



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 on

WEDNESDAY 9 AUGUST 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 9 August 2023
via teleconference
Commencing at 10:00 AM**

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Development Determination Panel acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 26 JULY 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 26 July 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	REV2023/0011 - 143 & 145 RIVERVIEW ROAD AVALON BEACH - REVIEW OF DETERMINATION OF APPLICATION NO. DA2022/1030 FOR DEMOLITION WORKS, LOT CONSOLIDATION AND THE CONSTRUCTION OF A DWELLING HOUSE
ACTING REPORTING MANAGER	Thomas Prosser
TRIM FILE REF	2023/484868
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to REV2023/0011 for Review of Determination of Application No. DA2022/1030 for demolition works, lot consolidation and the construction of a dwelling house on land at Lot 1 & 2 DP 19402, Lot 215 DP 752046 & Lot LIC 325946, 143 & 145 Riverview Road AVALON BEACH, subject to the conditions set out in the Assessment Report.
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REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0011
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 19402, 143 Riverview Road AVALON BEACH NSW 2107 Lot LIC 325946, 143 Riverview Road AVALON BEACH NSW 2107 Lot 1 DP 19402, 145 Riverview Road AVALON BEACH NSW 2107 Lot 215 DP 752046, 145 Riverview Road AVALON BEACH NSW 2107
Proposed Development:	Review of Determination of Application No. DA2022/1030 for demolition works, lot consolidation and the construction of a dwelling house
Zoning:	C4 Environmental Living W1 Natural Waterways
Development Permissible:	Yes - Zone C4 Environmental Living Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Christopher McLeod Watt Fiona Talei Zielinski
Applicant:	Christopher McLeod Watt
Application Lodged:	21/04/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	28/04/2023 to 12/05/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 47.05%
Recommendation:	Approval
Estimated Cost of Works:	\$ 3,729,000.00

EXECUTIVE SUMMARY

This review application seeks to review the determination of Development Application DA2022/01030 which was determined by way of refusal on 8 March 2023, pursuant to Section 8.2 of the *Environmental Planning and Assessment Act 1979*.

DA2022/1030 was refused by Council for the following two (2) reasons, detailed below:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.

Particulars:

- a) The proposed development, by virtue of its height and scale, will not be consistent with the desired character of the locality.*
- b) The development will not be compatible with the height and scale of surrounding and nearby development.*

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 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.

Particulars:

- a) The applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard to the extent proposed.*
- b) The proposed development will not be in the public interest because it is inconsistent with the objectives of the height of buildings development standard or the objectives in the C4 Environmental Living zone to provide for residential development of a low density and scale*

The applicant has sought to address the reasons for refusal through the provision of amended design, with the roof to the south-west portion of the site reduced.

The application is referred to the Development Determination Panel (DDP) due to an exceedance of the Building Height development standard of more than 10%. The Pittwater LEP (PLEP) 2014 prescribes a maximum 8.5m building height for the site and the proposal has an maximum height of 12.5m, a departure of 47.05% from the control. The application is accompanied by a written Clause 4.6 variation request which explains that the variation to the height of buildings standard arises due to the significant sloping topography of the site. Additionally, the application is referred to the Development Determination Panel (DDP) as the previous application (DA2022/01030) was referred to the equivalent panel (DDP).

The application was notified in accordance with Council's Community Participation Plan (CPP) and received one (1) submission. The concerns raised in the objection relate to view loss and solar access that arise as a result of the building height non-compliance.

Critical assessment issues relate to view sharing and building height non-compliance, each of these are addressed within the report in detail.

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

PROPOSED DEVELOPMENT IN DETAIL

This Review Application is for the review of determination of Development Application No. DA2022/1030 which sought for the demolition of existing structures, consolidation of two allotments and the construction of a four storey dwelling house with ancillary works.

In order to address the reasons for refusal under DA2022/1030, the plans have been revised to delete a large portion of roof, being 23sqm in area, toward the rear of the dwelling.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways

Pittwater 21 Development Control Plan - D1.9 Side and rear building line

Pittwater 21 Development Control Plan - D1.11 Building envelope

SITE DESCRIPTION

Property Description:	Lot 2 DP 19402 , 143 Riverview Road AVALON BEACH NSW 2107 Lot LIC 325946 , 143 Riverview Road AVALON BEACH NSW 2107 Lot 1 DP 19402 , 145 Riverview Road AVALON BEACH NSW 2107 Lot 215 DP 752046 , 145 Riverview Road AVALON BEACH
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	NSW 2107
Detailed Site Description:	The subject site consists of two adjoining allotments legally identified as Lots 1 and 2 in Deposited Plan 19402, commonly known as 143 and 145 Riverview Road, Avalon Beach. Herein the combination of these two Lots are known as the 'site'. The site falls to the western side of Riverview Road, which is the low-side or waterfront side. The site has a street frontage of 26m, depth of 60m, and an overall surveyed area of 1,530m². A separate Lot exists to the west of the site which extends over the water and accommodates a cottage structure. This property is legally identified as Lot 215 in Deposited Plan 752046 and does not form a part of the site the subject of this development application. The site presently accommodates one detached dwelling house, a detached garage and a large sweeping driveway which intersects 141 Riverview Road and benefits from a right of carriageway. The site has an inclinator and a series of walkways and stairs throughout. The site benefits from a boat shed, boat ramp and a timber jetty projecting approximately 40m into the waterway - all of which sits on Crown Land. These structures on Crown Land also do not form a part of the site the subject of this development application. Topographically the site falls from east to west, or street to waterway. The land falls by up to 35m across the site, generally in a consistent manner. There are several rock features across the site. The site has a total of twenty-three (23) trees throughout of various native and exotic species. Shrubs, scrub and grasses exist throughout the site. The site is within the C4 Environmental Living zone pursuant to the Pittwater Local Environmental Plan 2014. The site falls within the coastal use, coastal environment and general coastal area pursuant to the SEPP (Resilience and Hazards) 2021.

Map:



SITE HISTORY

The proposal has been used for residential purposes for an extended period of time. Prior the submission of this application, the following pre-lodgement meetings were held between Council and the Applicant team:

DA2022/1030

The application was for Demolition and construction of a dwelling house and swimming pool. A report recommending approval was referred to the Development Determination on 8 March. 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:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration	Comments
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.

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 March 2023 and the notice of determination was issued on 20 December 2022. The review was lodged on 14 April 2023 and is to be considered by the Northern Beaches Development Determination Panel 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. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

Assessment of Reasons for Refusal DA2022/1030

How has the 8.2 Application Responded to The Reasons for Refusal?

The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2022/1030 that are stipulated in the Notice of Determination are examined below to determine if they remain applicable or should be overturned:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.

Particulars:

- a) The proposed development, by virtue of its height and scale, will not be consistent with the desired character of the locality.***
- b) The development will not be compatible with the height and scale of surrounding and nearby development.***

Comment:

The proposed building height has been reviewed as part of this assessment. The non-compliant element of the proposal has been reduced as part of this review application. The change to the

proposal has occurred over the south-west portion of the dwelling roof which has been removed, as pictured below:

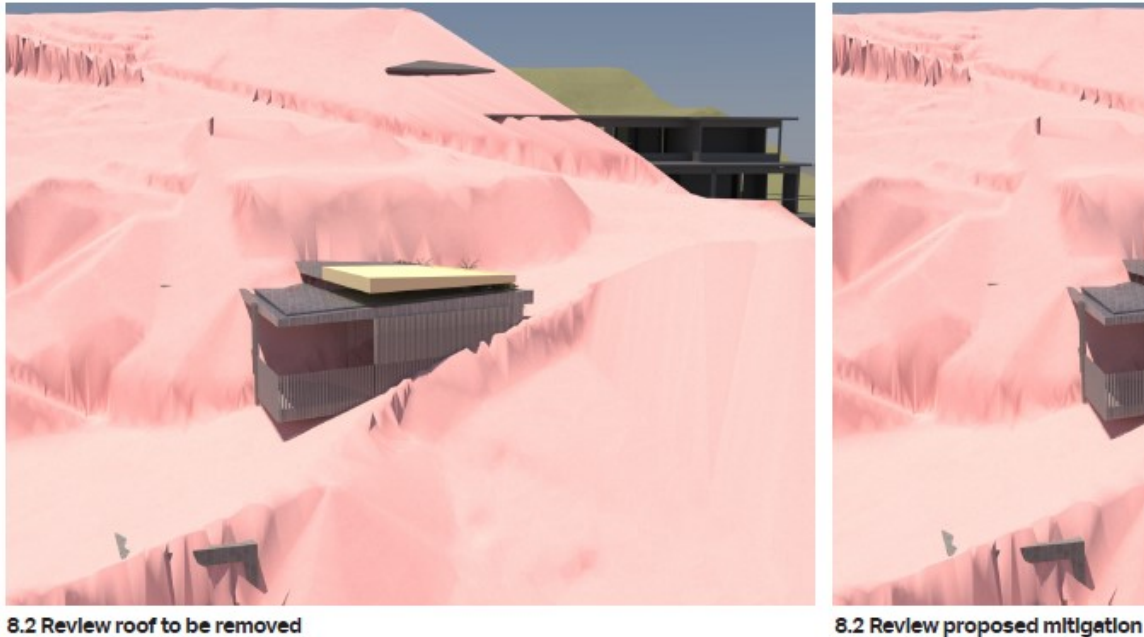


Figure 1 - Proposed amendments between DA2022/1030 and REV2023/0011

The area where the bulk of the proposal has been removed toward the rear of the dwelling, effectively contributes of the stepping of the built form along with the topography of the site, and reduces the area of building that breaches the development standard. While still non-compliant with clause 4.3 the PLEP 2014, the changes made are acceptable noting the steep sloping topography and constraints of the site and minimal amenity impact on adjoining properties. A detailed view assessment undertaken within the report demonstrates that highly valued views, while impacted, will largely be retained.

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 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.

Particulars:

a) The applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, or that there are sufficient environmental planning grounds to justify contravening the development standard to the extent proposed.

b) The proposed development will not be in the public interest because it is inconsistent with the objectives of the height of buildings development standard or the objectives in the C4 Environmental Living zone to provide for residential development of a low density and scale

Comment:

Based on the amended design (reduced height) and updated clause 4.6 it is deemed that the proposed development has consistent with the provisions of Clause 4.6 of the PLEP 2014.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/04/2023 to 12/05/2023 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:
Phillip Robert John Brett	46 Ocean Street WOOLLAHRA NSW 2025

The following issues were raised in the submissions:

- **Height of Buildings non-compliance**
- **View Loss**
- **Solar Access**
- **Insufficient Information**

The above issues are addressed as follows:

- **Height of Buildings non-compliance**

Concern has been raised with regard to the height of the proposed development and noted that the clause 4.6 request to vary the height is insufficient.

Comment:

As discussed with regard to clause 4.3 of PLEP 2014, the application seeks consent for a maximum height of 12.5m, representative of a 47.05% departure from the 8.5m height prescribed by PLEP 2014. In summary, the proposed written request from the applicant has been considered and is found to have adequately demonstrated the matters required to be demonstrated by subclause (3)(a) and (b). The maximum height non-compliance is as result of the significant drop of the property against the cliff. With the extent of non-compliance decreasing towards the front of the site. The non-compliant portion of the development does not attribute to any unreasonable impacts upon the amenity of adjoining properties and the height of the development as a whole is compatible with surrounding built form. The non-compliant height of the proposal is supported.

- **View Loss**

Concern was raised in regards to view loss of Pittwater.

Comment:

The proposal has been assessed against the view loss provisions under clause C1.3 (View Sharing) of the PDCP21 and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report. In summary, the proposed development does not cause unreasonable view loss to and from private and public open space. Adequate view sharing is achieved.

- **Solar Access**

Concerns have been raised in relation to the potential overshadowing created by the proposed development.

Comment:

The proposed development is multi storey, will be excavated into the natural landform and the site has a east-west orientation. The shadow diagrams, detail the shadowing impacts upon neighbouring properties. The development does not unreasonably overshadow adjoining properties living room windows and private open space of adjoining properties. The proposal complies with the requisite provisions of clause C1.4 (Solar access) of the PDCP 21.

- **Insufficient Information**

Comment:

The documentation and plans submitted are sufficient for the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported, subject to conditions The proposal is supported with regard to landscape issues. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D1 Avalon Beach Locality The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. The Arboricultural Impact Assessment (AIA) identified 26 trees of which trees 9, 15, 18, and 20 are located on neighbouring properties and as such must be retained, which is supported by the AIA. The remaining 22 trees are located within the property boundary and trees

Internal Referral Body	Comments
	3, 4, 6, 7, 8, 19, 24, 25, and 27 are proposed to be removed; of which trees 7, 19, 24, 25, and 27 are exempt by species or height thus do not require consent for removal. Trees 3, 4, 6, and 8 all have been rated low landscape significance, short ULE and priority for removal, and as such their removal can be supported. Thirteen trees will be retained. The Statement of Environmental Effects and the Landscape Plans outline that nine tree will be installed, which is supported and sufficient as replacement tree planting. A Project Arborist shall be engaged to supervise all work in the tree protection zone of trees to be retained, and in particular any required canopy/root pruning works or any ground level changes. All natural rock outcrops outside the construction footprint must be retained and protected during works. All on slab landscaping shall meet Council's minimum soil depth requirements.
NECC (Bushland and Biodiversity)	Supported, subject to conditions A review of the proposal refused under DA2022/1030 has been undertaken with respect to biodiversity issues. The review concluded that the original biodiversity comments remain current; specifically: <i>The proposed development has been assessed against the following applicable biodiversity-related provisions:</i> • <i>Biodiversity Conservation Act 2016</i> • <i>Biodiversity Conservation Regulation 2017 (specifically, entry into the Biodiversity Offsets Scheme)</i> • <i>SEPP (Resilience and Hazards) - Coastal Environment Area</i> • <i>Pittwater LEP Clause 7.6 - Biodiversity Protection</i> • <i>Pittwater DCP Clause B4.7 - Pittwater Spotted Gum Forest Endangered Ecological Community (EEC)</i> <i>The development footprint is identified on the NSW Biodiversity Values Map and as such, a Biodiversity Development Assessment Report (BDAR) has been submitted with the application. In addition, an Arboricultural Impact Assessment ('arborist report') and Landscape Plan have been submitted in accordance with pre-lodgement advice provided by Council (PLM2021/0359). The arborist report identifies four prescribed (i.e protected under DCP B4.22) native trees (Trees 3, 4, 6 and 8) for removal, all of which have been assessed as having a short Safe Useful Life Expectancy and low landscape significance.</i> <i>It is noted that the development proposes to retain significant trees Tree 1 (Angophora costata) and Tree 5 (Corymbia maculata) in accordance with pre-lodgement advice. Conditions recommended by the Landscape referrals body will serve to protect the remaining prescribed native trees on site.</i> <i>The submitted BDAR has assessed the biodiversity impacts of the proposal against the NSW Biodiversity Assessment Method (BAM) and identifies the following measures as evidence of avoidance and</i>

Internal Referral Body	Comments
	<i>minimisation of ecological impacts:</i> • consolidation of two lots into a single lot with one replacement dwelling to allow for greater setbacks and fewer tree impacts • siting of the replacement house within the footprint of the existing house • retention of the existing driveway alignment • retention of native trees including significant trees • proposed setbacks are greater than required under applicable planning provisions • dwelling footprint area is less than the permissible area • the consulting ecologist's assessment that the proposal will not fragment, isolate or prevent access to habitat, and "will not reduce the native tree canopy only thin the canopy". <i>In addition, one (1) biodiversity offset credit for the Pittwater Spotted Gum Forest Plant Community Type will be retired as a result of the proposal, as per the BAM Biodiversity Credit Report (26 May 2022).</i> <i>The submitted Landscape Plan has addressed applicable landscaping requirements under PDGP B4.7, with species from the Pittwater Spotted Gum Forest EEC comprising at least 80% of proposed new plantings. Finally, remaining Pittwater Spotted Gum Forest EEC on the site will be managed under a Biodiversity Management Plan for a five-year period. This will be conditioned.</i> <i>Upon assessment of the submitted plans and documentation, it is considered that the proposal has been appropriately designed, sited and will be managed to avoid adverse environmental impacts.</i> Minor amendments to original conditions have been recommended.
NECC (Coast and Catchments)	Supported, subject to conditions The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.

Internal Referral Body	Comments
	On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Levy Planning dated June 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP Estuarine Risk Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. On internal assessment, the ground floor level for the proposed additions and alterations is above the applicable EPL for the site. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP. Development on Foreshore Area A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC (Development Engineering)	Supported, subject to conditions No objections to the application subject to conditions.
NECC (Flooding)	Supported, subject to conditions The development proposes to consolidate the two properties and construct a new dwelling to replace the existing house on No. 143 and No.145. The site is affected by the Medium Flood Risk Precinct. The site is not subject to any Flood Planning Level control. The proposed development generally complies with the flood controls in the DCP and LEP.
NECC (Riparian Lands and Creeks)	Supported, subject to conditions This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses for riparian management, development in foreshore area; and • Northern Beaches Water Management for Development Policy On assessment the application meets the requirements of the relevant

Internal Referral Body	Comments
	Environmental Planning Instruments and policies relating to waterways, riparian areas, and groundwater. The proposal is therefore supported.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Supported, subject to conditions No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

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. 1301888S_02 dated 28 March 2023).

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

Commitment	Required Target	Proposed
Water	40	51
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) 2021Ausgrid

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

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

Comment:

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

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

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

Division 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 is mapped as being within the coastal environment area. The property is situated some distance from the waters edge, with that distance being intersected by a road and a public car park. The spatial separation and type of structures between the site and the waterway largely minimise opportunities for the development to have adverse impacts on the waterway, its ecology, or the coastal processes.

The development does not impact on access to the coast, any known Aboriginal heritage items or the use of the surf zone.

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

Comment:

The consent authority may be satisfied that the development is designed, sited, and will be managed in an appropriate manner to avoid adverse impacts referred to in subsection 1 as above.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The site is also mapped as being within the coastal use area. Given the separation of the site to the coast, the consent authority can be satisfied that the development is designed, sited, and will be managed in an appropriate manner to avoid adverse impacts.

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 has been reviewed by Council's Coast and Catchments Officer who considers that the development is not likely to cause an increase risk of coastal hazards on any land.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C4 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C4 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.8m - 12.5m (200mm reduction in height from original but also 23sqm reduction in roof area)	47.05%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Clause 4.3 <i>Height of Buildings</i>
Requirement:	8.5m
Proposed:	7.8m - 12.5m
Percentage variation to requirement:	47.05%

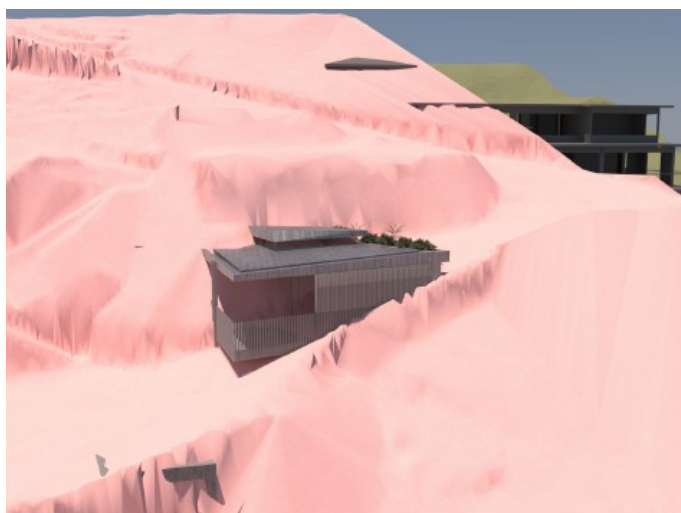


Figure 1 -

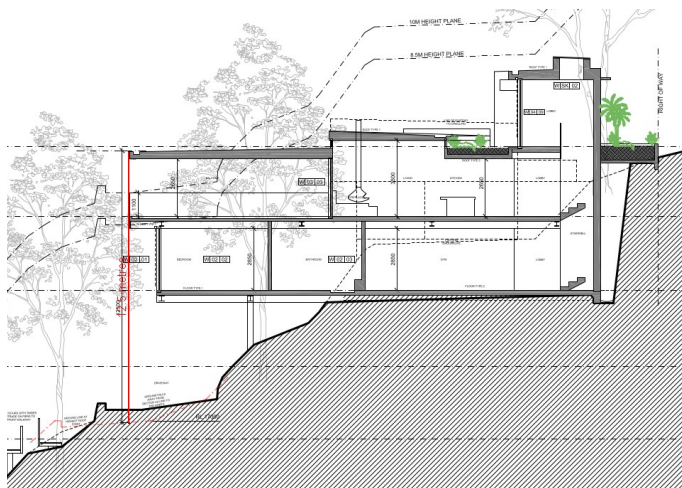


Figure 2 - Building height calculation

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:

"5.1 Steep topography

The site is extremely steep ranging from 25 to 28 degrees, significantly and exceeds the 16.7 degrees (30%). The Building Envelope control D1.11 of the Pittwater Development Control Plan (PDCP) 2006 acknowledges that the height (building envelope) should be assessed on merit. Therefore, the existing topography of the site is a fundamental environmental attribute which requires a bespoke design response. A 'business as usual' approach would result in environmental harm. The slope of the site is at its highest point where the height plane is breached.

5.2 Reduced excavation

To minimise excavation of the slope a deliberate design response has been to reduce the extent of excavation. Existing plateaus have been retained on site to avoid altering the conditions of the site and potentially generating slope instability, impacting groundwater and roots of trees. There is a plateau on the southeast portion of the site which impacts the height breach on that portion of the site. It is also proposed to retain the existing ROW and re-use existing rocks and soil on site.

5.3 Retention of Trees

A design principle has been the retention of trees and the proposed built form has been designed around the existing trees to ensure that the proposed development sits within the environment rather than on the site. The tree canopy is retained as only 5 trees are to be removed, which is a positive outcome on a site of 1530m².

5.4 Lot consolidation

Is located over two sites to reduce the overall massing of the built form."

Council's Assessment of the Clause 4.6 Request

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act, specifically the following objects of the EP&A Act:

- The development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property and will not have an unreasonable impact on the foreshore area noting the substantial rear setback proposed between the dwelling house and foreshore.
- The development promotes the orderly and economic use and development of the land, in so far as the proposed works to the ageing building will not have an unreasonable impact upon views when viewed from the public domain or adjoining properties.

The applicant's written request has demonstrated that the proposed development is an orderly and

economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 *Height of Buildings* of the PLEP 2014 are:

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

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

Comment:

The proposed building height is deemed appropriate is deemed to be reasonable given the significant fall of the land from the front to the rear of the property. The development is predominantly beneath the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwelling on the western side of Riverview Road. The proposed development integrates staggered wall planes and generous side setbacks to reduce apparent building mass. The development responds appropriately to the constraints on site.

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

Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in

this circumstance. The predominant compliance achieved by the building demonstrating a considered built form that is compatible with any future development on surrounding lands.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces.

d) to allow for the reasonable sharing of views,

Comment:

The proposal has been assessed against the view loss provisions under of the PDCP 21 and *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of adjoining properties in this report. In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

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

Comment:

The proposal is a uniquely designed architectural response to an extremely difficult sloping site, intersected by a number of mature trees and a sweeping driveway. The form and stepping of the building is found to be appropriate for the site, and in that respect, it is concluded that the building has been designed to sensitively respond to the natural topography.

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

Comment:

The proposed building height non-compliance will not compromise the adjoining aquatic land use or nearby bushland.

Zone Objectives

The underlying objectives of the C4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposed development is acceptable in terms of its impacts on the ecological and aesthetic values. There are no known special ecological, scientific or aesthetic sites of value recorded on the subject site.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The proposed works would not have an adverse effect on those values..

- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*

Comment:

N/A

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

Comment:

The generous setback proposed between the dwelling house and the foreshore will ensure that the development does not cause any unreasonable impact upon the the harbour.

- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment:

The proposed development will still allow for the conservation of trees and bushland.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

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

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

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

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The development proposes to excavate the site to approximately 9m below the natural ground level, however the works are not 5 metres below the Australian Height Datum. Further, the geotechnical report submitted with the application (prepared by Crozier, dated May 2022) notes that proposed works are unlikely to intersect the water table.

In this regard, an Acid Sulfate Soil Management Plan (ASSMP) is not considered to be necessary for the development of the site.

This condition and the recommendations made in the Preliminary Assessment have been included in the recommendation of this report.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development 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.

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

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

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

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

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

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the

development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

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

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

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

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

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

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	12.8m	-	Yes
Rear building line	FSBL	min. Beyond FSBL (15m from MHWM)	-	Yes
Side building line	North - 1.0m	min. 1.52m	-	Yes
	South - 2.5m	min. 2.06m	18%	No
Building envelope	North - Merit assessment	See discussion within report	-	Acceptable on merit
	South - Merit assessment	See discussion within report	-	
Landscaped area	60% (918m ²)	60%	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes
D15.18 Seawalls	Yes	Yes

Detailed Assessment

C1.3 View Sharing

As a result of the public exhibition of the development application Council received a number of submissions raising view loss as a concern from No. 141 Riverview Road, Avalon Beach.



The applicant has provided a photomontage of the view loss from the neighboring properties to the south. The photomontage lodged by the applicant was in accordance with the Land and Environment Court (LEC) practice and procedure, with survey confirmation provided to ensure accuracy.

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

Owners of the the vacant lot at No. 141 Riverview Road, Avalon Beach currently enjoy views of Pittwater, Ku-ring-gai Chase and the land and water interface. The views are obtained over the rear boundary of the property (west), as well as the side boundaries to the north and south.. The views of the Pittwater, headland and land water interface are highly valued, having regard to this principle.

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

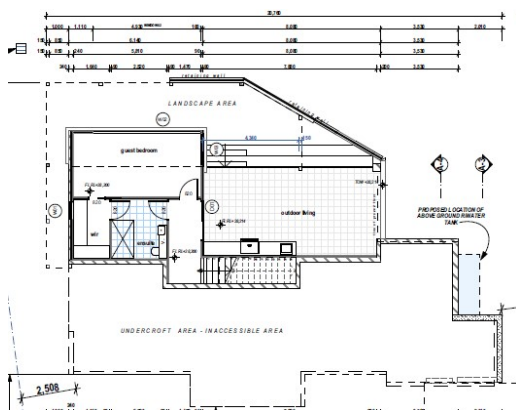
"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position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

Comment to Principle 2:

Currently this property is vacant and existing views are obtained from the vegetated sloping site as pictured under principle 3. However, as noted above Council approved a dwelling house on this site in 2021 (DA2021/0317 - Approved 8 September 2021). The approved development for this site includes the following:

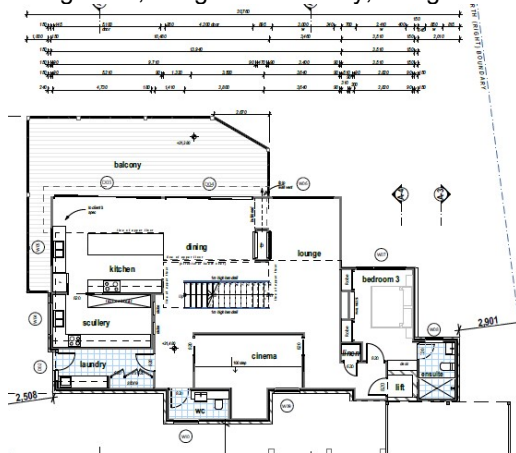
Lower Ground floor (RL 28.214)

Outdoor living, guest bedroom.



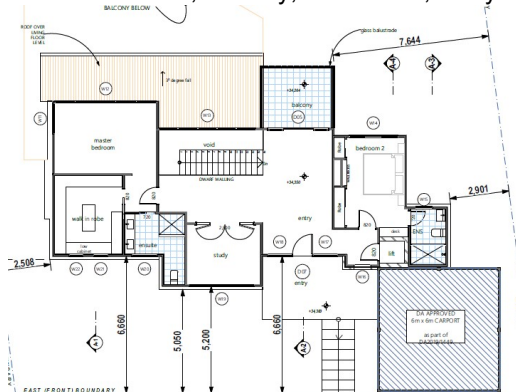
Ground floor (RL 31.380)

Living room, living room balcony, lounge room with cinema, kitchen, and bedroom 3.



First floor (RL 34.350)

Master bedroom, balcony, bedroom 2, study



If the proposed dwelling house is built, occupants would benefit from views from all levels from both living rooms, bedroom and balconies. The views taken would be over both the rear and side boundary. The views impacted from the proposed development would be taken over a side boundary.



Image 1 - View looking west - 141 Riverview Road



Image 2 - View looking north -west - 141 Riverview Road



Image 3 - View looking south-west - 141 Riverview Road

3. Extent of impact

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

Comment to Principle 3:

The impact of the development upon water views and land water interface is demonstrated in the images attached, above. No. 141 currently has substantial views to Pittwater and Ku-ring-gai Chase. The proposed dwelling house will reduce existing views from the approved dwelling house from living rooms and bedrooms over a side boundary. These areas are high use living areas and as such are highly valued, though difficult to protect being they are taken over a side boundary. The water views from these areas will be impacted to a minor extent as a result of the proposed works. While there will be a loss of a portion of existing water views as a result of the height of the dwelling house, some additional water views may also be reclaimed as a result of the removal of existing vegetation that currently dominates both the subject site and adjoining property. The land-water interface and Ku-ring-gai Chase will be retained. Qualitatively and in consideration of the collective existing views available from No. 141 Riverview Road, Avalon Beach, the extent of view loss is minor, noting that western rear views from the ground floor living room and principle private open space will be retained in full and water views looking north over the top of the proposed dwelling will still be available.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with

the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

In consideration of the existing views it is noted that the views in question are severely vulnerable to any significant development of the subject site; a new dwelling house will disrupt at least some existing water views. While it acknowledged that the proposed development breaches the Building Height development standard and side setback controls. The total severity of impacts upon water views is not considered to be unreasonable. A more skilful design is not likely to be able to achieve a reasonable scaled development while reducing view impacts to neighbouring properties.

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

Comment:

The proposal is considered to be satisfactory and not considered to have an unreasonable impact to views and vistas from Riverview Road.

- *Canopy trees take priority over views.*

Comment:

The development retains some canopy trees on site.

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

C1.4 Solar Access

Clause C1.4 *Solar Access* requires that:

- *The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.*
- *Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).*
- *Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.*
- *Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.*
- *The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.*

Comment:

Supporting shadow diagrams have been submitted with the application. The shadow diagrams indicate that living room windows and private open space of No. 141 Riverview Road will receive solar access

between 12pm-3pm in line with the requirements of this control.

C1.19 Incline Passenger Lifts and Stairways

No works proposed to the existing inclinator.

D1.9 Side and rear building line

Description of non-compliance

Clause D1.9 of the Pittwater 21 DCP requires development be setback at least 1.0m from northern side boundary and 2.5m from the southern side boundary

The development proposes the following:

North side setback 1.52m

Southern side setback - 2.06m (18% variation to the numeric control)

Merit Consideration

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

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

Comment:

The built form is not dominant as presented to the public domain and to adjoining and surrounding properties.

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

Comment:

The inclusion of varying materials and setbacks allows for the bulk and scale of the built form to be minimised.

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

Comment:

The proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

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

Comment:

This proposed development does not compromise any highly valued views from neighbouring properties or the public domain.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the*

development site and maintained to residential properties.

Comment:

Suitable privacy is maintained as part of this application, with no direct overlooking to neighbouring properties. In regards to shadowing the application is accompanied by Certified Shadow Diagrams which denote compliance with the solar access requirements prescribed within Clause C1.4 of P21 DCP.

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

Comment:

Council's Landscape Officer has reviewed the proposal and raised no objection subject to conditions which require additional landscape treatment be planted.

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

Comment:

The development has been sited appropriately in accordance with the site constraints and the surrounding residential context, ensuring reasonable amenity can be maintained for the dwelling occupants and those of adjoining and surrounding properties.

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

Comment:

The proposal maintains landscaping and vegetation to the front and rear of the site, suitable for future planting. As such, there is sufficient landscaping and vegetation on site to enhance the site and visually reduce the presentation of building bulk from both lot 1 and lot 2.

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

Comment:

The proposed development does not adjoin a commercial zone.

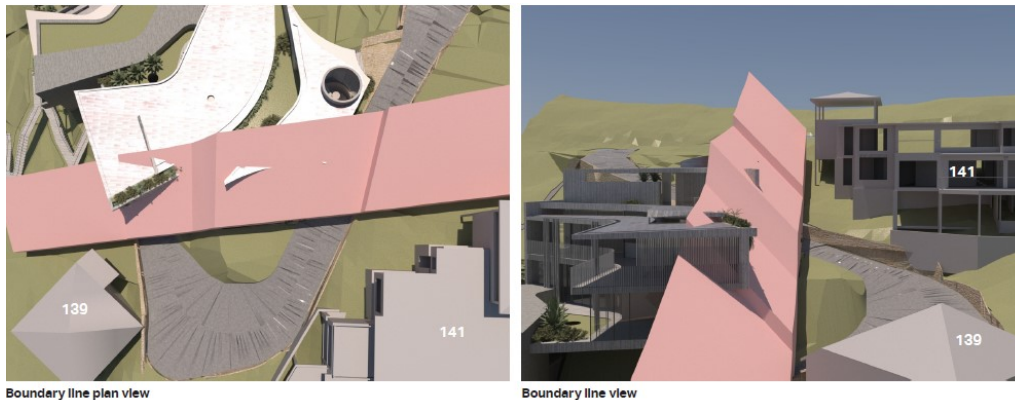
Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this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

D1.11 Building envelope

Description of Non-Compliance

Clause D1.11 Building envelope of the P21 DCP prescribes a 3.5m high envelope measured from the outer edges of the site before turning inwards at a 45 degree angle. The control does include a variation provision that states that where a building footprint is situated on a slope of 16.7 degrees, a variation may be considered on a merit basis.

The proposal exceeds the prescribes envelope on the southern elevations as depicted on the below overlay plans prepared by the architect:



Merit Consideration

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

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

Comment

The proposed development is centrally sited and is well articulated such that the dominance of the built form is reduced. The built form will remain sufficiently screened as presented to the public domain and surrounding properties. The proposal is therefore considered to achieve the desired future character of the locality.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment

The proposed encroachment to the building envelope does not manifest on the street elevation and does not materially alter the streetscape. The overall height and scale of the proposal is lesser than that of trees which will continue to tower over the built form.

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

Comment

The proposed development responds appropriately to changing topography across the site.

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

Comment

The extent of the breach relates to a minor element of the eastern elevation and in the context

of the entire development, is not unreasonable or unfounded. The dwelling ensures sufficient modulation to ensure that the perceived bulk and scale of the dwelling is significantly reduced.

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

Comment

The proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

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

Comment

Amenity considerations including solar access and privacy to the subject site and adjoining properties are maintained to a suitable standard.

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

Comment

Vegetation retention is discussed elsewhere in this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P 21 DCP 2014 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$37,290 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,729,000.

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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This Review application, for demolition work and construction of a dwelling house is referred to the 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. Additionally, the building height exceeds the development standard by more than 10% (in this case 47.05%).

One (1) submission raised concern regarding view impacts and solar 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 adequate solar access.

However, the site is constrained by significant sloping site and restricted building footprint and as such there are sufficient environmental planning grounds to be supported.

The critical assessment issues relating to views and solar access have been resolved to the satisfaction

of Council and are detailed within this assessment report.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to REV2023/0011 for Review of Determination of Application No. DA2022/1030 for demolition works, lot consolidation and the construction of a dwelling house on land at Lot 2 DP 19402, 143 Riverview Road, AVALON BEACH, Lot LIC 325946, 143 Riverview Road, AVALON BEACH, Lot 1 DP 19402, 145 Riverview Road, AVALON BEACH, Lot 215 DP 752046, 145 Riverview Road, AVALON BEACH, 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
DA-05-00/ Rev 4	27 March 2023	NOMAD
DA-10-00/ Rev 4	27 March 2023	NOMAD
DA-10-01/ Rev 4	27 March 2023	NOMAD
DA-10-02/ Rev 4	27 March 2023	NOMAD
DA-10-03/ Rev 4	27 March 2023	NOMAD
DA-10-04/ Rev 4	27 March 2023	NOMAD
DA-10-10/ Rev 4	27 March 2023	NOMAD
DA-10-11/ Rev 4	27 March 2023	NOMAD
DA-10-12/ Rev 4	27 March 2023	NOMAD

DA-10-15/ Rev 5	31 July 2023	NOMAD
DA-10-16/ Rev 4	27 March 2023	NOMAD
DA-10-17/ Rev 4	27 March 2023	NOMAD

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment Tree Protection Specification (ref: 143-145/RIVER/AIA/B)	10 May 2022	Tree IQ
Biodiversity Development Assessment Report (ref: BDAR032) rev. Final	6 June 2022	GIS Environmental Consultants
BASIX Certificate No. 1301888S_02	28 March 2023	ADP Consulting
NatHERS Certificate no. ZF30O10L4W-01	28 March 2023	NOMAD
Geotechnical Report	May 2022	Crozier

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
Development Application Report	May 2022	Arcadia

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	5 May 2022	Chris Watt and Fiona Zielinski

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	N/A

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

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

3. 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.

5. **No Approval for Secondary Dwelling**

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

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$37,290.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$3,729,000.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. On Slab Landscape Works

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

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

The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, grasses and lawn; 600mm for shrubs; and 1m for small trees.

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

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

9. Preparation of Biodiversity Management Plan

A Biodiversity Management Plan (BMP) is to be prepared by the Project Ecologist in accordance with recommendations of the submitted BDAR and the the Biodiversity Requirements for Development Applications available on Council's website.

The BMP is to be provided to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife and habitats.

10. Compliance with Ecologist's Recommendations – Pre-construction

All pre-construction measures specified in Section 7.4 of the submitted Biodiversity Development Assessment Report, the Biodiversity Management Plan (prepared prior to Construction Certificate) and these conditions of consent are to be implemented at the appropriate stage of the development.

Compliance with pre-construction measures is to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

11. 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 of trees and vegetation approved for removal
- direct supervision of tree and vegetation removal
- protocol for rescue of fauna
- procedures for stop work and formal impact assessment in the event that threatened fauna species are found during the pre-clearance survey

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

Reason: To protect native wildlife.

12. **Like for like credit retirement conditions - Ecosystem credit retirement conditions**
Prior to issue of the relevant Construction Certificate the class and number of ecosystem credits in Table 1 must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table 1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 1 requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Principal Certifier prior to release of construction certification.

Table 1 Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
1214-Pittwater Spotted Gum Forest	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	1	No	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 kilometers	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion. This includes PCTs: 1214, 1589

				of the outer edge of the impacted site	
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Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

13. **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 in accordance with Councils 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 and stormwater management arising from the development.

14. **Partial reconstruction of the existing driveway**

The existing concrete driveway access is to be partially reconstructed in accordance with the engineering plans prepared by Capital Consulting Engineers DRAW NO R1827-WAT-C1-DW-027C & 020D . The new section of driveway is to incorporate drainage inlet pits as detailed on the plans. Engineering plans are to be approved by the certifying authority prior to the issue of the construction certificate.

Reason: To facilitate safe vehicle entry into the garage.

15. **Erosion and Sediment Control Plan**

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

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

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

Reason: To protect the receiving environment.

16. **Construction Environment Management Plan**

A Construction Environmental Management Plan (CEMP) must be prepared in accordance with the environmental risks and mitigation methods identified in the Aquatic Ecology Report/Waterway Impact Statement and must be kept in the site office. The CEMP must identify and appropriately manage invasive species (e.g. *Caulerpa taxifolia*).

An induction plan for site personnel must be prepared and implemented that addresses the CEMP. Induction records must be maintained and available onsite at all times.

The CEMP and site induction plan must be submitted to the Principal Certifier for approval prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife, habitats and receiving waterways.

17. **Construction and Traffic Management Plan (CTMP)**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team 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, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP,
 - No materials or plant are to be located or parked in the private road/driveway, community title road or right of way
 - How any disruption to other users of the private road/driveway, community title

- road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
- A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
 - A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- 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. All Staff and Contractors are to use the basement parking once available
 - Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
 - Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
 - The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
 - Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
 - Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
 - The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
 - Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
 - The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
 - Proposed protection for Council and adjoining properties
 - The location and operation of any on site crane

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”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

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

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

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

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

19. **Stormwater outlet revetment (Pittwater Waterway)**

Rip rap for the revetment must be sized to hydraulic conditions. The rocks are to be a well graded Sandstone (D10, D50, D90) for interlocking effect.

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

Reason: Improve stability of the revetment to high flows and wave action.

20. **Limited development on foreshore area**

No major works in the foreshore area is approved under this Development Consent, except for the following purposes:

(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,

(b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

Reason: to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area

21. **Compliance with Standards**

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

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

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

22. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

23. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- a) any required root pruning, canopy pruning or ground level changes within the nominated tree protection zones.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

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

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any

approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

24. **Tree Removal Within the Property**

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

- a) tree 3 - *Angophora costata*, tree 4 - *Angophora floribunda*, tree 6 - *Eucalyptus robusta*, and tree 8 - *Eucalyptus robusta*,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

25. **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: 139, 141 & 147 Riverview Road, Avalon Beach.

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

26. **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.

27. 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.

28. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

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

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

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

Reason: Protection of trees.

29. **Compliance with Ecologist's Recommendations – During Construction**

All 'during construction and demolition' measures specified in Section 7.4 of the submitted Biodiversity Development Assessment Report, the Biodiversity Management Plan (prepared prior to Construction Certificate) and these conditions of consent are to be implemented at the appropriate stage of the development.

Compliance with 'during construction and demolition' measures is to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

30. **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.

31. **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.

32. **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: To protect the receiving environment.

33. **Use of equipment and vessels in the vicinity of seagrass**

No equipment is to be placed on any seagrass beds.

Inshore infrastructure for mooring vessels and plant must be used where suitable. Where mooring lines or cables are required, they shall be suitably buoyed prior to laying and kept buoyed once laid to prevent cable drag or swing damage (scalping). Where this is impractical, contractors should use a floating rope.

Vessels must have adequate clearance over seagrass beds, including allowance for tidal movement, swell/wind wave heights and vessel propulsion.

Reason: Protection of seagrass.

34. **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.

35. **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.

36. **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.

37. 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.

38. Implementation of 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.

39. Site inductions for Construction Environment Management Plan

The site Environmental Officer (or appropriate equivalent) must induct all staff prior to starting work, with an induction record maintained and available onsite at all times.

Personnel conducting the site induction must:

(a) Be familiar with any environmental protection conditions under the development approval

and/or the

Construction Environment Management Plan

(b) Be familiar with the names and contact details of relevant people and authorities in the event of any

environmental or site management emergency.

(c) Be familiar with the presence of environmentally significant areas within and surrounding the site.

(d) Be able to identify threatened species of fauna if they enter the site, especially Red-crowned Toadlet.

(e) Be familiar with animal welfare issues and procedures should human-wildlife interactions take place

during the construction phase.

Reason: To ensure all personnel understand what must be done to protect native vegetation, wildlife, habitats and receiving waterways on the site.

40. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning and Environment.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

41. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawings L_003, L_004, L_005, L_006, L_007 by Arcadia dated May 2022), and inclusive of the following conditions:

a) landscape works are to be contained within the legal property boundaries,

b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,

c) tree planting shall be installed as indicated on the approved Landscape Plan(s) (9 x trees),

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

e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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.

42. **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.

43. **Compliance with Ecologist's Recommendations – Post Construction**

All post-construction measures specified in Section 7.4 of the submitted Biodiversity Development Assessment Report, the Biodiversity Management Plan (prepared prior to Construction Certificate) and these conditions of consent are to be initiated or completed prior to any Occupation Certificate.

Compliance with this condition is to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

44. **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.

45. **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.

46. **Stormwater Disposal**

The stormwater drainage works shall be certified by the design engineer as compliant Councils water management for development policy and 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.

47. 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.

48. Geotechnical Certification Prior to Occupation Certificate

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

Reason: To ensure geotechnical risk is mitigated appropriately.

49. Certification of Bushland Management Contract

A bushland management contract for implementation of all post-occupation actions identified in the approved Biodiversity Development Assessment Report and the Biodiversity Management Plan (prepared prior to Construction Certificate) is to be entered into.

Evidence of engagement in accordance with this condition is to be certified by the Project Ecologist and provided to Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect and maintain native vegetation and wildlife habitat

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

50. Landscape Maintenance

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

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

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

Reason: To maintain local environmental amenity.

51. **Maintenance of Stormwater Treatment Measures**

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

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: To protect the receiving environment.

52. **Geotechnical Recommendations**

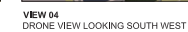
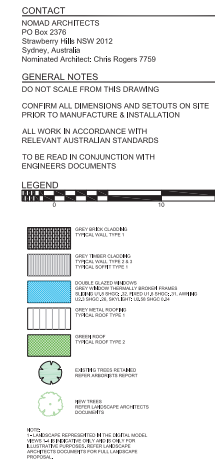
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

53. **Removal of exemption under B4.22 of Pittwater 21 Development Control Plan**

The exemption by proximity to an existing approved building (not including decks, pergolas, sheds, patios and the like) prescribed under B4.22 of the Pittwater 21 Development Control Plan shall not apply to Trees 1 and 5 (as identified in the approved aboriginal impact assessment). Trees 1 and 5 may only be cleared following approval via Development Application/Modification, a Vegetation Clearing Permit or is otherwise subject to s8(3)(4) of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

Reason: To ensure future retention of significant trees which have not been approved for removal.



4	27.03.21	UPPER BALCONY ROOF CUT BACK
3	13.10.22	EXISTING INCLINATOR & DRIVEWAY RETAINED
2	11.06.22	GA SUBMISSION
1	26.04.22	COST REVIEW FOR DA
Rev	Date	Description

File No: PL-20-05
Date Plotted: 31/01/2022



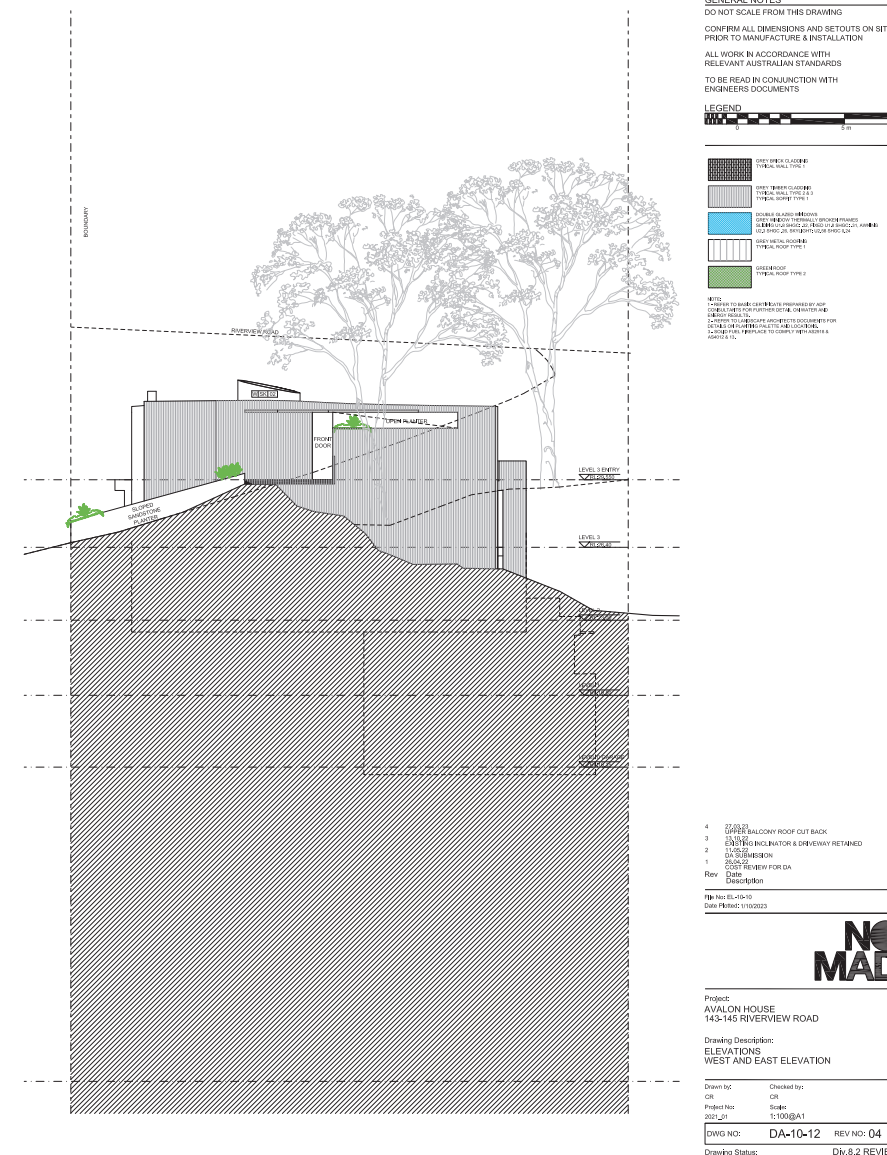
Project:
AVALON HOUSE
143-145 RIVERVIEW ROAD

Drawing Description:
SITE PLAN

Drawn by:	Checked by:
CR	CR
Project No:	Scale:
2021_01	1:200@A1
DWG NO:	DA-05-00
	REV NO: 04
Drawing Status:	Div.8.2 REVIEW







CLAUSE 4. 6 VARIATION REQUEST

TO ACCOMPANY A DEVELOPMENT APPLICATION
FOR

A NEW RESIDENTIAL DWELLING AND ANCILIARY WORKS

AT

143 & 145 RIVERVIEW ROAD,
AVALON, NSW 2107



Prepared by:

Levy Planning

Suite 67, 330 Wattle Street

ULTIMO NSW 2007

Ph: 9211 3366 Fax: 9211 8081

Email: admin@levyplanning.com

APRIL 2023

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1. INTRODUCTION

This is a written request, prepared in accordance with Clause 4.6 of the Pittwater Local Environmental Plan, (PLEP) 2014 to justify a variation to the building development standard of Height.

This Division 8.2 Request for Review of Determination of Development Application (DA)2022/1030 is submitted to Northern Beaches Council for demolition and construction of a tiered residential dwelling.

The maximum building height that applies to the site under Clause 4.3 of the PLEP is 8.5 metres. However, **Clause 4.6 (2D) (c) of the PLEP** acknowledges that on steep sites (with a slope in excess of 16.7 degrees (30%), greater flexibility is appropriate, and **provides an extension of the height limit to 10m**. This Clause applies to the subject site. The council have advised that while the 10m height plane applies to the site, for the purpose of the **Clause 4.6 Variation the 8.5m height plane is applied**.

The exceedance is due to the unique topography of the site and the location of an existing Right of Way access. The architectural design response is informed by an environmental commitment to minimise excavation and to utilise the location of existing plateaus on the site, created by carparking and the existing dwelling.

The design has been amended to reduce a portion of the Level 3 roof by 23m². The area of the proposed dwelling which exceeds the height limit is on the southern façade and pertains to a portion of the living room roof and balcony on Level 3. The roof area provided increases the thermal performance of the dwelling. No additional bulk (gross floor area) is created due to the height variation.

The proposed dwelling is **96.24% of the site, under the 8.5m height plane. The exceedance varies from 47.06% for 11.3m² to 11.76% for 8.5m²**

The objectives of Clause 4.6 are to provide an appropriate level of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development, by allowing flexibility in particular circumstances.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various recent decisions in the New South Wales Land and Environment Court (LEC) and New South Wales Court of Appeal (Appeals 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, RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130) and Al Maha Pty Ltd v Huajun Investments Pty Ltd (2018) 233 LGERA 170; [2018] NSWCA 245.

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)]; and
3. That the proposed development will be **in the public interest** because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

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This request considers that compliance with the Height of building development standard is unreasonable and unnecessary in the circumstances of the proposed development because the objectives of the development standard are achieved.

There are strong environmental planning grounds to justify the variation. Such as a design approach which reduces excavation and a design which complements the existing topography of the site, for example, the use of existing plateaus and retention of trees.

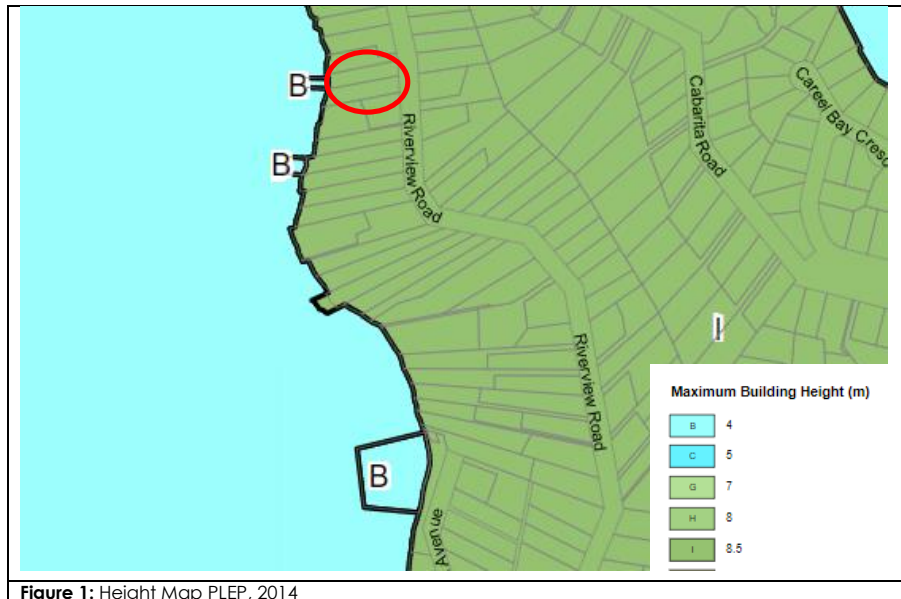
Specifically, the development satisfies the objectives of the height standard, as well as the objectives of the C4 Environmental Living Zone/C4 Conservation Zone and is therefore in the public interest.

This request also addresses the requirement for concurrence of the Secretary as required by Clause 4.6(4)(b). It is therefore considered appropriate in these circumstances to grant the Clause 4.6 variation request.

2. DEVELOPMENT STANDARD TO BE VARIED

2.1 Height Standard to be Varied.

The standard that is proposed to be varied is the Height of Building development standard which is set out in Clause 4.3 of the PLEP, 2014 as follows:



Clause 4.3 (2) states "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".

Clause 4.3 (2D) states, "Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the **Height of Buildings Map** may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the **Height of Buildings Map** is minor, and
- (b) the objectives of this clause are achieved, and

(c) the building footprint is situated on a slope that is more than 16.7 degrees (that is, 30%), and

- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope"

The numerical value of the development standard applicable in this instance is 8.5m and 10m.

2.2 Exceptions to development standards

Clause 4.6 of the PLEP, 2014 allows exemptions to a development standard. The relevant Clauses are addressed below.

Clause 4.6	
4.6 Exceptions to development standards <i>(1) The objectives of this clause are as follows—</i> <i>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i> <i>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i>	
	Commentary
<i>(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</i>	The development standard to be varied is not excluded from the operation of clause 4.6 of the LEP.
<i>(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—</i> <i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i> <i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard</i>	The Submission of a Clause 4.6 variation request is the subject of this Report and meets this requirement. a) The issue of unreasonable or unnecessary is addressed in Section 4 of this Report b) The issue pertaining to environmental planning grounds is addressed in Section 5 of this Report
<i>(4) Development consent must not be granted for development that contravenes a development standard unless—</i> <i>(a) the consent authority is satisfied that—</i> <i>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i> <i>(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</i>	The purpose of this report is to address Clause 4 a(i) and (ii) is addressed in Section 6 of this Report.

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<i>(b) the concurrence of the Planning Secretary has been obtained.</i>	
<i>(5) In deciding whether to grant concurrence, the Planning Secretary must consider— (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and (b) the public benefit of maintaining the development standard, and (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.</i>	Clause 5(a) is addressed in Section 7 of this Report

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827.
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action).
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (Al Maha).

The response in this Report is informed by the above.

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3. EXTENT OF VARIATION

The area of the height breach pertains to a portion of the living room roof and balustrading at Level 3.

Breach Analysis - 1m Contour Intervals over distance of 3.7m							
			% of	Area of	% of	% of	
Maximum RL		M		Breach			
Balcony roof	29.5	over	8.5	m ²	Roof	Site	Function
Existing RL at highest point	17.0						
Existing RL plus 8.5m	25.5	4.0	47.06%	11.3	2.69%	0.74%	
Existing RL plus 10m	27.0	2.5	29.41%	11.3	2.69%	0.74%	Deck Cover & Façade & Rooms below shading
Existing RL at highest point	18.0						
Existing RL plus 8.5m	26.5	3.0	35.29%	12.8	3.05%	0.84%	
Existing RL plus 10m	28.0	1.5	17.65%	12.8	3.05%	0.84%	
Existing RL at highest point	19.0						
Existing RL plus 8.5m	27.5	2.0	23.53%	15	3.57%	0.98%	
Existing RL plus 10m	29.0	0.5	5.88%	11	2.62%	0.72%	
Existing RL at highest point	20.0						
Existing RL plus 8.5m	28.5	1.0	11.76%	8.5	2.02%	0.56%	
Existing RL plus 10m	30.0	-0.5	-5.88%				
Maximum RL Living room roof	30.5						
	20.5						
Existing RL plus 8.5m	29.0	1.5	17.65%	10	2.38%	0.65%	
				57.6	13.71%	3.76%	8.5m Breach
				35.1	8.36%	2.29%	10m Breach

Table 1 – Height breach analysis

Note: The above table is a numerical representation of Figure 2

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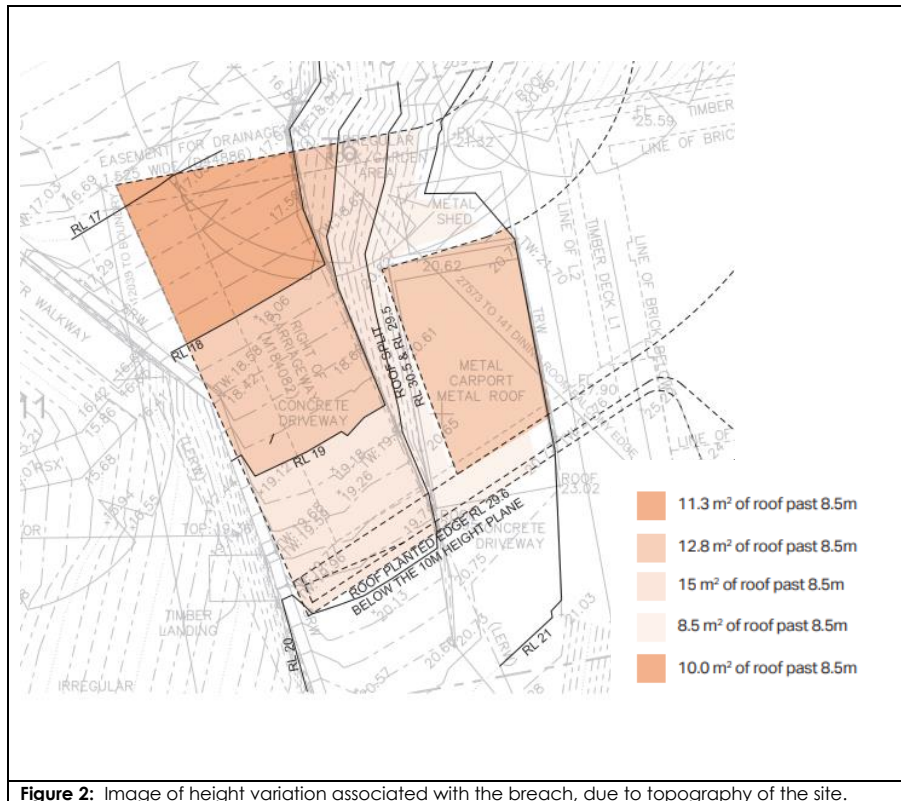
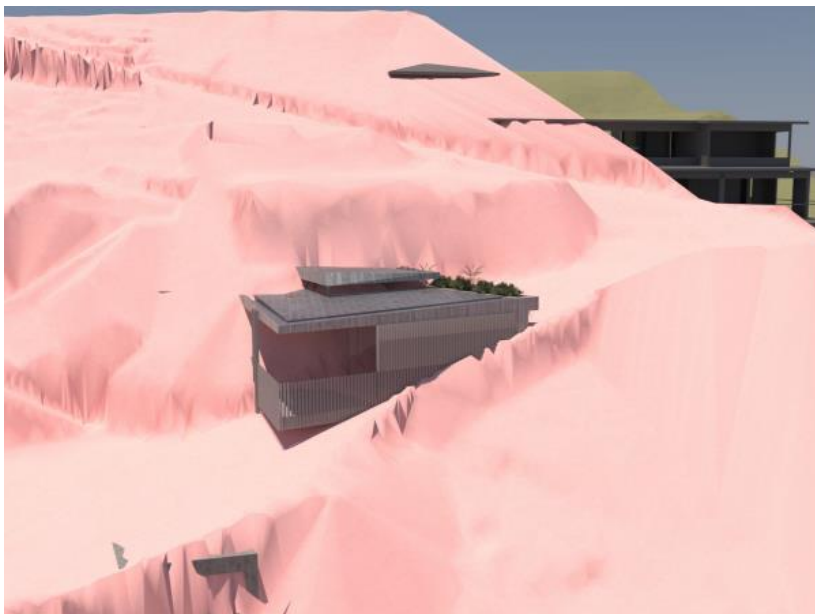


Figure 2: Image of height variation associated with the breach, due to topography of the site.



8.2 Review proposed mitigation

Figure 3: Model of 8.5m height plane – aerial view in a southerly direction.
Note: This view is diagrammatic and not at eye level.

4. UNREASONABLE AND UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable and unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of the PLEP, 2014.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary.

The decision in *Wehbe v Pittwater* [2007] NSW LEC 827 expanded on the findings in *Winten v North Sydney Council* and established a five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following.

1. The **objectives of the standard** are achieved notwithstanding non-compliance with the standard.
2. The underlying **objective or purpose of the standard** is not relevant to the development and therefore compliance is unnecessary.
3. The underlying **objective or purpose would be defeated** or thwarted if compliance was required and therefore compliance is unreasonable.
4. The development standard has been **virtually abandoned or destroyed** by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The "**zoning of particular land**" is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone. Consequently, compliance with that development standard is unnecessary and unreasonable.

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

Nonetheless, we have considered each of the ways as follows.

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4. 1 Test 1- Objectives of Standard are achieved

The underlying objectives or purpose of the development standard are achieved notwithstanding non-compliance with the standards

Objective	Commentary
4. 3 Height of buildings (1) The objectives of this clause are as follows -	
(a) <i>to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,</i>	The character of the area is one of a low-density residential suburb dominated by views and access to the Pittwater waterways. This locality is characterised by properties that are built on steep facing slopes with rocky outcrops and trees.
	<u>Height</u> <u>Southeast</u> To the SE of the subject site is the recently approved No.141 Riverview Road DA 2021/0317 No.141 ridge RL is 41.1 The proposed dwelling is located midway along the slope and the RL's vary per level. Level 0 – RL 16.15 Level 1 – RL 19.50 Level 2 – RL 23.00 Level 3 – RL 26.40 Level 4 Entry – RL29.550 Level 4 Roof – RL 33.250 Level 4 Skylight – RL 34.195 To the north of the subject site is No.147. No.147 ridge RL 23 in height. <u>Southwest</u> To the southwest of the subject site is No. 139 No 139 ridge RL is 26.1 in height.

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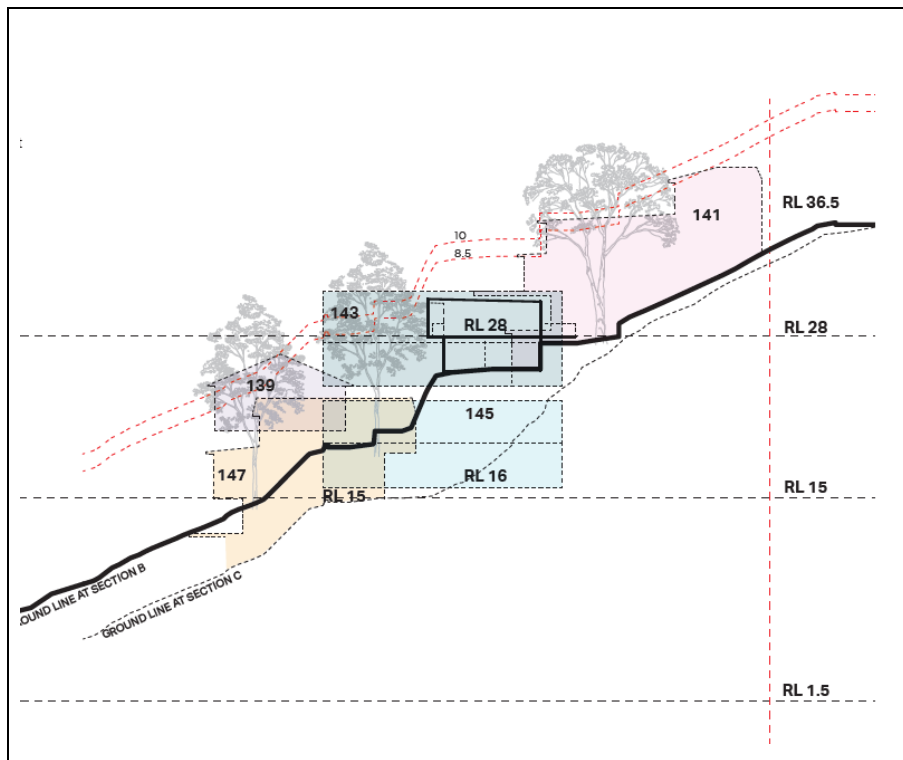
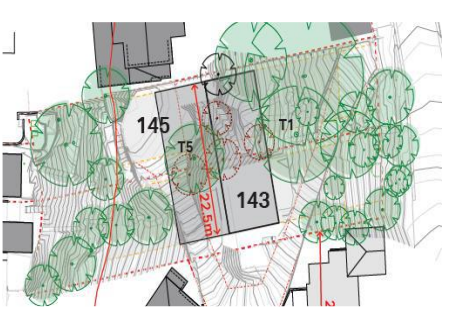


Figure 4: Extract from Pre DA-Report page 39 enclosed in Annexure 12 which identified proposed dwelling within context of existing dwellings and recently approved, No. 141.

	It is clear from <i>Figure 4</i> that the proposed dwelling height is compatible with the surrounding dwellings appropriate and does not visually dominate. It is consistent with the desired character of the area.
	<u>Scale</u> The subject site is comprised of two sites, which has the potential to accommodate two individual dwellings, however in this instance it is proposed to consolidate the sites and construct only 1 residential dwelling, therefore the scale is lower than that which is permissible. Alternative design options have been explored and they result in the footprints identified in <i>Figure 5</i> and encapsulate options around scale. The design emphasis being to reduce contact with the ground and therefore enhance the environmental footprint of the dwelling.

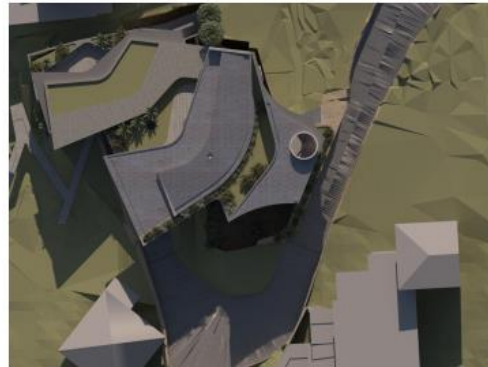
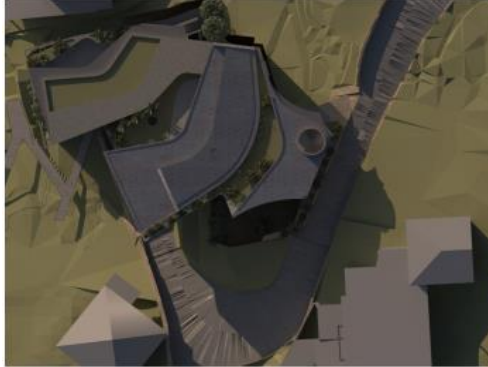
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	Two dwellings per site Traditional approach – vertical orientation Total footprint – 468m² 30% of the site area (including ROW)
	One dwelling two sites. Traditional approach –horizontal orientation Total footprint – 382m² 25% of the site (including ROW)
	1 dwelling per two sites – Site specific form. Total footprint is approximately 300m² Of the 300m of footprint only 110m² touches 'new ground'. That is 1/3 of the building footprint impacts untouched ground or 7.19% of the site area. The proposed design is a preferable outcome in terms of scale and meets the height objective.
Figure 5: Extract from Pre DA-Report enclosed in Annexure 12 which potential development options for the site.	
It is clear from the above options that the proposed design is preferable in terms of scale and that the proposed dwelling satisfies Objective a) in terms of being consistent with the desired character of the area.	
<i>(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development</i>	The site is surrounded by dwellings of a similar height and scale. Refer to response above and Figure 6 below. No. 141 Riverview, although compliant, is a more dominant built form as viewed from Riverview Road. This is, in part, a product of the site levels and access. The proposed dwelling will not be visibly dominant from the street level as it is located approximately mid-way along the site. The access

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		will be the only visible component from Riverview Street..
 Figure 6: Photomontage of proposed dwelling in context to the surrounding development as viewed from the waterway.		
The proposed dwelling is compatible in terms of height and scale with the surrounding development, further as the building is tiered in an 'arc' with the topography of the site the overall impact is reduced. The proposed dwelling is able to achieve Objective b).		
(c) to minimise any overshadowing of neighbouring properties,	The proposed dwelling has been designed to ensure that there is minimal impact on neighbouring properties from overshadowing. It is tiered /stepped down the slope in various 'arcs' rather than a 'block' to reduce the overall bulk of the dwelling which reduces any potential impact on neighbouring sites. The subject site is orientated east west and is located on a western facing slope. No. 141 is located above the proposed dwelling therefore loss of solar is minimal. No. 139 is located below the proposed dwelling and with a sufficient distance between the buildings to remain largely unaffected except at 9.00am. No. 147 is not impacted by overshadowing due to its orientation refer to Figure 7 below. Overall surrounding sites are able to a minimum of 3 hours sunlight on 31 June.	

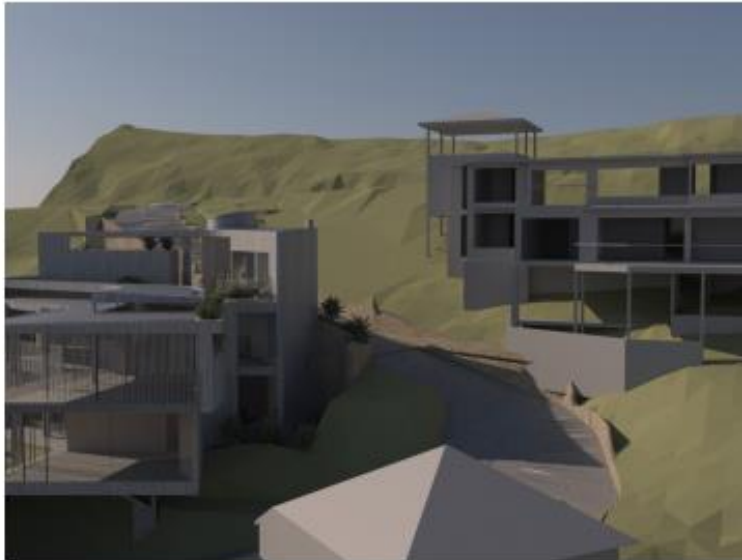
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 WINTER 9am Figure 7: Proposed shadows at 9.00am	
 WINTER 12noon Figure 8: Proposed shadows at 12 noon	
 WINTER 3pm Figure 9: Proposed shadows at 3.00pm The proposed dwelling at No 141 is not impacted by the proposed dwelling at No. 143 7 145 and is able to achieve more than 3 hours sunlight. See overleaf for further documentation.	

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WINTER 12noon

Note: The positioning of the existing and new house between 139 & 141 results in the majority of shadows falling between built form.



WINTER 3pm

Note: The positioning of the existing and new house between 139 & 141 results in the majority of shadows falling between built form.

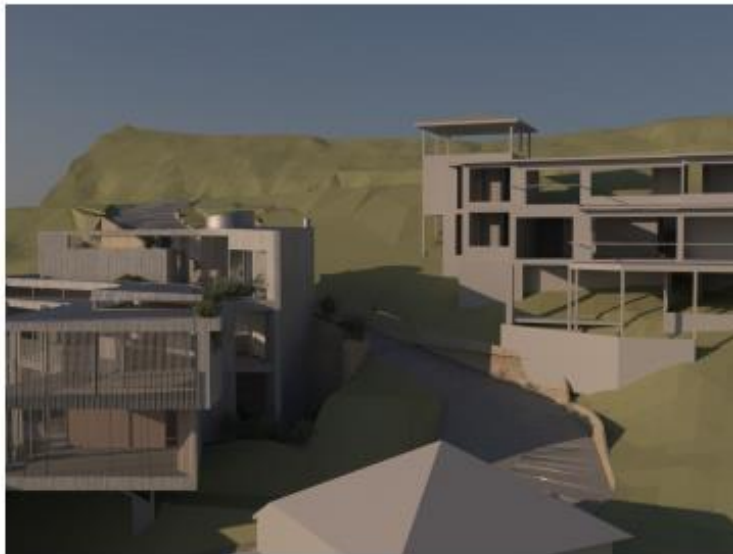


Figure 10 – Solar diagrams interface

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Proposed No. 141 Riverview Road is able to achieve more than 3 hours sunlight on the 21 June.	
The proposed dwelling has been designed to minimise any overshadowing of neighbouring properties as demonstrated above and is able to meet Objective c).	
(d) to allow for the reasonable sharing of views,	There are no view loss issues from neighbouring sites. From No. 139 the orientation and location of the built form sits below the proposed dwelling and its primary western water view remains uninterrupted. The recently approved No. 141 is orientated due west and has views over the top of the roof of 139 towards the waterway. Therefore, its primary view remains uninterrupted. Refer Design Report and View Analysis Report in Annexure 3.
	No. 139 _ The orientation and location of the built form sits below the proposed residence and its primary western view remains uninterrupted. The recently approved No. 141 is orientated due west and has views over the top of the roof of 139. These views remain uninterrupted. Refer to detailed View Analysis in Annexure 3. The primary view from the entry hall, dining room, kitchen, lounge and balcony are due east towards the Pittwater. The proposed new dwelling is not visible at all from this level. This is an excellent outcome for No. 141. From the guest bedroom on the lower level all direct water views to the water are retained. There is small oblique view that is reduced; however, it is a secondary view and noting that the view is from a bedroom . Tenacity Consulting v Warringah Council states that the following 4 steps are to be considered. 1 – <u>Assessment of views to be affected</u>. Water views are valued more highly than land views. In this instance water views area maintained. Whole views are more

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	important than partial. The whole view from 141 is retained. <u>2-From which part of the property are the views.</u> View across side boundaries are harder to protect than front and rear. In this case the front views of No. 141 are entirely protected. <u>3-Extent of the Impact</u> Views directly to the water from the living area, dining area and balcony are retained. If orientated in a northerly direction, there is a minor portion of the oblique secondary view that is impacted. <u>4- Reasonableness</u> Given the generosity of the site size and the potential to develop two sites with two dwelling the potential impact is far greater than the skilful design of the current proposal. The primary views are entirely protected, and this is an excellent outcome for No. 141. As noted, there is a minor oblique view to the north which is partially impacted. The impact is entirely reasonable.
 Figure 11: Potential view from entry of No.141 Riverview Road. Primary view to the waterway is retained. Proposed dwelling is not within view.	

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Figure 12: Potential view from Lounge of No.141 Riverview Road. Primary view to the waterway is retained. Proposed dwelling is not within view.



Figure 13: Potential view from Dining room of No.141 Riverview Road. Primary view to the waterway is retained. Proposed dwelling is not within view.

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Figure 14: Potential secondary view from kitchen room of No.141 Riverview Road in a northerly direction. The majority of the view will be obscured by the balustrade at 141. A small portion of the proposed roof sits above the balustrade from this angle.

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

The current design is an exemplary example of a dwelling that has been designed to respond to the unique topography of the existing site.

Garigal lands

This includes starting a process of understanding of being part of Garigal lands that will continue as the design evolves.

Existing plateaus

Utilise existing plateaus, to reduce the need to for cut, including the existing ROW.

Retention of trees

Only 5 trees are required to be removed, which is an outstanding outcome. The proposed dwelling has been designed around the existing trees and vegetation.

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	<u>Materials and finishes.</u> Utilise materials and finishes that complement the natural tones of the site, for example grey brick and grey timber hardwood. <u>Reduce Excavation</u> A key design intent is to reduce excavation. A number of design options have been tested and the option that is least impactful is the desired design outcome.
(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.	The visual impact on the natural environment is complemented by proposing a design that is organic in form and genuinely responsive to the environment. Care has been taken to minimise the visual impact by tiering the proposed dwelling in a series of gradations to complement the natural topography of the site. In addition, the proposed dwelling is designed in a collection of 'arcs' at each level to ensure facades are not read as a flat frontage which will reduce the overall visual bulk. The proposed dwelling will not be visible at eye level from the street level. The proposed dwelling sits into the topography and natural tree canopy and is only partially visible from the waterway. The proposed dwelling has no impact on heritage items or conservation area, as they not located in the vicinity of the subject site. Refer to Design Report and Visual Analysis report in Annexure 3.
The proposed dwelling will not result in an adverse visual impact on the natural environment.	
2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—	
a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and	The proposed dwelling will result in an exceedance of the 8m and 10m height plane in one portion of the site. The exceedance is due to the natural topography, a commitment to reduce excavation,

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	retain trees and the location of the existing right of way access road. The portion that exceeds 8.5m height plane, is 57.6m² of the roof, which is only 13.71% of the total roof area and 3.76% of the entire site. 96.24% of the site, under the 8.5m height plane. The variation is a 'point in time' and is continually reducing as the proposed dwelling height reduces across the existing topography. Therefore, the height breach is minor and meets Objective a) .
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Therefore, the objectives of Clause 4.3(1)a Height of buildings is achieved.

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 *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the Height of building development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.3(a) have been met on this way alone. For the sake of completeness, the other recognised ways are considered as follows.

4.2 Test 2 -Underlying objective is not relevant.

The underlying objective or purpose IS relevant to the development and is therefore not relied upon.

4.3 Test 3-The objective would be defeated.

The third test states that the objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

In this instance, the objective would NOT be defeated or thwarted if compliance was required. Therefore, this reason is not relied upon.

4.4 Test 4-The development standard has been abandoned.

The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.

The standard has not been abandoned by Council and is therefore NOT relied upon.

4. 5 Test 5- The Zoning is unreasonable or inappropriate

The zoning of the subject site C4 Environmental Living and is considered reasonable and appropriate and is therefore NOT relied upon

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Therefore, compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

Clause 4.6 (3)(b) of the PLEP, 2014 requires contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention

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 elements of the development which contravene the Height of Building development standard relate to a portion of the roof, glass line and awnings.

There are sufficient environmental planning grounds to justify contravention of the height of buildings development standard in this specific instance, as described below.

5.1 Steep topography

The site is extremely steep ranging from 25 to 28 degrees, significantly and exceeds the 16.7 degrees (30%). The Building Envelope control D1.11 of the Pittwater Development Control Plan (PDCP) 2006 acknowledges that the height (building envelope) should be assessed on merit. Therefore, the existing topography of the site is a fundamental environmental attribute which requires a bespoke design response. A 'business as usual' approach would result in environmental harm. The slope of the site is at its highest point where the height plane is breached.

5.2 Reduced excavation

To minimise excavation of the slope a deliberate design response has been to reduce the extent of excavation. Existing plateaus have been retained on site to avoid altering the conditions of the site and potentially generating slope instability, impacting groundwater and roots of trees. There is a plateau on the southeast portion of the site which impacts the height breach on that portion of the site. It is also proposed to retain the existing ROW and re-use existing rocks and soil on site.

5.3 Retention of Trees

A design principle has been the retention of trees and the proposed built form has been designed around the existing trees to ensure that the proposed development sits within the environment rather than on the site. The tree canopy is retained as only 5 trees are to be removed, which is a positive outcome on a site of 1530m².

5.4 Lot consolidation

Is located over two sites to reduce the overall massing of the built form.

5.4 Consistency with Objects of the EP&A Act

In *Initial Action*, the Court stated that the phrase "environmental planning grounds" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act.

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While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in the Table below, we consider the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the height development standard.

Assessment of consistency of the proposed development with the Objects of the EP&A Act	
Object	Commentary
<i>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</i>	The proposed height variation will promote the economic and social welfare of the community by providing an appropriate residential dwelling in a low-density residential context. The design of the residential dwelling is unique in that the key design principles is to reduce environmental impact. The specific design approach results in a better environmental outcome than a 'business as usual' approach. It is an exemplary design which has the potential to set a new environmental benchmark for residential dwellings in the area.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment</i>	The proposal, inclusive of the height variation will promote ecologically sustainable development by achieving the required environmental requirements of SEPP BASIX. The proposed dwelling exceeds the water target by 51% and the energy target by 91%. The design of the residential dwelling goes beyond the standard approach and has been guided by the context with the following outcomes for the built form; - Is located on the existing disturbed site plateaus, to reduce cut and fill - Is designed around the existing trees, to retain the natural canopy - Is stepped or tiered with the natural topography to reduce overall bulk and footprint of the built form is less than a 'business as usual' approach, - Is located over two sites to reduce the overall massing of the built form - Has multiple facades to reduce overall visual impact

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	- Utilises sympathetic materials and finishes.
<i>(c) to promote the orderly and economic use and development of land</i>	The proposed height variation promotes the orderly and economic use and development of the land by utilising two residentially designed lots for the purpose of one residential dwelling to ensure there is sufficient area to protect the surrounding environment. The use of the land for a residential purpose is the appropriate use within the context.
<i>(d) to promote the delivery and maintenance of affordable housing</i>	This object is not relevant to this proposal.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats</i>	The proposed height variation and the proposal will not have any impact on threatened species or ecological communities. A Biodiversity Impact Assessment Report has been prepared and states that the site is located within the Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion, which is identified as an Endangered Ecological Community. The impact does not result in any overall removal rather thinning of canopy and is mitigated by replanting and the contribution of 1 credit under the Biodiversity Assessment Method. An Arboricultural Report has been prepared and states that 26 trees were assessed of that only 5 trees are proposed for removal (a further 5 trees are to be removed which do not require approval from Council, as they are Exempt) and 9 trees are to be replanted. All of which are from the Pittwater and Wagstaffe Spotted Gum Forest ecological community in the Sydney Basin Bioregion
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)</i>	No items or areas of built or cultural heritage will be negatively impacted by the proposed height variation. It should be noted that the Client has commenced initial conversations with 'Bush To Bowl' who are a 100% Aboriginal owned community enterprise. Their mission is around sensitively managing the land. These connections may inform the implementation of the landscape

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	design and management of the site landscape as the project develops.
(g) to promote good design and amenity of the built environment	The proposed height variation will promote good design and amenity of the built environment by exhibiting a unique and bespoke design. One which has the potential to set a new environmental benchmark for the area.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development, inclusive of the variation, will comply with the relevant provisions of the BCA and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this proposal.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposed development will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

Further to the above, there are two recent development applications under the PLEP, 2014 which have been endorsed by Council which have a 40 % and above Height Variation.

DA2020/1693 – 1094 Barrenjoey Road, Palm Beach -Variation of **141.17%**

DA2020/1697 – 28 Palm grove Road, Avalon – Variation of **40%**.

The **current proposal varies from 47.06% to 11.76%.**

For these reasons, there are sufficient environmental planning grounds to justify the contravention of the maximum building height development standard, as it promotes good design and amenity of the built environment and there are no adverse environmental impacts as a result of the proposed height breach.

6. PUBLIC INTEREST

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. This was upheld by Initial Action at [27] This is required by clause 4.6(4)(a)(ii) of the LEP.

Consistency Caselaw

Consistency has been defined throughout caselaw including the following Land and Environment Court cases:

- Addenbrooke v Woollahra Municipal Council [2008] NSWLEC 190
- Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21
- Raissis v Randwick City Council [2019] NSWLEC 1040
- Abrams v Council of City of Sydney [2018] NSWLEC 1648
- Kingsland Developments v Parramatta Council [2018] NSWLEC 1241
- Dem Gillespies v Warringah Council (2002) 124 LGERA 147

In these cases, consistency is considered to be different to that of 'achievement'. The term 'consistent' has been considered in a judgement of the Court in relation to zone objectives and has been interpreted to mean "**compatible**" or "capable of existing together in harmony" (Dem Gillespies v Warringah Council (2002) 124 LGERA 147; Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC 190) or "not being antipathetic" (Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21). Whichever interpretation is adopted the test of "consistency", is less onerous than that of "achievement".

6.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the height of buildings development standard, for the reasons discussed in Section 4 of this report.

6.2 Consistency with objectives of the zone

The table below considers whether the proposal is also consistent with the objectives of the zone

Objectives of the C4 Zone Environmental Living	Discussion
<i>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i>	Care has been taken to protect ecological, scientific and aesthetic values of the site. The ecological and scientific values have been protected by an informed Biodiversity Assessment Report and Arboricultural Report which results in the retention of 17 trees number of trees and the replanting of 9 trees. Aesthetic values are retained as the proposed residential dwelling is not visible from Riverview Road. The street level RL varies from 35.4 up to 36.6 from north to south across 143 and 145 with the highest floor level of the dwelling at RL 29.550 with the highest point of the dwelling being the roof at RL 33.250 and the skylight above the entry lobby with an RL of 34.195

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	This proposal is unique in that it proposes the consolidation of two residential lots to provide for only one dwelling. It would be entirely permissible to provide two dwellings on two lots. The result is a low impact residential development which is able to protect the values of the zone which protects the ecological, scientific and aesthetic value of the site.
<i>To ensure that residential development does not have an adverse effect on those values.</i>	The proposed height variation is integrated into the residential dwelling which is a unique and bespoke response to the site context. The design response is one which sits sympathetically on the site and has been designed to complement the zone values as it works with the topography of the site, uses existing plateaus to reduce excavation and cut and fill, retains trees and is designed to be sculpted with the contour of the site. The building is designed in four arcs to reduce the overall mass of the dwelling and integrate environmental elements into the design.
<i>To provide for residential development of a low density and scale integrated with the landform and landscape.</i>	A Landscape Plan has been prepared and informs the setting of the site. The landscape plans ensures that the biodiversity of the site is improved and is a key component of articulating the facades of the dwelling to further recess the built form sympathetically into the broader context of Pittwater. In addition, the landscape plan proposed green roofs and planters up to 165.7m ²
<i>To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.</i>	The foreshore area will not be impacted by the proposed development as it is located outside of the foreshore area and will therefore be retained.

The proposal is consistent with the objectives of the height standard and the zone objectives and is therefore in the public interest.

7. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5) (a).

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.

As demonstrated already, the proposal is consistent with the objectives of the development standard and the objectives of the zone, that there are environmental grounds for the variation, and in our opinion, there are no additional

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matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

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8. CONCLUSION

This submission requests a variation, under clause 4.6 of the PLEP, 2014 to the Height of building development standard for Level 3 of the **living room roof and balustrades that varies from 47.06% to 11.3m² to 11.76% for 8.5m² and changes continuously with the topography.**

This submission demonstrates that:

- Numeric compliance with the height development standard would be unreasonable and unnecessary in the circumstances of this development.
- The development achieves the objectives of the C4 Environmental Living development standard and is consistent with the objectives of the zone.
- There are sufficient environmental planning grounds to justify the contravention; and
- There development is in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, it is appropriate to exercise the flexibility provided by clause 4.6 of the PLEP, 2014 in the circumstances of this application.

ITEM 3.2 **DA2023/0168 - 14/90 MONA VALE ROAD WARRIEWOOD - USE OF PREMISES AS A MEDICAL CENTRE****REPORTING MANAGER** **Steve Findlay****TRIM FILE REF** **2023/480309****ATTACHMENTS** **1** [↓](#) **Assessment Report**
 2 [↓](#) **Site Plan****PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **Defers Commencement Approval** for Development Consent to DA2023/0168 for use of premises as a medical centre on land at Lot 14 SP 70187, 14/90 Mona Vale Road WARRIEWOOD, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0168
Responsible Officer:	Nick Keeler
Land to be developed (Address):	LOT 14 SP 70187, 14 / 90 Mona Vale Road WARRIEWOOD NSW 2102
Proposed Development:	Use of Premises as a medical centre
Zoning:	OLDLand Zoning Map - B7 Business Park
Development Permissible:	Yes, under SEPP (Transport & Infrastructure) 2021
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Merryl Margaret Godfrey
Applicant:	Boston Blyth Fleming Pty Ltd
Application Lodged:	24/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Community facility
Notified:	30/03/2023 to 13/04/2023
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval
Estimated Cost of Works:	\$ 0.00

EXECUTIVE SUMMARY

This development application seeks consent for use of premises as a medical centre.

The application is referred to the Development Determination Panel (DDP) due to more than five (5) objections being received.

Concerns raised in the objections predominantly relate to inconsistency with the land use zone objectives, lack of owners corporation consent, amenity impacts upon other tenancies within the building and insufficient onsite parking.

Critical assessment issues included amenity impacts upon other tenancies within the building and onsite parking. The tenancy appears to contain internal walls and a kitchenette. Council records

indicate that no past development consent has been issued for these structures.

This report concludes with a recommendation that the DDP grant deferred commencement approval to the development application, subject to conditions and the applicant obtaining a Building Information Certificate relating to the unauthorised internal structures.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the use of the tenancy known as Lot 14 for the purpose of a medical centre. The proposal does not include any physical building works.

The applicant states that the operator, Rebound Health is an Allied Health organisation and provide allied health services under the following compensable schemes: NDIS, DVA, Aged Care and Medicare.

The proposed hours of operation of the medical centre are to be Monday to Thursday, 7.30am to 6pm and Friday, 7.30am to 2pm.

The proposed business expects to cater to approximately 20-30 clients per day with group activities limited to four clients per group. The business is to be staffed by three exercise physiologists.

OWNERS CONSENT

The applicant has provided information relating to owners consent for the lodgement of this development application.

The applicant advises that attempts have been made to obtain consent from the building's owners corporation, but such consent has not been forthcoming.

For situations where a development application within a strata subdivided building does not impact or relate to common property, caselaw established in the judgement of *Owners Strata Plan No. 50411 & Ors v Cameron North Sydney Investments Pty Ltd [2003] NSWCA 5* states that for a development application relating to works 'wholly within' the boundaries of a lot and not affecting common property, such application does not require the consent of an owners corporation.

As this development application relates specifically to Lot 14 and does not seek to make change or impact upon common property or other tenancies within the building, the above caselaw applies. As such, consent from the owners corporation is not required in this case.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

SITE DESCRIPTION

Property Description:	LOT 14 SP 70187 , 14 / 90 Mona Vale Road WARRIEWOOD NSW 2102
Detailed Site Description:	The subject site consists of one (1) strata allotment located on ground floor of a commercial building on the southern side of Mona Vale Road and western side of Ponderosa Parade. The site is has an area of 80m², excluding parking spaces. The site is located within the B7 Business Park zone and is a tenancy within a three-storey commercial building with basement parking. The site is generally flat with landscaped areas along the street frontages. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by commercial buildings and warehouses.

Map:



SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Application **N1102/01** for commercial office development was approved on 07/05/2002.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report. The NSW employment zones reforms have been made and came into force on 26 April 2023. These reforms will result in this property changing from a B7 zone to a SP4 zone. The proposed use is permissible in the former zone under SEPP (Transport & Infrastructure) 2021 and becomes directly permissible in the new zone.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the

Section 4.15 Matters for Consideration	Comments
the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	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 additional details outlining how acoustic impacts are proposed to be mitigated. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <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 clause is not relevant to this application. <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 Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Matters for Consideration	Comments
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 30/03/2023 to 13/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Michael Bucknell	2 Hastings Street WARRIEWOOD NSW 2102
Ms Larisa Alexander	5 Deakin Street FORESTVILLE NSW 2087
Mr Kym Houden	165 Powderworks Road ELANORA HEIGHTS NSW 2101
Tarnhelm Pty Ltd	PO Box W210 CESSNOCK WEST NSW 2325
Insight Building Certifiers Pty Ltd	PO Box 326 MONA VALE NSW 1660
Andrea Crompton	Address Unknown

The following issues were raised in the submissions:

- Owners consent
- Land use permissibility
- Noise impacts
- Parking

The above issues are addressed as follows:

- **Owners consent**

The submissions raised concerns that owners consent from the building owners corporation has not been provided for this development application.

Comment:

As discussed, as the proposed development relates only to Lot 14 and does not alter any

common property structures, owners consent from the building owners corporation is not required for this development application.

- **Land use permissibility**

The submissions raised concerns that the proposed medical centre land use is not permissible on the site and the proposed use is inconsistent with the objectives of the zone.

Comment:

The applicant proposes the use the tenancy for the purpose of a medical centre, which is not permitted in the B7 zone under PLEP 2014 but is permitted under SEPP (Transport and Infrastructure) 2021. In this case, the provisions of the SEPP prevails over that of the LEP, therefore the the proposed use is permitted. The proposed use is considered to be consistent with the objectives of the B7 zone. It is noted that gyms are permitted in the B7 zone as "recreational facilities (indoor)".

- **Noise impacts**

The submissions raised concerns that the proposed development will result in unreasonable acoustic amenity impacts upon other tenancies within the building.

Comment:

Conditions are recommended to mitigate acoustic impacts that may be caused during operation of the business, including the requirement to prepare a business operation Plan of Management and to ensure noise mitigation measures are put in place during operation.

- **Parking**

The submissions raised concerns that the subject tenancy does not have an adequate amount of parking to cater for the proposed development.

Comment:

The tenancy has two associated parking spaces and the overall site contains six visitor parking spaces. The locality contains several on-street parking spaces within walking distance of the site. Based on the proposed patronage, it is considered that the proposed development will not unreasonably increase the demand for additional onsite parking.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.

Internal Referral Body	Comments
Environmental Health (Food Premises, Skin Pen.)	Change of use of existing commercial building to a Medical Centre - no impact on any residential receivers due to zoning and distances. We support the proposal subject to conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Division 10 Health services facilities

Clause 2.60 stipulates that development for the purpose of health services facilities may be carried out by any person with consent on land in a prescribed zone. The B7 Business Park zone is a prescribed zone under this Division.

As such, the proposed change of use of the tenancy to a medical centre (health service facility) is permissible with consent on the site.

Pittwater Local Environmental Plan 2014

Is the development permissible?	No
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:	11m	Change of use	N/A	N/A
Floor Space Ratio:	1:1	Change of use	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	N/A
5.10 Heritage conservation	Yes
7.10 Essential services	Yes

Detailed Assessment

Pittwater 21 Development Control Plan

Built Form Controls

The proposal seeks consent for the use of an existing commercial tenancy for the purposes of a medical centre. The proposal does not alter the existing built form, therefore consistent with the relevant DCP controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
D16.1 Character as viewed from a public place	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The proposed development does not seek to alter the existing onsite parking arrangement. Two (2) parking spaces are dedicated to the tenancy with six (6) visitor parking spaces available for the building complex.

The parking rate for a medical centre use is not listed in section B6.3 of P21DCP. As such, guidance to establish the required parking rate is taken from the RMS Guide to Traffic Generating Development. This guide states that parking for a medical centre should be provided at a rate of four (4) spaces per 100m² gross floor area. Based on a gross floor area of 80m², the tenancy is deficient of two (2) spaces for the proposed medical centre use.

Notwithstanding this deficiency, it is considered that the existing onsite parking situation is sufficient for the proposed use. There are six onsite visitor spaces in addition to the two spaces associated with the tenancy which may be used by patrons. Additionally, there is sufficient onstreet parking spaces within a short walking distance to the site.

As such, it is considered the proposed development will not unreasonably increase parking demand to

a level that exceeds the supply of parking on the site and in the nearby streets. The proposal is considered acceptable on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for use of premises as a medical centre has been referred to the Development Determination Panel (DDP) due to more than five (5) objections being received.

The concerns raised in the objections have been addressed and resolved by recommending conditions to assist in mitigating acoustic amenity impacts and requiring the preparation of an operational plan of management.

The critical assessment issues including the amenity impact of the operation of the tenancy upon other tenancies within the building and the availability of parking have been addressed and are considered acceptable.

Overall, subject to conditions, the development 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 deferred commencement approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2023/0168 for Use of Premises as a medical centre on land at LOT 14 SP 70187, 14 / 90 Mona Vale Road, WARRIEWOOD, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

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.

DEFERRED COMMENCEMENT CONDITIONS

1. Building Information Certificate

Council's record do not indicate that a past approval granted consent for internal walls to create an office or a kitchenette to Unit 14. This current development application cannot grant retrospective approval to these unauthorised works.

In this instance, a Building Information Certificate is to be obtained from Northern Beaches Council prior to this consent becoming operative.

Applicants must complete two essential steps to request their consent become operational:

1. Submit a completed 'Deferred Commencement Document Review Form' (available on Council's website), include the relevant evidence and the application fee as per Council's Fees and Charges.
2. Submit a request for operational consent to Council via the NSW Planning Portal. This can be completed through accessing the relevant portal application ID and navigating to 'Request for Operational Consent' in the Actions dropdown menu.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review

Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

GENERAL CONDITIONS

2. **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
97623.01 Issue A	19/07/2023	HSA Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BCA Compliance Assessment (Ref: P230032)	10/03/2023	BCA Vision

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

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of Lot 14 SP 70187 for any land use beyond the definition of a *medical centre*, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014.

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

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

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work,

subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

6. **No Approval for any Signage**

No approval is granted under this Development Consent for signs (as defined under Pittwater Local Environment Plan 2014 and State Environmental Planning Policy (Industry and

Employment) 2021). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

7. **No Approval for Building Works**

This development consent does not authorise any physical building works to be undertaken.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

8. **Plan of Management**

A Plan of Management for the operation of the premises is to be prepared prior to issue of any Occupation Certificate and a copy sent to Council for record purposes. The Plan of Management must contain details including, but not limited to:

- Measures implemented to minimise noise impacts from on surrounding premises
- Mitigation measures to minimise amenity impacts on surrounding premises
- Operational procedures of the business
- Management of occupancy numbers
- Waste management procedures
- Deliveries
- Method of recording and actioning any complaints received directly from affected residents/businesses

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

Reason: To ensure appropriate operational management and mitigate impact upon nearby premises.

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

9. **Medical waste**

Medical waste including sharps shall be removed by an appropriate contractor

Reason: Protect workers and the public from health risks.

10. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 7:30am to 6pm
- Saturday – Closed
- Sunday and Public Holidays – Closed

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

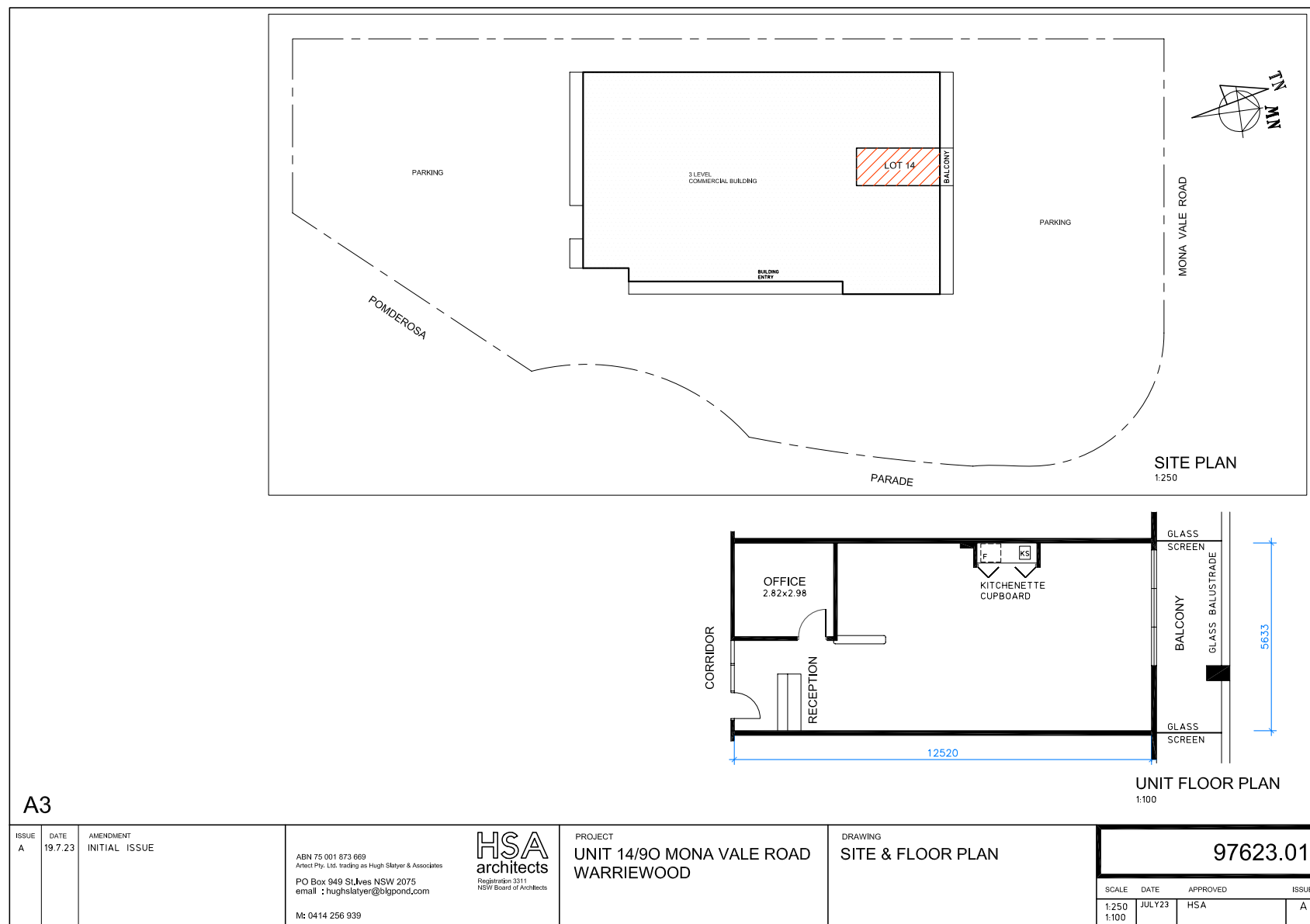
Reason: Information to ensure that amenity of the surrounding locality is maintained.

11. **Noise Mitigation**

The following measures are to be implemented to limit acoustic impact upon other tenancies within the building:

- No intentional dropping of exercise equipment on unpadded surfaces.
- No playing of amplified music above typical background levels.
- No fixing of equipment to common/adjoining walls.
- Signage displayed to ensure the front door stays closed and that clients must not congregate on the balcony outside or within common areas of the building.

Reason: To maintain acceptable levels of acoustic privacy within the building.



ITEM 3.3 **DA2022/1235 - 3 PACIFIC ROAD PALM BEACH - DEMOLITION
WORKS AND CONSTRUCTION OF A DWELLING HOUSE
INCLUDING SWIMMING POOL**

REPORTING MANAGER Adam Richardson

TRIM FILE REF 2023/480368

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/1235 for demolition works and construction of a dwelling house including swimming pool on land at Lot 399A DP 387179, 3 Pacific Road PALM BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1235
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 399A DP 387179, 3 Pacific Road PALM BEACH NSW 2108
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Andrew Roy Lockhart Katherine Louise Lockhart
Applicant:	Andrew Roy Lockhart
Application Lodged:	01/08/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	08/06/2023 to 22/06/2023
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 5,660,276.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to receiving nine (9) submissions (one of which was in support).

Concerns raised in the objections predominantly relate to view sharing, street character, garage design, bulk and scale, privacy, overshadowing and geotechnical concerns. Following an initial assessment by Council, amended plans and documentation were submitted to respond to Council's assessment and

the amended plans form part of the assessment. The application was re-notified and further submissions were received regarding the amended plans. The submission issues have been addressed within the assessment report, with some issues dealt with via recommended condition (such as construction traffic management) and a condition requiring the further reduction of the Level 3 dining room to further resolve view sharing to an acceptable level.

Critical assessment issues included the above issues raised within the submissions, including view sharing and building presentation to the street. Of note, the originally submitted plans had a double width garage and entrance feature with a nil setback to the front boundary. Council raised concern with the street appearance and the application has been amended to consist of a single width carport and setback entrance feature to resolve the street presentation including retaining views from the public domain.

The proposal provides a highly articulated façade and incorporates architectural strategies such as skewed windows, privacy walls/screens and deep planter boxes to resolve privacy whilst still allowing coastal views from the dwelling.

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

Site works

Demolition of existing dwelling house and garage

Level 4/Entry Level

Single carport, entry and staircase, lift.

Level 3

Living Room, rumpus room, kitchen, dining, terrace, lift and stair

Level 2

Laundry, Master bedroom with ensuite and walk in robe, Study, bedroom 4, bathroom, lift and stair

Level 1

Living Room, bedroom 4 and bedroom 5 with ensuite, lift and stairs.

External

Pool with associated terrace and landscaping around 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

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - C1.4 Solar Access
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C1.23 Eaves
 Pittwater 21 Development Control Plan - D12.3 Building colours and materials
 Pittwater 21 Development Control Plan - D12.5 Front building line
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line
 Pittwater 21 Development Control Plan - D12.8 Building envelope
 Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 399A DP 387179 , 3 Pacific Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the north-eastern side of Pacific Road. The site is regular in shape with a frontage of 16.75m along Pacific Road and a depth of 48.18m. The site has a surveyed area of 712.5m². The site is located within the C4 Environmental Living zone and accommodates a two storey dwelling house and detached single garage. The site has a steep topography falling from the front boundary (south-west) to the rear boundary (north-east). The site has an overall fall of 16m from the front to rear boundary. The fall across the building footprint of the proposal exceeds 30%. The site does not have any significant local canopy trees, with two trees in the road reserve and one on the front boundary, consisting of three palm trees.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one, two and three storey dwelling houses of varying sizes and ages. Immediately to the north-west is a two storey dwelling with single garage. To the south-east is a one and two storey dwelling with a setback garage. Across the road is a single storey dwelling and a two storey dwelling. To the rear are dwelling houses of two and three stories down at Whale Beach Road, however, there is a significant level difference between this site and those sites to the rear.

Map:



SITE HISTORY

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

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

History of DA Assessment

On 22 December 2022 Council wrote to the applicant with a Request for Information outlining issues relating to the garage design, excavation amount, information regarding view impacts, privacy concerns, building envelope encroachment, building height, clarification of demolition areas, landscape calculation and front building setback.

On 2 June 2022, amended plans were submitted via the NSW planning portal. The amended plans included an increase to landscaping, information relating to views, reduction in the extent of excavation, deletion of the double garage and replacement with a single carport, further shadow diagrams, updated geotechnical report, amended stormwater plan, updated landscape plan and an updated BASIX certificate.

On 8 June 2023, the amended plans were re-notified to the adjoining properties for 14 days with the notification concluding on 22 June.

On 11 July 2023, further amended plans were received which increased the upper level setback to the L3 dining area to further address Council's comments about the building envelope control. These plans were not required to be further notified given it was a further reduction to the proposal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 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 view sharing, shadow diagrams, dwelling and garage design, geotechnical report and stormwater. This information has been provided and considered as part of the application. <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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 08/06/2023 to 22/06/2023 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 process council is in receipt of 9 submission/s from:

Name:	Address:
Mr Peter Wachtel	18 Pacific Road PALM BEACH NSW 2108
Wasim Chemali	2 Pacific Road PALM BEACH NSW 2108

Name:	Address:
Justine Bradley Ms Deborah Susan Kelton	4 Pacific Road PALM BEACH NSW 2108
Ingham Planning Pty Ltd Mr Peter McCallum	54 Waters Road CREMORNE NSW 2090
Mr Robert Donald Mackinnon	16 Norma Road PALM BEACH NSW 2108
The Palm Beach & Whale Beach Association Inc	PO Box 2 PALM BEACH NSW 2108
Michelle Hale Dr Michael Bernard Hale	14 Norma Road PALM BEACH NSW 2108
Mr Douglas Michael Maher	60 Bynya Road PALM BEACH NSW 2108
Withheld	PALM BEACH NSW 2108

The application received eight (8) submissions against the application and one (1) submission in support of the application, a total of 9 submission.

Following the receipt of amended plans, the application was again notified for a two week period. During the second notification, four (4) submissions were received (noting that these four (4) properties has already written a submission in the first notification period).

The following issues were raised in the submissions:

- View impact upon surrounding properties
- View impacts from public domain
- Parking congestion on the street (during and post development)
- Bulk, scale and character
- Overshadowing
- Privacy Impacts
- Excessive excavation and impact on water table
- Geotechnical risk associated with the development and impact on surrounding sites
- Construction impacts of traffic
- Insufficient landscape area under the PDCP
- Height of the building does not meet Clause 4.3(2D) PLEP 2014

The above issues are addressed as follows:

- ***View impact upon surrounding properties***

Comment:

A detailed view sharing assessment is undertaken later in this report for the surrounding properties being 1 Pacific Parade, 25 Norma Road and 2 Pacific Parade (across the road). Overall and subject to a recommended condition requiring a 2m reduction to the length of the L3 Dining Room, an acceptable view sharing outcome is achieved. The submission from No.5 Pacific Road has mentioned view as a concern, however it is considered any view impacts for this property will be entirely over the side boundary and not contain any landmark features, as Barrenjoey Headland and the Central Coast is viewed in a northerly-easterly direction (over the rear north-east boundary). As such a detailed view sharing assessment is not undertaken for this site as Council is satisfied view sharing is maintained.

- **View impacts from public domain**

Comment:

View outcomes from the public domain (Pacific Parade) is discussed within the view sharing section of this report.

- **Parking congestion on the street (during and post development)**

Comment:

The proposal provides a compliant amount of parking for a dwelling, being two spaces. A condition will be recommended for a Construction Traffic Management Plan given the narrow nature of the street and limitations of street parking for construction vehicles.

- **Bulk, scale and character**

Comment:

A detailed assessment has been undertaken against the planning controls, including building height, setbacks, landscaping and envelope which all contribute to shaping the bulk, scale and character of the development. The proposal has found to be consistent with the outcomes of the controls where there is a numerical non-compliance and this is discussed throughout the assessment report. The proposal provides a highly articulated facade and incorporates landscaping around and within the development. It is noted that the dwelling is contemporary in design, consistent with that of many newer builds in the area.

The applicant has provided a design solution for carparking at the site frontage with a single carport only and setback entry level to minimise street presence. Landscaping is provided either side of the carport to contribute to the landscape nature of the street and the parking structure is supported given the open nature and steep slope of the site which makes parking more difficult.

- **Overshadowing**

Comment:

The adjoining property will receive solar access in accordance with the DCP requirements and this is discussed in further detail later in this report.

- **Privacy Impacts**

Comment:

A detailed discussion has been undertaken later in this report regarding privacy for each level of the development. Overall, the proposal has incorporated architectural features such as skewed windows, screens and deep landscape planters to retain reasonable privacy to the adjoining sites whilst still maintaining ocean views from various areas within the building.

- **Excessive excavation and impact on water table**

Comment:

The proposal has been amended to remove some of the excavation from the development, however some excavation is still proposed and this is acceptable given the sloping nature of the site and that the deepest portion of excavation is a centralised staircase that will not be visually discernable from the surrounding properties and is well setback from the side boundaries.

The geotechnical report did not find there to be a presence of groundwater as discussed within the geotechnical report. The proposal has a stormwater plan that has been reviewed and accepted by Councils engineers.

- **Geotechnical risk associated with the development and impact on surrounding sites**

Comment:

The application is accompanied by a geotechnical report prepared by a suitably qualified engineer. The report concludes that subject to the recommendations, risks can be appropriately managed for the surrounding properties. A condition of consent will be recommended requiring compliance with the geotechnical report. A submission has raised concern regarding the presence of floating boulders, however, the subject to adherence to the geotechnical report Council is satisfied geotechnical risks can be managed. Furthermore, a condition will also be recommended that dilapidation reports be carried out for the properties at 1 and 5 Pacific Road.

- **Construction impacts of traffic**

Comment:

A condition has been recommended a Construction Traffic Management Plan be implemented and approved by Council, prior to the issue of any Construction Certificate.

- **Insufficient landscape area under the PDCP**

Comment:

A merit assessment is undertaken of the numerical non-compliance with the landscape area control within the PDCP. Refer to the assessment later in this report where it is found to be supported on merit.

- **Height of the building does not meet Clause 4.3(2D) PLEP 2014**

Comment:

An assessment of the building height under Clause 4.3 is undertaken later in this report and the proposal is found to meet Clause 4.3(2D) for the reasons outlined in the assessment.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported subject to conditions The development application is for demolition of the existing dwelling, and construction of a new dwelling, swimming pool and landscape works, as described and illustrated in the reports and plans. A Landscape Plan and an Arboricultural Impact Assessment accompany the application and are assessed as part of this Landscape Referral. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation

Internal Referral Body	Comments
	• C1.1 Landscaping • D12 Palm Beach Locality including D12.14 Scenic Protection Category One Areas The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. The property contains natural landscape features such as rock outcrops to the lower slopes and no prescribed trees (ie. protected under the DCP) are found on the property, and rather exempt palms, garden planting and lawns exist, such that the landscape works proposed are required to satisfy the landscape intent of zone C4. The Arboricultural Impact Assessment includes recommendations to remove two exempt species within the property and no concerns are raised. Council consent is not required for the identified exempt species within the property. Additionally two exempt Cocus Palms within the road reserve are reported and proposed for removal and no concerns are raised as these offer no streetscape amenity and are undesirable species with the potential to self-seed into bushland areas. Between the two Cocus Palms within the road reserve a small native Lillypilly tree (possibly Small leaved Lillypilly - <i>Syzygium leuhmannii</i>) also exists and no reference to this is submitted, and it is noted that the small native Lillypilly is located over the proposed crossover and thus will require removal and no concerns are raised subject to street tree replacement. The inclusion of landscape stairs and bin enclosures into the landscape areas calculation as impervious landscape area is contrary to the LEP definition of landscape area as: "a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area". The notation of permeable gravel mulch to these areas does not satisfy the expectation of planting and thus the reported landscape area of 68.6% (combined as deep soil, impervious landscape area, and on-slab landscape planters) is reduced by approximately 4% and nevertheless remains above the 60% requirement of the C4 zone. Information on the on-slab planters and roof garden are not detailed on any of the plans in terms of soil depth provisions, except for planting design, and conditions shall be imposed on the minimum soil depths required to support the proposed planting design. The Landscape Plans submitted include landscape treatment to the landscaped areas including deep soil and on-slab planters, and propose tree planting and other planting across the development property. The proposed tree planting of one species type (Water Gum - <i>Tristaniaopsis laurina</i> 'Luscious') shall be varied to provide a range of native tree species across the development property, suited to the

Internal Referral Body	Comments
	sandstone crest geology, as subject to imposed conditions. Subject to conditions of consent, Landscape Referral raise no objections.
NECC (Coast and Catchments)	Supported subject to conditions This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses.
NECC (Development Engineering)	Supported subject to conditions The subject site is located on the low side of the street and as such the method of stormwater disposal must be designed in accordance with Council's Water Management for Development Policy section 5.5. In accordance with the policy, the applicant must provide evidence for the refusal of a drainage easement prior to consideration of alternative methods of disposal of stormwater. No evidence or statutory declaration has been submitted with the application. The submitted stormwater report and design of the level spreader is acceptable but cannot be conditioned until the above issue has been resolved. The proposed driveway grade is acceptable using Council's maximum low profile. The submitted Geotechnical report addresses the relevant DCP controls. The proposed access path must be assessed by Council's Road Asset Team. Development Engineering cannot support the proposal due to insufficient information to address stormwater management in accordance with Clause B5 of the DCP. Additional information submitted 9/11/22 The submitted refusal of easement is acceptable. The proposed method of drainage disposal in accordance with Council's Water Management for Development Policy. Development Engineering support the proposal, subject to conditions as recommended. Amended Plans submitted 2/06/23 The amended stormwater plan is acceptable. Development Engineering support the proposal, subject to conditions as recommended.
Road Reserve	Supported subject to conditions

Internal Referral Body	Comments
	There is no significant impact on existing road infrastructure. Development Engineering to condition s138 application for civil works detailing driveway and associated access pathway.

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. 1301122S_02 dated 16 May 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	55

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

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

Comment: Not within land containing coastal wetlands or littoral rainforest.

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

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

coastal wetland or littoral rainforest.

Comment: The site is not within proximity to coastal wetlands or littoral rainforest.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

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

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

Comment: The site is not within coastal vulnerability area.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment: The site is not within coastal environment area.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact

- referred to in subsection (1), or
- b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment: Not within coastal environment 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: It is considered that the matters listed i) to v) and are satisfied that the development has been designed to avoid impact. In particular, the proposal is compatible with the height of the surrounding buildings and does not detract from the visual quality of the coast.

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: It is considered that the proposal will not increase risk of coastal hazards.

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

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

management program that applies to the land.

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

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m/10m* *Pursuant to Clause 4.3(2D)	7.1m to 10m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The C4 zone objectives are considered below:

- *To provide for low-impact residential development in areas with special ecological, scientific or*

aesthetic values.

Comment: The proposal has demonstrated it will retain reasonable amenity for surrounding areas. The proposal has adopted a minimal approach to the carparking at the front of the site (carport only in front setback) to promote views through the site and from the public domain to respond to the aesthetic value of the area.

- *To ensure that residential development does not have an adverse effect on those values.*
Comment: The proposal does not have an adverse impact on the scenic value of the area with a single storey presentation from the public domain and an open single carport only to present the street, with the entry level reasonable in width and setback from the street to preserve views either side.
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
Comment: The proposal is low density consisting of a dwelling house only. The proposal steps down the site with the slope of the land and integrates landscaping around the building footprint to allow landscaping to soften the building,
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors*
Comment: The proposal does not require the removal of any significant trees and will provide new landscape planting within the site.

The proposal is permissible in the zone and meets the zone objectives.

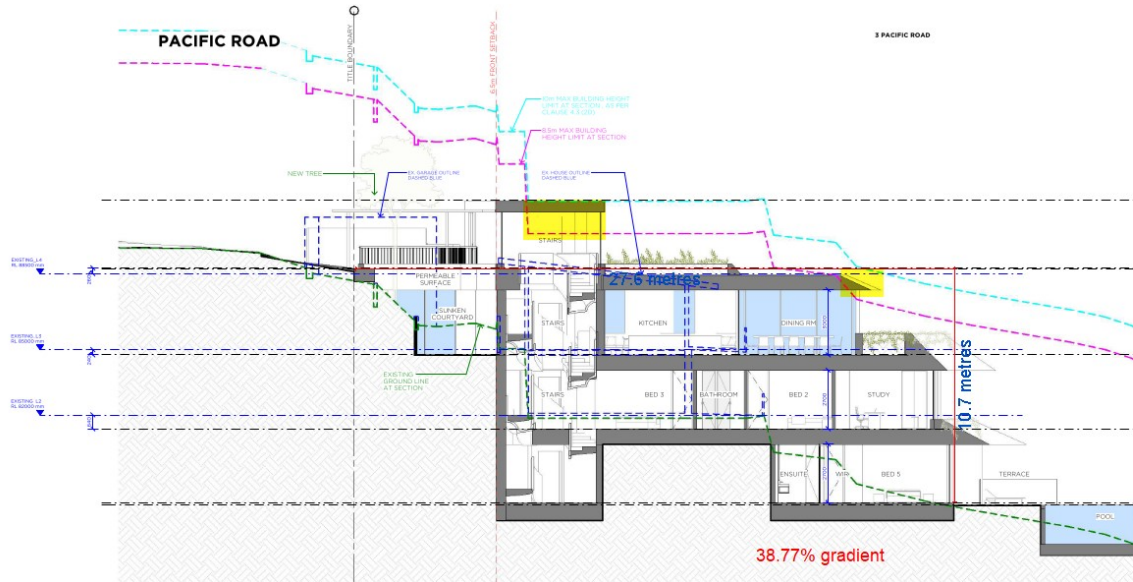
4.3 Height of buildings

The Pittwater LEP contains the following clause in relation to building height:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

The proposal is generally beneath the 8.5m height limit, with the exception of two portions of the building exceeding 8.5m, but no higher than 10m, in accordance with the above clause. See below extract, those areas exceeding 8.5m highlighted yellow:



In considering if the proposal meets the requirements of the clause, the following assessment is made:

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

Comment: The two portions are considered to be minor, the L4 encroachment forming part of the entry way and the eave overhang of L3 is also a minor element.

(b) the objectives of this clause are achieved, and

Comment: The following assessment is made against the objectives:

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

Comment: The desired future locality calls for a two storey building however there are numerous examples of part two/part three storey dwellings in the locality on sloping sites. The proposal adopts this approach of part two/three storey dwelling and is consistent with this approach. The building is surrounded by landscaping and has appropriate spatial proportions as per the DCP setbacks.

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

Comment: See comment above about compatibility with two /three storey dwellings in the surrounding locality.

(c) to minimise any overshadowing of neighbouring properties,

Comment: The adjoining site will receive solar access in accordance with the DCP control. The applicant has provided shadow diagrams showing the breaching elements cast additional shadow over the roof and not the main living room window or POS.

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

Comment: View sharing is achieved and this is discussed elsewhere within this report, subject to a condition that the L3 Dining room be reduced to allow views to be obtained for 14 Norma Road.

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

Comment: The building steps with the site topography and provides open elements to minimise bulk

and scale.

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

Comment: The proposal is not adjacent to heritage items or will be visually prominent as viewed from the coastline. Adequate room is available for landscaping around the building.

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

Comment: The building footprint is situated on a slope of 38.77%, in excess of the requirement. The building footprint is taken to be the length of that part of the site the total building occupies.

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Comment: As shown in the above image, each level of the building steps with the slope of the land. The building is positioned in a way that generally uses the existing cut of the land and cut of the existing building (existing building shown in blue dotted line). It is acknowledged that there is a deeper portion of excavation beneath the entry level. However, this is a centralised portion of excavation that is not visually discernable from any surrounding property and contains only a staircase and the lift providing access down to the bottom level.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development 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.

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

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

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

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

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

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

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

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

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

excavation/construction.

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

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

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

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

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

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

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

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.7 Geotechnical hazards

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

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

Comment:

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

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

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:

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

Comment:

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Carport - Nil L4 (Entrance) 5.7m to 6.5m L3 Rumpus - 2m (Below ground) L2 Laundry - 5.4m (below ground) L1 - 6.5m foyer (below ground)	0%-100%	No
Rear building line	6.5m	Facade - 18.8m Pool - 8.7m	N/A	Yes
Side building line	2.5m	South - Generally 2.5m Bed 3 window 1.4m + Study wall 2.2m	N/A	No
	1m	North west - 1m to 2m	N/A	Yes
Building envelope	3.5m	Outside envelope	N/A	No
	3.5m	Outside envelope	N/A	No
Landscaped area	60% (427.5m ²)	539.2m ² or 75.6% (When calculated as per Clause C1.1 PDCP)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	No	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

Comment:

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

View sharing Assessment for 1 Pacific Parade Palm Beach

1. Nature of the views affected

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

Comment to Principle 1:

The below view assessment focuses on the views obtained from the most affected property being No 1 Pacific Road. The views to be affected are views of the Pacific Ocean, Palm Beach (land water interface), Barrenjoey Headland and Barrenjoey Lighthouse. The views are captured in a north-east direction from the various rooms within 1 Pacific Parade. The below figures are extract from the view montages provided with the applicant and shows the views from a number of windows along the northern (side) and eastern (rear) elevations. Reference should also be made to the report containing the photomontages which have further information as to the existing views and extent of impact from the proposed development.



Figure 1 - Image taken from Applicant view sharing analysis. Standing position, rear balcony adjoining living room. Photo looking north-east towards Palm Beach and Barrenjoey Headland/Lighthouse.



Figure 2 - Image taken from Applicant's view sharing analysis. Photo taken by Assessing Officer. Standing position in living room, looking north-east toward Palm Beach and Barrenjoey Headland. Red dotted line represents proposal outline.





Figure 3 - Images taken by assessing officer. Standing position, centrally located within living room. Photo looking north-east towards Palm Beach and Barrenjoey Headland/Lighthouse.



Figure 4 - Image taken from Applicant's view sharing report. Standing position from dining room window looking north-east towards Palm beach and Barrenjoey Headland.



Figure 5 - Image taken from Applicant's view sharing report. Standing position from side balcony (also the same view from the Kitchen window) looking north-east towards Palm beach and Barrenjoey Headland.

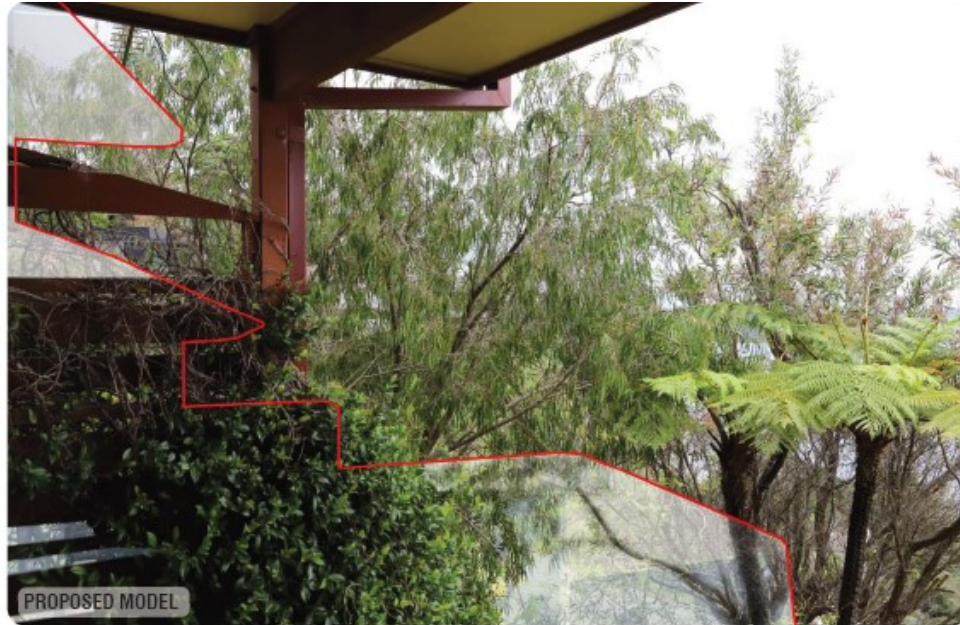


Figure 6 - Image taken from Applicant's view sharing report. Standing position from lower ground floor master bedroom looking north-east towards Palm beach and Barrenjoey Headland.

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

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

Comment to Principle 2:

The views are obtained a number of rooms including bedrooms (lower floor), kitchen, dining room and living room (upper floor). The view can be obtained in both seated and standing position from each of the rooms. Where the views are impacted of Barrenjoey Headland and Palm Beach, the impacted views are obtained over the side boundary of the site for each of the impacted rooms. It is relevant to point out that the most impacted rooms are located on the lower ground floor (bedrooms) or are located more centrally to the building including the Kitchen and dining room window, which are the most centrally located rooms within the building and therefore more highly susceptible to a view impact across a side boundary.

3. Extent of impact

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

Comment to Principle 3:

The rooms more centrally located being the kitchen window, side balcony (adjoining kitchen window) and dining room window will be impacted and will lose the view of Barrenjoey Headland/lighthouse, the Pacific Ocean and Palm Beach. The view shown in Figures 4 and 5 will be lost as a result of the proposal. It is noted these views are partially obscured at present by vegetation and a screen. The view from the lower ground floor Master Bedroom will be retained (figure 6). Views from the rear facing balcony will be retained in their entirety. Furthermore, views from the eastern facing living room window and northern facing living room window consisting of Palm Beach, Barrenjoey Headland and Lighthouse and the Pacific Ocean will be retained (Figure 2 and 3). The outline of the proposal is shown in image 2 and the proposed new dwelling does not extend further past the alignment of 1 Pacific Parade and therefore, this view corridor to the north-east is maintained. The views located closer to the rear of the property are more 'whole' and more valuable.

Whilst the centralised kitchen window and dining window will be impacted, the primary 'whole' views of Palm Beach, Barrenjoey Headland/Lighthouse and the Pacific Ocean are maintained from the living room and primary balcony adjoining the living room. On balance, the overall impact is considered to be moderate having regard to the views retained when compared to those impacted (with the most high quality views maintained).

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The views which are impacted are obtained from centrally located rooms over a side boundary. The applicant has provided details in the photomontages confirming that these views would be impacted in a fully compliant development and as such, the envelope breaches to the southern side do not further impact upon the views. The building has been sited to align with the consistent rear setback to the building on 1 Pacific Road to retain view corridors to the north-east across the side boundary from the Living Room and Balcony. It would be considered unrealistic to retain all views from the side facing windows of 1 Pacific Parade and given that primary views have been obtained from the living room and balcony, this is a reasonable outcome and has demonstrated a sufficiently skilful design.

View Sharing Assessment for 14 Norma Road Palm Beach

1. Nature of the views affected

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

more valuable than one in which it is obscured".

Comment to Principle 1:

The owner of 14 Norma Road Palm Beach has provided Council with photographs in a subsequent submission showing the views available from the living area on the upper floor which includes lounge/kitchen/dining and balcony areas. The view available is shown in the below three images provided by the owner. The view contains Palm Beach, Barrenjoey Headland/Lighthouse and the Pacific Ocean extending up the central coast.



Figure 7 - Kitchen Window, photo provided by owner 14 Norma Road, standing position looking north-east.



Figure 8 - Balcony adjoining kitchen, photo provided by owner 14 Norma Road, standing position looking north-east.



Figure 9 - Standing at the southern extent of the balcony, photo provided by owner 14 Norma Road, standing looking north-east. The existing dwelling at 3 Pacific can be seen

in background (white building).

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

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

Comment to Principle 2:

The view to be impacted is from main living space and kitchen of the upper floor, including the balcony area adjoining. As can be seen in the above photos, the views are obtained from a standing position looking over the side boundary of the site.

3. Extent of impact

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

Comment to Principle 3:

Whilst the applicant has not modeled the view impact from this property in the photomontages provided, it is considered that the proposed Level 3 roof (RL 88.7) will be visible when looking to the north east (noting views will be available over the roof of the adjoining property at 1 Pacific, the roof ridge RL86.67). It is noted that the existing north-eastern gutter line of the existing building at 3 Pacific is at RL88.5, a comparable height to proposed level 3. As Level 3 will extend at RL 88.5, the level 3 dining room area will extend into the view corridor and have a partial impact on this view corridor. The level of view impact varies depending on where you would stand in the dwelling or on the balcony. It is considered that in Figure 7 and 8 (adjoining kitchen), the proposed level 3 dining area would impact upon some of the land/water interface views of Palm Beach. However when standing at the southern side of the balcony (figure 9), there would be less view obstructed (views to balm beach maintained).

In considering that some of the views from the kitchen will be impacted of Palm Beach, this is a highly valuable view and is considered a moderate impact (having regard to the fact that the distant views of the ocean, central coast and some of Barrenjoey Headland could be retained from the southern side of the dwelling and balcony).

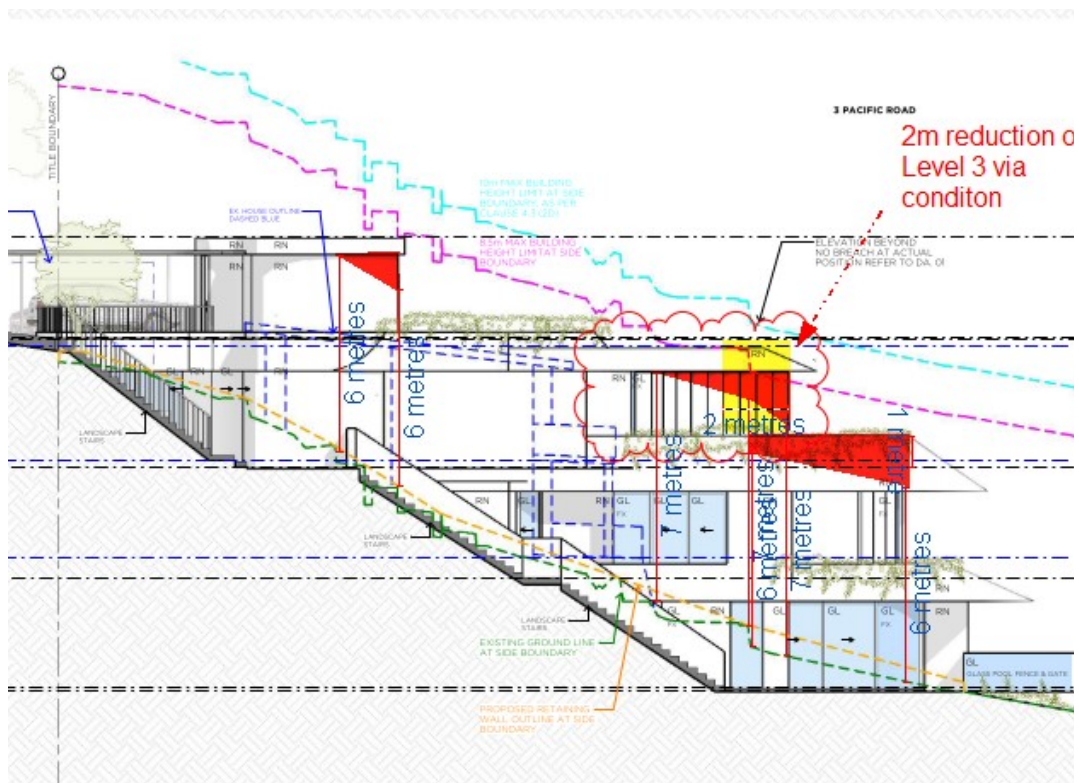
4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the

views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

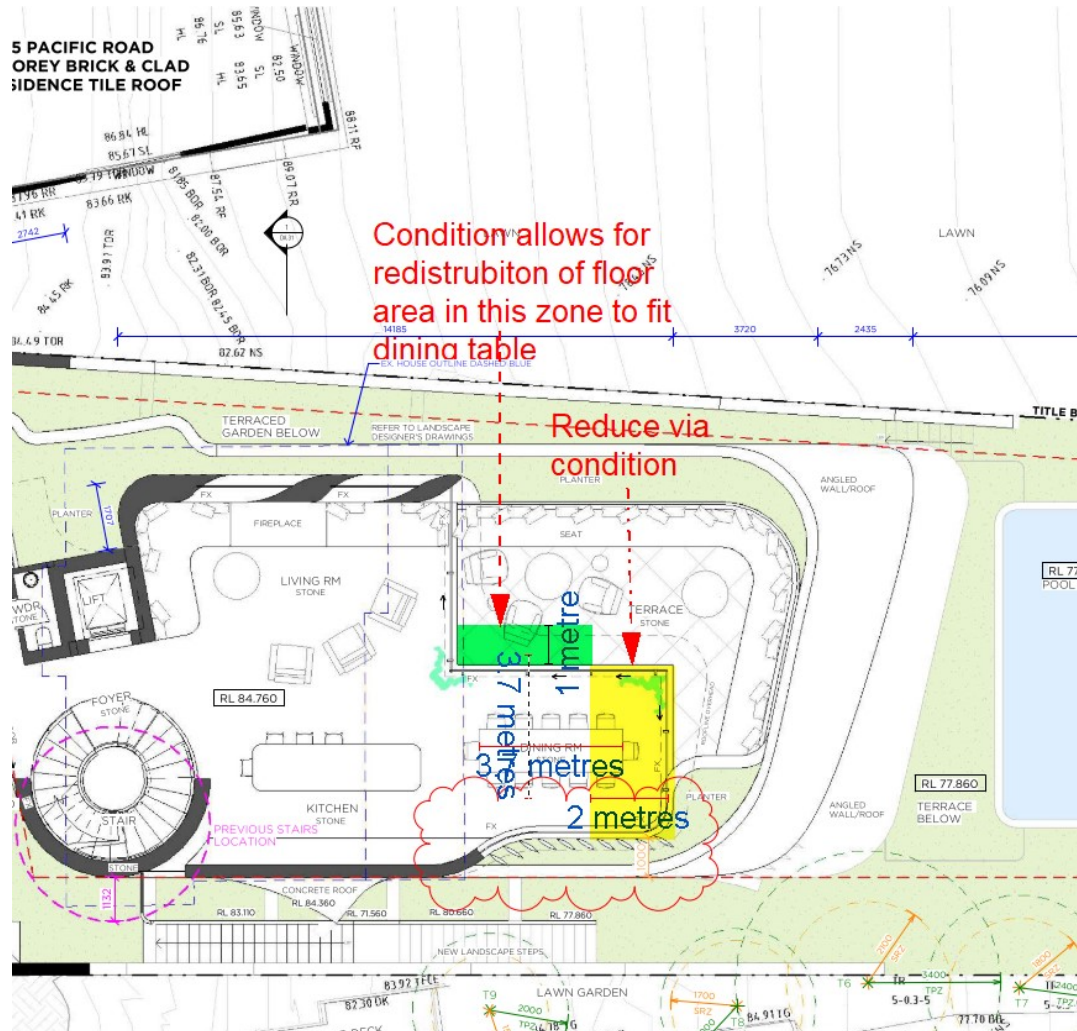
Comment to Principle 4:

The particular area of Level 3 that is causing a view impact slightly exceeds the 8.5m height limit (but is within the 10m concession), however this area is in breach to the DCP building envelope control, see extract below:



Although the impact is overall considered to be 'moderate' for the dwelling at 14 Norma Road, the fact that this particular element of Level 3 is in breach of the 8.5m height limit and has a large breach of the building envelope, the view impact is unreasonable having regard to the non-compliance with the planning controls.

As such, it is considered reasonable to impose a condition of consent that requires the level 3 dining room to be reduced in depth by 2m (including the roof overhang) to reduce the extent of envelope breach and also bring into compliance with the 8.5 height limit. This will then result in a reasonable view sharing outcome for 14 Norma Road and retain a larger proportion of views to Palm Beach from the kitchen and balcony area adjoining the kitchen. The condition allows for the dining room to be increased in width to maintain functionality of the space and allow for the same sized dining room to be accommodated, as shown on the plans. The area of the dining room may be used as an open terrace and there will remain a landscape planter around the edge southern corner of the terrace to mitigate direct downward views.



View Sharing Assessment for 2 Pacific Road Palm Beach (across the road)

1. Nature of the views affected

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

Comment to Principle 1:

The submission from 2 Pacific Road raised concern with a view impact looking across the road towards the subject site from their front porch, front yard and driveway. The view contains parts of the ocean and Barrenjoey Headland/lighthouse. It is a similar view that is available from the public domain looking from Pacific Road, photo below. It is noted that the concern was raised upon the original plans which involved solid double garage and reduced setback entrance. It is

noted that the proposal has been amended to include a single open carport and setback entrance (with glazing) to reduce view impacts, no further submission was received.



Figure 10 - View corridor through site from 2 Pacific Parade and Public domain.



Figure 11 - The original proposed double garage, now amended to be replaced with single open carport.



Figure 12 - Amended proposal with single garage and setback entrance with glazing.

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

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

Comment to Principle 2:

The view to be impacted was from the porch adjoining the living room, driveway and front yard. The views are available in a diagonal direction across the front boundary and front yard, partially over the side boundary.

3. Extent of impact

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

Comment to Principle 3:

It is noted that the property at 2 Pacific Road also has views towards the south-east of Whale Beach and the headland to the south-east, as well as the aspect north-east over the subject site. Based on the amended carport design and the fact the existing single garage will be demolished, this will preserve a reasonable view corridor through the subject site and the impact upon views will be upon water with Barrenjoey Headland retained. Overall, given that this is not the only view obtained from the property (also views of Whale Beach to the south-east) the

overall impact is considered minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The previous double solid garage was considered to be too bulky for the streetscape and would have had an unreasonable impact. However, the new design consisting of a single open carport and setback entrance is very reasonable and has a minimal presentation to the street and allows views to be maintained from the public domain and property across the road. A generous setback is provided between the carport and northern boundary (between 4m and 5m) and the entrance is setback from the front boundary, therefore allowing a reasonable view corridor to be maintained to Barrenjoey Headland. Given the steep slope of the site the carport structure is a reasonable solution.

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

Comment:

In regards to the views from the public domain, the application has been amended to reduce the proposal from a double garage to a single carport, to promote view sharing through the front of the site and maintain to a reasonable level views from the Public Road. It is considered entirely reasonable to allow the proposal to have some form of undercover parking at the site and a single carport is a reasonable solution. The entrance level will present a single storey to the street and maintain public views either side of the structure of the water. See extract below of front elevation montage:



Figure 13 - Amended proposal with single garage and setback entrance with glazing.

- Canopy trees take priority over views.

Comment:

No canopy trees are proposed to be removed as a result of the development.

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

C1.4 Solar Access

The DCP requires the following for solar access:

The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

The adjoining property at No.1 Pacific Road will maintain at least 3 hours solar access to the east and north facing living room windows and the rear yard, including the elevated balcony facing east. The applicant has provided elevational shadow diagrams to demonstrate this will occur, with no overshadowing of living room windows or POS from 9am to 12pm. During the afternoon there will be some additional overshadowing, however given the orientation of the site this would reasonably occur in any redevelopment of the site.

C1.5 Visual Privacy

The proposal uses a range of architectural strategies to resolve privacy including skewed windows, planter boxes and privacy screens to mitigate direct overlooking. Landscape planting is also proposed along the side boundaries to further enhance privacy. The proposal seeks to strike a balance between protecting direct overlooking of the main living areas of adjoining properties, whilst capturing coastal views and sunlight to the north-east. Privacy is considered for each level of the development below:

Level 4 Entry

This is an entry level and staircase which is not considered to be a highly used or habitable area. Therefore, the glazed stairwell/entry level is not considered to result in adverse privacy impacts. The glazed nature of the stairwell allows a more lightweight presentation to the street and views through the structure from the street.

Level 3

Skewed windows are used on the northern elevation of the living room to direct views away from the primary open space and living area of 5 Pacific Parade. The terrace is surrounded by a generous width landscape planter box along the northern edge to mitigate direct downward views. The dining room window on the southern elevation has a fixed privacy screen to mitigate privacy between properties.

Level 2

Skewed windows are used on the northern elevation of the main bedroom to direct views away from the primary open space and living area of 5 Pacific Parade. Landscape planter box is used along the northern side of the main bedroom window and adjoining living space to mitigate direct downward views. It is noted that north facing window has adequate spatial separation from the dwelling at 5 Pacific Road. The southern elevation contains bedroom windows only, with bedroom 3 having a skewed window and bedroom 2 being having the benefit of existing and proposed vegetation along the boundary. It is noted that no specific privacy treatment is provided to bedroom 2, however, as this is a bedroom it is not considered to result in unreasonable privacy as it is a lower occupancy room (as opposed to a living room or kitchen). The study has been provided with a blade wall privacy treatment.

Level 1

Level 1 does not present unreasonable privacy impacts as it is situated at a low level, with a bedroom window facing the south boundary and a living room which is situated a large distance from the dwelling house and primary open space. Landscape planting is proposed along the northern and southern boundary to enhance privacy and this will be most effective at these lower levels.

C1.23 Eaves

Generous overhangs of at least 450mm are provided to the north, east and west facing windows to provide sun-shading for the windows. The proposal meets BASIX requirements and therefore meets the legislative requirements.

D12.3 Building colours and materials

The colour schedule submitted with the application is lighter than the DCP requirement, stating the wall colour to be 'limestone'. A condition is recommended that the external finishes be a colour no lighter than mid-grey in order to comply with the DCP and ensure the building is more visually recessive in the landscape.

D12.5 Front building line

The DCP front setback control required 6.5m. However, the DCP contains a provision for steeply

sloping sites as follows:

"Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable."

The proposal incorporates a single width carport at a nil setback to the street boundary, with the building entrance setback between 5.7m and 6.5m from the front boundary. The site has a steep topography (exceeding 30%) with the front of the site falling away from the front boundary. As such, a nil setback parking structure is considered a reasonable approach from an engineering perspective given the difficulty in achieve a suitable driveway gradient, which the DCP acknowledges by allowing reduced setback structures. It is noted that the existing situation comprises of a single width, enclosed garage setback nil from the boundary. The adjoining site at No.5 Pacific also has a zero setback garage. Therefore, the proposal for a single width, open carport maintains the existing spatial relationship with the front boundary and is a reasonable solution to parking on this site (with the second parking space an open at-grade space beside the carport).

The remainder of the dwelling is set down into the slope of the land and will not be visually prominent from the street. Although the L3 Rumpus room encroaches the front setback (2m setback) this room is subterranean and sits beneath the carport structure. Therefore, given the subterranean nature of the room it does not compromise the streetscape. Deep soil areas either side of the rumpus room are maintained to allow landscaping within the front setback to contribute to street character. Similarly, the L2 laundry setback 5.4m will also not be visible from the street given the position beneath the building footprint.



Figure 1 - Extract from photomontage front elevation- Source: Rob Mills Architects

Merit Consideration

In considering a variation to the control, the proposal is considered against the outcomes of the control as follows:

Achieve the desired future character of the Locality.

Comment: The proposal is considered to achieve the desired future character of the Palm Beach Locality which predominantly consist part two and three storey dwellings, with dwelling having a three storey component not uncommon on a sloping site of >30%. The proposal will read as single storey from the front elevation and maintains consistency with the existing arrangement with a nil setback garage. The proposal will be surrounded by deep soil landscape planting so that the building will integrate into the landform and landscape, including a large amount of planter boxes proposed around building. Deep soil area is provided either side of the parking structure within the front setback.

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

Comment: The proposed arrangement of a single open carport and single storey, setback building entrance allows for reasonable view sharing from the public road and is the preferred arrangement over solid garages. Given the slope of the site, the reduced setback structure is supported given the open nature of the carport. Similarly, views from the properties across the road to the Pacific Ocean either side of the carport and through the carport can be obtained given the open nature of the carport design and will promote view sharing.

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

Comment: Amenity for the development is not compromised due to the setback and the site is not located on a main road.

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

Comment: No significant canopy trees are proposed for removal and new landscape planting is proposed throughout, including deep soil planting in the front setback either side of the carport.

Vehicle manoeuvring in a forward direction is facilitated. (S)

Comment: This is not required given the site is not on a main road.

To preserve and enhance the rural and bushland character of the locality. (En, S)

Comment: Deep soil landscaping is provided in the front either side of the parking structure, including a lightweight pedestrian bridge to allow landscaping beneath this area to enhance the landscape setting. Pervious pavers have been used for parking area to further promote a landscape setting. A generous landscape planter is provided behind the carport.

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

Comment: The front setback area has sufficient soil depth and area to provide meaningful landscaping for the proposal and maintain street character. The building is single storey presenting to the street and is in keeping with single storey nature of structures fronting the street.

To encourage attractive street frontages and improve pedestrian amenity.

Comment: The open nature of the carport, together with landscape planting either side and planter box behind the carport provide an attractive street frontage and allow pedestrians to enter the building 'at grade' from the street.

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

Comment: The proposed development is consistent with the spatial characteristics, as there is an existing nil setback garage on the site and adjoining site and therefore replacement with an open carport maintains this spatial relationship. The entrance level is minimal in width and is setback an appropriate distance from the street to minimise visual presence, noting the entrance is a low scale structure. The encroachments of the L3 and L2 rooms into the front setback have no visual bearing on the street given their subterranean and landscaping is still provided either side side presenting to the street.

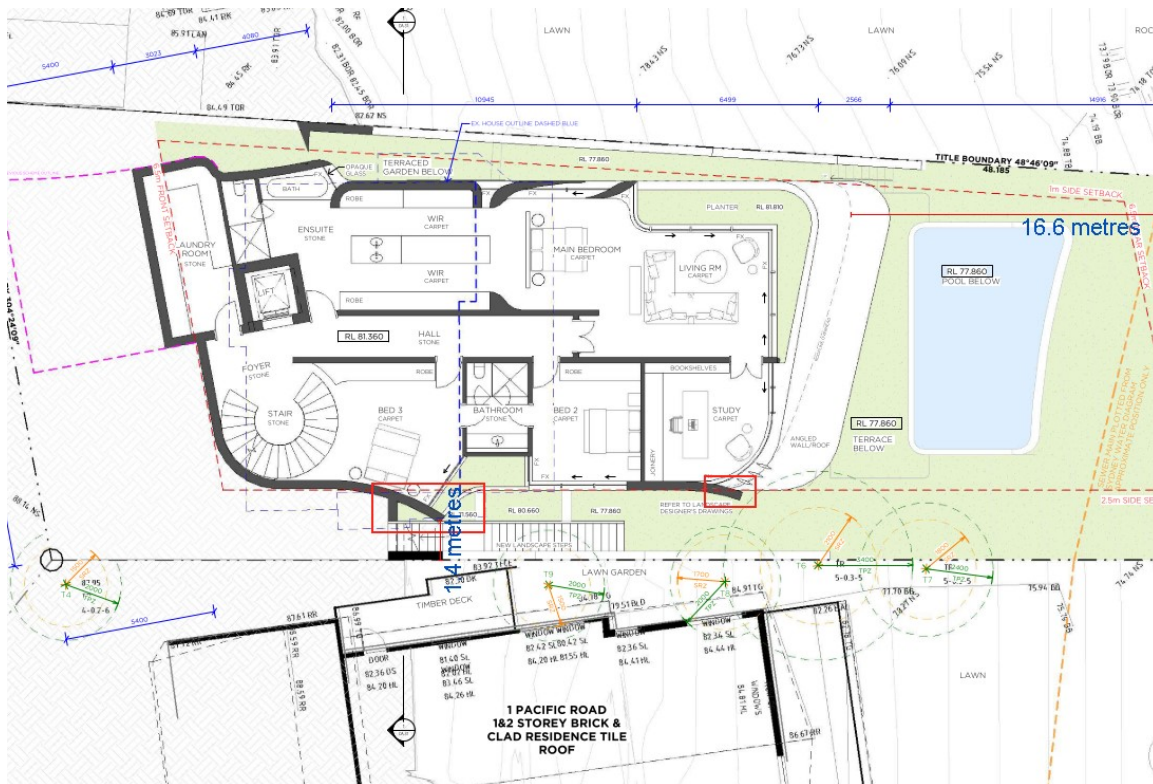
Overall, the proposed development meets the required outcomes of the control and therefore, a variation to the control is supported in this particular circumstances given the sloping nature of the site and open nature of the carport design.

D12.6 Side and rear building line

Description of non compliance

The DCP requires a 2.5m side setback to the southern side and 1m setback to the norther side.

The proposal is largely compliant, except for two minor elements encroaching into the southern setback and the ground level. These elements form part of skewed windows/blade wall to assist in resolving privacy for a bedroom and study. The bedroom wall is setback 1.4m and study wall setback 2.2m. See below extract:



Merit Consideration

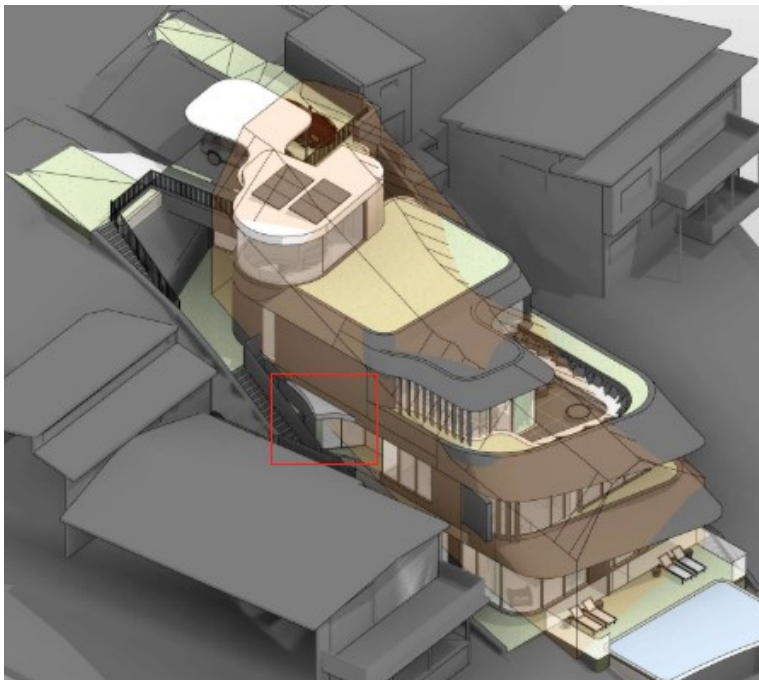
In reviewing the variation, the proposal is considered against the outcomes of the control as follows:

To achieve the desired future character of the Locality. (S)

Comment: The proposal is considered to achieve the desired future character of the Palm Beach Locality which predominantly consist part two and three storey dwellings, with dwelling having a three storey component not uncommon on a sloping site of >30%. The proposal will largely read as two stories from the side elevation above the natural ground level, noting that the lowest floor at the southern elevation will be beneath the natural ground level and when reading the northern elevation, the upper level is significantly stepped back to mitigate bulk and scale. The proposal will be surrounded by deep soil landscape planting so that the building will integrate into the landform and landscape, including a large amount of planter boxes proposed around building.

The bulk and scale of the built form is minimised. (En, S)

Comment: The proposal incorporates varied setbacks to provide visual breaks along each elevation, including stepping the building with the land, recessing and projecting features and landscape planter boxes integrated into the design. The two minor encroachment into the side setback do not render the proposal excessive in terms of bulk and scale. Noting, the skewed window encroachment of bedroom 3 is set down into the slope of the site and will not be visually prominent, see extract below showing location relative to the levels:



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

Comment: View sharing is achieved and discussed earlier within this report.

To encourage view sharing through complimentary siting of buildings, responsive design and well-

positioned landscaping.

Comment: View sharing is achieved and discussed earlier within this report.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Comment: Both of the encroaching elements are in direct response to resolving privacy, whilst allowing sunlight into the rooms. The bedroom level is located at a low level that will be screened by boundary fencing and low height landscaping.

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Comment: New landscape planting around the proposal as demonstrated in the landscape plan. Council's landscape officer supports the proposal.

Flexibility in the siting of buildings and access. (En, S)

Comment: Access is provided down the southern side via the proposed stairs.

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

Comment: The proposal does not result in any significant trees being removed and landscape planting is proposed which is supported by Council's landscape officer.

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

Comment: Not applicable to the development.

The proposed development is not considered to give rise to any unreasonable impacts and is consistent with the outcomes of the control. Therefore, a variation to the control is supported in this particular circumstance.

D12.8 Building envelope

Description of Non-Compliance

Clause D12.8 of the PDCP prescribes a 3.5m side building envelope, but permits a variation to that envelope where the building footprint is situated on a slope of 16.7 degrees (30% gradient) or more, which is relevant to the subject site (37% gradient).

The DCP also states that *"Eaves or shading devices that provide shade in summer and maximise sunlight in winter, shall be permitted to extend outside the building envelope"*. Therefore, the roof overhang which forms part of the eave is permitted outside of the envelope.

The proposal has an encroachment of the northern and southern side boundary building envelope. The extent of encroachment is displayed in red on the below diagrams:

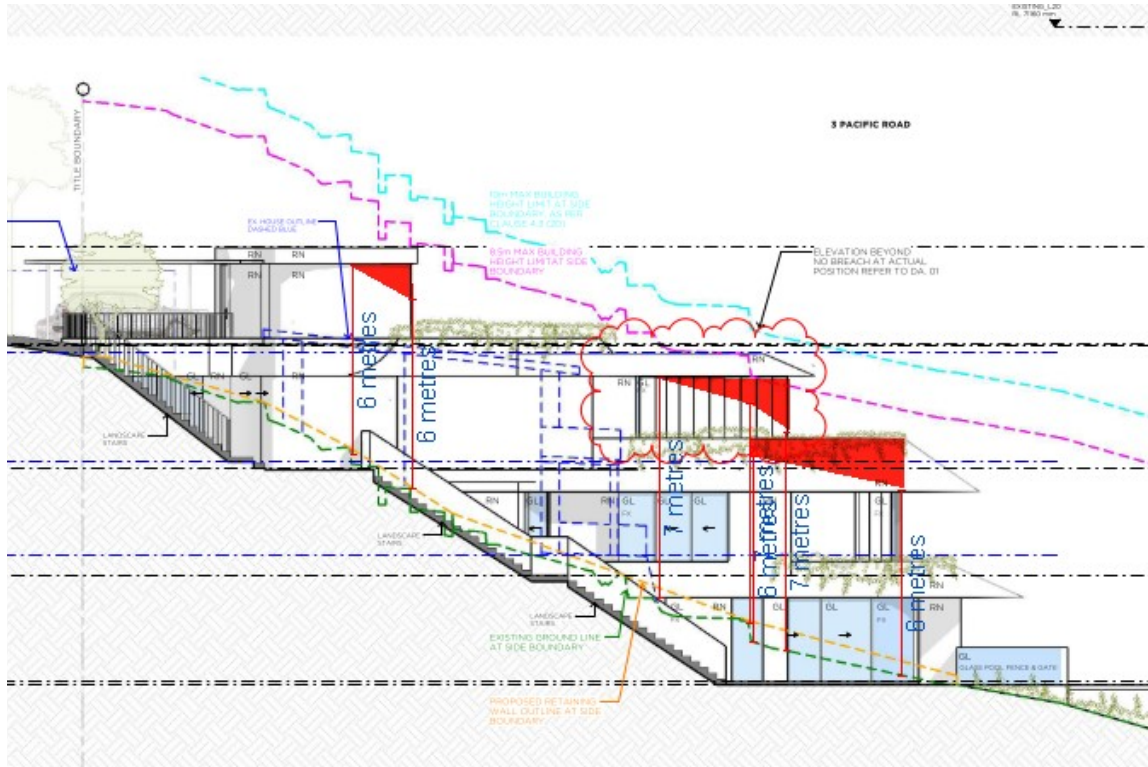


Figure 1 - South elevation - Building envelope plan prepared by architect . Blue circles mark up by assessing officer showing areas of breach.

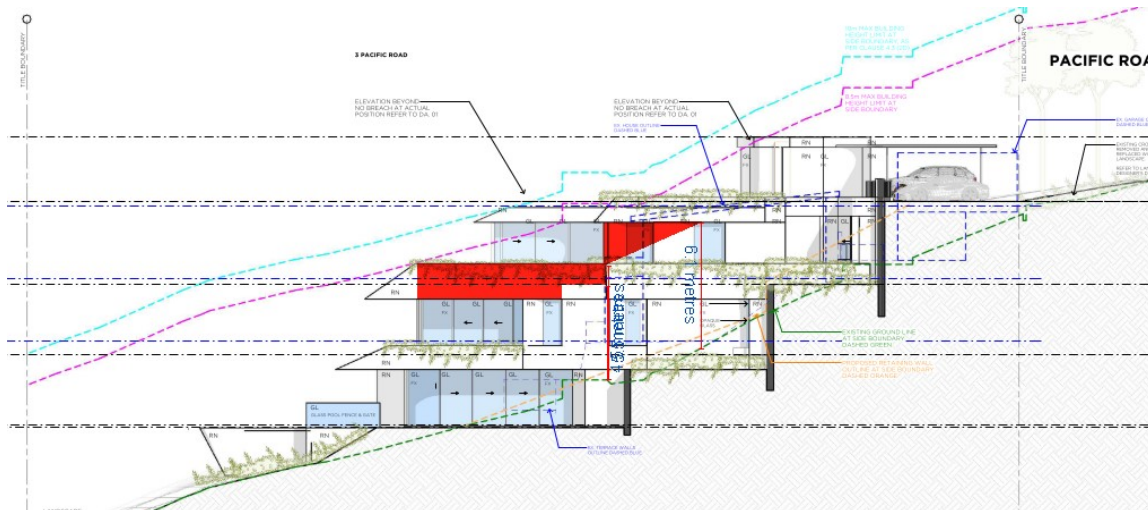


Figure 1 - Northern elevation - Red mark up by assessing officer showing areas of breach.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below:

Achieve the desired future character of the Locality.

Comment: Notwithstanding the encroachments to the building envelope, the proposal is considered to achieve the desired future character of the Palm Beach Locality which predominantly consist part two and three storey dwellings, with dwelling having a three storey component not uncommon on a sloping site of >30%. The proposal will largely read as two stories from the side elevation above the natural ground level, noting that the lowest floor at the southern elevation will be beneath the natural ground level and when reading the northern elevation, the upper level is significantly stepped back to mitigate bulk and scale. The proposal will be surrounded by deep soil landscape planting so that the building will integrate into the landform and landscape, including a large amount of planter boxes proposed around building.

To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

Comment: The proposal provides a well resolved street presentation with a single storey presentation to the street consisting of a single carport only, with the entrance setback from the front boundary. Landscaping is provided either side of the parking area to contribute to the landscape setting of the streetscape. Deep soil areas are provided around the site to allow tree planting.

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

Comment: The building appropriately steps down the land, while including a flat roof line that minimises bulk and scale. The building is generally below the 8.5m height limit, with the exception of two minor encroachments permitted under Clause 4.3(2D) PLEP due to the sloping nature of the site. The proposal provides largely compliant side setbacks (save for a minor encroachment to a skewed window on the south side ground floor) and has a rear setback well in excess of the DCP control, noting that the rear building setback generally aligns with the dwelling on 1 Pacific Road to maintain the theme of a large area of open space provided to the rear.

The bulk and scale of the built form is minimised.

Comment: The proposal incorporates varied setbacks to provide visual breaks along each elevation. As shown in the below 3D diagrams, the northern elevation provides a setback facade to create depth and articulation to minimise building bulk. The southern facade has stepped in the upper level dining room by 1m from the lower floors to further articulate the wall and respond to the building envelope. Deep soil landscaping is provided around the perimeter of the site to allow landscape to mature and soften the development as viewed from the side elevations. Landscape planter boxes are incorporated throughout the building, including along side elevations, to provide further visual interest through landscaping and articulation.

Overall, despite the encroachments to the envelope, the proposal has provided a range of strategies to break down the building mass and minimise bulk and scale.

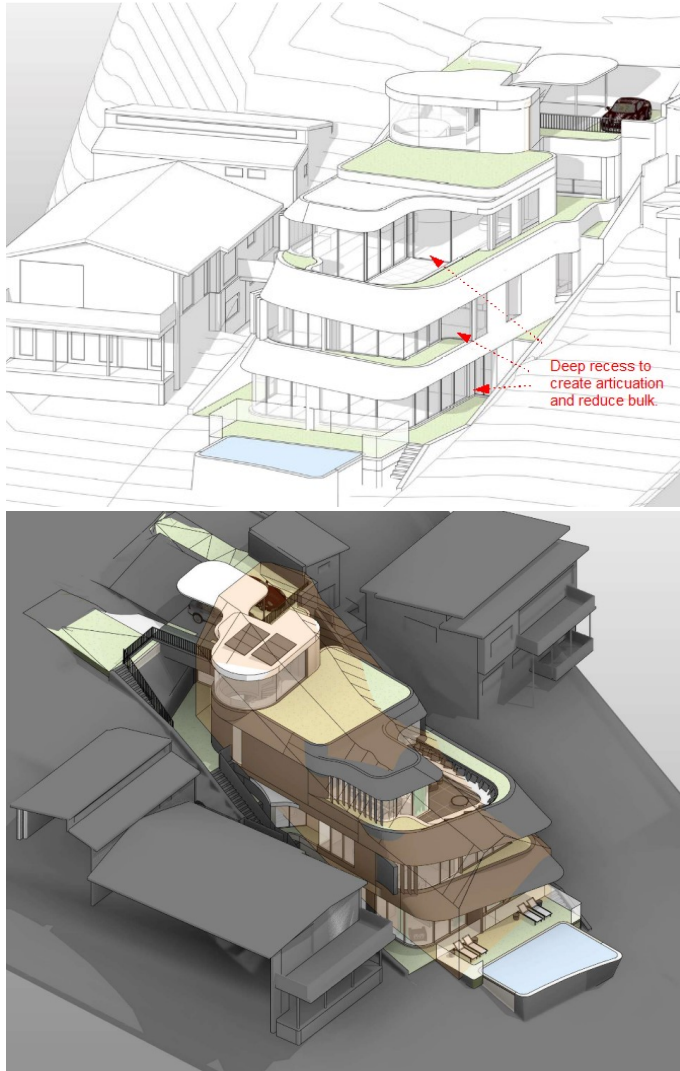


Figure 3 - 3D Views shown articulation of walls on north and south elevation.

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

Comment: View sharing is discussed in detail earlier in this report subject to a condition. Of note, it has been recommended that the dining room length upon level 2 be reduced by 2m given this encroachment will have a direct impact upon view sharing for No 14 Norma Road (see discussion above in this report under view sharing). As such, the extent of envelope breach is to be reduced through a 2m reduction to the length of the dining room to result in a reasonable view sharing outcome and ensure non-compliant elements do not contribute to view impacts. View sharing is found to be achieved for adjoining sites and is discussed earlier in this report.

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

Comment: The proposal has used privacy screening for the southern upper level living room window and setback the living room window from the northern boundary, with a planter box to mitigate direct

overlooking of the adjoining site, whilst still capturing views looking to the north-east. Skewed windows have been provided on both elevations where necessary to resolve privacy from study and bedroom windows, including setting back windows with planter boxes to promote views outwards and mitigate direct downward views to the adjoining properties private open space.

The application is accompanied by elevational shadow diagrams showing the additional overshadowing of the property south which demonstrate the adjoining property will receive >3 hours mid winter to the living room and private open space. The adjoining property has a north-east facing aspect to the living room window and will continue to receive solar access, where some overshadowing will occur during the afternoon which can be reasonably expected and would also be the case for a development which complied with the envelope (comparison shadow diagrams have been provided showing compliant v proposed).

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

Comment: The proposal enhances vegetation on the site as shown on the landscape plan, with the existing site not consisting of many trees at present.

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

D12.10 Landscaped Area - Environmentally Sensitive Land

DCP Control

The DCP states the following with regard to the calculation of landscape area under Clause C1.1 Landscaping:

The following soil depths are required in order to be counted as landscaping:

- 300mm for lawn
- 600mm for shrubs
- 1metre for trees

Strictly in accordance with this definition (when including the landscape planters for the development) the site consists of 539.2m² or 75.6%.

When counting the deep soil ground level landscaping for the site, the site consists of 364m² / 51% (which includes roof overhangs of less than 2m in depth - these areas are considered to receive a sufficient amount of light, air and rainfall to function as deep soil).

The application is considered to technically comply with the landscape requirements as prescribed under the DCP and the definition provided in Clause C1.1 when including planters.

For completeness, the application is also considered against the objectives of the control:

Achieve the desired future character of the Locality.

Comment: The building will present as a two/three storey building within a landscape setting, which is consistent with the residential character of Palm Beach, particularly on sloping sites. The numerous

areas beneath the eave overhang, planter boxes, and landscape steps are considered to contribute to the landscape quality of the development and enable the building integrate into the landscape setting of the locality.

The design uses an open carport with landscaping either side to respond to the landscape street character and minimise the built for presentation to the street.

The bulk and scale of the built form is minimised.

Comment: The landscape planting around the perimeter of the dwelling, rear setback and side setbacks, plus planting over structure, contributes to minimising bulk and scale of the development.

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

Comment: The proposal will not result in any unreasonable amenity impacts in terms of solar access, as demonstrated in the submitted shadow diagrams. Landscape planting along side boundaries will further enhance privacy between sites.

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

Comment: No significant vegetation is impacted and the proposal provides adequate room for replacement planting, which is proposed in the landscape plan and required as conditions. The planting over structure is considered to contribute to the landscape quality of the area and visually screen portions of the development and reduce visibility of portions of the development.

Conservation of natural vegetation and biodiversity.

Comment: Council's landscape team also support the proposal and the proposal will not result in impacts to significant vegetation.

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

Comment: Council's Development Engineer offers no objection subject to condition.

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

Comment: Subject to landscape conditions the proposal will preserve and enhance the landscape character of the locality.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment: The planting over structure further contributes to areas for water infiltration and water sensitive urban design. The areas of landscaping around the site contribute to stormwater management and Council's engineers are satisfied 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 \$56,603 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,660,276.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for demolition of the existing dwelling house and construction of a new dwelling and swimming pool has been referred to the Development Determination Panel (DDP) due to receiving nine (9) submissions (one of which was in support)

Concerns raised in the objections predominantly relate to view sharing, street character, garage design, bulk and scale, privacy, overshadowing and geotechnical concerns having been discussed in detail in this report. This assessment report recommending a condition for a further reduction of the Level 3 dining room to further resolve view sharing to an acceptable level.

The critical assessment issues relate to the above issues raised in the submissions and are detailed throughout the report.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/1235 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 399A DP 387179, 3 Pacific Road, PALM BEACH, 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
DA.00 Rev E	30/06/2023	Rob Mills Architecture
DA.03 Rev D	30/06/2023	Rob Mills Architecture
DA.10 Rev D	30/06/2023	Rob Mills Architecture
DA.11 Rev E	30/06/2023	Rob Mills Architecture
DA.12 Rev E	30/06/2023	Rob Mills Architecture
DA.13 Rev E	30/06/2023	Rob Mills Architecture
DA.14 Rev E	30/06/2023	Rob Mills Architecture
DA.20 Rev D	30/06/2023	Rob Mills Architecture
DA.21 Rev D	30/06/2023	Rob Mills Architecture
DA.30 Rev D	30/06/2023	Rob Mills Architecture
DA.31 Rev D	30/06/2023	Rob Mills Architecture
DA.90 Rev C	30/06/2023	Rob Mills Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
CI-000-0001 Rev C	26/05/2023	Stantec
CI-007-001 Rev C	26/05/2023	Stantec

CI-070-001 Rev C	26/05/2023	Stantec
CI-076-001 Rev C	26/05/2023	Stantec
CI-500-001 Rev C	26/05/2023	Stantec
CI-520-001 Rev C	26/05/2023	Stantec
CI-520-002 Rev C	26/05/2023	Stantec
CI-526-001 Rev C	26/05/2023	Stantec
CI-526-002 Rev C	26/05/2023	Stantec

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report Ref 206867.00 R.001.Rev0	13/12/2022	Douglas Partners
BASIX Certificate No.1301122S_02	16/05/2023	Ecological Design
Stormwater Management Report Ref 301350879	26/05/2023	Stantec
Arborist Report	15/07/2022	Ross Jackson

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
2023.05.LOCKHART.3.PACIFIC.A0.2.0.L4 Issue 02	May 2023	Ben Kaye Garden Design
2023.05.LOCKHART.3.PACIFIC.A0.2.0.L3 Issue 02	May 2023	Ben Kaye Garden Design
2023.05.LOCKHART.3.PACIFIC.A0.2.0.L2 Issue 02	May 2023	Ben Kaye Garden Design
2023.05.LOCKHART.3.PACIFIC.A0.2.0.L1 Issue 02	May 2023	Ben Kaye Garden Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	04/07/2022	Rob Mills Architecture

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

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

2. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS**4. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$56,602.76 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$5,660,276.00.

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

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

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

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

5. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**6. On Slab Landscape Works**

Details shall be submitted to the Certifying Authority 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 also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule. The following soil depths are required to support landscaping as proposed:

- i) 300mm for groundcovers and accent planting
- ii) 600mm for shrubs

Design certification shall be submitted to the Certifying Authority 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.

7. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Stantec Australia Pty Ltd, drawing number CI-000-001, CI-007-001, CI-500-001, CI-520-001, CI-520-002, CI-526-001 and CI-526-002 Revision C, dated 26/05/23. 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.

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

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

8. Traffic Management and Control

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Douglas Partners Pty Ltd dated 13 December 2021 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Amendments to the approved plans**

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

a) The length of the Level 3 Dining Room shall be reduced by 2m from the north-eastern edge of the glass-line and the roofline is to also be reduced by 2m from the north-east. In making this amendment, the dining room may increase in width by up to 1m in a north-westerly direction to redistribute a sufficient amount of floor area to maintain functionality of the dining room (the roof area above to be amended to suit). The area of the deleted dining room floor space may consist of an open terrace area.

b) Any reference to 'stone' on the Level 1 Terrace adjoining the pool shall be deleted from the architectural plans and the landscape plan, with this area to consist of grass or the required pool fencing only.

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, including maximising soft landscaping and retaining view sharing outcomes for the surrounding properties.

11. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

12. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

13. **Compliance with Standards**

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

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

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

14. **External Finishes to building**

The external finish of the building shall consist of a colour no lighter than mid-grey, as outlined in Clause D12.3 PDCP.

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

Reason: To ensure the building is more visually recessive in the landscape and meets the requirements of the DCP colour schedule.

15. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- a) The proposed phases of construction works on the site, and the expected duration of each construction phase.
- b) 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.
- c) Make provision for all construction materials to be stored on site, at all times.
- d) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- e) 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, with no access across public parks or reserves being allowed.
- f) 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, exclusive of any private road/driveway, community title road or right of way
- g) Make provision for parking onsite. Parking minimisation strategies are to be considered and documented.
- h) The CTMP must stipulate the size of the vehicles accessing the site and whether access is feasible in line with the adjoining property access uses.
- i) Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council.
- j) 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.

k) 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

l) 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

m) 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

n) Proposed protection for Council and adjoining properties

o) The location and operation of any on site crane

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”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Tree Removal Within the Road Reserve

This consent approves the removal of the following tree(s) within the road reserve (as recommended in the Arboricultural Impact Assessment):

- i) T1 and T2 - Cocus Palms,
- ii) additionally one small native Lillypilly located between T1 and T2 and not identified in the Arboricultural Impact Assessment, subject to street tree replacement,
- iii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council’s Trees Services business unit prior to removal.

Reason: Public liability.

17. 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: 1 and 5 Pacific Road Palm Beach

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.

18. **Installation and Maintenance of Sediment and Erosion Control**

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

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

DURING BUILDING WORK

19. **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 Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

20. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,

iii) all road reserve trees and vegetation not approved for removal.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, including:

- i) section 4 Recommendations and in particular: a), b), c), d), e), f), and g).

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

21. **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.

22. **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.

23. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

24. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor 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.

25. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

26. **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.

27. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 6 metres wide in accordance with Northern Beaches Council Drawing Maximum Low Profile and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

28. **Replacement Street Tree Planting**

One (1) replacement street tree planting shall be planted within the lawn area of the road verge and shall be selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, or Council's Tree Guide, with the following suggested species as a guide: Old Man Banksia - Banksia serrata, Coast Banksia - Banksia integrifolia, or Small leaved Lillypilly - Syzygium leuhmannii.

Street tree planting shall be a minimum pre-ordered planting size of 75 litres, and shall 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 including a four post and top and mid rail timber tree guard and watered until established and shall be generally located at least 1 metre and preferably 2 metres from any structures including driveways, kerbs and paths and shall generally be centralised within the road verge.

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

Reason: To maintain environmental amenity.

29. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) the proposed tree planting species shall be varied to provide diversity and shall include the nominated species as well as the following species: Old Man Banksia - Banksia serrata, Coastal Banksia - Banksia integrifolia, Scribbly Gum - Eucalyptus haemastoma,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained,

and watered until established, and shall be located at least 3.0 metres from other trees, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,

iii) all selected planting near pools shall comply with the requirement of Australian Standard AS 1926.1 for a Non Climbable Zone for planting care,

iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

30. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

31. **Post-Construction Dilapidation Report**

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

- 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.

32. **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.

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

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

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

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **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

36. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent. All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

37. **Geotechnical Recommendations**

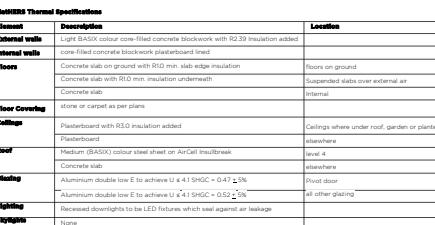
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

38. **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.

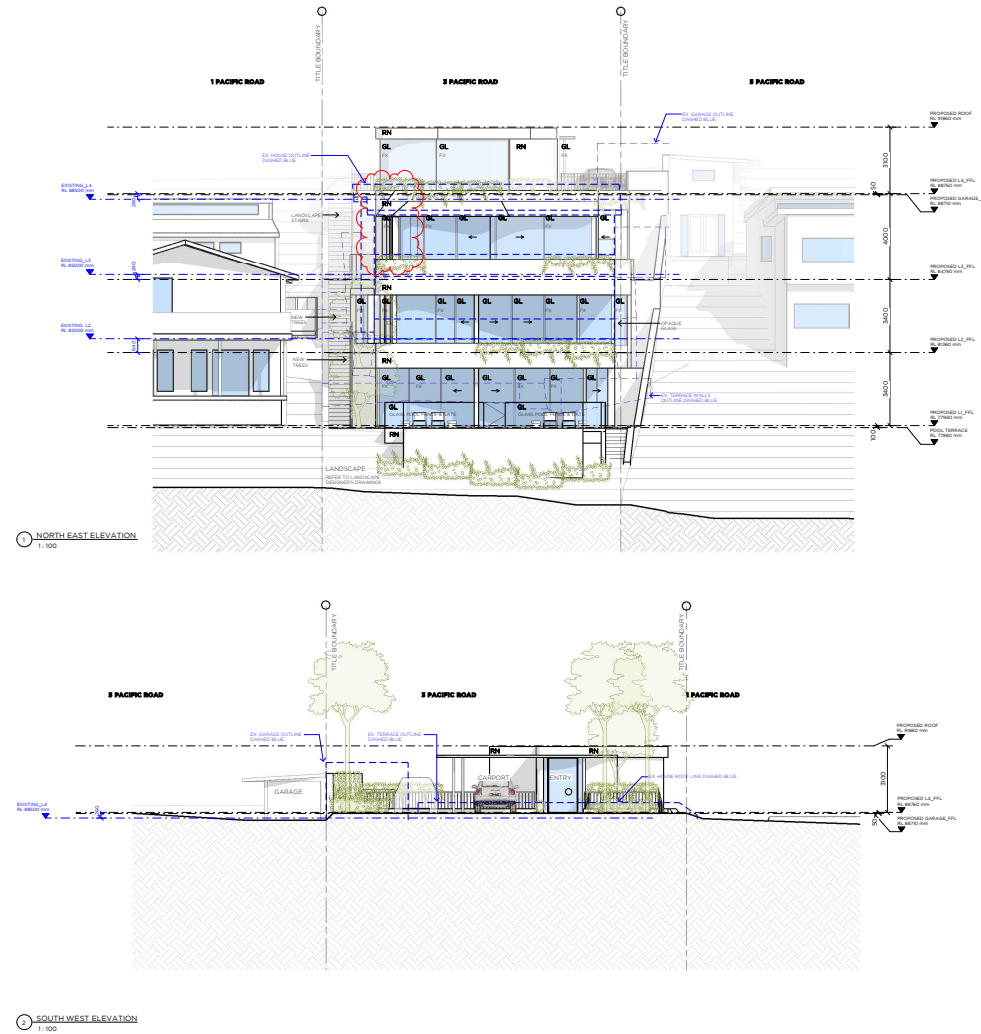


TITLE

SITE PLAN

0 1 5

PROJECT OVERVIEW		
DEVELOPMENT APPLICATION		
Not to be used for construction purposes		
Job No.	2024	Scale: 1:100 @ All
Drawn by:	TL/CC	Drawing No. Rev
Rev Date:	30/06/2023	DA 10 D



All dimensions are to be checked by the builder on site and any discrepancies brought to the attention of Robert Mills Architect Pty Ltd prior to construction. When a dimension is not clear it is the builder's responsibility to clarify the dimension with the architect. It is the builder's responsibility to cross reference working drawings with all other approved documents. These drawings are not to be taken as a final design or construction document. All dimensions and components with client budget requirements. At time of design, confirmation of these approvals has not been received.

© Robert Mills Architect Pty Ltd 2018. This confidential design and any accompanying documentation is and remains the exclusive property of Robert Mills Architect Pty Ltd and is to be used solely for the purpose of evaluating our design unless permitted otherwise, under a written arrangement with Robert Mills Architect Pty Ltd. Design is schematic only and subject to council and other requisite approvals.

REV	NOTES	DATE
A	DA SUBMISSION	16/07/2022
B	RESPONSE TO COUNCIL RFI	20/03/2023
C	RESPONSE TO COUNCIL RFI	04/05/2023
D	RESPONSE TO COUNCIL RFI	30/06/2023

PROJECT NAME & DESCRIPTION
NEW DWELLING
3 PACIFIC ROAD, PALM BEACH
NSW 2108
1511 S ARCADEY LOCKHART

TITLE
ELEVATIONS
0 1 5m

PROJECT OVERVIEW			
DEVELOPMENT APPLICATION			
Date to be used for construction purposes			
Job No.	2024	Scale	1:100 @ A1
Drawn By	TL/CC	Drawing No.	DA.20
Rev Date	30/06/2023	Rev	D



Melbourne Office
170 Grafton Street
Melbourne VIC 3001
+61 3 9525 2408

Sydney Office
51 Queen Street
Woolahra NSW 2025
+61 2 9988 7851



DATE
15/07/2022
20/03/2023
04/05/2023
30/06/2023

PROJECT NAME & DESCRIPTION
NEW DWELLING
AT
**3 PACIFIC ROAD, PALM BEACH
NSW 2108**

ELEVATIONS

PROJECT OVERVIEW
DEVELOPMENT APPLICATION
 Not to be used for construction purposes

Job No.	2024	Scale.	1:100 @ A1
Drawn by.	TL/CC	Drawing No.	Rev
Rev Date.	30/06/2023	DA 21	D



Melbourne Office.
1/10 Grattan Street
Prahran VIC 3181
+613 9525 2406

Sydney Office.
51 Queen Street
Woolahra NSW 2025
+612 9188 7851

ITEM 3.4 **DA2023/0166 - 21 OCEAN ROAD MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A GARAGE AND OUTBUILDING**

REPORTING MANAGER Adam Richardson

TRIM FILE REF 2023/485085

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0166 for alterations and additions to a dwelling house including a garage and outbuilding on land at Lot 12 DP 2428, 21 Ocean Road MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0166
Responsible Officer:	Nick England
Land to be developed (Address):	Lot 12 DP 2428, 21 Ocean Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house including a garage and outbuilding
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Darren Bradley Wickham Kathryn Lee Wickham
Applicant:	Wray And Cutcliffe Architects
Application Lodged:	13/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/05/2023 to 09/06/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.4 Floor space ratio: 12%
Recommendation:	Approval
Estimated Cost of Works:	\$ 446,490.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a variation to the Floor Space Ratio (FSR) development standard of Manly Local Environmental Plan 2013, which exceeds 10% (12% proposed).

During the notification period, the application attracted 2 submissions. The submission raised concerns in respect of visual impact, view loss and use of the proposed garage/outbuildings as a secondary dwelling / habitable floor space.

Initial assessment of the application resulted in issues with: non-compliance with the FSR standard; visual impact to Ocean Lane; and non-compliance with the Roof Height control of Manly Development Control Plan 2013 (MDCP).

Critical assessment issues relate to: variation to the FSR standard; Total Open Space and Side Setback controls of the MDCP and the subject sites proximity to items of environmental heritage.

The 4.6 request for the non-compliance with FSR standard arises from the total area of floor space (296.9m²) representing a 12% variation with the standard. The proposal will actually result in net reduction in floor space, by approximately 6m², through the rationalisation of the existing outbuildings to the rear of the site.

In effect, the proposal will not increase the bulk or scale of the built form on the site, through the net reduction of floor space. There will also be an additional 2% of the site (approximately 9m²) set aside as Total Open Space.

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

PROPOSED DEVELOPMENT IN DETAIL

The application consists of the demolition of two (2) existing outbuildings (garage and storage) and the construction of a new double garage and new combined storage / single car garage accessed from Ocean Lane. Other works include:

- additional landscaped open space and a new pedestrian entry is proposed on the Ocean Lane frontage;
- revised rear landscaped area;
- extension to existing rear pergola and patio by 1.8m;
- new bbq adjoining northern boundary; and
- removal of one (1) tree.

ASSESSMENT INTRODUCTION

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

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

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 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 12 DP 2428 , 21 Ocean Road MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Ocean Road. The site also has a secondary frontage to Ocean Lane, adjoining the western (rear) boundary of the site. The site is regular in shape, with a surveyed area of 434.7m². The site is located within the R1 General Residential zone and accommodates a two-storey dwelling house, swimming pool and carports / outbuildings to the rear of the site. The dwelling house likely dates from the early 20th century, whilst the rear outbuildings / garages are likely to date from the mid to late 20th century. The site has southerly aspect with a slight fall down across from the side north boundary to the side south boundary. The site has no significant vegetation or natural features. Adjoining and surrounding development is characterised by dwelling houses, with an item of environmental heritage (dwelling) adjoining the site at No.19 Ocean Road and a group of heritage dwellings to the west on Quinton Road.

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:

PLM2022/0175: Written prelodgement advice of Council was provided to the applicant on 8 September 2022, in regard to a proposal which involved a new double garage with storage above. In conclusion, the notes advised the following:

"A review of the proposed development based on the specific issues raised in the pre lodgement application has been carried out and you are advised that any further increase to the non-compliant FSR is unlikely to be supported by Council. Any additional storage for the site is to be supported by a comprehensive Clause 4.6 Variation Statement."

History relevant to the subjection application includes the following:

18 April 2023: Correspondence forwarded to applicant outlining that the application was not supported, based on: non-compliance with the floor space ratio control of MLEP 2013 (15% variation proposed); inappropriate bulk and scale to Ocean Lane; and non-compliance with the Roof Height control of MDCP 2013.

15 May 2023: Amended plans received in response to Council's concerns. These plans were re-notified, between the periods of 22 May and 9 June 2023, as the amendments proposed structures in closer proximity to the northern side boundary in comparison to the original proposal.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of	See discussion on "Environmental Planning Instruments" in

Section 4.15 Matters for Consideration	Comments
any environmental planning instrument	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>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: non-compliance with floor space ratio development standard; frontage to Ocean Lane; and roof height, in correspondence dated 18 April 2023. <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.

Section 4.15 Matters for Consideration	Comments
	(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 26/05/2023 to 09/06/2023 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 process council is in receipt of 2 submission/s from:

Name:	Address:
Mr David Harold Godwin	29 Ocean Road MANLY NSW 2095
Mr Russell James Harrison	25 Ocean Road MANLY NSW 2095

The following issues were raised in the submissions, which have been summarised and addressed below:

- *The proposal represents a significant non-compliance with the floor space ratio control of Manly LEP 2013.*

Comment: This issue was raised in a submission received on the original proposal, which involved a significant area of storage located above the proposed garage. The application has since been amended to remove the storage area above the garage. The floor space represented in the amended proposal now actually represents a reduction in the overall existing

area of floor space on the site (6.3m^2), which results in a fall from the existing ratio of 0.69:1, to a new ratio of 0.68:1. Whilst the proposal still in effect represents a non-compliance with the development standard, and as there is no effective increase in floor space on the site, the proposal is acceptable.

- *The proposed storage area above the garage will result in view loss from properties to the north of the site.*

Comment: As the proposal has since been amended to remove the storage located in the roof and the height of the amended roof, is well within relevant standards and controls and is consistent with height of other similar structures, no adverse loss of views is likely as a result of the proposed development, as amended.

- *The proposed garages / storage may be used as short-term accommodation and a condition should be applied that will restrict their use to only garages.*

Comment: The plans lodged with the application (as amended) clearly illustrate that the new structures will only be used for parking and storage purposes. If these plans form part of an approved development as recommended, these notations will serve to restrict their use to only those purposes. In the event that these areas are used for purposes other than those approved, Council may commence regulatory action.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported, subject to Conditions The proposed alterations and additions includes: demolition of the existing parking structures to be replaced with a new double garage with attic storage space within the pitched roof; garden storage spaces attached to the garage; new landscape works; new rear lane pedestrian gate access; new pool paving to existing pool area; and extension of existing the patio. The existing property supports small trees and garden planting and a street tree is located within the road reserve verge at Ocean Road. No prescribed trees are impacted by the development and the existing street tree shall be protected by imposed conditions. A Landscape Plan is submitted indicating planting as well as a replacement tree, and conditions shall be imposed.
NECC (Development Engineering)	Supported, subject to Conditions The proposed development reduces the existing impervious area and the pool and surround will discharge to the sewer. Hence OSD is not required and the submitted stormwater plan is acceptable subject to conditions. No objections to approval subject to conditions as recommended.

Internal Referral Body	Comments												
Strategic and Place Planning (Heritage Officer)	<i>Supported, subject to Conditions</i>												
	HERITAGE COMMENTS												
	Discussion of reason for referral												
	The proposal has been referred to Heritage as the subject site adjoins two heritage items and is opposite a group item												
	Item I2 - All Stone Kerbs (Ocean Road) Item I188 - House - 19 Ocean Road Item I215 - Group of Houses - Quinton Road												
	Details of heritage items affected												
	Item I2 - All Stone Kerbs <u>Statement of significance:</u> Stone kerbs are heritage listed. <u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century.												
	Item I188 - House - 19 Ocean Road <u>Statement of Significance</u> A fine example of Federation Filigree style of residence. <u>Physical Description</u> Elaborate two storey Federation Filigree style brick residence with two storey verandah featuring timber fretwork balustrading and (to first floor) timber shingling and valance												
	Item I215 - Group of Houses <u>Statement of Significance</u> The group of houses at 1-23, 25 and 27 Quinton Road are a remarkably intact example of early Twentieth Century development, typical of the Manly area at that time.												
	<u>Physical Description</u> The group of houses on lower Quinton Road and 1, 3, 5 and 7 Augusta Road is a substantially intact example of villa residences, as well as post World War 1 residential flat buildings, typical of early Twentieth Century development in the Manly district.												
	Other relevant heritage listings												
	<table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr></table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No	
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No											
Australian Heritage Register	No												
NSW State Heritage Register	No												
National Trust of Aust (NSW) Register	No												

Internal Referral Body	Comments		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for works to the rear of the dwelling including new landscaping works, a garage with loft storage space, rear fence and extension of the patio and pergola. The heritage listed stone kerbs are located at the front of the dwelling in Ocean Road and are not impacted by the works. The heritage items in Quinton Road are separated from the site by Ocean Lane which is fronted on either side by rear carports and garages for properties in Ocean Road and Quinton Road. The proposed works are consider to not impact the group heritage item in Quinton Road.		
	Directly adjoining to the south of the site is 19 Ocean Road. It has a garage directly adjoining the site and the laneway. Heritage considers a new garage to be generally consistent with the character of the laneway and is supportive of the efforts to rationalise the current 3 spaces down to two with a reduction in the length of buildings on the rear boundary. However the proposed pitch of the roof and its overall height is much greater than its immediate neighbours. While on balance Heritage can tolerate the pitch and height of the garage, any improvements to the design would need to see the the overall roof height and pitch angle be reduced.		
	Revised Comments - 06 July 2023		
Heritage reviewed the amended documents, received on 03 July 2023. The proposed separation of the storage space from the double garage resulted a lower ridge level for the pitched roof facing the rear lane. Given the proposed modifications are mainly confined to the rear boundary and the reduction of the overall roof height will reduce the impact on the neighbouring buildings, the proposal is considered acceptable on heritage grounds.			
Therefore on balance, Heritage raises no objections to the proposal 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	Supported, subject to Conditions		

External Referral Body	Comments
and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A483476 dated 20 February 2023).

The BASIX Certificate indicates that the development will achieve the sustainability requirements of State Environmental Planning Policy - BASIX.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0 metres of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m 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	4.1m	N/A	Yes
Floor Space Ratio	FSR:0.6:1	FSR: 0.68:1	12*	No

* existing variation to the FSR on the site is estimated at 13%

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1
Proposed:	0.68:1
Percentage variation to requirement:	12%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) *the consent authority is satisfied that:*

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

That the "first" way of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in Wehbe v Pittwater Council (2007), is adopted in the written report. This specifically establishes 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, based on the following:

- no additional floor space is created as a result of the proposed development;
- the presence of built structures on the frontage of Ocean Lane is reduced;
- the proposed improves the presentation of built form along Ocean Lane, and as stated in the request, is "*considered to be a significant improvement to the existing rear lane character with the dilapidated structures to be replaced with a more refined contemporary outcome*"; and
- The works represent an actual reduction in floor space and will not give rise to any adverse environmental impacts with regard to view loss, overshadowing and privacy.

The reasons given in support of the proposed variation are considered well founded and relevant to both the objectives of the standard and the zone in which the land is situated.

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment: The proposed development entails a rationalisation of the rear outbuildings that face Ocean Lane and will in effect, be a reduction of the existing floor space on the site, by

approximately 6m². No additional visual bulk will be visible from the primary frontage of the site on Ocean Road. Hence, the proposal bulk and scale of the proposal is consistent with the existing and desired streetscape character and the proposal is consistent with this objective.

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

Comment: The proposed development will not result in any obscuration of any adjoining significant landscape / townscape feature and hence the development will be consistent with this objective.

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

Comment: The proposed works are consistent in height and scale to other outbuildings adjacent Ocean Lane and hence will create an appropriate visual relationship with existing development in the area, consistent with this objective.

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

Comment: The proposed variation will not result in any adverse amenity impacts, on either an adjoining private property or the public domain. Hence, this objective is achieved.

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

Comment: Not relevant to the proposed development.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

To provide for the housing needs of the community.

Comment: The existing residential use will be retained, hence this objective is not compromised by the proposed variation.

To provide for a variety of housing types and densities.

Comment: The existing residential dwelling will be retained, hence this objective is achieved.

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

Comment: Not relevant to the proposed development.

Conclusion:

For the reasons detailed above, the proposal is consistent with the objectives of the R1 General Residential zone.

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

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

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

6.4 Stormwater management

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

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

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

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

Comment: It is not required to incorporate on-site stormwater retention into the development, as the proposal results in no effective increase in impervious surface area and the existing disposal system is adequate to accommodate the proposed development.

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

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

6.8 Landslide risk

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

(a) matches the underlying geotechnical conditions of the land, and

(b) is restricted on unsuitable land, and

(c) does not endanger life or property.

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

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

Comment:

The proposed works are minor and will result in the demolition and rebuilding of existing garage / outbuildings with no significant excavation proposed. Hence, the risk of landslide is considered negligible.

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

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

Comment:

The application has been referred to Council's Development Engineers, who are satisfied that (subject to condition) adequate measures will be provided to manage stormwater generated by the proposed development.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

Comment:

The site is adequately serviced by utilities to service the proposed development.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 434.7m ²	Requirement	Proposed	% Variation*	Complies
4.1.4.1 Street Front Setbacks (Ocean Lane)	prevailing building line - nil setback	Nil	N/A	Yes

4.1.2.1 Wall Height	North: 6.6m (based on gradient 1:60)	2.4m	N/A	Yes
	South: 6.6m (based on gradient 1:60)	2.4m	N/A	Yes
	East: 6.6m (based on gradient 1:60)	2.4m	N/A	Yes
	West: 6.6m (based on gradient 1:60)	2.4m	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.5m	N/A	Yes
	Pitch: maximum 35 degrees	35 degrees	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	South: 0.8m (based on wall height of 2.4m)	Nil	100	No
	North: 0.7m (based on wall height of 2.1m)	Nil	100	No
	Windows: 3m	N/A	N/A	N/A
4.1.4.4 Rear Setbacks	N/A (Street frontage control applied to Ocean Lane)	N/A	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	169.1m ² or 39% (existing estimated at 37%)	29	No
4.1.5.2 Landscaped Area	Landscaped area 35% of "actual" of open space, or 66m ²	80.7m ² or 48%	N/A	Yes
	1 native trees	1 tree	N/A	Yes
4.1.5.3 Private Open Space	18m ²	121m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6m, or 50% of Ocean Lane frontage	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	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
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

Description of non-compliance

The proposed garage and storage building are setback at a nil distance from the north and south side boundaries of the site, which is a 100% non-compliance with the standard (1/3 of wall height).

Merit consideration:

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

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

Comment: The proposed garage and outbuilding is located on Ocean Lane, which is typified by similar service structures that also have nil setbacks from their respective boundaries. In this regard, the proposed development is able to maintain and enhance the existing streetscape and in turn, meet this objective.

Objective 2) To ensure and enhance local amenity by:

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

- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment: The site is not a corner allotment. The scale and bulk of the proposed structures are very minor and are unlikely to give rise to any adverse amenity impact on adjoining properties, in respect to privacy, solar access or view loss. As discussed previously, the character of existing development along Ocean Lane is typified by single storey structures with nil setbacks from the side boundaries and the proposal is consistent with this form. Hence, the proposal is consistent with this objective.

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

Comment: The proposed works will in effect demolish one existing structure and reconstruct two other structures in a manner more sympathetic to the subject land and surrounding properties. This will achieve the requirements of this objective.

Objective 4) To enhance and maintain natural features by:

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

Comment: The proposal will create a new area of landscaped open space fronting Ocean Lane, approximately 2.5m in width, which will promote landscape plantings and deep soils zones where currently none exist. This objective is therefore achieved.

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

Comment: Not relevant to the subject site.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposed area of total open space is estimated at 161.9m² or 39% of the site, which is a 29% variation with the minimum requirement (55%).

The existing provision of total open space is estimated at 37% of the site area, with the proposal resulting in a net increase in total open space on the site.

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: There are currently no significant landscape features on the rear of the site, however the re-arrangement of existing outbuildings on the site will result in a net increase of total open space on the site, estimated at approximately 9m², located in the rear yard area. A further 15m² of new landscaped open space is provided directly adjacent the Ocean Lane frontage, providing new opportunities for landscape features and vegetation on the site, which enhance the public domain. The proposal is therefore consistent with this objective.

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

Comment: As stated previously, the proposed works will represent a net increase in both the total open space and soft landscaped area on the site. Hence this objective is achieved.

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

Comment: Despite the non-compliance with the minimum requirements, the proposed development will improve the existing provision of total open space and landscaped area on the site, resulting in an improvement of the amenity of the surrounding area. Therefore, the proposed development is consistent with this objective.

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

Comment: As a net increase in landscaped open space is proposed, this objective is achieved.

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

Comment: A landscape plan is provided with the application, demonstrating suitable replacement species and plantings to meet this objective.

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

Comment: The land is not subject to a wildlife corridor. The additional landscape open space on the site will however provide new opportunities for wildlife habitat.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$4,465 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$446,490.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including a garage has been referred to the Development Determination Panel (DDP) due to a variation to the Floor Space Ratio (FSR) development standard of Manly Local Environmental Plan 2013, which exceeds 10% (12% proposed).

The critical assessment issues relate primarily to the extent of the proposed variation to the FSR standard. Other issues relate to the Total Open Space and Side Setback controls of the Manly Development Control Plan 2013 and the subject's site proximity to items of environmental heritage.

Overall, the proposal development represents a net decrease in the floor space on the site. Whilst a variation to the FSR standard remains, the existing non-compliance is no worse and in effect, slightly improved. The written report provided by the applicant to justify the variation is well-founded and contains relevant arguments to the circumstances

The concerns raised in the objections have been addressed and resolved by the amendments made to the application since it was lodged, primarily to reduce its visual impact and ensure no adverse amenity impacts on adjoining properties.

In summary, the application has demonstrated compliance with the standards and objectives of Council's policies and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/0166 for Alterations and additions to a dwelling house including a garage and outbuilding on land at Lot 12 DP 2428, 21 Ocean Road, MANLY, 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
DA-102 Issue P	15 May 2023	Wray & Cutcliffe Architects
DA-112 Issue P	15 May 2023	Wray & Cutcliffe Architects
DA-201 Issue P	15 May 2023	Wray & Cutcliffe Architects
DA-202 Issue P	15 May 2023	Wray & Cutcliffe Architects
DA-203 Issue P	15 May 2023	Wray & Cutcliffe Architects
DA-204 Issue P	15 May 2023	Wray & Cutcliffe Architects
DA-301 Issue P	15 May 2023	Wray & Cutcliffe Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report Title / No.	Dated	Prepared By
BASIX Certificate No.A483476	20 February 2023	Wray & Cutcliffe Architects

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-111 Issue P	15 May 2023	Wray & Cutcliffe Architects

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

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,	EDMS Reference	Dated
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Authority or Service		
Ausgrid	Ausgrid Referral Response	30 March 2023

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

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

3. Prescribed Conditions

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

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

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

- damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by

- Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,464.90 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 \$446,490.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Stormwater Disposal

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

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.

8. Boundary Identification Survey

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

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

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

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

9. 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.

10. Compliance with Standards

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

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

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

11. **External Finishes to Roof**

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

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

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

12. **Sydney Water "Tap In"**

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

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

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

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

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

DURING BUILDING WORK

13. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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

Reason: Street tree protection.

14. **Road Reserve**

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

Reason: Public safety.

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

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

- 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.

16. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

17. **Survey Certificate**

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

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

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

18. **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.

19. **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

20. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan DA-111, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; to achieve at least 6.0 metres height at maturity; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, 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 Landscape Plan
- d) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

21. **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.

22. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the

floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.

23. **Swimming Pool Requirements (existing pool modified by works)**

The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018;
- (iv) Australian Standard AS1926 Swimming Pool Safety;
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools;
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(b) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(c) All signage shall be located in a prominent position within the pool area.

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

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

Reason: To protect human life.

24. **Swimming Pool Requirements (existing pool modified by works)**

The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018;
- (iv) Australian Standard AS1926 Swimming Pool Safety;
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools;
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(b) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(c) All signage shall be located in a prominent position within the pool area.

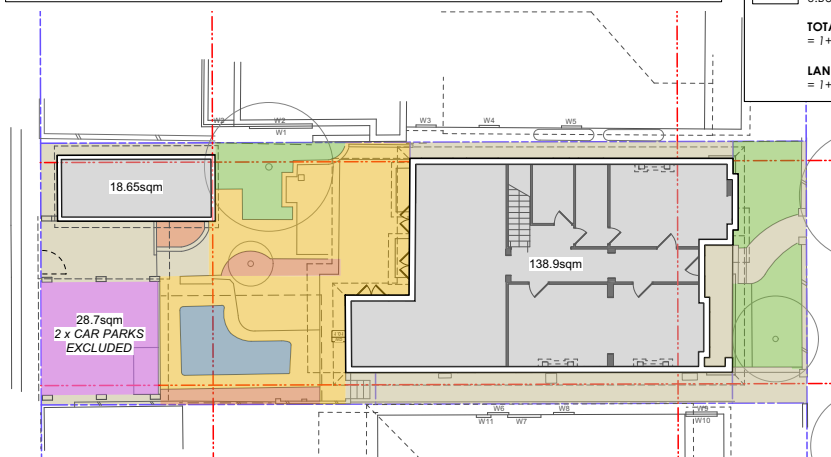
Swimming pools and spas must be registered with the *Division of Local Government*.

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

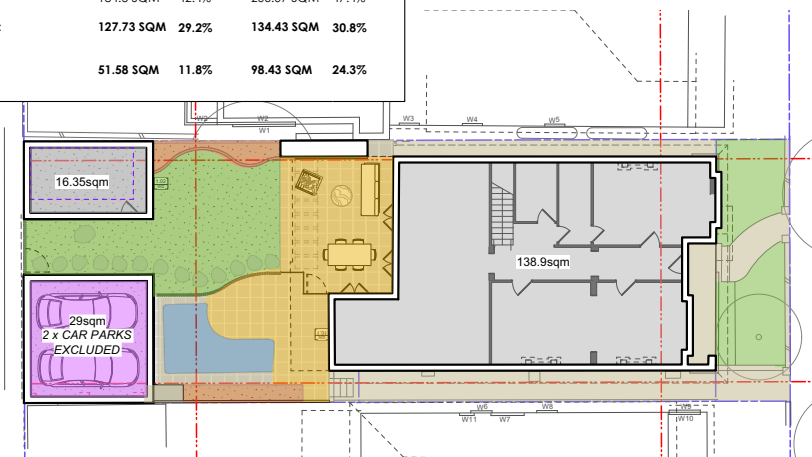
Reason: To protect human life.

FSR CALCULATIONS	EXISTING	PROPOSED	CONTROL/REQ
GROUND PLAN	157.56sqm	155.27sqm	EXISTING FLOOR AREA
LEVEL 1 PLAN	135.9sqm	135.9sqm	EXISTING FLOOR AREA - N/A
TOTAL	293.46sqm	291.17sqm	260.82sqm
FSR:	0.6741	0.671	0.6-1
	(variation 12.5%)	(variation 11.1%)	[Improved]
TOTAL SITE AREA:	434.9sqm	434.9sqm	434.9sqm

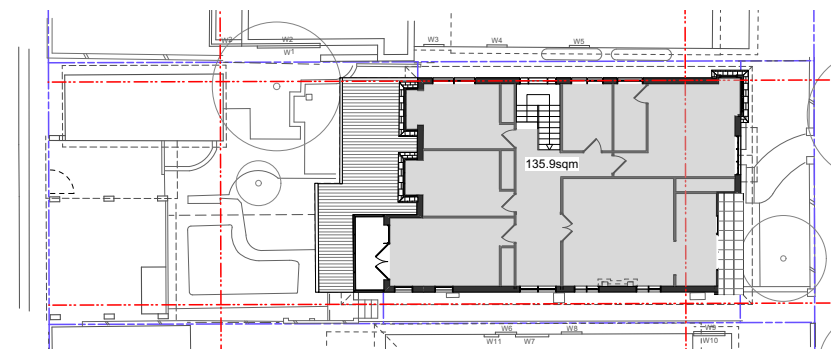
LEGEND	CONTROL:	EXISTING	EXISTING	PROPOSED	PROPOSED
		434.95SQM	100%	434.95SQM	100%
OPEN SPACE CALCULATIONS					
1. LANDSCAPE OPEN SPACE		39.43 SQM	9%	77.64SQM	17.8%
2. LANDSCAPE AREA (EXCLUDED)		12.15 SQM	2.7%	10.27 SQM	2.3%
3. HARDSTAND OPEN SPACE		76.8 SQM	17.6%	53.9 SQM	12.4%
4. HARDSTAND AREA (EXCLUDED)		110.5 SQM	25%	65.0 SQM	14.9%
5. POOL (EXCLUDED)		11.5 SQM	2.6%	11.5 SQM	2.6%
6. BUILT UPON AREA		184.5 SQM	42.4%	206.07 SQM	47.4%
TOTAL OPEN SPACE:	= 1+3+5=SQM	127.73 SQM	29.2%	134.43 SQM	30.8%
LANDSCAPE AREA:	= 1+2=SQM	51.58 SQM	11.8%	98.43 SQM	24.3%



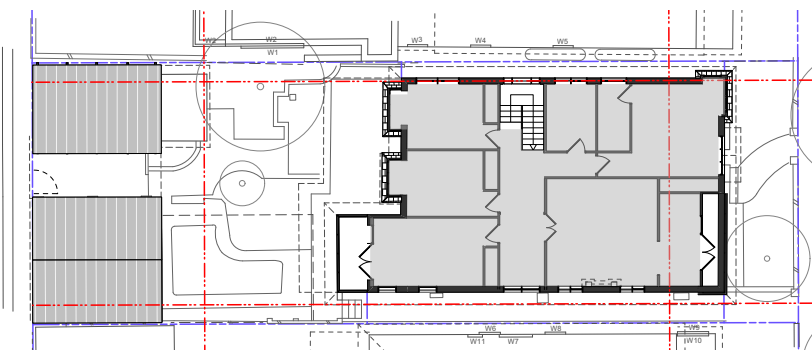
01 Existing Site Calculations GF
Scale: 1:200



03 Proposed Site Calculations GF
Scale: 1:200



02 Existing Site Calculations L1
Scale: 1:200



04 Proposed Site Calculations L1
Scale: 1:200



**WRAY AND CUTCLIFFE
ARCHITECTS**

e: jessica@wacarchitects.com.au • e: alicia@wacarchitects.com.au
m: 0424 755 086 m: 0424 581 309

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TITLE
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AT

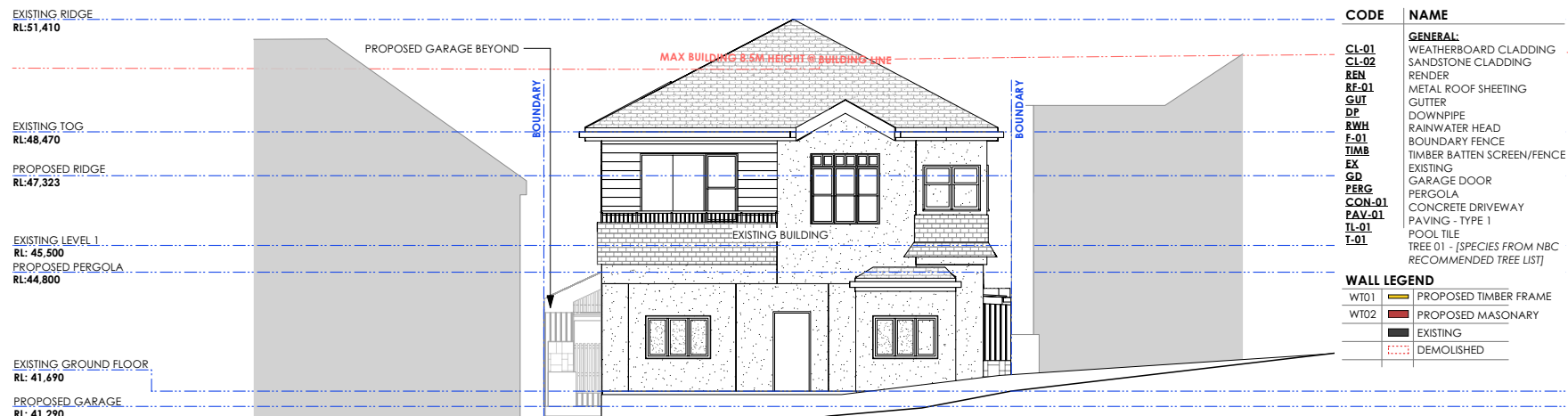
Ocean Road
Site Calculations Plan
Kathryn and Darren Wickham
21 Ocean Road, Manly, 2095

DATE 15/05/2023
SCALE AS NOTED
DRAWN AC/DY
JOB NO. #2203

DWG
DA-401
ISSUE P

1m 5m 10m

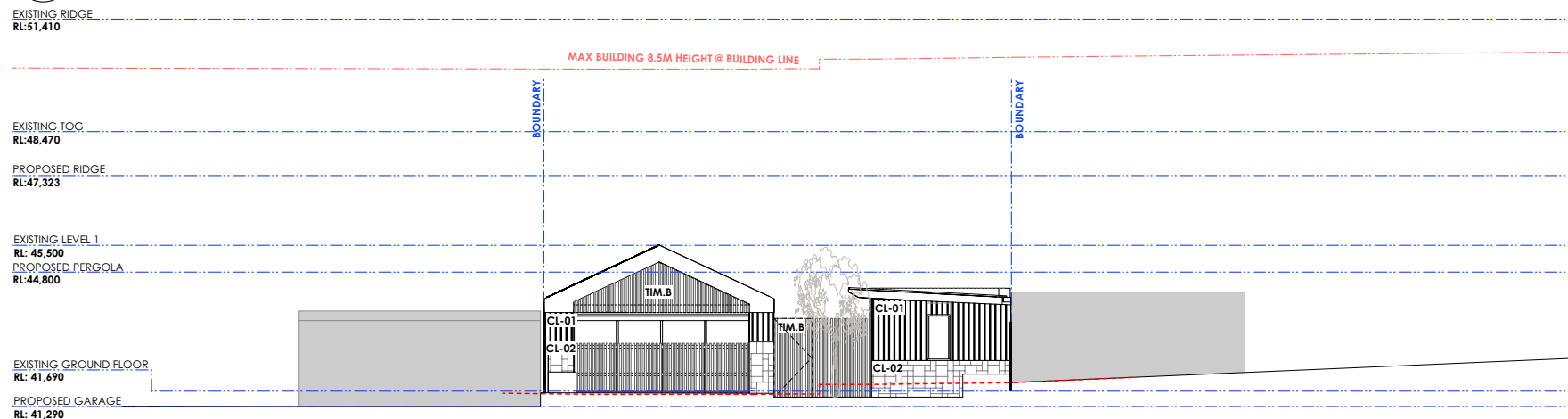
Issue	Description	Date
P	RFI to Council	15.05.2023
O	Review to Council	09.05.2023
N	Draft Re-submission to Client	19/04/2023
M	Development Application	14.02.2023
L	Draft Development Application to planner	16.12.2022



01

Eastern [Street] Elevation

Scale: 1:100



02

Eastern Elevation

Scale: 1:100

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e: jessica@wacarchitects.com.au • e: alicia@wacarchitects.com.au
m: 0421 755 086 m: 0424 581 309

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TITLE
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AT

Ocean Road

Elevation - Eastern

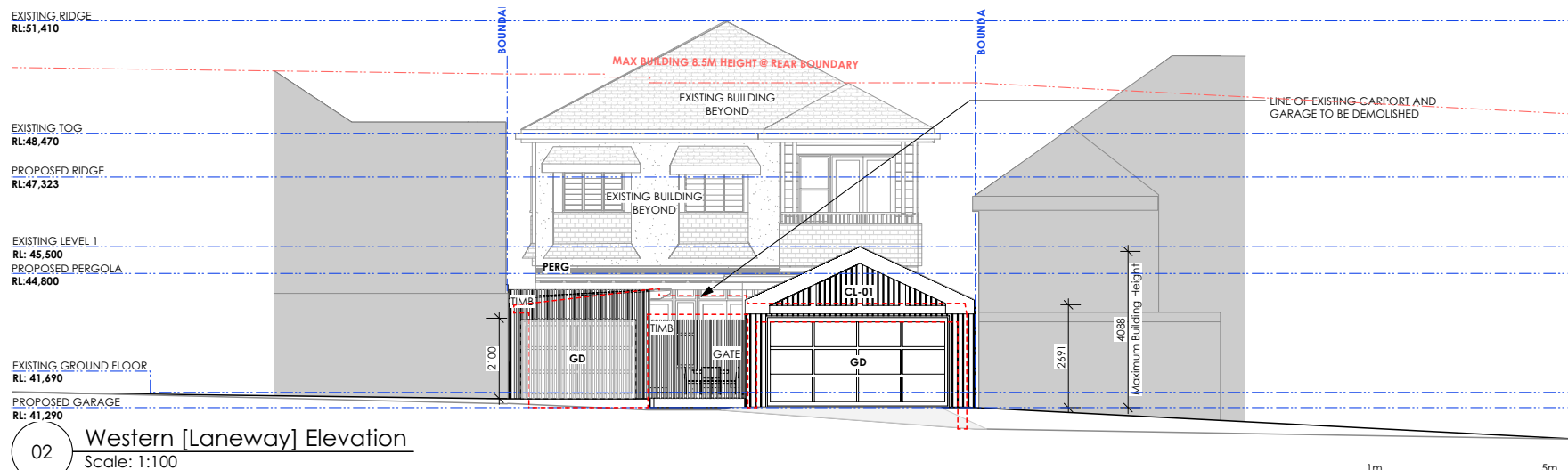
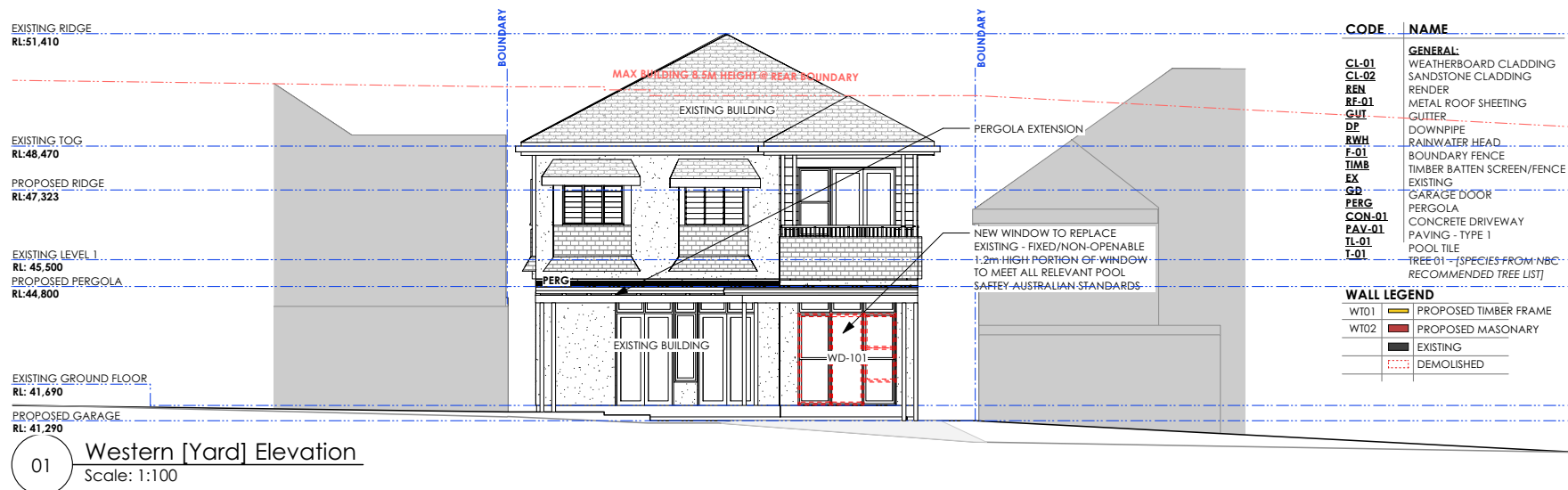
Kathryn and Darren Wickham
21 Ocean Road, Manly, 2095

DATE 15/05/2023
SCALE AS NOTED
DRAWN AC/DY
JOB NO. #2203

DWG
DA-201
ISSUE P

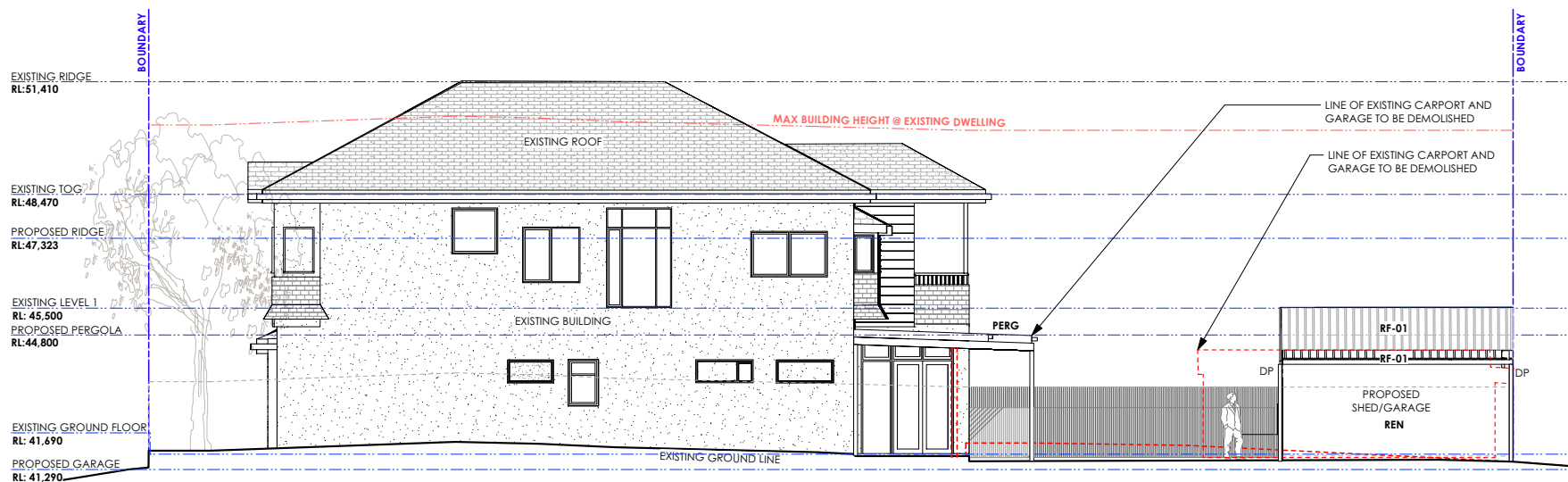
1m 5m

Issue	Description	Date
P	RFI to Council	15.05.2023
O	Review to Council	09.05.2023
N	Draft Re-submission to Client	19/04/2023
M	Development Application	14.02.2023
L	Draft Development Application to planner	16.12.2022



CODE	NAME
GENERAL:	
CL-01	WEATHERBOARD CLADDING
CL-02	SANDSTONE CLADDING
REN	RENDER
RF-01	METAL ROOF SHEETING
GUT	GUTTER
DP	DOWNPIPE
RWH	RAINWATER HEAD
F-01	BOUNDARY FENCE
TMB	TIMBER BATTEN SCREEN/FENCE
EX	EXISTING
GD	GARAGE DOOR
PERG	PERGOLA
CON-01	CONCRETE DRIVEWAY
PAV-01	PAVING - TYPE 1
TL-01	POOL TILE
T-01	TREE 01 - (SPECIES FROM NBC RECOMMENDED TREE LIST)

WALL LEGEND	
WT01	PROPOSED TIMBER FRAME
WT02	PROPOSED MASONRY
	EXISTING
	DEMOLISHED



01 Northern Elevation
Scale: 1:100

WRAY AND CUTCLIFFE
ARCHITECTS
e: jessica@wacarchitects.com.au • e: alicia@wacarchitects.com.au
m: 0421 755 086 m: 0424 581 309

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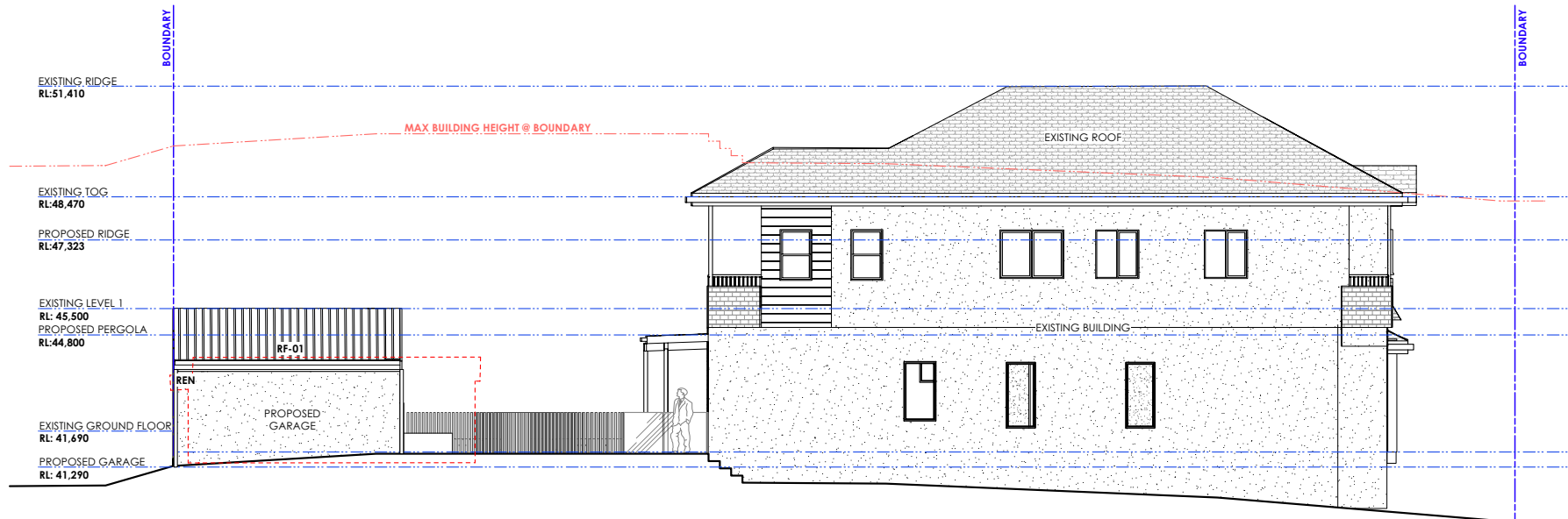
Ocean Road
Elevation - Northern
CLIENT Kathryn and Darren Wickham
21 Ocean Road, Manly, 2095

DATE 15/05/2023
SCALE AS NOTED
DRAWN AC/DY
JOB NO. #2203

DWG **DA-203**
ISSUE **P**

1m 5m	
Issue	Description
P	RFI to Council
O	Review to Council
N	Draft Re-submission to Client
M	Development Application
L	Draft Development Application to planner
Date	
15.05.2023	
09.05.2023	
19/04/2023	
14.02.2023	
16.12.2022	

CODE	NAME
GENERAL:	
CL-01	WEATHERBOARD CLADDING
CL-02	SANDSTONE CLADDING
REN	RENDER
RF-01	METAL ROOF SHEETING
GUT	GUTTER
DP	DOWNPIPE
RWH	RAINWATER HEAD
F-01	BOUNDARY FENCE
TMB	TIMBER BATTEN SCREEN/FENCE
EX	EXISTING
GD	GARAGE DOOR
PERG	PERGOLA
CON-01	CONCRETE DRIVEWAY
PAV-01	PAVING - TYPE 1
TL-01	POOL TILE
T-01	TREE 01 - (SPECIES FROM NBC RECOMMENDED TREE LIST)
WALL LEGEND	
WT01	PROPOSED TIMBER FRAME
WT02	PROPOSED MASONRY
	EXISTING
	DEMOLISHED



01

Southern Elevation
Scale: 1:100

WRAY AND CUTCLIFFE
ARCHITECTS
e: jessica@wacarchitects.com.au • e: alicia@wacarchitects.com.au
m: 0421 755 086 m: 0424 581 309

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TITLE
CLIENT
AT

Ocean Road

Elevation - Southern

Kathryn and Darren Wickham
21 Ocean Road, Manly, 2095

DATE 15/05/2023
SCALE AS NOTED
DRAWN AC/DY
JOB NO. #2203

DWG
DA-204
ISSUE P

1m 5m

Issue	Description	Date
P	RFI to Council	15.05.2023
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N	Draft Re-submission to Client	19/04/2023
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CLAUSE 4.6 REQUEST TO VARY THE FLOOR SPACE RATIO

21 OCEAN ROAD, MANLY

1.0 Introduction

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

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.4 – Floor Space Ratio

Pursuant to Clause 4.4 of Manly Local Environmental Plan 2013 (MLEP) the floor space ratio control applicable to the site is 0.6:1 which equate to a permissible gross floor area of 260.82m². 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.*

The existing FSR is measured at 0.674:1 or 293.46m² gross floor area (GFA) and is non-compliant with the development standard. The proposed development will have an FSR of 0.67 or 291.17m² GFA which is a reduction from the existing non-compliance. This equates an **11.6%** variation to the development standard.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.4 FSR Development Standard.

Clause 4.6(3) of MLEP provides:

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

The proposed development does not comply with the FSR provision at 4.4 of MLEP which specifies a maximum FSR however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP provides:

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

(5) *In deciding whether to grant concurrence, the Director-General must consider:*

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court 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), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: [Wehbe v Pittwater Council](#) at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: [Wehbe v Pittwater Council](#) at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: [Wehbe v Pittwater Council](#) at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: [Wehbe v Pittwater Council](#) at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: [Wehbe v Pittwater Council](#) at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in [Wehbe v Pittwater Council](#) at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

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

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and

- (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

4.0 Request for variation

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

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

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the Floor Space Ratio standard

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

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

Response: No additional floor space is proposed to the dwelling. As such, there is no change to the existing bulk and scale or streetscape character of the dwelling to Ocean Road.

The works are confined to the rear and front Ocean Lane. The development is for a double carport with pitched roof to the southwest corner of the site and a garden storage space/single car garage in the northwest corner. This replaces the existing structures and covered rear pedestrian entry that run along the entirety of the rear boundary as shown below:



Figure 1: Existing rear lane character for 21 Ocean Road

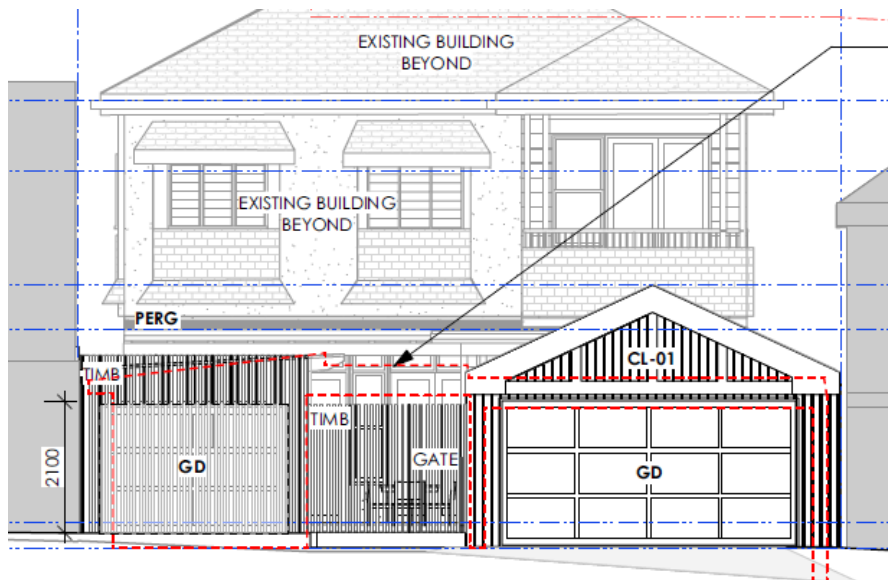


Figure 2: Proposed rear lane development

The proposal is considered a betterment to the existing rear lane structures and will use a softer palette of materials and finishes. The development will include an open pedestrian entryway which removes bulk and scale from the rear lane with a new tree proposed to sit in between the two structures.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

This objective is achieved as the bulk and scale of development is entirely consistent with the existing and desired streetscape character.

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

Response: The works are at ground level with the garage/carport structures being single storey. No important landscape or townscape features are impacted.

The proposal meets this objective.

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

Response: The works are considered to be a significant improvement to the existing rear lane character with the dilapidated structures to be replaced with a more refined contemporary outcome. This new development will contribute positively to the rear land character. The works will significantly improve landscaping opportunities to the rear private open space and increase soft landscaping.

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

Response: The works represent a reduction in GFA and will not give rise to any adverse environmental impacts with regard to view loss, overshadowing and privacy.

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

Response: N/A

Consistency with zone objectives

The subject site is zoned R1 General Residential pursuant to MLEP 2013 with dwelling houses permissible in the zone with consent. The stated objectives of the zone are as follows:

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

Response: The development relates to alterations and additions to an existing dwelling. The use will be retained.

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

Response: Maintains existing housing typology.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to FSR, demonstrates consistency with objectives of the R1 General Density Residential zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be unreasonable and unnecessary.

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

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

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

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

Sufficient environmental planning grounds exist to justify the FSR variation. Specifically, the environmental planning grounds consist of the following:

- The existing floor space is retained to the dwelling. There is no change to the bulk and scale of the dwelling nor its presentation to Ocean Road.

- The GFA is to be reduced from the existing non-compliant level.
- The rear lane character is to be improved as it will replace the dilapidated structures. Greater openness of the rear boundary, by providing a new uncovered pedestrian entryway and double carport, will reduce the existing bulk and scale and its adverse visual impact.
- A softer palette of materials and finishes, compared to the existing, will contribute positively to the laneway character.
- The heritage value of the adjoining property, and those within proximity, will not be impacted by development.
- The refinement of the rear boundary structures has facilitated improvements to the rear private open space area with regard to soft landscaping opportunities. It will see a significant enhancement of soft landscaping on site.

The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also giving weight to the acceptability of the variation sought.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

There are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R1 General Density Residential zone

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

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

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

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

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

4.4 Secretary’s concurrence

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

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

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

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the FSR standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and FSR standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

ITEM 3.5 **DA2022/1944 - 30 & 32 LAKEVIEW PARADE, WARRIEWOOD -
DEMOLITION WORK, TREE REMOVAL AND SUBDIVISION OF
TWO LOTS INTO FIVE LOTS**

REPORTING MANAGER **Adam Richardson**

TRIM FILE REF **2023/485097**

ATTACHMENTS **1** [↓](#) **Assessment Report**
 2 [↓](#) **Subdivision Plan and Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Development Consent to DA2022/1944 for demolition work, tree removal and subdivision of two lots into five lots on land at Lot A & B DP 357717, 30 & 32 Lakeview Parade WARRIEWOOD, for the reasons for refusal set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1944
Responsible Officer:	Kimberley Kavwenje – Consultant Planner
Land to be developed (Address):	30 and 32 Lakeview Parade, Warriewood
Proposed Development:	Demolition work, tree removal and subdivision of two lots into five lots
Zoning:	R2 Low Density Residential zone & C4 Environmental Living zone
Development Permissible:	Yes
Existing Use Rights:	N/A
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Katherine Anne Newton, Patrick John Daley, Thomas Matthew Daley
Applicant:	Thomas Matthew Daley
Application Lodged:	21 November 2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	No
Notified:	The development application was notified twice between the following dates: 21/11/2022 to 09/12/2022 Amended plans - 03/04/2023 to 25/04/2023
Advertised:	N/A
Submissions Received:	Four (4) unique submissions were received within the first notice period. Four (4) submissions were received within the second notice period. Total of eight (8) submissions received.
Clause 4.6 Variation:	N/A
Recommendation:	Refusal
Estimated Cost of Works:	\$440,844



EXECUTIVE SUMMARY

This report is an assessment of a development application (DA) under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) on land at 30 and 32 Lakeview Parade, Warriewood (Lot B and A in DP 357717 respectively).

The DA seeks consent for demolition work, tree removal and Torrens Title subdivision of two lots into five lots. The site is located within two zones. The northern portion being within the C4 Environmental Living zone and the southern portion within the R2 Low Density Residential zone under *Pittwater Local Environmental Plan 2014* (PLEP 2014). The proposed development is permissible with consent.

The DA was notified between 21 November 2022 and 9 December 2022 in accordance with Council's Community Participation Plan, and in response, four (4) submissions were received.

Concerns raised in the submissions related to:

- The proposed development does not fit within the established character of the area and is considered out of context for the locality.
- The proposed development will impact on local traffic and parking on Lakeview Pde.
- The application received lacks important information regarding traffic, easement utilities, storm water drainage, and placement of garbage bins.
- Non compliances with B2.2 Subdivision - Low Density Areas, C4.7 Subdivision - Amenity and Design and Landscape Open Space requirements of the Pittwater 21 DCP.
- The removal of many trees on the site, and an inability for the proposed dwelling footprints to comply with the landscaped area requirements of the Pittwater 21 DCP.
- A new dwelling in the location of the proposed footprint on Lot 3 will significantly impact the light, privacy, and outlook from the primary living area of that dwelling, which adjoins the kitchen at 40 Lakeview Drive.

The application is referred to the Northern Beaches Development Determination Panel (DDP) due to the number of submissions received.

Throughout the assessment of the DA, the Applicant was requested to provide further information (RFI) on 21 February and in April 2023. Information was requested relating to:

- terms of the existing right of carriageway,
- vehicular access in terms of providing a passing bay,
- stormwater management plan to be submitted,
- concerns held in relation to the proposed subdivision
- non-compliances with the Pittwater Development Control Plan 2014 (PDCP).

Also, the provided building envelopes included insufficient and unrealistic detail on the future development of the allotments. It was recommended that the subdivision be revised to reduce the number of allotments.

The Applicant submitted amended plans and documents including conceptual dwelling designs for Lots 2-5 in the proposed subdivision, which partly responded to the concerns raised by Council. These amended plans were the subject of renotification. The amended plans were notified between 3 April 2023 and 25 April 2023. In response, four (4) submissions were received.



The assessment of the application has identified fundamental concerns in relation to the proposed subdivision which creates constrained environmentally sensitive allotments as outlined below:

- Lots 3, 4 and 5 and half of proposed Lot 2 are zoned C4 Environmental Living and containing ecological and aesthetically significant vegetation.
- Proposed Lots 3 and 5 do not meet the minimum required width of 16m.
- Lot 1 does not meet the 15m allotment width requirement.
- The proposed accessway traverses Lots 1, 2 and 4. The useable site area (width) of these allotments has not been increased to offset the accessway. The accessway has a width between 3.5m to 5.5m due to the number of allotments serviced and length of the accessway.
- Lots 2 and 3 has been designed to internally present to the accessway and have sited the building envelopes with reduced front setbacks, which increase the likelihood on impact upon adjoining properties.
- Lots 1, 2 and 4 contain significant vegetation which provides a physical constraint to the allotments. The building envelopes do not adequately respond to these constraints, and it has not been demonstrated the proposed allotments can be reasonably development in accordance with PDGP.
- The proposed subdivision is contrary to the subdivision requirements of PDGP.
- The creation of allotments which have physical and environmental constraints is not orderly development.
- The proposed subdivision pattern confines future building placement to an arrangement that will result in an abrupt built form and is unacceptable.
- The likelihood of adverse environmental and amenity impacts as a result of the development is high due to the topography, environmental constraints, and orientation of allotments.
- In this circumstance, it is considered the dwellings on these allotments should form part of the same application in which the subdivision is proposed to ensure the design satisfactorily responds to the dimensional and vegetative constraints.

Having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act*, it is recommended that Development Application DA2022/1944 be refused.

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for demolition of the existing dwelling at 32 Lakeview Road, Warriewood, removal of vegetation and the Torrens Title subdivision of two (2) existing allotments into five (5) allotments at 30 and 32 Lakeview Parade, Warriewood. The proposed works include:

- Demolition of the existing dwelling and outbuildings on land at 32 Lakeview Parade.
- Demolition of existing outbuildings on land at 30 Lakeview Parade, the existing dwelling is to be retained.
- Removal of the following seven (7) trees as described within the Applicant's arborist report,
 - Tree 7 - *Lophostemon confertus*, Brushbox,
 - Trees 10 and 12 - *Archontophoenix cunninghamiana*, Bangalow Palm,
 - Tree 15 - *Betula spp*, Birch,
 - Tree 26 - *Corymbia maculata*, Spotted Gum,
 - Tree 27 - *Banksia integrifolia*, Coastal Banksia and
 - Tree 40 - *Plumeria spp*, Frangipani.
- Torrens Title subdivision of the existing two (2) allotments to create five (5) allotments as identified in **Figure 1** below, and described in the following table.



- Construction of an internal driveway servicing Lots 2 – 5.
- Drainage works.
- Easements for access and services.

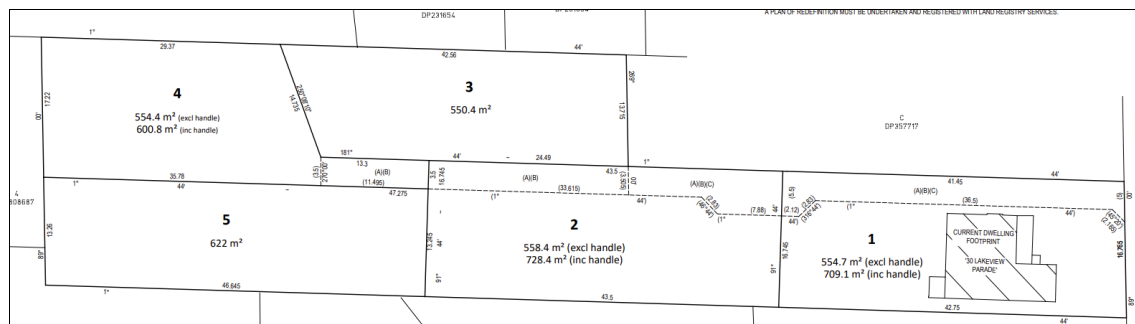


Figure 1: Proposed five (5) lot Torrens Title subdivision
Source: SDG, 28 March 2023

Allotment	Site Area	Dimensions
Lot 1	554.7m ² (709.1m ² including right of carriageway (ROC))	Southern allotment presenting to Lakeview Parade and is rectangular in shape. The existing dwelling is to be retained. The proposed dimensions excluding the area associated with the ROC are: - 13.715m southern boundary width, 42.75m western boundary length, 11.245m northern boundary width and irregular eastern boundary length 38m, 2.83m and 2.12m. The proposed dimensions of the ROC are: - Irregular western boundary length 2.165m, 36.5m, 2.83m and 2.12m. Northern boundary width of 5.5m and eastern boundary length of 41.45m.
Lot 2	558.4m ² (728.4m ² including ROC)	The site is centrally located between Lot 5 and Lot 1 and is regular in shape. The proposed dimensions excluding the area associated with the ROC are: - 11.245m southern boundary width, 43.5m western boundary length and 13.245m northern boundary width and a stepped eastern boundary length 7.88m, 2.83m and 33.615m. The proposed dimensions of the ROC are: - The ROC has 43.5m eastern boundary length, 5.5m southern width, stepped western boundary length 7.88m, 2.83m and 33.615m. The northern boundary width 3.5m.



Lot 3	550.4m ²	South eastern allotment. Irregular in shape. Eastern boundary length 42.56m, 13.715m southern boundary width, 37.79m western boundary length and splayed northern boundary 14.735m.
Lot 4	554.4m ² (600.8m ² including ROC)	Rear north eastern allotment. Irregular in shape. The proposed dimensions excluding the area associated with the ROC are: - 3.5m southern boundary, western boundary length 47.275m, northern boundary width 17.22m and eastern boundary length 29.37m, south eastern boundary 14.735m and eastern boundary 13.3m. The proposed dimensions of the ROC are: - 3.5m and western length 11.495m and eastern 13.3m.
Lot 5	622.0m ²	Rear south western allotment. Rectangular in shape. 13.245m southern boundary width, 46.645m western boundary length, 13.26m northern boundary width and 47.275m eastern boundary length.
ROC	370.8m ²	Overall the ROC includes the following dimensions: 98.25m eastern boundary length. 5m southern boundary which presenting to Lakeview Parade. Western boundary length is irregular with total length of 99.435m. Northern boundary width 3.5m.

Amended plans 30 March 2023

- Widening of the ROC at the southern boundary (Lakeview Parade) from 3.5m to 5m;
- Swept path diagrams provided;
- Amended Arborist report and Water Management Report;
- Amended engineering plans; and
- Indicative dwelling plans for proposed Lots 2 – 5.
- Legal advice pertaining to the right-of-carriageway.
- Written response from Northern Beach Planning in response to the RFI.



•

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) considering all relevant provisions of the Act and the associated regulations;
- A site inspection was conducted on 8 February 2023 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, and referrals to relevant internal and external bodies was undertaken in accordance with the Act, Regulations, and relevant Community Participation Plan (CPP);
- A review and consideration of all submissions made by the public in relation to the application was undertaken;
- A review and consideration of all documentation provided with the application (up to the time of determination) was undertaken;
- A review and consideration of all referral comments provided by the relevant Council Officers, Agencies on the proposal was undertaken.

SUMMARY OF ASSESSMENT ISSUES

The DA proposes the demolition of the existing dwelling at 32 Lakeview Road, Warriewood, removal of vegetation and the Torrens title subdivision of two (2) existing allotments into five (5) allotments. The assessment issues are summarised below:

The assessment issues are summarised below:

- Pittwater 21 Development Controls Plan – A1.7 Considerations before consent is granted.
- Pittwater 21 Development Controls Plan – B2.2 Subdivision – Low Density Residential Areas
- Pittwater 21 Development Controls Plan – C1.1 Landscaping
- Pittwater 21 Development Controls Plan – C4.7 Subdivision – Amenity and Design
- Pittwater 21 Development Controls Plan – C4.8 Subdivision – Landscaping on the existing and proposed public road reserve frontage to subdivision lots.
- Pittwater 21 Development Controls Plan – D14.7 Front building line
- Pittwater 21 Development Controls Plan – D14.8 Side and rear building line
- Pittwater 21 Development Controls Plan – D14.13 Landscaped Area – Environmentally Sensitive Land



SITE DESCRIPTION

Property Description:	30 Lakeview Parade, Warriewood (Lot B DP 357717). 32 Lakeview Parade, Warriewood (Lot A DP 357717).
Detailed Site Description:	The site is 30 and 32 Lakeview Parade, Warriewood (Lot B and A Deposited Plan 357717). 30 Lakeview Parade is rectangular in shape and has a surveyed area of 835.2m² with a frontage to Lakeview Road of 13.715 metres and depth of 60.96 metres. The lot presently accommodates a single storey dwelling with vehicular access from Lakeview Parade to a single space garage (Figure 2). The dwelling contains a front balcony and a rear outdoor entertaining area. No. 30 is located within the R2 Low Density Residential zone pursuant to PLEP 2014. No. 32 Lakeview Parade is generally rectangular in shape; however the lot has an access 'handle' with a frontage width of 3.05 metres to Lakeview Parade. The length of the access handle is 60.96 metres (Figure 3). The rectangular area towards the rear, where the existing dwelling is located, has a width of 30.48 metres and depth of 71.935 metres. As such the total surveyed area of No. 32 is 2,375m². The lot accommodates a single storey dwelling house constructed of brick, with an attached garage and ancillary driveway (Figure 4). Vehicle access is via a right of way over the properties to the east being 42-50 Lakeview Road. No. 32 is located within the C4 Environmental Living zone pursuant to <i>Pittwater Local Environmental Plan 2014</i> (PLEP). The development site has total surveyed area of 3,210.2m² and is located on the northern side of Lakeview Parade, between Pittwater Road and Warriewood Road. The site falls from north to south, from the rear boundary of No. 32 to Lakeview Parade, with surface levels falling from approximately RL 38.0 to about RL 20.80 AHD. The site contains significant vegetation along the current boundaries.



Figure 2: Existing dwelling at 30 Lakeview Parade, Warriewood proposed to be retained.
Source: <https://www.google.com/maps>



Figure 3: Existing right of carriageway between 30 Lakeview Parade and 34 Lakeview Parade looking north towards 32 Lakeview Parade.
Source: CPS 8 February 2023



Figure 4: Existing dwelling located at 32 Lakeview Parade that is proposed to be demolished.
Source: CPS 8 February 2023





The dwellings located at 48 – 38 Lakeview Parade rely upon the ROC providing vehicular access to Lakeview Parade. The dwellings located at the top of the site, No's 38 and 40 Lakeside Parade (**Figure 7**) descend along the ROC. The existing allotment at 32 Lakeview Parade is adjoined by 40 and 42 Lakeside Parade to the east (**Figure 6**).

These dwellings present to the ROC and includes single and two storey dwellings. Significant water views are available in an easterly and south easterly direction towards Warriewood and TriMet Head. To the south west, the low lying Warriewood wetlands are observable from the site.



Figure 6: Adjoining properties to the east, No.40 and 42 Lakeview Parade
Source: CPS 8 February 2023



Figure 7: Looking north with No. 38 Lakeview Parade and 40 Lakeview Parade access from ROC
Source: CPS 8 February 2023



Figure 8: Existing right of carriageway sited along the eastern side boundary providing access to 32 Lakeview Parade
Source: CPS 8 February 2023

SITE HISTORY

A search of Council's records has revealed the following relevant history for 32 Lakeview Parade:

- **Development Application N1152/00** for development of a carport and awning was submitted on 27 November 2000 and approved on 09 January 2001.
- **Development Application N0590/01** for development of alterations and additions to a dwelling house was submitted 04 July 2001 and approved 18 September 2001.
- **Application TA2018/0264** for the removal of 1-2 trees was submitted 28 November 2018 and was refused.

A search of Council's records has revealed there are no recent development applications for 30 Lakeview Parade.

Application history:

21 November 2022	DA was lodged.
21 November 2022 and 9 December 2022	The DA was notified to surrounding properties. In response, four (4) submissions were received.
8 February 2023	Inspection of the site and adjoining sites undertaken.
21 February 2023	A request for additional information (RFI) was sent to the Applicant. Concern was raised regarding: - Request for terms of the existing easement to be submitted. - Potential concern raised regarding owners' consent being required from 34 Lakeview Parade given the terms of the



	easement were to be significantly modified by the proposed development. - Clarification sought regarding whether the proposed allotments are to benefit from the existing right of way over Lot 9, 10, 11, 12 and 13 on DP 231564. - To avoid queueing within Lakeview Parade, the driveway crossing must be 5 metres wide between the kerb and the boundary with a transition back to 3 metres. - Arboricultural Impact Assessment is updated to reflect the building encroachments on trees within the road reserve and adjoining properties. All plans and sections were requested to be amended to show the revised driveway width. - Request for stormwater drainage plans to demonstrate an inter-allotment drainage line servicing each of the proposed lots with a piped connection to Council's stormwater drainage line in Lakeview Parade. - The DRAFT Plan of Subdivision was requested to be amended to include an easement to drain water over the proposed inter-allotment drainage line and driveway and right of carriageway over the driveway widening in proposed Lot 1. - Concern raised regarding the proposed development and the response to the existing pattern of subdivision and landscape character of the locality. - A response was requested to submissions received.
3 March 2023	Online meeting held with consultant planner, assessing officer and Applicant/owner.
30 March 2023	The Applicant submits amended plans and further information.
3 April 2023 and 25 April 2023.	The DA was re-notified to surrounding properties. In response, four (4) submissions were received objecting to the development.
26 April 2023	Council's Water Management Officers advise that the application is not supported as there is no information demonstrating compliance with Council's Water Management for Development Policy.
12 May 2023	The Applicant submits a Water Quality Report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.

Section 4.15 '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 regulations	<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 104</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested 21 February 2023 The contents of the correspondence included: - Stormwater drainage plans - Building envelopes - Water quality report - Amendments to the subdivision design relating to the ROC - Swept paths to demonstrate vehicle turning circles - Legal advice relating to the right-of-carriageway. - Written response to the RFI. <u>Clause 61(1)</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter can be addressed via a condition of consent in the event of DA approval. <u>Clauses 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 can be addressed via a condition of consent in the event of DA approval. <u>Clause 69(2)</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the <i>Home Building Act 1989</i>. This matter can be addressed via a condition of consent in the event of DA 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 can be addressed via a condition of consent in the event of DA 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 PDCP section in this report and below. The development results in an unacceptable environmental impact. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

Section 4.15 'Matters for Consideration'	Comments
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development.	The site is not suitable for the development as currently proposed.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs.	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	For the reasons outlined within this report, the development is unacceptable and results in adverse impacts upon adjoining properties and results in unacceptable environmental impacts. Approval of the development would be contrary to the public interest and the application is recommended for refusal.

ENVIRONMENTAL IMPACT

The DA seeks consent for the removal of seven (7) trees.

- Tree 7 *Lophostemon confertus*, Brushbox,
- Trees 10 and 12 - *Archontophoenix cunninghamiana*, Bangalow Palm,
- Tree 15 - *Betula spp*, Birch,
- Tree 26 - *Corymbia maculate*, Spotted Gum,
- Tree 27 - *Banksia integrifolia*, Coastal Banksia and
- Tree 40 - *Plumeria spp*, Frangipani.

Trees 7 and 15 are identified as Category A trees by the Consulting Arborist, with the remaining identified as Category Z trees.

Trees 10 and 11 are identified as exempt species and do not require development consent for removal. Tree 7 is identified in **Figure 9** below, with the red indicating the structural root zone (SRZ), the blue the tree protection zone (TPZ) and the purple delineates the passing bay. The development will result in an encroachment of the SRZ.

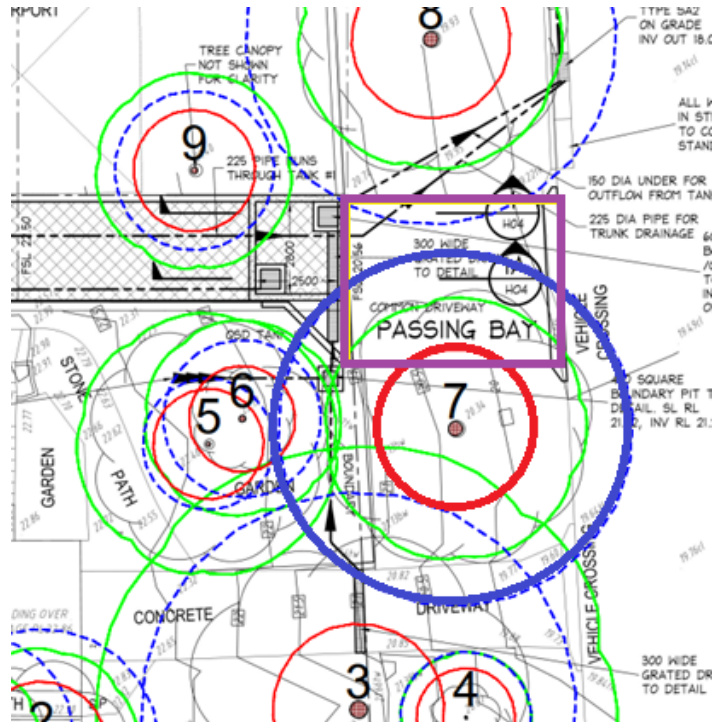


Figure 9: Tree identification map showing Tree 7 and structural root zone outlined in red.
Source: Hugh the Arborist, 29 March 2023

Council's Landscape Officer has recommended approval of the DA, however, has not supported the removal of Tree 7 stating:

An Arboricultural Impact Assessment is submitted that assesses the impact of subdivision and future residential dwelling works upon existing trees. However the recommendations for tree removal based on indicative building layouts are to be disregarded under this subdivision application and only existing trees impacted by the subdivision works (new crossover driveway and passing bay, new internal driveway, and installation of stormwater services shall be assessed for Council consideration. As interpreted by Landscape Referral the following existing trees are required for removal under the subdivision works: tree 10 (exempt Palm), tree 12 (exempt Palm), tree 15 (Betula), and tree 27 (Banksia). Additionally the updated Arboricultural Impact Assessment recommends removal of the existing street tree numbered 7, however Landscape Referral are of the opinion that the Bushbox street tree is viable for retention with tree sensitive construction utilised for the passing bay, and furthermore without any tree root investigation along the alignment of the passing bay extent, there is no justified reason to accept the recommendation for removal.

Despite the comments above, concern is held regarding the retention of Tree 7. The proposed development will result in an incursion of greater than 20% of the nominal TPZ of this tree. This incursion is classified as 'Major' under the provisions of AS470-2009 – Protection of trees on development sites and is likely to be unsustainable.

The conditions recommended by the Landscape Officer include root mapping. It is not appropriate to defer consideration of the likely environmental impacts of the development. The proposal has



not been accompanied by root mapping and therefore it cannot be known that Tree 7 is capable of retention simply by consent conditions.



Figure 10: Tree 7 – Queensland brushbox in road reserve
Source: 8 February 2023

The recommendations of the Landscape Officer only consider the tree removal necessary for works associated with the subdivision, such as the drainage works and driveway. Pursuant to Section 4.15(1)(b) of the Act, consideration must be given to the likely impacts of the development, including environmental impacts on both the natural and built environments. In this regard, the tree impacts cannot be deferred, and must be considered in determining the suitability of the subdivision in relation to tree impacts.

The AIA includes plans of the existing site plan and stormwater plans showing the TPZ and SRZ of trees on site. The trees on site, and their relationship with the future building envelopes anticipated for Lots 3, 4 and 5, is shown in **Figure 11**. Lot 1 and 2 is shown in **Figure 12**.

The AIA recommends the removal of seven (7) trees (two of which are Category A trees) in association with the proposed subdivision, and six (6) Category A trees in associated with the anticipated future building envelopes. The six (6) trees impacted upon by the future building envelopes require design amendments and sensitive construction methods to enable their retention.

The design amendments necessary cannot be accommodated with the proposed subdivision arrangement. This is because the current position of significant vegetation does not allow for alternative building envelope locations.

The concept plans have not taken into consideration the design amendment recommendations of the AIA. Based on the concept plans, the impacts of the future development will result in a loss of eight (8) Category A trees.

The proposal does not preserve the amenity of the area through the preservation of trees and other vegetation.

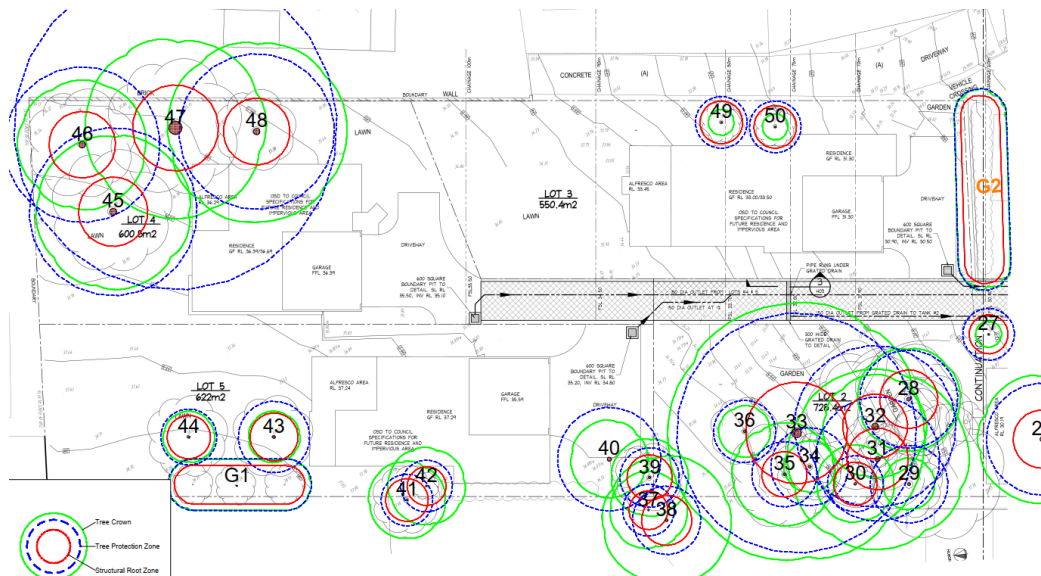


Figure 11: Tree Location Plan of Lots 3, 4 and 5. Green identified tree crown, TPZ shown in blue and red is SRZ.
Source: Hugh the Arborist, 29 March 2023

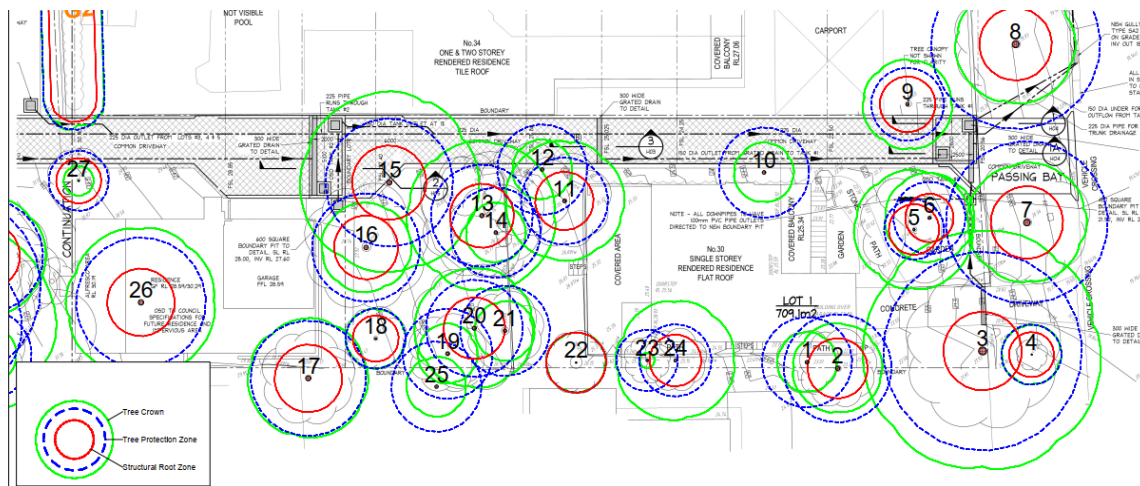


Figure 12: Tree Location Plan of Lots 1 and 2. Green identified tree crown, TPZ shown in blue and red is SRZ.
Source: Hugh the Arborist, 29 March 2023

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited twice in accordance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021* and the *Northern Beaches Community Participation Plan 2019*.



As a result of the public exhibition process for the DA as originally lodged, Council is in receipt of four (4) unique submissions; the number of submissions has been calculated in accordance with Council's CPP, in that all submissions received by or on behalf of the same dwelling will be considered as a single submission.

The amended plans were renotified between 3 April 2023 and 25 April 2023. In response, an additional four (4) unique submissions were received.

The details of these submissions and the addresses they relate to are as follows:

Name:	Address:
Michael Gallagher	28 Lakeview Parade, Warriewood
Joanna Pascuzzo	35 Lakeview Parade, Warriewood
Blackwattle Planning	40 & 42 Lakeview Parade, Warriewood
C. Russo & J. Greco	44 Lakeview Parade, Warriewood
Mr 7 Mrs Tatomirovic	61 Vineyard Street, Mona Vale
Unknown	No address provided.

The following list is a summary of the issues raised within received submissions, along with a comment provided by the assessing officer:

- ***There are no gutters within Lakeview Parade.***

Comment: The proposed subdivision does not create any new roads and does not necessitate construction of gutters within the existing road.

- ***The proposed development does not fit within the established character of the area and is considered out of context for the locality.***

Comment: The development is inconsistent with the desired future character. The proposed subdivision has not been supported by sufficient information to demonstrate an acceptable environmental outcome. The proposed subdivision creates constrained allotments due to the dimensions, orientation, topography and resulting location of significant vegetation within the proposed lots. The dwellings represented on the concept plans do not demonstrate the resultant lots can be developed in accordance with the suite of built form controls, and sufficiently avoid adverse impacts upon significant vegetation within the site and within adjoining properties.

- ***The proposed development will impact on local traffic, parking on Lakeview Pde.***

Comment: The DA has been accompanied by a Traffic Impact Assessment prepared by Terraffic Pty Ltd. The report indicates *the development will only generate 3 additional vehicle trips during the peak periods. This is a relatively minor increase and will not have any noticeable or unacceptable impact on the road network serving the site in terms of road network capacity or traffic-related environmental effect.* No concerns have been raised by Council's Development Engineer.



- ***The owner has no written agreement and legal right of way of the carriage easement on my section of the road, whereby, he has bought out other lots which we have not to date granted any permission, also with this development it has not been made clear where all this traffic and heavy vehicle traffic will be accessing this 5 lot subdivision, this road is inadequate for 2 cars to pass by with a blind spot.***
- ***All physical and any legal access across No. 40 and 42 Lakeview Parade cease and be relinquished.***

Comment: The subdivision includes drainage easements within the proposed accessway and does not rely upon the existing right-of-carriageway which 32 Lakeside Drive currently benefits from.

Clarification was however sought from the Applicant in relation to the existing access arrangement being modified by the proposed development with no consent having been obtained from the adjoining property that currently benefits from the right-of-carriageway.

No formal response was received from the Applicant despite Council's RFI.

- ***Safety issues***
 - ***Inadequate lighting which is a safety issue and has not been addressed.***
 - ***No turn around area, at the present moment cars are reversing back down the lane way, this is a great concern to us and other residents.***

Comment: Each of the proposed allotments include turning bays to enable vehicles in exit and enter the site in a forward direction. There is presently no lighting provided on the plans, but considering the length of the driveway and width, compliant sight lines are achieved consistent with the Australian Standard.

- ***Headlight pollution at night with full beams shining through my windows into the rooms when vehicles drive up. There also needs to be a speed limit put into place for safety reasons as some cars come speeding up.***

Comment: Whilst this concern is understood, it is also considered likely the development of these allotments would include provision of boundary fencing. Presently, there is no fencing along the eastern boundary which would ordinarily screen headlights from vehicles turning into proposed Lots 3 and 4 and shine into the dwellings at 36, 40 and 42 Lakeview Drive. It is considered this issue could be resolved by the provision of suitable boundary fencing.

- ***Insufficient information***
 - ***There remains concerns which has not been addressed with be impact statement on the DA is Storm Water & Sewage.***
 - ***Significant deficiency of the application in the absence of any information relating to stormwater disposal, and that no stormwater plan has been submitted.***
 - ***The application received lacks important information regarding Traffic , Easement Utilities, Storm Water Drainage & Placement of garbage bins etc,***

Comment: The DA was amended to provide a stormwater management and water quality report as further information. The DA also includes a traffic assessment. The placement of garbage bins is not referenced on the plans. It is agreed the DA has not been accompanied by sufficient information to demonstrate the likely impacts of the development. However, this is related to tree impacts and amenity impacts associated with the future development of the proposed allotments.



- **Non-compliance with Pittwater DCP**
 - **B2.2 Subdivision - Low Density Areas.**
 - **The new proposed lots 3 and 5 both fail to meet this requirement of 16m width. The variation proposed is more than minor being 14% and 17% respectively.**
 - **Non-compliance with C4.7 Subdivision - Amenity and Design.**
 - **Proposed Lots 1 and 2 do not comply with minimum width of 15m (Lot 1), the right of carriageway must be no greater than 3m. For a lot with a minimum width of 16m (Lot 2), the right of carriageway must be 3.2m. The proposed width of the right of carriageway for both lots are non-compliant, varying in width between 3.5-5.5m.**
 - **The proposed footprints are not able to comply with the 60% landscaped area provisions.**
 - **Non-compliance with Landscape Open Space requirements.**

Comment: The development is non-compliant with the provisions of Pittwater DCP in relation to the minimum widths of Lots 3 and 5 and the width of the accessway. Detailed discussions are provided against these provisions below under the PDCP considerations. The Applicant provided concept designs for Lots 2 – 5 to demonstrate the allotments can reasonably be developed in accordance with the provisions of the Parrott Planning Principle. The proposed subdivision creates constrained environmentally sensitive allotments and has not sufficiently demonstrated they can be reasonably developed. This forms part of the recommendation for refusal.

- **The removal of many significant trees on the site, and an inability for the proposed footprints to comply with the landscaped area requirements of Pittwater 21 DCP.**

Comment: Significant concerns are held regarding the impact upon existing vegetation. The proposal seeks to remove seven (7) trees as a result of the subdivision works alone, including two (2) Category A trees being Tree 7 within the road reserve, and Tree 15 located within proposed Lot 1 as a result of the accessway. The DA originally sought consent for the removal of additional trees but at the direction of the Landscape Officer this request has been declined.

The Applicant's submitted Arboricultural Impact Assessment (AIA) demonstrates the nominated building envelopes result in a major encroachment within the TPZ of an additional six (6) significant trees on site. The AIA includes recommendations on ways of mitigating these impacts through construction methods and design amendments. The concept plans do not reflect these changes and therefore the likely impact of the development is the loss of these additional six (6) trees. This is not considered reasonable and forms part of the recommendation for refusal.

- **The footprint proposed on Lot 3 will result in a dwelling that removes a valued vista from No. 40 Lakeview Parade. The outlook and views obtained from the front of No. 40 Lakeview Parade are of remnant bushland and the escarpment beyond.**

Comment: Consideration of the proposal in relation to the provisions of PCP are provided below in relation to view sharing and solar access.

C1.3 View Sharing

A submission has been received from 40 Lakeview Parade raising concerns with the potential loss of views from the future development of proposed Lot 3. The vista available is shown in **Figure 13**.



Figure 13: Vistas to the south west as viewed from the front entrance of 40 Lakeview Parade.
Source: Blackwattle Planning submission

A letter was issued to the Applicant and requested concept plans for the development of the proposed allotments be submitted. The Applicant provided a concept design for Lot 3. The siting of the concept dwelling in relation to the existing dwelling at 40 Lakeside Parade is shown in **Figure 14**.

The concept dwelling is shown to have a ridge height of RL38.70. The existing dwelling at 40 Lakeview Parade contains five (5) existing openings within the western elevation which adjoins the proposed allotment. The openings include the following levels:

Window	Sill	Lintel
1 – Western	RL34.39	RL35.23
2 – Western	RL34.39	RL35.22
3 – Western	RL34.40	RL35.23
4 -Western	RL33.20	RL35.20
5 – Western	RL33.94	RL35.12

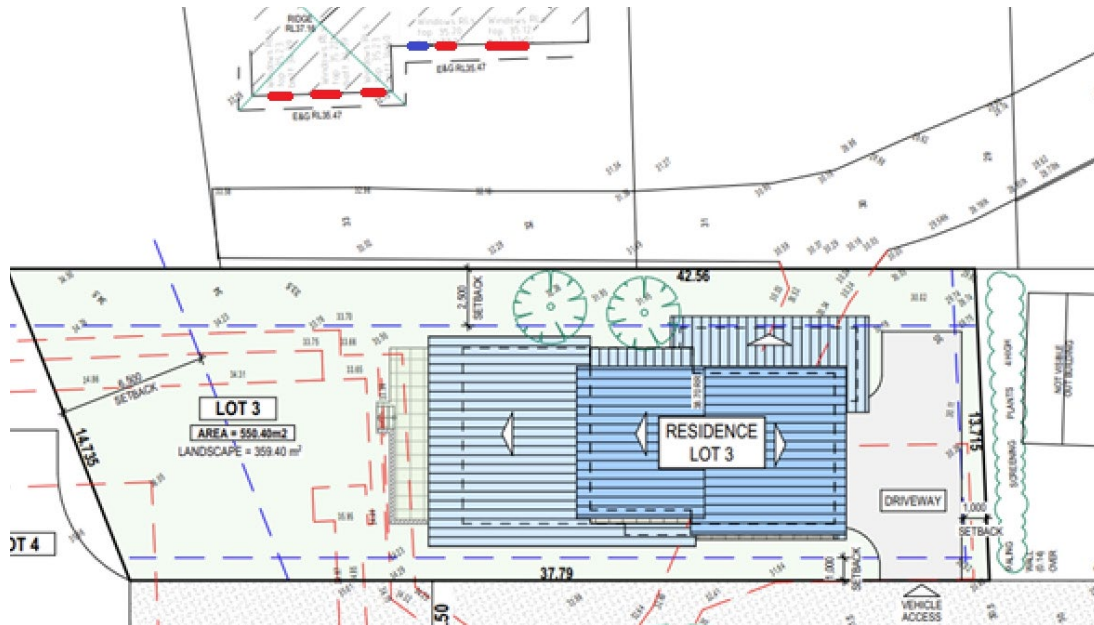


Figure 14: Concept plan for development of Lot 3. Existing dwelling at 40 Lakeside Parade. The red indicates windows and the blue is the front door.

Source: JJ Drafting, March 2023

The existing floor level of 40 Lakeview Parade is approximately RL33.19. The sightlines available from the dwelling would therefore be at a height of RL34.69. The outlook from the dwelling, would be impacted by a dwelling in the position shown on the concept plans.

The advisory notes of C1.3 View Sharing references consideration of *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. For reference, the four tests established in the planning principle are as follows:

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

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

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



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

An assessment of the level of impact regarding the four-step planning principle established has been undertaken:

1. The views available are not considered to be significant and is better considered as an outlook of the bushland and the Elanora Heights escarpment beyond.
2. The views are available across the front of the property. However, due to the orientation of the allotment presenting to the existing accessway, the dwelling has a west to east orientation. The proposed concept dwelling is orientated south to north and the views would be across the proposed side boundary. The outlook is presently available from both standing and seated positions. The existing development is sited at the top of the site and the current outlook is achieved across a deep front setback.
3. The three (3) windows to the west are associated with a walk in robe and ensuite. These are not considered to be significant areas as they are non-habitable secondary areas within the house (**Figure 15**). The small window is associated with the entrance hall and the large window associated with the family room. The outlook from this window would be considered more valuable.

The kitchen, living room and decking is orientated in a southern direction to capture the water views. The existing window associated with the kitchen (**Figure 16**), and visible from the family room, contains water views which will not be affected by the proposed development.

The dwelling would also have more significant views to the south east of water. The views would be achieved from the living room and associated decking (**Figure 17**). These more highly valued views would not be impacted by the proposed development.



Figure 15: Internal floor layout of 40 Lakeview Drive, Warriewood. Source: realestate.com.au
Source: realestate.com.au



Figure 16: Existing window associated with kitchen and visible from the family room.
Source: realestate.com.au



*Figure 17: Eastern (rear) elevation of 40 Lakeview Drive showing elevated decking.
Source: realestate.com.au*

The impact on the outlook would be considered minor. However, the more valued views of the water and beach are unaffected by the concept dwelling's siting.

4. The DA includes a concept dwelling only. The development is non-compliant. The siting of the development does cause impact. The site can accommodate a more skilful design. Lot 3 contains a deep setback to the northern boundary which can accommodate a future dwelling with a reduced impact.
- ***A new dwelling in the location of the proposed footprint will significantly impact the light, privacy, and outlook from the primary living area of that dwelling, which adjoins the kitchen.***

Comment: The concept plans provided for Lot 3 do not nominate any windows within the eastern elevation, which is considered highly unlikely given the adjacent views and the requirement to achieve cross ventilation. Nonetheless, the dwelling provides for a 2.5m setback from the eastern boundary. The accessway provides additional separation between the dwellings. The concept plan provides for a partially elevated outdoor entertainment area which generally aligns with the window associated with the bathroom. The concept plan would not result in any adverse privacy impact upon 40 Lakeview Parade.

The impact upon outlook is outlined above. In terms of solar access, the provisions of C1.4 Solar Access are considered. The controls require the following:

- The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.



- Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).
- Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid-winter.
- Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.

The DA has not been accompanied by shadow diagrams in response to the concept dwellings. However, 40 Lakeview Parade is located to the east of Lot 3, and 42 Lakeview Parade is located to the southeast. Due to the siting of 40 Lakeview Parade, it is likely to be impacted only in the afternoon period and the development of Lot 3 would likely maintain compliant solar access to this dwelling. The siting of the dwelling would likely overshadow 42 Lakeview Parade from early afternoon, but it is unlikely that it would adversely overshadow this dwelling and lead to a noncompliance with the development controls.

REFERRALS

Internal Referral Body	Comments
Landscape	Supported, subject to Conditions <i>The application for subdivision of two existing allotments to create five allotments is assessed by Landscape Referral under Pittwater Development Control Plan clause C4.7 Subdivision - Amenity and Design.</i> <i>The proposed works under the subdivision include: Demolition of the existing dwelling and outbuildings at 32 Lakeview Parade; Demolition of existing outbuildings at 30 Lakeview Parade (with the existing dwelling to be retained); The creation of five new lots under Torrens Title; Construction an internal driveway servicing Lots 2-5; Installation of essential services to each lot; Easements for access and services; and tree removal impacted by subdivision works.</i> <i>An Arboricultural Impact Assessment is submitted that assesses the impact of subdivision and future residential dwelling works upon existing trees. However, the recommendations for tree removal based on indicative building layouts are to be disregarded under this subdivision application and only existing trees impacted by the subdivision works (new driveway and installation of services as shown on plans within the proposed easement (A) (B) and (C) shall be assessed for Council consideration. As interpreted by Landscape Referral the following existing trees are required for removal under the subdivision works: tree 10 (exempt Palm), tree 12 (exempt Palm), tree 15 (Betula), and tree 27 (Banksia).</i> <i>All other existing trees within the lots shall be retained under subdivision works the subject of this application. Future applications for new dwellings to each lot shall be assessed separately.</i> <i>As considered under C4.7 Subdivision - Amenity and Design, Landscape Referral raise no objections to the subdivision application, as the proposed lot arrangement provides opportunities to retain existing trees within the lots or otherwise provides adequate landscape area to support new tree and vegetation planting.</i>

Internal Referral Body	Comments
	<i>The proposal is therefore supported.</i> Amended referral 15 February 2023: ... <i>An Arboricultural Impact Assessment is submitted that assesses the impact of subdivision and future residential dwelling works upon existing trees. However the recommendations for tree removal based on indicative building layouts are to be disregarded under this subdivision application and only existing trees impacted by the subdivision works (new driveway and installation of services as shown on plans within the proposed easement (A) (B) and (C) shall be assessed for Council consideration. As interpreted by Landscape Referral the following existing trees are required for removal under the subdivision works: tree 10 (exempt Palm), tree 11 (exempt Jacaranda), tree 12 (exempt Palm), tree 15 (Betula), tree 16 (Mulberry), and tree 27 (Banksia).</i> <i>All other existing trees within the lots shall be retained under subdivision works the subject of this application. Future applications for new dwellings to each lot shall be assessed separately...</i> <i>The proposal is therefore supported.</i> Amended referral 4 April 2023 <i>The proposed works under the subdivision include: Demolition of the existing dwelling and outbuildings at 32 Lakeview Parade; Demolition of existing outbuildings at 30 Lakeview Parade (with the existing dwelling to be retained); The creation of five new lots under Torrens Title; Construction an internal driveway servicing Lots 2-5; Installation of essential services to each lot; Easements for access and services; and tree removal impacted by subdivision works.</i> <i>An Arboricultural Impact Assessment is submitted that assesses the impact of subdivision and future residential dwelling works upon existing trees. However the recommendations for tree removal based on indicative building layouts are to be disregarded under this subdivision application and only existing trees impacted by the subdivision works (new crossover driveway and passing bay, new internal driveway, and installation of stormwater services shall be assessed for Council consideration. As interpreted by Landscape Referral the following existing trees are required for removal under the subdivision works: tree 10 (exempt Palm), tree 12 (exempt Palm), tree 15 (Betula), and tree 27 (Banksia). Additionally the updated Arboricultural Impact Assessment recommends removal of the existing street tree numbered 7, however Landscape Referral are of the opinion that the Bushbox street tree is viable for retention with tree sensitive construction utilised for the passing bay, and furthermore without any tree root investigation along the alignment of the passing bay extent, there is no justified reason to accept the recommendation for removal.</i>

Internal Referral Body	Comments
	<i>All other existing trees within the lots shall be retained under subdivision works the subject of this application. Future applications for new dwellings to each lot shall be assessed separately, including any necessary tree removal impacted by dwelling and associated works. As considered under C4.7 Subdivision - Amenity and Design, Landscape Referral raise no objections to the subdivision application, as the proposed lot arrangement provides opportunities to retain existing trees of value within the lots or otherwise provides adequate landscape area to support new tree and vegetation planting.</i> <i>The proposal is therefore supported.</i>
Water Management	Not supported <i>The proposed subdivision is subject to the Council Water Management for Development Policy. A stormwater management plan is to be provided showing the project compliance with the Water Management for Development Policy.</i> <i>The General Water quality objectives stated in table 5 of the policy are likely to be applicable. Refer to 4.1.2 Standards of Design for the supporting documentation to be supplied.</i> <i>The proposal is therefore unsupported.</i> <i>Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.</i> Amended referral 26 April 2023 <i>Not Supported.</i> <i>The proposed subdivision is subject to the Council Water Management for Development Policy. A stormwater management plan is to be provided showing the project compliance with the Water Management for Development Policy water quality objectives. Water quality treatment achieving the General Water quality objectives stated in table 5 of the policy is to be provided.</i> <i>Refer to 4.1.2 Standards of Design for the supporting documentation to be supplied.</i> <i>The proposal is therefore unsupported.</i> Amended referral 30 March 2023 <i>This application was assessed in consideration of:</i> • <i>Supplied plans and reports;</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.8 and 2.12);</i> • <i>Northern Beaches Water Management for Development Policy (WM Policy); and</i> • <i>Relevant LEP and DCP clauses.</i>

Internal Referral Body	Comments
	<i>The proposed subdivision is subject to the Council Water Management for Development Policy. The proposed stormwater management strategy is satisfactory.</i> <i>NECC Water Management has no objections, subject to conditions.</i> <i>The proposal is therefore supported.</i>
Development Engineer	Supported, subject to Conditions <i>The proposal includes the demolition of an existing dwelling and the construction of a common driveway and subdivision of two lots into 5 lots.</i> <i>The submitted driveway plan and traffic report propose a driveway width of 3.0 metres within a proposed right of carriageway of 3.5 metres wide with a single passing bay 5.5 metres wide by 9.4 metres long. Council's DCP requires a passing bay 5 metres by 10 metres long however the traffic report includes vehicle paths demonstrating that two vehicles can pass adequately which is acceptable. Due to the length of the driveway it is considered that the driveway crossing must be 5 metres wide between the kerb and the boundary and continued for a distance of 3 metres within the site with a further transition for 1.5 metres back to the proposed 3 metres width within the front lot to ensure two vehicles can pass without stopping in the roadway. The plans and sections are to be amended to suit.</i> <i>The proposal has not included any stormwater drainage plans for the proposal. As the proposed impervious area exceeds 50 square metres, on-site stormwater detention (OSD) will be required for the proposal. Also the drainage plan must include the provision of an inter-allotment drainage line servicing each of the proposed lots with a piped connection to Council's stormwater drainage line in Lakeview Parade. Pit and pipe details must be included with the submission. Details for the drainage of the proposed access driveway must also be shown.</i> <i>The draft plan of subdivision must be amended to include an easement to drain water over the proposed inter-allotment drainage line and driveway and right of carriageway over the driveway widening in proposed lot 1 as discussed above.</i> <i>Development Engineering cannot support the proposal due to insufficient information to address stormwater, access and subdivision in accordance with clauses B5, B6 and C4.</i> Amended referral 30 March 2023 <i>The submitted stormwater plan is acceptable. The widened driveway crossing and turning paths address the previous crossing width issue. The amended subdivision plan includes the new passing bay but does not include the required drainage easement. This issue has been conditioned.</i> <i>Development Engineering support the proposal, subject to conditions as recommended. The proposal is therefore supported.</i>



External Referral Body	Comments
Ausgrid	<i>Supported, subject to Conditions</i> An external referral was made to the energy supply authority. An undated referral was received which did not raise any objections, subject to the satisfaction of Ausgrid requirements relating to underground cables and overhead power lines. Such requirements will be subject to conditions of consent in the event of approval.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP)

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 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.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP)

Chapter 2 Infrastructure

Subdivision 2 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 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.



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

PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Detailed Assessment

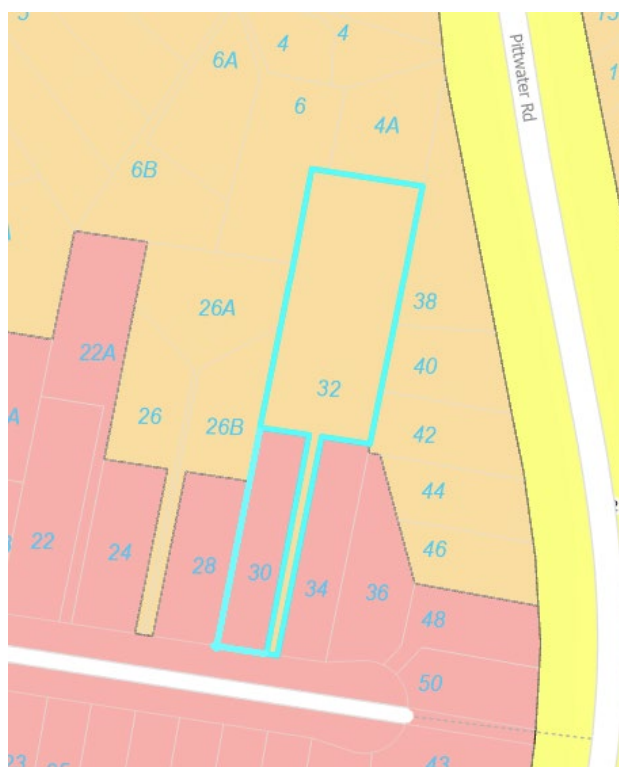


Figure 18: Extract of Zoning Map. Site outlined in blue.
Source: nsw.legislation.nsw.gov.au

The existing allotment at 32 Lakeview Parade is zoned C4 Environmental Living, and 30 Lakeview Parade is zoned R2 Low Density Residential (**Figure 18**). The subdivision results in Lot 1 being zoned R2 Low Density Residential, along with the front of proposed Lot 2 for approximately 15m. Proposed Lots 3, 4 and 5 are zoned C4 Environmental Living.

On 23 August 2022, Northern Beaches Council resolved to publicly exhibit the Conservation Zones Review and associated technical studies and maps. The Conservation Zones Review was exhibited between September and October 2022. 32 Lakeview Parade is identified within the residential zone and removed from the C4 Environmental Living zone. A draft LEP has not been prepared or exhibited and is therefore not imminent or certain. There is no statutory requirement for consideration of the Conservation Zones Review.



Zone C4 Environmental Living

The objectives of the zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.*

Comment: The site includes special ecological and aesthetic values given the existing significant vegetation on site.

The development, due to the proposed and likely tree loss is not low-impact. The proposed subdivision creates constrained allotments due to the dimensions, orientation, topography, and presence of significant vegetation. The dwellings represented on the concept plans do not demonstrate the sites can be developed in accordance with the suite of built form controls while at the same time avoid adverse impact upon significant vegetation.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment: The proposed subdivision has not been supported by sufficient information to demonstrate an acceptable environmental outcome. The subdivision will create constrained allotments, and has not demonstrated the allotments can be developed to ensure there are no adverse effects on the ecological and aesthetic values of the site.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment: The proposal does not demonstrate the subdivision can be appropriately developed in response to the landform and landscape. The concept plans necessitate excavation and provision of retaining walls, changing the levels of the site. These works result in impacts upon vegetation indicated to be retained, but are likely to be adversely affected by the extent of changes to the landform. It has not been demonstrated that the allotments can be developed with a low density and scale integrated with the local landform and landscape.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment: This objective is not relevant to the proposed development as the site is not riparian or foreshore land.

Zone R2 Low Density Residential

The objectives of the zone are:

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

Comment: The proposed development fails to satisfy the first objective of the zone. While the subdivision will provide for the housing needs of the community by future development and resultant density, proposed Lot 2 is a very constrained allotment. The proposal would result in a development incongruous with the low-density residential environment for the Warriewood locality.



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

Comment: This objective is not relevant to the proposed development.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Comment: This objective is not relevant to the proposed development.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	N/A There are existing right-of-carriageways but is not a restriction which is subject to Clause 1.9A.
2.6 Subdivision – consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	Yes – The Lot Size map identifies the minimum lot size for the site is 550m ² . Pursuant to Clause 4.1 (3A) the area of an access handle is not to be included in calculating the lot size. Each allotment to be created has a minimum lot size of at least 550m ² (550.4m ²) not including the access handle.
4.3 Height of Buildings	N/A – The proposal does not seek consent for any dwellings.
4.6 Exceptions to development standards	N/A
5.21 Flood planning	N/A – The site is not mapped as being within a flood planning area.
7.1 Acid Sulfate Soils	Yes - The site is mapped as being within Class 5 Acid Sulfate Soils. The proposal is considered unlikely to have any implications for acid sulfate soils given the nature of the proposed works.
7.2 Earthworks	No. The proposal includes excavation to a depth of 310mm within the proposed driveway. Retaining walls are provided along the eastern and western side of the driveway to a height of approximately 400mm. Concept plans have been provided to demonstrate the potential development of the proposed allotments. Lot 2 would necessitate 1.24m of excavation. Lot 5 demonstrates excavation necessary to a depth of 690mm. The objective of the clause is to ensure that earthworks do not to have a detrimental impact on environmental functions and process, neighbouring

Clause	Compliance with Requirements
	uses, cultural or heritage items or features of surrounding land. The levels of the driveway in which consent is sought will establish the likely development levels of future dwellings on the proposed lots. The concept designs demonstrate that specific levels of excavation are required to facilitate reasonable development on the proposed lots. The excavation associated with Lot 2 and Lot 5 is located within the TPZs of significant trees on site and within adjoining properties. Insufficient consideration has been given to the impact of excavation upon vegetation. Subclause (3)(b) requires consideration of the effect of the development on the likely future use or redevelopment of land. Council cannot be satisfied the excavation works do not result in any adverse effect on the future development of the proposed allotments.
7.10 Essential services	Yes – the subject site is within an established area. As such, Council is satisfied that the proposed allotments can be connected to essential services (water, electricity, sewerage). Furthermore, Council's Development Engineer and Water Management Department are satisfied that appropriate stormwater measures are proposed, subject to conditions.

PITTWATER 21 DEVELOPMENT CONTROL PLAN

Built Form Controls

Built form Control	Requirement	Proposed	%Variation*	Complies
B2.2 Subdivision – Low Density Residential Areas	Minimum lot depth of 27m	Lot 1 – 41.45m and 42.75m	N/A	Yes
		Lot 2 – 43.5m	N/A	Yes
		Lot 3 – 37.79m – 42.56m	N/A	Yes
		Lot 4 – 29.37m - 47.275m	N/A	Yes
		Lot 5 – 46.645m – 47.275m	N/A	Yes
	Area 1 – Landscape Area Map – minimum width 16m	Rear part of Lot 2 – 16.745m	N/A	Yes
		Lot 3 – 13.715m	14.28%	No

Built form Control	Requirement	Proposed	%Variation*	Complies
		Lot 4 – 17.22m	N/A	Yes
		Lot 5 – 13.245m	17.21%	No
	Area 2 or 3 – Landscape Area Map – minimum width 15m	Lot 1 – 11.765m	21.56%	No
		Front of Lot 2 – 16.745m	N/A	Yes
	Created lot slope less than 16.7 degrees (30%)	Lot 1 – 28.5 – 21 = 7.5/42.1 = 17.8%	N/A	Yes
		Lot 2 – 35.5 – 28 = 7.5/43.5 = 17.2%	N/A	Yes
		Lot 3 – 36- 29.66 = 6.84/40.175 = 17%	N/A	Yes
		Lot 4 – 37.10 – 34.731 = 2.37/44.97 = 5.2%	N/A	Yes
		Lot 5 – 38.28 – 34.731 = 3.549/46.96 = 7.55%	N/A	Yes
	Minimum building area 175m ²	Lot 1 – Existing dwelling and developed	N/A	N/A- Existing
		Lot 2 – 202.6m ²	N/A	Yes
		Lot 3 – 203.5m ²	N/A	Yes
		Lot 4 – 226.51m ²	N/A	Yes
		Lot 5 – 217.43m ²	N/A	Yes
C1.1 Landscaping	60% in front of the building line 171.76m ² area 103.05m ² - 60%	Lot 1 - 93.02m ² 54%	9.7%	No
C4.7 Subdivision – Amenity and Design	18m width given ROW	Lot 1 – 16.765m	6.96%	No
	Front 18m and rear 19.2m width given ROW	Lot 2 – 16.745m	6.97% front 12.78% rear	No
	19.2m width given ROW	Lot 4 – 17.22m	10.3%	No
D14.7 Front Building Line		Lot 1 -	Existing	Existing

Built form Control	Requirement	Proposed	%Variation*	Complies
	6.5m or established building line	Lot 2 – 2.0m southern	69.2%	No
		Lot 3 – 4.5m	30.7%	No
		Lot 4- 5.15m	20.76%	No
		Lot 5 – 7.55m	N/A	Yes
D14.6 Side and Rear Building Line	1m and 2.5m side building line 6.5m rear building line	Lot 1- 5.05m from eastern and 1.75m from western – existing dwelling to be retained >6.5m rear	N/A 0	Yes Yes
		Lot 2 - 1.0m from western and 1.225m – 3.225m from eastern >6.5m rear	N/A	Yes
		Lot 3 – 2.0m – 2.5m from western and 2.5m from eastern Rear >6.5m	N/A	Yes
		Lot 4 – 1.0m from western and 4.891m from eastern Rear >6.5m	N/A	Yes
		Lot 5 – 1m from western and 2.5m from eastern Rear 16m	N/A	Yes
D14.11 Building Envelope	3.5m at 45° to max height	Lot 1	Existing	Existing
		Lot 2 Within	N/A	Yes
		Lot 3 - Within	N/A	Yes
		Lot 4 - Within	N/A	Yes
		Lot 5 - Within	N/A	Yes

Built form Control	Requirement	Proposed	%Variation*	Complies
D14.12 Landscaped Area – General – 50%	Lot 1 – 50% 354.55m ²	382.25m ² 53.9%%	N/A	Yes
	Lot 2 – 50% 364.2m ²	388.29m ² 53.3%	N/A	Yes
D14.13 Landscaped area – Environmentally Sensitive Land – 60%	Lot 2 - 60% - 437.04m ²	Lot 2 – 388.29m ² 53.3%	11.1%	No
	Lot 3 - 60% - 330.24m ²	Lot 3 – 305.76m ² 55%	7.4%	No
	Lot 4 - 60% - 360.48m ²	Lot 4 – 310.8m ² 51.7%	13.78%	No
	Lot 5 - 60% - 373.2m ²	Lot 5 – 373.65m ² 60%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater		
A1.7 Considerations before consent is granted	No	No
A4.14 Warriewood Locality	Yes	Yes
Section B General Controls		
B1 Heritage Controls		
B1.4 Aboriginal Heritage	Yes	Yes
B3 Hazard Controls		
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4 Controls Relating to the Natural Environment		
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5 Water Management		
B5.5 Rainwater Tanks	No	Yes
B5.15 Stormwater	Yes	Yes
B6 Access and Parking		
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8 Site Works Management		
B8.1 Construction and Demolition – Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition – Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition – Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition – Works in the Public Domain	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.6 Construction and Demolition – Traffic Management Plan	Yes	Yes
Section C Development Type Controls		
C1 Design Criteria for Residential Development		
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C4 Design Criteria for Subdivision		
C4.1 Subdivision - Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	Yes	Yes
C4.3 Subdivision - Transport and Traffic Management	Yes	Yes
C4.4 Subdivision - Public Roads, Footpath and Streetscape	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots	No	Yes
D14 Warriewood Locality		
D14.1 Character as viewed from a public place	Yes	Yes
D14.2 Scenic Protection – General	Yes	Yes
D14.15 Fences – General	N/A	N/A
D14.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

Development consent is not sought for any improvement or development of the proposed allotments. Consent is sought for subdivision and subdivision works only.

The DA has been accompanied by concept plans to represent how the proposed allotments can be developed. Consideration of the concept dwellings against the relevant provisions of the PDGP has been undertaken.

The assessment below demonstrates the allotments proposed under this DA cannot be developed in accordance with the suite of built form controls.

Planning Principle – Parrot v Kiama [2004] NSWLEC 77

An assessment of the proposed subdivision regarding the planning principle established by *Parrot v Kiama [2004] NSWLEC 77* has been undertaken below. For reference, the tests are as follows:



- 17 *When should a subdivision application include information on the buildings to be built on the resulting allotment(s)? It is normal practice in Australia to subdivide land without constraints on the buildings that can later be built. While this practice is appropriate in most cases, it is not always so. I have adopted the planning principle that a subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual, or environmentally sensitive or where significant impacts on neighbours is likely and needs careful design to minimise them.*

The proposed allotments are smaller than usual. Lots 2, 4 and 5 are environmentally sensitive due to the presence of existing significant vegetation. Lots 3, 4 and 5 and rear of Lot 2 are zoned C4 Environmental Living. The orientation of allotments, being south – north, along with the site slope, means there is the potential for impacts upon neighbouring properties.

Following the issue of an RFI, the Applicant submitted further information that included the provision of concept dwelling house designs for Lots 2 – 5.

Consideration of the proposed allotments and concept plan designs is included below with reference to the relevant subdivision provisions contained within the PDCP.

B2.2 Subdivision – Low Density Residential Areas

The relevant controls of this Part include:

- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot depth of 27 metres.*
- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 1 on the Landscaped Area Map shall have a minimum lot width at the building line of 16 metres.*
- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 2 or 3 on the Landscaped Area Map shall have a minimum lot width at the building line of 15 metres.*
- *A person shall not subdivide land if the allotment(s) intended to be created have a slope in excess of 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s)*
- *The minimum area for building shall be 175m².*
- *Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services.*

The development does not achieve consistency with the provisions of B2.2 Subdivision – Low Density Residential Areas. Lots 3 and 5 do not meet the 16m minimum allotment width, representing a 14.28% and 17.21% variation to the control. Lot 1 does not meet the 15m allotment width representing a 21.56% variation to the control.

The dimensions of the proposed allotments create a constraint for the future development of buildings on the allotments. The allotments are further constrained by the presence of significant trees contained within the proposed allotments. The development does not as a consequence of tree impacts achieve the desired future character of the locality, and does not satisfactorily maintain the environment.

C4.7 Subdivision – Amenity and Design



Under the provisions this Part, in reference to useable site area, where a right-of-carriageway to another lot is provided over a lot, the width of that right-of-carriageway shall not be more than 20% of the required minimum width of the lot over which it is located.

This control relates to Lots 1, 2 and 4. The proposed accessway exceeds the minimum width requirement of between 3 – 3.2m. The accessway width varies between 3.5m – 5.5m. Lot 1 results in a 6.96% variation to the control, with Lot 2 a 6.97% variation at the front and 12.78% at the rear. Lot 4 results in a 10.3% variation to the control. The purpose of this control is to ensure the width of a property which an accessway is located, is sufficient to accommodate a residential development.

The controls of Part B2.2 require Lot 1 and the front of Lot 2 have a minimum width of 15m, and Lot 4 to have a minimum width of 16m. Part A1.9 Definitions of PDCP defines **Lot width** as follows:

This is different to 'Effective Lot Width' in controls C6.8, C6.9 and D16.1.

Is the width of a lot measured from one side boundary to the other at the primary street front building line not including access handle.

For Lot 1, the width of the access handle is excluded when calculating the lot's width as Lot 1 presents to the primary street. The minimum width control of Part B2.2 does not exclude the accessway in relation to Lots 2 and 4. Lot 1 is non-compliant representing a 21.56% variation to the required lot width. Lots 2 and 4 all rely upon the width of the accessway to achieve compliance.

The width of access is reflective of the number allotments to be serviced by the accessway. As the accessway services more than two (2) allotments, and has a length in excess of 40m to enable the passing of vehicles, a width of 5.5m is required in part.

As a result of the above, design constraints for future development occurs. The constraints result in a concept design that is inconsistent with the controls of PDCP. It is undesirable to create allotments where future development cannot satisfy the requirements of the DCP.

The subdivision proposed as a result of these dimensional variations suggest an overdevelopment of the site.

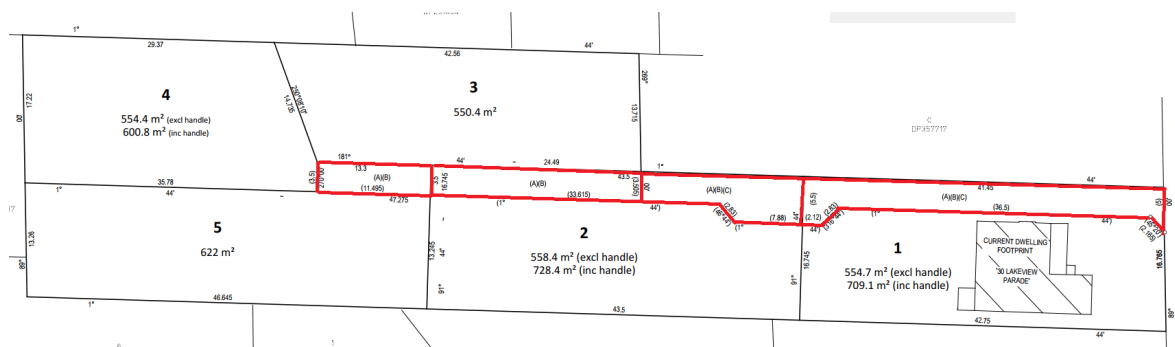


Figure: 19 Proposed subdivision showing accessway outlined in red.
Source: SDG, 28 March 2023 (CPS markup)

The subdivision design controls under C4.7 of PDCP seek to ensure that:



- *all properties, both existing and proposed, achieve/retain a level of amenity commensurate with the locality and the desired character of the area;*
- *the impact on the environment of the completed development (including buildings to be constructed on the proposed lots) has an acceptable impact on the environment.*

Below is a consideration of the provisions of Part A4.16 Warriewood Valley Locality which details the expectations for development within Warriewood.

A4.16 Warriewood Valley Locality

The desired future character for Warriewood is outlined in Part A4.14 Warriewood Locality of the PDCP. The desired character relevant to the proposal includes:

- *The Warriewood locality will remain characterised by a mix of residential, retail, commercial, industrial, recreational, and educational land uses.*
- *Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.*
- *Future development will maintain a building height limit below the tree canopy and minimise bulk and scale.*
- *Existing and new native vegetation, including canopy trees, will be integrated with the development.*
- *Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance.*
- *Development will be designed to be safe from hazards.*

A comprehensive site analysis is required to be submitted considering specific characteristics which includes:

- *the slope, topography, and any natural features (e.g. creeklines);*
- *trees and vegetation (particularly trees worthy of retention);*
- *viewlines from within the proposed lots and from adjoining properties;*
- *solar access to the subdivision site;*
- *the side, rear and front setbacks of future dwellings and structures in relation to the proposed new boundaries and development on adjoining properties;*
- *the visual impact of built development which will occur as a result of the subdivision process (building height, bulk and scale, visual impact of buildings);*
- *the provision of vehicular access to the future buildings on the proposed lots;*
- *the provision of landscaping and/or recreation space for each proposed lot;*
- *the provision of on-site car parking on each proposed lot;*
- *the provision of services to each lot, including sewerage, water, electricity, communications, and gas (where available);*
- *the provision of emergency services to each (bushfire, fire brigade, ambulance).*

The DA has been accompanied by an indicative building footprint plan (**Figure 20**). Through the assessment of the DA, more detailed information was requested to demonstrate the acceptability of the subdivision in relation to the key matters for consideration detailed above. Concept plans were submitted.

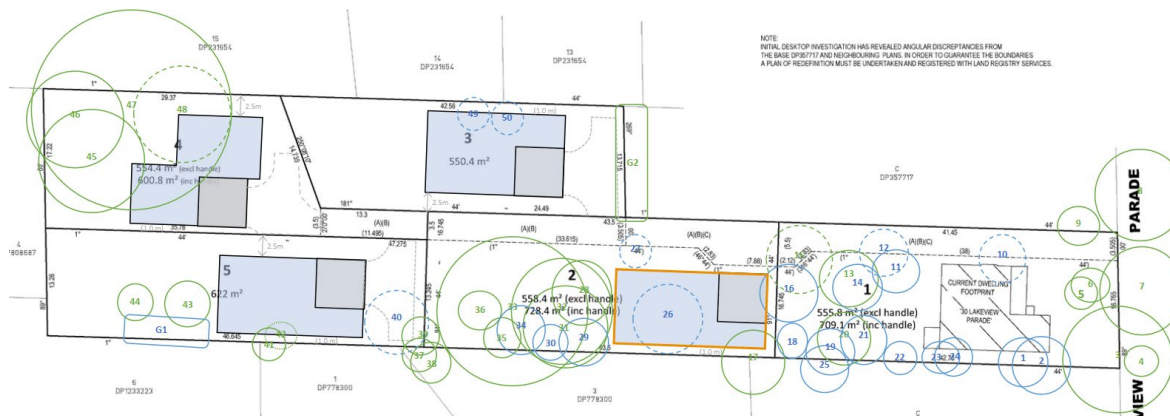


Figure 20: Applicant's Indicative Building Footprint Plan
Source: Northern Beaches Planning,

The control states, in order to demonstrate how the subdivision would meet these requirements, building envelopes are to be nominated on each allotment within which any future building is to be contained. The building envelope is required to clearly demonstrate that a building envelope can be built on the site that have regard to the following:

- *retention of trees and bushland,*
- *vehicular access,*
- *provision of services,*
- *provision of emergency services,*
- *and safety from hazard,*
- *A building which achieves the desired character of the area and is commensurate with the amenity standards of surrounding development, and does not overly impact on the environment, and can be erected within that envelope.*

A detailed discussion of the concerns in relation to the proposed allotments is provided below.

Proposed Lot 2

Lot 2 is centrally located between the existing dwelling to be retained on Lot 1 and the proposed Lot 5 to the rear. The entire eastern side of the allotment is burdened by the proposed accessway. The building envelope shown orientates the dwelling to present internally to the accessway. The allotment contains significant vegetation centrally and to the rear of the site. The allotment is constrained by its dimensions and vegetation as to the location of future buildings.

The northern portion of the site contains significant vegetation (Trees 31, 32, 33 and 36) which are identified for retention (**Figure 21**). The significant vegetation results in the building envelope being restricted to the southeastern corner of the allotment.

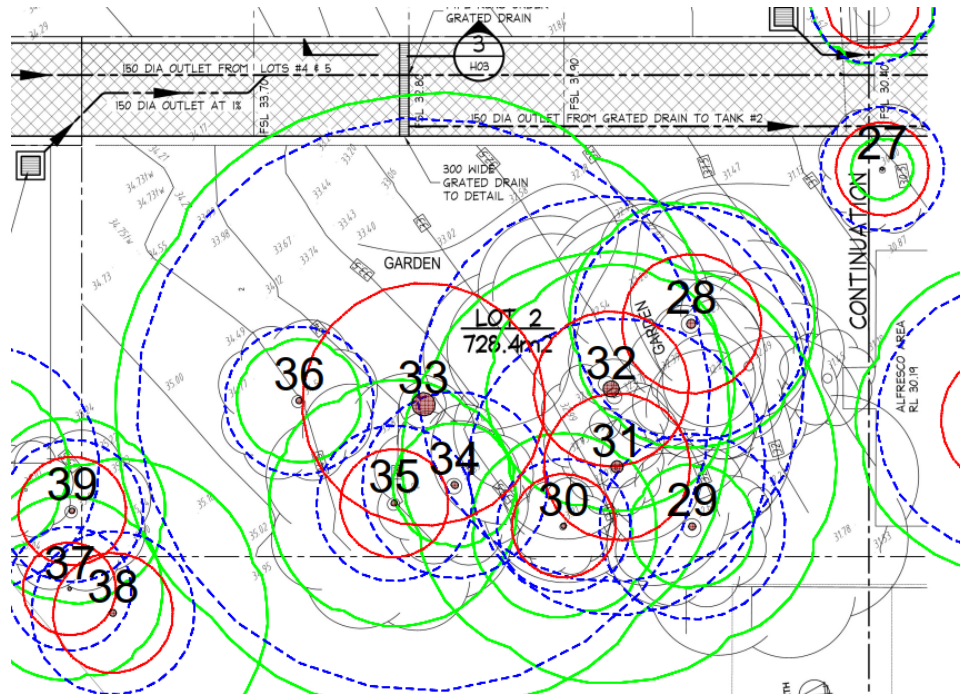


Figure 21: Tree Location Plan. Green identified tree crown, TPZ shown in blue and red is SRZ.
Source: Hugh the Arborist, 29 March 2023

Proposed Lot 2 will be zoned both R2 Low Density Residential and C4 Environmental Living (**Figure 22**). The front portion of the site is zoned R2, and the rear where significant vegetation is sited is zoned C4. As a result, the allotment is located within both Area 1 and Area 3 of the Pittwater Landscaped Area Map.

Despite these constraints, the Applicant submitted concept plans at the request of Council to demonstrate how the site can be developed in accordance with PDCP (**Figure 23**).

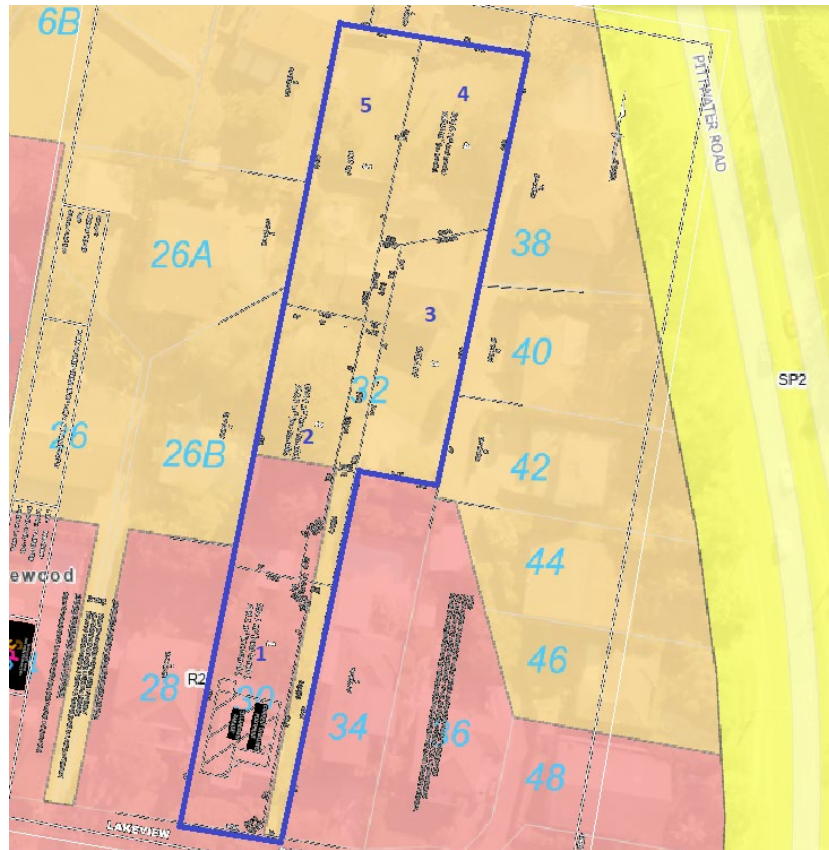


Figure 22: Extract of Pittwater Zoning Map. Proposed subdivision overlayed on map. Lot 2 is zoned both R2 Low Density Residential and the middle and rear of the site is zoned C4 Environmental Living where significant vegetation is located.
Source: www.legislation.nsw.gov.au, CPS markup

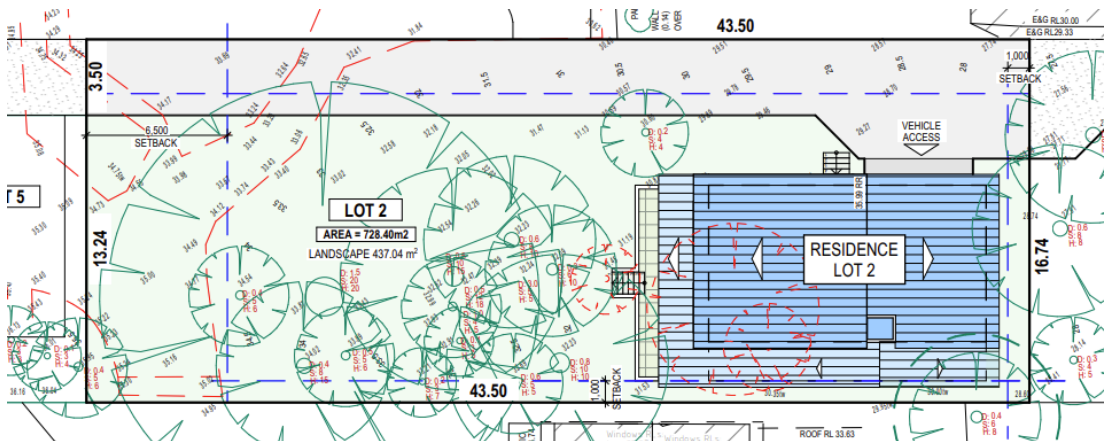


Figure 23: Concept plan of siting of development on proposed Lot 2
Source: JJ Drafting, March 2023

The concept plan submitted does not satisfactory demonstrate the site, despite these constraints, can reasonably be developed in for the following reasons:



- The dwelling is sited to provide a 2m setback from the southern boundary and 1m from the western boundary. The dwelling is setback 3.225m from the accessway and 6.725m from the eastern boundary of the accessway.

In order to achieve consistency with the dimensional requirements of B2.2 Subdivision – Low Density Residential Areas, Lot 2 unreasonably relies upon the area of the accessway. The dwelling is orientated internally to the accessway, indicating a compliant 6.725m setback is provided from the eastern side of the accessway, with the front building line requirement being satisfied.

- The dwelling provides a 1m setback from the western boundary, and 2m from the southern. Part D14.8 'Side and rear building line' requires a 6.5m rear setback. The orientation of the dwelling would mean the rear boundary is the western boundary which represents an 84.6% variation to the control.
- The 2m setback from the southern boundary, which is more appropriately considered the front setback, would result in a 69.2% variation to the control. C1.1 Landscaping requires at least 2 canopy trees in the front yard and 1 canopy tree in the rear yard. The site is not capable of accommodating canopy trees within the southern setback.
- The development of Lot 2 in the manner represented in the concept design provides the smallest setback from the southwestern corner of the site where it adjoins vegetation upon 28 Lakeview Parade. The siting of the dwelling at the southwestern corner results in a poor outcome and increases the likelihood of impact upon adjoining properties once this allotment is developed.
- The existing dwelling on Lot 1 to be retained is setback 16m from the rear boundary. Lot 2 is subject to a maximum height of 8.5m. The separation distance means, the development of Lot 2 being upslope and to the north of Lot 1, will result in overshadowing. The proposal has not provided shadow diagrams to demonstrate the likely resultant solar access impacts.
- The concept plan references a retaining wall along the southern and western setbacks. The retaining wall will range in height between 100mm - 690mm and is located within the setbacks. The retaining wall is necessary in response to the represented levels.

The retaining wall results in a major incursion of 13.7% of the TPZ of Tree 17 located on the neighbouring property at 28 Lakeview Parade. The Arborist recommendation is for the removal of this retaining wall. The retaining wall has been provided due to the necessary change in levels across the site to facilitate development. Without this wall, it is not known how suitable levels will be able to be achieved.

- The driveway is proposed to be constructed as part of the subject DA. The driveway will establish the likely levels of the future development of the Lot.

The concept design provides for multiple transitions within the dwelling. The dwelling is partly sited in the position of the existing garage/shed and concrete area within the rear of 30 Lakeview Parade. The concept dwelling is sited at the steepest part of the site.

The concept dwelling has a FFL of RL30.29, with the external spot levels ranging between RL31.19 and RL31.53. The outdoor entertainment area is excavated into the site. The level



difference is up to 1.24m. This would result in amenity impacts upon the private open space given it is located to the south of required retaining walls.

- The development has not demonstrated that it has an acceptable impact upon the environment. The concept dwelling result in unacceptable impacts upon existing vegetation. The Arborist recommendations for design amendments have not been reflected on the concept plans. These requirements will further constrain the development opportunity.
- Control D14.13 Landscaped Area – Environmentally Sensitive Land which is mapped as Area 3 Environmentally Sensitive Land requires 60% landscape area, and Area 1 is subject to a 50% requirement under the provisions of D14.12 Landscaped Area – General.

Given the split zoning, it is considered more appropriate to apply the 60% requirement to the site. In this regard, the development achieves a landscaped area of 53.3%, resulting in a 11.1% variation to the control.

It is not considered appropriate to automatically apply a 6% variation dispensation within the control, as has been indicated within the DA.

The outcomes of the control require consistency with the desired future character, reasonable level of amenity and solar access is provided and maintained, and vegetation is retained and enhanced to visually reduce the built form. From the information submitted and reasons discussed above, the development does not meet the outcomes and variation cannot reasonably be applied.

Proposed Lot 3

Submissions have been received from a neighbouring property at 40 Lakeview Drive raising concerns with the likely view loss and solar access impacts resulting from the future development on Lot 3. Specific consideration of solar access and view loss has been considered earlier in this report relating to the provision of C1.3 View Sharing and C1.4 Solar Access.

The development of Lot 3, whilst it has potential for shadow impact, would be limited to the afternoon period only and therefore the adjoining dwellings to the east will be capable of receiving adequate solar access.

Lot 3 is mapped within Area 1 Landscape Area Map which requires a minimum width of 16m. The lot has a width of 13.715m representing a 14.28% variation to control of B2.2 Subdivision – Low Density Residential Areas.

The concept design (**Figure 24**) sites the dwelling towards the southern boundary, and locates the driveway and turning bay within the front setback. The driveway is setback 1m from the southern boundary.

D14.7 Front Building Line requires a 6.5m front setback, yet the dwelling has a setback of 4.5m representing a 30.7% variation to the control. The Lot does not demonstrate compliance with the control for 60% landscaped area, with the Lot providing 55%, presenting a 7.4% variation.

The outcomes of the controls B2.2 Subdivision – Low Density Residential Areas, D14.7 Front Building Line, D14.13 Landscaped area – Environmentally Sensitive Land and C1.1 Landscaping



is to achieve the desired future character of the locality. This includes maintenance of the existing environment and vegetation being retained and enhanced to visually reduce the built form.

The Warriewood Locality desired future character is to maintain low-density residential dwellings with a maximum two storeys in a landscaped setting. Existing and new native vegetation, including canopy trees, is to integrate with the development.

The lot fails to comply with the minimum width and front setback controls, and does not provide for the required 60% landscaped area controls contained with the PDCP. The front setback is not sufficient to accommodate the required two canopy trees within the front setback. In this circumstance, support for these non-compliances is not justifiable.

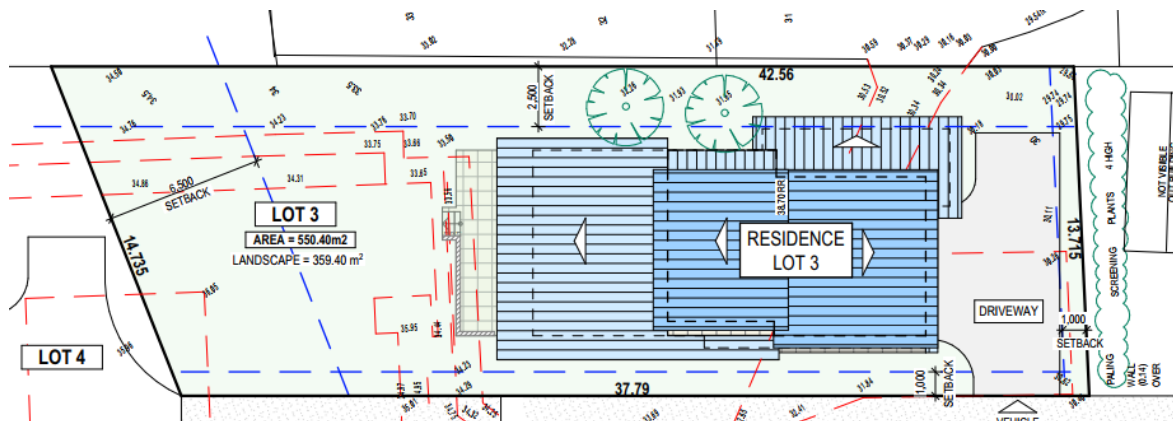


Figure 24: Concept dwelling for proposed Lot 3
Source: JJ Drafting, March 2023

Proposed Lot 4

Lot 4 contains significant vegetation to the northeastern corner of the site (**Figure 25**). The vegetation includes 3 x *Melaleuca quinquenervia* (Tree 45, 47 and 48) and 1 x *Araucaria heterophylla* (Tree 46).

The significant vegetation creates a constraint on the allotment. The Arborist report recommends the need for specific requirements for Trees 47 and 48 as the concept plan represents a major encroachment of the TPZ.

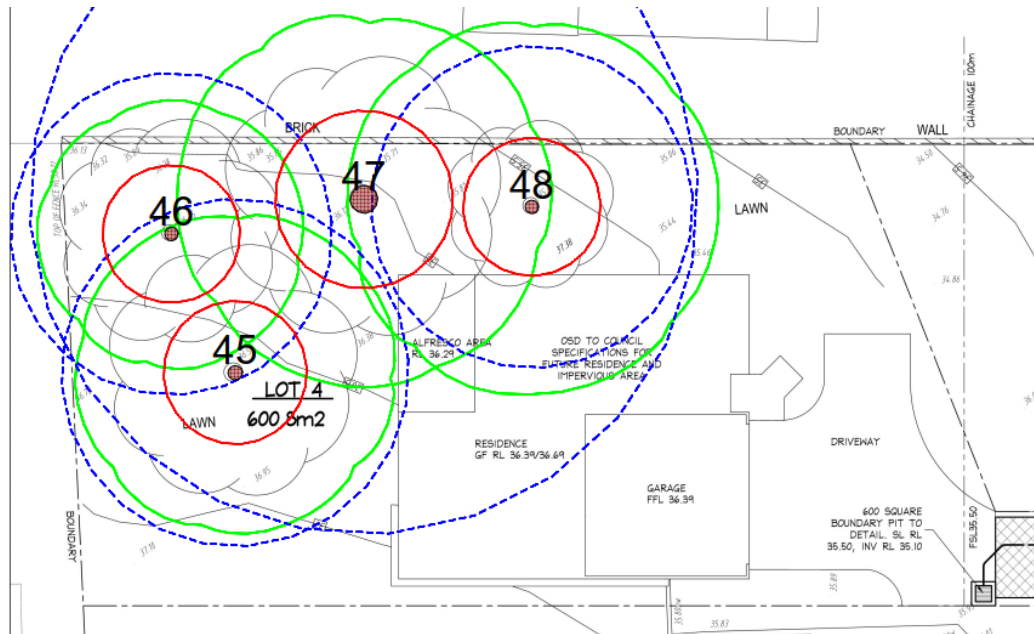


Figure 25: TPZ and SRZ of significant vegetation location on Lot 4 with concept dwelling shown.
Source: Hugh the Arborist, 29 March 2023

The Applicant has submitted a concept design for the lot (**Figure 26**). The concept plan does not demonstrate the significant vegetation can be retained. It cannot be said that the building would achieve the desired future character of the area and does not overly impact on the environment.

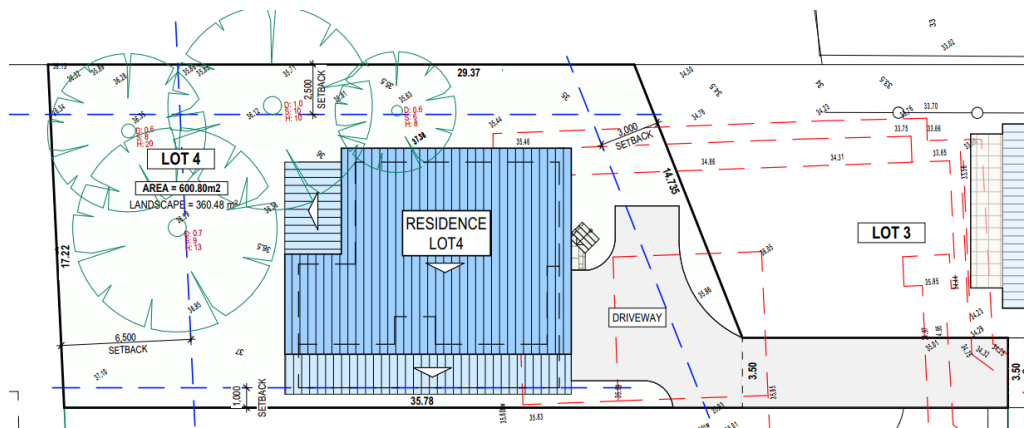


Figure 26: Concept plan for Lot 4
Source: JJ Drafting, March 2023

The allotment is contrary to the controls of C4.7 Subdivision – Amenity and Design as detailed above and does not achieve the outcomes of the controls. The proposal does not achieve the desired character of the locality, does not protect the natural environment.



Proposed Lot 5

The lot is mapped within Area 1 Landscape Area Map and the control requires a minimum width of 16m. The lot has a width of 13.245m representing a 17.21% variation to control of B2.2 Subdivision – Low Density Residential Areas and is non-compliant.

The concept design (**Figure 27**) positions the dwelling towards the southern boundary and locates the driveway with the turning bay within the front setback. The driveway is setback 1m from the southern boundary.

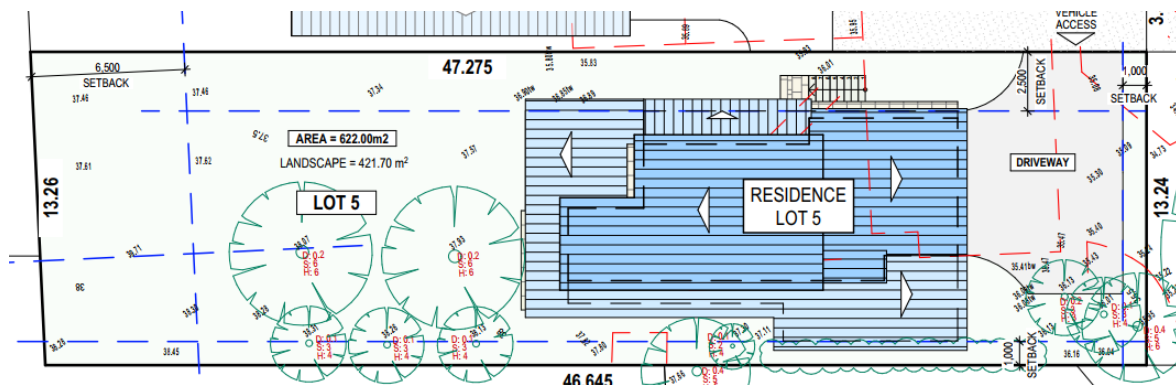


Figure 27: Concept plan for Lot 5
Source: JJ Drafting, March 2023

The site contains significant vegetation at the rear (Trees 43 and 44) and within the mid-block adjacent to the western boundary (Tree 42). Tree 41 is located on the adjoining property at 26A Lakeview Parade (**Figure 28**).

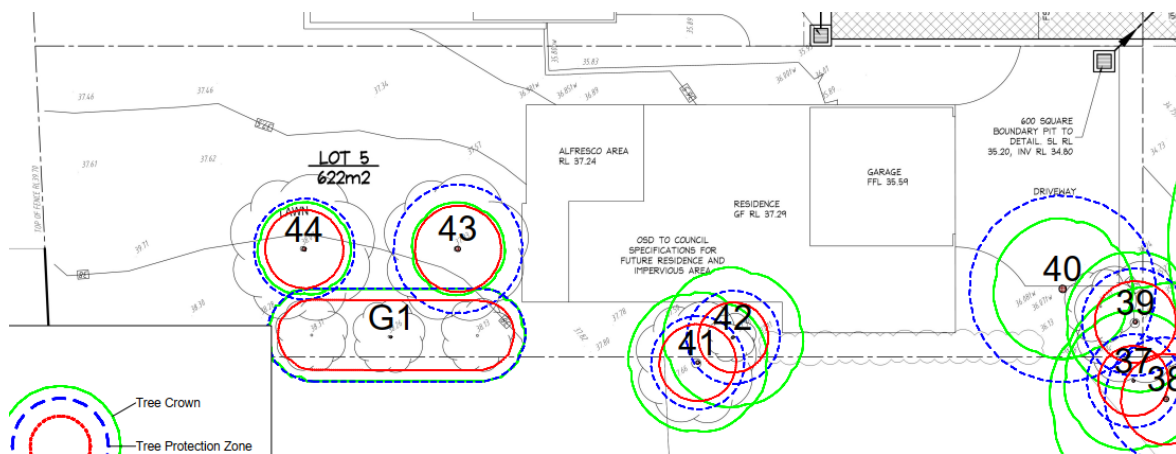


Figure 28: TPZ and SRZ of significant vegetation located on Lot 5 with concept dwelling shown.
Source: Hugh the Arborist, 29 March 2023

The concept dwelling design includes provision of a retaining wall along the rear western elevation and partially along the rear northern boundary. The retaining wall is necessary due to the proposed level and excavation necessary at the northwestern corner of the dwelling. The excavation is located within proximity of Tree 43.

The concept plan demonstrates this site can reasonably be developed in accordance with PDCP.



C4.8 Subdivision – Landscaping on the existing and proposed public road reserve frontage to subdivision lots

The control requires all existing trees over 3m in height and native vegetation and trees within the road reserve areas to be retained where practical. The road reserve contains a Queensland Brushbox, and the required widening of the access handle to accommodate the number of new allotments proposed will result in the removal of Tree 7.

The proposed development will result in an incursion of greater than 20% of the nominal TPZ of this tree. This incursion is classified as 'Major' under the provisions of AS470-2009 – Protection of trees on development sites and is likely to be unsustainable for tree.

As discussed above, Council's Landscape Officer requires retention of this tree to support the development. The Applicant's AIA indicates this tree is not capable of retention. The Landscape Officer recommendation relies upon the provision of further information which includes root mapping and specific construction methods. The DA does seek to retain this tree.

For the reasons outlined earlier in this report, it is not appropriate to delay the environmental assessment of significant vegetation until the construction certificate stage.

C1.1 Landscaping

The control requires that for the front of single dwellings, 60% (between the front boundary and any built structures) shall landscaped to screen those buildings from the street. The front building line area of Lot 1 is 171.76m², requiring a minimum landscaped area of 103.05m². The proposal results in a landscaped area of 93.02m² (54%), which represents a 9.7% variation to the control.

The controls also require provision of at least 2 canopy trees in the front yard and 1 canopy tree in the rear yard. Due to the provided front setbacks for Lots 2, 3 and 4 the allotments are not capable of accommodating the provision of 2 canopy trees. The allotments are configured to provide reduced setbacks or the provision of turning circles within the front boundaries thereby limiting the ability to accommodate the required canopy trees.

Development is required to provide for the reasonable retention and protection of existing significant trees, especially near property boundaries, and retention of natural features such as rock outcrops.

The development does not achieve the outcomes of the control for the following reasons:

- The reduced setbacks do not enable landscaping to be provided which reflects the scale and form of development. The concept dwellings are two storeys in scale. The front setbacks cannot accommodate a canopy tree.
- The concept plans demonstrate the building envelopes are located within the TPZ and SRZ of significant trees nominated for retention. The building envelopes have not been modified in response to the design recommendations of the Arborist report.
- The development does not retain existing native vegetation.

The development is unacceptable in this regard.



D14.7 Front Building Line

The allotments require a front building line of 6.5m, or the established building line whichever is greater. The setbacks reflected on the concept plans are as follows:

Lot	Proposed
2	2.0m - 69.2%
3	4.5m – 30.7%
4	5.15m – 20.76%

The allotments do not present to the streetscape. However, the development of the lots is nonetheless subject to setback requirements. In response to the RFI, the Applicant indicates Clause D14.7 of P21 DCP will not apply to Lots 2 – 5 as they do not have a street frontage. This position is not agreed with.

'Building line' is not defined within the PDCP, but is defined within the Dictionary of the PLEP as follows:

Building line or setback means the horizontal distance between the property boundary to other stated boundary (measured at 90 degrees from the boundary) and –

- a. a building wall, or
- b. the outside face of any balcony, deck or the like, or
- c. the supporting posts of a carport or verandah roof.

Whichever distance is the shortest.

D14.7 does not specify that the front building line is measured to the street, nor does the building line definition within the PLEP. Rather, it references the front building line in relation to the property boundary. The DA has applied the rear building line to the northern boundary and side building lines to the eastern and western boundaries. Accordingly, the front building line of Lots 2 – 5 is taken to be the southern boundary.

The PDCP seeks to achieve a building separation distance of 13m across the rear boundaries of residential properties. This is achieved by a combination of 6.5m front building line and 6.5m rear building line controls working together across the rear boundaries of opposing allotments. By not subjecting proposed Lots 2 – 5 to the 6.5m front building line (as suggested by the Applicant), reduced building separation distances to that prescribed by the PDCP ensue. Instead of 13m per the DCP, shared equally between properties the development relies upon increased rear setbacks for Lots 1, 2 and 4 to achieve separation distances.

This arrangement places the burden of reasonable separation distances upon an adjoining allotment. This is not reasonable.

D14.7 does not specifically provide variation for battle axe allotments (or non-frontage lots). The PDCP does not include specific controls in terms of building lines or setbacks for battle axe allotments. If there were an intended difference in spatial characteristics for battle axe allotments, then this would be prescribed in the PDCP, but it is not.

The intention for all residential zoned properties not presenting to Mona Vale Road or the foreshore within Warriewood Locality is to achieve a 13m spatial separation distance between dwellings.

The outcomes of the control include:

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

The spatial characteristics of the urban environment are achieved through building lines/setbacks from the property boundaries. The purpose of the control is exclusive to setbacks from the street, but for all properties.

The proposal represents a design which provides for reduced setbacks from the southern boundary, and provision of an extending driveway and turning bays as shown in **Figures 29 and 30**) highlighted in red. Whilst the front building line can accommodate driveways, the subdivision and concept design locates turning bays within the front building line.

This arrangement provides for a further constraint of the proposed allotments and results in reduced areas for landscaping and separation between neighbouring sites.

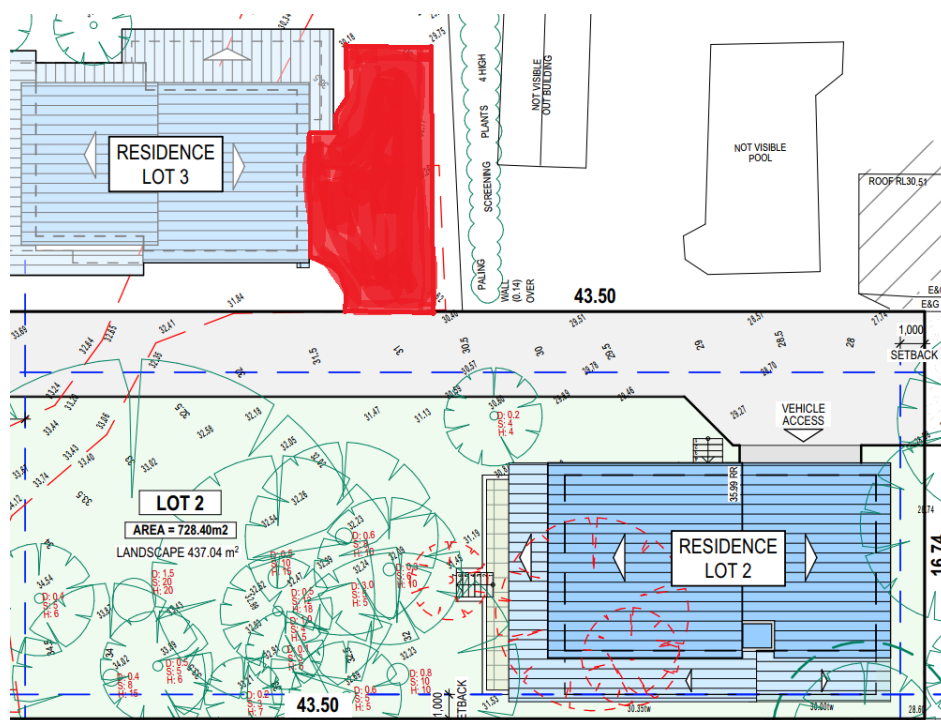


Figure 29: Proposed driveway and turning area within Lot 3 outlined in red.
Source: JJ Drafting, March 2023 (CPS markup)

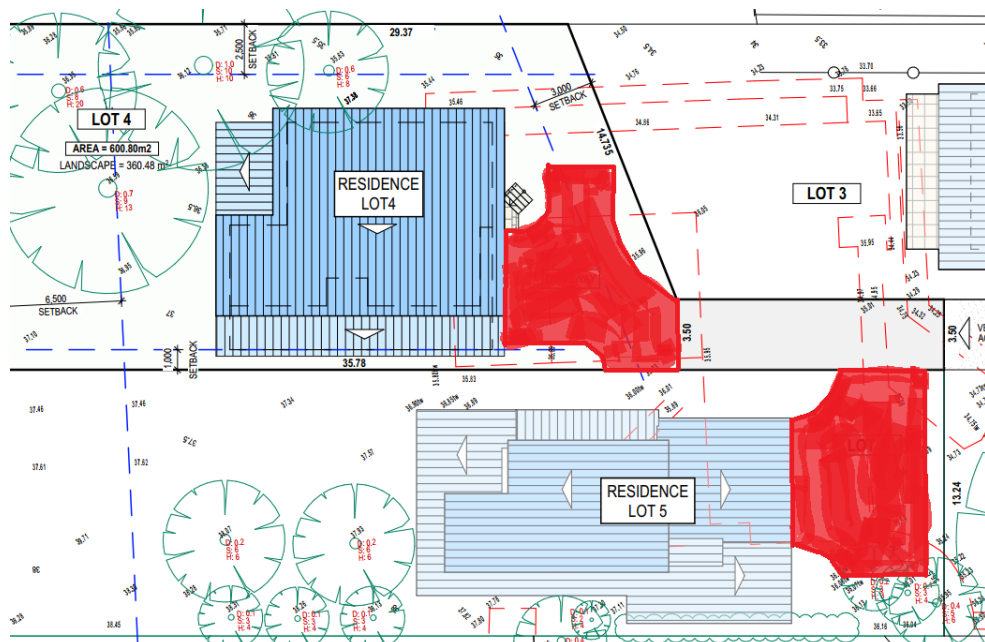


Figure 30: Driveway and turning area for Lots 4 and 5 within the front building line
Source: JJ Drafting, March 2023 (CPS markup)

Conclusion

The proposed subdivision works and concept dwelling plans fail to comply with the suite of PDCP controls for the following reasons:

- The proposed allotment arrangement results in reduced setbacks, resulting in potential conflict between properties.
- The DA has not demonstrated the environmental impacts of the development. The subdivision will result in the removal of significant vegetation. The concept building envelopes demonstrate future development of the land cannot be appropriately designed in response to the arborist recommendations to ensure significant vegetation can be retained on site.
- The development does not have an acceptable impact on the environment.
- The reduced width, and reduced front setbacks due to the siting of driveway and turning bays, does not achieve the designed landscape setting for the future development of allotments.
- Lots 2, 3, 4 and 5 cannot accommodate the required 2 canopy trees within the front yard due to the siting of the driveways and reduced setbacks.
- The building envelopes have not been designed to integrate with existing significant vegetation.
- The future development does not step down the allotments. The proposed levels of Lot 2 result in the provision of a retaining wall adjacent to the southern and western walls of the dwelling, and the outdoor entertainment area is excavated into the site. This results in a poor amenity outcome for the site.
- The excavation necessary will adversely affected trees to be retained on site and those on adjoining properties.

The Parrot planning principle is essentially a cautionary principle designed to ensure that lot sizes and lot configurations approved by a subdivision application are not subsequently going to



produce unacceptable environmental impacts on adjoining properties because of the size and configuration of the lots.

The likelihood of adverse impact as a result of the development is high due to the topography, environmental constraints, and orientation of allotments. In this circumstance, the development of these allotments may be better served if the same application in which the subdivision is proposed includes the dwellings to ensure the building design satisfactorily responds to the constraints.

It is not the orderly development of land to allow a subdivision which creates constrained allotments.

In the decision of *Rudder Developments Two Pty Ltd v Inner West Council* [2017] NSWLEC 1132, the Land and Environment Court upheld the Parrott planning principle. Where the proposed allotments are smaller than usual, environmentally sensitive, or where significant impacts on neighbours is likely – and careful design to minimise these impacts is required – it is appropriate for the consent authority to require the subdivision application to be accompanied by a development application for the proposed dwellings.

For the reasons detailed above, it is necessary in this circumstance for the subdivision to include the buildings proposed on each lot in the same development application to enable a complete assessment of the built form and environmental impacts.

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. The application is recommended for refusal and therefore no contribution is required.

CONCLUSION

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

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



This assessment has taken into consideration the submitted plans, Statement of Environmental Effects and other documentation supporting the application and public submissions. The development is unacceptable for the following reasons:

- The proposed five lot subdivision creates constrained allotments as the allotments are of non-compliant dimension and environmentally sensitive to future development of buildings.
- The likelihood of adverse impact as a result of the development is high due to the topography, environmental constraints, and orientation of allotments.
- The proposed allotment arrangement results in reduced setbacks, resulting in potential conflict between properties.
- The DA has not demonstrated the environmental impacts of the development. The subdivision will result in the removal of significant vegetation. The building envelopes have not been appropriately designed in response to the arborist recommendations to ensure significant vegetation can be retained on site.
- The development does not have an acceptable impact on the environment.
- The reduced width and reduced front setbacks due to the siting of driveway and turning bays does not achieve the designed landscape setting for the future development of allotments.
- The DA does not demonstrate the proposed allotments can be reasonably developed in accordance with the controls of PDCP.

PLANNING CONCLUSION

This proposal is referred to the Development Determination Panel (DDP) due to the application receiving eight (8) unique submissions.

Consideration has been given to the Parrot planning principle which is a cautionary principle designed to ensure that lot sizes and lot configurations approved by a subdivision application are not, subsequently, going to produce unacceptable environmental impacts on adjoining properties because of the size and configuration of the lots.

The proposed subdivision is contrary to the subdivision requirements of PDCP. The subdivision will create constrained and environmentally sensitive allotments. The information submitted has not demonstrate the allotments can be reasonably developed in accordance with PDCP.

The likelihood of adverse impact as a result of the development is high due to the topography, environmental constraints, and orientation of allotments. In this circumstance, consent for the erection of buildings on the allotments should form part of the same application in which the subdivision is proposed to ensure the dwelling designs satisfactorily respond to the constraints. The preliminary building envelopes submitted do not demonstrate this.

If the Applicant is not able to pursue reasonable building outcomes on all five allotments when having regard to the environmental constraints, consideration may need to be given to reducing the number of allotments proposed on the site.

The proposal has therefore been recommended for refusal.



RECOMMENDATION

That Northern Beaches Council as the consent authority refuse DA2022/1944 for demolition work, tree removal and subdivision of two lots into five lots on land at, 30 and 32 Lakeside Drive, Warriewood (Lot B and A in DP 357717 respectively) for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the provisions of *Pittwater Local Environmental Plan 2014* in that:
 - The subdivision creates constrained allotments. A better planning and environmental outcome would be for the erection of buildings on the allotments forming part of the same application in which the subdivision is proposed to ensure the dwelling designs satisfactorily respond to the vegetation constraints on the land.
 - The development does not respond to the site's constraints and would have an adverse effect on the aesthetic value of the site and surrounds. The proposed subdivision pattern confines future building placement to an arrangement that will result in an abrupt built form change.
 - The extent of excavation required for the future development of allotments adversely impacts the existing environment and vegetation to be retained on site. The proposal is contrary with the provisions of Clause 6.2(3) of the PLEP.
 - The development does not achieve the objectives of the C4 Environmental Living zone. The site is ecologically and aesthetically significant due to existing vegetation. Any future residential development is to respond sympathetically and harmoniously to this feature by providing low impact residential development as prescribed by the C4 Environmental Living zone objectives of the PLEP.
2. The development is inconsistent with provisions of the *Pittwater Development Control Plan 2014*, specifically:
 - The development results in constrained allotments that are contrary to B2.2 Subdivision – Low Density Residential Areas and C4.7 Subdivision – Amenity and Design
 - o The building envelopes provided do not demonstrate or facilitate the retention of existing significant vegetation. The proposed allotments are constrained by existing significant vegetation which necessitates a considered design response to protect and maintain vegetation.
 - o The concept plans do not demonstrate a building which achieves the desired character of the area.
 - o The proposed allotment arrangement results in non-compliant setbacks, resulting in potential conflict between properties.
 - o The DA has not demonstrated the environmental impacts of the development. The subdivision will result in the removal of significant vegetation. The building envelopes have not been appropriately designed in response to the arborist recommendations to ensure significant vegetation can be retained on site.
 - o The development does not have an acceptable impact on the environment including Trees 7, 9, 27, 31, 32, 33, 36, 47, and 48.
 - o The reduced width and reduced front setbacks due to the siting of driveway and turning bays does not achieve the designed landscape setting for the future development of allotments.



- Lots 2, 3, 4 and 5 cannot accommodate the required 2 canopy trees within the front yard due to the siting and extent of the driveways and reduced setbacks.
 - The building envelopes have not been designed to integrate with existing significant vegetation.
 - The future development does not step down the allotments. The proposed levels of Lot 2 results in the provision of a retaining wall adjacent to the southern and western walls of the dwelling and the outdoor entertainment area excavated into the site. This results in a poor amenity outcome.
 - The excavation necessary will adversely affected trees to be retained on site and those on adjoining properties.
 - The development includes non-compliant setbacks contrary to Part D14.7 Front Building Line and D14.6 Side and Rear Building Line for Lots 2, 3, and 4.
 - The development results in the removal of significant trees within the road reserve (Tree 7) contrary to C4.8 Subdivision – Landscaping on the Existing and proposed public road reserve frontage to subdivision lots.
 - The development does not achieve the required 60% landscape open space on Lots 2, 3, 4 and 5, and fails to comply with D14.13 Landscaped Area – Environmentally Sensitive Land.
 - For the reasons outlined above, the development fails to achieve the objectives outlined in Part A1.7.
3. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the development results in unacceptable and adverse impacts upon the natural and built environment in that:
- The subdivision creates constrained allotments by their dimensions and resultant environmentally sensitive land.
 - The subdivision will result in the removal of significant vegetation. The development results in unacceptable impacts upon trees contained within Lot 2, and 4.
 - The concept plans provided do not demonstrate the allotments can be developed without natural and built environment impacts.
 - The development does not adequately consider the resultant tree impacts.
4. Pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* the development is contrary to Section 1.3 Objects for the following reasons:
- The proposal does not promote the orderly and economic use and development of land. The development results in adverse impacts upon surrounding properties.
 - The proposal does not promote good design and amenity of the built environment. The development is not responsive to the site's topography, results in amenity impacts upon neighbouring properties, and is inconsistent with the suite of built form controls applying to the land.
5. The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.



6. Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of the development application is not in the public interest.

FINAL DECLARATION

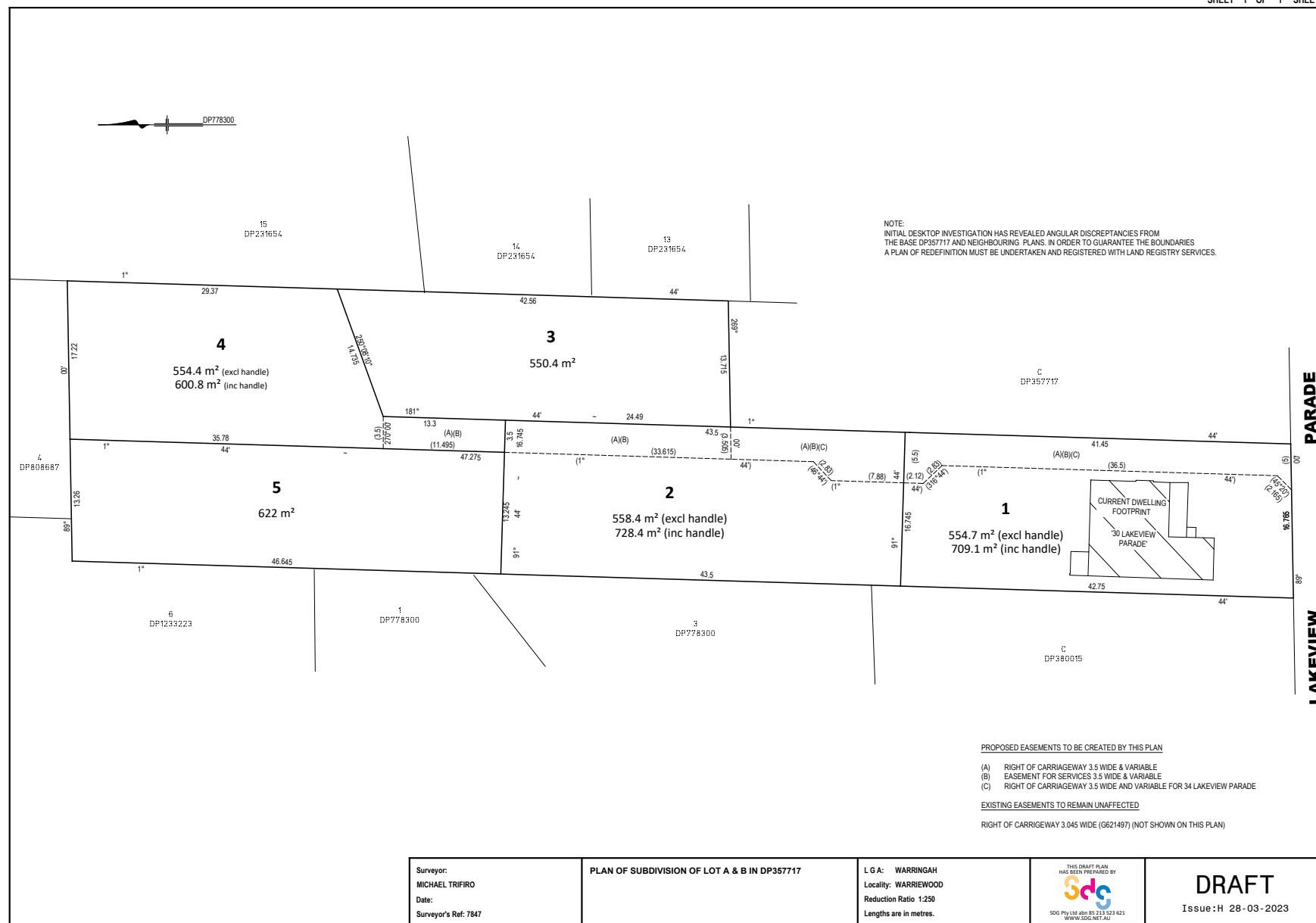
Consultant Name: Kimberley Kavwenje – Creative Planning Solutions

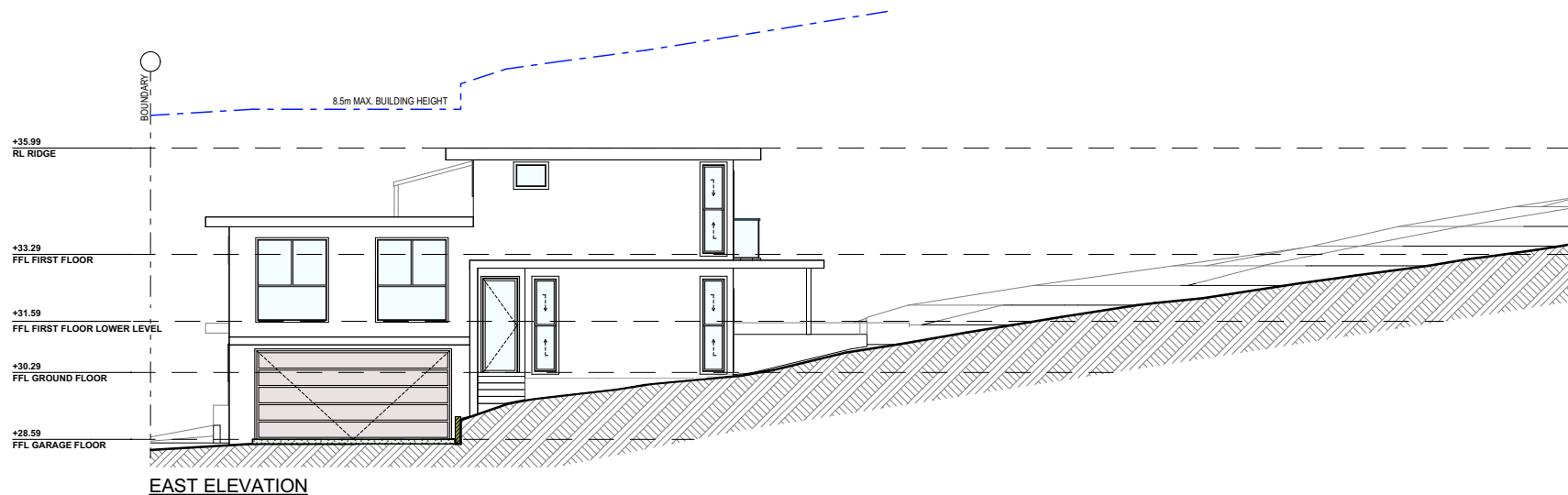
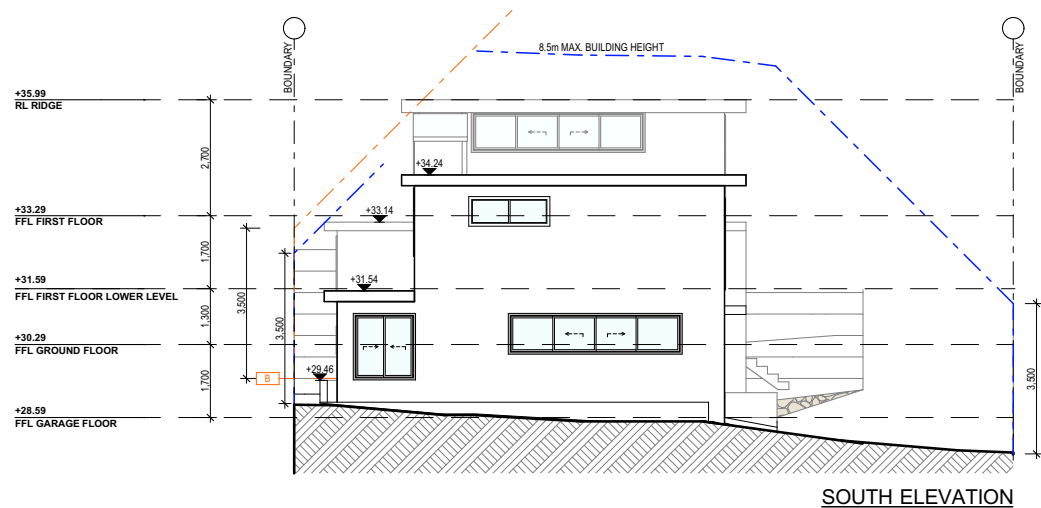
In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.



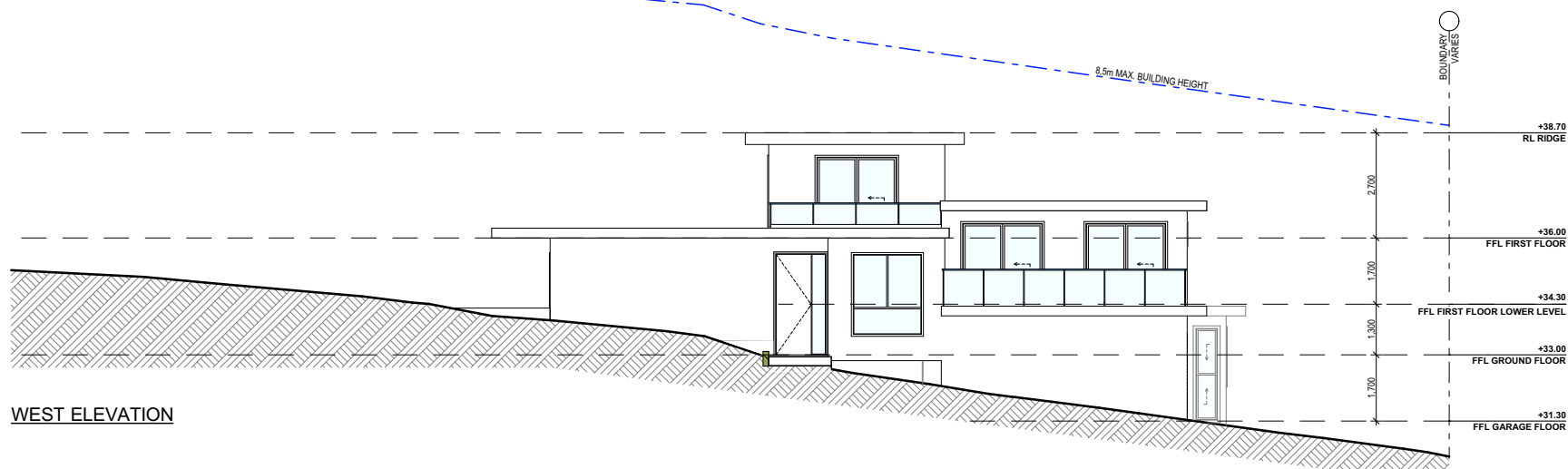
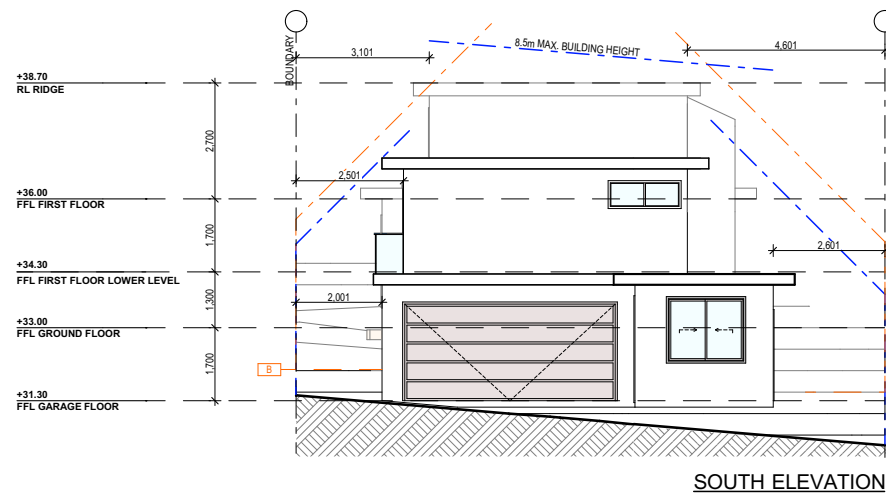
Kimberley Kavwenje
Consultant Planner

SHEET 1 OF 1 SHEETS

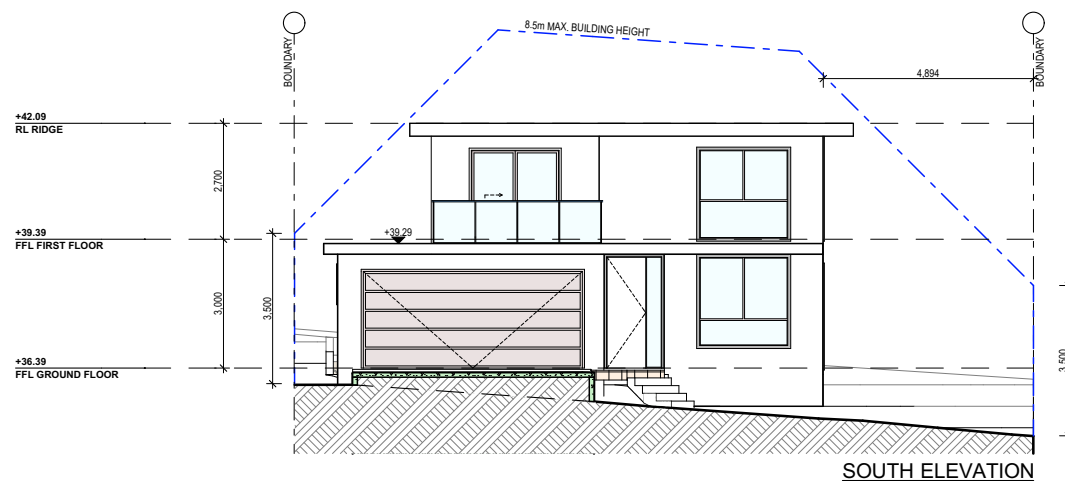




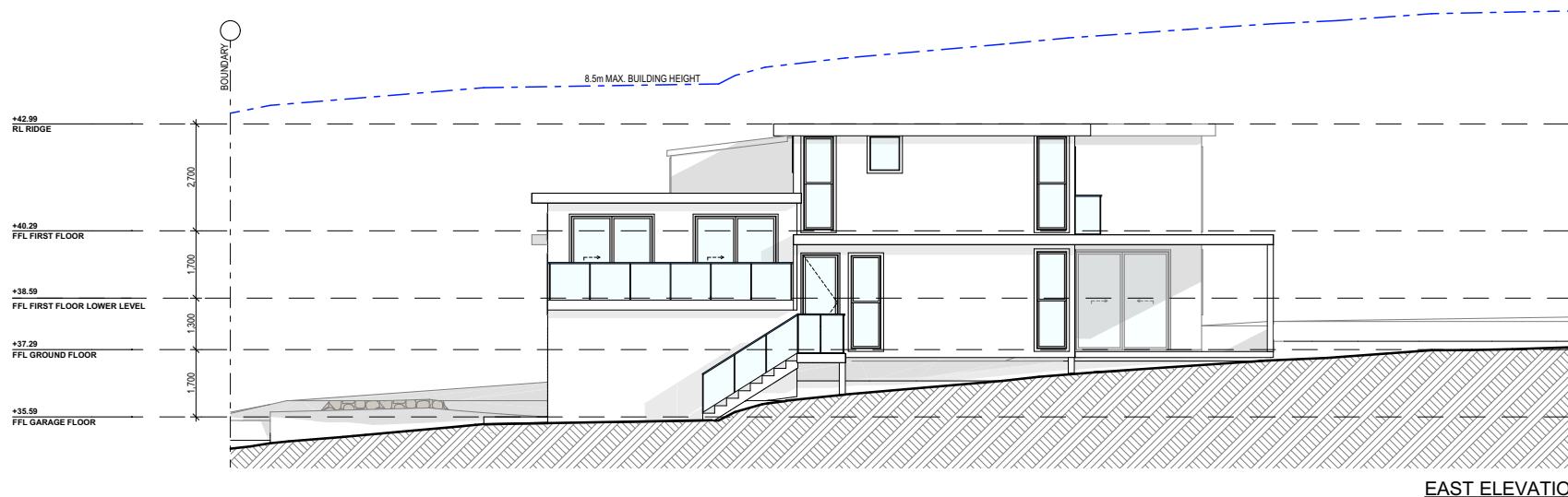
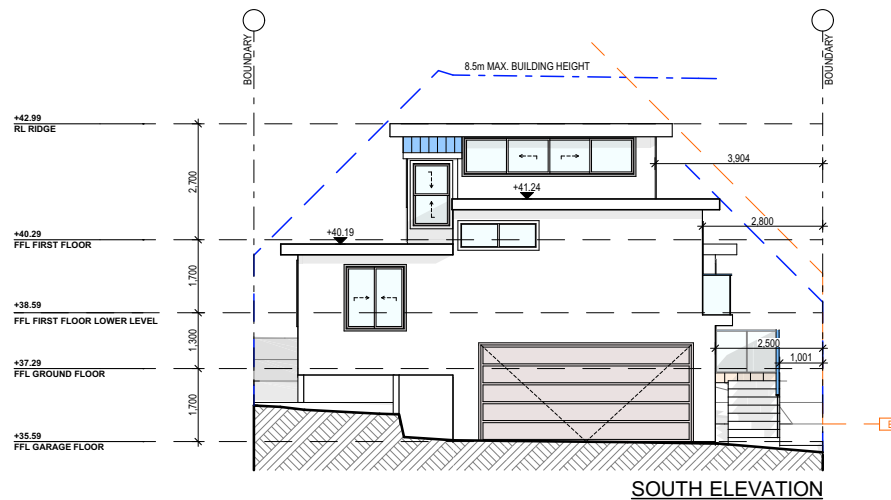
NOTES (E & OE) • All structures including stormwater & drainage to engineer's details. • Do not obtain dimensions by scaling drawings. • All dimensions are to be checked on site prior to starting work. • These drawings are to be read in conjunction with all other consultant's drawings and specifications. • 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 28/90 Mona Vale Road, Mona Vale, NSW, 2103 PO Box 687, Dee Why, NSW, 2099 Mob. 0414 717 541 Email: jjdraft@tbg.com.au www.jjdrafting.com.au ACN 651 693 346	<table><tr><th>REV:</th><th>DATE:</th><th>DESCRIPTION:</th></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr></table>	REV:	DATE:	DESCRIPTION:																						CONCEPT RESIDENCE PLANS 30 - 32 Lakeview Parade - Warriewood NSW 2102 CLIENT: Tom Daley	DATE: March/23	DRAWN BY: LB	SCALE: 1:100 @ A3
	REV:	DATE:	DESCRIPTION:																											
			DRAWING TITLE: ELEVATIONS	JOB No: 1130/23	CHECKED BY: JJ	DRAWING No: LOT2_D04																								



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		JOB No: 1130/23	CHECKED BY: JJ	DRAWING No: LOT3_D04		



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					CLIENT: Tom Daley			
					DRAWING TITLE: ELEVATIONS	JOB No: 1130/23	CHECKED BY: JJ	DRAWING No: LOT4_D04



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				DRAWING TITLE: ELEVATIONS	JOB No: 1130/23	CHECKED BY: JJ	DRAWING No: LOT5_D04