will not increase the existing building height.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3. PURPOSE OF CLAUSE 4.6

The Manly Local Environmental Plan 2013 contains its own variations clauses (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

4. OBJECTIVES OF CLAUSE 4.6

The objectives of Clause 4.6 are as follows:

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

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing dwelling which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as :

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* 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 residence.

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing dwelling, to meet the housing needs of the dwelling's occupants.

The new works are modest in height and scale, with consistent materials and finishes, in order to provide for high quality development that will enhance and compliment the locality.

Notwithstanding the existing non-compliance with the maximum building height control, the new works will provide an attractive residential development that will add a positive character and function of the local residential neighbourhood and will not increase the current building height.

5. ONUS ON APPLICANT

Clause 4.6(3) provides that:

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

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

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

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) and (b) above.

6. JUSTIFICATION OF PROPOSED VARIATION

There is jurisdictional guidance available on how variations under clause 4.6 of the standard instrument should be assessed in *Samadi v Council of the City of Sydney (2014) NSWLEC 1199*.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii).

The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii).

The third precondition requires the court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i).

The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and

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with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i).

PRECONDITION 1 – CONSISTENCY WITH ZONE OBJECTIVES

The site is located in R2 Low Density Residential Zone. The objectives of the R2 zone are as follows:

- * To provide for 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.*

Comments

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons:

- * The proposal will be consistent with and compliment the existing detached style of the residential development within the locality.*
- * The proposed development respects the scale and form of other new developments in the vicinity and therefore compliments the locality.*
- * The setbacks are compatible with the existing dwelling and surround development.*
- * The proposal does not have any impacts on long distance views.*
- * The proposal will not increase the current building height which portion currently slightly exceeds the 8.5m building height.*

It is considered that the site may be developed with a variation to the prescribed max. building height, whilst maintaining consistency with the zone objectives.

PRECONDITION 2 – CONSISTENCY WITH THE OBJECTIVES OF THE STANDARD

The objective of Clause 4.3 are articulated at Clause 4.4(1):

These are as follows:

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

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

Comments

Despite the existing minor variation to the building height which occurs as a result of the existing development on the site, the proposed new works are considered to be in keeping with the desired future character of the locality and are located below the existing roof line .

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposal is consistent with the objectives of the development standard.

There will be no bulk and scale to the streetscape given that the proposal is located to the rear of the building and is located above an existing balcony and below an existing roof line.

PRECONDITION 3 – TO CONSIDER A WRITTEN REQUEST THAT DEMONSTRATES THAT COMPLIANCE WITH THE DEVELOPMENT IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE.

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the alterations and additions to an existing dwelling, which is constrained by the extent of the existing development on the site.

Council's controls in Clause 4.3 provides a maximum building height of 8.5m

It is considered that the proposal achieves the objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

* The proposed departure from the maximum building height control occurs as a result of the extent of the existing development on the site. The proposed new works are modest in bulk and scale and will not be prominently visible from the public domain and are located within the existing building footprint.

* The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and given the variety in the scale of the development, the proposal will reflect a positive contribution to its streetscape.

* The proposal does not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

PRECONDITION 4 – TO CONSIDER A WRITTEN REQUEST THAT DEMONSTRATES THAT THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD AND WITH THE COURT (OR CONSENT AUTHORITY) FINDING THAT THE MATTERS REQUIRED TO BE DEMONSTRATED HAVE BEEN ADEQUATELY ADDRESSED.

Council's controls Clause 4.3 provide a max. BUILDING HEIGHT OF 8.5M for the subject development.

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The proposed first floor addition to the master bedroom is located within the existing building footprint. The existing roof above slightly contravenes the 8.5m building height.

The development is justified in this instance for the following reasons:

- * The proposed departure from the building height control occurs as a result of the extent of the existing development on the site. The proposal is located within the existing building footprint and will not increase the current building height.
- * The proposal is consistent with the character of the subject detached dwelling development and the locality. The proposed design which is to increase the size of the master bedroom will continue to have a generous side setback and good spacial separation between existing buildings
- * The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and given the variety in the scale of the development, the proposal will reflect a positive contribution to its streetscape.
- * The proposal does not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for the max.building height.

In the recent 'Four2Five' judgement (Four2Five P/L v Ashfield (2015) NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a judge of the court, and later the court on appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance.

Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of Randwick City Council v Micaul Holdings Pty Ltd (2016) NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicants written document itself, and in the commissioner's assessment of it). In February 2016 the chief Judge of the Court dismissed the appeal, finding no fault in the commissioner's approval of the large variations to the height control.

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While the judgement did not directly overrun the *Four2Five v Ashfield* decision an important issue emerged. The chief judge noted that one of the consent authority's obligation is to be satisfied that "the applicants written request has adequately addressed..that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard". He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicants written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, in regards to the proposed development at 19 Harvey St, Seaforth, the following environmental planning grounds are considered to be sufficient to allow council to be satisfied that a variation to the development standard can be supported:

- * The development is constrained by the existing development on the site.
- * The proposal is located below the existing building footprint.
- * The proposal will not be visible from the streetscape
- * Given that the proposal is located below the existing roof, the existing building height will not be increased.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

In the *Wehbe* judgement (*Wehbe v Piitwater Council 2007 NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the objection may be consistent with the aims of the policy.. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations:

a) The objectives of the standard are achieved notwithstanding non-compliance with the standard

comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discussed the achievement of the objectives of the standard.

b) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary:

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

c) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable:

Comment: Compliance does not defeat the underlying object of the standard development: however, compliance would prevent the approval of an otherwise supportable development.

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Furthermore, it is noted that the development standards are not intended to be applied in an absolute manner, which is evidenced by clause 4.6 (1)(a) and (b)

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

Comment: Not applicable

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

Comment: The development standard is applicable to an appropriate to the zone.

7. CONCLUSION

This development proposes a departure from the maximum building height, for the proposed alterations and additions to the existing dwelling. Portion of the existing building slightly contravenes the building height to the rear of the building. There will be no increase in the building height due to the proposed addition.

This variation occurs as a result of the siting of the existing development on the site.

This objection to the maximum building height in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.

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c/- JJ DRAFTING AUSTRALIA P/L

ITEM 3.5**DA2023/0186 - 42 WHITE STREET BALGOWLAH -
DEMOLITION WORKS, SUBDIVISION OF ONE LOT INTO TWO
AND CONSTRUCTION OF ONE DWELLING HOUSE ON EACH
ALLOTMENT****REPORTING MANAGER** Rod Piggott**TRIM FILE REF** 2023/449054**ATTACHMENTS**
1 [↓](#)Assessment Report
2 [↓](#)Site Plan and Elevations**PURPOSE**

- A. To refer the attached application for determination as required under adopted delegations of the Charter.
- B. To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the 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 **refuses** Development Consent to DA2023/0186 for demolition works, subdivision of one lot into two and construction of one dwelling house on each allotment on land at Lot 2 DP 519674, 42 White Street BALGOWLAH, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0186
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 2 DP 519674, 42 White Street BALGOWLAH NSW 2093
Proposed Development:	Demolition works, subdivision of one lot into two and construction of one dwelling house on each allotment
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Owner:	Sara Jane Davies
Applicant:	Minto Planning Services Pty Ltd
Application Lodged:	01/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	07/03/2023 to 21/03/2023
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.4 Floor space ratio: 14% to 36%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 3,221,980.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition of the existing dwelling, subdivision into two lots and construction of two (2) dwelling houses.

The application is referred to the Development Determination Panel (DDP) due to receiving seven (7) submissions and based on Council's calculation of the Flood Space Ratio, exceeds the FSR development standard by more than 10% (in this case 36% for Lot 1 and 14% for Lot 2).

Concerns raised in the objections predominantly relate to view sharing, non-compliance with the built form controls, privacy and overdevelopment of the site.

Critical assessment issues include how the FSR has been calculated for this site. Of note, Council's

assessment finds that the FSR is exceeded for both lots based on the definition of 'Gross Floor Area' within the MLEP and using the relevant case law to calculate FSR for dwelling houses. Furthermore, the area designated to the right of carriageway is excluded from the site area for Lot 1 when calculating the available site area contributing to the FSR, in accordance with Clause 4.5 MLEP 2013, therefore the exceedance is calculated as 36%. In either scenario (including or excluding the Right of Carriageway) the FSR is exceeded for Lot 1. The FSR is also exceeded for Lot 2. No Clause 4.6 Variation request has been submitted with this application and as such, there is no power to approve the application.

The application also has not demonstrated that a reasonable view sharing outcome is achieved for the properties to the west. The proposal has not demonstrated a 'skillful design' in order to retain harbour views and there are non-compliant elements (such as FSR, wall height and rear setback) which contribute to view impacts. The proposal also has insufficient open space, partially due to the curved design of the driveway which takes up a significant portion of the front setback area, reducing the available area for landscaping to the street.

Council's development engineer has also reviewed the driveway design and stormwater design, both do not meet Council's standards and are aspects of this proposal that are not resolved.

This application is also now subject to a Class 1 Appeal to the Land and Environment Court by way of a 'deemed refusal' filed on 4 July 2023.

This report concludes with a recommendation that the DDP refuse the development application, for the reasons outlined at the end of this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for Demolition of the existing dwelling, subdivision of the land into two lots and construction of a dwelling house on each lot.

Specifically, the proposal consists of:

- Demolition of the existing dwelling house on the land;
- Subdivision of the land into two lots, Lot A being 373.6m² and Lot B being 341.7². Lot B is accessed via a Right of Carriageway through Lot A;
- Construction of a four (4) bedroom dwelling on each lot across two levels, with subterranean double garage;
- Landscaping and earthworks to facilitate the development.

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 - 4.1 Minimum subdivision lot size
 Manly Local Environmental Plan 2013 - 4.5 Calculation of floor space ratio and site area
 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 Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 3.7 Stormwater Management
 Manly Development Control Plan - 4.1.1.2 Residential Land Subdivision
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.8 Subdivision

SITE DESCRIPTION

Property Description:	Lot 2 DP 519674 , 42 White Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of White Street. The site is irregular in shape with a frontage of 15.24m along White Street and a depth of 48.77m. The site has a surveyed area of 715.3m². The site is located within the R1 General Residential zone and accommodates a detached dwelling house and carport. The site has a moderate fall from the rear (north) boundary to the front (south) boundary, with a total fall of 5m across the site. The site has a range of scattered trees across the site, between 3m and 8m, with one larger (12m) height tree at the rear boundary. The remainder of the site consists of landscaped lawns and garden. Detailed Description of Adjoining/Surrounding

Development

Adjoining and surrounding development is characterised by a mixture of development consisting of detached dwelling houses and medium density residential typologies of older residential flat buildings, dual occupancies and multi-dwelling housing. Directly to the east of the site is a two storey multi-dwelling housing block. To the north (rear) of the site is a two storey dual occupancy. To the west is a three (3) unit multi-dwelling housing development. Across the road to the south are detached residential dwelling houses.

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:

- Pre-lodgement Meeting **PLM2022/0088** was held on 26/05/2022 for Construction of a Construction of two dwellings and subdivision of land.

History of DA assessment

On 5 April 2023 Council wrote to the applicant outlining Council's issues with the application following an assessment. Council requested the application be withdrawn given the extent of the issues with the current proposal.

On 4 July 2023 a Class 1 Appeal (deemed refusal) was submitted to the NSW Land and Environment Court.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an amended design and engineering matters. Given the substantial issues with the proposal Council recommended the DA be withdrawn and resubmitted, once the issues were resolved. Following the RFI a Class 1 Appeal was submitted to the Land and Environment Court and as such, the application is determined by way of refusal based on the plans originally submitted. <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 could be addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development (being two dwellings), however the design at present is unable to be supported.
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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Manly LEP and DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 07/03/2023 to 21/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Withheld	BALGOWLAH NSW 2093

Name:	Address:
Boston Blyth Fleming Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085
North Harbour Residents Group	24 Wanganella Street BALGOWLAH NSW 2093
Ms Shane Marie Donohoe	46 White Street BALGOWLAH NSW 2093
Mr Robert Carson	46 C White Street BALGOWLAH NSW 2093
Withheld	BALGOWLAH NSW 2093
Mr Peter Edward Welsh Mrs Jill Christine Welsh	1 / 46 White Street BALGOWLAH NSW 2093

The following issues were raised in the submissions:

- Privacy to northern property and western property.
- Rear setback non-compliance to northern common boundary
- Overall height of the proposal and roof design appears excessive in height
- The subdivision fails to demonstrate that compliant dwellings can be accommodated on the new lots which will be less than 500m², as required by the DCP.
- Driveway design does not provide passing bay and the driveway design restricts ability to provide open space.
- View impacts for 46A, 46B and 46C White Street (properties to the west).
- Non-compliance with built form controls of Wall Height, Roof Height and Number of Stories MDCP.
- Non-compliance with side setbacks.
- Insufficient landscape area and open space in accordance with the MDCP.

The above issues are addressed as follows:

- **Privacy to northern property and western property.**

Comment: Privacy is discussed within this report under Clause 3.4.2 MDCP. Of note, it is agreed that the reduced rear setback to the northern boundary and extent of glazing of Lot 2 facing the northern boundary has not resolved privacy to a high level. No windows face the western boundary and as such, Council does not consider the proposal to have a privacy impact to the western sites.

- **Rear setback non-compliance to northern common boundary**

Comment: The rear setback non-compliance is discussed later in this report under Clause 4.1.4. The non-compliance with the rear setback, in combination with the height of the roof and windows facing the northern boundary, are considered to be an issue and form a reason for refusal.

- **Overall height of the proposal and roof design appears excessive in height**

Comment: The wall height and roof height are discussed under Clause 4.1.2 MDCP later in this report. The exceedance of the wall height/roof height is a reason for refusal of this application.

- **The subdivision fails to demonstrate that compliant dwellings can be accommodated on**

the new lots which will be less than 500m², as required by the DCP.

Comment: The non-compliances with the particular setbacks and the proposed quantum of floor space, open space and landscaping are considered later within this report. The culmination of the non-compliances leads Council to form the opinion that the proposal should be refused based on the current design and extent of non-compliances.

- **Driveway design does not provide passing bay and the driveway design restricts ability to provide open space.**

Comment: Council's engineer has reviewed the driveway design and has raised issues. See their comments within this report under the development engineering response. It is agreed that the driveway contributes to the non-compliance with the open space requirement under the DCP and this forms a reason for refusal, as discussed later in this report under Clause 4.1.5 MDCP.

- **View impacts for 46A, 46B and 46C White Street (properties to the west).**

Comment: A view sharing assessment is undertaken later in this assessment report and the proposal is found to be inconsistent with the tenacity planning principle, therefore the application is not supported due to the view impacts.

- **Non-compliance with built form controls of Wall Height, Roof Height and Number of Stories MDCP.**

Comment: This is discussed under Clause 4.1.2 MDCP later in this report.

- **Non-compliance with side setbacks.**

Comment: Council's assessment has found that the only element that is non-compliant with the side setback is the L2 Balcony upon Lot 2 adjoining the eastern boundary (has a setback of 0.2m). This particular setback non-compliance forms a reason for refusal of the application.

- **Insufficient landscape area and open space in accordance with the MDCP.**

Comment: An assessment against the landscape area and open space controls is undertaken later in this report under Clause 4.1.5 MDCP.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported subject to conditions The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.

Internal Referral Body	Comments
Landscape Officer	Supported subject to conditions The proposal is supported with regard to landscape issues. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings where applicable The Arboricultural Impact Assessment (AIA) identifies 19 trees, of which three are located outside the property boundaries, trees 1a, 22, and 23, and as such must be retained and protected during works. Of the remaining 16 trees, 13 trees are exempt by species or height and as such can be removed at the discretion of the applicant as consent is not required. The three prescribed trees, trees 6, 8 and 11 are all a small size and can be readily replaced, and as such their removal can be supported and tree replacement shall be conditioned. All trees and vegetation shown to be retained shall be protected in accordance with the recommendations of the AIA and the imposed conditions. The landscape proposal is generally supported; however, to offset canopy loss and to satisfy the MDCP one locally native canopy tree shall be installed in each lot, subject to the imposed conditions. All on slab landscaping shall meet Council's minimum soil depth requirements. All <i>Rhaphiolepis</i> species shall be substituted with a suitable alternative as Council deems this species and environmental threat.
NECC (Development Engineering)	Not supported - recommended refusal The proposal is for the demolition works, subdivision of one Lot into two lots and the construction of a dwelling on each proposed lot. <u>Access</u> Access to the new lots is proposed via right of carriageway off the existing vehicular crossing which results in a semi circular driveway within proposed Lot A. The DCP requires passing bays for shared driveways greater than 30m long. However, due to the curved alignment of the proposed driveway a passing bay (5m wide x 10m long) is required regardless of the length of the driveway to ensure vehicles travelling in opposite directions can pass safely. The proposed width of the right of way is insufficient. The right of carriageway shall be minimum 3.5m wide. The architectural plans indicates that the first floor of the dwelling on Lot A overhangs the access way which is not acceptable. No overhanging structures will be supported over the access driveway to ensure unrestricted vehicular access to Lot B.

Internal Referral Body	Comments
	The proposed profile of the access driveway creates a trapped low point at the turning area to Lot A which is unacceptable. It is unclear how drainage for this area is proposed to ensure safe overland flow in case of blockage It is recommended that the proposed driveway and associated right of carriageway be relocated along the eastern boundary adjacent to driveway of No 42A in a straight alignment. <u>Stormwater</u> The site is located in Region 3 , Zone 1 and as such OSD is required for each Lot in accordance with Council's Water Management for Development Policy. Please refer to the OSD checklist in Appendix 16. A design in accordance with Section 9.3.3.2 shall be provided for each proposed Lot. Plans are to include calculations and details of each OSD system. The submitted stormwater plan is unsatisfactory. The drainage lines servicing Lot B are to be independent of the drainage lines from Lot A. A drainage easement shall be created over any pipelines servicing Lot B. It is recommended that the drainage for the rear lot be directed to a boundary pit within the boundary of Lot B and then connected, via an interallotment drainage line, to a common boundary pit inside the front boundary of Lot A. The interallotment drainage line should be along the driveway alignment adjacent to the eastern boundary. This will additionally provide a safe overland flowpath to the street kerb. The drainage for Lot A should also be directed to the common boundary pit within the front boundary of Lot A and further one single outlet to the kerb should be provided with maximum discharge of 25l/s for all storm events up to the 1%AEP. <u>Subdivision</u> The submitted subdivision plan is inconsistent with the stormwater plans. If the recommended amendments to the access and stormwater plans are carried out then, the subdivision plan shall be amended for consistency with the locations of the ROW, easement for services and easement for drainage. <i>Note to Planner:</i> <i>If the above recommended changes are made to the driveway alignment, the existing street tree will be impacted which will require comments from the Landscape team.</i> <i>The site is located on a narrow one lane road each way. May require comments from the Traffic team regarding construction traffic management.</i>

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 could be included as a condition of consent if consent were granted.

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. 1355672S_02 and 1355529S_02 dated 22 February 2023).

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

Commitment	Required Target	Proposed
Water	40	45
Thermal Comfort	Pass	Pass
Energy	50	90

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

power line.

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	300sqm	Lot A: 373.6sqm	N/A	Yes
		Lot B: 341.7m ²		
Height of Buildings:	8.5m	Lot A: 6.9m-7.9m	N/A	Yes
		Lot B: 7.2m-8m		
Floor Space Ratio	FSR: 0.5:1 (Lot A - 137.1m ²)	Lot A: 0.68:1 (188.1m ²)	36%* See comment under Clause 4.5 MLEP 2013 regarding calculation of lot size	No
	(Lot B - 170.85m ²)	Lot B: 0.57:1 (195.5m ²)	14%	

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	No
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Stormwater management	No
6.12 Essential services	Yes

Detailed Assessment

4.1 Minimum subdivision lot size

Clause 4.1 (3A) states that *"If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size"*.

Lot 1 has an Right of carriageway (ROC) which has an approximate area of 99.4m². A lot with a right of carriageway is not considered to meet the definition a 'battle axe lot' or 'other lot with an access handle'. As the Right of Carriageway is not technically an 'access handle', then it may be included in the minimum lot size for Lot 1.

However, it is noted that Clause 4.1.1.2 Residential Land Subdivision Manly DCP requires that c) i) *"Each lot must have frontage to a public road being at least 1m wide, with the land held as fee simple irrespective of whether this frontage serves as part of a right of way for access or not"*. The subdivision does not provide this layout with a 1m wide handle for Lot 2 in accordance with the DCP. Should the proposal be amended to incorporate this required 1m wide access handle, this could further reduce the size of Lot 1.

4.5 Calculation of floor space ratio and site area

In calculating the relevant land area for Lot 1 in assessing Floor Space Ratio, Clause 4.5 is considered. Of note, the objectives of the clause are as follows:

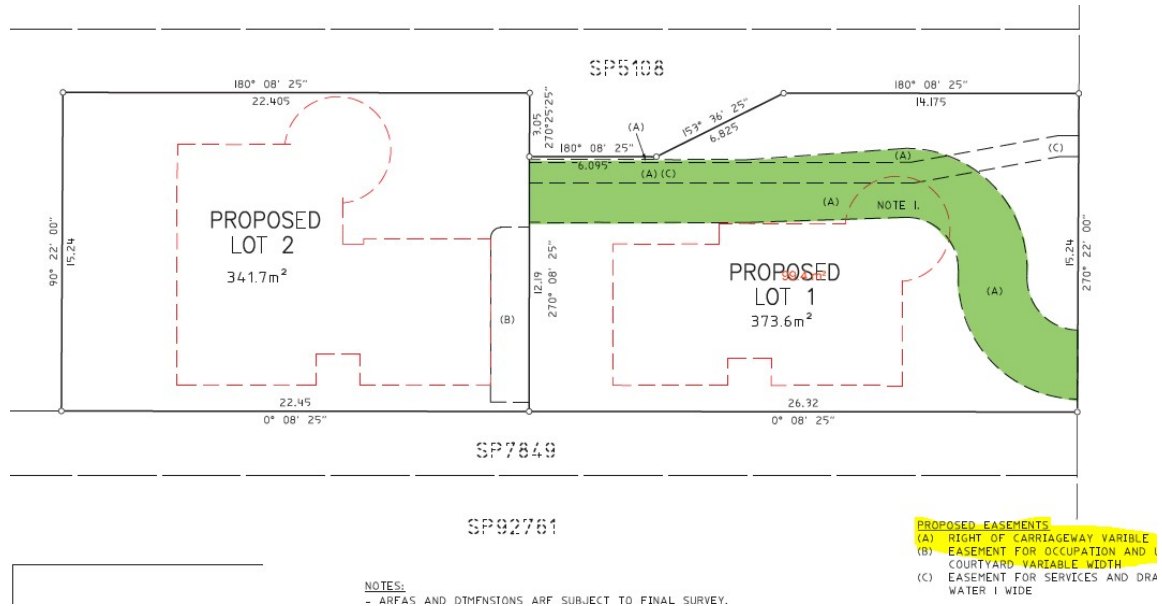
- (a) to define floor space ratio,
- (b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:
 - (i) **prevent the inclusion in the site area of an area that has no significant development**
 - (ii) prevent the inclusion in the site area of an area that has already been included as part of a
 - (iii) require community land and public places to be dealt with separately.

Clause 4.5(4) sets out exclusions from the site area when calculating FSR, as follows:

The following land must be excluded from the site area:

- (a) **land on which the proposed development is prohibited, whether under this Plan or any other law,**
- (b) community land or a public place (except as provided by subclause (7)).

Lot 1 has a Right of Carriageway traversing through the site providing access to Lot 2. The area of the right of carriageway is approximately 99.4m² and it would be expected that the terms of the right of carriageway would include restrictions on the use of this land other than for the purpose of a driveway and vehicular access/service, including prohibiting development on this part of the site. As such, it is part of the site that prohibits the carrying out of development and should be excluded from the site area when calculating the maximum permitted FSR for Lot 1.



As such, when discounting the ROC (which does not allow for development) through Lot 1, the site area is 274.2m² and with a maximum FSR of 0.5:1, would permit 137m² of FSR to comply with the control.

The FSR for lot 1 is therefore calculated based on a site area of 274.2m² having regard to the exclusions within Clause 4.5.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.5:1 FSR Lot A = 137.1m ² Lot B = 170.85m ²
Proposed:	Lot A = 0.68:1 (188.1m ²) Lot B = 0.57:1 (195.5m ²)
Percentage variation to requirement:	FSR Lot A = 36% Lot B = 14%

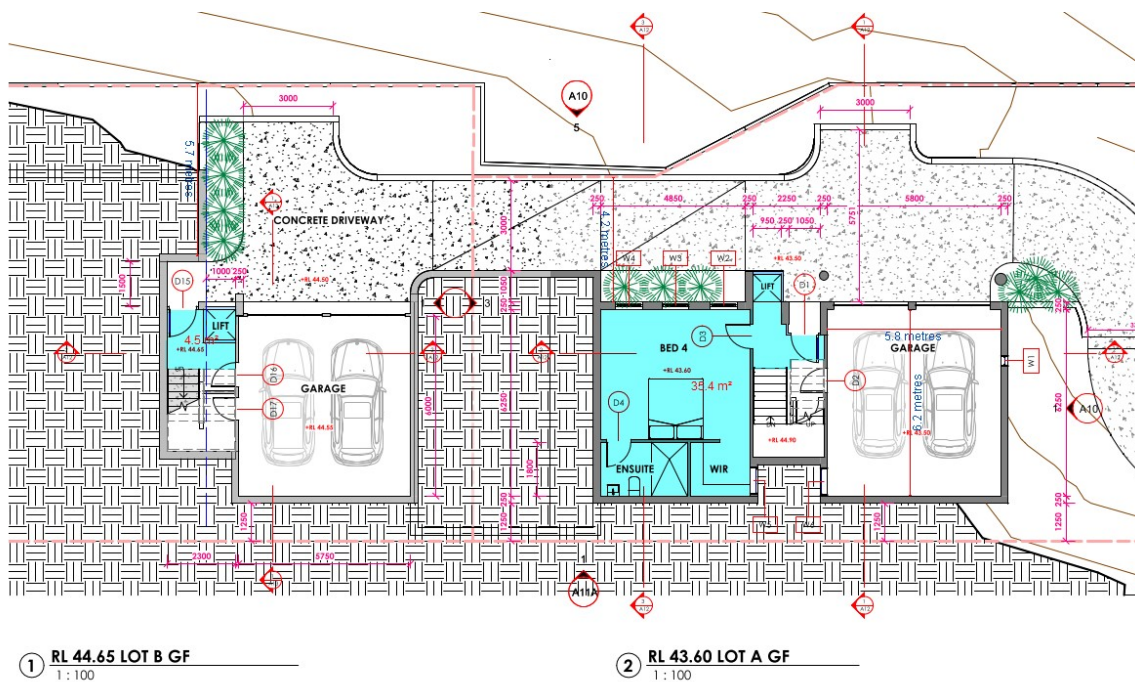
Floor Space Ratio

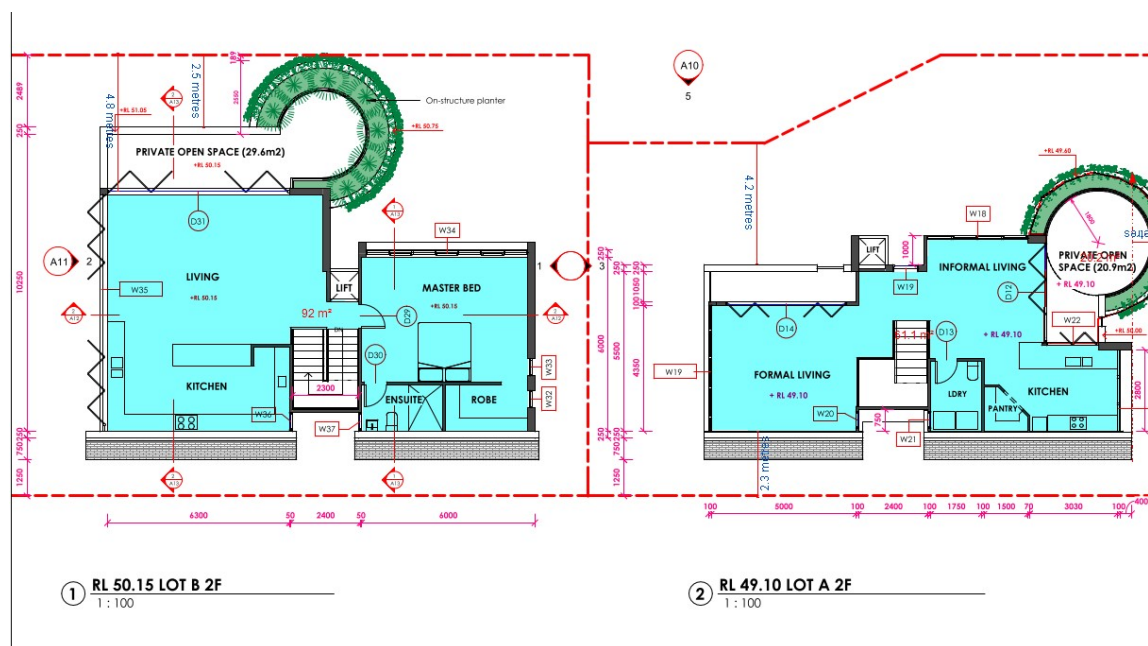
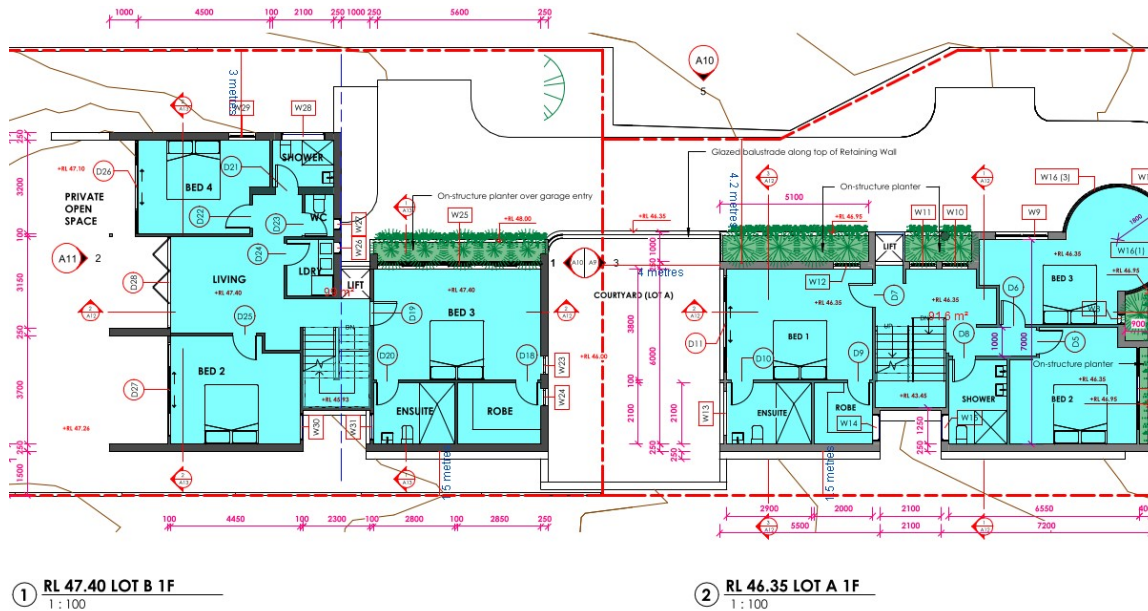
The applicant's documentation states that the proposal is compliant with the Floor Space Ratio control

of 0.5:1. As such, no Clause 4.6 variation request was submitted with the application.

However, when considering Clause 4.5 MLEP 2013 which sets out how lot size shall be calculated when measuring FSR, the exclusion of the Right of Carriageway for Lot 1 means that the proposal is well in excess of the FSR.

Furthermore, Council has calculated the Gross Floor Area of each dwelling in accordance with the definition of "Gross Floor Area" within the Manly LEP 2013 and consistent with relevant recent case law regarding the calculation of FSR in dwelling houses (which includes counting the lift shaft once and the stairs on every alternate level). See the below extract from Council's 'Working Plans' showing how FSR has been calculated across each level:





The FSR exceeds the 0.5:1 FSR standard by 36% when excluding the ROC from the lot size (as per Clause 4.5). If it were to be argued that the ROC should be included in the site area, the FSR for Lot 1 would still have a minor exceedence (1.3m²).

The Manly LEP 2013 requires that a Clause 4.6 request is required to be submitted to seek a variation to the development standard.

No clause 4.6 variation request has been submitted seeking a variation to the standard. As such, there

is no power to approve the application in the current form.

Therefore, the application fails Clause 4.6 of the Manly LEP and the relevant case law relating to the assessment of Clause 4.6 of the standard instrument.

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 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. However, Council's engineers are not satisfied at present with the design of the stormwater disposal system and as such this is a reason for refusal of the application.

- (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.

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties.

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

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

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

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

Comment: Conditions could be imposed that will minimise the impacts of the development in relation to earthworks.

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 falls short of the landscape area calculation. In this regard, Council is not 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: Councils engineers are not satisfied with the method of stormwater disposal, see their detailed comments earlier in this report. This forms a reason for refusal.

(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: Councils engineers are not satisfied with the method of stormwater disposal, see their detailed comments earlier in this report. This forms a reason for refusal.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: Lot A: 373.6m ² and Lot B:341.7m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 300m ²	1 per 357m ²	N/A	Yes
	Dwelling Size: 90sqm	Lot A: 188.1m ²	N/A	Yes

		Lot B: 195.5m ²		
4.1.2.1 Wall Height	W: 6.9m (based on gradient 1 in 15) (includes roof with a pitch >35 degree)	Lot A - 6.9m to 7.9m Lot B - 7.1m to 8m	14% 16%	No
	E: 6.9m (based on gradient 1 in 15)	Lot A - 6.5 to 6.9m Lot B - 5.9m to 7.3m	N/A 6%	Yes No
4.1.2.2 Number of Storeys	2 stories	3 stories	50%	No
4.1.2.3 Roof Height	Height: 2.5m	From west - included in wall height From East - 1.6m to 2.2m	N/A	N/A Yes
	Pitch: maximum 35 degrees	West - 75 degrees East - 15 degrees	N/A	No Yes
4.1.4.1 Street Front Setbacks	Prevailing building line is 8.65m (average of two adjoining facades)	Garage - 8.4m First - 6.2m Second - 7.5m Second balcony - 6.2m	3% - 28%	No
4.1.4.2 Side Setbacks	Lot A West Ground - Nil (Beneath Ground) First - 0.8m to 1.2m Second - 1.2m to 2.6m	Lot A West Ground - 1.25m First - 1.5m Second - 1.5m to 2.6m	N/A	Yes Yes Yes
	Lot A East Ground - 0.65m First - 1.63m Second - 2.3m	Lot A East Ground - 4.2m First 4.2m Second 4.2m		Yes Yes Yes
	Lot B West Ground - Nil (Beneath Ground) First - 0.8m to 1.2m Second - 1.2m to 2.6m	Lot B West Ground - 1.25m First - 1.5m Second - 1.5m to 2.8m		Yes Yes Yes
	Lot B East Ground - 0.65m First - 1.6m Second - 2.4m Balcony - 1.7m	Lot B East Ground 5.7m First - 3m Second - 4.8m Balcony 0.2 to 2.5m	88%	Yes Yes Yes No
	Windows: 3m	West - No Windows East - 3m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	Lot A - 4m Lot B - 5.5m	31% - 50%	No
4.1.5.1 Minimum Residential Total Open Space	Open space 55% of site area (3m dims)	Lot A: 29%	47%	No

Requirements Residential Open Space Area: OS3	Lot A: 55% (205m ²) Lot B: 55% (188m ²)	(108.24m ²) Lot B: 42.4% (145m ²) All dimensions within lot Lot A: 49.7% (186m ²) Lot B: 58% (198m ²)	23%	
	Open space above ground 25% of total open space	Lot A 18% Lot B 20%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	Lot A 100% of compliant dims Lot B 100% of compliant dims	N/A	Yes
	2 native trees per lot	2 trees per lot as a condition	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	Lot A 35sqm Lot B 85sqm	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces per dwelling	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
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)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	No	No
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.7 Stormwater Management	No	No
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1 Residential Development Controls	No	No
4.1.1 Dwelling Density, Dwelling Size and Subdivision	No	No
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.1.2 Residential Land Subdivision	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	No	No
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The DCP control 3.1.1.3 Roofs and Dormer Windows states the following:

- a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*
- b) Roofs should be designed to avoid or minimise view loss and reflectivity.*

The design of the roof form in relation to view impact is discussed later in this report. The design of the roof form does not achieve the control as it does not minimise view loss. The roof form does not compliment the predominant form of roofs in the locality and causes visual and view impacts.

3.4.2 Privacy and Security

Concern is raised with regard to privacy to the northern adjoining property, having regard to the large window facing the northern boundary which has a sill height of 1m and a large area of glazing servicing the living room and kitchen. Furthermore, the rear setback is not complied with (5.5m instead of 8m) and as such, privacy needs to be further resolved for the north facing Level 2 window of Lot 2.

The surrounding dwellings all have elevated balconies looking towards the harbour to the east, with the proposed development also including upper floor balconies facing east. The proposal continues the existing pattern and orientation of balconies and in this regard, poses no significant privacy concerns for the properties to the east. There are no window openings facing west and as such, no privacy impact to the western properties.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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

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

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

Comment:

Three properties to the east (46A, 46B and 46C White Street) have been considered in relation to view sharing. Each property contains upper level living areas, kitchen and balconies that face east towards the harbour, obtaining district and water views.

The applicant has erected height poles (which have been surveyed) to assist Council in undertaking a view impact assessment from each property. Each property is dealt with below.

46A White Street

This property has eastern facing views which consist of district views towards Manly. The view includes South Head and a distant view towards St Patrick's Estate Heritage Building. The views also contain filtered views through trees of the Harbour, considered to be partial harbour views obscured by vegetation.



Figure 1 - View taken from balcony adjoining living room, 46A White Street, standing position looking towards the east.

46B White Street

The view from 46B consists of harbour views which are partially obscured by vegetation, but containing some areas of definable foreshore area, along with district views of Manly and St Patricks Estate Heritage Building.



Figure 2- View looking east, standing position in lounge room of 46B White Street.



Figure 3 - View looking south-east, from kitchen/dining room window of 46B White Street, from a standing position.

46C White Street

The views from 46C White Street consist of Harbour views of the forshore area, containing land/water interface. The views also consist of district views of Manly and part of North Head. The views are partially obscured by vegetation, however are still good quality views of the harbour.



Figure 4 - View from living room 46C White Street, standing position looking east.



Figure 5 -View from dining room 46C White Street, standing position looking east.



Figure 6 - View from balcony adjoining dining room 46C White Street, standing position looking east.

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 from each of the properties are obtained from the upper level living room, dining room, kitchen and balcony adjoining these areas. The balconies are considered to be an area of primary open space having a direct connection to the living spaces.

The views are obtained from both a sitting and standing position.

The views are obtained over the side boundary of the site. However, this is common for the properties within the vicinity of the site with the properties purposefully being developed in a way to capture the views of the Harbour looking eastward over the side boundary.

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:

Each of the properties are considered individually below:

46A White Street

The harbor views at present are highly obscured by vegetation, with more whole district views available. The views to the east is the primary aspect, with no other secondary views. The proposal will obscure all of the district views of Manly, St Patricks Estate and the obscured water views. The level of impact is considered severe given the outlook that is currently enjoyed will be largely lost. Given the views of the harbour are currently obscured, this would not render the impact 'devastating'.

46B White Street

The view from the living room window will be highly impacted with approximately 50% of the water view being obscured. The view from the dining room window will be entirely obscured (having regard to the sloping angle of the roof). The small area of water view from the balcony at the northern side of the dwelling will also be impacted. The views to the east is the primary aspect, with no other secondary views.

Even though it appears some of the water view will be retained from the living room though a gap between proposed lot 1 and 2, along with St Patrick's Estate, this is still considered to be a severe impact due to the 'wholeness' of the water view being impeded and diminishing the quality of the outlook. Overall, the view impact is considered severe.

46C White Street

The water view from the living room will be entirely lost based on the height of the roof as represented by the height poles. The water view from the dining room will largely be impacted as well. The view from the balcony at the northern side of the dwelling will be retained. The views to the east is the primary aspect, with no other secondary views. Given that views from both the living room and dining room will be highly impacted, with some views retained from the balcony, the overall impact is considered severe given the quality of views impacted from the main living spaces.

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 impact upon water views, although being over a side boundary, could reasonably be avoided (in particular 46B and 46C White Street) through a more skillful design with regard to the roof form. The roof form does not comply with the 6.9m wall height control as measured along the western façade and this correlates with a direct impact on views. Additional impact upon views is generated by the combination of the roof height and rear setback non-compliances. The exceedance of the FSR control also contributes to impacts upon views, with the additional building bulk being attributed to exceedance

of the FSR control.

The proposal has both non-compliant elements which contribute to view impacts and has not demonstrated that the proposal has been designed in a way that skillfully retains the harbour views from the adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

3.7 Stormwater Management

Council's engineers are not satisfied with the method of stormwater disposal, see their detailed comments above in this report. This forms a reason for refusal of the application.

4.1.1.2 Residential Land Subdivision

The control requires that the following is provided:

- c) Vehicular access and services must be considered and comply with the following minimum requirements:*
 - i) Each lot must have frontage to a public road being at least 1m wide, with the land held as fee simple irrespective of whether this frontage serves as part of a right of way for access or not;*

The DCP contains the following figure which shows how lots are to be arranged with the 1m wide strip of land:

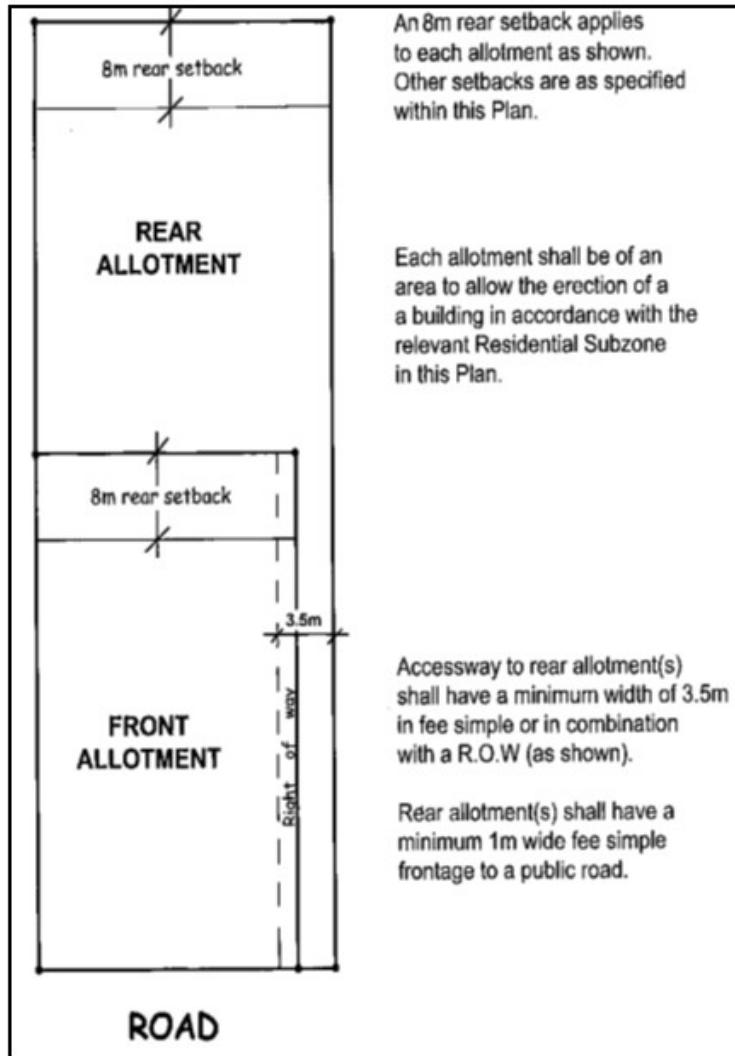


Figure 25 - Battle-axe Allotments

The subdivision layout is not consistent with the above figure and does not provide the 1m wide fee simple frontage to a public road.

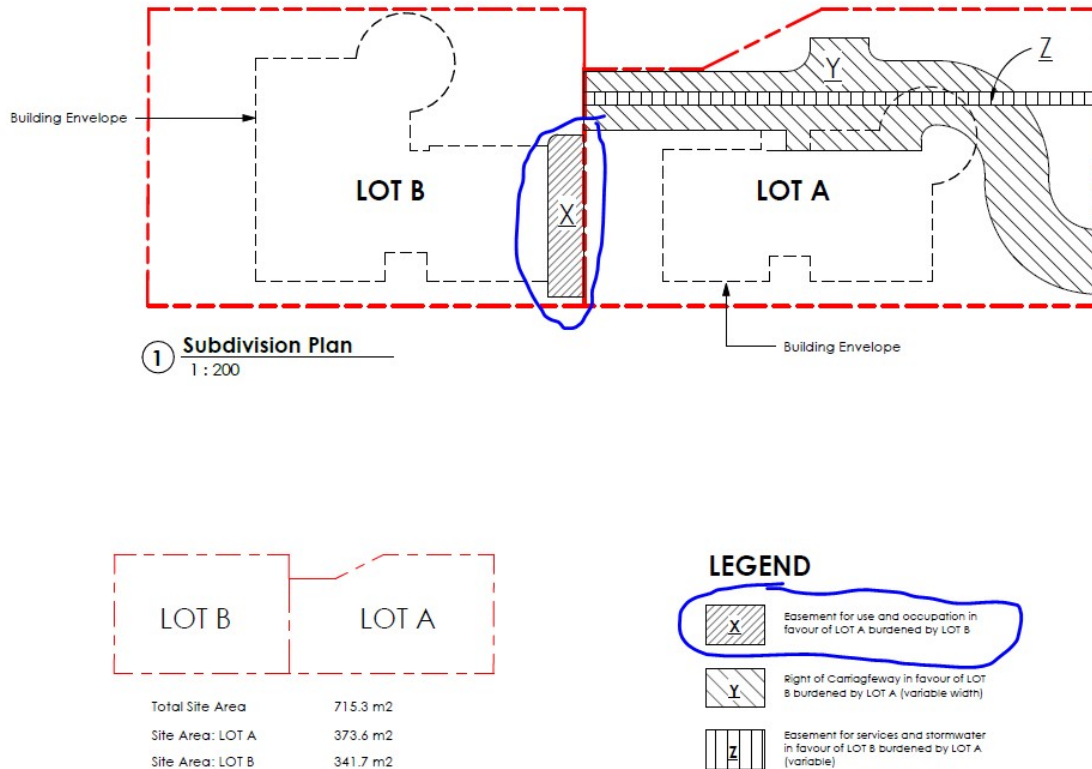
The DCP requires the following in regards to vehicular access when designing a subdivision:

iii) Driveways longer than 30m require provision of a passing bay (as shown in Figure 25 - Battle-axe Allotments) or otherwise provide an increased width demonstrating appropriate access, manoeuvrability and safety.

Council's development engineers have also raised issue with the design and dimension of the Right of Carriageway to provide access to the lots. See the engineering referral earlier in this report which states a passing bay is required due to the curved nature and length of the driveway.

The subdivision layout also includes an area of Private Open Space of Lot 1 to encroach onto Lot 2, which is not support and will result in an awkward configuration for this Torrens title subdivision. The fact that the private open space for Lot 1 is required to encroach into Lot 2 signifies that the proposal is

an overdevelopment of the site. See extract below showing the area of encroachment:



For these reasons, the application is recommended for refusal.

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

The proposal is inconsistent with the following controls:

4.1.2.1 Wall Height

Based on a site gradient of 1 in 15, the maximum wall height for the western elevation is 6.9m. The western elevation (including the roof form) for Lot A is 6.9m to 7.9m and for Lot B is 7.1m to 8m. As the roof is in excess of 35 degrees, it is included in wall height (as per Clause 4.1.2.3).

Comment: The wall height non-compliance (which includes the roof) has a direct implication for view sharing, as discussed earlier in this report under the Tenacity Assessment. The non-compliance results in a wall that is visually excessive and has a direct impact on water views. The non-compliance forms a reason for refusal.

4.1.2.2 Number of Storeys

The control for number of stories reads as follows:

a) Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of

Building Map and notwithstanding the wall and roof height controls in this plan.

c) Variation to the maximum number of storeys may be considered:

i) where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and

ii) to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.

Comment: The buildings are part 3 stories as the garage level protrudes more than 1m above the ground floor and as such, is not a 'basement'. The proposal is non-compliant with wall height and as such, does not meet the variation for a third storey to be considered.

Merit Consideration

The non-compliance is considered against the outcomes of the control as follows (the same objectives are used for 4.3 Building Height under the MLEP 2013:

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

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

Comment: The wall height and roof design is not consistent with the prevailing heights in the area or considers the topographic landscape, which includes view sharing over the top of the building roof form. The height of the roof form presenting to the street is excessive and the lack of landscaping within the front setback due to the driveway design does not assist in screening the visual bulk of the building which has a three story presentation to the street.

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

Comment: The failure to meet the wall height control signifies that the development is of a scale that is not consistent with the desired character set by the DCP. The bulk and height of the western façade/roof form has a visual impact and view impact for surrounding properties.

(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: As discussed previously in the report, the non-compliance has a direct impact on views from adjoining properties to the harbour and foreshore area.

(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 elevated nature of the private open space for the properties to the west mean that solar access is maintained for these properties. The proposal is compliant with solar access to the surrounding sites.

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

Comment: Not relevant to this proposal.

Overall, the proposal does not meet the outcomes of the DCP control and therefore is unable to be supported based on the current design. Therefore, the proposal is recommended for refusal for this reason.

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

Description of non-compliance

Front Setback

Control 4.1.4.1 Street Front setbacks requires that *"Street Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity"*. The two adjoining buildings have a setback to the front façade of 10m (east) and 7.3m (west), as measured from the submitted survey plan. The balcony of No.46 has a setback of 6m to the street.

Therefore the predominant façade setback is the average of the two adjoining properties and is 8.65m, with the property to the west having a balcony at 6m.

The proposal has a façade setback of 8.4m (garage), 6.2m (first floor) and 7.5m (second floor). The second floor balcony is 6.2m.

Therefore, the façade is forward of the street average setback and non-compliant with the control. The balcony alignment is consistent with the development to the west.

Rear Setback

The proposal requires an 8m rear setback to each lot. Lot 1 proposes a 4.021m rear setback and Lot 2 a 5.5m rear setback, non-compliant with the control.

Side Setback

The level 2 balcony on the eastern elevation of Lot B has a 0.2m setback to the side boundary, non-compliant with the requirement of 1.7m based on the height of the balcony.

Merit consideration:

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

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

Comment:

The proposal being forward of the predominant façade line of the adjoining properties will result in a building that is more visually prominent than the two adjoining sites. This, coupled with the driveway curved driveway within the front setback, makes the built form more dominant in the streetscape with a reduced area for landscape planting to screen the building due to the driveway.

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:

View sharing is discussed elsewhere within this report. The non-compliant rear setback for Lot 1 and Lot 2 does impact view sharing given the height of the roof structure, which impedes views from the western properties.

The non-compliance to the eastern boundary for the L2 Balcony (0.2m) increases overlooking to the eastern property.

The front setback does not assist in defining or adding to the character of the streetscape as the façade is forward of the predominant character and lacks adequate open space dimensions to provide meaningful landscaping.

Solar access is compliant for the surrounding sites.

The non-compliant rear setback to Lot 2 contributes to privacy impacts for the northern property. Concern is raised with regard to privacy to the northern adjoining property, having regard to the large window facing the northern boundary which has a sill height of 1m and a large area of glazing servicing the living room and kitchen.

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

Comment:

Flexibility could only be exercised when amenity impacts and streetscape has been resolved, which in this the present does not adequately resolve.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The reduced front setback does not allow for the enhancement street planting considering the location of the driveway and reduced façade setback.

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

Comment:

Not applicable to this development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

Each lot requires 55% of the site area to consist of Total Open Space. Taking into consideration the minimum 3m dimensions required for Total Open Space (and the elevated balconies which may be included in the calculation), the proposal provides the following:

Lot A - 108.24m² or 29% (includes ground floor plus 2nd for balconies). When including all dimensions (including <3m) the proposal would have 49.7% (186m²)

Lot B - 145m² or 42.4% (includes ground floor plus 2nd for balcony). When including all dimensions (including <3m) the proposal would have 58% (198m²).

The large non-compliance for Lot 1 is in part due to the driveway design which restricts the ability to provide a meaningful landscape buffer with sufficient dimension to the street consistent with the landscape character of the R1 Zone.

Merit consideration:

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

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

Comment:

The proposal does not remove significant canopy trees and there are not significant site features impacted that provide for native flora or fauna.

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

Comment:

The driveway design within the front setback reduces the area of open space to be provided within Lot 1 and does not maximise soft landscaping and open space at the ground level for the site. The majority of Lot 1 consists of the building footprint or the driveway, with only 29% provided as 'open space' in accordance with the control. Considering that the proposal is also in excess of the FSR control, the proposal does not allow for sufficient areas of open space to maximise open space at the ground level and reduce the apparent bulk of the development.

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

the streetscape and the surrounding area.

Comment:

The streetscape is not enhanced as the driveway within the front setback of Lot 1 reduces the area for meaningful deep soil planting to contribute to the landscape character of the street. The large non-compliance with the open space requirement is in part due to the design of the driveway which has a negative impact on the ability to provide meaningful landscaping to the street. This is of particular importance to minimise the visual presence of the building on the street and have the front setback area consist of landscaping to compliment the streetscape.

As discussed earlier within this report, the proposal will have unreasonable view impacts on the properties to the west. This is in part due to non-compliance with the open space control and which if complied with, could improve view sharing.

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

Comment:

Council's engineers is not satisfied with the method of stormwater drainage, see their assessment previously in this report.

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

Comment:

This could be dealt with via condition with all new species required to be native.

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

Comment:

N/A for this site not a wildlife corridor.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

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

Council's development engineer has completed an assessment of the vehicular access arrangement for the site.

Council's engineer has noted that the ROC design is not acceptable due to insufficient width, no passing bay and encroachments of the building over the ROC. See the engineering referral earlier in this report. As vehicular access is not resolved to the satisfaction of Council's Engineer, this forms a reason for refusal of the application.

4.4.8 Subdivision

The following controls in relation to subdivision are not complied with:

4.4.8.1 Access and Services

a) All subdivisions will provide adequate vehicular access to a public road.

Comment: Council's engineers are not satisfied with the vehicular access arrangement to the public road, see their detailed comments in the referral response.

b) The provision of drainage, easements and servicing requirements must be considered and any resultant adverse impacts - environmental or otherwise are to be minimised or resolved in the design. In particular, sufficient details of stormwater management are to accompany DAs for subdivision.

Comment: Council's engineers are not satisfied with how the easements have been arranged on the site with regard to vehicular access and stormwater drainage, see their comments earlier in the report.

The encroachment of an easement for private open space upon Lot 2, to the benefit of Lot 1, signifies overdevelopment of the land is not orderly development of land. For this reason the subdivision arrangement is not supported.

4.4.8.2 Prevailing subdivision pattern and natural features

b) New Subdivisions must have regard to existing vegetation, topography, views, scenic values and natural bushland and other natural features. Any resultant adverse impacts- environmental or otherwise are to be minimised or resolved in the design and addressed in the Statement of Environmental Effects accompanying the DA.

Comment: The proposal not not satisfied view sharing to a satisfactory level and engineering matters such as stormwater and vehicular access are not resolved to Council's engineers satisfaction.

As such, the proposal does not achieve compliant with this control and therefore this is a recommended reason for refusal.

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 \$32,220 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,221,980.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

As no Clause 4.6 variation requested has been submitted, Council is not 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 the existing building, subdivision into two lots and construction of a dwelling house on each lot has been referred to the Development Determination Panel (DDP) due to receiving seven (7) submissions and having an FSR breach of more than 10%, as calculated by Council's assessment.

There are valid concerns which have been raised in the objections with regard to view sharing, privacy and built form non-compliances which Council's assessment have also found to be critical issues for the proposal. For these reasons, the application cannot be supported in the current form.

The critical assessment issues are in relation to the calculation of Floor Space Ratio and the absence of any Clause 4.6 variation request, the driveway design and layout, non-compliance with built form, view sharing and privacy.

Overall, given a number of critical issues are unresolved and extent of non-compliances with the built form controls, the proposal is unable to be supported in the current form. Therefore, the application is recommended for refusal to the DDP for the reasons outlined below.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

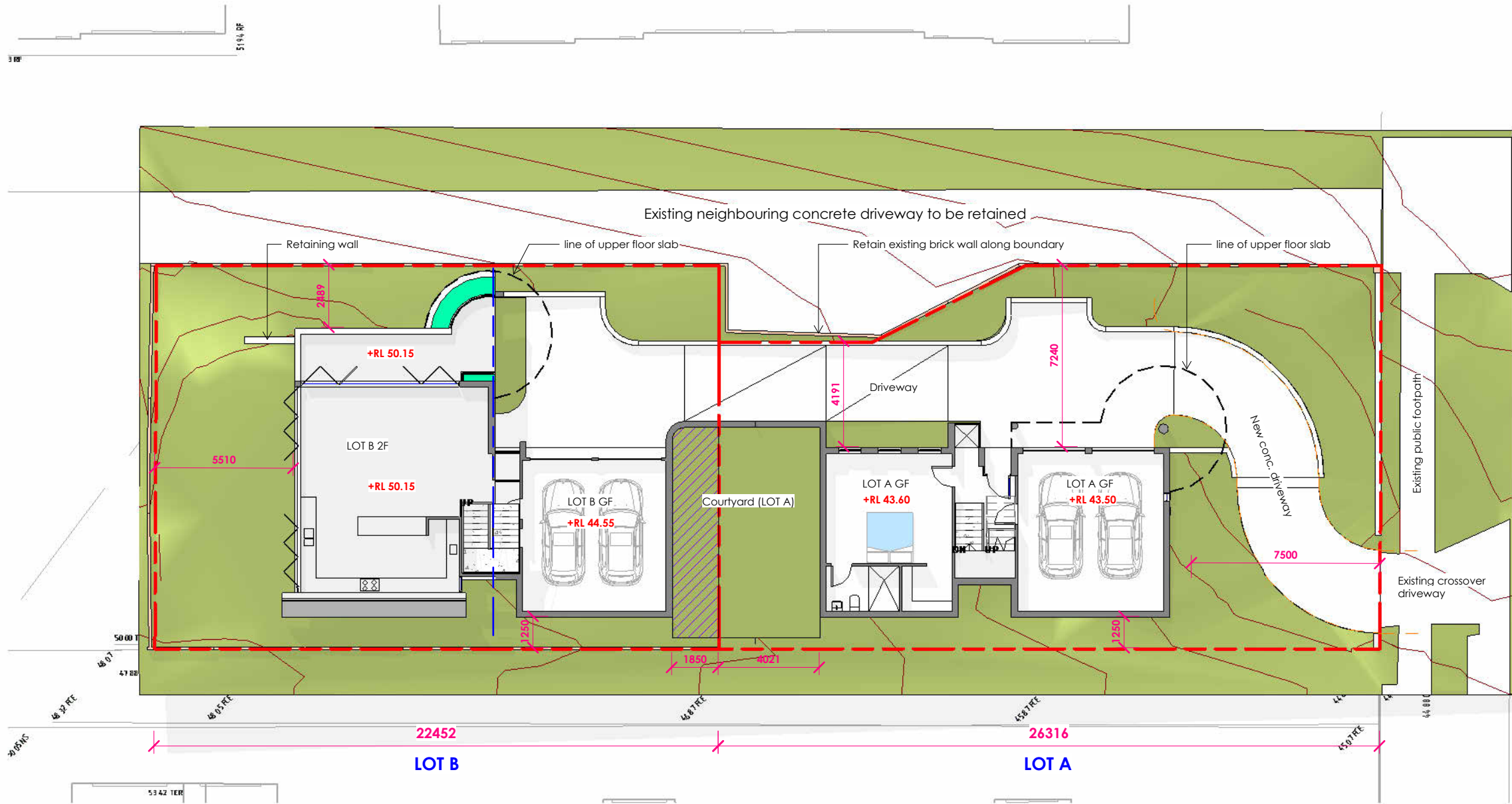
RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/0186 for the Demolition works, subdivision of one lot into two and construction of one dwelling house on each allotment on land at Lot 2 DP 519674,42 White Street, BALGOWLAH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013. The dwelling on both Lot 1 and Lot 2 exceed the 0.5:1 FSR control.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013 and no written request was submitted with the application.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan, in particular due to the design and height of the roof and non-compliant front setback.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan. In particular, the Level 2 northern facing window of Lot 2 has not resolved privacy to a reasonable level.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan. In particular, the view impact upon the properties to the east at 46 White Street is unacceptable in this circumstance.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.7 Stormwater Management of the Manly Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.1.2 Residential Land Subdivision of the Manly Development Control Plan, in relation to the subdivision layout and the

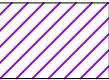
driveway access proposed as part of the subdivision which are inconsistent with the requirements of the DCP.

10. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan. In particular, the height of the western roof from (which presents as a wall) is in excess of the wall height control and creates view impacts upon adjoining properties. The proposal is also up to (3) stories whilst exceeding the wall height control.
11. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan. In particular, the front façade is forward of the predominant street character as defined by the two adjoining buildings, the eastern setback to the Level 2 balcony of Lot 2 is too small and the rear setback of Lot 1 and Lot 2 is less than the minimum requirement.
12. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan. In particular, the proposal does not provide a suitable amount of open space within each proposed lot.
13. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly Development Control Plan as the design of the vehicular access is not provided in accordance with Council's DCP or engineering specifications. The Right of Carriageway is not of sufficient width, no passing bay has been provided and the building footprint of Lot A encroaches over the Right of Carriageway.
14. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4.8 Subdivision of the Manly Development Control Plan.

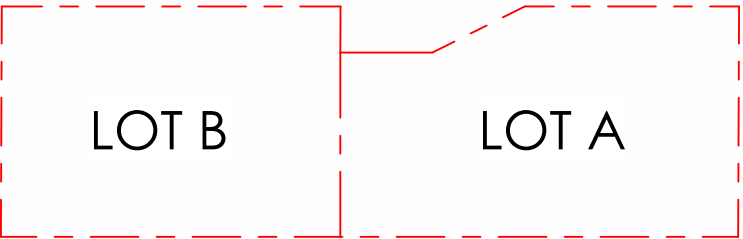


1 Site Plan
1 : 200

LEGEND



Easement for use and occupation
over LOT B in favour of LOT A



Total Site Area 715.3 m²
Site Area: LOT A 373.6 m²
Site Area: LOT B 341.7 m²

FSR Calculation

LOT A

LEVEL	AREA(m ²)
Basement	34.6
First floor	76.9
Second floor	58.5
TOTAL	170
Site Area	373.6
FSR	0.45 : 1

LOT B

LEVEL	AREA(m ²)
Basement	1.1
First floor	84.93
Second floor	84.82
TOTAL	170.85
Site Area	341.7
FSR	0.5 : 1

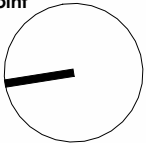
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All dimensions shown are nominal contractors must verify all dimensions on site before proceeding.

North Point



Tom Simmat & Associates Architects Pty Ltd

Principal Tom Simmat BA Reg No. 4392
"The Brolgas" 6 Brolga Place BELROSE NSW 2085
tel: (02) 9453 0022 email: tom@simmat.com.au

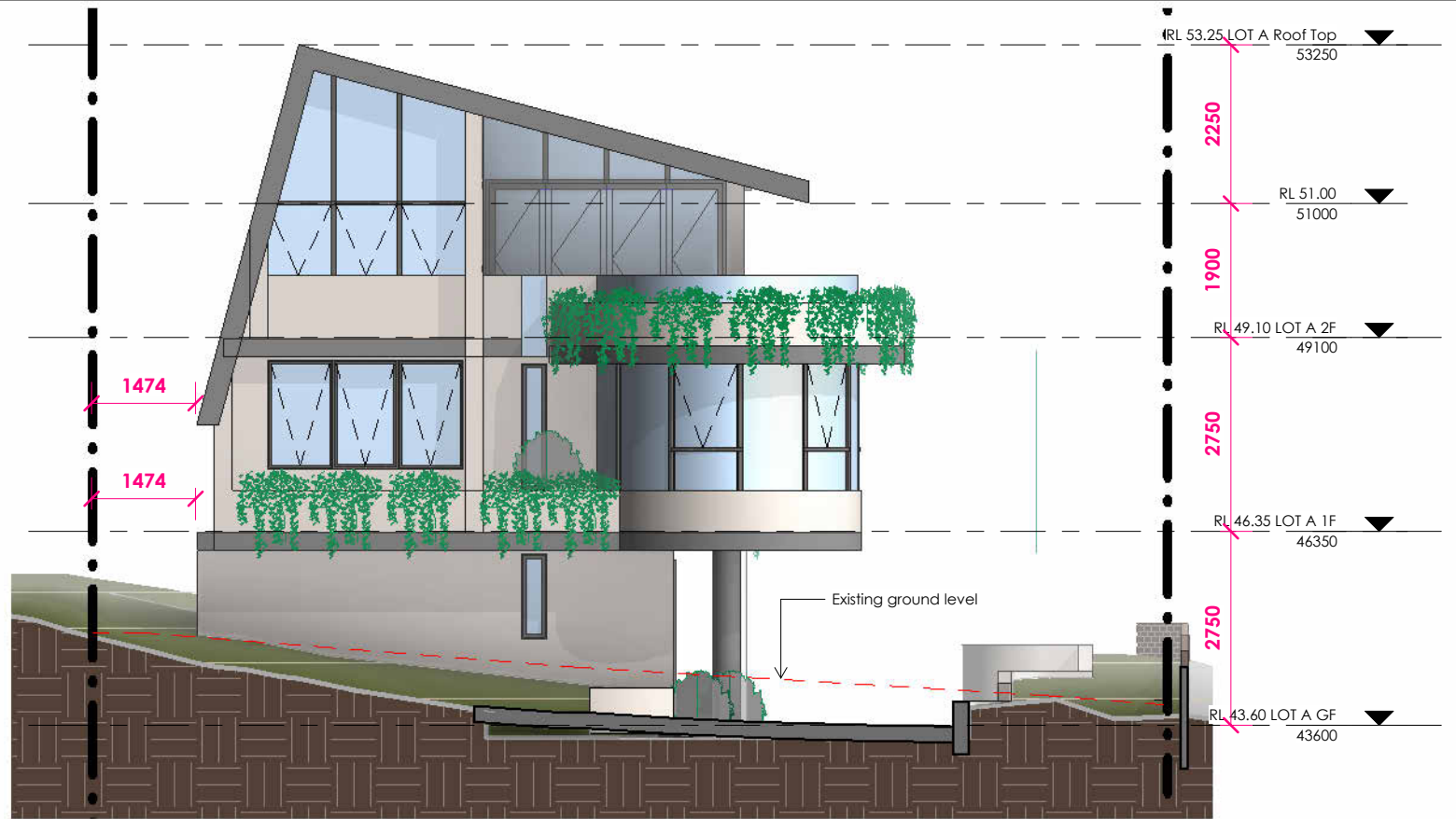
Project: Proposed Dwellings
Address: 42 White Street, Balgowlah
DWG Title: Site Plan

Scale: As indicated @ A3
Date: 01-05-2023
Checked by: TS

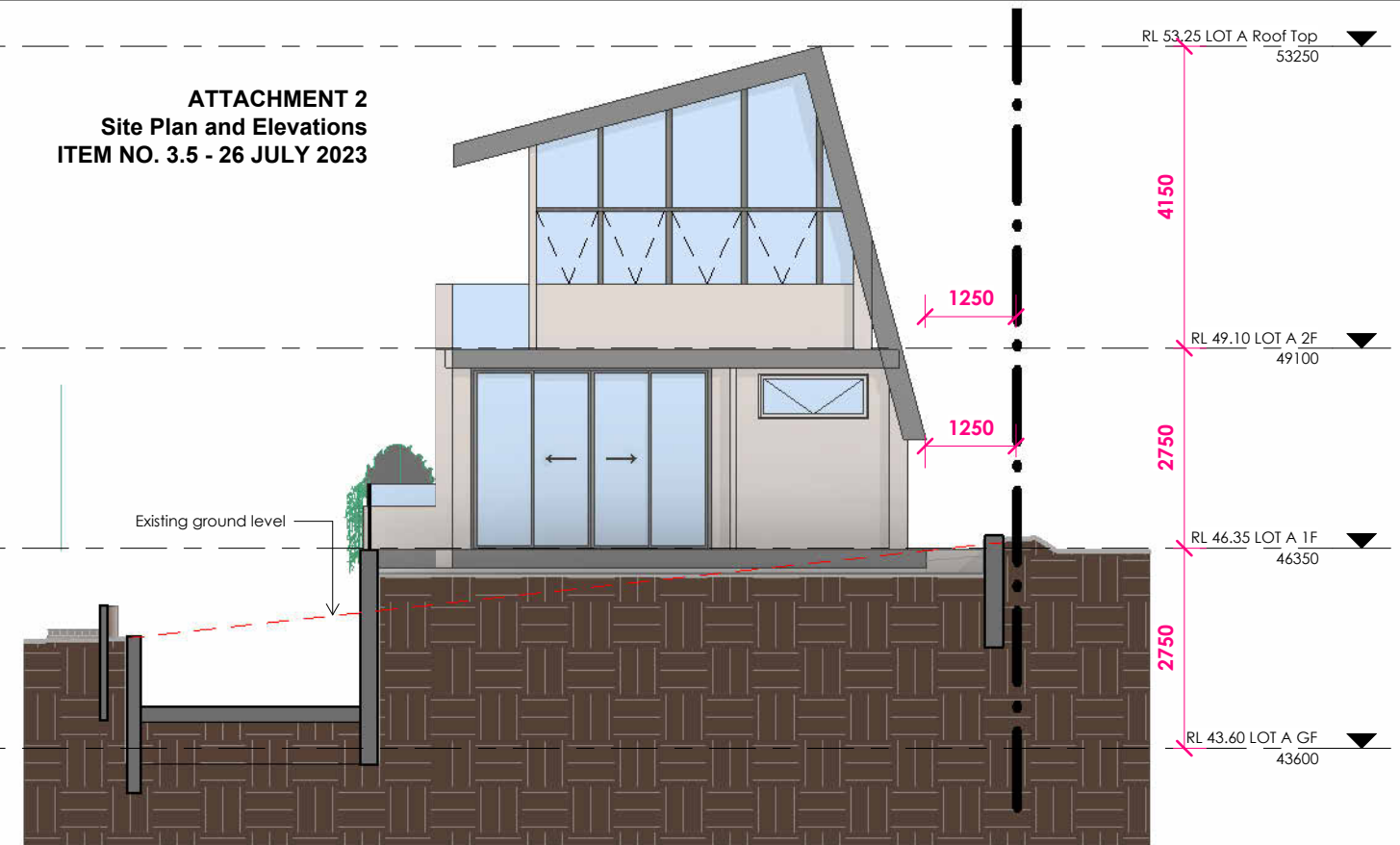
DWG NO.
A02
PROJECT NO.

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ATTACHMENT 2
Site Plan and Elevations
ITEM NO. 3.5 - 26 JULY 2023



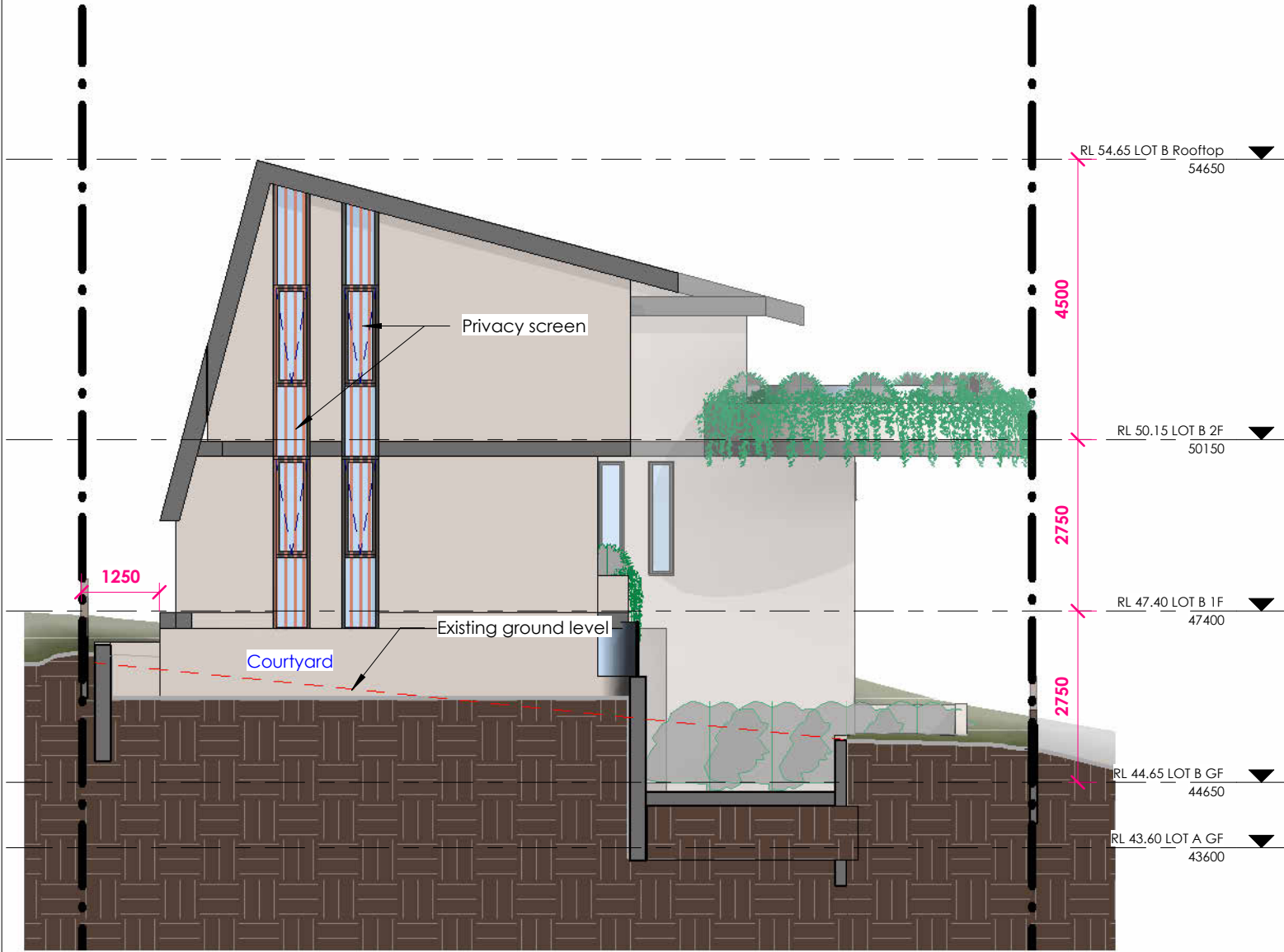
1 LOT A - South Elevation
1 : 100



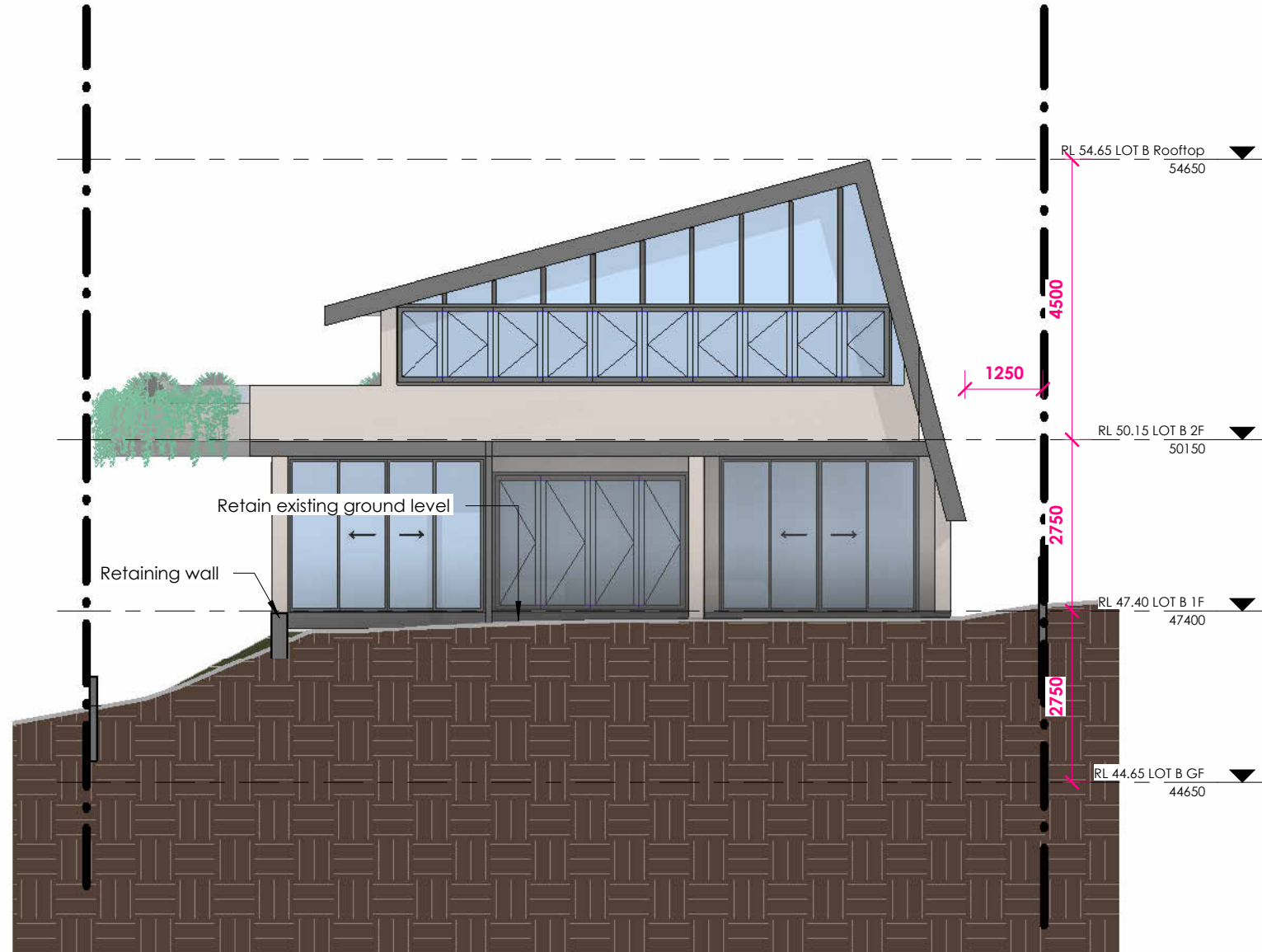
3 LOT A - North Elevation
1 : 100



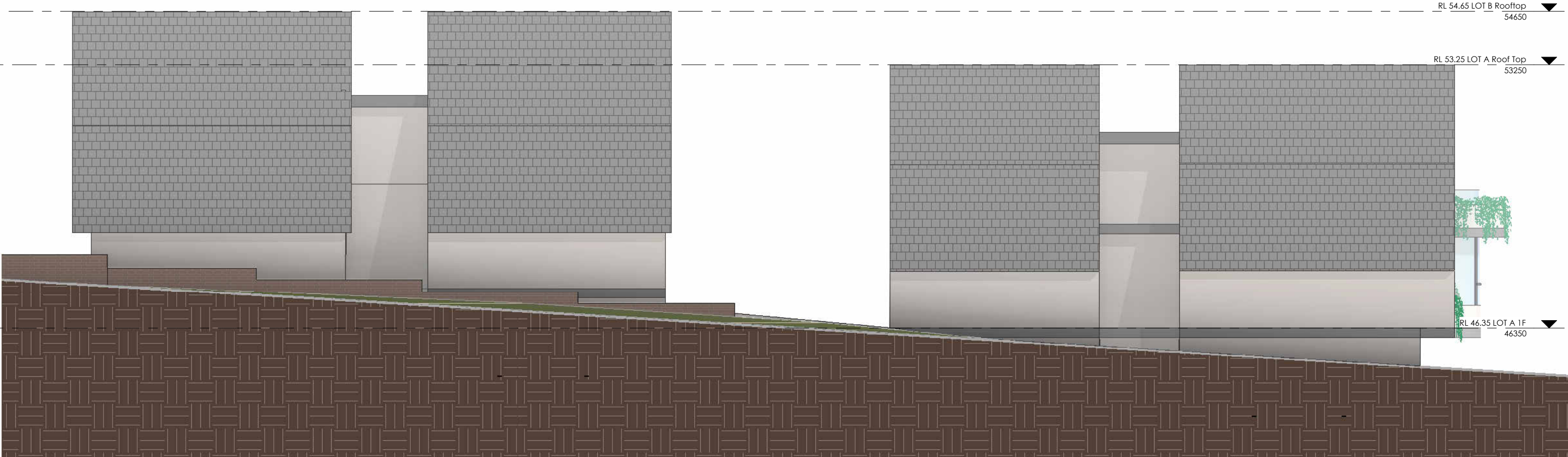
5 East Elevation
1 : 100



1 LOT B - South Elevation
1 : 100



2 LOT B - North Elevation
1 : 100



1 West Elevation
1 : 100

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				Address: 42 White Street, Balgowlah	Date: 01-05-2023	A11A	L
				DWG Title: Elevations 03	Checked by: TS	PROJECT NO.	DA

ITEM 3.6

**DA2023/0451 - 6 GREENWOOD AVENUE NARRAWEENA -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING A SECONDARY DWELLING AND
SWIMMING POOL**

REPORTING MANAGER Adam Richardson
TRIM FILE REF 2023/442736
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 DA2023/0451 for demolition works and construction of a dwelling house including a secondary dwelling and swimming pool on land at Lot 6 DP 13139, 6 Greenwood Avenue NARRAWEENA, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0451
Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 6 DP 13139, 6 Greenwood Avenue NARRAWEENA NSW 2099
Proposed Development:	Demolition works and construction of a dwelling house including a secondary dwelling and swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Michael Anthony Gooley
Applicant:	Site Specific Designs
Application Lodged:	24/04/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	02/05/2023 to 16/05/2023
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,220,000.00

EXECUTIVE SUMMARY

This development application seeks consent for Demolition works and construction of a dwelling house including a secondary dwelling and swimming pool.

The application is referred to the Development Determination Panel (DDP) due to the application receiving five (5) or more objections, with a total of seven (7) objections received.

Concerns raised in the objections predominantly relate to stormwater disposal. Further concerns were raised in relation to the location of the proposed swimming pool, car parking requirements, and noise impacts from the swimming pool motor/air conditioning motor. The concerns raised have been

considered in detail within this report, and do not warrant the refusal of the application.

Critical assessment issues included side boundary envelope, front boundary setbacks, and rear boundary setbacks.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Demolition works;
- Construction of a dwelling house;
- Construction of a secondary dwelling;
- Construction of a swimming pool; and
- Associated landscaping works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 5.4 Controls relating to miscellaneous permissible uses
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D15 Side and Rear Fences

SITE DESCRIPTION

Property Description:	Lot 6 DP 13139 , 6 Greenwood Avenue NARRAWEENA NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Greenwood Avenue. The site is regular in shape with a frontage of 13.41m along Greenwood Avenue and a depth of 62.38m. The site has a surveyed area of 834.7m². The site is located within the R2 Low Density Residential zone from WLEP 2011 and accommodates a dwelling house, swimming pool, and fibro garage currently on the site. The site slopes from the front south-western corner across the site downwards to the rear north-eastern corner over approximately 4 metres. The site contains lawn areas, trees, and plantings. There are no details of any threatened species on the subject site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design.

Map:



SITE HISTORY

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

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

APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested additional information on 9 June 2023 in relation to Clause 4.3 Height of Buildings of Warringah Local Environmental Plan 2011, Clause B3 Side Boundary Envelope of Warringah Development Control Plan 2011, Clause B7 Front Boundary Setbacks of Warringah Development Control Plan 2011, Clause D1 Landscaped Open Space and Bushland Setting of Warringah Development Control Plan 2011, and Clause D8 Privacy of Warringah Development Control Plan 2011. Furthermore, additional information was requested from Council's Development Engineer in relation to the proposed stormwater drainage.

On 23 June 2023, the applicant provided amended documentation including amended Master Plans, amended Landscape Plans, amended Stormwater Plans, and a Response Letter to the Request for Further Information. Further information was requested from Council's Development Engineer, and it was noted the swimming pool location had not been altered on the amended Stormwater Plans.

On 4 July 2023, the applicant provided further amended Stormwater Plans that satisfied Council's Development Engineer.

The amendments to the proposed development are summarised as follows:

- Increased side setback to the western ground floor of the dwelling house;
- Increased side setback, and articulation to the western first floor of the dwelling house;
- Reduced pitch to the first floor roof over the garage;
- Increased front boundary setback to secondary dwelling;
- Increased landscaped open space presenting compliance; and
- Increased eastern side setback to swimming pool.

The amended plans constituted a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.3 Height of Buildings of Warringah Local Environmental Plan 2011, Clause B3 Side Boundary Envelope of Warringah Development Control Plan 2011, Clause B7 Front Boundary Setbacks of Warringah Development Control Plan 2011, Clause D1 Landscaped Open Space and Bushland Setting of Warringah Development Control Plan 2011, and Clause D8 Privacy of Warringah Development Control Plan 2011. Furthermore, additional information was requested from Council's Development Engineer in relation to the proposed stormwater disposal. Subsequently, the applicant submitted amended Master Plans, amended Landscape Plans, and amended Stormwater Plans. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on

Section 4.15 Matters for Consideration	Comments
	the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/05/2023 to 16/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Austen James Devereux	2 Greenwood Avenue NARRAWEENA NSW 2099
Glenn Anthony Oakes	16 Rayner Avenue NARRAWEENA NSW 2099
Mr Stewart Andrew Edwards	22 Rayner Avenue NARRAWEENA NSW 2099
Mr Tullio Mastroianni	307 / 517 Pittwater Road BROOKVALE NSW 2100
Mrs Irene Margaret Penches	4 Greenwood Avenue NARRAWEENA NSW 2099
Mr Peter Anthony Robertson	13 Greenwood Avenue NARRAWEENA NSW 2099
Withheld Withheld	NARRAWEENA NSW 2099

The following issues were raised in the submissions:

- **Stormwater Disposal**
- **Notification of Development Application**
- **Location of Swimming Pool**
- **Car Parking Requirements**
- **Swimming Pool Pump/Air Conditioning Motor**

The above issues are addressed as follows:

- **Stormwater Disposal**

The submissions raised concerns that the proposed development will result in stormwater runoff to sites down-slope. Further concern is raised that the applicants have not explored the options for an easement.

Comment:

Council's Development Engineer has reviewed the proposed development, and provided comments under the Internal Referrals section of this report. In summary, the proposal has followed Council's Water Management for Development Policy. The applicant has submitted easement refusal letters and a Statutory Declaration indicating that the easement option has been explored. As an easement has been refused by adjacent neighbours and alternate design option can be considered in accordance with the Policy.

The applicant provided amended Stormwater Plans in response to Council's Development Engineer initial comments. Further amended plans were provided as it was noted the location of the swimming pool had not been revised. The amended Stormwater Plans have been reviewed by Council's Development Engineer, and have satisfied the requirements of Council's Water Management for Development Policy. Therefore, the proposed stormwater disposal is consistent with Council's Water Management for Development Policy, and as such is supportable by Council's Development Engineer, subject to recommended conditions.

- **Notification of Development Application**

The submissions raised concerns that they did not receive notification of the proposed development application.

Comment:

The Development Application has been notified in accordance with Council's Community Participation Plan as detailed by the Notification Map available on Council's website.

- **Location of Swimming Pool**

The submissions raised concerns surrounding the excavation into sandstone during the construction of the pool, and also the potential overflow of the proposed swimming pool to the secondary dwelling located at No.4 Greenwood Avenue.

Comment:

A recommended condition for a Pre-Construction, and Post-Construction Dilapidation Report has been recommended for No.4 Greenwood Avenue, and to No.26 Rayner Avenue to ensure no unacceptable damage occurs as a result of the proposed development. The proposed Stormwater Plans have taken into consideration the swimming pool, and as such will be managed appropriately to ensure any unreasonable overflow is contained as per the proposed stormwater design.

- **Car Parking Requirements**

The submissions raised concerns that the proposal does not provide enough car parking as an allowance for one car inside the garage, and one outdoor parking space is insufficient for a development with six bedrooms, across two dwellings.

Comment:

In accordance with Clause C3 Parking Facilities of Warringah Development Control Plan 2011, the car parking requirements are to be in accordance with Appendix 1. Appendix 1 Car Parking Requirements details for dwelling houses to provide 2 spaces per dwelling. There are no requirements under Appendix 1 for secondary dwellings. However, under Clause 53(b) of *State Environmental Planning Policy (Housing) 2021* the following is stipulated: *b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.* As such, the subject site currently presents three (3) off-street parking spaces, and the proposal presents three (3) off-street parking spaces. Therefore, the proposed development is compliant with the car parking requirements under Warringah Development Control Plan 2011, and *State Environmental Planning Policy (Housing) 2021*.

- **Swimming Pool Pump/Air Conditioning Motor**

The submissions raised concerns surrounding noise from a Swimming Pool Pump, Air Conditioning Motor, or Heating.

Comment:

A suitable on-going condition has been recommended for the Pool Pump/Air Conditioning to ensure that the swimming pool / air conditioning motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

- **Rear Setback**

The submissions raised concerns surrounding the rear setback of the proposed swimming pool.

Comment:

A detailed assessment has been undertaken under Clause B9 Rear Boundary Setbacks of Warringah Development Control Plan 2011. In summary, the proposed swimming pool is an exception to the control, and as such the proposed swimming pool location is supportable.

Concluding Comments:

In summary, the concerns raised have been addressed and do not warrant the refusal of the proposed application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<i>Supported - without conditions.</i> The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Landscape Officer	<i>Supported - subject to conditions.</i> <u>Amended Plans Comment</u>

Internal Referral Body	Comments
	Amended Plans, including amended landscape plans, are noted. The minor adjustments to the landscape plans are not objected to. No objections are raised with regard to landscape issues subject to conditions. <u>Original Comment</u> The application seeks consent for demolition works and construction of a dwelling house including a secondary dwelling and swimming pool. The Arborist's Report prepared by Complete Arborcare and Landscape plans prepared by Jamie King are noted. The Arborist's Report indicates that tow trees are to be removed to accommodate the proposed works. One other exempt tree (<5m ht) is to be removed in the rear yard. The two non-exempt trees are indicated to be in poor condition and rated Low landscape significance. No objections are raised to the proposed tree removals. All other trees are to be retained. The Landscape Plans indicate replanting with trees shrubs and ground covers across the site. No objections are raised to the proposed landscape works. No objections are raised with regard to landscape issues subject to conditions.
NECC (Development Engineering)	<i>Supported - subject to conditions.</i> The proposal is for demolition works and construction of a dwelling and secondary dwelling. The site falls to the rear and as such the stormwater management shall be in accordance with Section 5.5 of Council's Water Management for Development Policy. The applicant has submitted easement refusal letters and a Statutory Declaration indicating that the easement option has been explored. As an easement has been refused by adjacent neighbors and alternate design option can be considered. The submitted stormwater plan proposes to discharge to a level spreader via an OSD system. The plans by VKN Consulting have been reviewed and the following issues are to be addressed: • The PSD of 30l/s appears too high. Council's review indicated a much lower PSD. The applicant shall submit the Drains model for further assessment. • The proposed level spreader shall be wider and set back

Internal Referral Body	Comments
	minimum 3m from the side and rear boundaries. Additional Information Provided on 23/6/2023 The amended stormwater plans and model have been reviewed. The amended PSD of 21l/s is still appears high. Council's review indicates a PSD of approximately 16l/s. A review of the model indicates that amendments to the following parameters are required: • The Pervious area loss and Pervious area continuing loss are to be obtained from the ARR Data Hub • Pre-burst rainfall depths are to be used. • Rainfall patterns for the area to be used. Amended plans and model are to be submitted for further analysis. The amended stormwater plans are to reflect all current architectural changes including the accurate location of the pool. Additional Information Provided on 4/7/2023 Amended plans have been reviewed. The proposed discharge to a level spreader via an OSD system is acceptable in principle as it reduces the site discharge to 20% AEP state of nature flows. However the assumed PSD of 21l/s appears high as Council's review indicates a PSD of 16l/s. As such conditions are provided to ensure site discharge is limited to 16l/s and sufficient OSD volume is provided. No objections to approval subject to conditions as recommended.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported - subject to conditions. The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1353297M_02 dated 02 February 2023). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No.0008293260 dated 02 February 2023).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	75

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
(2) Development consent must not be granted for development to which this Part applies unless— a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and c) The total floor area of the secondary dwelling is: i) no more than 60m², or ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	a) Compliant. The proposed development includes a principal dwelling and a secondary dwelling only on the land. b) Not Applicable. There is no floor space ratio control for the subject site under Warringah Local Environmental Control Plan 2011. c) Compliant. The total floor area of the secondary dwelling is less than 60m².
Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
a) For a detached secondary dwelling - a	Compliant.

minimum site area of 450m ² .	The site area is greater than 450m ² .
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Compliant. The subject site currently presents three (3) off-street parking spaces, and the proposal presents three (3) off-street parking spaces.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Dwelling House: 8.19m	-	Yes

		Secondary Dwelling: 4.66m	-	Yes
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Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

Clause 5.4 Controls relating to miscellaneous permissible uses of Warringah Local Environmental Plan 2011 (WLEP 2011) stipulates the following:

(9) Secondary dwellings

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- (a) 60 square metres,
- (b) 11% of the total floor area of the principal dwelling.

Comment:

The proposed secondary dwelling is 60m² and therefore is compliant with Clause 5.4(9) of WLEP 2011.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.0m	-	Yes
B3 Side Boundary Envelope	4m (East)	Dwelling House: Outside Envelope Secondary Dwelling: Within Envelope	3.33% (0.2m) -	No Yes
	4m (West)	Dwelling House: Outside Envelope Secondary Dwelling: Within Envelope	12.0% (0.6m) -	No Yes
B5 Side Boundary Setbacks	0.9m (East)	Dwelling House: 2.0m Secondary Dwelling: 0.9m Swimming Pool: 2.0m	- - -	Yes Yes Yes
	0.9m (West)	Dwelling House: 1.0m	-	Yes

		Secondary Dwelling: 6.0m Swimming Pool: 6.9m	- -	Yes Yes
B7 Front Boundary Setbacks	6.5m (South)	Dwelling House: 23.8m Secondary Dwelling: 6.0m	- 7.69% (0.5m)	Yes No
B9 Rear Boundary Setbacks	6m (North)	Dwelling House: 17.1m Swimming Pool: 4.0m	- 33.34% (2.0m)	Yes No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (333.88m ²)	41.54% (346.7m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	No	No
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

Under Clause B3 of Warringah Development Control Plan 2011 (WDCP 2011), buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 4 metres above ground level (existing) at the side boundaries.

The proposal sits outside of the building envelope on the East Elevation as depicted in Figure 1, and the West Elevation as depicted Figure 2. The East Elevation presents two encroachments, with the maximum encroachment being 0.2 metres in vertical height for a horizontal length of 4 metres, resulting in a maximum variation of 3.33% (0.2m). It is noted that the breach in building envelope at these points are attributed to the sloping topography of the site.

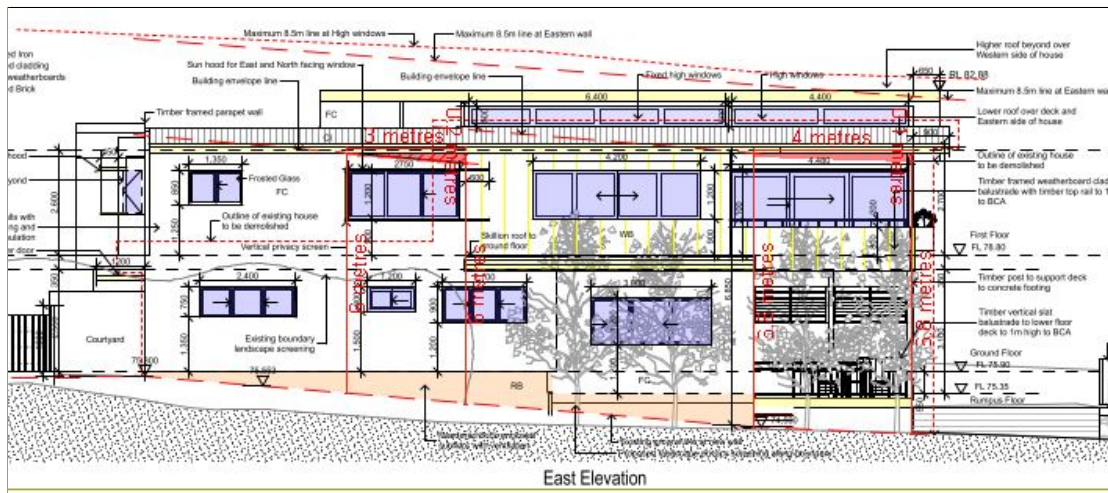


Figure 1. East Elevation (red highlighting building envelope numerical non-compliance)

The West Elevation presents two encroachments, with the maximum encroachment being 0.6 metres in vertical height for a horizontal length of 6.8 metres, resulting in a maximum variation of 12.0% (0.6m).

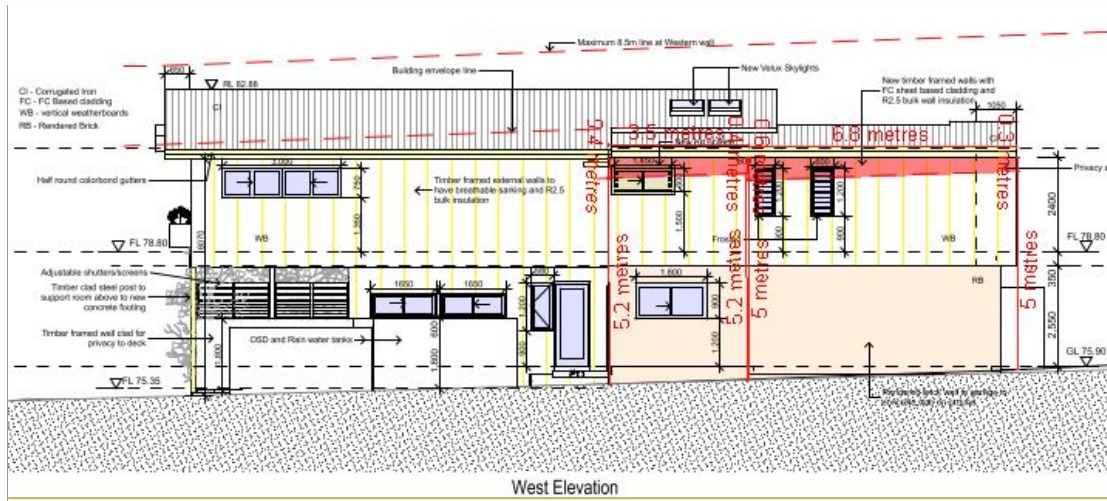


Figure 2. West Elevation (red highlighting building envelope numerical non-compliance)

A detailed assessment has been undertaken that concludes the proposal is consistent with the objectives of the control as outlined below. Therefore, the variation to the side boundary envelope is supportable in this circumstance.

Merit consideration

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

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

Comment:

The proposed development is compliant with the maximum height of buildings development standard, wall height control, and side setback control. Furthermore, the portion of the first floor that encroaches outside of the building envelope is considered to be minor, and as such the proposal presents an overall appropriate height, and scale.

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

Comment:

The proposal is accompanied with shadow diagrams that detail appropriate light, and solar access is provided to adjoining sites. The proposal provides suitable treated windows including high level windows, and frosted windows to mitigate any unacceptable privacy impacts. The proposed development presents compliant side setbacks that provide adequate separation between buildings.

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

Comment:

The proposed development responds appropriately to the moderately sloping topography of the site

B7 Front Boundary Setbacks

Description of non-compliance

The proposed secondary dwelling is located 6.0m from the front boundary line that requires a setback of 6.5m, presenting a variation of 7.69% (0.5m).

It is important to note, that the encroachment is isolated to a point encroachment as a result of a blade wall, and the remainder of the proposed secondary dwelling is compliant with the 6.5m front boundary setback.

In this instance, the variation to the control is supportable as the proposal has met the objectives of the control as detailed below.

Merit consideration:

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

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

Comment:

The proposal will create a sense of openness as the front setback area is largely open, and consists of open lawn area, and the driveway.

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

Comment:

The proposal presents a consistent visual continuity of built form, pattern of buildings, and landscape elements that are compatible with surrounding development.

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

Comment:

The proposal will protect, and enhance the visual quality of streetscapes and public spaces. The proposal retains two trees within the front setback area that will assist in protecting the visual quality.

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

Comment:

The proposed secondary dwelling will not result in any adverse impacts to view sharing given the single storey development.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed swimming pool is located 4.0m from the rear boundary line, presenting a variation of

33.34% (2.0m) to the required 6.0m rear boundary setback.

Under Clause B9 Rear Boundary Setbacks of Warringah Development Control Plan 2011, the following exceptions can be made:

On land zoned R2 Low Density Residential, where the minimum rear building setback is 6 metres, exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area, provided that the objectives of this provision are met.

In this instance the proposed swimming accommodates approximately 9.4m² of the 81.2m² rear setback area, that equates to 11.58% of the rear setback area. Therefore, as the proposed swimming pool is less than 50% of the rear setback area the proposed variation is supportable, provided the objectives of the control are met.

An assessment against the objectives of the control have been undertaken, and it is considered the proposal is consistent with the objectives, and therefore the variation is supportable.

Merit consideration:

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

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

Comment:

The proposal presents a compliant area of landscaped open space, and therefore the proposal provides ample opportunities for deep soil landscaping.

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

Comment:

The proposal will create a sense of openness in rear yards, as the proposal rear yard is largely open landscaped areas including lawn areas, and plantings.

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

Comment:

The proposal will preserve amenity to the adjacent land through the existing boundary fencing that is retained. Furthermore, the proposed swimming pool includes limited coping on the northern and eastern sides of the swimming pool that will limit use of the pool coping to alleviate unacceptable privacy impacts to the adjoining sites to the north and east. Furthermore, the proposal includes screen planting as detailed on the Landscape Plans that will provide supplementary privacy when planting reaches maturity. It is noted that the Landscape Plan does not include screen planting for the entire northern and eastern edge adjacent to the swimming pool. Therefore, a condition has been recommended for Required Screen Planting to ensure the proposal includes screen planting along the entire northern, and eastern outer edge of the swimming pool to provide suitable supplementary privacy.

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

Comment:

The proposal is consistent with the swimming pools being located within the rear setback area

as apparent with sites along Greenwood Avenue. Overall, the proposal is consistent with the pattern of buildings, rear gardens, and landscape elements along Greenwood Avenue.

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

Comment:

The proposal provides opportunities to maintain privacy through the retention of the existing boundary fencing, and proposed supplementary planting that will assist in screening the proposed swimming pool to provide an acceptable level of privacy to adjoining sites.

D8 Privacy

Concern was initially raised in relation to the proposed swimming pool, and potential overlooking to the adjoining sites as a result of the elevated nature of the swimming pool, and location of the pool decking. The applicant provided amended plans that provided an increased northern rear setback, and increased eastern side setbacks. Furthermore, the pool coping was reduced on both the northern edge, and eastern edge of the swimming pool to limit the available trafficable area. The proposal includes screen planting as detailed on the Landscape Plans that will provide supplementary privacy when planting reaches maturity. It is noted that the Landscape Plan does not include screen planting for the entire northern and eastern edge adjacent to the swimming pool. Therefore, a condition has been recommended for Required Screen Planting to ensure the proposal includes screen planting along the entire northern, and eastern outer edge of the swimming pool to provide suitable supplementary privacy. As such, it is considered that as per the amended plans, and recommended condition to ensure plant screening for the entire length of the swimming pool, the proposal will provide an acceptable level of privacy to the adjoining neighbours to the north, and east.

Concern was raised in relation to the first floor deck adjacent to the dining and living room, and potential overlooking to the private open space of the adjoining site to the east. The applicant provided a response to the Request for Further Information that detailed photos of the existing ocean views obtained from the current first floor bedroom that is in the location of the proposed deck. It is considered that the solid balustrade of the deck will assist in mitigating any unreasonable privacy impacts. Furthermore, it is considered that the deck and associated balustrade provides improved privacy than the existing bedroom window that has a minimal window sill height.

Notwithstanding, the proposal has been assessed against the objectives of the control, and it is considered the proposed development satisfies the objectives.

Merit consideration

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

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

Comment:

The proposed development provides an appropriate level of visual, and acoustic privacy for adjoining neighbours and for the occupants. The proposed development has included appropriate visual privacy as a result of the window locations and designs, and proposed deck.

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

Comment:

The proposal includes appropriate design solutions to improve the urban environment. The proposal includes appropriate window privacy measures including frosted windows, and high level windows that will ensure acceptable privacy to adjoining neighbours.

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

Comment:

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

D15 Side and Rear Fences

The proposal includes the construction of a side boundary fence of 1.6 metres in height along the eastern side boundary forward of the proposed secondary dwelling.

However, no owners consent from the relevant adjoining neighbours were received as part of the Development Application.

This height of boundary fencing may be undertaken via the provisions of the *State Environmental Planning Policy Exempt and Complying Development 2008*. Furthermore, if the fence is a dividing fence, the *Dividing Fences Act 1991* also applies.

As a result, the side boundary fencing will be removed from the proposed works via a recommended condition of consent and will not be further assessed.

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 \$12,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,220,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;

- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

This proposal, for Demolition works and construction of a dwelling house including a secondary dwelling and swimming pool has been referred to the Development Determination Panel (DDP) due to the application receiving five (5) or more objections, with a total of seven (7) objections received.

The concerns raised in the objections have been addressed and resolved by amended Stormwater Plans, and review from Council's Development Engineer who is supportable of the proposal, subject to recommended conditions. Furthermore, the other concerns raised have been addressed, and resolved with the inclusion of recommended conditions as deemed appropriate.

The critical assessment issues are considered supportable with the side boundary envelope, front boundary setback, and rear boundary setback variations demonstrating consistency with the objectives of the controls.

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

The proposal has therefore been recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/0451 for Demolition works and construction of a dwelling house including a secondary dwelling and swimming pool on land at Lot 6 DP 13139, 6 Greenwood Avenue, NARRAWEENA, 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
Site and Roof Plan, Street Front Perspective - DA01, Rev B	14 June 2023	Site Specific Designs
Ground Floor Granny Flat - DA02, Rev B	14 June 2023	Site Specific Designs
Ground Floor - DA03, Rev B	14 June 2023	Site Specific Designs
First Floor - DA04, Rev B	14 June 2023	Site Specific Designs
Section A, Granny Flat Section A, Driveway Section, East-West Section B, Section C - DA05, Rev B	14 June 2023	Site Specific Designs
East Elevation, North Elevation - DA06, Rev B	14 June 2023	Site Specific Designs
South House Elevation, West Elevation - DA07, Rev B	14 June 2023	Site Specific Designs
Secondary Dwelling - East Elevation, West Elevation, North Elevation, South (Streetfront) Elevation - DA08, Rev B	14 June 2023	Site Specific Designs

Engineering Plans		
Drawing No.	Dated	Prepared By
Stormwater Drainage Layout Plan-1 - 150223-01, Issue D	3 July 2023	VNK Consulting Pty Ltd
Stormwater Drainage Layout Plan-2 - 150223-02, Issue D	3 July 2023	VNK Consulting Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Report	30 November 2022	Complete Arborcare
Arboricultural Plan	25 November 2022	Complete Arborcare
BASIX Certificate (No.1353297M_02)	02 February 2023	Chapman Environmental Services Pty Ltd
External Finishes Schedule	December 2022	Site Specific Designs
NatHERS Certificate (No.0008293260)	02 February	Chapman Environmental

	2023	Services Pty Ltd
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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
Master Landscape Plan - 101, Rev G	21 June 2023	Jamie King Landscape Architect
Planting Plan - 102, Rev G	21 June 2023	Jamie King Landscape Architect
Front Yard Detail Plan - 103, Rev G	21 June 2023	Jamie King Landscape Architect
Backyard Detail Plan - 104, Rev G	21 June 2023	Jamie King Landscape Architect
Sections (AA & BB) - 105, Rev G	21 June 2023	Jamie King Landscape Architect
Sections (CC & DD) - 106, Rev G	21 June 2023	Jamie King Landscape Architect
Sections (EE) - 107, Rev G	21 June 2023	Jamie King Landscape Architect

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	17 February 2023	Site Specific Designs

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	3 May 2023

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

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

3. **Prescribed conditions (Demolition):**

(a) A sign must be erected in a prominent position on any site on which building work,

subdivision work or demolition work is being carried out:

- (i) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (ii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

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

Reason: Legislative Requirement.

4. Prescribed Conditions

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

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

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

Reason: Legislative requirement.

5. **General requirements (Demolition):**

- (a) Unless authorised by Council:
- Demolition and excavation works are restricted to:
- o 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

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

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

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

6. 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 sewer 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.

7. **No Approval for Separate Occupancy within Dwelling House**

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

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

FEES / CHARGES / CONTRIBUTIONS

8. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$12,200.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,220,000.00.

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

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

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

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

9. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by VNK Consulting, drawing number 150223-01, 150223-02, issue D, dated 3/7/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. PSD to be limited to 16l/s
- ii. Minimum 21m³ of OSD to be provided on site
- iii. Storage volumes in above ground basins shall include an allowance for 20% additional storage for vegetation growth and construction inaccuracies.

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

11. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide at the kerb and 3.8 meters wide at the boundary in accordance with Northern Beaches Council Standard Drawing Normal Low in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

12. **Amendments to the approved plans**

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

- All proposed side boundary fencing is to be deleted.

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.

13. **Compliance with standards (Demolition):**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

14. **Compliance with Standards**

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

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

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

15. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Construction Certificate.

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

16. **Sydney Water "Tap In"**

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

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

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

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

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

17. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **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: No.4 Greenwood Avenue NARRAWEENA
 No.26 Rayner Avenue NARRAWEENA

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.

DURING BUILDING WORK

19. Protection of Existing Street Trees

a) All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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

Reason: Street tree protection.

20. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not indicated for removal on the approved plans, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 30/11/2022 prepared by Complete Arborcare and AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,

- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

21. Condition of Trees

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

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

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

conditions.

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

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

Reason: Protection of trees.

22. **Road Reserve**

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

Reason: Public safety.

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

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

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

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

24. **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.

25. 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.

26. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**27. Required Tree Planting**

Trees shall be planted in accordance with the following:

- a) 3 native tree(s) shall be planted within the property to achieve at least 5 metres height at maturity, and in accordance with the following:
 - i) tree planting shall be a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; 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 located either within garden bed or within a prepared bed within lawn,
 - ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

28. Required Screen Planting

Screen planting (along the northern and eastern outer side of the swimming pool) shall be planted in accordance with the following:

- a) the selected planting is to comprise of native species capable of attaining a minimum

- height of (5) five metres at maturity,
- b) plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
 - c) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Reason: To maintain environmental amenity.

29. **Landscape Completion**

a) Landscape works are to be implemented in accordance with the approved Landscape Plans.

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

Reason: Environmental amenity.

30. **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:

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

31. **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.

32. **House / Building Number**

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

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

Reason: Proper identification of buildings.

33. **Waste Management Confirmation**

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

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

34. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue

of an Occupation Certificate.

Reason: To protect human life.

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

35. **Swimming Pool/Air Conditioning Motor Noise**

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

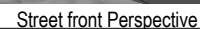
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

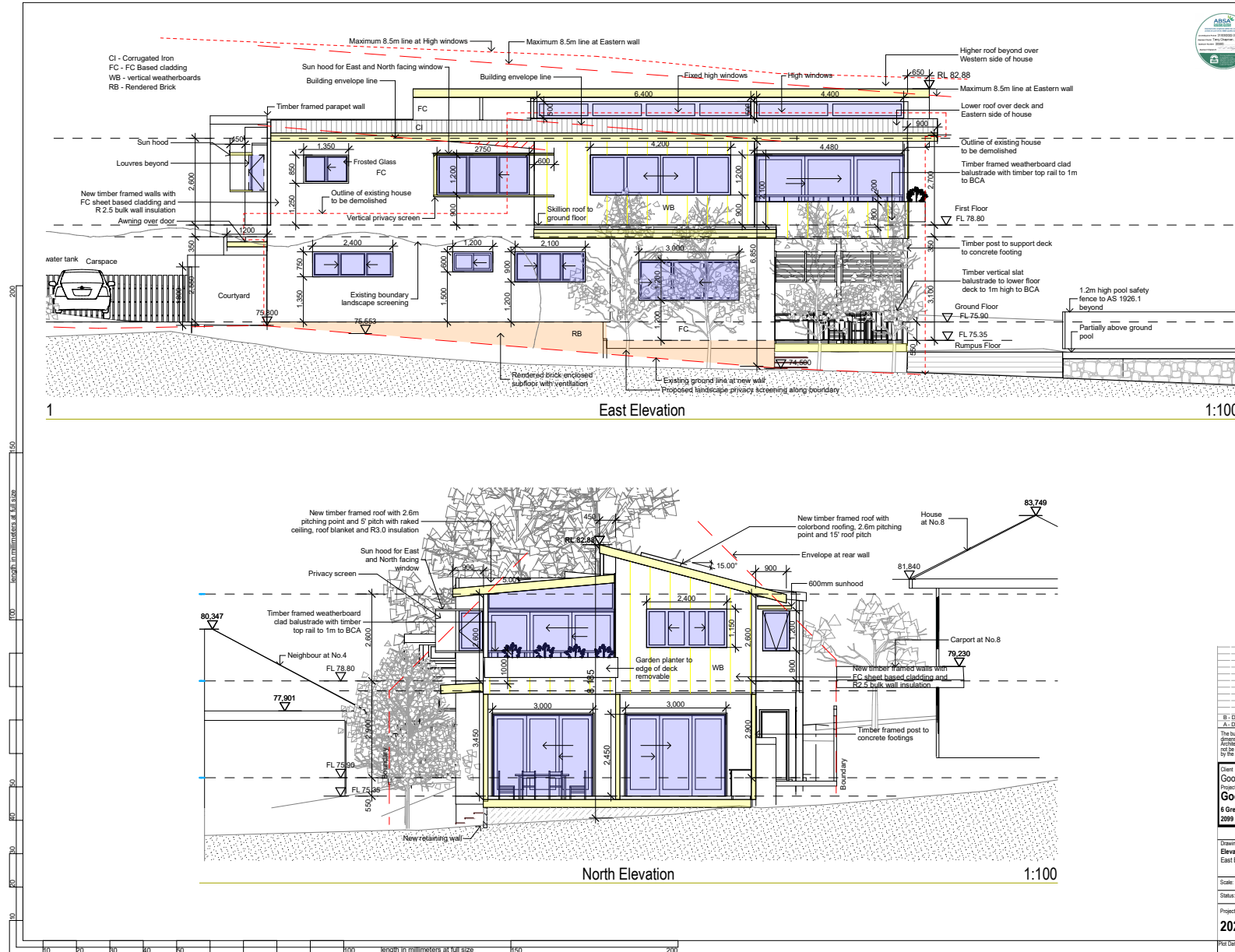


Site and Roof Plan

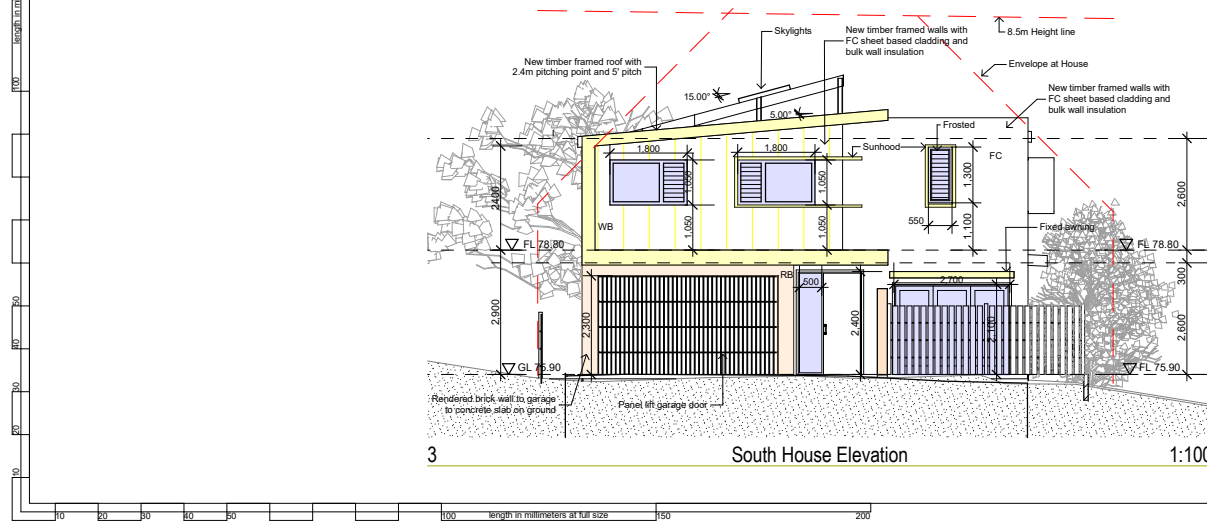
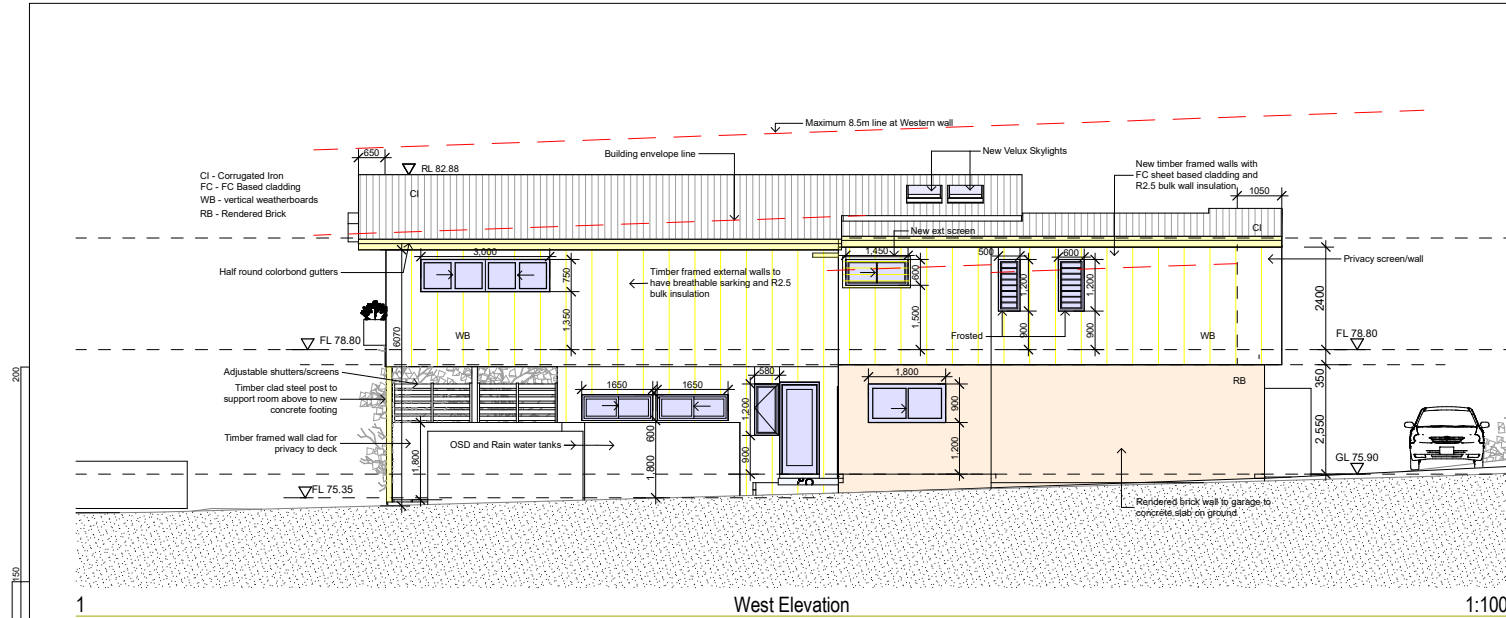
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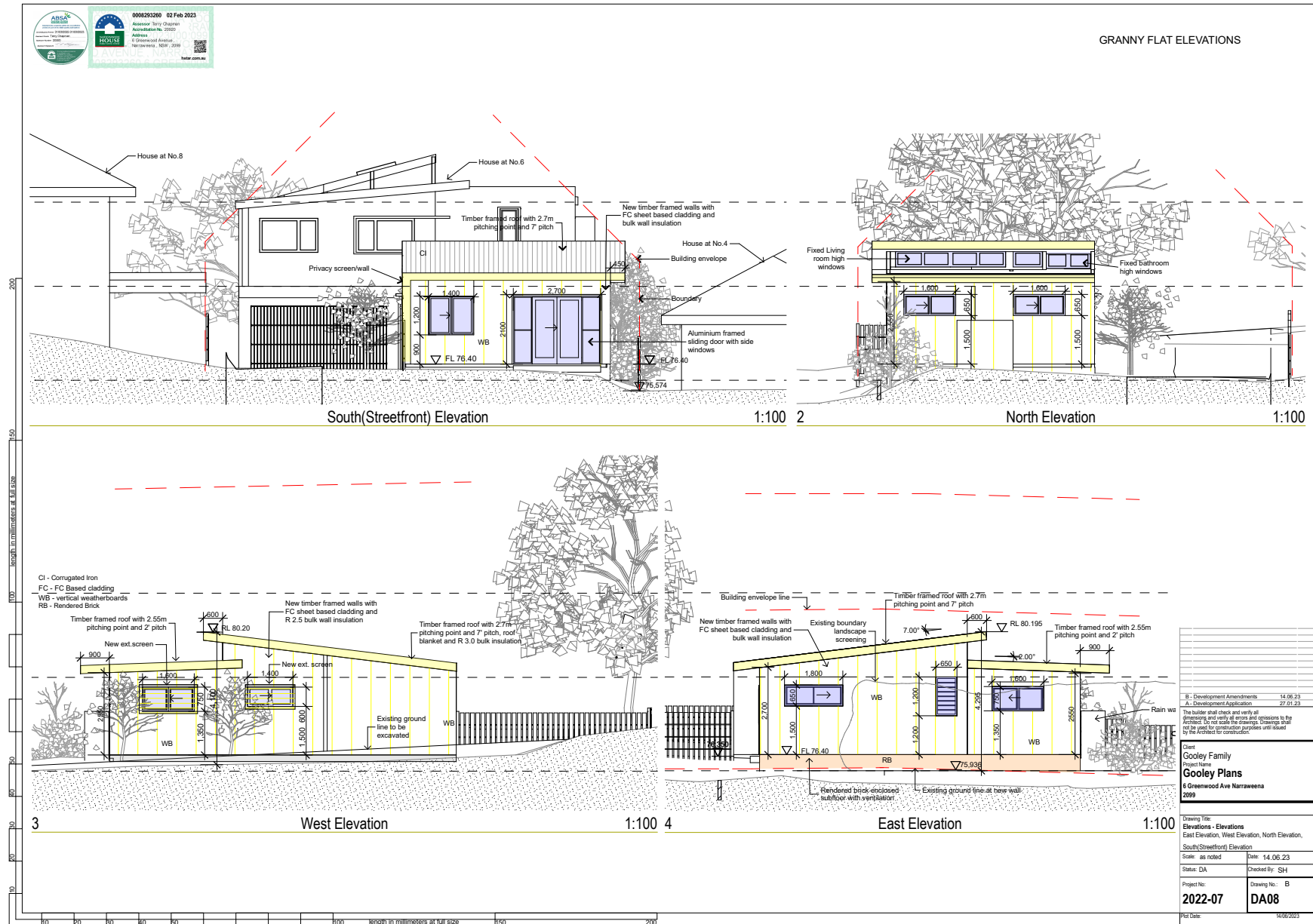
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B - Development Amendments	14.06.23
A - Development Application	27.01.23
The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not make the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.	
Client Gooley Family Project Name Gooley Plans 6 Greenwood Ave Narraweena 2099	
Drawing Title: Elevations - Elevations East Elevation, North Elevation	
Scale: as noted	Date: 14.06.23
Status: DA	Checked By: SH
Project No: 2022-07	Drawing No.: B DA06
Plot Date:	14/06/2023



B - Development Amendments	14.06.23
A - Development Application	27.01.23
The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not make the changes. Drawings shall not be used for construction purposes until issued by the Architect for construction.	
Client Gooley Family Project Name Gooley Plans 6 Greenwood Ave Narraweena 2099	
Drawing Title: Elevations - Elevations South House Elevation, West Elevation	
Scale: as noted	Date: 14.06.23
Status: DA	Checked By: SH
Project No: 2022-07	Drawing No.: DA07
Plot Date:	14/06/2023



ITEM 3.7

**MOD2023/0241 - 123 VICTOR ROAD DEE WHY -
MODIFICATION OF DEVELOPMENT CONSENT DA2022/1553
GRANTED FOR ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE INCLUDING A SWIMMING POOL**

REPORTING MANAGER Adam Richardson
TRIM FILE REF 2023/449206
ATTACHMENTS
1 [↓ Assessment Report](#)
2 [↓ Site Plan and Elevations](#)
3 [↓ Clause 4.6](#)

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to Mod2023/0241 for modification of Development Consent DA2022/1553 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot 20 DP 22524, 123 Victor Road DEE WHY, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0241
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 20 DP 22524, 123 Victor Road DEE WHY NSW 2099
Proposed Development:	Modification of Development Consent DA2022/1553 granted for Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Russell Martin Williams Brooke Leanne Williams
Applicant:	Brooke Leanne Williams
Application Lodged:	15/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	23/05/2023 to 06/06/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 10%
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent for the Modification of Development Consent DA2022/1553 granted for Alterations and additions to a dwelling house including a swimming pool.

The 4.55(2) modification application is referred to the Development Determination Panel (DDP) due the proposed modifications resulting in a variation greater than 10% to the maximum building height control of the Warringah Local Environmental Plan 2011. The Development Application was previously considered and determined by way of approval under delegation on 8 November 2022 as the variation was less than 10% to the maximum building height control.

The proposal was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

Critical assessment issues include variation to the height of buildings development standard.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify the approved alterations and additions to the dwelling house as follows:-

"Ground Level

- *Cathedral ceiling over kitchen, living and deck.*

External

- *Change to roof form to provide for a gable end in lieu of approved hipped roof."*

Amended Plans

On 30 June 2023 amended plans were received from the applicant which lowered the height of the proposed roof from a 14 degree pitch to 10 degree pitch.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 20 DP 22524 , 123 Victor Road DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Victor Road. The site is regular in shape with a frontage of 15.24 metres along Victor Road and a depth of 38.68 metres. The site has a surveyed area of 588.8m². The site is located within the R2 Low Density Residential zone and accommodates two storey brick dwelling with a tiled and metal roof and garage under. The dwelling is located towards the front western portion of the site. A concrete driveway provides vehicular access to the lower level garage and at grade parking space. The site slopes from the southwest corner down to the northeast corner with a sloping grade of 22%. The site has a mix of native and exotic species of shrubs, plants and trees. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a mix of one and two storey detached residential dwellings with associated structures and landscaped gardens on varied sized allotments.

Map:



SITE HISTORY

DA2022/1553 - Alterations and additions to a dwelling house including a swimming pool approved 8 November 2022

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2022/1553, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/1553 for the following reasons: The proposed modifications to the approved alterations and additions to the dwelling house are considered to be substantially the same given the minor modify to the original approved development.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the	Development Application DA2022/1553 did not require concurrence from the relevant Minister, public authority or approval

Section 4.55 (2) - Other Modifications	Comments
general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 61</u> of the EP&A Regulation 2021 requires the

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/05/2023 to 06/06/2023 in

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

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.625m	9.35m	10%	*No

* Previous Clause 4.6 approved variation.

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
Part 5 Miscellaneous provisions	Yes
5.9 Dwelling house or secondary dwelling affected by natural disaster	Yes
Part 6 Additional Local Provisions	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

--	--

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.35m (Breach of 0.85m)
Percentage variation to requirement:	10%

The proposed variations to the height of buildings development standard are detailed in Figure 1 below:

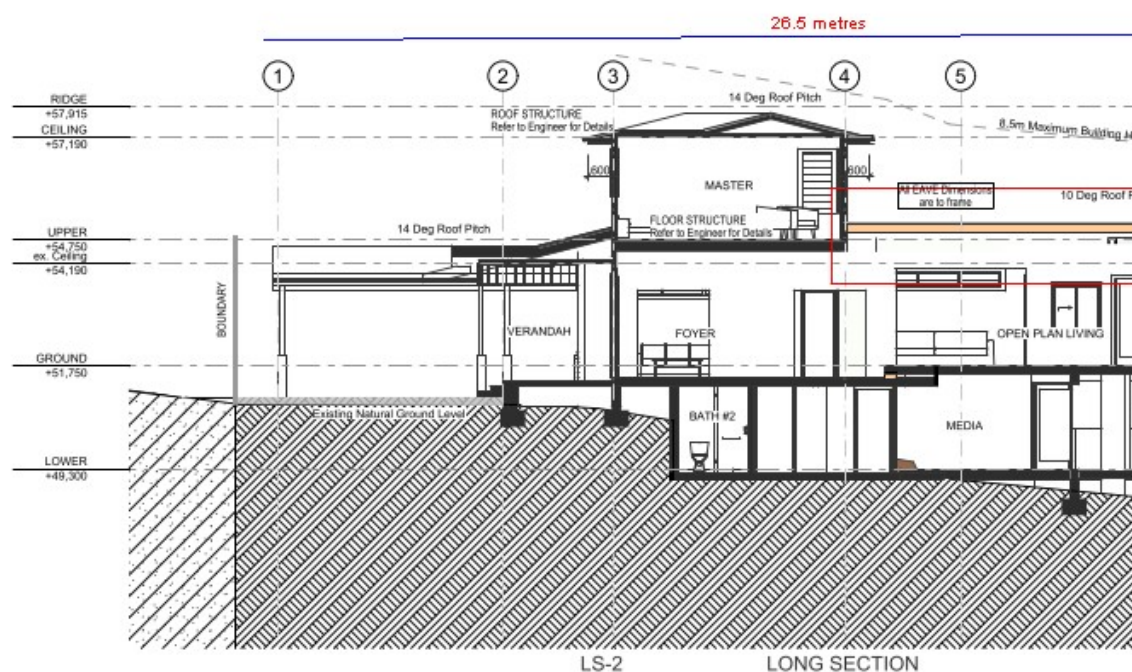


Figure 1. South Elevation (red oval showing height of building non-compliance)

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Warringah LEP 2011, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

It is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The proposal presents variations to the height of buildings development standard as a result of the amendment to the roof form at the rear of the dwelling where there is a significant fall both west to west and a crossfall from south to north. It is considered that the elements that breach the building height are located beneath the existing maximum height of the dwelling house, and as such strict compliance is unreasonable or unnecessary.

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment:

It is considered that the subject site obtains constraints as a result of the steep topography. The existing dwelling house has been designed to step down the sloping site, and the proposal presents additional encroachments above the maximum height of buildings. It is considered that the existing site topography, and retention of the existing dwelling house restrict the proposal from demonstrating compliance with the maximum height of buildings. Notwithstanding, it is considered that sufficient environmental planning grounds justify the contravention in this circumstance.

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

4.3 Height of buildings

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

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

Comment:

In their submission, the applicant has demonstrated that other surrounding developments within the same subdivision also breach the prescribed 8.5m height limit, which is not surprising given the difficult topography. The proportions and bulk of the development are considered appropriate, well-resolved and compatible with the desired character of the area.

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

Comment:

The height of the development is not considered incongruent with neighbouring properties, nor is the height considered to detract from the natural scenic quality of the site.

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

Comment:

The proposal is not considered to generate any unreasonable overshadowing impacts to neighbouring properties.

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

Comment:

The proposal is not considered to generate any unreasonable view loss impacts from neighbouring private properties or from the private domain.

Zone objectives

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

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

Comment: The proposed development provides additional floor space within the existing dwelling, which will provide for the housing needs of the community within this low density residential environment.

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

Comment: The proposal maintains the existing low density residential land use.

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

Comment: The proposed development will maintain an appropriate visual relationship with the surrounding environment.

Conclusion:

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

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

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

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not

strictly apply and the concurrence of the Secretary is not required to be obtained.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	8m	8m	Unchanged
B3 Side Boundary Envelope	4m (south)	Within Envelope	Within Envelope	Yes
	4m (north)	Outside Envelope	Outside Envelope	Unchanged
B5 Side Boundary Setbacks	0.9m (south)	1.7m	1.7m	Yes
	0.9m (north)	2.2m	2.2m	Yes
B7 Front Boundary Setbacks	6.5m	6.5m	6.5m	Yes
B9 Rear Boundary Setbacks	6m	13m	13m	Yes
D1 Landscaped Open Space and Bushland Setting	40% (235.5sqm)	40.6% (238.8sqm)	40.6% (238.8sqm)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B1 Wall Heights	N/A	N/A
B3 Side Boundary Envelope	N/A	N/A
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

The varied wall heights approved under DA2022/1553 remain unaltered under this modification application. Therefore, the outcomes of the original consent are retained under this modification application and a detailed merit assessment is not required in this instance.

B3 Side Boundary Envelope

The varied wall heights approved under DA2022/1553 remain unaltered under this modification application. Therefore, the outcomes of the original consent are retained under this modification application and a detailed merit assessment is not required in this instance.

D7 Views

The proposal has minimal impact or disruption of views of neighbouring properties, There is no impact on the coastal or bushland environment. It is noted that the additions has been designed to incorporate lower pitched roofs along with articulation allowing for greater view corridors. Additionally, it is noted that no submissions were raised during the notification period and/or during the assessment of this development application.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for the Modification of Development Consent DA2021/2626 granted for Alterations and additions to a dwelling house including a swimming pool has been referred to the Development Determination Panel (DDP) due to variation greater than 10% to height of buildings under Warringah Local Environment Plan 2011.

The proposal was notified in accordance with Northern Beaches Community Participation Plan and no submissions were received.

The critical assessment issues relate to the proposed variation to the height of buildings development standard.

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0241 for Modification of Development Consent DA2022/1553 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 20 DP 22524, 123 Victor Road, DEE WHY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

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

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

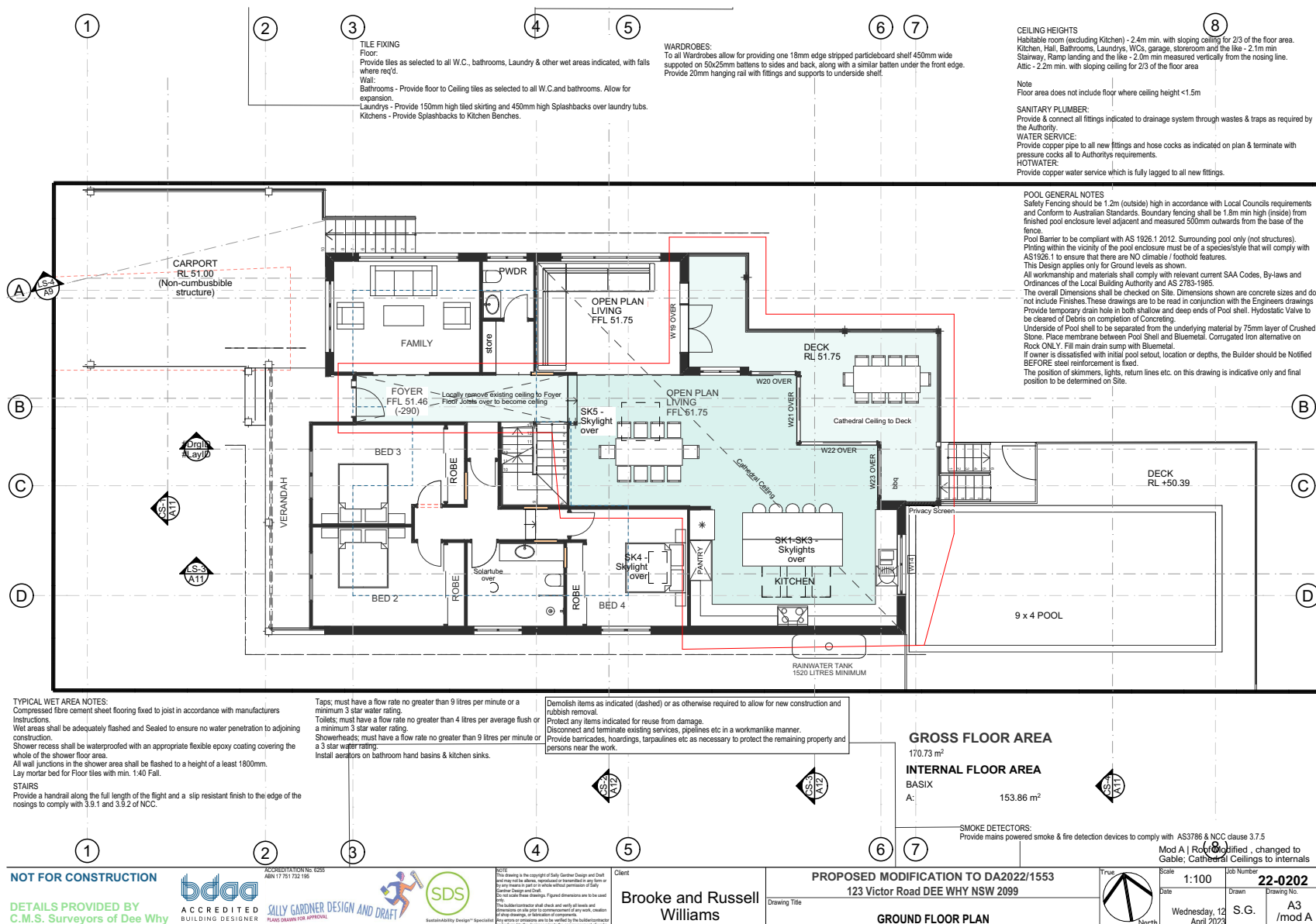
a) Modification Approved Plans

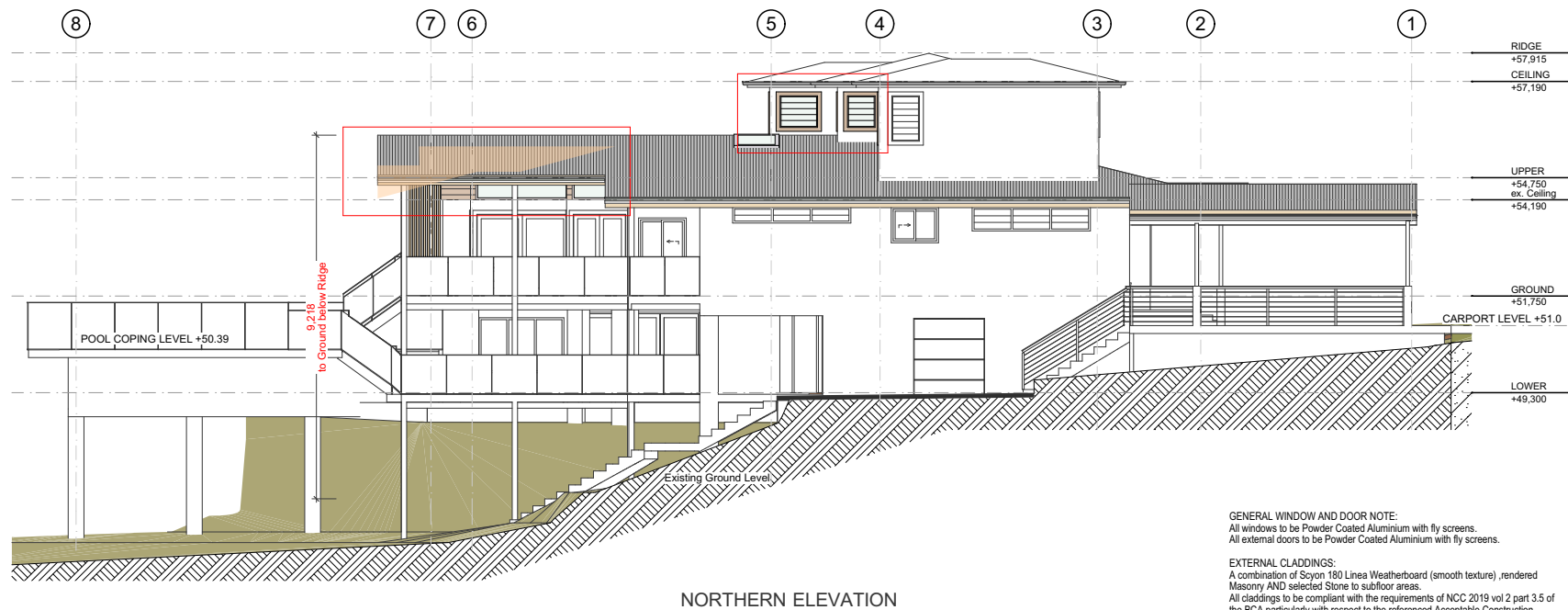
Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A1/mod B	16 June 2023	Sally Gardner Design an
A2/mod B	16 June 2023	Sally Gardner Design an
A3/mod B	16 June 2023	Sally Gardner Design an
A6/mod B	16 June 2023	Sally Gardner Design an
A7/mod B	16 June 2023	Sally Gardner Design an
A8/mod 8	16 June 2023	Sally Gardner Design an
A10/mod B	16 June 2023	Sally Gardner Design an
A11/mod B	16 June 2023	Sally Gardner Design an
A12/mod B	16 June 2023	Sally Gardner Design an
N2/mod B	16 June 2023	Sally Gardner Design an

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (A462488_03)	14 July 2023	Sally Gardner

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

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





GENERAL WINDOW AND DOOR NOTE:
All windows to be Powder Coated Aluminium with fly screens.
All external doors to be Powder Coated Aluminium with fly screens.

EXTERNAL CLADDINGS:
A combination of Soyon 180 Linea Weatherboard (smooth texture), rendered Masonry AND selected Stone to subfloor areas.
All claddings to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the BCA particularly with respect to the referenced Acceptable Construction Practice as detailed in the BCA for product materials and installations.

ROOFING:
Lysaght colorbond 'Custom Orb' roof Sheeting
All roofing to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the BCA particularly with respect to the referenced Acceptable Construction Practice as detailed in the BCA for product materials and installations.

NOT FOR CONSTRUCTION

DETAILS PROVIDED BY
C.M.S. Surveyors of Dee Why

bdca
ACCREDITED
BUILDING DESIGNER

ACCREDITATION NO: 6265
ABN 17 751 732 195

SALLY GARDNER DESIGN AND DRAFT
PLANNING APPROVAL

SDS
Sustainable Design Specialist

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All structural elements are to be verified by the appropriate engineer and related to the design prior to the commencement of work.

Client
Brooke and Russell Williams

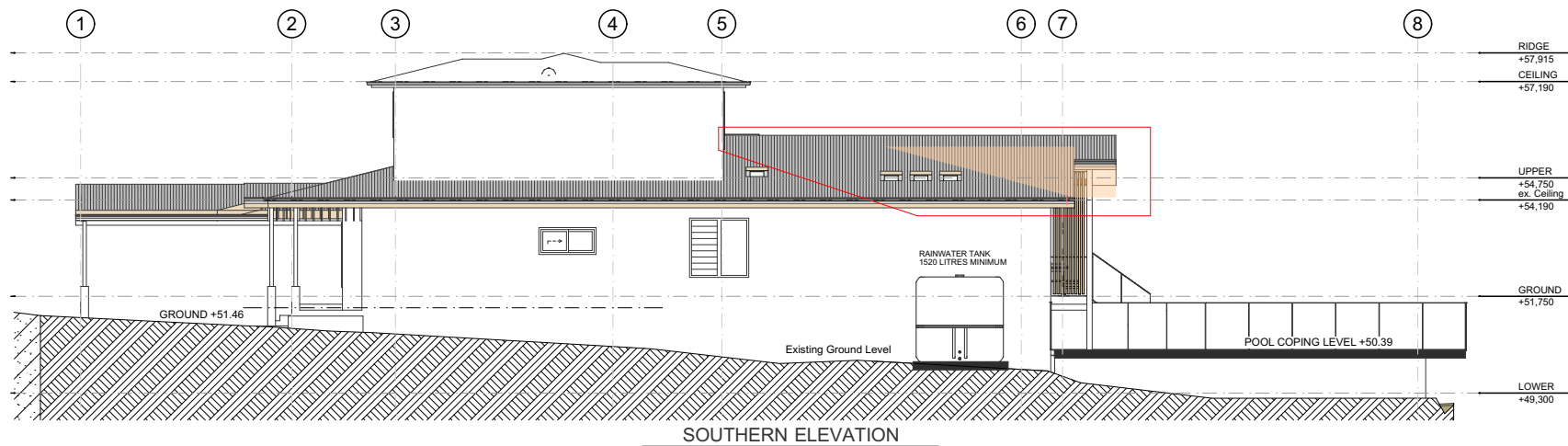
PROPOSED MODIFICATION TO DA2022/1553
123 Victor Road DEE WHY NSW 2099

Drawing Title

ELEVATION SHEET 2

Mod A | Roof Modified, changed to Gable; Cathedral Ceilings to Internals

Scale	1:100	Job Number	22-0202
Date	Wednesday, 12 April 2023	Drawn	S.G.
		Drawing No.	A6 / mod A



GENERAL WINDOW AND DOOR NOTE:
All windows to be Powder Coated Aluminium with fly screens.
All external doors to be Powder Coated Aluminium with fly screens.

EXTERNAL CLADDINGS:
A combination of Soyon 180 Linea Weatherboard (smooth texture) ,rendered Masonry AND selected Stone to subfloor areas.
All claddings to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the BCA particularly with respect to the referenced Acceptable Construction Practice as detailed in the BCA for product materials and installations.

ROOFING:
Lysaght colorbond 'Custom Orb' roof Sheeting
All roofing to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the BCA particularly with respect to the referenced Acceptable Construction Practice as detailed in the BCA for product materials and installations.

NOT FOR CONSTRUCTION

DETAILS PROVIDED BY
C.M.S. Surveyors of Dee Why

bdca
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BUILDING DESIGNER

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Client
Brooke and Russell Williams

PROPOSED MODIFICATION TO DA2022/1553
123 Victor Road DEE WHY NSW 2099
Drawing Title
ELEVATIONS SHEET 3

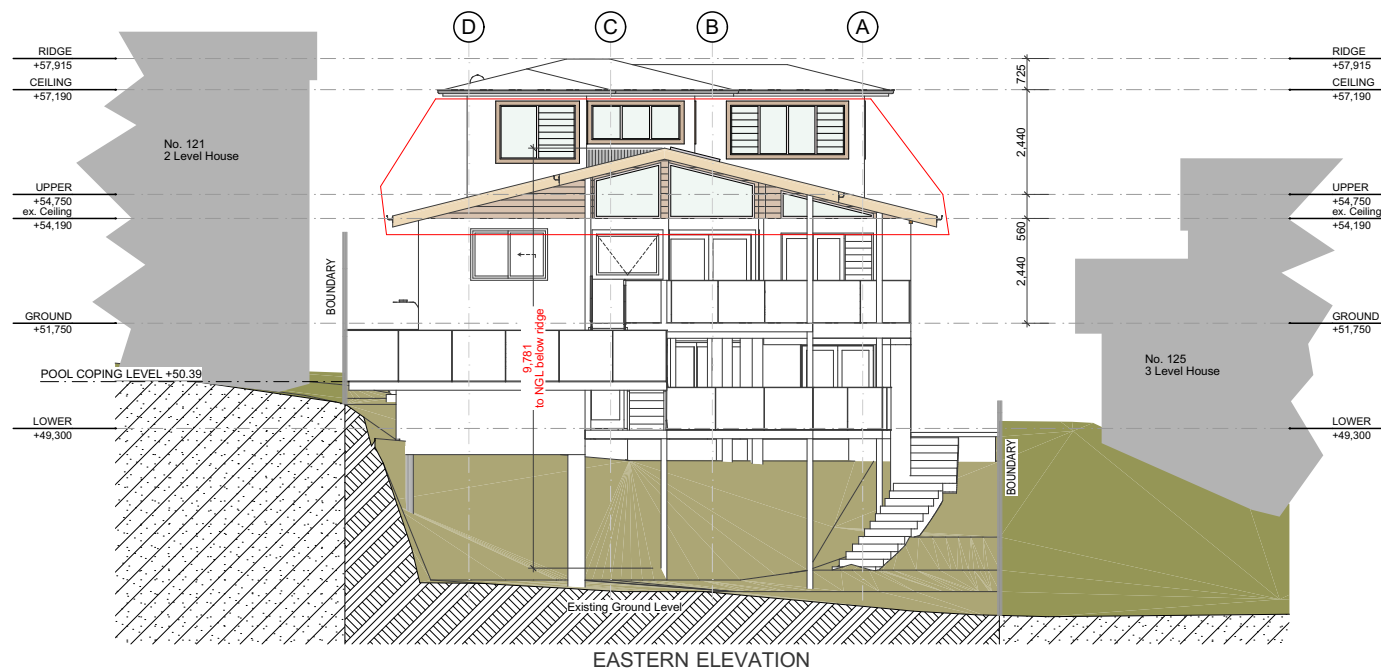
Mod A | Roof Modified , changed to Gable; Cathedral Ceilings to internals

Scale	1:100	Job Number	22-0202
Date	Wednesday, 12 April 2023	Drawn	S.G.
		Drawing No.	A7 /mod A

GENERAL WINDOW AND DOOR NOTE:
All windows to be Powder Coated Aluminium with fly screens.
All external doors to be Powder Coated Aluminium with fly screens.

EXTERNAL CLADDINGS:
A combination of Sycor 180 Linea Weatherboard (smooth texture) ,rendered
Masonry AND selected Stone to subfloor areas.
All claddings to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of
the BCA particularly with respect to the referenced Acceptable Construction
Practice as detailed in the BCA for product materials and installations.

ROOFING:
Lysaght colorbond 'Custom Orb' roof Sheeting
All roofing to be compliant with the requirements of NCC 2019 vol 2 part 3.5 of the
BCA particularly with respect to the referenced Acceptable Construction Practice
as detailed in the BCA for product materials and installations.



NOT FOR CONSTRUCTION

DETAILS PROVIDED BY
C.M.S. Surveyors of Dee Why

bdac
ACCREDITED
BUILDING DESIGNER

ACCREDITATION NO. 6055
ABN 17 751 732 195

SALLY GARDNER DESIGN AND DRAFT
PLANNING APPROVAL

SDS
Sustainable Design Specialist

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Client
**Brooke and Russell
Williams**

PROPOSED MODIFICATION TO DA2022/1553
123 Victor Road DEE WHY NSW 2099

Drawing Title

ELEVATIONS SHEET 4

Mod A | Roof Modified , changed to
Gable; Cathedral Ceilings to internals

Scale	1:100	Job Number	22-0202
Date	Wednesday, 12 April 2023	Drawn	S.G.
		Drawing No.	A8 /mod A

123 Victor Road, Dee Why

**123 VICTOR ROAD, DEE WHY
ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING HOUSE, INCLUDING AN IN-
GROUND SWIMMING POOL**

**VARIATION OF A PRECAUTIONARY DEVELOPMENT STANDARD REGARDING
THE MAXIMUM BUILDING HEIGHT CONTROL AS DETAILED IN CLAUSE 4.3 OF
THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

For: Alterations and additions to an existing dwelling house, construction of an inground swimming pool and landscaping works
At: 123 Victor Road, Dee Why
Owner: Russell & Brooke Williams
Applicant: Russell & Brooke Williams

1.0 Introduction

This precautionary written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. Clause 4.6 is not applicable to s4.55 modifications however this is a precautionary request with respect to compliance with the maximum building height as described in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

2.0 Background

Clause 4.3 of WLEP sets out the maximum height of a building as follows:

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

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

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

The Height of Buildings Map specifies a maximum building height of 8.5m.

The proposed modifications to the approved dwelling additions will result in an amendment to the rear roof form with a maximum height of up to 9.781m in height, resulting in a non-compliance of 1.281m or 15% to the control, as noted in Figure 1.

123 Victor Road, Dee Why

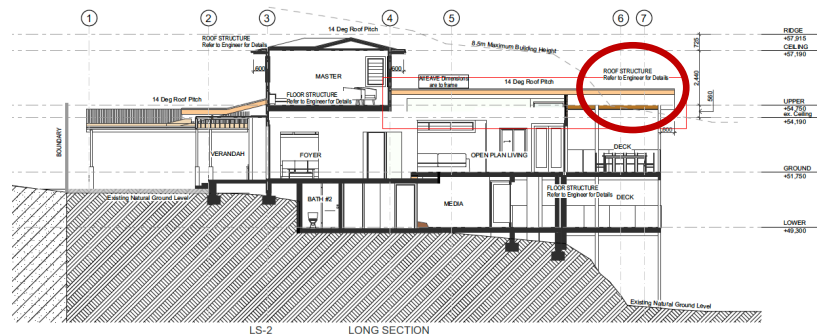


Fig 1: Extract from revised plans noting the area of the proposed building height non-compliance

The Dictionary to WLEP operates via clause 1.4 of WLEP. The Dictionary defines “building height” as:

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

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

For the purposes of calculating the maximum building height, the existing excavated level within the site and in particular within the excavated sub-floor level has been determined in accordance with the principles identified in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 [at 73].

As noted in *Merman* [at 74] the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, is considered to be an environmental planning ground within the meaning of clause 4.6 (3)(b) of WLEP 2012.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

123 Victor Road, Dee Why

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.3 of the LEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of the development and includes:

“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,.”

- (b) Clause 4.3 relates to the maximum height of a building. Accordingly, Clause 4.3 is a development standard.

3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in ***RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51]** where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

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

Clause 4.3 (the Maximum Building Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

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

123 Victor Road, Dee Why

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

The proposed development does not comply with the maximum building height development standard pursuant to Clause 4.3 of WLEP which specifies a maximum building height of 8.5m in this area of Warringah.

The proposed modifications to the approved dwelling additions will result in an amendment to the rear roof form with a maximum height of up to 9.781m in height, resulting in a non-compliance of 1.281m or 15% to the control.

As discussed in *Merman* [at 74] the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, is considered to be an environmental planning ground within the meaning of clause 4.6 (3)(b) of WLEP 2012.

The site has a significant slope which is exacerbated at the rear below the proposed roof modification. The proposed modification will improve amenity to the residents.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

123 Victor Road, Dee Why

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of the LEP provides:

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

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

123 Victor Road, Dee Why

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.3 of the LEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.
- The proposed modifications continue to presents as two storeys when viewed from the street. The area of non-compliance is at the rear of the dwelling and is not visible from the street or the public domain. The resultant dwelling is compatible in the streetscape in terms of height and scale. The proposal provides for a good transition between the existing dwellings at No. 121 and No. 125.
- The subject and adjoining properties enjoy views to the east and northeast towards Dee Why Lagoon and Beach. The proposed modified roof form is located at the rear of the dwelling. When viewed from the adjoining southern property, due to the topography of the site, the additions are located near ground level, presenting as single level from this view, and will not obstruct views from the adjoining southern property. The area of non-compliance is provided with ample setback to the northern boundary and due to topography and outlook the proposal will not obstruct views from the adjoining northern property. The proposal is therefore considered to maintain the view opportunities for the surrounding properties.

123 Victor Road, Dee Why

- The proposal will not result in any loss of views from nearby public land.
- The proposed additions are not visible from the areas Coastal or bush environments. There is no impact on the scenic quality of these areas.
- When viewed from the street, the proposed modifications continue to present as a two storey dwelling which is compatible with the existing development in this locality. The area of non-compliance relates to the rear of the dwelling and is not visible from the street.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in Clause 4.3 of WLEP.
- 5.2 Clause 4.3 of WLEP specifies a maximum building height of 8.5m in this area of Warringah.
- 5.3 As a consequence of the sloping topography of the site in the previous excavation, the proposed modifications will incorporate a revised roof form to provide cathedral ceilings.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:
 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
 22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is Clause 4.3 of WLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

123 Victor Road, Dee Why

- (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
- 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives for development for in the R2 zone?
 - 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
 - 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes Clause 4.3 of WLEP?

7.0. Request for Variation

7.1 Is compliance with Clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in Wehbe.
- (b) The first way in Wehbe is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum 8.5m building height standard, as outlined under Clause 4.3, and reasoning why compliance is unreasonable or unnecessary, is set out below:

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

The proposed modifications continue to presents as two storeys when viewed from the street. The area of non-compliance is at the rear of the dwelling and is not visible from the street or the public domain. The resultant dwelling is compatible in the streetscape in terms of height and scale. The proposal provides for a good transition between the existing dwellings at No. 121 and No. 125.

- *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

The subject and adjoining properties enjoy views to the east and northeast towards Dee Why Lagoon and Beach. The proposed modified roof form is located at the rear of the dwelling. When

123 Victor Road, Dee Why

viewed from the adjoining southern property, due to the topography of the site, the additions are located near ground level, presenting as single level from this view, and will not obstruct views from the adjoining southern property. The area of non-compliance is provided with ample setback to the northern boundary and due to topography and outlook the proposal will not obstruct views from the adjoining northern property. The proposal is therefore considered to maintain the view opportunities for the surrounding properties.

- *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

The proposed additions are not visible from the areas Coastal or bush environments. There is no impact on the scenic quality of these areas.

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

When viewed from the street, the proposed modifications continue to present as a two storey dwelling which is compatible with the existing development in this locality. The area of non-compliance relates to the rear of the dwelling and is not visible from the street.

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

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental*

123 Victor Road, Dee Why

planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the streetscape and which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The height non-compliance can be attributed to the prior excavation and the significant slope of the site and this is considered to be an environmental planning grounds which supports the variation to the control.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. The non-compliance is a result in an improvement to the amenity of the residents by providing for cathedral ceilings. The area of non-compliance does not result in any detrimental impact. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives of the R2 Low Density Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ also found that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*".

123 Victor Road, Dee Why

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation of to the building height, the proposed additions to the existing dwelling will be consistent with the individual Objectives of the R2 Low Density Residential Zone for the following reasons:

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

The proposal provides for alterations and additions to the existing dwelling, which continues to provide for the housing needs of the community.

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

This objective is not relative to the proposal.

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

The proposal does not require the removal of any vegetation and the proposal maintains an appropriate landscape setting.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of WLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions and alterations to the existing dwelling for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) There are no other matters required to be taken into account by the secretary before granting concurrence.

123 Victor Road, Dee Why

8.0 Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed additions and alterations to provide for a maximum building height of 9.781m when measured above the prior excavated levels of the site immediately within the building footprint.

This variation occurs as a result of the sloping topography of the site, the desire to improve amenity through the use of a cathedral ceiling and the prior excavation of the site, resulting in the distortion of how the building height plane relates to a site.

The extent of the variation to the building height control does not result in any significant impact for the views and outlook for the neighbouring properties.

This written request to vary to the maximum building height standard specified in Clause 4.3 of the Warringah LEP 2011 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.

Natalie Nolan
Town Planner