



northern
beaches
council

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

Notice is hereby given that the Northern Beaches Planning Panel will be held via Teleconference on

WEDNESDAY 16 AUGUST 2023

Beginning at 12.00pm for the purpose of considering and determining matters included in this agenda.

A handwritten signature in blue ink, appearing to read 'Am'.

Adam Richardson
Acting Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 16 August 2023

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ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, the Northern Beaches Local Planning 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 NORTHERN BEACHES LOCAL PLANNING PANEL HELD 2 AUGUST 2023

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 2 August 2023 were adopted by the Chairperson and have been posted on Council's website.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0238
Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 4 DP 22826, 15 The Chase LOVETT BAY NSW 2105 Lot LIC 367042, 15 The Chase LOVETT BAY NSW 2105
Proposed Development:	Modification of Development Consent DA2022/1368 granted for alterations and additions to dwelling house, installation of an incline passenger lift and replacement of the on-site wastewater treatment system.
Zoning:	C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Barbara Ann Messerle Henry Edward Curry-Hyde
Applicant:	Stephen Crosby & Associates Pty Ltd
Application Lodged:	10/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	17/05/2023 to 31/05/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	7.8 Limited development on foreshore area
Recommendation:	Refusal

EXECUTIVE SUMMARY

This application was made under section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, seeking modification of development consent DA2022/1368 granted for alterations and additions to dwelling house, installation of an incline passenger lift and replacement of the on-site wastewater treatment system.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the application seeks the modification of a development consent under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* of a consent previously granted by the NBLPP and proposes the

contravention of a non-numerical development standard (Clause 7.8 - Limited development on foreshore area of the Pittwater Local Environmental Plan 2014).

The application was on notification for 14 days, in accordance with Council's Community Participation Plan, and no submissions were received in response.

The assessment of this application has found the proposal to be contrary to the relevant requirement(s) of the following controls:

- *State Environmental Planning Policy (Resilience and Hazards) 2021.*
- *Clause Zone C3 Environmental Management of the Pittwater Local Environmental Plan 2014.*
- *Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014.*
- *Clause A4.8 Lower Western Foreshores and Scotland Island Locality of the Pittwater 21 Development Control Plan.*
- *Clause D8.2 Scenic protection - General of the Pittwater 21 Development Control Plan.*
- *Clause D8.9 Landscaped Area of the Pittwater 21 Development Control Plan.*

The proposed modifications sought the the development result in the breach of development which is restricted by Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014. The breach arises from decking and stairs proposed within the foreshore area that are not permitted within the foreshore area. The variation of the Clause is not supported, given the presence of an acceptable and compliant design.

It is considered that the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest.

This report concludes with a recommendation that the NBLPP refuse the modification application.

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55(2) Modification Application seeks modification of Development Consent DA2022/1368 granted for alterations and additions to dwelling house, installation of an incline passenger lift and replacement of the on-site wastewater treatment system. Specifically, the proposal seeks the following modifications:

- Alteration to the location of approved new access stairs (towards the west of the site).
- Provision of a 1.2 metres wide walkway in front of the approved basement level.
- Extensions to the existing ground floor deck.
- Access stairs at the western end of the ground floor deck.

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 C3 Environmental Management
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.8 Lower Western Foreshores and Scotland Island Locality
Pittwater 21 Development Control Plan - D8.2 Scenic protection - General
Pittwater 21 Development Control Plan - D8.9 Landscaped Area

SITE DESCRIPTION

Property Description:	Lot 4 DP 22826 , 15 The Chase LOVETT BAY NSW 2105 Lot LIC 367042 , 15 The Chase LOVETT BAY NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Lovett Bay.</p> <p>The site is irregular in shape with a frontage of 30 metres along Lovett Bay and a depth of 42 metres to 44 metres. The site has a surveyed area of 1,410m².</p> <p>The site is located within the C3 Environmental Management zone and accommodates a one to two storey timber house and decking, including a boat shed, further decking, retaining walls and an access path leading to the jetty to the waterfront portion of the lot.</p> <p>The site slopes by 19 metres from the rear of the property to the waterfront on a south-easterly aspect.</p> <p>The site adjoins the Ku-ring-gai National Park and contains dense native vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings set on large lots in a</p>

bushland locality. Dwellings feature generous side, front and rear setbacks accommodating dense vegetation that integrates development into the landform and provides a high degree of building separation and privacy. To the north the site is bound by the Ku-ring-gai National Park, and to the south Lovett Bay. No vehicular access is provided to the site or surrounding sites, with primary access via existing jetties to Lovett Bay.

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:

- **N0028/01** - New single dwelling. Approved 19/01/2001.
- **N0603/00** - alterations and additions to dwelling. Approved: 24/11/2000.
- **DA2022/1368** - Alterations and additions to dwelling house, installation of an incline passenger lift and replacement of the on-site wastewater treatment system. Approved 15/02/2023 by the Northern Beaches Local Planning Panel.
- **Mod2023/0119** - Modification of Development Consent DA2022/1368 granted for alterations and additions to dwelling house, installation of an incline passenger lift and replacement of the on-site wastewater treatment system. Made under Section 4.55(1) of the EPA Act 1979, concerning correction of an error or mis-description within DA2022/1368. Approved 15/03/2023.
- **BC2023/0188** - Building Information Certificate (149D Unauthorised) - Existing stone seawalls. At the time of preparing this report, this application is still under assessment by Council.
- **DA2023/0913** - Replacement of existing jetty, ramp and pontoon, and two berthing areas, construction of seawalls and minor reclamation works. At the time of preparing this report, this application is still under assessment by Council.

DA2022/1368 APPLICATION HISTORY

As originally proposed, DA2022/1368 included the additional decking/stairs that are proposed to be added by this modification application. During the assessment process of DA2022/1368, a Request for Further Information was made raising issues with this element of the proposal, based on the encroachment of the Foreshore Building Line and increase of non-landscaped area (issues which form reasons for refusal in this assessment). Subsequently, the decking/stairs were removed from the proposal and DA2022/1368 was approved by the Northern Beaches Local Planning Panel on 15 February 2023.

Mod2023/0119 was made in relation to an error in the conditions of DA2022/1368 which sought to address a typographical error in the consent. This modification was approved on 15 March 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2022/1368, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/1368 for the following reasons:</p> <p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 where His Honour states:</p>

Section 4.55 (2) - Other Modifications	Comments
	<p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <ul style="list-style-type: none"> • The description of the development remains unchanged. • The location and use of individual rooms remain unchanged. • The height of the development remains unchanged. • The impacts associated with the approved development with respect to views, solar access and privacy remains unchanged. • The impact upon surrounding trees and vegetation remains unchanged. • The built form of the proposal remains generally unchanged. <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is substantially the same as the development for which the consent was originally granted and can be considered under Section 4.55 of</p>

Section 4.55 (2) - Other Modifications	Comments
	the Act.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2022/1368 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning	There are no current draft environmental planning instruments.

Section 4.15 'Matters for Consideration'	Comments
instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>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 already been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to the Foreshore Building Line and Landscaped Area.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is already addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is already addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is already address via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental</p>

Section 4.15 'Matters for Consideration'	Comments
	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 unsuitable for the proposed modified development, as the proposed development is contrary to relevant requirements.
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	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (Resilience and Hazards) 2021, • Clause Zone C3 Environmental Management of the Pittwater Local Environmental Plan 2014, • Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014, • Clause A4.8 Lower Western Foreshores and Scotland Island Locality of the Pittwater 21 Development Control Plan, • Clause D8.2 Scenic protection - General of the Pittwater 21 Development Control Plan, and • Clause D8.9 Landscaped Area of the Pittwater 21 Development Control Plan. <p>The modification proposal will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with DA2022/1368 that included a certificate (prepared by Planning for Bushfire Protection, dated 1 April 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

This modification application is for works that are considered substantially the same as the original development. Furthermore, the decking proposed under this modification application was originally proposed in DA2022/1368, before the proposal was modified subject to a request for further

information made during the assessment process. The original bushfire report considered this decking and therefore the recommendations of the Bush Fire Report would be satisfactory to remain included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/05/2023 to 31/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	<p>Supported, Without Conditions</p> <p>General Comments Class 5 site. The application seeks consent for the following modifications to the development approved pursuant to DA2022/1368:</p> <ul style="list-style-type: none"> • minor alteration to the location of the approved new access stairs (towards the west of the site), • provision of a 1.2m wide walkway in front of the approved basement level, • minor extensions to the existing ground floor deck, and • new access stairs at the western end of the ground floor deck. <p>Aside from reference to the modified plans and supporting documents provided, no further changes to the conditions of consent are proposed or required.</p> <p>Environmental Health supports the proposal without additional conditions.</p>
Environmental Health (Unsewered Lands)	<p>Supported, Subject to Conditions</p> <p>General Comments The application seeks consent for the following modifications to the development approved pursuant to DA2022/1368:</p> <ul style="list-style-type: none"> • minor alteration to the location of the approved new access stairs (towards the west of the site), • provision of a 1.2m wide walkway in front of the approved basement level, • minor extensions to the existing ground floor deck, and • new access stairs at the western end of the ground floor deck. <p>Aside from reference to the modified plans and supporting documents provided, no further changes to the conditions of consent are proposed or required.</p>

Internal Referral Body	Comments
	<p>Deck/walkway (elevated) concrete footings appear immediately adjacent to the AWTS and will require the engineer and builder to confirm adequacy - a building matter. Environmental Health supports the proposal with conditions</p>
Landscape Officer	<p>Supported, Without Conditions</p> <p>The application is for modification to development consent DA2022/1368, as indicated on plans including: minor alteration to the location of the approved new access stairs; provision of a 1.2m wide walkway in front of the approved basement level; minor extensions to the existing ground floor deck; and new access stairs at the western end of the ground floor deck.</p> <p>As reviewed the proposed modifications are limited to the immediate proximity of the existing dwelling and do not impact upon existing canopy trees or vegetation. An arboricultural assessment of the modification works is provided and determines that the "application to add the proposed new walkway and stairs will not impact on the six (6) trees ... assessed in Arboriculture Impact Assessment ... ", and approved under the development consent.</p> <p>Landscape Referral raise no objections.</p>
NECC (Bushland and Biodiversity)	<p>Supported, Subject to Conditions</p> <p>The proposal seeks approval for Modification of Development Consent DA2022/1368 granted for alterations and additions to dwelling house, installation of an incline passenger lift and replacement of the on-site wastewater treatment system. The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • Biodiversity Conservation Act 2016 • Biodiversity Conservation Regulation 2017 • Pittwater LEP - Part 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p> <p>However, the submitted plans and documentation indicate that the proposed modifications will not impact the 6 identified trees in the vicinity of the building footprint and will not require the removal of native vegetation.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>Supported, Subject to Conditions</p> <p>The application seeks consent for the following modifications to the development approved pursuant to DA2022/1368:</p> <ul style="list-style-type: none"> • minor alteration to the location of the approved new access stairs (towards the west of the site), • provision of a 1.2m wide walkway in front of the approved basement level, • minor extensions to the existing ground floor deck, and • new access stairs at the western end of the ground floor deck. <p>The proposed decking and its associated footings are located well above the Estuarine Planning Level (2.77m AHD) and are setback from the waters edge to ensure against any impacts upon the natural processes of the foreshore. The structure has also been reviewed by a Geotechnical Engineer (AscentGeo dated March 2023) to ensure that the development can be undertaken to be safe from hazards.</p> <p>The changes to the design, as presented in the plans referenced above, do not require any material modifications to the recommendations presented in Table 3 of our original report (AG 22225, dated 9 June 2022), or our assessment that provided the recommendations are followed, the existing site conditions and proposed development are considered to constitute an “Acceptable” risk to life and a “Low” risk to property.</p> <p>No other coastal issues identified.</p>
NECC (Water Management)	<p>Supported, Without Conditions</p> <p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses <p>On review, the proposed modification does not raise any water quality concerns.</p>
Parks, reserves, beaches, foreshore	<p>Supported, Without Conditions</p> <p>The application is for modification to development consent DA2022/1368, as described in reports and as indicated on plans.</p> <p>The proposed modifications are not detrimental to the landscape character of the adjoining foreshore, and as such Parks, Reserves and Foreshores raise no concerns with the proposal.</p>

Internal Referral Body	Comments
	<p><u>Planner Comments:</u> Whilst this referral notes that Council's Parks, Reserves and Foreshores Officers raise no concerns with the impact of the proposal on the landscape character of the adjoining foreshore, further planning assessment within this report outlines issues with the impact of the proposal on the foreshore area, locality and character relating to the contravention of PLEP 2014 Clause 7.8 Limited development on foreshore area and P21DCP Clause D8.9 Landscaped Area.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, Subject To Conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p>Supported, Subject To Conditions</p> <p>Development Application No. Mod2023/0238 Description: Modification of Development Consent DA2022/1368 granted for alterations and additions to dwelling house, installation of an incline passenger lift and replacement of the on-site wastewater treatment system. Address: 15 The Chase LOVETT BAY</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0 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 could be included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

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

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

- d) any other development

Comment:

The site is not identified as containing 'coastal wetlands' or 'littoral rainforest' under the Coastal Management SEPP.

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 identified as containing 'proximity area for coastal wetlands' or 'proximity area for littoral rainforest' under the Coastal Management SEPP.

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:

At the time of this assessment, no Coastal Vulnerability Area Map was adopted in the SEPP and therefore no coastal vulnerability area has been identified.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater)

- and ecological environment,
- b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
 - e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - f) Aboriginal cultural heritage, practices and places,
 - g) the use of the surf zone.

Comment:

The proposed modifications are unlikely to cause adverse impact on the coastal environment area. The proposed modifications have been reviewed and supported by Council's Coast and Catchments Officer.

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

Comment:

The proposed modifications are unlikely to cause adverse impact on the coastal environment area. The proposed modifications have been reviewed and supported by Council's Coast and Catchments Officer.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

- sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed modifications have been considered in respect to the above matters. As discussed in the section of this report considering PLEP 2014 Clause 7.8 Limited Development on Foreshore Area, the development proposed elements which contravene the limited development in the foreshore area development standard. This incursion is not supported as the proposed modified development is considered to be inconsistent with the objectives and provisions of Clause 7.8 - Limited development on foreshore area and the objectives of the C3 Environmental Management zone. Built form in the foreshore area is controlled to maintain the appearance of bushland character and limit the appearance of built form and structures from the waterway. The proposal increases the existing dwellings encroachment into the foreshore area and building bulk, thereby increasing the visual prominence of the built form from the waterway. As such, the development is considered to have an adverse impact on the visual amenity and scenic qualities of the coast, including coastal headlands. Therefore, the proposal is not considered to comply with this section of the SEPP.

Division 5 General

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

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

Comment:

The proposed modifications have been reviewed and supported by Council's Coast and Catchments Officer in regards to coastal hazards. It is noted that the subject site is included on the Estuarine Hazard Map, however it is noted that all proposed structures will be above the base Estuarine Planning Level (2.77 metres AHD) and therefore does not require an Estuarine Hazard Report. Council is therefore satisfied that the proposed development is unlikely to cause increased risk of coastal hazards to the subject site or surrounds.

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

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

Comment:

The application was assessed by Council's Coast and Catchments department against all relevant coastal legislation, plans and policies and is supported.

Conclusion:

It is considered that the application does not comply with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021, in that the proposed development is likely to cause an adverse impact on the visual amenity and scenic qualities of the coast, including coastal headlands, a matter for consideration under Section 2.11 Development on land within the

coastal use area.

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?	No

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.75m	No change	15.6%	Yes*

*The proposal benefits from the provisions of Clause 4.3(2)(d) of the PLEP 2014 which allows a higher building height (up to 10m) on steeply sloping sites (a slope greater than 16.7 degree or 30%).

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
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	No
7.10 Essential services	Yes

Detailed Assessment

Zone C3 Environmental Management

The development is assessed against the objectives of the C3 Environmental Management zone as follows:

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

Comment:

The proposed modifications extend the footprint of the dwelling further into the foreshore area and further reduce landscaped area. The proposed elements within the foreshore area are considered to be against the aesthetic values of the area, whereby built form in the foreshore area is controlled to maintain the appearance of bushland character and limit the appearance of built form and structures from the waterway. The development does not protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values. Therefore, the proposal is not considered to comply with this objective.

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

Comment:

As outline above, proposed elements within the foreshore area are considered to be against the aesthetic values of the area, whereby built form in the foreshore area is controlled to maintain the appearance of bushland character and limit the appearance of built form and structures from the waterway. The development does have an adverse effect on the above values. Therefore, the proposal is not considered to comply with this objective.

- To provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent.

Comment:

The proposed works are not considered to be designed and sited to be integrated into the landform, as the proposed works encroach within the foreshore area in a manner not permitted by Clause 7.8 of the PLEP 2014. The scale of built form can be measured by compliance with built form controls. The proposal decreases landscaped area (which as existing is already non-compliant) and further increases the existing dwelling's intrusion into the foreshore area. As such, the proposal is not considered of low scale. Furthermore, the increased encroachment into the foreshore area increases the visual prominence of the built form from the waterway. Therefore, the proposal is not considered to comply with this objective.

- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

Comment:

The proposed works further decrease landscaped area from the non-complaint level provided and approved in DA2022/1368. The landscaped area is proposed to be reduced from within the foreshore area, thereby the development is not retaining or enhancing foreshore vegetation. Therefore, the proposal is not considered to comply with this objective.

- To ensure the continued viability of ecological communities and threatened species.

Comment:

The proposal is not expected to impact on wildlife corridors. Council's Bushland and Biodiversity Officers have reviewed the proposal and are supportive, subject to conditions. Therefore, the proposal is considered to comply with this objective.

Overall, the proposed modification is inconsistent with the objectives of the C3 Environmental Management zone of the Pittwater Local Environmental Plan 2014.

4.3 Height of buildings

Clause 4.3(2) of the PLEP 2014 stipulates a maximum building height of 8.5 metres for the subject site. Notwithstanding, Clause 4.3(2)(d) of the PLEP 2014 expresses that:

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 assessment of DA2022/1368 found that the proposed development qualified for the expressed variation under clause Clause 4.3(2)(d) and therefore complied with the requirements of the Height of Buildings Development Standard.

The proposed modification application does not alter the height of the proposal approved under DA2022/1368. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

7.7 Geotechnical hazards

DA2022/1368 was supported by a Geotechnical report (prepared by AcentGEO, dated 9 June 2022), the recommendations of which formed a condition of consent. A letter has been provided by AcentGeo (dated 16 March) which states:

"The changes to the design... do not require any material modifications to the recommendations presented in Table 3 of our original report (AG 22225, dated 9 June 2022), or our assessment that provided the recommendations are followed, the existing site conditions and proposed development are considered to constitute an "Acceptable" risk to life and a "Low" risk to property."

As such, it is considered that, as conditioned in DA2022/1368, the proposal 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.

7.8 Limited development on foreshore area

Description of non-compliance:

Development standard:	Clause 7.8 - Limited development on foreshore area
Requirement:	Development consent must not be granted for development on land in the foreshore area 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).
Proposed:	Decking and stairs that are not considered 'walking trails' or 'waterway access stairs'.
Percentage variation to requirement:	Non-numerical development standard

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

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

Comment:

The proposed modifications are not considered to be an extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, as they will result in the footprint of the building extending further into the foreshore area.

The proposed modifications are not considered to be for a boat shed, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors). The decking and stairs are not for the propose of walking trails trails or waterway access, but rather extensions of the existing dwelling decks, used for private open space and leisure.

As such, the proposed modifications are not permitted under Clause 7.8(2) as they do not represent exclusions under Clause 7.8.

Assessment of request to vary a development standard:

Whilst the modification application will result in the contravention of the non-numerical development standards outline by Clause 7.8 - Limited development on foreshore area of the Pittwater LEP 2014, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15

matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the Limited development on foreshore area development standard and the underlying objectives of the C3 Environmental Management zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

Comment:

The additional proposed decking and stairs further increases the existing dwelling's intrusion into the foreshore area and are not elements permitted in the foreshore area by Clause 7.8(2). Compliance with this standard is considered to be reasonable and necessary, given the site zoning as C3 Environmental Management, the existing dwelling's intrusion into the foreshore area and the variation proposed to the non-landscaped area control.

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment:

The applicant has provided the following grounds to justify the contravention of the development standard:

- *Improved amenity*
- *Minor nature of breach*
- *Lack of impact*
- *Construction Methodology*

These 'environmental planning grounds' are not considered sufficient. The proposal may increase amenity for the owner and occupants of the subject site, however, this is at the expense of the objectives of the Clause and the C3 Environmental Management Zone (as discussed below). The development standard is a non-numerical development standard. As such, the scale of the breach is not measured in a percentage, the development is just considered in contravention of the development standard. The impact of allowing further development within the foreshore area in contravention of this Clause is increased visual prominence of the built form from along the waterway. Built form in the foreshore area is controlled to maintain the appearance of bushland character and limit the appearance of built form and structures from the waterway. Regardless of construction methodology, the impacts of this contravention of the development standard remain.

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

Clause 7.8 - Limited development on foreshore area

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

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

Comment:

The proposed modifications extend the footprint of the dwelling further into the foreshore area and further reduce landscaped area. These decking and stair additions are additional encroachments into the foreshore area. The development will affect the significance and amenity of the area, in that the development increases the visual prominence of the built form from the waterway and further increases the existing dwelling's intrusion into the foreshore area. Therefore, the proposal is not considered to comply with this objective.

b) to ensure continuous public access along the foreshore area and to the waterway.

Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. Therefore, the proposal is considered to comply with this objective.

(2) Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
 - *pollution or siltation of the waterway, or*
 - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - *an adverse effect on drainage patterns, or*
 - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is inconsistent with the objectives of the C3 Environmental Management zone (as discussed further in this section). The appearance of the proposed development

is incompatible with the surrounding area, given the proposal will unreasonable increase the appearance of built structures, from both the waterway and adjacent foreshore areas.

(3) In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. No concern is raised in this regard.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposed modifications extend the footprint of the dwelling further into the foreshore area and further reduce landscaped area. The proposed elements within the foreshore area are considered to be against the aesthetic values of the area, whereby built form in the foreshore area is controlled to maintain the appearance of bushland character and limit the appearance of built form and structures from the waterway. The development does not protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values. Therefore, the modified development not considered to comply with this objective.

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

Comment:

As outline above, proposed elements within the foreshore area are considered to be against the aesthetic values of the area, whereby built form in the foreshore area is controlled to maintain the appearance of bushland character and limit the appearance of built form and structures from the waterway. The development does have an adverse effect on the above values. Therefore, the modified development is not considered to comply with this objective.

- *To provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent.*

Comment:

The proposed works are not considered to be designed and sited to be integrated into the landform, as the proposed works encroach within the foreshore area in a manner not permitted by Clause 7.8 of the PLEP 2014. The scale of built form can be measured by compliance with

built form controls. The proposal decreases landscaped area (which as existing is already non-compliant) and further increases the existing dwelling's intrusion into the foreshore area. As such, the modified development is not considered of low scale and does not integrate with the landform and becomes visually dominant. Furthermore, the increased encroachment into the foreshore area increases the visual prominence of the built form from the waterway. Therefore, the proposal is not considered to comply with this objective.

- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

Comment:

The proposed works further decrease landscaped area from the non-complaint level provided and approved in DA2022/1368. The landscaped area is proposed to be reduced from within the foreshore area, thereby the development is not retaining or enhancing foreshore vegetation. Therefore, the proposal is not considered to comply with this objective.

- To ensure the continued viability of ecological communities and threatened species.

Comment:

The proposal is not expected to impact on wildlife corridors. Council's Bushland and Biodiversity Officers have reviewed the proposal and are supportive, subject to conditions. Therefore, the proposal is considered to comply with this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives and provisions of Clause 7.8 - Limited development on foreshore area and the objectives of the C3 Environmental Management zone.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	FSBL - 15m - 17m	12.7m	No change (however, proposal increases the scope of the breach)	No
Rear building line	6.5m	No change to existing	No change	Yes
Side building line	N: 2.5m	3.4m	No change	Yes
	S: 1m	3.2m	1.2m	Yes
Building envelope	3.5m	Within envelope	No change	Yes
	3.5m	Within envelope	No change	Yes
Landscaped area	Max. 230m ² not landscaped	485.9m ² not landscaped	513.9m ² not landscaped	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	No	No
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
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	No	No
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	Yes	Yes
D8.9 Landscaped Area	No	No
D8.10 Fences	Yes	Yes
D8.12 Companion animals	Yes	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.14 Parking management	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes

Detailed Assessment

A4.8 Lower Western Foreshores and Scotland Island Locality

The Lower Western Foreshores and Scotland Island Locality statement includes the following:

"The Lower Western Foreshores and Scotland Island locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Development will be limited primarily due to the locality's remoteness and lack of vehicular access, but also due to the steepness of slope, proximity to the waterway, species and habitat diversity, and visual prominence."

"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. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards."

"A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors."

Comment:

The proposed development is considered to be inconsistent with the desired future character statement of the Lower Western Foreshores and Scotland Island Locality, as the proposed modifications do not achieve a balance between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. This is a result of the contravention of PLEP 2014 Clause 7.8 Limited development on foreshore area and P21DCP Clause D8.9 Landscaped Area.

D8.2 Scenic protection - General

Description of Non-Compliance:

This control requires the following:

"Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve."

The proposed development is not considered to minimise visual impact on the natural environment when viewed from the waterway, as result of the contravention of PLEP 2014 Clause 7.8 Limited development on foreshore area and P21DCP Clause D8.9 Landscaped Area.

Merit Assessment:

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

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

Comment:

Refer to the section of this report on P21DCP Clause A4.8 Lower Western Foreshores and Scotland Island Locality. The proposed development is considered to be inconsistent with the desired future character statement of the Lower Western Foreshores and Scotland Island Locality. The development is not considered to comply with this objective.

- *Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment.*

Comment:

The proposal decreases landscaped area (which as existing is already non-compliant) and further increases the existing dwelling's intrusion into the foreshore area. This increases the visual prominence of the built form from the waterway. Built form in the foreshore area is controlled to maintain the appearance of bushland character and limit the appearance of built form and structures from the waterway. Therefore, as the development is in contravention of PLEP 2014 Clause 7.8 Limited development on foreshore area, the development is not considered to comply with this objective.

Having regard to the above assessment, it is concluded the proposed development is inconsistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D8.9 Landscaped Area

Description of Non-Compliance

Clause D8.9 of the P21DCP requires a maximum area not provided as landscaped area shall be 230m² for a site with an area greater than 1,000m². The site has an area of 1,410m².

DA2022/1368 approved a non-landscaped area of 485.9m².

The proposed modifications include additional decking which increases non landscaped area by 28m² to 513.9m², further breaching the control.

The control expressly permits variations to the landscaped area in the following instances:

Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:

- *impervious areas less than 1 metre in width (e.g. pathways and the like);*
- *for single dwellings on land zoned E3 Environmental Management, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).*

On sites larger than 1000 square metres, the maximum area not provided for landscaping may be increased up to 23% of the site, upon application to Council. In such instances it must be demonstrated that development is kept in scale with the Locality, that the natural features of the site are preserved, and that the supply of water and the treatment of wastewater is sufficient for the size of the proposed development, without adverse environmental impact.

DA2022/1368 assessed that the original application qualified for this dispensation provision, which would allow a total non-landscape area of 324.3m². The original proposal was still in excess of this amount and approved based on a merit assessment of the proposal against the objectives of this Clause.

The modification proposed by this application further decreases landscaped area and increase non-landscaped area, whilst increasing the existing dwellings encroachment into the foreshore area.

Merit Assessment:

With regard 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:

Refer to the section of this report on P21DCP A4.8 Lower Western Foreshores and Scotland Island Locality. The proposed development is considered to be inconsistent with the desired future character statement of the Lower Western Foreshores and Scotland Island Locality. Therefore, the development is not considered to comply with this objective.

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

Comment:

The proposal decreases landscaped area (which as existing is already non-compliant) and further increases the existing dwelling's intrusion into the foreshore area. This increases the visual prominence of the built form from the waterway. Built form in the foreshore area is controlled to maintain the appearance of bushland character and limit the appearance of built form and structures from the waterway. Therefore, the development is not considered to comply with this objective.

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

Comment:

The proposal presents a reasonable level of privacy, amenity, and solar access to the site and adjoining site. Therefore, the development is considered to comply with this objective.

- *Vegetation is retained and enhanced within the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation including tree canopy.*

Comment:

Whilst landscaped area is reduced, the proposal does not result in the removal of any significant vegetation or canopy trees. However, built form in the foreshore area is controlled to maintain the appearance of bushland character and limit the appearance of built form and structures from the waterway. In contravening PLEP 2014 Clause 7.8 Limited development on foreshore area, the development is not ensuring that buildings and built form is secondary to landscaping and vegetation. Therefore, the development is not considered to comply with this objective.

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

Comment:

The proposal will retain appropriate stormwater runoff to prevent soil erosion, and siltation of natural drainage channels. Therefore, the development is considered to comply with this objective.

- To ensure the distribution of height and mass preserves, and enhances neighbourhood amenity and has regard to site characteristics and environmental constraints.

Comment:

The proposal decreases landscaped area (which as existing is already non-compliant) and further increases the existing dwelling's intrusion into the foreshore area. This increases the visual prominence of the built form from the waterway, neighbouring foreshores and properties. Built form in the foreshore area is controlled to maintain the appearance of bushland character and limit the appearance of built form and structures, in effect controlling the distribution of height and mass to preserve and enhance neighbourhood amenity and site character. Therefore, the development is not considered to comply with this objective.

- To conserve significant natural features of the site and contribute to effective management of biodiversity.

Comment:

Council's Bushland and Biodiversity Officers have reviewed the proposal and are supportive. Therefore, the proposal is considered to comply with this objective.

- The area of site disturbance is minimised.

Comment:

The proposal decreases landscaped area (which as existing is already non-compliant) and further increases the existing dwelling's intrusion into the foreshore area. This increases the area of the site disturbed, within closer proximity to the foreshore. Therefore, the development is not considered to comply with this objective.

- Soft surface is maximised.

Comment:

The proposal decreases landscaped area (which as existing is already non-compliant) and further increases the existing dwelling's intrusion into the foreshore area. This reduces soft surfaces by an unreasonable extent. Therefore, the development is not considered to comply with this objective.

Having regard to the above assessment, it is concluded the proposed development is inconsistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

PLANNING CONCLUSION

This application has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the application seeks the modification of a development consent under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* of a consent previously granted by the NBLPP and proposes contravention of a non-numerical development standard (Clause 7.8 - Limited development on foreshore area of the Pittwater Local Environmental Plan 2014).

The proposed development does not satisfy the appropriate controls. Furthermore, the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest. The proposal has therefore been recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, as the consent authority REFUSE Modification Application No. Mod2023/0238 for Modification of Development Consent DA2022/1368 granted for alterations and additions to dwelling house, installation of an incline passenger lift and replacement of the on-site wastewater treatment system. on land at Lot 4 DP 22826,15 The Chase, LOVETT BAY, Lot LIC 367042,15 The Chase, LOVETT BAY, subject to the reasons outlined as follows:

1. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021.**

Particulars:

- o The proposed development is likely to cause an adverse impact on the visual amenity and scenic qualities of the coast, including coastal headlands, a matter for consideration under Section 2.11 Development on land within the coastal use area.

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 Zone C3 Environmental Management of the Pittwater Local Environmental Plan 2014.**

Particulars:

- o Contravention of PLEP 2014 Clause 7.8 Limited development on foreshore area and P21DCP Clause D8.9 Landscaped Area result in a proposal that does not provide for residential development of a low density and scale integrated with the landform and landscape, resulting in a visually prominent built form.
- o The proposed modification is inconsistent with the objectives of the C3 Environmental Management zone.

3. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014.**

Particulars:

- o The proposed modifications are not permitted under Clause 7.8 Limited development on foreshore area as they do not represent exclusions under Clause 7.8(2).
- o Compliance with this standard is considered to be reasonable and necessary, given the site zoning as C3 Environmental Management, the existing dwelling's intrusion into the foreshore area and the variation proposed to the non-landscaped area control.
- o Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, this assessment has found that the environmental planning grounds advanced to justify a variation to Clause 7.8 Limited development on foreshore area of the PLEP 2014 are not sufficient.
- o Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the development standard and underlying objectives of the C3 Environmental Management zone. The proposal is considered to be inconsistent with the objectives and provisions of Clause 7.8 - Limited development on foreshore area and the objectives of the C3 Environmental Management zone.

4. **Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.8 Lower Western Foreshores and Scotland Island Locality of the Pittwater 21 Development Control Plan.**

Particulars:

- The proposed development is considered to be inconsistent with the desired future character statement of the Lower Western Foreshores and Scotland Island Locality within Clause A4.8 of the Pittwater Development Control Plan.

5. **Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8.2 Scenic protection - General of the Pittwater 21 Development Control Plan.**

Particulars:

- The proposed development is not considered to minimise visual impact on the natural environment when viewed from any waterway and is inconsistent with this Clause, resulting from contravention of PLEP 2014 Clause 7.8 Limited development on foreshore area and P21DCP Clause D8.9 Landscaped Area.

6. **Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8.9 Landscaped Area of the Pittwater 21 Development Control Plan.**

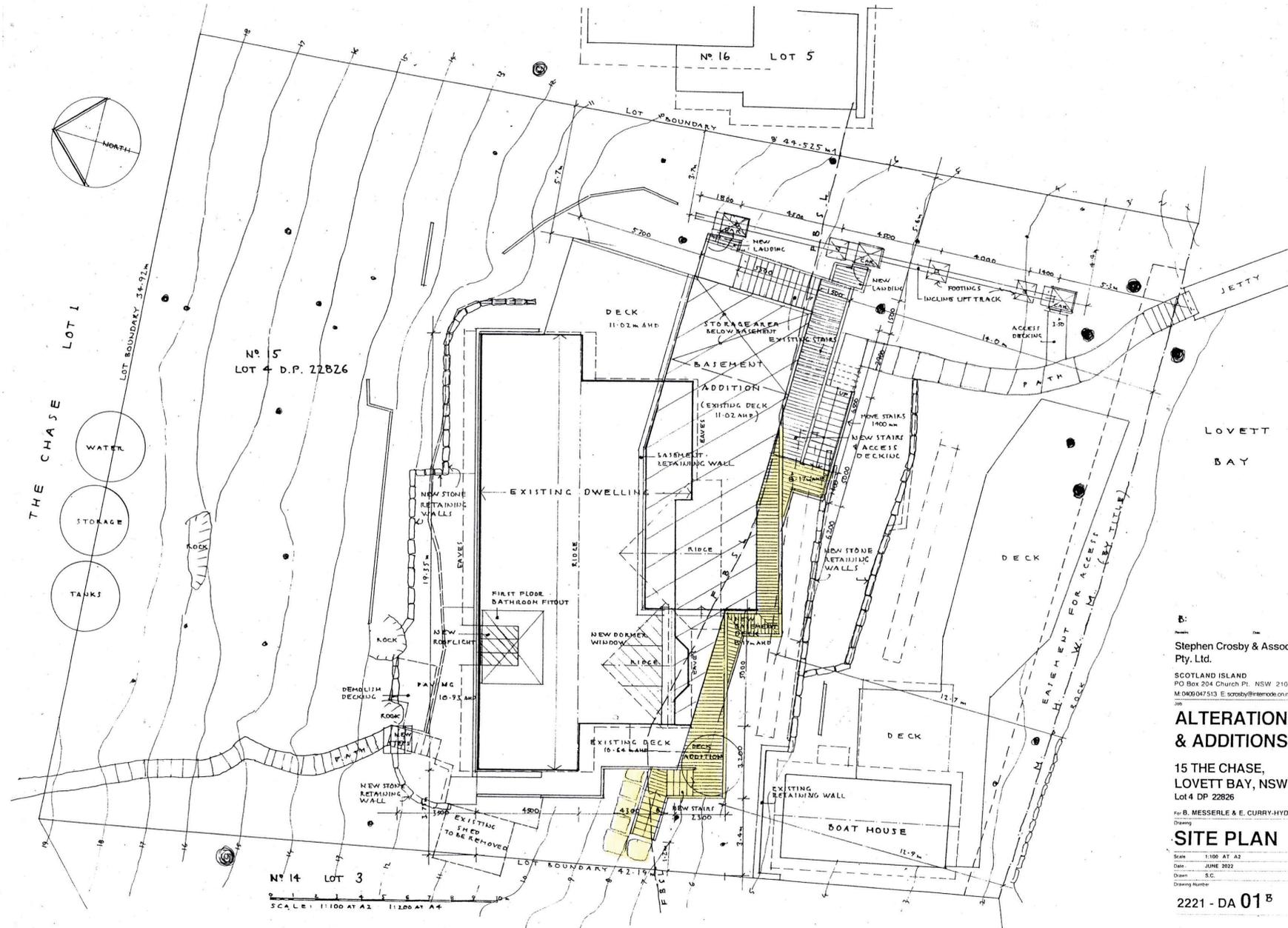
Particulars:

- The modification proposed by this application further decreases landscaped area and increases non-landscaped area to an unreasonable and unsupported extent, whilst increasing the existing dwellings encroachment into the foreshore area.

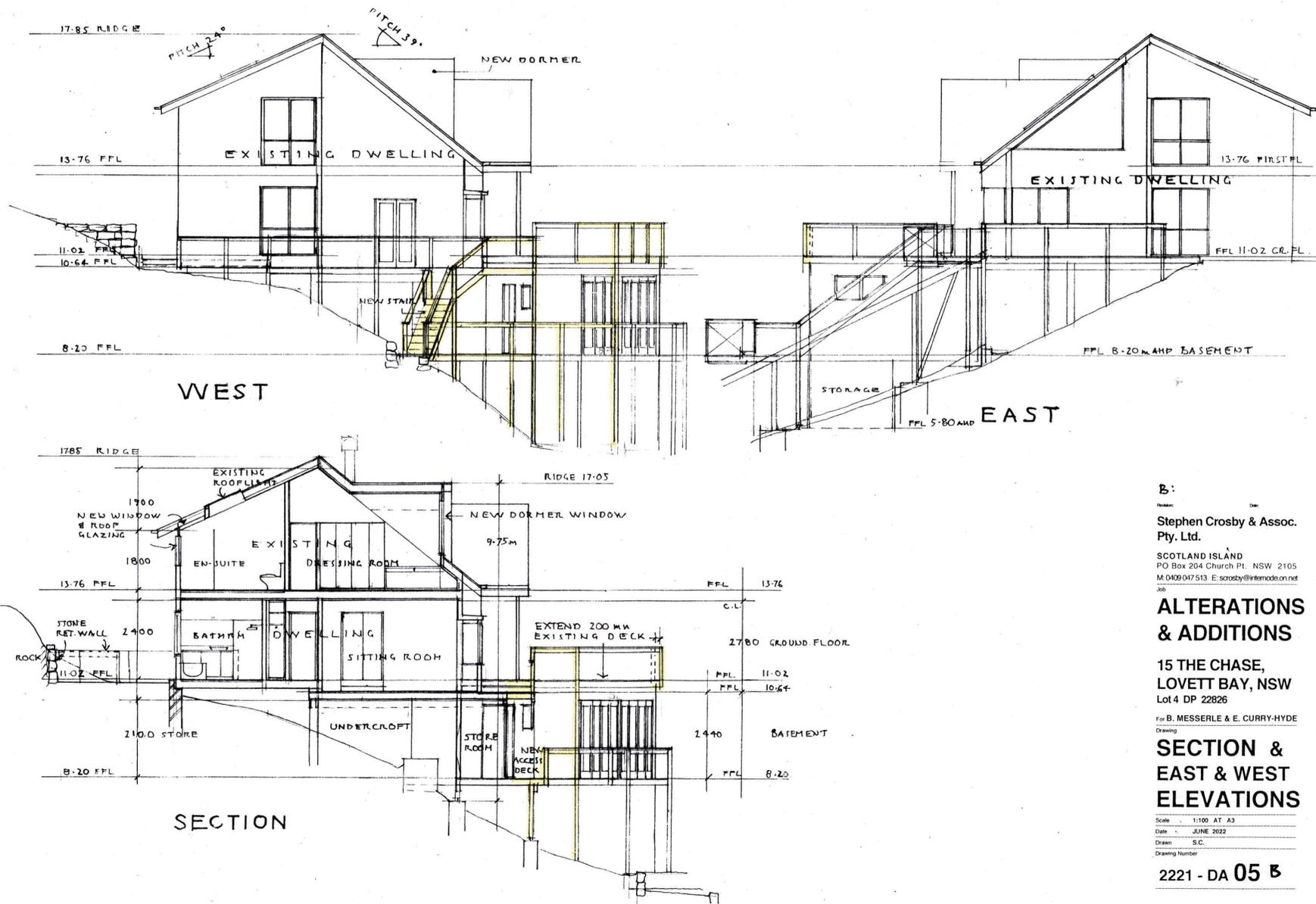
7. **Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not within the public's interest.**

Particulars:

- It is considered that the proposal would result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community, and is therefore not in the public interest.



B:
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**ALTERATIONS
& ADDITIONS**
15 THE CHASE,
LOVETT BAY, NSW
Lot 4 DP 22826
for B. MESSERLE & E. CURRY-HYDE
Drawing
SITE PLAN
Scale: 1:100 AT A2
Date: JUNE 2022
Drawn: S.C.
Drawing Number:
2221 - DA 01^B



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Prepared by:
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Job

**ALTERATIONS
& ADDITIONS**

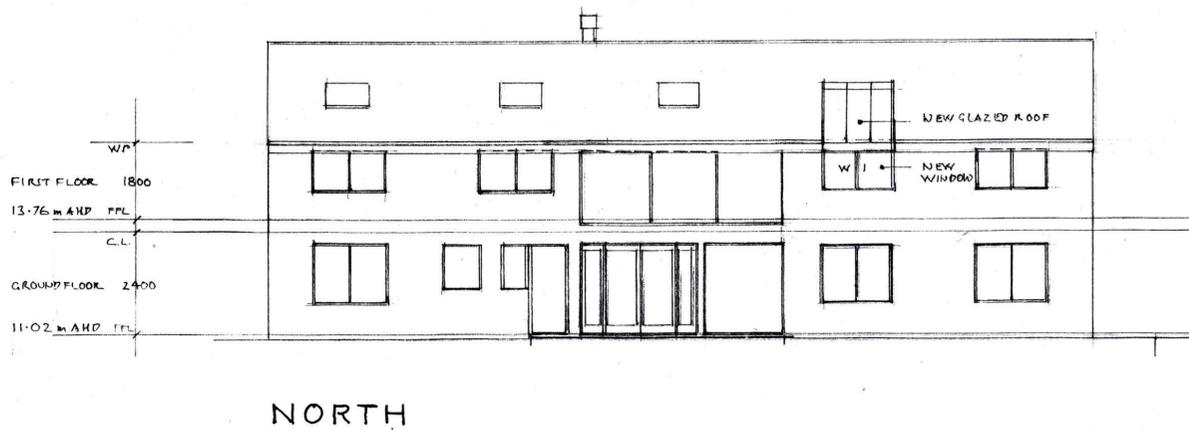
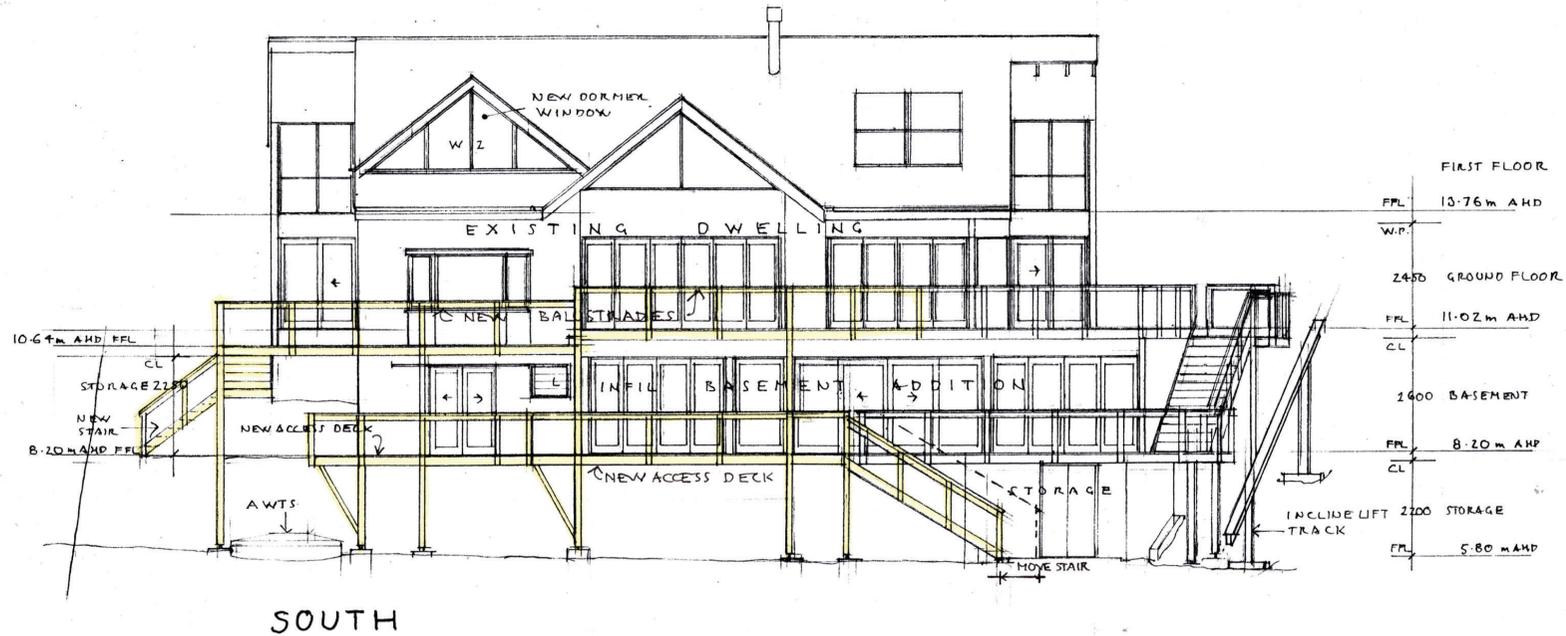
15 THE CHASE,
LOVETT BAY, NSW
Lot 4 DP 22826

For B. MESSERLE & E. CURRY-HYDE
Drawing

**SECTION &
EAST & WEST
ELEVATIONS**

Scale: 1:100 AT A3
Date: JUNE 2022
Drawn: S.C.
Drawing Number

2221 - DA 05 B



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ALTERATIONS & ADDITIONS

15 THE CHASE,
LOVETT BAY, NSW
Lot 4 DP 22826

for B. MESSERLE & E. CURRY-HYDE
Drawing

NORTH & SOUTH ELEVATIONS

Scale 1:100 AT A3
Date JUNE 2022
Drawn S.C.
Drawing Number

2221 - DA 06 B

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1	DA2023/0376 - 400 BARRENJOEY ROAD, BILGOLA BEACH - CHANGE OF USE OF PREMISES FROM A KIOSK TO A CAFE
AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2023/482517
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plans & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant and land owner is the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0376 for the use of an existing kiosk as a café at Lot 7096 DP 1124092 Part Lot 7327 DP 1164236, 400 Barrenjoey Road, Bilgola Beach, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0376
Responsible Officer:	Natalie Richter, Independent Planning Consultant
Land to be developed (Address):	400 Barrenjoey Road, Bilgola Beach (Lot 7096 DP 1124092 Part Lot 7327 DP 1164236)
Proposed Development:	Use of (existing) Kiosk as a Café
Zoning:	RE1 (Pittwater LEP 2014)
Development Permissible:	Yes
Existing Use Rights:	N/A
Consent Authority:	Local Planning Panel
Land and Environment Court Action:	N/A
Owner:	The kiosk site is owned by Crown Lands NSW and is under the care control and management of Northern Beaches Council, under reserve number 58243. The reserve was gazetted as public recreation on 21 August 1925.
Applicant:	Northern Beaches Council
Application Lodged:	06/04/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Local
Notified:	17/04/2023 to 01/05/2023 and 26/06/2023 to 24/07/2023
Advertised:	No
Submissions Received:	Two (2)
Clause 4.6 Variation:	No
Recommendation:	Approval subject to conditions
Estimated Cost of Works:	\$0.00 (use only and no additional work)

EXECUTIVE SUMMARY

Development consent is sought to '*regularise the existing situation where the premises has been operating as a café for a number of years*' however the building only has consent for a 'kiosk'.

No alteration to the scale of use, building or hours are proposed.

The application is referred to the Northern Beaches Local Planning Panel, as the land is under the Council's control and Council is the applicant.

The proposal has been notified in accordance with Council's policies and relevant planning and community plans have been considered.

One (1) resident submission has been received and discussed within the assessment.



The proposed use does not present any concerns and is supported subject to compliance with updated conditions appropriate to the café style use. The use has been reviewed by appropriate Council officers including Parks, Building and Environmental Health and Protection.

As no work is proposed and with original conditions have been expanded upon, the proposal does not present any objectionable environmental issues.

The application is subject of the Management of Council related applications policy and he been notified for a period of 28 days and has a management strategy published on Council's website. The level of risk has been categorised as medium, necessitating independent assessment of the application.

The proposal is supported on merit, being consistent with planning frameworks, Section 4.15 considerations, and the public interest. The development is recommended for approval, subject to Conditions.

PROPOSED DEVELOPMENT IN DETAIL

The Statement of Environmental Effects ('SEE') lodged with the application details that:

- It is proposed under this DA to '*regularise the existing situation where the premises has been operating as a café for a number of years*' whilst it was originally approved and has historically operated as a 'kiosk'.
- No change is proposed to the operation or intensity and the use would continue to be restricted by conditions of consent relating to hours, capacity, noise, nature/no service of alcohol etc with no change to conditions proposed.
- The proposal is for a change of approved use from kiosk to café in order to be in step with the nature of the use, and the wording and clauses of the current Pittwater LEP 2014/planning definitions.
- No building work or alteration to the physical operation is proposed.
- The proposal will not result in an intensification of use as it will not alter any of the conditions of consent in the previous 2007 DA.
- Patrons of the building will continue to utilise the nearby public toilets as was approved under the original DA.
- Parking remains is available within the existing carpark, where the café is located. No change is proposed.
- No change is proposed to building form, environmental aspects, garbage location or storage materials or signage.
- The subject proposal has been further reviewed by relevant departments with additional contemporary conditions suggested by Council's Environmental Health and Protection Officer. These recommended conditions would update to contemporary wording and address the submission received (which is detailed in the assessment below).

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 on 5 June 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, 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.

SITE DESCRIPTION

The small, single storey kiosk/café building is located to the northern side of the existing carpark, next to Bilgola Beach, as can be seen in the following aerial photograph.

The Bilgola Beach kiosk was approved for re-building under a 2007 development consent (DA 0038/07, approved on 8 November 2007). The building is contemporary in design with low scale flat and curved roof elements. The roof height was subject to specific consent conditions.

Plans of the existing building/premises are provided below.

An outdoor seating area is located next to the kitchen and service area, closest to the beach side. This opens customers out to directly take in the aspect, view and breezes.

A small, enclosed garbage storage area is located on the other side of the service area, next to the carpark allowing for storage and collection.

At the other side of the carpark is the Surf Club building, outdoor beach showers and public toilet block.

The carpark is ticketed/time restricted.

An ocean lap swimming pool, known as the 'Bilgola Rockpool' is located to the south of the beach, near the rocks/cliff.

The broader area is characterised by residential homes within a coastal and landscaped setting.

The site is located away busy roads and the closest shopping/service areas would be Newport and Avalon Beaches.

LOCATION

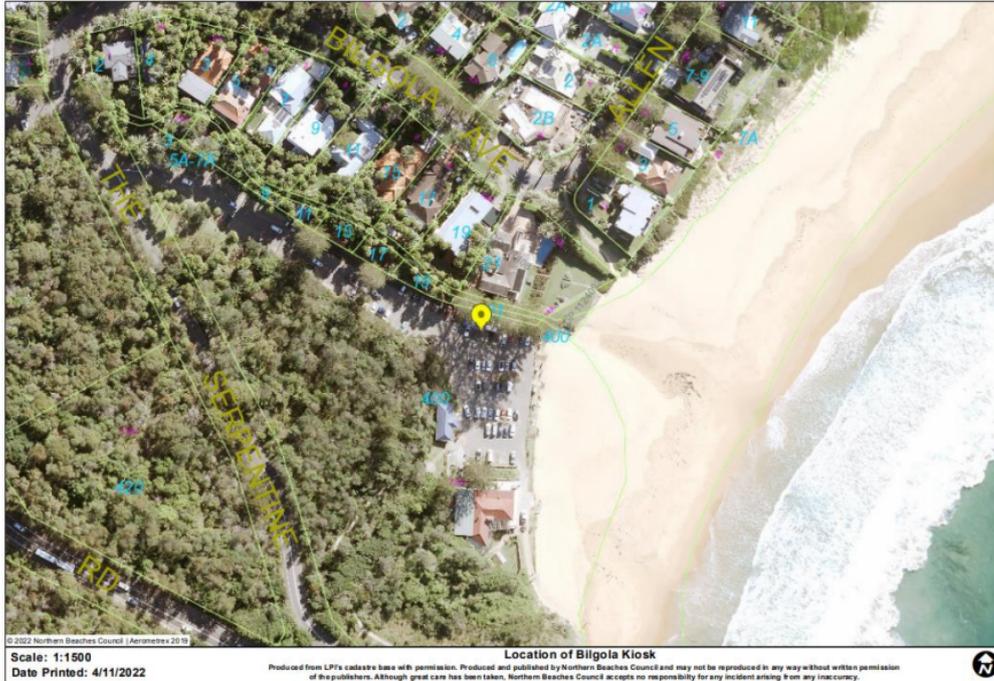


Figure 1 Map, courtesy SEE provided by NBC

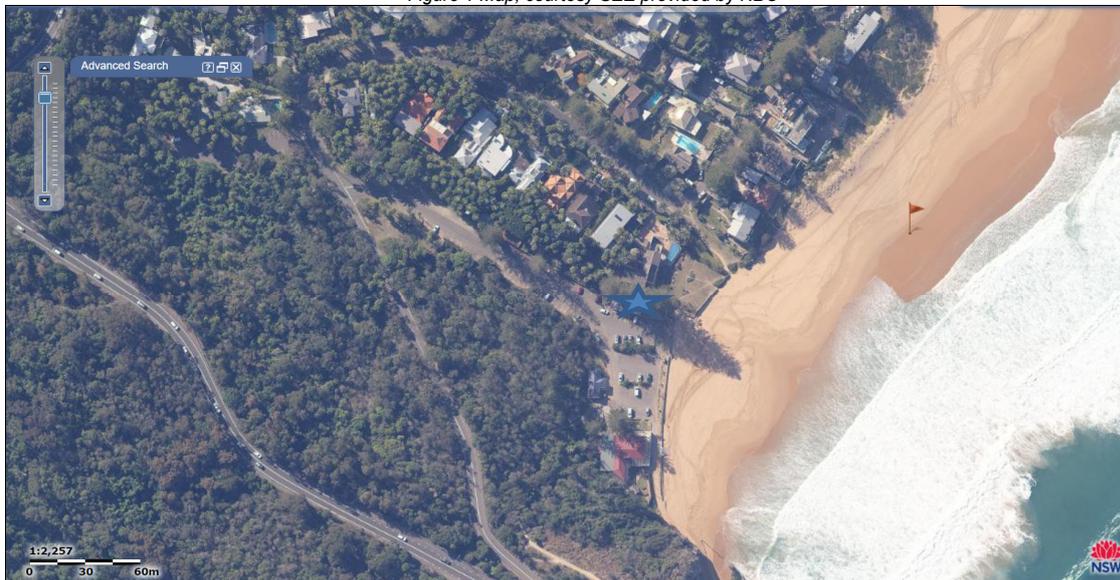


Figure 2 Map of the beach and context, courtesy Sixmaps, location of the existing kiosk noted with a star

Property Description:

The subject site consists of parts of 2 allotments known as Lot 7096 DP 1124092 and Part Lot 7327 DP 1164236 (400 Barrenjoey Road) and is Crown Reserve under reserve number 58243 gazetted in 1925 and is leased. The site is zone RE1 under the Pittwater Local Environmental Plan 2014

<p>Detailed Site Description:</p>	<p>The existing kiosk site is located to the north of the Bilgola Beach public carpark. The premises is directly accessed from it and faces the carpark, with easy access.</p> <p>The outdoor sitting area is located directly interfacing with the Bilgola Beach/coastline, to the west of the beach, looking out to it.</p> <p>The lease boundary/site is irregular in shape with a frontage of some 19.605m to the Bilgola Beach carpark and a depth of around 6.265m. According to the survey of the lease which has been provided with the DA, the site has a surveyed area of 125.7m².</p> <p>The site is located within the RE1 (Public Recreation) zone under the Pittwater LEP 2014.</p> <p>The site is essentially level, with a very slight slope to the east, toward the beach. The open area faces east.</p> <p>The site does not include any vegetation.</p>
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Detailed Description of Adjoining/Surrounding Development

The low-density residential area to the direct north is zoned and C4 (Environmental Living). This zoning reflects the unique coastal/forest setting.

The areas to the west and south are designated as natural areas and classified road (refer to the following zoning extract).

The characteristics of the site and its context are shown in the following 3 photographs.



Photograph 1



Photograph 2



Photograph 3

The prevailing character of the broader area is as a quiet, leafy neighbourhood with large residential lots within an escarpment/landscaped setting. Other commercial uses are located at nearby Newport and Avalon Beaches.

SITE HISTORY

The land has been used for commercial purposes for an extended period of time as the Bilgola Kiosk. It is understood from the submitted SEE and some background application information from 2007, that a kiosk has existed on the subject site, at the edge of the public beach carpark since at least the early 1970s.

Development Application No. N0038/07 for: *'demolition of the existing site structure and redevelopment of the site to accommodate a new kiosk in accordance with the Plan of management adopted by Council on 12 December 2005'* was submitted on 01/02/2007.

This DA was determined with conditional approval on 08/11/2007. The consent allowed for demolition of the older style original kiosk and it's re-building to the standard which exists today (per the plans below).

It is noted that the approved plan is consistent with the concept plan which was envisaged in the Bilgola Beach POM document.

This approval was issued with conditions relating to the maximum height of the new roofing, hours of use (including preparation and close) between 6.30am and sunset for 7 days, noise management conditions/plant noise, limit of 40 chairs seating capacity, conditions relating to environmental matters and materials, and conditions relating to storage and management of garbage.

In accordance with the 2007 consent, the site is currently occupied by a small single storey building with low form, curved roofing and has a kitchen at the western side and a covered outdoor seating area to the east, facing the beach. The character shown in the above photographs. The plans of the existing structures are detailed in the following extracts, from the DA documents.

The previous plans have been reviewed and the proposed plans are consistent and have not been altered. No 'new' or proposed work is indicated on the submitted plans.

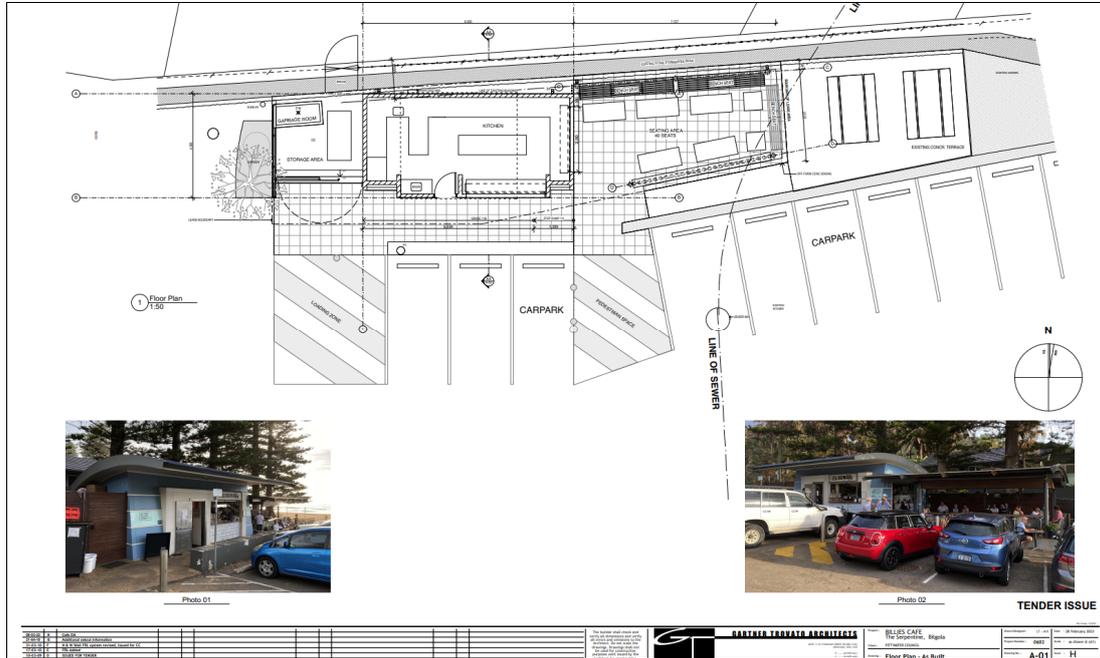


Figure 4 Site Plan showing existing kiosk/cafe

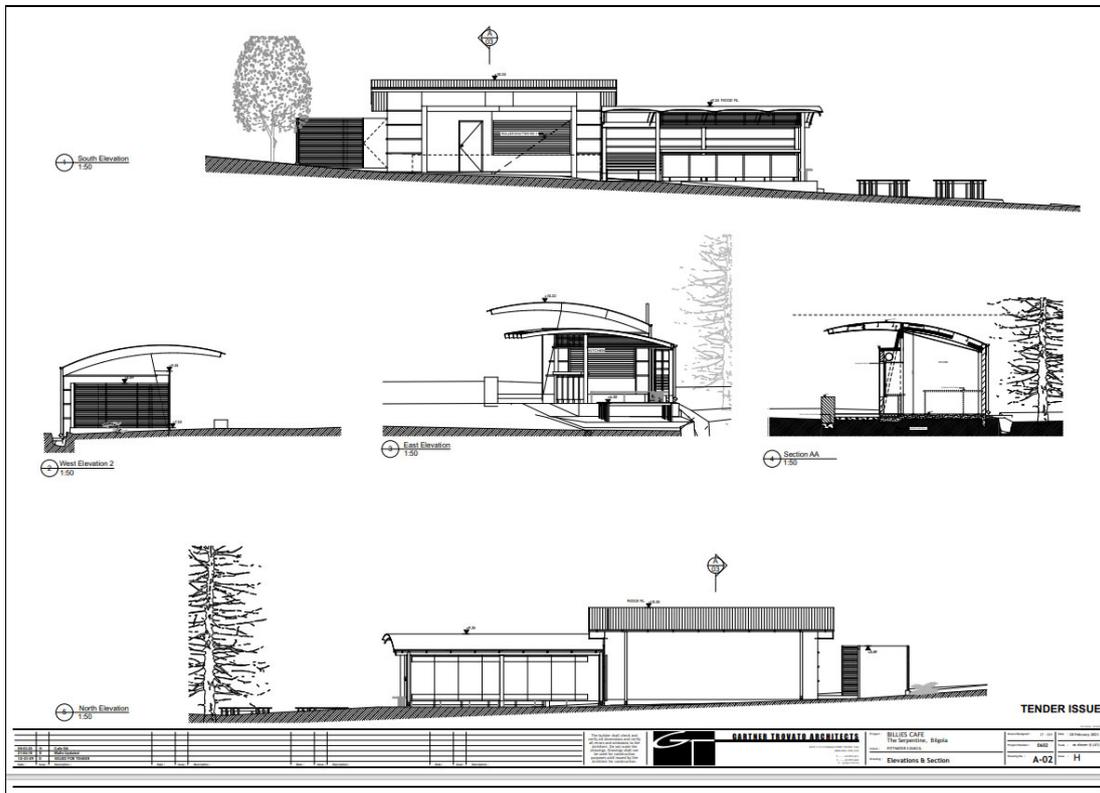


Figure 5 Elevations showing existing kiosk/cafe

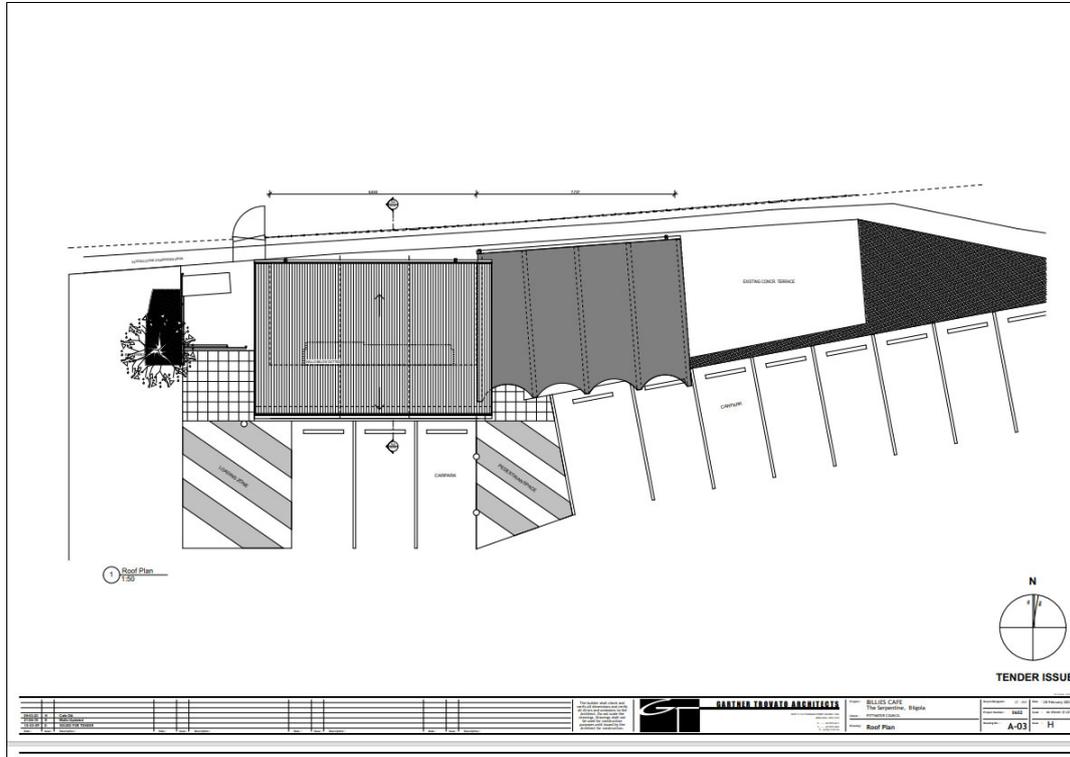


Figure 6 Roof Plan

The kiosk services local residents, the patrons and members of the Surf Club and visitors to the Beach given its close proximity/next to the beach.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Northern Beaches Community Participation Plan 2019.

As a result of the public exhibition process council is in receipt of one (1) submission from:

Name:	Address:
D Mallett & G Sloan (to both notification periods – April and July)	19 Bilgola Avenue, Bilgola Beach

The original submission was generally supportive of the application on the basis of no intensification of the proposed use and no service of alcohol in this location, to maintain the quiet residential amenity in this location.

A further submission from this objector was received and it acknowledged the renotification and expressed the view that the use should not be intensified or changed from the original conditions and frameworks. It was noted that a restaurant use would be prohibited under the Bilgola POM.

A request was made in terms of the sensitive consideration of timings for service deliveries and commercial rubbish collection to minimise noise impacts and disruption on residential neighbours.



Environmental Health and Protection conditions are recommended in relation to the hours of delivery and waste collection being within the approved operational hours and noise matters to address this submission. Refer to recommended Condition No. 13 in this regard.

The use is not intensified. The use is not for a restaurant and the café use is consistent with the zoning and no change is proposed to the conditions which are also endorsed within the recommendations.

REFERRALS

Internal Referral Body	Comments
Environmental Health	<p>Supported, subject to Conditions</p> <p><i>'This application seeks consent for one or more of the following: / Food premises, or / Backpackers/Boarding house, or / Mortuary, or / Skin penetration, acupuncture, tattoo, beauty salon, or / Public pool And as such, Council's Environmental Health and Protection officers are required to consider the likely impacts. Officer comments General Comments Environmental Health have reviewed the information provided and added the conditions required for a cafe. Recommendation Supported - subject to conditions. The proposal is therefore supported.'</i></p> <p>Recommended conditions are included in the recommendation.</p>
Parks, Reserves and Foreshores	<p>Supported, no Conditions required</p> <p><i>'The development is sited within RE1 Public Recreation land under Pittwater Local Environment Plan, and the use as a café is permitted with consent. No new physical works are proposed. Public access within and throughout the RE1 land is not impacted by the development and the development is not detrimental to the landscape character in terms of physical and visual impact within the RE1 land including the beach and reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development. The proposal is therefore supported.'</i></p> <p>No specific conditions are recommended.</p>
Building Assessment	<p>Supported, no Conditions required</p> <p><i>'This application seeks consent for Class 2-9 Buildings (i.e. all buildings except a dwelling, garage, shed, gazebo or swimming pool/spa) which include: / Alterations and Additions; or / Change of Use And as such, Councils Building Assessment officers are required to consider the likely impacts. Officer comments Under the terms of Section 62 of the Environmental Planning and Assessment Regulation the proposal is not a change in building use and as such there is no objections to approval of the development. Note: An Occupation Certificate was applied for in 2010 but the private certifier required additional documents before the OC could be approved. To date no OC has been issued (Refer to Trim PW3581730). This matter should be followed up by the relevant section within Council. 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. The proposal is therefore supported.'</i></p>



Internal Referral Body	Comments
	No specific conditions recommended in relation to the use change. Original BCA conditions in place/2007 consent for the building.

External Referral Body	Comments
	No external referrals sent/necessary

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. The proposed use, with no change to the building or the intensity is considered to support the community without adverse impact. The proposal is acceptable/consistent subject to conditions.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<u>Division 8A</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</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 54 and 109</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</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 as no demolition is required. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2021 requires

Section 4.15 'Matters for Consideration'	Comments
	<p>the consent authority to consider the upgrading of a building (including fire safety upgrade of development). 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.</p> <p><u>Clause 98</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been assessed and no additional conditions are required/no additional building works proposed.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. The proposed use is considered to bring about positive aspects in relation to the residential and beach setting.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use. The proposed use is considered to bring about positive aspects in relation to the residential and beach setting, providing a low scale and supportive commercial/employment/economic opportunity.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

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 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)

State Environmental Planning Policy Resilience and Hazards (Coastal Management).

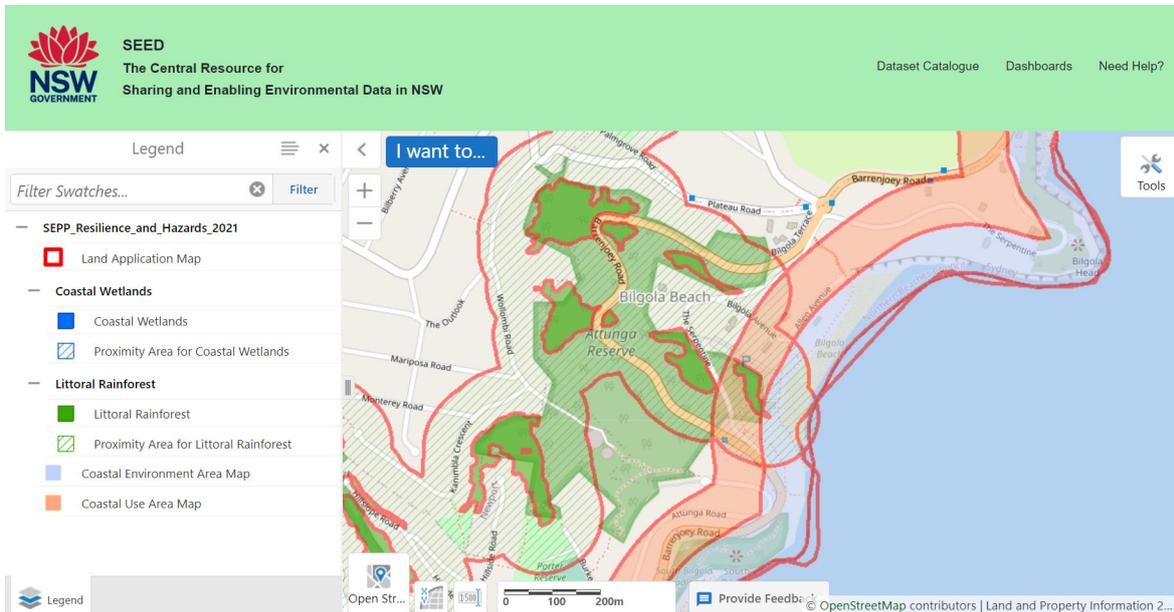


Figure 7 – Coastal use area

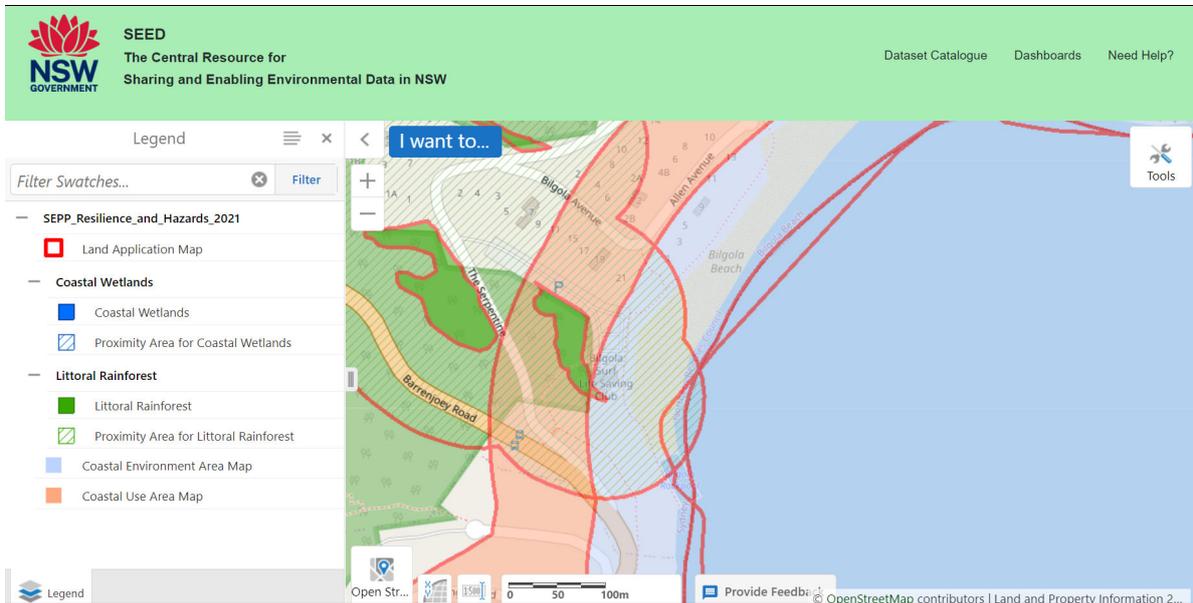


Figure 8 – Coastal environment map

As indicated in the map extract above, the site is located in the coastal use area and on the coastal environment map. The site is located within the mapped littoral rainforest area.

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

Comment:

No change is proposed to drainage or earthworks and the proposed development would not adversely impact on sensitive coastal areas accordingly.

Existing water management conditions are in place due to the 2007 development consent for the kiosk building.

No physical or landscaping/tree work is proposed.

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

Comment:

The site is within a proximity area. No change or work is proposed to the site and no change is proposed to the existing scale or style of the land use.

This land use is considered to be non-impacting and involves an existing altered area. Access and parking is via the existing carport and garbage collection via the existing storage area. Therefore, no further or changed impact would be created by the proposed use application and the proposal is consistent with this clause.

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 other land, and*
 - (ii) 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*
 - (iii) 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 subject site is not mapped as being located within a coastal vulnerability area. The proposal is assessed as acceptable in relation to this clause.

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 under the SEPP.

The proposal:

- Has been assessed as acceptable in relation to water management and quality and coastal processes and land stability. No change proposed.
- Does not involve any physical or built work.
- Does not involve any vegetation removal.
- Is not within a surf zone and would not impact on marine or native vegetation.
- Is not considered to impact on aboriginal cultural heritage, practices and places as the site has been used and developed as a kiosk/commercial use for some time.
- Does not impact upon public open space, headlands, beach areas, rock platforms or foreshore access.



- 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*

Comment:

The proposed development is considered acceptable in relation to impacts relevant to the coastal environment area within the SEPP, as addressed above. No work is proposed, and management/environmental conditions are in place.

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 foreshores,*
 - iv) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - v) Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and*
 - b) is satisfied that:*
 - i) the development is designed, sited and will be managed to avoid an adverse*
 - ii) impact referred to in paragraph (a), or*
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The site is mapped as being within the coastal use area. The proposed development/use is considered acceptable with no altered impacts to the coastal use area within the SEPP, as addressed above. No work is proposed, and management/environmental conditions are in place.

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:



No work is proposed and as such a Geotechnical Report is not required to addresses stability and landslip aspects.

Therefore, the proposed development is not assessed as creating increased risk of coastal hazards on the subject land or adjoining 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.

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:

No certified coastal management program applies at the subject site.

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 commercial purposes for a significant period of time with no prior land uses.

No change is proposed to the site which has historically been used as a low scale kiosk serving refreshments and snacks in association with the beach and surf club.

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 proposed minor change of land use description from ‘kiosk’ to ‘café’.

Rural Fires Act, 1997 and Planning for Bushfire Protection, 2019

Part of the reserve is mapped as bushfire prone. However, no change is proposed to the buildings or the type or scale of use (just the definition of the use). Therefore, no additional risk is posed, and the DA was not considered to need referral to the RFS form comment. The fire aspect was also assessed at the time that the new building and use was approved in November 2007.

PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

<p>Is the development permissible?</p>	<p>Yes. ‘kiosks’ and ‘cafes and restaurants’/‘food and drink’/retail premises are permissible with consent in the RE1 zone.</p> <p>The application seeks to change the wording from ‘kiosk’ to ‘café’ in accordance with the character and conditions which apply to the site.</p>
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	<p>The distinct definitions taken from the PLEP are:</p> <p>'kiosk means premises that are used for the purposes of <u>selling food, light refreshments and other small convenience items.</u></p> <p>Note— See clause 5.4 for controls relating to the gross floor area of a kiosk. Kiosks are a type of retail premises—see the definition of that term in this Dictionary.'</p> <p>Food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following— a restaurant or cafe, take away food and drink premises, a pub, a small bar.</p> <p>Note— Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary.'</p> <p>AND</p> <p>'restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of— an artisan food and drink industry, or farm gate premises.</p> <p>Note— Restaurants or cafes are a type of food and drink premises—see the definition of that term in this Dictionary'</p>
<p>After consideration of the merits of the proposal, is the development consistent with:</p>	
<p>aims of the LEP? The proposal is consistent with the sustainable and environmentally appropriate development of land in Pittwater, allowing the preservation of natural, social and economic values.</p>	<p>Yes</p>
<p>zone objectives of the LEP? These are: <i>To enable land to be used for public open space or recreational purposes.</i> <i>To provide a range of recreational settings and activities and compatible land uses.</i> <i>To protect and enhance the natural environment for recreational purposes.</i></p>	<p>Yes</p>



<p>To allow development that does not substantially diminish public use of, or access to, public open space resources.</p> <p>To provide passive and active public open space resources, and ancillary development, to meet the needs of the community.</p>	
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Compliance Assessment

Clause	Compliance with Requirements																								
<p>Clause 5.10 Heritage conservation.</p> <p>The following items in the locality are listed as items under Part 1/Schedule 5 of the Pittwater LEP:</p> <table border="0"> <tr> <td>Bilgola Beach</td> <td>Ocean rock pool</td> <td></td> <td></td> </tr> <tr> <td>Bilgola Beach</td> <td>Street trees—Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>)</td> <td>Bilgola Avenue and Allen Avenue</td> <td>Road reserve</td> </tr> <tr> <td>Bilgola Beach</td> <td>"The Palms" (house)</td> <td>3 Bilgola Avenue</td> <td>Lot 53, DP 517038; Lot 133, DP 752046</td> </tr> <tr> <td>Bilgola Beach</td> <td>Grove of Cabbage Tree Palms (<i>Livistona australis</i>)</td> <td>The Serpentine and Barrenjoey Road (Bilgola Valley)</td> <td>Lots 139–144, 336–338, 547–557, 566 and 569, DP 16902; Lots 1–4, DP 395158; Lot 3, DP 511677; Lot 4C, DP 413781; Lot 300, DP 1035587; Lot 7327, DP 1164236</td> </tr> <tr> <td>Bilgola Beach</td> <td>Palm House and garden</td> <td>4 The Serpentine</td> <td>Lot 52, DP 517038</td> </tr> <tr> <td>Bilgola Plateau</td> <td>House called Trees</td> <td>36 Plateau Road</td> <td>Lot 1, DP 1214257</td> </tr> </table> <p>The site is not heritage listed however is near to the above listed items and an item of archaeological heritage under Part 3/Schedule 5 (the drainage and bridge structures at 15–21 Bilgola Ave). These structures are located to the north of the carpark, behind the existing kiosk.</p> <p>The site is not located within a Heritage Conservation Area.</p> <p>As the proposal involves no building work and the site is well separated visually, there is not considered to be any detrimental impact on the heritage elements.</p> <p>The minor proposal to regularise the use/wording is consistent with Clause 5.10 of the LEP.</p>	Bilgola Beach	Ocean rock pool			Bilgola Beach	Street trees—Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>)	Bilgola Avenue and Allen Avenue	Road reserve	Bilgola Beach	"The Palms" (house)	3 Bilgola Avenue	Lot 53, DP 517038; Lot 133, DP 752046	Bilgola Beach	Grove of Cabbage Tree Palms (<i>Livistona australis</i>)	The Serpentine and Barrenjoey Road (Bilgola Valley)	Lots 139–144, 336–338, 547–557, 566 and 569, DP 16902; Lots 1–4, DP 395158; Lot 3, DP 511677; Lot 4C, DP 413781; Lot 300, DP 1035587; Lot 7327, DP 1164236	Bilgola Beach	Palm House and garden	4 The Serpentine	Lot 52, DP 517038	Bilgola Plateau	House called Trees	36 Plateau Road	Lot 1, DP 1214257	Yes
Bilgola Beach	Ocean rock pool																								
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Bilgola Plateau	House called Trees	36 Plateau Road	Lot 1, DP 1214257																						
<p>Clause 7.1 Acid sulfate soils</p> <p>The site is located within the acid sulfate soil level 4 however as no building works are being undertaken as part of this application, the proposal will not impact on acid sulfate soil issues and the proposal is satisfactory in relation to this clause and does not raise concern or need for conditions.</p>	Yes																								
<p>Clause 7.7 Geotechnical hazards</p> <p>The larger site is listed as being affected by geotechnical hazards.</p> <p>However, this is noted not extend to the location of the existing Consequently, there are no issues regarding geotechnical hazards on the site which would require referral or condition.</p>	Yes																								

PITTWATER DEVELOPMENT CONTROL PLAN

Compliance Assessment – Merit Assessment against Relevant DCP Clauses

Clause	Compliance with Requirements	Consistency Aims/Objectives
<p>Part A – What Shapes Development in Pittwater The proposed use is consistent with the zone objectives, is permissible and is envisaged for Bilgola under the locality plans. The proposal is consistent with Part A of the DCP. The proposal is consistent with the ESD, social, environmental and economic objectives of the DCP, providing a facility which supports the community, is consistent with the nature and attributes of the area, and encourages local economy.</p>	Yes	Yes
<p>A4.3 Bilgola Locality The proposal does not result in any physical or scale changes to what was approved and encouraged under the Bilgola Beach POM. The existing building was designed to be deliberately modest and low-scale, to suit the low density and natural coastal visual quality. No change is proposed to the form. The proposal is consistent with the desired natural and low density character. The proposal protects the environment and the littoral rainforest, being well separated and with no physical work or change to conditions proposed. No change is involved in terms of any other natural or built elements.</p>	Yes	Yes
<p>B1.2 Heritage Conservation – Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites. As detailed above, the site is not classified as a heritage item nor within a conservation however is within proximity of a number of heritage items and is adjacent to an item of archaeological heritage (the drainage and bridge structures at 15-21 Bilgola Avenue). As the current proposal does not involve any building works, the proposal will not impact on the archaeological value of the drain or any of the other items in the locality. No work is proposed, and the site is well separated from the items physically and visually.</p>	Yes	Yes
<p>B1.4 Aboriginal Heritage Significance Mapping indicates that there is an Aboriginal midden located on the larger site over 100 metres from the existing building. No site alteration or physical building works are proposed and as such, the proposal will not impact on Aboriginal heritage in the area.</p>	Yes	Yes
<p>B3.1 Landslip Hazard The geotechnical hazard shown on the broader site context does not extend to this portion of the site and no site alteration is proposed. This matter was addressed with the 2007 DA which involved the demolition of the original kiosk and the construction of the new kiosk in place, in line with the Bilgola Masterplan/POM.</p>	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
<p>B3.2 Bushfire Hazard The building is shown in Council's mapping system as being partially located within the vegetation buffer for bushfire hazard. As there is no building work occurring as part of this application, the proposal satisfies the requirements of Section 3.2. This matter was addressed in detail as part of the 2007 re-building of the structure.</p>	Yes	Yes
<p>B3.6 Contaminated Land and Potentially Contaminated Land The proposal is for a change of use of an existing building constructed in 2008 with no additional building work being proposed or site disturbance. This matter was addressed in detail previously and there is no reason to believe that the proposal as submitted will be at risk from potential land contamination. The proposal is for a change in technical reference/definition of the use only.</p>	Yes	Yes
<p>B4.17 Littoral Rainforest – Endangered Ecological Community The site is mapped as being part of the Littoral Rainforest Endangered Ecological Community. The existing building is not proposed to change and is located on an existing hardstand carpark. As such, there will be no impact on the littoral rainforest from this proposal. The intensity and type of use and impacts associated with the existing kiosk/cafe remain essentially the same with no further generation of garbage, impact or disturbance to the surrounding area.</p>	Yes	Yes
<p>B6.6 On-Street Vehicle Parking Requirements The proposal does not seek any increase to the existing footprint or number of patrons approved under the previous development consent. There has historically been no parking associated with the building (from the 1970s). It was always envisaged that the refreshment area would be connected with the carpark, club and beach and would only be used by people visiting the beach and who are parked in the parking area in association with the beach (in addition to residents who can be accessible on foot). The Council assessment report for the 2007 DA which supported the development, noted at the time that no additional usable floor space was being created as part of that DA but that parking demand in the beach car park is greater than parking supply (due to the location away from main roads and the popularity of the beach). Given the nature of the area, the merits and discussions provided on this matter as part of the previous assessment for the redevelopment of the kiosk, and the fact that this proposal does not alter or extend the approved use in any</p>	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
way, providing additional parking is not considered to be warranted. Given there is no increase in approved patron numbers or footprint, the currently available parking arrangement is appropriate in this instance to support the proposed technical wording/change of use description.		
D Locality Controls – Bilgola Locality The DA does not involve any change to the building or form character or surrounds. These controls are not therefore strictly applicable to the subject application.	Yes	Yes

OCEAN BEACHES PLAN OF MANAGEMENT ('POM') – BILGOLA BEACH

The site is located within Crown Land covered by the Bilgola Beach POM which has been reviewed as part of the DA assessment.

The site is within the care, control and management of Northern Beaches Council (previous Pittwater Council LGA).



Figure 9 Boundary map, Bilgola POM



The site is designated under the plan for 'general community use' in association with the surf club, amenities, car park and rock/swimming pool.

The application does not change the existing scale or nature of the use or the building.

The proposal is considered consistent with the POM in that the use maintains:

*'The conservation, economic, recreation and social values of the reserve are recognised, protected and enhanced for public enjoyment by current and future generations; and
The public's right of choice, access and equity is recognised and preserved.'*

The proposal does not change the size, intensity or hours of the outlined/existing kiosk. As detailed in the submitted SEE, the proposal remains consistent with the specifications of the POM which dictate:

'The new lease for the Bilgola Kiosk shall include the following conditions: - - Outdoor seating numbers within leased area – 40 Chairs - Hours of operation – 6:30a.m. till Sunset - Alcohol prohibited from sale or supply.'

This accords with public expectations for the intensity/small nature of the use.

It is noted that a 'restaurant' would be prohibited under the acceptable uses within the POM however the proposal involves a subtle wording change from 'kiosk' to a 'café'. As discussed in the zoning assessment, a café is an alternative to a 'restaurant'. The current nature and service aligns with a café and not restaurant use. A café is not a prohibited land use character under the POM. The LEP would allow both as permissible.

The proposal does not change the 5 year lease arrangements.

7.12 CONTRIBUTIONS PLAN

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022. As there is no development cost for this change of use, a monetary contribution is not required in this instance.

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, including the relevant POM.

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

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

PLANNING CONCLUSION



This proposal, for a change of use of an existing kiosk to a cafe, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a conflict of interest, being that the applicant and landowner is Northern Beaches Council.

The submissions received during the notification period have been considered.

Overall, the development complies with all numerical LEP and DCP controls. The proposal 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. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, as the consent authority on behalf of Northern Beaches Council, APPROVE Development Consent to Development Application No DA2023/0376 for the use of an existing kiosk as a café on land 400 Barrenjoey Road, Bilgola Beach (Lot 7096 DP 1124092 Part Lot 7327 DP 1164236) at subject to the following conditions:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-01 H	28 February 2023	Gartner Trovato Architects
A-02 H	28 February 2023	Gartner Trovato Architects
A-03 H	28 February 2023	Gartner Trovato Architects
	28 February 2023	Gartner Trovato Architects
A-04 H	28 February 2023	Gartner Trovato Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Environmental Effects	March 2023	Prepared by Gina Hay Principal Planner Property Northern Beaches Council
Sketch of Lease of Premises	August 2011	Steve Davey Registered Surveyor

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

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



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

2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a cafe, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

***restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—*

- (a) *an artisan food and drink industry, or*
- (b) *farm gate premises.*

Note—

*Restaurants or cafes are a type of **food and drink premises**—see the definition of that term in this Dictionary.*

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

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

3. **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 (Transport and Infrastructure) 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.

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 Certifying Authority 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 Certifying Authority 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 Certifying Authority 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 a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not



commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming



- pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

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

6. Amenity

The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

Plant and equipment are to be designed, located and operated to ensure that noise levels at adjoining residential properties does not exceed more than 5dBA above background noise.

Reason: To ensure the surrounding area and people within the neighbourhood are not affected adversely and to ensure compliance with the Protection of the Environment Operations Act 1997.

7. Deliveries and Waste Service Collections

Deliveries and waste service collections shall only occur during the approved operational hours.

Reason: To minimise the impacts of noise on neighbouring premises

8. Hours of Operation

The hours of operation, including all preparation, set up and closure activities, shall be confined to between 6:30am until sunset, seven (7) days per week.

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.

9. Capacity

The seating capacity of the cafe is to remain at 40 chairs.

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

10. Service of Alcohol

The sale, supply and consumption of alcohol is not permitted, without the prior written approval of the Council.



Reason: To ensure that the safety and amenity of the surrounding locality is maintained.

11. Landscaping

In accordance with the conditions of the original kiosk building and use Development Consent No.0038/07, existing landscaping is to be retained and approved/established landscaping is to be maintained. Noxious weeds are to be managed and removed.

Natural landscape features, including natural rock outcrops, bush rock, natural vegetation soil and watercourses are to remain undisturbed and protected.

Reason: To ensure that amenity and environmental quality of the surrounding locality is maintained.

12. Use of roofing

Any plastic membranes used across the northern façade of the outdoor dining shade are only to be open in inclement weather. The structure is generally to remain open.

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

FINAL DECLARATION

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.



Consultant Name:
Natalie Richter, Independent Town Planner
27 July 2023

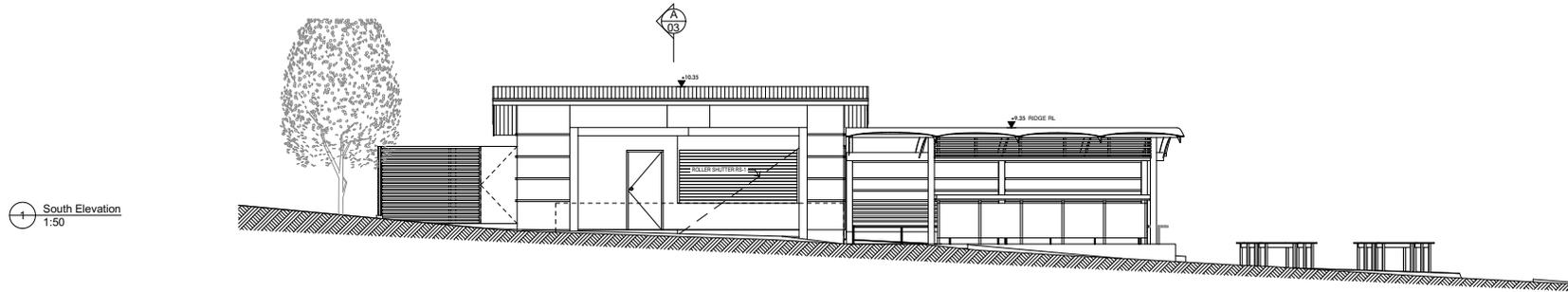


⊕ Aerial Site Plan

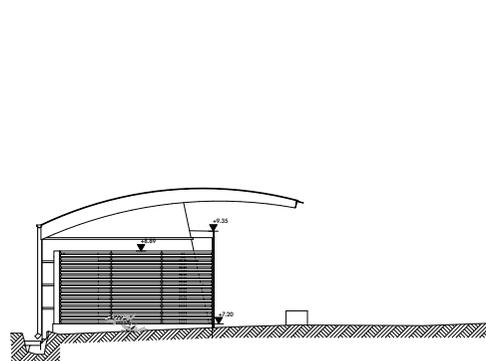
TENDER ISSUE

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<p>Scale: 1:1000</p>		<p>Project: BILLIES CAFE The Serpentine, Bilgola PITWATER COUNCIL</p>	
<p>Author: [Name]</p>		<p>Client: PITWATER COUNCIL</p>	
<p>Checker: [Name]</p>		<p>Drawing No.: A-04</p>	
<p>Designer: [Name]</p>		<p>Scale: H</p>	
<p>Approver: [Name]</p>		<p>Project: BILLIES CAFE The Serpentine, Bilgola PITWATER COUNCIL</p>	
<p>Client: PITWATER COUNCIL</p>		<p>Drawing No.: A-04</p>	
<p>Scale: 1:1000</p>		<p>Scale: H</p>	

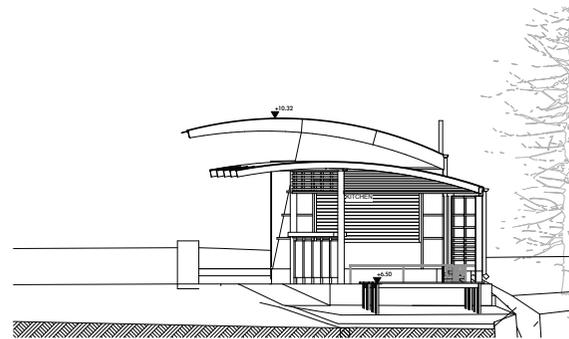




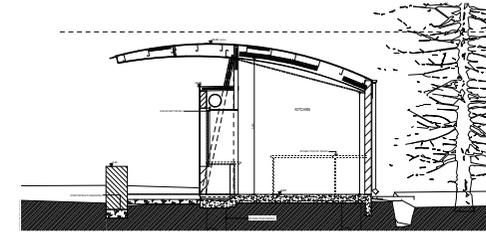
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1:50



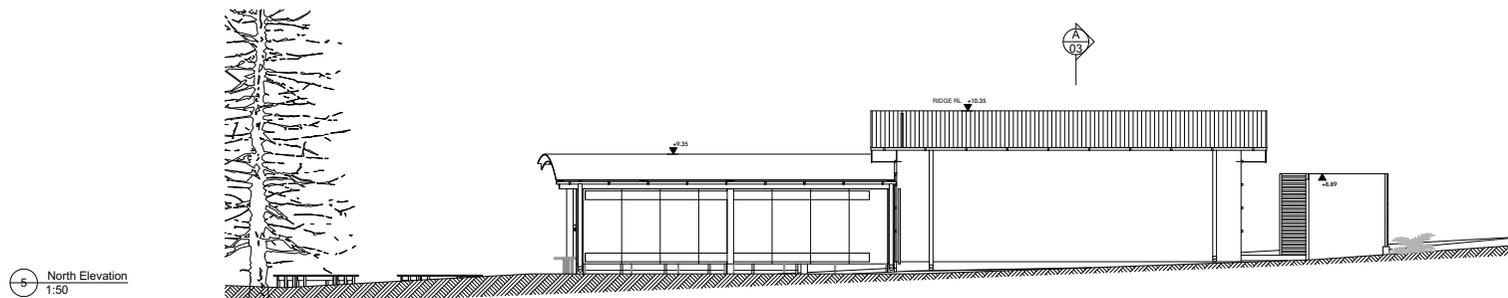
2 West Elevation 2
1:50



3 East Elevation
1:50



Section AA
1:50



4 North Elevation
1:50

TENDER ISSUE

Rev	Date	Description	Side	View	Description	Side	View	Description
00-03-23	11	CON DA						
21-04-23	6	Revised						
20-03-23	0	ISSUED FOR TENDER						

The builder shall check and verify all dimensions and verify all work and materials to our drawings. Our not scale the drawings. Drawing shall not be used for construction purposes and is issued by the architect for construction.

GARTNER TROVATO ARCHITECTS
 10/11-12/13-14/15-16/17-18/19-20/21-22/23-24/25-26/27-28/29-30/31-32/33-34/35-36/37-38/39-40/41-42/43-44/45-46/47-48/49-50/51-52/53-54/55-56/57-58/59-60/61-62/63-64/65-66/67-68/69-70/71-72/73-74/75-76/77-78/79-80/81-82/83-84/85-86/87-88/89-90/91-92/93-94/95-96/97-98/99-100/101-102/103-104/105-106/107-108/109-110/111-112/113-114/115-116/117-118/119-120/121-122/123-124/125-126/127-128/129-130/131-132/133-134/135-136/137-138/139-140/141-142/143-144/145-146/147-148/149-150/151-152/153-154/155-156/157-158/159-160/161-162/163-164/165-166/167-168/169-170/171-172/173-174/175-176/177-178/179-180/181-182/183-184/185-186/187-188/189-190/191-192/193-194/195-196/197-198/199-200/201-202/203-204/205-206/207-208/209-210/211-212/213-214/215-216/217-218/219-220/221-222/223-224/225-226/227-228/229-230/231-232/233-234/235-236/237-238/239-240/241-242/243-244/245-246/247-248/249-250/251-252/253-254/255-256/257-258/259-260/261-262/263-264/265-266/267-268/269-270/271-272/273-274/275-276/277-278/279-280/281-282/283-284/285-286/287-288/289-290/291-292/293-294/295-296/297-298/299-300/301-302/303-304/305-306/307-308/309-310/311-312/313-314/315-316/317-318/319-320/321-322/323-324/325-326/327-328/329-330/331-332/333-334/335-336/337-338/339-340/341-342/343-344/345-346/347-348/349-350/351-352/353-354/355-356/357-358/359-360/361-362/363-364/365-366/367-368/369-370/371-372/373-374/375-376/377-378/379-380/381-382/383-384/385-386/387-388/389-390/391-392/393-394/395-396/397-398/399-400/401-402/403-404/405-406/407-408/409-410/411-412/413-414/415-416/417-418/419-420/421-422/423-424/425-426/427-428/429-430/431-432/433-434/435-436/437-438/439-440/441-442/443-444/445-446/447-448/449-450/451-452/453-454/455-456/457-458/459-460/461-462/463-464/465-466/467-468/469-470/471-472/473-474/475-476/477-478/479-480/481-482/483-484/485-486/487-488/489-490/491-492/493-494/495-496/497-498/499-500/501-502/503-504/505-506/507-508/509-510/511-512/513-514/515-516/517-518/519-520/521-522/523-524/525-526/527-528/529-530/531-532/533-534/535-536/537-538/539-540/541-542/543-544/545-546/547-548/549-550/551-552/553-554/555-556/557-558/559-560/561-562/563-564/565-566/567-568/569-570/571-572/573-574/575-576/577-578/579-580/581-582/583-584/585-586/587-588/589-590/591-592/593-594/595-596/597-598/599-600/601-602/603-604/605-606/607-608/609-610/611-612/613-614/615-616/617-618/619-620/621-622/623-624/625-626/627-628/629-630/631-632/633-634/635-636/637-638/639-640/641-642/643-644/645-646/647-648/649-650/651-652/653-654/655-656/657-658/659-660/661-662/663-664/665-666/667-668/669-670/671-672/673-674/675-676/677-678/679-680/681-682/683-684/685-686/687-688/689-690/691-692/693-694/695-696/697-698/699-700/701-702/703-704/705-706/707-708/709-710/711-712/713-714/715-716/717-718/719-720/721-722/723-724/725-726/727-728/729-730/731-732/733-734/735-736/737-738/739-740/741-742/743-744/745-746/747-748/749-750/751-752/753-754/755-756/757-758/759-760/761-762/763-764/765-766/767-768/769-770/771-772/773-774/775-776/777-778/779-780/781-782/783-784/785-786/787-788/789-790/791-792/793-794/795-796/797-798/799-800/801-802/803-804/805-806/807-808/809-810/811-812/813-814/815-816/817-818/819-820/821-822/823-824/825-826/827-828/829-830/831-832/833-834/835-836/837-838/839-840/841-842/843-844/845-846/847-848/849-850/851-852/853-854/855-856/857-858/859-860/861-862/863-864/865-866/867-868/869-870/871-872/873-874/875-876/877-878/879-880/881-882/883-884/885-886/887-888/889-890/891-892/893-894/895-896/897-898/899-900/901-902/903-904/905-906/907-908/909-910/911-912/913-914/915-916/917-918/919-920/921-922/923-924/925-926/927-928/929-930/931-932/933-934/935-936/937-938/939-940/941-942/943-944/945-946/947-948/949-950/951-952/953-954/955-956/957-958/959-960/961-962/963-964/965-966/967-968/969-970/971-972/973-974/975-976/977-978/979-980/981-982/983-984/985-986/987-988/989-990/991-992/993-994/995-996/997-998/999-1000/1001-1002/1003-1004/1005-1006/1007-1008/1009-1010/1011-1012/1013-1014/1015-1016/1017-1018/1019-1020/1021-1022/1023-1024/1025-1026/1027-1028/1029-1030/1031-1032/1033-1034/1035-1036/1037-1038/1039-1040/1041-1042/1043-1044/1045-1046/1047-1048/1049-1050/1051-1052/1053-1054/1055-1056/1057-1058/1059-1060/1061-1062/1063-1064/1065-1066/1067-1068/1069-1070/1071-1072/1073-1074/1075-1076/1077-1078/1079-1080/1081-1082/1083-1084/1085-1086/1087-1088/1089-1090/1091-1092/1093-1094/1095-1096/1097-1098/1099-1100/1101-1102/1103-1104/1105-1106/1107-1108/1109-1110/1111-1112/1113-1114/1115-1116/1117-1118/1119-1120/1121-1122/1123-1124/1125-1126/1127-1128/1129-1130/1131-1132/1133-1134/1135-1136/1137-1138/1139-1140/1141-1142/1143-1144/1145-1146/1147-1148/1149-1150/1151-1152/1153-1154/1155-1156/1157-1158/1159-1160/1161-1162/1163-1164/1165-1166/1167-1168/1169-1170/1171-1172/1173-1174/1175-1176/1177-1178/1179-1180/1181-1182/1183-1184/1185-1186/1187-1188/1189-1190/1191-1192/1193-1194/1195-1196/1197-1198/1199-1200/1201-1202/1203-1204/1205-1206/1207-1208/1209-1210/1211-1212/1213-1214/1215-1216/1217-1218/1219-1220/1221-1222/1223-1224/1225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ITEM 5.2**DA2023/0687 - 9/110 NORTH STEYNE, MANLY -
ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT
BUILDING****AUTHORISING MANAGER** Rod Piggott**TRIM FILE REF** 2023/482527**ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Site Plan & Elevations](#)
3 [↓ Clause 4.6](#)**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0687 for Alterations and additions to a residential flat building on land at Lot 9 SP 68048, 9 / 110 North Steyne, MANLY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0687
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Responsible Officer:	Grace Facer
Land to be developed (Address):	Lot 9 SP 68048, 9 / 110 North Steyne MANLY NSW 2095
Proposed Development:	Alterations and additions to a residential flat building
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Susan Massasso
Applicant:	Susan Massasso

Application Lodged:	13/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	21/06/2023 to 05/07/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 21.54%
Recommendation:	Approval

Estimated Cost of Works:	\$ 253,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a residential flat building, specifically extension of the balcony and changes to the windows and sliding doors at Unit 9.

The application seeks a variation to the Height of Buildings development standard pursuant to Clause 4.3 of the Manly LEP 2013. The proposal is referred to the Northern Beaches Local Planning Panel (NBLPPP) due to the application proposing a variation to the Height of Buildings development standard of more than 10% (2.8 metres or 21.54%).

The Clause 4.6 request for the non-compliance with the building height development standard arises due to the existing residential flat building demonstrating a breach to the building height control. It is

noted that the proposed alterations and additions to Unit 9 will not increase the existing numerically non-compliant building height.

One (1) submission was received as a result of the public exhibition of the application.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Remove existing balcony balustrade and extend balcony in curved triangle shape
- Remove part of the existing decorative blade to be tiled over to match existing
- New opaque glass cover to existing roof below balcony
- New aluminium window and sliding doors to match existing within existing openings

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 - 5.21 Flood planning

Manly Development Control Plan - 3.4.2 Privacy and Security

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

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 9 SP 68048 , 9 / 110 North Steyne MANLY NSW 2095
Detailed Site Description:	<p>The subject allotment is legally known as Lot 9 in SP 68048.</p> <p>The site is regular in shape with a primary frontage of 15.235m along North Steyne and a secondary frontage of 15.24m along Pine Lane. The site has a surveyed area of 559.3m².</p> <p>The site is located within the R3 Medium Density residential zone from MLEP 2013 and accommodates a five (5) storey residential flat building with basement parking. Vehicular access to the basement parking is obtained via Pine Lane.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining development is characterised by residential flat buildings with shop top housing, detached and semi-detached dwellings located in the surrounding vicinity. The site is located directly opposite North Steyne Reserve and Manly Beach.</p>

Map:



SITE HISTORY

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

DA15/2015

Alterations and additions to an existing Residential Flat Building including enclosure of the side courtyard at ground level – Unit 3
Approved on 2 April 2015

DA0071/2013

Alterations and additions to an existing Residential Flat Building including extension into the balcony area - Unit 3
Approved on 3 July 2013

DA603/01

Strata subdivision of Residential Flat Building
Approved on 25 February 2002

DA5/00

Demolition and Construction of a Residential Flat Building
Approved on 30 January 2001

Application History

During the course of the assessment of the application, and in response to the submission received, the Applicant removed the proposed strata subdivision and internal works from the proposal and architectural plans.

The amended plans improved the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/06/2023 to 05/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mrs Alice O'Connor	2 / 110 North Steyne MANLY NSW 2095

The following issues were raised in the submissions:

- Character of the building

The above issues are addressed as follows:

- **Character of the building**

The submission raised concerns that the proposed works to the balcony will change the existing facade and design of the building, and alterations to the facade should consider the holistic design of the building as a whole.

Comment:

The proposed works are considered to be relatively minor and will not affect the general presentation of the building to the North Steyne streetscape. The extension to the balcony on the upper level of the building above a large roof will not be readily visible when viewed from street level, noting that the proposal will not result into further encroachment into the existing front setback area. Furthermore, the curved design of the extended balcony is considered to respond appropriately to the existing built form. The application has been referred to Council's Strategic and Place Planning (Urban Design) team who have raised no objections to the proposed development.

It is noted that the submission also raised concerns in relation to the proposed increase to the total area of the lot. The application was subsequently amended to remove the proposed strata subdivision and internal works and this concern is no longer relevant to the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to conditions</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
NECC (Coast and Catchments)	<p>Supported without conditions</p> <p>The property is located within the Coastal Use and Environment Area, the development is unlikely to have an impact on these attributes.</p>
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>The proposal is for internal and external alterations and additions to the fourth floor unit of an existing residential flat building. No objections to approval subject to conditions as recommended.</p>
NECC (Flooding)	<p>Supported without conditions</p> <p>The proposal seeks consent for alterations and additions to a unit located on the fourth floor of an existing residential flat building. All of the proposed works are located above the identified flood extent. Therefore, Section 5.4.3 Flood Prone Land from the Manly DCP 2013 is not applicable.</p>
Strategic and Place Planning (Urban Design)	<p>Supported without conditions</p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent for alterations and additions to an existing residential flat building. The proposed works are minor and will not affect the general presentation of the building to the North Steyne streetscape.</p> <p>Urban Design raise no objection to the proposed development.</p> <p>Please note: Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Council Planning Officer. Any impacts of non-</p>

Internal Referral Body	Comments
	compliances regarding heritage will be dealt with under the evaluation of Council Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Council Landscape Officers.

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 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposed development is for alterations and additions to the balcony and

living room windows and doors of one (1) residential unit (Unit 9) on the fourth floor of a residential flat building.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application, as the proposed works do not consist of substantial redevelopment or substantial refurbishment of the existing building.

Accordingly, no further assessment is required with regard to the provisions of SEPP 65.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A495873 dated 29 May 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed development is not anticipated to adversely impact the biophysical, hydrological or ecological environments. As the proposal is located on the upper level of a residential flat building, no adverse impacts are expected to coastal environmental values or natural coastal processes. Similarly, no adverse impacts are anticipated on water quality, vegetation or fauna and their habitats. The existing public access arrangements to the foreshore will not be changed as a result of the application. The Application has been referred to the Aboriginal Heritage Office and it is considered that there will be no known impacts on Aboriginal cultural heritage, practices and places. The proposal will not interact with 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 proposed development has been sited and designed to avoid any potential adverse impacts referred to in Clause 2.10(1).

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
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development is not anticipated to impact beach access, the amenity of public places or the foreshore or Aboriginal cultural heritage and built environment heritage. As such, the proposed development is considered to be designed and sited to avoid any potential 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 proposed development is unlikely to have a significant impact on coastal hazards or increase the risk of coastal hazards in relation to any other land

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:

No certified coastal management program applies at the subject site.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for

a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	13m	Proposed Works: 15.8m (top of balcony balustrade) Existing Building Height: 17.7m	21.54% (2.8m)	No, below existing maximum building height
Floor Space Ratio	FSR: 1.5:1 (840.24m ²)	FSR: 1.49:1 (832.28m ²) - Unaltered	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	13 metres

Proposed:	15.8 metres
Percentage variation to requirement:	21.54%



Figure 1 - Building Height non-compliance (measured to top of balcony balustrade)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

- (a) *that compliance with the development standard is unreasonable or unnecessary in the*

circumstances of the case, and

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the roof line.*
- *The proposal is consistent with the existing bulk and scale of the area.*
- *The proposal has no adverse impacts to views or view corridors.*
- *The proposal does not impact existing solar access to private and public places.*
- *The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.*

It is agreed that the proposal maintains the existing maximum building height, as the proposed development will not result in any further increase to the existing numerically non-compliant height of the building. The proposed development is sympathetic to the existing building and is consistent with the locality and neighbouring developments within the vicinity that are of similar scale. In terms of its strict compliance with this development standard it would not result in a net benefit to the desired future character of the locality, as the proposal is considered to be an appropriate design to preserve the residential medium density setting.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed works will be located below the existing roof line and will not result in any changes to the maximum height of buildings on the site. Adjoining and surrounding properties along North Steyne exhibit similar building height breaches and the proposal is therefore consistent with the prevailing building height and streetscape character.

b) to control the bulk and scale of buildings,

Comment:

The open balcony with glass balustrades will not be visually dominant when viewed from adjoining or surrounding properties nor from the public domain. The proposed development will maintain the existing side and front setbacks to resulting in a minimal impact on the building's perceived bulk. The proposal is considered to be complementary to the larger built form and will maintain the existing bulk and scale of the building when viewed from the streetscape.

c) to minimise disruption to the following:

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

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

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

Comment:

The open nature of the balcony and translucent glass balustrades will allow for view corridors across the site to be maintained. The proposal will have no adverse impacts on views to and from adjoining properties and public places.

d) to provide solar access to public and private open spaces and maintain adequate

sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The solar access presently received to public and private open spaces will be unchanged as a result of the proposed development.

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

Comment:

The subject site is not located in a recreation or environmental protection zone, therefore this objective is not relevant to this application.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone:

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

Comment:

The proposed works will provide additional outdoor space for the occupants whilst maintaining the medium density residential character of the locality.

- ***To provide a variety of housing types within a medium density residential environment.***

Comment:

The proposal will continue to provide residential housing within a medium density residential environment.

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

Comment:

The proposal retains the residential use of the site and therefore this objective is not relevant.

- ***To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.***

Comment:

The proposed works will not result in substantial redevelopment of the site. The relatively minor works to Unit 9 will be complementary to the existing built form and result in appropriate revitalisation of the front facade of the building.

- ***To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.***

Comment:

The existing residential flat building is not classified as tourist accommodation, therefore this objective is not relevant to this application.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) is compatible with the flood function and behaviour on the land, and***
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and***
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and***
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and***
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.***

Comment:

Although the site is located on the Northern Beaches Flood Hazard Map, the proposal seeks consent for alterations and additions to a unit located on the fourth floor of an existing residential flat building, above the identified flood extent. Therefore, the proposed development is not anticipated to adversely affect flood behaviour on the land or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,***
- (b) the intended design and scale of buildings resulting from the development,***
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,***
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.***

Comment:

The proposal has been referred to Council's Flood Management team and is supported. The proposed development will not impact flood behaviour or increase risk to life in the event of a flood.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 559.3m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 unit/50m ² (11 units)	10 units (Unaltered)	-	Yes
4.1.2.1 Wall Height	N: 12m	13.5m (Unaltered)	12.5% (1.5m)	No, as existing
	S: 12m	13.5m (Unaltered)	12.5% (1.5m)	No, as existing
4.1.2.2 Number of Storeys	3 storeys	4 storeys (Unaltered)	1 storey	No, as existing
4.1.2.3 Roof Height	Height: 2.5m	0.3m (Unaltered)	-	Yes
4.1.4.1 Street Front Setbacks	Primary Frontage (North Steyne): Prevailing building line / 6m	Proposed Balcony: 5.1m, consistent with prevailing setback Existing Balconies: 4.4m (Unaltered)	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Secondary street frontage (Pine Lane): Prevailing setback / 6m	Proposed Balcony is fronting the North Steyne frontage Existing Building: 2.4m, consistent with prevailing setback (Unaltered)	-	Yes
	N: 4m (based on wall height)	Proposed Balcony: 2.3m Existing Building: 2m (Unaltered)	42.5% (1.7m)	No
	S: 4m (based on wall height)	Proposed Balcony: 2.6m Existing Building: 2.4m (Unaltered)	35% (1.4m)	No
4.1.4.4 Rear Setbacks*	8m	N/A	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1	Open space 45% of site area (251.685m ²)	20.76% (116.1m ²) Unaltered	53.87% (135.59m ²)	No, as existing
	Open space above ground <40% of total open space	Nil	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 25% of open space (29.03m ²)	37.9% (44m ²) Unaltered	-	Yes

4.1.5.3 Private Open Space	18m ²	Proposed Balcony:24.7m ²	-	Yes
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*The site has two frontages, therefore there is no rear setback in this instance

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description

Clause 3.4.2.2 of the DCP stipulates that architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. No submissions in relation to visual

privacy have been received during the notification period, nevertheless the proposed extension of the balcony has been considered against the underlying Objectives of the Control as follows:

Merit consideration:

Objective 1) To minimise loss of privacy to adjacent and nearby development by: appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

Comment:

The proposed balcony extension will not result in further encroachment into the northern or southern side setbacks and will not result in an increase to the existing building height. The balcony will be oriented to face the east in order to capitalise on water views with the bulk of the balcony at the front of the building to align with the larger balconies that belong to units on the lower floors. Unit 9 is sited higher than the top floor units of adjoining buildings and the proposed development will not result in direct overlooking across the side boundaries into adjoining balconies. The roof of the adjoining buildings to the north and south will assist in obscuring direct sightlines. As there is an existing upper floor balcony, in the context of existing development within the site, the proposal is not anticipated to result in any additional unreasonable overlooking impacts.

It is noted that the existing front balconies of the units at No.110 North Steyne exhibit no privacy screening along the side elevations, which permits some degree of overlooking in the current scenario. Notably, the adjoining and surrounding properties also do not have privacy screening along the sides of the front balconies in order to maintain a sense of openness in the streetscape. The imposition of privacy screens on the proposed balcony extension is not considered warranted or a positive design outcome in this instance.

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

Comment:

The proposal will allow for the maintenance of outlook and views from surrounding properties without compromising privacy or access to light and air to occupants of the subject site.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not impact upon the site's ability to provide personal and property security for occupants, nor will it compromise casual surveillance of the neighbourhood.

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

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

The proposal does not involve any works that will alter the existing numerically non-compliant wall height of the residential flat building. The glass balustrade to the balcony will replace an existing balustrade at Unit 9. Therefore, the outcomes of the original consent for the building are maintained and a detailed merit assessment is not required in this instance.

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

Description of non-compliance

Clause 4.1.4.2 of the DCP stipulates that setbacks between any part of a building on the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The extended balcony is setback 2.3m from the northern side boundary and 2.6m from the southern side boundary, resulting in variations to the control of 42.5% (1.7m) and 35% (1.4m), respectively.

Notably, the proposed extension of the balcony and replacement of windows and sliding doors on the front façade of Unit 9 will not alter the existing numerically non-compliant side setbacks of the residential flat building.

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 extension of the front balcony will not result in any further encroachment into the front or side setbacks, therefore the spatial proportions of the street will be maintained. The proposed front setback is consistent with the prevailing building line along the streetscape. Furthermore, no changes are proposed on the ground floor level that would impact the landscape character of North Steyne.

- ***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 proposal is not anticipated to result in any adverse amenity impacts to adjoining properties in regards to solar access, view sharing, or privacy. Given that the proposed works will maintain the open nature of the balcony and the proposed windows and doors will replace existing openings, equitable access to light, sunshine and air movement will be maintained. Existing separation between buildings and the public domain will be unchanged and it is considered that the outcomes of the original non-compliance approved for the residential flat building will be maintained.

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

Comment:

The existing residential flat building and balcony of Unit 9 present numerically non-compliant side setbacks. Flexibility in the siting of new works is considered reasonable in this instance as the proposed balcony extension has been designed to follow the setbacks of the existing building on the site.

- **Objective 4) To enhance and maintain natural features by:**
- **accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;**
- **ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and**
- **ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.**

Comment:

The proposal will retain the existing landscaped areas on site as no changes are proposed on the ground floor level. The nature of the development does not unduly detract from the context of the site, and the site does not adjoin a national park or urban bushland.

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

Comment:

The site is not located on bush fire prone land, therefore this objective is not relevant for this application.

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

4.1.5 Open Space and Landscaping

Clause 4.1.5 of the DCP requires that at least 45% (251.685m²) of the site area is to be open space. The site exhibits a total open space of 20.76% (116.1m²), which is numerically non-compliant with the control.

The control defines open space as areas with a horizontal dimension of at least 3 metres in any direction and must have a minimum unbroken area of 12m². The proposed extension of the balcony does not meet the aforementioned minimum specifications and therefore does not contribute to any changes to the existing numerically non-compliant total open space. As such, no further consideration of this control is required for the purpose of this assessment.

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 \$2,530 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$253,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a residential flat building, has been referred to the Northern Beaches Planning Panel (NBLPP) due to the application proposing a variation to the Height of Buildings development standard of more than 10% (2.8 metres or 21.54%).

One (1) submission was received during the notification period.

The proposed development is sympathetic to the character of the site and will maintain an appropriate visual relationship with the surrounding environment, noting that the proposal will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

Therefore, the application is recommended for approval (subject to conditions).

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

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

RECOMMENDATION

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0687 for Alterations and additions to a residential flat building on land at Lot 9 SP 68048, 9 / 110 North Steyne, 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
Site/Roof Plan - Drawing No.A01 Revision A	2 January 2022	Mark Szczerbicki Design Studio
Level 4 Plan - Drawing No.A02 Revision D	3 July 2023	Mark Szczerbicki Design Studio
Balcony Slab Infill Detail - Drawing No.A03 Revision D	3 July 2023	Mark Szczerbicki Design Studio
Elevation 01 - Drawing No.A04 Revision A	2 January 2022	Mark Szczerbicki Design Studio
Elevation 02 - Drawing No.A05 Revision A	2 January 2022	Mark Szczerbicki Design Studio
Elevation 03 - Drawing No.A06 Revision A	2 January 2022	Mark Szczerbicki Design Studio
Section Plan - Drawing No.A07 Revision A	2 January 2022	Mark Szczerbicki Design Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No.A495873	29 May 2023	Mark Szczerbicki Design Studio

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Undated	Susan Massasso

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	19 June 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:
- o 7.00 am to 5.00 pm inclusive Monday to Friday,
 - o 8.00 am to 1.00 pm inclusive on Saturday,
 - o 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 \$2,530.00 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 \$253,000.00.

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

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

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$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. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Capability Statement prepared by Steve Watson & Partners, dated 25/5/2023, Report No. 2023/1035 R1.0, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

8. **Waste Management Plan**

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

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

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

9. **Compliance with Standards**

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

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

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

DURING BUILDING WORK

10. **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.

11. **Survey Certificate**

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

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

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

12. **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.

13. **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.

DRAWING LIST

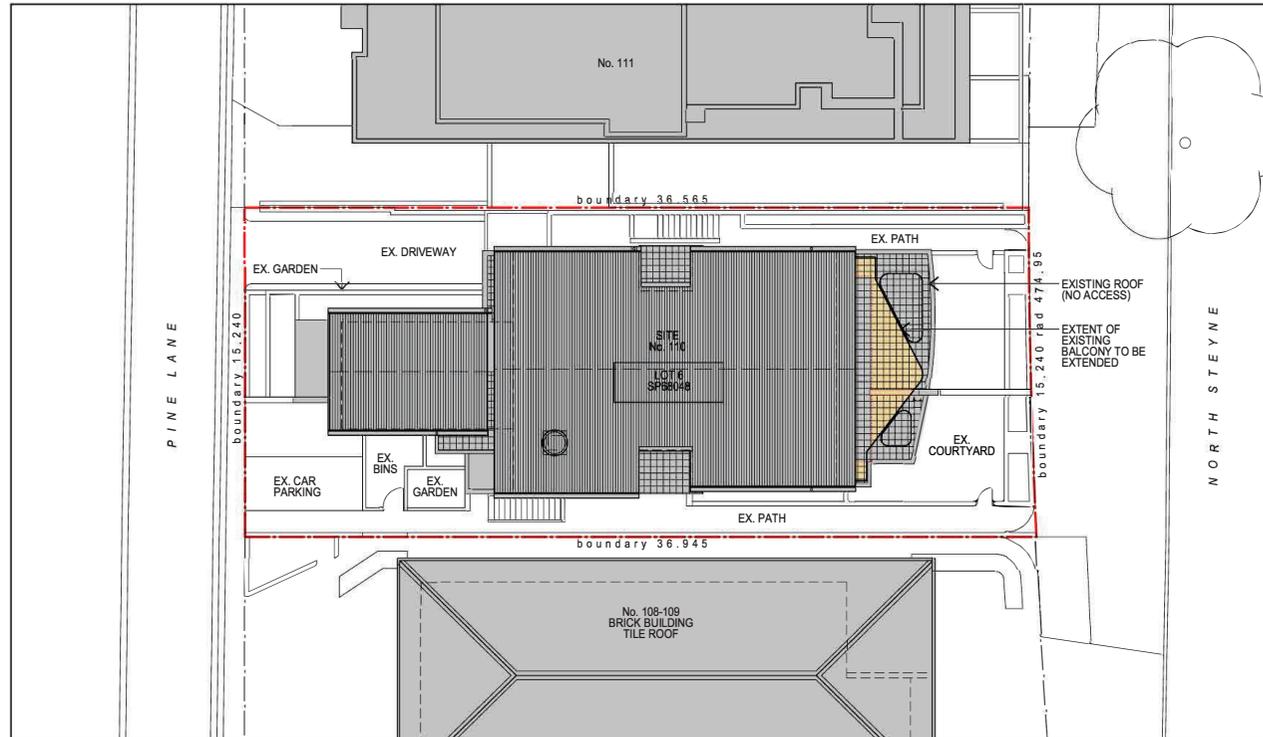
- A01 SITE/ ROOF PLAN AND DRAWING LIST
- A02 LEVEL THREE PLAN
- A03 LEVEL FOUR PLAN
- A04 ELEVATIONS 1
- A05 ELEVATIONS 2
- A06 ELEVATIONS 3
- A07 SECTION
- A10 AREA CALCULATIONS

LOCATION MAP (NTS)



560.16 m'	REQUIREMENT	EXISTING	PROPOSED
FSR			

SITE PLAN



AMENDMENT	CLIENT
A 02.01.2022 DA ISSUE	SUSAN MASSAGO
	do not scale from drawings
	use figured dimensions only
	if in doubt - ASK report any
	discrepancies to architect.
	builder to arrange all
	necessary inspections
	builder to ensure compliance with
	BCA and relevant Aust Standards

LEGEND
EX EXISTING
CT CERAMIC TILE
TF TIMBER FLOOR
MR METAL ROOF SHEETING
RB RENDERED BLOCK WORK
BL FACE BLOCK WORK

(W2)	NEW WINDOW NUMBERS
(---)	DEMOLITION
(---)	EXISTING WALLS
(---)	NEW WORK
(---)	SHOWN COLOURED

M S D S
MARK SZCZERBICKI DESIGN STUDIO

Registered Architect: Level 1, 102 Queens Rd New South Wales NSW 1510
 Phone: 915 951 912
 Email: info@msds.com.au
 Website: www.markszcerbicki.com.au

ALTERATIONS & ADDITIONS 9/110 NORTH STEYNE, MANLY, NSW 2095, LOT 9 SP98048

SITE/ ROOF PLAN AND DRAWING LIST

1551 1:200 @ A3 NOV 2022 ISSUE **A** DRAWING No **A01**

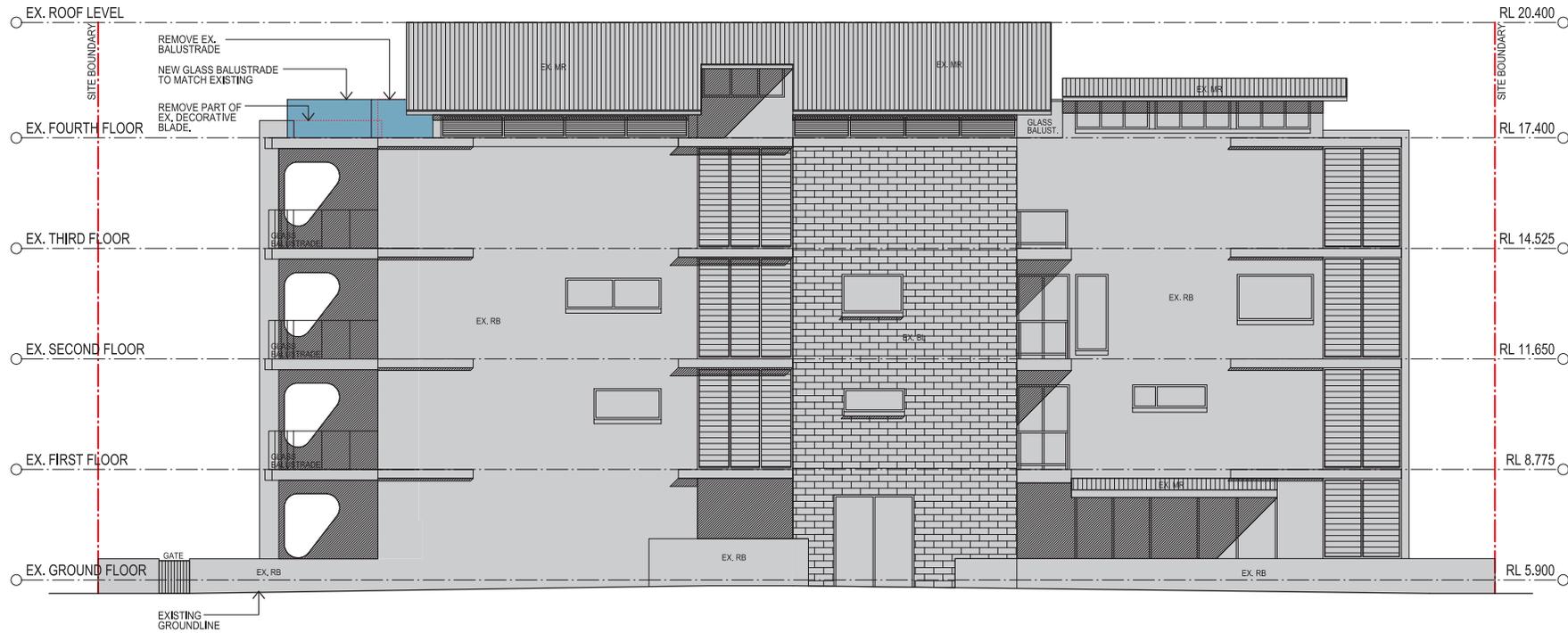
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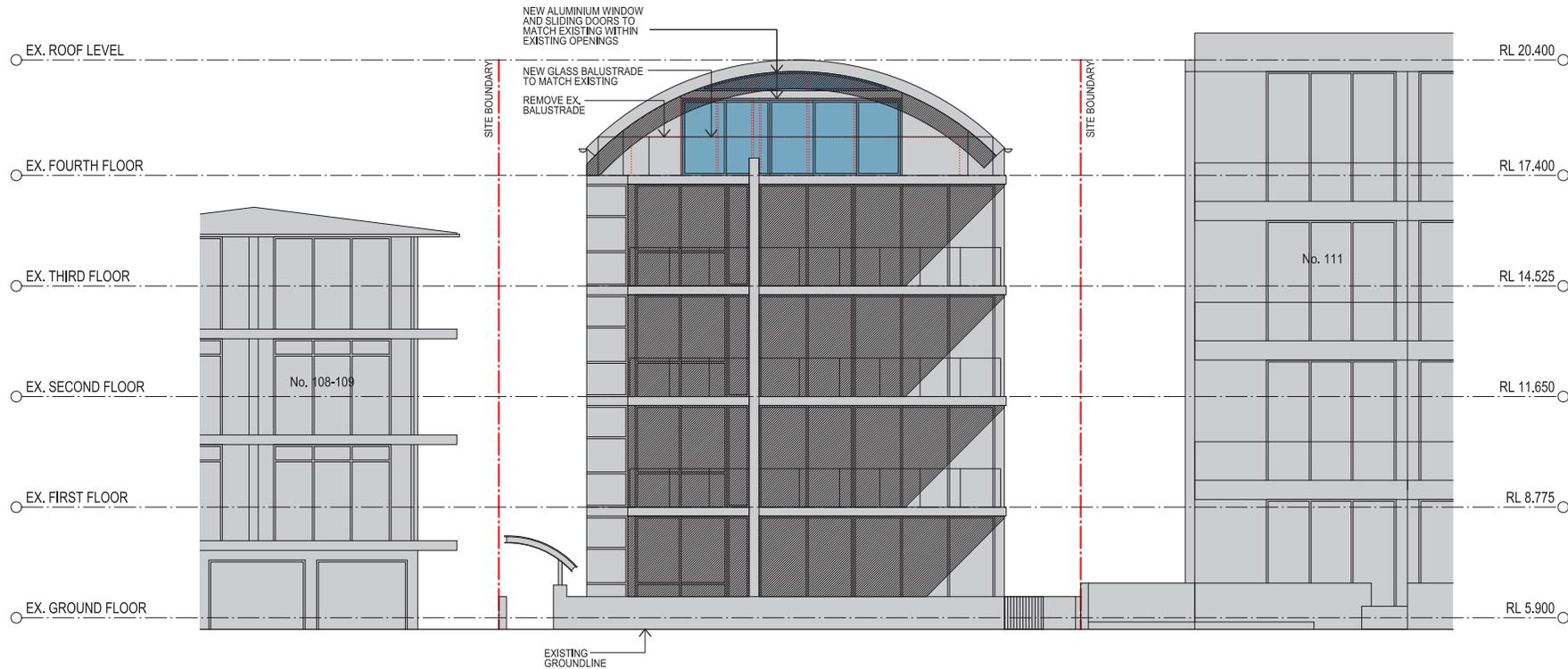
SOUTH ELEVATION

AMENDMENT	CLIENT	LEGEND	(W2) NEW WINDOW NUMBERS	<p>MARK SZCZERBICKI DESIGN STUDIO</p>	ALTERATIONS & ADDITIONS	9/110 NORTH STEYNE, MANLY, NSW 2095, LOT 9 SP88048
A 02.01.2022 DA ISSUE	SUSAN MASSASO	EX EXISTING CT CERAMIC TILE TF TIMBER FLOOR MR METAL ROOF SHEETING RB RENDERED BLOCK WORK BL FACE BLOCK WORK	DEMOLITION EXISTING WALLS NEW WORK SHOW COLOURED		ELEVATION 01	1551 1:100 @ A3 NOV 2022
	do not scale from drawings use figured dimensions only if in doubt - ASK, report any discrepancies to architect, builder to arrange all necessary inspections builder to ensure compliance with BCA and relevant Ausi Standards			<p>Mark Szczerbicki Architect 14/110 North Steyne Manly NSW 2095 02 9539 1000</p> <p>Level 1, 102 Sussex Rd Manly NSW 2095 02 9539 1000</p> <p>0453 888 012 1143@msdsdesign.com 11/11/2023</p>	ISSUE FOR DA	0 1 2 3 4



NORTH ELEVATION

AMENDMENT	CLIENT	LEGEND	<p>(W2) NEW WINDOW NUMBERS</p> <p>DEMOLITION</p> <p>EXISTING WALLS</p> <p>NEW WORK SHOWN COLOURED</p>	<p>M S D S</p> <p>MARK SZCZERBICKI DESIGN STUDIO</p> <p>15/101/102 Queens Rd Manly NSW 2156 www.northernbeaches.com.au</p> <p>045 888 012 11443@northernbeaches.com.au 02 915 8220</p>	<p>ALTERATIONS & ADDITIONS 9/110 NORTH STEYNE, MANLY, NSW 2095, LOT 9 SP88048</p> <p>ELEVATION 02</p> <p>1551 1:100 @ A3 NOV 2022 ISSUE A DRAWING No A05</p> <p>ISSUE FOR DA</p>
A 02.01.2022 DA ISSUE	SUSAN MASSARO	<p>EX EXISTING</p> <p>CT CERAMIC TILE</p> <p>TF TIMBER FLOOR</p> <p>MR METAL ROOF SHEETING</p> <p>RB RENDERED BLOCK WORK</p> <p>BL FACE BLOCK WORK</p>			



**EAST ELEVATION
North Steyne**

AMENDMENT		CLIENT		LEGEND		(W2) NEW WINDOW NUMBERS		M S D S		ALTERATIONS & ADDITIONS	
A 02.01.2022 DA ISSUE		SUSAN MASSASO		EX EXISTING		DEMOLITION		MARK SZCZERBICKI DESIGN STUDIO		9/110 NORTH STEYNE, MANLY, NSW 2095, LOT 9 SP88048	
		do not scale from drawings		CT CERAMIC TILE		EXISTING WALLS		1551 1:100 @ A3 NOV 2022		ISSUE A DRAWING No A06	
		use figured dimensions only		TF TIMBER FLOOR		NEW WORK		1551 1:100 @ A3 NOV 2022		ISSUE FOR DA	
		if in doubt - ASK, report any		MR METAL ROOF SHEETING		SHOW COLOURED		1551 1:100 @ A3 NOV 2022		0 1 2 3 4	
		discrepancies to architect,		RB RENDERED BLOCK WORK				1551 1:100 @ A3 NOV 2022			
		builder to arrange all		BL FACE BLOCK WORK				1551 1:100 @ A3 NOV 2022			
		necessary inspections						1551 1:100 @ A3 NOV 2022			
		builder to ensure compliance with						1551 1:100 @ A3 NOV 2022			
		BCA and relevant Aus/NZ Standards						1551 1:100 @ A3 NOV 2022			



**WRITTEN REQUEST PURSUANT TO
CLAUSE 4.6 OF MANLY LOCAL
ENVIRONMENTAL PLAN 2013**

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING THE HEIGHT OF
BUILDINGS AS DETAILED IN CLAUSE 4.3
OF MANLY LOCAL ENVIRONMENTAL
PLAN 2013**

**Alterations and Additions to Existing
Residential Flat Building including new
fit out to Unit 9 at 110 North Steyne,
Manly NSW 2095**

✉ mathew@fourtowns.com.au

☎ 0425232018

www.fourtowns.com.au

PO Box 361, Balgowlah NSW 2093

Alterations and Additions to Existing Residential Flat Building

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

Report prepared by:

Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:

Susan Massasso

19 May 2023

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Alterations and Additions to Existing Residential Flat Building

Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height of a building as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013). It is noted that this request is made for the proposed alterations and additions at 110 North Steyne, Manly.

The following assessment of the variation to Clause 4.3 – Building Height development standard, has taken into consideration the recent judgement contained within Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Requirement	13m
Proposed	Proposed works under existing building height - 14.45m Existing building height to remain – 14.8m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	11.15%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The proposal is consistent with surrounding developments and the proposed variation is compatible with the locality and complies with other relevant controls which determine the built form of the site.

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

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 R3 Medium Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the roof line.
- There are sufficient environmental planning grounds to support the proposed variation.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors.
- The proposal does not impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

Alterations and Additions to Existing Residential Flat Building

Clause 4.6 Variation Requirements

The grounds of objection are based upon the various tests of the recent judgements in the *NSW Land and Environment Court Case Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130* and review the following:

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council at [42] and [43]*.
2. The underlying objective or purpose of Clause 4.3(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.
5. The relevance of the zoning provisions of the land to which the development is proposed.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31]*

Is the proposed development in the public interest?

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

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

Secretary's Concurrence

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

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

Alterations and Additions to Existing Residential Flat Building

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

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

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

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

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

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

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

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

(5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*

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

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note— *When this Plan was made it did not include all of these zones.*

(7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*

- (a) a development standard for complying development,*

Alterations and Additions to Existing Residential Flat Building

- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,*
- (c) clause 5.4.*

Comment: As detailed previously in this request, Clause 4.6 of MLEP2013 is applicable to enable a variation to the Height of Building to permit Northern Beaches Council power to grant development consent to the subject development.

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

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

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

4.3 Height of buildings

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

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

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

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Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the MLEP2013 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary. The proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the MLEP2013, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.3 (2) states:

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

The Height of Building Map sets a maximum Height of Building control of 13m. For the purpose of calculating Height of Building, the MLEP2013 provides the following definition:

Building height is defined as follows:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

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

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

The Height of Building in clause 4.3(2) of the MLEP2013 is a development standard in accordance with the definition set out below:

Development standards’ is defined in section 1.4 of the EP&A Act 1979 as:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which **requirements are specified or standards are fixed** in respect of any aspect of that development,

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including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Despite the variation to the Height of Building control which occurs due to the existing building, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project architects have worked tirelessly to design a new open plan internal fit out and minor external changes to unit 9 that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the North Steyne streetscape.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing noting the building height remains as existing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under MLEP2013 and the provisions of Clause 4.6 which permit a variation to a development standard.

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

Compliance being unreasonable or unnecessary

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

Comment: Clause 4.6(3)(a) of the MLEP2013 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is *'unreasonable or unnecessary in the circumstances of the case'*.

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

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. The proposed works do not alter the existing building height and are located under the roof line which is maintained, therefore it is submitted that the development is reasonable despite the variation to the development standard. Given the proposed application is consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particularly the Manly precinct. As noted under the review of Clause 4.3 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.3, as outlined below:

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.

Alterations and Additions to Existing Residential Flat Building

- The objectives of the MLEP2013 R3 Medium Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the roof line.
- There are sufficient environmental planning grounds to support the proposed variation.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors.
- The proposal does not impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

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

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

Comment: The proposal does not change the existing maximum building height of 14.8m. The proposed works relate to unit 9 and the replacement of existing glass balustrades and aluminum sliding doors to match the existing front façade. The proposed works are under the existing maximum building height at 14.45m. Whilst the proposal doesn't technically comply, the proposed works are sympathetic to the building and as noted below the existing ridgeline and maximum building height of 14.8m. The proposal does not increase the building footprint, nor does it extend the building height as existing. The proposal is supported and in our opinion is consistent with the objectives of the Clause, as outlined below:

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

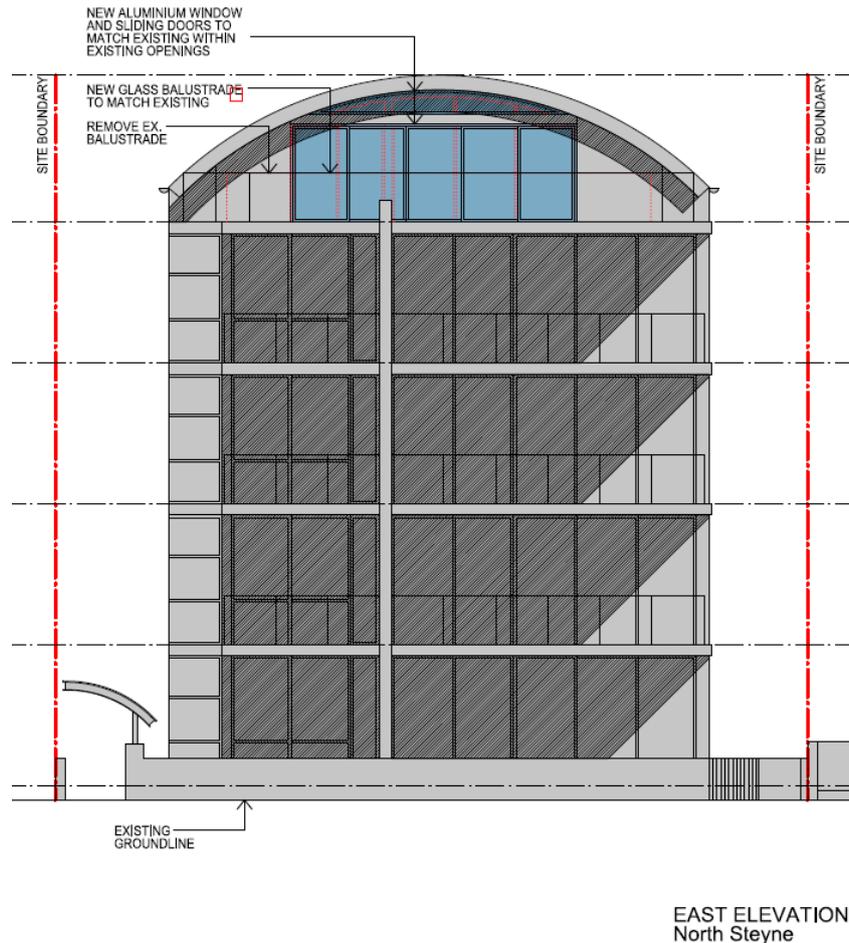
Comment: The proposed development is compatible with the height and scale of surrounding and nearby development. It is noted that notwithstanding the existing breach to the building height, the proposal is below the existing maximum building height for the building, therefore the works are inconsequential to that existing and purely relate to the replacement of sliding doors. It is noted that notwithstanding the existing breach to the building height, adjoining properties have similar breaches, and the approval would not result in significant impacts to the bulk and scale of North Steyne. It is important for Council to acknowledge the existing streetscape and built form of 110 North Steyne, as existing. The proposed works relate to cosmetic alterations and additions that are consistent with the desired future streetscape of the locality.

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

Comment: The proposal has been strategically designed by the project architect to be the replacement of the sliding doors and a new glass balustrade only. The proposal will not have a visual impact, will not adversely disrupt views, will not increase privacy or amenity impacts to neighbouring properties. It is therefore considered that the bulk and scale of the existing building is retained.

Alterations and Additions to Existing Residential Flat Building

The excerpt below of the eastern elevation shows the proposed works and the existing building height of the entire building. The proposal has been strategically designed to maintain the existing bulk and scale of the streetscape. The excerpt shows the proposal has a maximum height of 14.45m, with the existing building 14.8m.



(c) to minimise disruption to the following—

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

Comment: The proposal relates to alterations and additions externally in the form of replacing the existing window and sliding doors and moving the glass balustrade. The proposal will have no impact to views from both adjoining properties and public spaces.

Alterations and Additions to Existing Residential Flat Building

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

Comment: Not applicable – no change to existing provisions on-site.

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

Comment: Not applicable – the site is not located within a recreation or environmental protection zone.

It is our professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. We have formed the considered opinion that the project is a sympathetic design and development with no impact to existing bulk and scale and is consistent with the existing and future character of the area. The proposal is not offensive, or unsympathetic in a streetscape context nor the context from North Steyne, and therefore the variation can be supported by Northern Beaches Council.

2. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*

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

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

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

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

Alterations and Additions to Existing Residential Flat Building

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

Zoning Map



Zone R3 Medium Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.
- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Attached dwellings; Boarding houses; Boat sheds; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental protection works; Flood mitigation works; Group homes; Home businesses; Home industries; Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Recreation facilities (indoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Service stations; Shop top housing; Signage; Take away food and drink premises; Tank-based aquaculture; Tourist and visitor accommodation; Water recycling facilities; Water supply systems

4 Prohibited

Advertising structures; Farm stay accommodation; Water treatment facilities; Any other development not specified in item 2 or 3

The proposed use is defined as follows under MLEP2013:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

Note— Residential Flat Buildings are a type of **residential accommodation**—see the definition of that term in this Dictionary.

Alterations and Additions to Existing Residential Flat Building

Comment: The relevance of the zone objectives are assessed below:

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

The site is zoned R3 Medium Density Residential. A residential flat building is a permissible land use with Council's consent. The proposal is consistent with the objectives of the zone, as supported below:

- The proposal provides for the housing needs of the community.
- The proposal provides a variety of housing types and densities in line with the Manly area.
- There are multiple residential flat buildings within the immediate vicinity as outlined in the site analysis.
- The proposal provides increased residential amenity through the refurbishment and internal redesign of unit 9.

Sufficient environmental planning grounds

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

Comment: Sufficient environmental planning grounds exist to justify the height of buildings variation namely the retention of the existing building height noting that the proposal will not alter the existing variation on site. Further justification to support the proposed variation is provided below:

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

Planning principle: assessment of height and bulk

· The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)

How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

· Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:

Does the area have a predominant existing character and are the planning controls likely to maintain it?

Does the proposal fit into the existing character of the area?

· Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

Is the proposal consistent with the bulk and character intended by the planning controls?

· Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation

Alterations and Additions to Existing Residential Flat Building

of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is: Does the proposal look appropriate in its context?

Note: the above questions are not exhaustive; other questions may also be asked.

In addressing the above planning principals, the benefits of the proposal, represents a new functional dwelling through the internal redesign of the living space and external cosmetic changes to unit 9.

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

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 R3 Medium Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the roof line.
- There are sufficient environmental planning grounds to support the proposed variation.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors.
- The proposal does not impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

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

2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

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

Is the proposed development in the public interest?

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

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

Alterations and Additions to Existing Residential Flat Building

Comment: As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of Height of Building applicable to this site as the breach is existing. Additionally, the building improvements add significant amenity benefits through a new functional dwelling with modern amenities and an open plan design. Council should encourage such developments via support of positive intention to upgrade sites within the Northern Beaches LGA.

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

Secretary's Concurrence

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

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

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

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

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

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

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

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

Alterations and Additions to Existing Residential Flat Building

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

Summary and Conclusion

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.3(2) Height of Building and this statement verifies that compliance with the provisions of clause 4.3(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

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

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

A variation to the strict application of Council's Height of Buildings development standard is considered appropriate for the site at 110 North Steyne, Manly.

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

- The objectives of the MLEP2013 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the MLEP2013 R3 Medium Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary given the existing building height is retained and the works are below the roof line.
- There are sufficient environmental planning grounds to support the proposed variation.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors.
- The proposal does not impact existing solar access to private and public places.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

As outlined above, the proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. The permissible Height of Building control does not align with the permissible height on the site, nor several built form

Alterations and Additions to Existing Residential Flat Building

controls of the MDCP2013. This essentially limits any redevelopment potential of the site without varying Council's standards.

In addition to the above justification, the proposal is considered to meet the intent of Council's controls relating to Height of Building, the R3 Medium Density Residential zone objectives and the desired future character of this precinct. It is therefore submitted that the non-compliance with the Height of Building Clause 4.3(2) is acceptable, and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. It is noted the assessment has been undertaken in relation to the most recent court case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. The variation under Clause 4.6 is to vary the Height of Building control to give Northern Beaches Council the power to grant development consent to the proposed development.

ITEM 5.3	DA2023/0287 - NORTH STEYNE, MANLY - SUBDIVISION OF TWO (2) LOTS INTO FOUR (4) STRATUM LOTS
AUTHORISING MANAGER	Rod Piggott
TRIM FILE REF	2023/496476
ATTACHMENTS	1 ↓Assessment Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant and land owner is the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0287 for Subdivision of two (2) lots into four (4) stratum lots on land at Lot 1 DP 1062787, 0 North Steyne, MANLY, Lot 3 DP 1062787, 0 North Steyne, MANLY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0287
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 1062787, 0 North Steyne MANLY NSW 2095 Lot 3 DP 1062787, 0 North Steyne MANLY NSW 2095
Proposed Development:	Subdivision of two (2) lots into four (4) stratum lots
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre OLDManly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Northern Beaches Council

Application Lodged:	30/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	23/06/2023 to 07/07/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

This development application seeks consent for subdivision of two (2) lots into four (4) stratum lots. The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as Northern Beaches Council is both the applicant for the DA and landowner of the subject site. The application is fully compliant with the provisions of the applicable State Environmental Planning Policies (SEPP's), but also the Manly Local Environmental Plan (MLEP) and Manly Development Control Plan (MDCP). The Council-related Development Applications Policy does not apply to this application as it was lodged before 3 April 2023.

During the notification period, Council received 1 submissions which raised concerns with the potential

future ownership of the proposed stratum lots. These concerns are addressed within the report and do not warrant refusal of the application.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the stratum subdivision of 2 strata lots, where each of those strata lots would have 2 stratum lots as follows:

Exiting Lot 1

- Lot 21 - limited in depth to RL 3.51 and limited in height to RL 7.86 AHD.
- Lot 22 - limited in depth to RL 7.86 AHD and is unlimited in height.

Existing Lot 3

- Lot 23 - limited in depth to RL 3.51 and limited in height to RL 7.86 AHD.
- Lot 24 - limited in depth to RL 7.86 AHD and is unlimited in height.

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

SITE DESCRIPTION

Property Description:	Lot 1 DP 1062787 , 0 North Steyne MANLY NSW 2095 Lot 3 DP 1062787 , 0 North Steyne MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of two (2) allotments located on the western side of North Steyne and are separated by Lot 2 DP 1062787.</p> <p>The site is irregular in shape with a frontage of Lot 1 being 6.22m and Lot 3 being 6.235m along North Steyne. The site has a surveyed area of 57.4m².</p> <p>The site is located within the E1 Local Centre zone and forms part of the North Steyne road reserve.</p> <p>The site is flat and is completely paved.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by medium and high density mixed-use residential and commercial buildings. Manly Beach and promenade is located opposite the site.</p>

Map:



SITE HISTORY

Between 1961 and 2019, the site was subject to the North and South Steyne Road Widening Scheme (the Scheme).

The Scheme allowed Council to acquire land on the western side of South Steyne (from The Corso to Ashburner Street) and North Steyne (from The Corso to Collingwood Street) to widen the road up to 6 metres for a wider vehicle carriageway, a promenade for foot traffic, and for areas of gardens.

Figure 1 below indicates the original extent of the Scheme along North and South Steyne.



Figure 1 - original extent of the road widening scheme

The Scheme has been progressively implemented since the 1960's, involving the acquisition of land

with and without compensation via conditions of development consent and by development deeds in advance of the determination of development consents. The Scheme was subsequently included in Manly Development Control Plans.

Since its commencement, 50 of the 71 parcels of land affected by the scheme had been acquired by Council. However, the Scheme had been challenged in various Land and Environment Court proceedings in the last 20 years. The outcome in each instance has been either a Court finding or an acceptance that Council did not have the legislative power to claim title over the land.

Council at its meeting on 23 July 2019 resolved to adopt amendments to Council's Manly DCP 2013 to remove reference to the North and South Steyne Road Realignment Scheme. The amended DCP came into force on 3 August 2019.

Council is now in the process of seeking to transfer land dedicated to the road widening process to adjoining lot owners.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures.</p>

Section 4.15 Matters for Consideration	Comments
	<p>This clause is not relevant to this application.</p> <p><u>Clause 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/06/2023 to 07/07/2023 in

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

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

Name:	Address:
Withheld	NSW

The following issue was raised in the submission:

- **Dedication of proposed stratum lots**

The submission raised concern that ownership of proposed lots 22 and 24 are to be retained by Northern Beaches Council and that transfer of the land as existing to SP 69948 is a more appropriate solution.

Comment:

The future ownership of lots proposed in this development application is not a matter for consideration in its assessment. It is the landowner who has the right to determine future ownership of the proposed lots.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>Supported, without conditions</p> <p>The proposal is for a four (4) lot Stratum Subdivision at 43-45 North Steyne Manly.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • Relevant LEP and DCP clauses. <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Gina Hay dated March 2023, the DA satisfies requirements under clauses 2.10, 2.11</p>

Internal Referral Body	Comments														
	<p>and 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>No coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Manly LEP 2013 and Manly DCP.</p>														
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>The proposal is for a four (4) lot Stratum Subdivision at 43-45 North Steyne Manly. The proposed subdivision has frontage to a public road. Other requirements of Section 4.1.1.2 of Manly DCP 2013 have been satisfied.</p>														
NECC (Flooding)	<p>Supported, without conditions</p> <p>The proposal seeks consent for a stratum subdivision of land into various lots. Lower lots will become part of the existing retail spaces and upper lots retained by Council. No physical works are proposed. There are no flood related objections.</p>														
Strategic and Place Planning (Heritage Officer)	<p>Supported, without conditions</p> <table border="1" data-bbox="568 1301 1324 1962"> <thead> <tr> <th data-bbox="568 1301 1324 1330">HERITAGE COMMENTS</th> </tr> </thead> <tbody> <tr> <td data-bbox="568 1335 1324 1364">Discussion of reason for referral</td> </tr> <tr> <td data-bbox="568 1368 1324 1426">The proposal has been referred to Heritage as the proposal is within the vicinity of heritage items</td> </tr> <tr> <td data-bbox="568 1453 1324 1482">Town Centre Conservation Area</td> </tr> <tr> <td data-bbox="568 1487 1324 1516">Hotel Steyne - 75 The Corso</td> </tr> <tr> <td data-bbox="568 1520 1324 1550">Beach Reserve - Merrett Park - North and South Steyne</td> </tr> <tr> <td data-bbox="568 1554 1324 1583">Details of heritage items affected</td> </tr> <tr> <td data-bbox="568 1588 1324 1617">Town Centre</td> </tr> <tr> <td data-bbox="568 1621 1324 1650"><u>Statement of Significance</u></td> </tr> <tr> <td data-bbox="568 1655 1324 1753">The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales</td> </tr> <tr> <td data-bbox="568 1758 1324 1787">Physical Description</td> </tr> <tr> <td data-bbox="568 1814 1324 1843">Hotel Steyne</td> </tr> <tr> <td data-bbox="568 1848 1324 1877"><u>Statement of Significance</u></td> </tr> <tr> <td data-bbox="568 1881 1324 1962">The Steyne Hotel, also known as 75 The Corso is considered to demonstrate Historic, Associative, Aesthetic, Social, Technological, Rarity and Representative Heritage Significance.</td> </tr> </tbody> </table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the proposal is within the vicinity of heritage items	Town Centre Conservation Area	Hotel Steyne - 75 The Corso	Beach Reserve - Merrett Park - North and South Steyne	Details of heritage items affected	Town Centre	<u>Statement of Significance</u>	The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales	Physical Description	Hotel Steyne	<u>Statement of Significance</u>	The Steyne Hotel, also known as 75 The Corso is considered to demonstrate Historic, Associative, Aesthetic, Social, Technological, Rarity and Representative Heritage Significance.
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Internal Referral Body	Comments																					
	<p><u>Physical Description</u> The existing structure is a two storey building, with modern roof addition. The current building on site was constructed during the inter-war era and is consistent with the Inter-war Art Deco Style.</p> <p>Beach Reserve <u>Statement of Significance</u> High significance as natural sand beach and cultural backdrop of paved promenade and first coastal plantings of Norfolk Island Pines.</p> <p><u>Physical Description</u> Beachfront, promenade, sandstone retaining wall, paved, grassed And/or planting beds and remnant plantings of Norfolk Island Pines planted from the 1850's to the 1880's.</p> <table border="1" data-bbox="571 947 1337 1435"> <thead> <tr> <th colspan="3" data-bbox="571 947 1337 981">Other relevant heritage listings</th> </tr> </thead> <tbody> <tr> <td data-bbox="571 981 842 1099">Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td> <td data-bbox="842 981 922 1099">No</td> <td data-bbox="922 981 1337 1099"></td> </tr> <tr> <td data-bbox="571 1099 842 1160">Australian Heritage Register</td> <td data-bbox="842 1099 922 1160">No</td> <td data-bbox="922 1099 1337 1160"></td> </tr> <tr> <td data-bbox="571 1160 842 1220">NSW State Heritage Register</td> <td data-bbox="842 1160 922 1220">No</td> <td data-bbox="922 1160 1337 1220"></td> </tr> <tr> <td data-bbox="571 1220 842 1281">National Trust of Aust (NSW) Register</td> <td data-bbox="842 1220 922 1281">Yes</td> <td data-bbox="922 1220 1337 1281">Steyne Hotel is on the register</td> </tr> <tr> <td data-bbox="571 1281 842 1373">RAIA Register of 20th Century Buildings of Significance</td> <td data-bbox="842 1281 922 1373"></td> <td data-bbox="922 1281 1337 1373"></td> </tr> <tr> <td data-bbox="571 1373 842 1435">Other</td> <td data-bbox="842 1373 922 1435">N/A</td> <td data-bbox="922 1373 1337 1435"></td> </tr> </tbody> </table> <p><u>Consideration of Application</u> The proposal seeks consent for a stratum subdivision of land into various lots. Lower lots will become part of the existing retail spaces and upper lots will eventually become part of strata plan SP69948 . No physical works are proposed. The conservation area and Steyne Hotel are located to the south and are separated from the site by 42 North Steyne. Merrett Reserve is the east across North Steyne. As there is no physical works proposed, there is considered to be no impact from the proposed stratum subdivision on the heritage items. Future building works would have to consider the heritage items and their potential impacts.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No</p>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	Yes	Steyne Hotel is on the register	RAIA Register of 20th Century Buildings of Significance			Other	N/A	
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Other	N/A																					

Internal Referral Body	Comments
	Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

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 (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) *In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—*

- (a) *whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) *whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) *whether the development will increase the amount of stormwater run-off from a site,*
- (d) *whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) *the impact of the development on the level and quality of the water table,*
- (f) *the cumulative environmental impact of the development on the regulated catchment,*
- (g) *whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) *Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—*

- (a) *the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*

(b) the impact on water flow in a natural waterbody will be minimised.

Comment:

The proposal has been reviewed by Council's Coastal Officer and Development Engineer who have raised no objection to the proposal and its impacts to the adjoining waterway (subject to conditions).

6.7 Aquatic ecology

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,*
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—*
 - (i) a controlled activity approval under the Water Management Act 2000, or*
 - (ii) a permit under the Fisheries Management Act 1994,*
- (c) whether the development will minimise or avoid—*
 - (i) the erosion of land abutting a natural waterbody, or*
 - (ii) the sedimentation of a natural waterbody,*
- (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,*
- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,*
- (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:

- (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,*
- (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,*
- (c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,*
- (d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,*
- (e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.*

Comment:

The proposal has been reviewed by Council's Coastal Officer who has raised no objection to the works and their impacts to the surrounding natural environment.

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or

(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems

Comment:

The proposal will not impact upon the flood capacity of the site or cause adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.

Comment:

The proposal has been reviewed by Council's Coastal Officer who has raised no objection to the works and their impacts to the surrounding natural environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

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 proposed development is not expected to cause adverse impact to the 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:

Council is satisfied that the proposed development will not cause adverse impact to the items referred to in subsection (1) is avoided.

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*
 - ii) *adverse 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:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

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:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

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:

All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

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 as a part of the road reserve 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 commercial 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

The proposal involves the stratum subdivision of the existing road reserve land. As such, the principal development standards do not apply.

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

The proposal involves the stratum subdivision of the existing road reserve land. As such, the built form controls do not apply.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.8 Subdivision	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- 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

PLANNING CONCLUSION

This proposal, for subdivision of two (2) lots into four (4) stratum lots has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to Council being the landowner.

The concerns raised in the objection have been addressed, which are not matters for consideration in the assessment of the development application.

Overall, the development complies with 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0287 for Subdivision of two (2) lots into four (4) stratum lots on land at Lot 1 DP 1062787, 0 North Steyne, MANLY, Lot 3 DP 1062787, 0 North Steyne, 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
Plan of Stratum Subdivision of Lot 1 & 3 in DP1062787 Sheet 1 of 1	01/12/2022	Paul Barry Byrne

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.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

2. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

3. Sydney Water Compliance Certification

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised

Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

4. Release of Subdivision Certificate

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

5. Subdivision Certificate Application

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

6. Building Management Statement

The Applicant shall submit a Building Management Statement to set out the provisions for the management and maintenance of the building. Details demonstrating compliance are to be submitted to the Principle Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Ensure the property access.

7. Title Encumbrances

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

ITEM 5.4**DA2023/0306 - 20 SPRING COVE AVENUE, MANLY -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL**

AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2023/496690
ATTACHMENTS	1 ↓Assessment Report
	2 ↓Site Plan & Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a development involving the demolition of a heritage item.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0306 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 15 DP 1189590, 20 Spring Cove Avenue, MANLY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0306
Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 15 DP 1189590, 20 Spring Cove Avenue MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney Christopher Robert Bayley Lee Vouch Sar
Applicant:	Harrison's Landscaping Pty Ltd
Application Lodged:	12/04/2023
Nominated Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/06/2023 to 03/07/2023
Exhibited Clause 56 EP&A Regulations:	05/06/2023 to 03/07/2023
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 276,084.73

EXECUTIVE SUMMARY

This application seeks development consent for the construction of a swimming pool, replacement and extension of a stone retaining wall with boundary pool fencing and associated landscaping works.

The subject site forms part of St Patrick's Estate which is a State Heritage Item. A such, development is Nominated Integrated Development pursuant of the Heritage Act 1977. Accordingly, the proposal was referred to Heritage NSW, with General Terms of Approval being issued.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposal including partial demolition of a heritage item, in particular the removal of a section of existing stone retaining wall and garden. The demolition works do not significantly affect any original building fabric of the existing dwelling house or any other parts of St Patrick's Estate. However, any form of demolition associated with a heritage item is defined as a form of Sensitive Development.

The development application was notified and exhibited for a period of twenty-eight (28) days, as stated within Council's Community Participation Plan and the Environmental Planning and Assessment Act 1979 as it constituted nominated integrated development. No submissions were received.

The application has been assessed against the relevant local and State controls, and it has been found to be acceptable.

Based on a detailed assessment of the application, it is considered that, on balance the proposal is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the construction of a swimming pool and associated site works.

Specifically, the works consist of the following:

- Removal of part of an existing retaining wall and garden to accommodate the excavation and construction of a swimming pool;
- Replacement and addition of a new stone retaining wall and boundary pool fencing; and
- Landscaping works to accommodate new bandicoot habitat.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone C4 Environmental Living
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.19 Development in St Patrick's Estate
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 5.3 St Patrick's Estate, Manly
 Manly Development Control Plan - 5.4.2 Threatened Species and Critical Habitat Lands

SITE DESCRIPTION

Property Description:	Lot 15 DP 1189590 , 20 Spring Cove Avenue MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Spring Cove Avenue.</p> <p>The subjects site is legally identified as Lot 15 in Deposited Plan 1189590, No. 20 Spring Cove Avenue, Manly.</p> <p>The site is irregular in shape with a surveyed area of 682.2m².</p> <p>The site is located within the C4 Environmental Living zone under the Manly Local Environmental Plan 2013 and accommodates a dwelling house. The site is included as part of the St Patrick's Estate which is of State Heritage Significance.</p> <p>The site is elevated above street level, but is however situated lower than the properties to the north. Landscaping on site is located towards the east which includes various vegetation forms and canopy trees. Smaller landscaped sections to the north-western and south-western corners also exist. The site is also located within a "vegetated link" (bandicoot movement corridor), under the Spring Cove Bandicoot Habitat Plan.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses including swimming pools of similar nature also located within St Patrick's Estate. In addition is adjacent to Sydney Harbour National Park, a C1 National Parks and Nature Reserve and North Harbour.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has not revealed any recent history in relation to No. 20 Spring Cove Avenue, Manly.

Application History

The development application was initially notified for a period of fourteen (14) days and resulted in no submissions.

The application was identified as nominated integrated development due to the purposes of the Heritage Act 1977, and was referred to Heritage NSW.

Council invited on 16 May 2023 through a request for information letter amended plans and additional information to address the following:

- **Statement of Heritage Impact Report:** A Statement of Heritage Impact, prepared in accordance with Heritage Council Guidelines, must be submitted for any development application on land which is identified as a heritage item.
- **Consent from the adjoining landowner** (No. 10 Spring Cove, Manly) to the application is necessary if works are to be located on the adjoining northern boundary line.
- **Council's Biodiversity Officer Request:** Compensatory planting required to be undertaken elsewhere on the property to ensure no net loss of bandicoot habitat.

The amended plans and additional information received on 30 May 2023 satisfied Council's requests. The development application was then re-notified and exhibited for a period of twenty-eight (28) days, as stated within Council's Community Participation Plan and the Environmental Planning and Assessment Act 1979 as it constituted nominated integrated development. No submissions were received.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a Heritage Impact Statement.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Service, dated 16 February 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. The proposed development has satisfied the requirements of Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 05/06/2023 to 03/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan. The exhibition period included the required public consultation for nominated integrated development under Clause 56 of the Environmental Planning and Assessment Regulations 2021.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported, subject to conditions.</p> <p>Council’s Landscape Referral section have considered the application against the Manly Local Environment Plan C4 Environmental Living zone, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping <p>The objectives of the Zone C4 Environmental Living include: ensure that residential development does not have an adverse effect on in areas with special ecological, scientific or aesthetic values; protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore; ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation; and ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.</p> <p>The proposal is to: renovate the existing stone wall to improve drainage issues on site; construct a concrete swimming pool; and install associated landscape works. The majority of existing landscape area and character setting, excluding the proposed works, is retained including existing native trees and native understorey and as such the landscape objectives of Zone C4 are satisfied.</p> <p>An Arboricultural Impact Assessment is submitted and the report concludes that no existing trees are impacted by the works, and conditions shall be imposed for existing tree and vegetation protection.</p> <p>Landscape Plans are submitted that illustrate hard and soft landscape proposals and no concerns are raised.</p>
NECC (Bushland and Biodiversity)	<p>Supported, subject to conditions.</p> <p>Biodiversity Referral (2 June 2023) The amended landscaping proposal is noted and supported. Additional plantings in the eastern corner of the site will now provide for no net loss of bandicoot habitat and ensure compliance with the Bandicoot Habitat Plan for the Spring Cove Estate.</p> <p>Biodiversity Referral (12 May 2023) The proposal seeks approval for alterations and additions to a dwelling house including a swimming pool. The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • Manly LEP 2013 - Part 6.5 Terrestrial Biodiversity • Manly DCP - Part 5.4.2 Threatened Species and Critical Habitat Lands. <p>The proposal would take place in the “vegetated link” (bandicoot movement corridor), which is required to</p>

Internal Referral Body	Comments
	<p>be maintained as bandicoot habitat under the Spring Cove Bandicoot Habitat Plan of the original estate consent. As the development would result in the removal of this vegetated link, compensatory planting is required to be undertaken elsewhere on the property to ensure no net loss of bandicoot habitat. Proposed measures to ensure no net loss of bandicoot habitat must be confirmed before compliance with relevant biodiversity controls can be assessed, and may be demonstrated by either an amended landscape plan (showing proposed areas of improved bandicoot habitat elsewhere on the site), or an ecology report (prepared by a suitably qualified ecologist) outlining proposed bandicoot habitat replacement measures.</p>  <p>Figure 1: Bandicoot Habitat Plan for the Spring Cove Estate.</p>
NECC (Coast and Catchments)	<p>Supported, subject to conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.7, 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP apply for this DA.</p> <p>Comment On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Serenescapes Landscape Design dated February 2023, the DA satisfies requirements under clause 2.12 of the SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>State Environmental Planning Policy (Biodiversity & Conservation) 2021</p> <p>Harbour Foreshores & Waterways Area</p> <p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.6 and 6.7, Division 2 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021 apply in assessing this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Serenescapes Landscape Design dated February 2023, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p> <p>Coastal Wetlands and Littoral Rainforest Area</p> <p>The subject site is also identified as "Coastal Wetlands and Littoral Rainforest Area". Hence, clause 2.7 of the SEPP (R&H) apply for this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Serenescapes Landscape Design dated February 2023, the DA satisfies requirements</p>

Internal Referral Body	Comments																		
	<p>under clause 2.7 of the SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management</p> <p>The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Serenescapes Landscape Design dated February 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p>																		
Strategic and Place Planning (Heritage Officer)	<p>HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as it is within a State heritage item - SHR #01724 St Patricks Estate, which is also listed as Item I131 - St Patricks Estate, Manly within Schedule 5 of Manly LEP 2013.</p> <p>Details of heritage items affected</p> <p>Statement of Significance</p> <p>St Patrick's Estate is a place of outstanding heritage significance to NSW and Australia. The 1885-1935 buildings and grounds of the estate make up one of Australia's most outstanding collegiate ensembles unrivalled for its completeness, grandeur and extraordinary siting.</p> <p>Other relevant heritage listings</p> <table border="1"> <tr> <td>SEPP (Biodiversity and Conservation) 2021</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>Yes</td> <td>St Patrick's Estate is on the register</td> </tr> <tr> <td>National Trust of Aust (NSW) Register</td> <td>Yes</td> <td></td> </tr> <tr> <td>RAIA Register of 20th Century Buildings of Significance</td> <td>No</td> <td></td> </tr> <tr> <td>Other</td> <td>No</td> <td></td> </tr> </table> <p>Consideration of Application</p> <p>The proposal is for the construction of a new pool, with renovated retaining wall and landscaping, located in the rear yard of the existing dwelling.</p> <p>The site is included as part of the St Patrick's Estate heritage item which is on the State Heritage Register. As a result the application is integrated and a referral was required to Heritage NSW. Heritage NSW by letter dated 4 July 2023 have provided general terms of approval for this proposal.</p> <p>The proposed development is contained within the existing rear yard and will not physically or visually compromise the heritage significance of St Patricks Estate. It will also not impact on the views to and from the Archbishops Residence or views towards Spring Cove.</p> <p>Therefore, no objections are raised on heritage grounds, subject to all general terms of approval by Heritage NSW being included in any consent.</p> <p><u>Consider against the provisions of Cl 5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>	SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	Yes	St Patrick's Estate is on the register	National Trust of Aust (NSW) Register	Yes		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
SEPP (Biodiversity and Conservation) 2021	No																		
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RAIA Register of 20th Century Buildings of Significance	No																		
Other	No																		
External Referral Body	Comments																		
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, subject to conditions.</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>																		
Nominated Integrated Development - Heritage NSW - Heritage Act 1977	<p>Supported, subject to the General Terms of Approval.</p> <p>Heritage NSW have considered the nominated integrated development application, in accordance with</p>																		

External Referral Body	Comments
	Section 4.47 of the Environmental Planning and Assessment Act 1979. The general terms of approval have been included within this assessment and form part of the recommended conditions of consent

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0 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 (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,
- (c) whether the development will increase the amount of stormwater run-off from a site,
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,
- (e) the impact of the development on the level and quality of the water table,
- (f) the cumulative environmental impact of the development on the regulated catchment,
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and
- (b) the impact on water flow in a natural waterbody will be minimised.

Comment

The proposal has been reviewed by Council's Coastal and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the adjoining waterway, subject to recommended conditions.

6.7 Aquatic ecology

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation,
- (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—
 - (i) a controlled activity approval under the *Water Management Act 2000*, or
 - (ii) a permit under the *Fisheries Management Act 1994*,
- (c) whether the development will minimise or avoid—
 - (i) the erosion of land abutting a natural waterbody, or
 - (ii) the sedimentation of a natural waterbody,
- (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area,

- (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology,
(f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following:

- (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development,
(b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves,
(c) if a controlled activity approval under the Water Management Act 2000 or a permit under the Fisheries Management Act 1994 is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained,
(d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised,
(e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.

Comment

The proposal has been reviewed by Council's Coastal and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment, subject to recommended conditions.

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

- (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or
(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems

Comment

The site is not located within a flood prone area.

6.9 Recreation and public access

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

- (a) the likely impact of the development on recreational land uses in the regulated catchment, and
(b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—

- (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,
(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,
(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

Comment

The proposed works include a swimming pool and retaining walls within the boundaries of the property, and will be located to the rear of the dwelling house. This application will therefore, not alter or disrupt the existing recreation and/or public access within the catchment area.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.

Comment

The proposal has been reviewed by Council's Coastal and Bushland & Biodiversity Officer. Based on the expert advice provided and recommended conditions, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

Part 6.3 Foreshores and Waterways Area

Division 3 Development in Foreshores and Waterways Area

6.28 General

(1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—

- (a) whether the development is consistent with the following principles—
(i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
(ii) the public good has precedence over the private good,
(iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,
(b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,
(c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,
(d) whether the development promotes water-dependent land uses over other land uses,
(e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,

- (f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,
 (g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,
 (h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.

(2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—

- (a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,
 (b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,
 (c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,
 (d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,
 (e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—
 (i) the Foreshores and Waterways Area, and
 (ii) public places, landmarks and heritage items.

Comment

The above has been considered as part of the assessment of this application. The subject site is located adjacent to the Zone 2 (Environment Protection). The proposed works are not considered to impact the Foreshores and Waterways Area nor be seen from the Foreshores and Waterways Area. The foreshores and waterways area will continue to be protected and maintained, in relation to its unique visual qualities.

6.29 Areas of outstanding biodiversity value

(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development will not have a significant adverse impact on the land.

Comment

The proposed modifications will not impact the biodiversity value of the land.

Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005

The Sydney Harbour Foreshores and Waterways Area Development Control Plan, continues to apply to the foreshores and waterways area as identified in Part 6.3 of the Biodiversity and Conservation SEPP 2021. The development control plan includes design guidelines for development and criteria for natural resource protection.

Comment

The proposed works will include the construction of a swimming pool and associated retaining walls and fencing, and are not considered to impact the foreshores and waterways area. The overall built form of the dwelling house will remain as existing, with the proposed works to be located to the rear of the dwelling which will not be viewed from the waterway or streetscape. Therefore, the existing character of the area will remain unchanged.

Council is satisfied that the proposal is consistent with all relevant requirements and objectives of the SEPP (Biodiversity and Conservation) 2021.

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:

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 proposed works will not detrimentally impact the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest nor the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Division 3 Coastal environment area

Comment

The site is located within the Foreshores and Waterways Area. Section 2.10 (3) stipulates that “This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6”.

Division 4 Coastal use area

Comment

The site is located within the Foreshores and Waterways Area. Section 2.11 (2) stipulates that “This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6”.

Division 5 General

Section 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 consists of a swimming pool and is not likely to increase the risk of coastal hazards within the locality.

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

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

Comment

The proposal is not inconsistent with relevant coastal management programs.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	Fence and retaining wall: 2.0m	-	Yes
Floor Space Ratio	FSR: 0.6:1	No Change to existing dwelling house	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	N/A
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.19 Development in St Patrick's Estate	Yes

Detailed Assessment

Zone C4 Environmental Living

The C4 - Environmental Living zone objectives are addressed below:

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

Comment

The proposal consists of excavation and construction of a swimming pool to the rear of a dwelling house with associated retaining walls and fencing. The works will also include new bandicoot habitat planting to aid in maintaining the ecological, scientific or aesthetic values of the area.

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

Comment

In addition to the above, recommended conditions of consent have been included by Council's Biodiversity, Landscape and Coastal Officers to

ensure that impacts to the ecological, heritage, scientific or aesthetic values of the site, are minimised.

- **To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.**

Comment

The proposed works will not be dominating in nature, and will be sited well below the surrounding tree canopy height. The works will be located to the rear of the dwelling, and will not be visual from the foreshore area.

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

Comment

The location of the proposed works do not contain any significant geological features and will not impact the nearby foreshore. The loss of existing vegetation to accommodate the swimming pool will be replaced to ensure no net loss to bandicoot habitat. The works have been reviewed by Council's Biodiversity Officer who is in support of new plantings, subject to recommended conditions.

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

Comment

The proposed works as stated above, will not impact the foreshore area. The proposed hard service is minimal and will accommodate for foot traffic around the swimming pool. The remainder of the site will remain as existing, with no significant vegetation or tree loss. The works are not considered to impact on the water quality of the foreshore or increase run off.

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

Comment

The proposed works will not alter the height or bulk of the existing dwelling. The works as stated above, have regard to the existing vegetation and topography. In addition, no surrounding land uses will be impacted.

5.10 Heritage conservation

- (a) to conserve the environmental heritage of Manly,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Comment

The proposal is accompanied by a Heritage Impact Statement prepared by Damian O'Toole Town Planning and Heritage Services, which has been reviewed by Heritage NSW and Council's Heritage Officer. Council is therefore satisfied that the proposed works conserve the environmental heritage of Manly and conserve the heritage significance of heritage items (St Patrick Estate). The subject site is not located within any identified areas of Aboriginal Heritage Significance or objects.

It is also noted that Heritage NSW have considered the nominated integrated development application, in accordance with Section 4.47 of the Environmental Planning and Assessment Act 1979. The general terms of approval have been included within this assessment and form part of the recommended conditions of consent

6.2 Earthworks

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

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and

- (b) to allow earthworks of a minor nature without requiring separate development consent.

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

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

Comment

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

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

Comment

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

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

Comment

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

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

Comment

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

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

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

(f) the likelihood of disturbing relics

Comment

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

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

Comment

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

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

Comment

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

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

6.5 Terrestrial biodiversity

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

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

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

(a) whether the development is likely to have:

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

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

Comment

The proposal is accompanied with an Arboricultural Assessment Report prepared by Complete Arborcare which concludes that the works will not result in any long-term tree impact. This report has been reviewed by Council's Landscape Officer, who is in support of the proposal subject to recommended conditions. The site is located within a "vegetated link" (bandicoot movement corridor), which is required to maintain any bandicoot habitats. The works include the removal of lawn area and vegetation to the north-western corner. Replacement planting to the eastern corner of the site is therefore proposed, which will ensure no net loss to bandicoot habitat, providing compliance with the Bandicoot Habitat Plan for the Spring Cove Estate (DA 482/04). Council's Biodiversity Officer has reviewed the proposal and is in support, subject to recommended conditions .

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

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

Comment

The subject site is limited in areas for the location of the proposed development due to the siting of existing structures, and significant vegetation (i.e. native trees). As stated above, the Arboricultural Assessment Report indicates that the works in its proposed location will not result in impacts to surrounding trees. In addition, replacement planting has been proposed, which is considered acceptable to avoid any adverse environmental impacts or overall net loss of the bandicoot habitat area.

Therefore, this application complies with the objectives and requirements of this clause.

6.9 Foreshore scenic protection area

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

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

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment

The proposed development will not impact the visual amenity of the harbor or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore. The works will not detrimentally impact the scenic qualities of the coastline, as these works will not be easily viewed from the coastline. The development is considered suitable in relation to its type, location, design and relationship to the foreshore, and will not result in impacting the qualities of the foreshore itself. The proposed works will not affect any land-based and water-based coastal activities.

Therefore, this application complies with the objectives and requirements of this clause.

6.19 Development in St Patrick's Estate

The objectives of this clause are as follows:

- (a) to protect the heritage significance, including the archaeological, natural and cultural heritage values, of St Patrick's Estate,
- (b) to ensure that development does not detract from the heritage significance of Moran House, Cerretti Chapel, St Therese's Convent and the Archbishop's Residence,
- (c) to ensure that any new buildings or structures in St Patrick's Estate are sympathetic in scale and built form to the heritage items that are situated in St Patrick's Estate.

In this regard, development consent must not be granted to development on land in "Precinct 10", as identified on the Key Sites Map, unless the consent authority is satisfied that the development:

- (i) will not involve the erection of a building within 5 metres of the western boundary of the Precinct or land in Zone RE1 Public Recreation, and
- (ii) will not involve the erection of a building within 10 metres of land in Zone EC1 National Parks and Nature Reserves, and
- (iii) will not involve the erection of a building within 5 metres of the centre of the pathway that extends from the Archbishop's Residence to Spring Cove and is identified on the Key Sites Map, and
- (iv) will retain the view to and from the Archbishop's Residence and Spring Cove, if the development is on land identified as "View Cone" on the Key Sites Map.

Comment

The proposed development does not include the erection of a building within 5 metres of the western boundary of the Precinct or land in Zone RE1 Public Recreation, within 10 metres of land in Zone EC1 National Parks and Nature Reserves, nor within 5 metres of the centre of the pathway that extends from the Archbishop's Residence to Spring Cove and is identified on the Key Sites Map. The works are located on land identified as "View Cone" on the Key Sites Map, however will not impact on the view to and from the Archbishop's Residence and Spring Cove due to the minor nature of the swimming pool and associated structures.

Therefore, this application complies with the objectives and requirements of this clause.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 682.2m ²	Requirement	Proposed	% Variation*	Complies
4.1.4.1 Street Front Setbacks	Prevailing building line: Approx. 0.0m	Proposed Swimming Pool: Approx. 18.0m - consistent with prevailing building line	-	Yes
4.1.4.4 Rear Setbacks	8.0m	Swimming Pool/retaining wall: 0.0m - 0.3m	96.3% - 100.0%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55.0% of site area (375.2m ²)	Open Space to remain unchanged to that of existing. (Approx. 450.6m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35.0% of open space (157.7m ²)	> 35.0% (Approx. 323.5m ²)	-	Yes
4.1.5.3 Private Open Space	18.0m ² per dwelling	> 18m ²	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1.0m height above ground	< 1.0m height above ground	-	Yes
	1.0m curtilage/1.5m water side/rear setback	Curtilage/Water Line: 0.0m - 0.3m (northern rear setback) Curtilage: 0.4m (western side setback) Water Line: 1.5m (western side setback)	-	No

Note: The side setback controls do not apply in this instance, as the Manly Development Control Plan 2013 includes specific setbacks (as demonstrated above) for swimming pools.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 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
4.1.3 Floor Space Ratio (FSR)	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.3 St Patrick's Estate, Manly	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

4.1.9 Swimming Pools, Spas and Water Features

Clause 4.1.9.2 Location and Setbacks stipulate that the setback of the outer edge of the pool/spa concourse from the side and rear boundaries must be at least 1.0m, with the water line being at least 1.5m from the boundary.

The proposed swimming pool outer edge is setback 0.6m from the western side boundary line. The water line is however, setback at a compliant 1.5m. The swimming pool outer edge/water line is setback 0.3m from the northern rear setback. Therefore, non-compliant with the numerical requirements of this clause.

It is noted that due to the siting of buildings, canopy trees and areas for bandicoot habitat, the swimming pool location is limited to the north-western corner of the site. Therefore, being the most acceptable location for the swimming pool, this will however result in numerical non-compliances in relation to the pool setbacks.

Merit Consideration

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

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

Comment

A condition of consent as been recommended to limit the noise of the pool filter to 5dB (A) above background level noise, to ensure mitigation of noise impact. The swimming pool is located behind boundary fencing, and is surrounded by vegetation, which will ensure acceptable visual privacy levels.

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

Comment

The swimming pool is located at the rear of the property, and will not be viewed from the street. Therefore, will not adversely impact on the streetscape or the established character of the locality.

- **Objective 3) To integrate landscaping.**

Comment

The proposal consists of replacement planting elsewhere on site and to the north-western corner behind the pool wall. This is to ensure that there is no net loss to bandicoot habitat and will also aid in softening the built form of the development. The replacement planting has been reviewed by Council's Biodiversity Officer.

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

Comment

The swimming pool could be used as a water source in the case of an emergency.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

5.3 St Patrick's Estate, Manly

Clause 5.3.3 Indigenous Wildlife Habitat within the Estate requires the following:

a) Any new fencing of or within St Patrick's Estate, including the fencing of private landholdings within the Estate is to allow movement of the bandicoot population within the Estate, and between the Estate and the adjoining land (that is to say, the fencing is to provide for free circulation and not impede access for the Bandicoots). The access spaces in fencing are to be at least 300mm wide and 150mm high at intervals of 3.0m. This provision does not include swimming pool fencing which should exclude Long-nosed Bandicoots.

b) Consideration must also be given to indigenous wildlife habitat for the long nosed bandicoot by enabling access to undercroft areas within the development, minimising use of bright lights in open space areas (including movement sensors) and encouraging access by steps and retaining walls no greater than 200mm in height.

The proposed development includes boundary fencing atop a retaining wall, which will act as swimming pool fencing. Therefore, in accordance with this control the requirements for bandicoot access spaces for fencing are excluded.

As noted above, the proposed retaining wall will also act as a swimming pool fence and is incorporated into the swimming pool design. The retaining wall is measured 300mm - 800mm high from existing ground level. Therefore greater than the required 200mm height. It is noted that the existing retaining wall which is to be replaced is more than 200mm in height.

Merit Consideration

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

Objective 1) To conserve and enhance the indigenous wildlife habitat within St Patrick's Estate.

Objective 2) To preserve and protect the landscape as habitat for the long nosed bandicoot.

Comment

The proposal includes the removal of lawn area and some vegetation to accommodate the swimming pool/retaining wall. However, new specific bandicoot habitat planting has been incorporated at the rear of the site to ensure compliance with the Bandicoot Habitat Plan for the Spring Cove Estate and that no net loss of bandicoot habitat occurs. Council's Biodiversity Team have reviewed the proposal, and is in support subject to relevant conditions. It is considered that these plantings are an improvement over the current lawn area. It is noted that to protect the well-established canopy trees on site and the overall amenity of the area, the location of the works (rear of dwelling) are considered to be most acceptable.

5.4.2 Threatened Species and Critical Habitat Lands

Council's Biodiversity Officer has provided the following comment in regard to Clause 5.4.2 Threatened Species and Critical Habitat Lands:

"The subject site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head, as listed under Part 2 of the NSW Biodiversity Conservation Act 2016. As such, a 'threatened species test of significance' is required to be undertaken in accordance with s7.3 of the Act. This assessment has been undertaken and has concluded that the proposal will not result in a significant to the endangered population."

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 \$2,761 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$276,085.

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

PLANNING CONCLUSION

This proposal, for the construction of a swimming pool, replacement and extension of a stone retaining wall with boundary pool fencing and associated landscaping works, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to demolition of part of a State Heritage Item. Therefore, meets the requirements for the determination by the NBLPP for Sensitive Development.

The development application was notified and exhibited for a period of twenty-eight (28) days, as stated within Council's Community Participation Plan and the Environmental Planning and Assessment Act 1979 as it constituted nominated integrated development. No submissions were received.

The critical assessment included a detailed consideration of the relevant provisions under the State Environmental Planning Policy (Biodiversity and Conservation) 2021, as well as several other relevant State Environmental Planning Policy's, the Manly Local Environmental Plan 2013, and the planning controls listed under both the Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 and Manly Development Control Plan 2013.

In addition, the proposal was referred to Heritage NSW, who responded with General Terms of Approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is referred to the NBLPP with a recommendation for **approval**.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0306 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 15 DP 1189590, 20 Spring Cove Avenue, 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
L-01, Site Plan/Site Analysis/Sedimentation Control Plan, Revision B	25 May 2023	Harrison's Landscaping Pty Ltd.
L-02, Detail Plan, Revision B	25 May 2023	Harrison's Landscaping Pty Ltd.
L-03, Sectional Elevations, Revision B	25 May 2023	Harrison's Landscaping Pty Ltd.
L-04, Sectional Elevations, Revision B	25 May 2023	Harrison's Landscaping Pty Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment (Ref. AG 23117)	23 March 2023	AscentGeo Geotechnical Consulting
Bushfire Risk Assessment (Ref. 4257)	16 February 2023	Bushfire Planning Services
Arboricultural Impact Assessment	26 February 2023	Complete Arborcare
Heritage Impact Statement	May 2023	Damian O'Toole Town Planning and Heritage Services

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Waste Management Plan		
Drawing No./Title.	Dated	Prepared By
Waste Management Plan	13 March 2023	Harrison's Landscaping Pty Ltd.

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	21 April 2023
Heritage NSW	Heritage NSW General Terms of Approval	5 July 2023

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

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

3. Prescribed Conditions

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

 - o 8.00 am to 5.00 pm Monday to Friday only.

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

- v) For any work/s that is to be demolished
The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following:
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewer areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

5. Heritage NSW General Terms of Approval

The proposal shall strictly comply with the General Terms of Approval prepared by the Heritage Council of NSW as dated 5 July 2023. The General Terms of Approval, are referenced under Condition 2 of this consent.

Reason: Statutory Requirement.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$2,760.85 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 \$276,084.73.

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

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

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

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

7. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Waste Management Plan

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

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

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

9. Erosion and Sediment Control Plan

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

- o Site Boundaries and contours
- o Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- o Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- o Existing and proposed drainage patterns with stormwater discharge points
- o Locations and methods of all erosion and sediment controls;
- o North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

10. Swimming Pools

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

Reason: To ensure compliance with legislation and Australian Standards and to protect public health, amenity and to ensure the protection and preservation of receiving waters.

11. Compliance with Standards

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

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

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

12. Sydney Water "Tap In"

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

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

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

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

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

13. Works located within site boundary

All parts of the approved swimming pool, retaining wall and fencing are required to be wholly located within the boundaries of the subject property (Lot 15 DP 1189590 - No. 20 Spring Cove, Manly) and shall not encroach beyond the lot boundary lines.

Reason: To ensure works are located within site boundary.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. 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

15. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees within the site, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

16. Pre-clearance Survey

Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

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

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

Reason: To protect native wildlife.

17. 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.

18. 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.

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(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) 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,
- c) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

21. **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.

22. **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.

23. **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.

24. **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

25. **Landscape Maintenance**

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

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

Reason: To maintain local environmental amenity.

26. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

27. **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.

Habitat Planting Calculations

Long-nosed bandicoot habitat lost to pool enclosure. 41.00m²
Replacement habitat planting on site for long-nosed bandicoot. 41.08m²

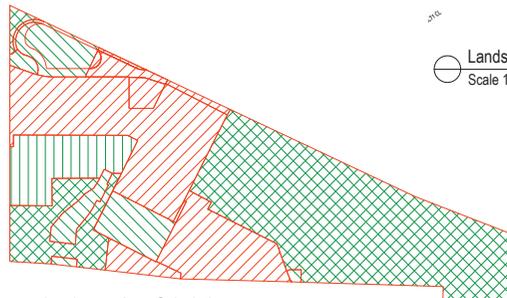
Landscape Area Calculations

Total Open Space Area (OS3) requires 55% of site area to be Open Space with 35% of that Open Space to be Landscape Area.

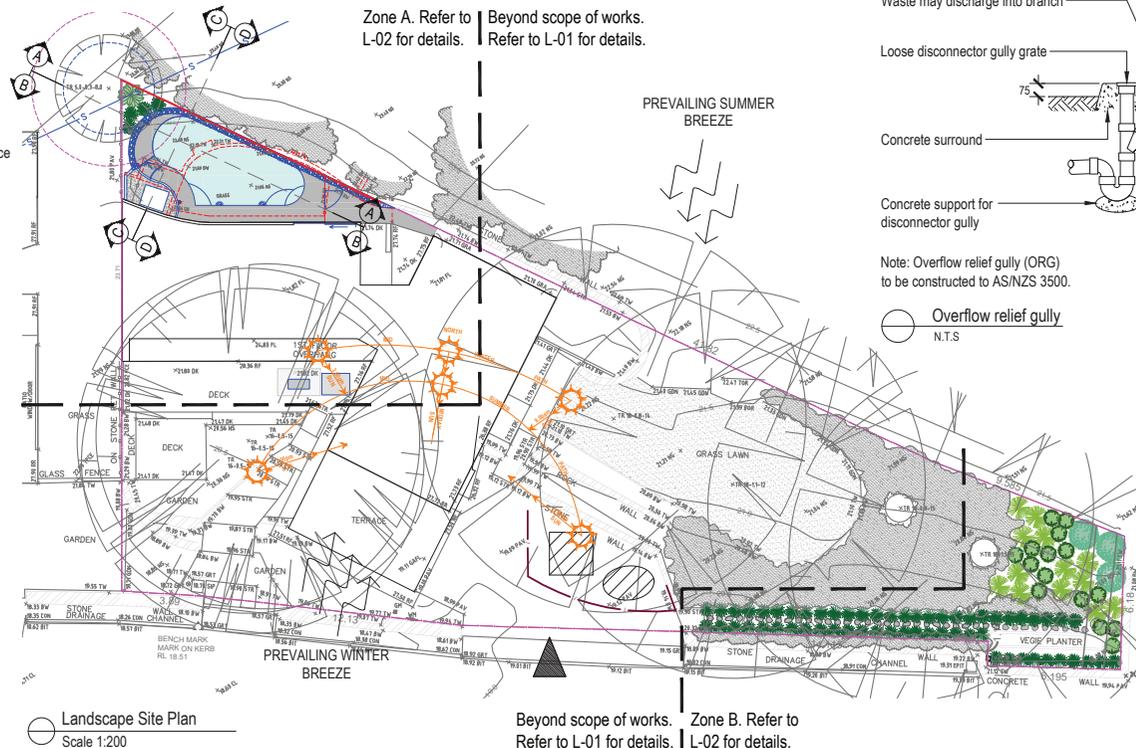
Site Area:	682.20m ²	
Open Space required:	375.21m ²	55%
Open Space existing:	450.60m ²	66.05%
Open Space proposed:	450.60m ²	66.05%
Above ground open space max.:	112.65m ²	25% of 450.60m ²
Above ground open space:	53.04m ²	11.77%
Pool component of open space max.:	135.18m ²	30%
Pool component of open space:	17.94m ²	0.04%
Landscape Area required:	131.32m ²	35% of 375.21m ²
Landscape Area existing:	332.67m ²	73.83%
Landscape Area proposed:	323.50m ²	71.79%

Landscape Area Calculations Legend

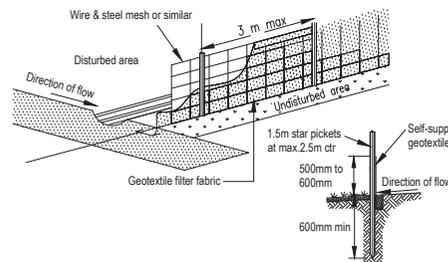
- Excluded from Open Space Area
- Open Space Area
- Above ground Open Space Area
- Landscape Area



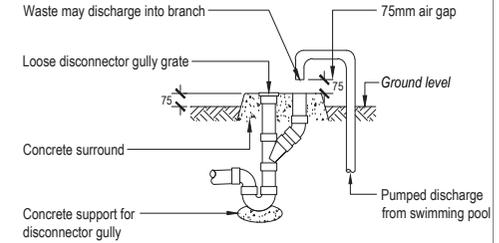
Landscape Area Calculations
Scale 1:400



Landscape Site Plan
Scale 1:200



Sediment fence detail
N.T.S.



Note: Overflow relief gully (ORG) to be constructed to AS/NZS 3500.

Overflow relief gully
N.T.S.

Site Analysis Legend

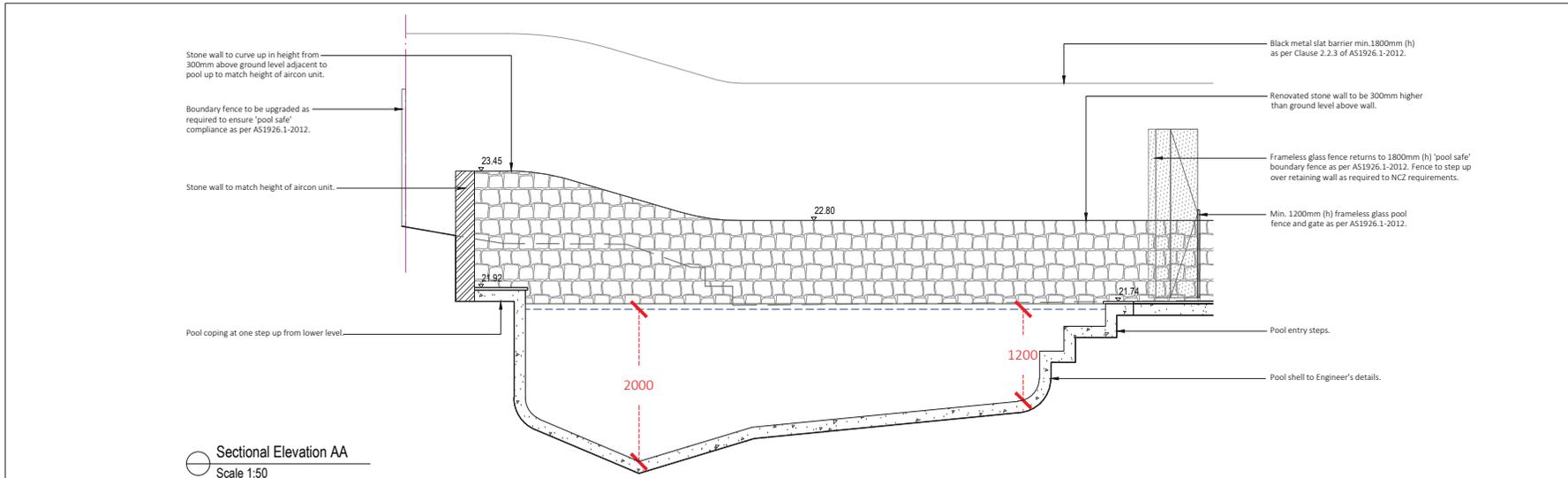
	Site vehicle entry
	Prevailing wind
	Materials storage area during construction phase
	Waste storage area during construction phase
	Sediment control device during construction phase
	Existing tree to be retained. TPZ & SRZ shown dashed
	Proposed 'hard' works shown blue

Sediment & erosion control notes

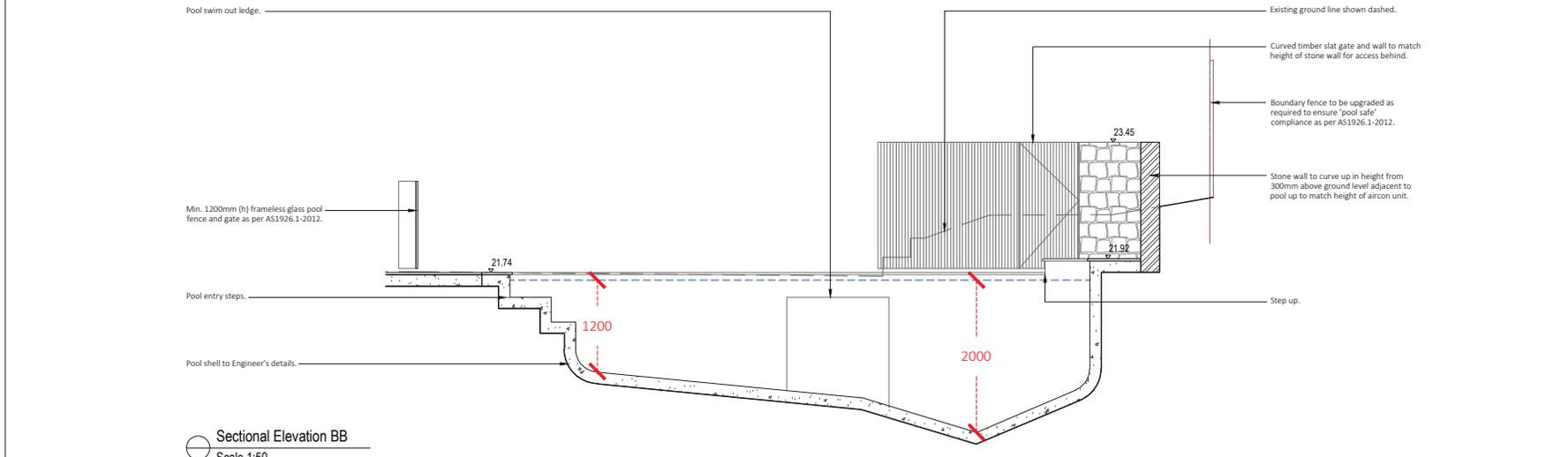
- During earthworks the following procedures shall be followed:
1. Install silt barriers where shown on plan prior to commencement of works.
 2. Silt barriers to be maintained regularly & after heavy rain by removal of built up silt & spreading silt on existing site when 50% capacity.
 3. Repair any damages to fence immediately.
 4. Clean up spillages outside silt fence immediately.
 5. Sediment control measures to be left in place until works completed.
 6. Topsoil from the work's area will be stockpiled for later use in landscaping if necessary.
 7. Approved bins for building waste, concrete and mortar slurries, paints and acid washings will be provided by contractor.

Note:
- Contractors to check and verify all dimensions and all levels on site prior to any works.
- Any discrepancies should be immediately referred to Harrison's Landscaping.
- All work to comply with E.C.A. Statutory Authorities and relevant Australian Standards.
- Dimensions recognised over scaling. All measurements are in millimetres.
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	Harrison's Landscaping PO Box 682, Manly, NSW, 1655 Studio 7, 19 Roadborough Road, Frenchs Forest NSW 2086 www.harrisonlandscaping.com.au P: 9451 2366 E: info@harrisonlandscaping.com.au	Client: Sar Residence	Drawing Title: Site Plan / Site Analysis / Sedimentation Control Plan	Rev: A B	Date: 11/11/2022 25/05/2023	Issue: DA Issue Amended DA Issue	Checked: JH JH
	Site Address: 20 Spring Cove Avenue, Manly	Drawn by: Sam Snaith AILDM # 1229	Project Number: 21968	Scale: As shown @ A3	Sheet Number: L-01 of 5		



Sectional Elevation AA
Scale 1:50



Sectional Elevation BB
Scale 1:50

Note:
 - Contractors to check and verify all dimensions and all levels on site prior to any works.
 - Any discrepancies should be immediately referred to Harrison's Landscaping.
 - All work to comply with E.C.A. Statutory Authorities and relevant Australian Standards.
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Client:
Sar Residence
Site Address: 20 Spring Cove Avenue,
 Manly

Drawing Title:
Sectional Elevations
Drawn by: Sam Snaith
 AILDM # 1229
Project Number: 21968
Scale: As shown @ A3
Sheet Number: L-03 of 5

Rev:	Date:	Issue:	Checked:
A	11/11/2022	DA Issue	JH
B	25/05/2023	Amended DA Issue	JH

