

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 23 AUGUST 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 23 August 2023
via teleconference
Commencing at 10:00 AM**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 26 July 2023.....	2
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	4
3.1	REV2023/0015 - 175 Forest Way BELROSE - Earthworks and construction of a retaining wall.....	4
3.2	DA2022/1868 - 144 Queenscliff Road QUEENSCLIFF - Demolition works and construction of a dwelling house including swimming pool.....	42
3.3	Mod2023/0085 - 15 Oyama Avenue MANLY - Modification of Development Consent DA2020/1372 granted for Alterations and additions to a dwelling house.....	129
3.4	DA2023/0542 - 11 Wyadra Avenue FRESHWATER - Demolition works and construction of a dwelling house including garage, and secondary dwelling	187
3.5	DA2022/1944 - 30 & 32 Lakeview Parade, Warriewood - Demolition work, tree removal and subdivision of two lots into five lots.....	236

ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil.

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 26 JULY 2023

RECOMMENDATION

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

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	REV2023/0015 - 175 FOREST WAY BELROSE - EARTHWORKS AND CONSTRUCTION OF A RETAINING WALL
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/504436
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevation

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to REV2023/0015 for earthworks and construction of a retaining wall on land at Lot 11 DP 737255, 175 Forest Way BELROSE, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0015
Assessment Officer:	Kye Miles
Land to be developed (Address):	Lot 11 DP 737255, 175 Forest Way BELROSE
Proposed Development:	Earthworks and construction of a retaining wall
Locality :	B2 Oxford Falls Valley under WLEP 2000
Category:	Category 2
Consent Authority:	Northern Beaches Council
Determination Level	Development Determination Panel
Land and Environment Court Action:	No
Owner:	P Langenhoven, L R Langenhoven
Applicant:	Cadence & Co Pty Ltd
Application Lodged:	29/06/2023
Notified:	06/07/2023 to 20/07/2023
Submissions:	1
Recommendation:	Approval
Estimated Cost of Works:	\$885,910

EXECUTIVE SUMMARY

This Review of Determination application seeks consent for earthworks and the construction of a retaining wall.

The application is referred to the Development Determination Panel (DDP) due to the original application being refused by the DDP.

The application seeks a variation to the Side Building Setback development standard pursuant to Appendix B of the WLEP 2000, which also warrants a referral to the DDP due to the application proposing a setback to the northern side boundary of 8.0 metres, resulting in a variation of more than 10% (2 metres or 20%).

The applicant's variation request for non-compliance with the side setback standard arises due to the proposed retaining wall being designed to stabilise the site in response to the subsidence that has occurred at the site after a period of prolonged heavy rain.

One (1) submission was received in objection to the development raising concerns regarding potential landslip risk, drainage, privacy, visual impact, and waste management.



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

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the EP&A 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 EP&A Act 1979, and the 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 provided by relevant Council / Government / Authority Officers on the proposal.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979);
- b) Environmental Planning and Assessment Regulations 2021;
- c) State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- d) State Environmental Planning Policy (Resilience and Hazards) 2021; and
- e) Warringah Local Environmental Plan 2000 (WLEP 2000)

SITE DESCRIPTION

The subject site is legally described as Lot 11 in DP 737255, No. 175 Forest Way, Belrose. The site consists of one (1) allotment located on the eastern side of Forest Way. The site is regular in shape with a frontage of 50.25 metres along Forest Way and a depth of 189.11 metres. The site has a surveyed area of 9503m².

The site is located within the B2 Oxford Falls Valley Locality from WLEP 2000 and accommodates a dwelling house, detached garage, swimming pool and tennis court.

A landslip occurred on the property following a significant rain event resulting in subsidence and clearing at the rear of the site.

The site is located close to a ridge crest within an area of topography which is generally steeply east dipping. The topography includes extensive sandstone outcropping which is sub-vertical and sub-horizontal in places.

The site contains lawn areas, shrubs and a number of canopy trees. The subject lot is covered by the Bushfire Prone Land Map and is therefore considered to be bushfire prone.

Adjoining and surrounding development is characterised by predominantly detached dwelling houses.



Figure 1: Aerial Photo of the Subject Site

SITE HISTORY

On 23 June 1982, application **No.82/177** was approved for land filling to the rear of the subject site.

On 3 July 1989, **DA6000/7634** was submitted for the construction of a dwelling house, garage, pool and tennis court.

On 6 March 1995, Council approved **DA95/112** for the extension of the garage.

On 27 April 2012, Council issued an Emergency Order **LGA2022/0025** for landslip remediation.

On 2 June 2022, a pre-lodgement meeting was held **PLM2022/0101** with the applicant and Council Officers for advice for permanent rectification to stabilise the site. The applicant was advised to lodge a Development Application as the works could not be dealt with under the Emergency Works Order process provided for in Part 5 of the EP&A Act.

On 29 November 2022, the Development Application (**DA2022/2034**) subject to this review was received. The application was for earthworks and the construction of a retaining wall and was referred to the Development Determination Panel (DDP) due to the application proposing a setback to the northern side boundary of 1.6 metres, resulting in a variation of more than 10% (8.4 metres or 84%).

On 8 March 2023, the application was refused by the DDP due to the following reasons:

- The proposed development is inconsistent with the Desired Future Character Statement of the B2 Oxford Falls Valley locality under the Warringah Local Environmental Plan 2000, as the proposal is not sympathetic to the natural landscape of the land.
- The proposed development is inconsistent with the provisions of Clause 57 Development on Sloping Land of the Warringah Local Environmental Plan 2000 as



the height and bulk of the development is not compatible with the sloping topography of the site.

PROPOSED DEVELOPMENT

The proposed development comprises the following works:

- Construction of retaining walls with the lower eastern portion of the site
- Cut and fill earthworks covering an area of approximately 520m² at the rear of the site
- Filling using existing onsite materials and limited imported fill to finish as per plans
- Revegetation of the lower portion of the site
- Ancillary stormwater infrastructure

Amendments to the Development

The following amendments have been made to the development described in the original application (DA2022/2034):

- Reduction of cut and fill earthworks by approximately 130m².
- Battered fill (600mm) at the base of the wall to minimise the height of the retaining wall.
- Revised landscaping details within the eastern portion of the site.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA) - Section 8.3

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 8 March 2023 and the notice of determination was issued on 17 March 2023. The review was lodged on 29 June 2023 and is to be considered by the Development Determination Panel on 23 August 2023, which is within 6 months of the date of determination.

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

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

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

Therefore, it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.



EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The 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 Bush Fire Planning Services, dated 25 August 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited in accordance with the EP&A Regulation 2021, WLEP 2000 and WDCP. As a result, the application was notified for a minimum period of 14 calendar days commencing on 6 July 2023 and being finalised on 20 July 2023. Furthermore, a notice was placed on the site.

As a result of the public exhibition process, a submission has been received from:

- ***Ms. Anne Patricia Saxon – Lot 955 Morgan Road, Belrose***

The following issues were raised in the submissions:

- **Landslip risk**
- **Drainage**
- **Privacy**
- **Visual impact**
- **Waste management**

The matters raised within the submissions are addressed hereunder:

- **Landslip risk**

The submission raised concerns that the proposed works may result in another landslide, which will adversely impact the property downslope (Lot 955/Morgan Road).

Comment:

The proposed works are intended to stabilise the portion of the site that was affected by the extreme rainfall event affecting Lot 955 on Morgan Road. In this context, the proposal is viewed as an enhancement to the current layout, with a primary focus on diminishing the potential for landslides on the property. The application is supported by a Geotechnical Report, validating the notion that the current state of the site is unsafe, necessitating measures to reinforce the slope. This factor significantly contributes to the approval rationale. The recommendations outlined in the



Geotechnical Report and Structural Plans will be incorporated as recommended conditions of consent.

This matter is addressed via conditions of consent.

- **Drainage**

The submission raised concerns that the additional run-off created by the proposal will unreasonably impact the properties downslope of the development.

Comment:

The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

This matter does not warrant the refusal of the application.

- **Privacy**

The submission raised concerns that the proposal will result in unacceptable privacy impacts.

Comment:

The proposed retaining wall is set back 28.8 metres from the Morgan Road front boundary, which exceeds the minimum setback requirement of 20 metres. In addition, the proposal has been designed to retain battered fill at a 1:2 grade, which restricts the useability of that portion of the site. Furthermore, the proposal includes a detailed landscaping scheme within the eastern setback that will notably screen the development. In this regard, the proposal is not considered to result in any unacceptable privacy impacts and no further assessment is required in this instance given the nature of the works proposed.

This matter does not warrant the refusal of the application.

- **Visual impact**

The submission raised concerns that the proposal will result in an unacceptable visual impact.

Comment:

The design of the proposed retaining wall takes into careful consideration the visual impact it will have on the downslope property. By employing a combination of appropriate materials, colours, and landscaping, the retaining wall is designed to sensitively blend with the natural surroundings. This design ensures that the wall becomes an integral part of the landscape, rather than an intrusive element. Additionally, the height and scale of the wall are appropriately integrated with the existing topography, maintaining a balanced outcome. Overall, the proposed retaining wall is anticipated to create a minimal visual disruption to the downslope property, thereby ensuring an acceptable and visually pleasing outcome.



This matter does not warrant the refusal of the application.

- **Waste management**

The submission has requested that appropriate waste management measures are carried out.

Comment:

The applicant has submitted a Waste Management Plan and suitable conditions regarding waste management have been incorporated within the recommendation of this report.

This matter is addressed via conditions of consent.

External Referrals

External Referral Body	Comments
Ausgrid	<p><i>Supported, subject to Conditions</i></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 recommended condition of consent.</p>
Aboriginal Heritage Office	<p><i>Supported, subject to Conditions</i></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>

Internal Referrals

Internal Referral Body	Comments
Landscape Officer	<p><i>Supported, subject to Conditions</i></p>

	<p>The proposal is supported with regard to landscape issues.</p> <p>The Arboricultural Impact Assessment (AIA) identified 20 trees for removal of which trees 5, 6, 7, and 21 are exempt by species or height and as such can be removed without consent. The remaining 16 trees can be supported for removal as remediation of a landslip is required, and Landscape Referral supports the recommendations outlined in the Vegetation Management Plan for tree replacement and revegetation. All trees to be retained shall be protected in accordance with the recommendations outlined in the AIA, subject to the imposed conditions. A Project Arborist shall be engaged to supervise all work in the tree protection zone of trees to be retained.</p>																																			
NECC (Bushland and Biodiversity)	<p>Supported, subject to Conditions</p> <p>The proposal seeks approval for earthworks and the construction of a retaining wall. The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none">• Planning for Bushfire Protection 2019• NSW Biodiversity Conservation Act 2016• Warringah DCP Clause E2 Prescribed Vegetation• Warringah DCP Cluase E6 Retaining Unique environmental features <p>The proposed works would take place in response to destabilisation and vegetation impacts that took place in February 2022. An arboricultural impact assessment has been submitted with the application and recommended the removal of 20 trees (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 19, 20, 21, 24, 25, 26, 31 and 32). No objections are raised subject to like for like replacement.</p> <p>Additionally, a Vegetation Management Plan (VMP) has been submitted with the application (Biosis, November 2022) and recommended a range of measures which will have to be adhered to if the application is approved. Table 4 of the submitted VMP indicates the required planting that will have to take place in each of the proposed management zones.</p> <p>Table 4 Planting numbers</p> <table><tr><th>Zone</th><th>Trees</th><th>Shrubs</th><th>Forbs and herbs</th><th>Climbers and Scramblers</th><th>Grasses and Sedges</th><th>Total</th></tr><tr><td>MZ1a</td><td>30</td><td>120</td><td>300</td><td>40</td><td>600</td><td>1090</td></tr><tr><td>MZ1b</td><td>25</td><td>100</td><td>250</td><td>33</td><td>500</td><td>908</td></tr><tr><td>MZ1c</td><td>20</td><td>80</td><td>200</td><td>27</td><td>400</td><td>727</td></tr><tr><td>Total</td><td>75</td><td>300</td><td>750</td><td>100</td><td>1500</td><td>2725</td></tr></table> <p>A landscape statement (Myles Baldwin Design, June 2023) has been submitted indicating the proposed locations for a proportion of the plantings proposed in the VMP. No objections are raised in relation to these locations, however, the remainder of the plantings will have to take place as recommended in the VMP.</p>	Zone	Trees	Shrubs	Forbs and herbs	Climbers and Scramblers	Grasses and Sedges	Total	MZ1a	30	120	300	40	600	1090	MZ1b	25	100	250	33	500	908	MZ1c	20	80	200	27	400	727	Total	75	300	750	100	1500	2725
Zone	Trees	Shrubs	Forbs and herbs	Climbers and Scramblers	Grasses and Sedges	Total																														
MZ1a	30	120	300	40	600	1090																														
MZ1b	25	100	250	33	500	908																														
MZ1c	20	80	200	27	400	727																														
Total	75	300	750	100	1500	2725																														
NECC (Development Engineering)	<p>Supported, subject to Conditions</p> <p>The revised stormwater plan to reflect the amended architectural plans are acceptable.</p>																																			



	Development Engineering support the proposal, subject to conditions as recommended.
--	---

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)

All, EPIs (State Environmental Planning Policies (SEPPs), Regional Environment Plans (REPs) and Local Environment Plans (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 EPIs (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)

A further consideration is required for the following State policies:

State Environmental Planning Policy (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.

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 ancillary residential land use.



LOCAL ENVIRONMENTAL PLANS

Warringah Local Environmental Plan 2011 (WLEP 2011)

The WLEP 2000, B2 Oxford Falls Valley and C8 Belrose North Localities (which cover the land subject to this application) were proposed to be zoned E3 Environmental Management in the draft 2009 version of Warringah's standard instrument. This was based on a detailed translation methodology that was applied to all land within the former Warringah LGA.

In December 2011, the Minister for Planning and Infrastructure deferred land in the Oxford Falls Valley and Belrose North areas from WLEP 2011 in response to stakeholder concern regarding the adequacy of consultation during the preparation of WLEP 2011.

Accordingly, WLEP 2011 and the current Warringah Development Control Plan 2011 do not apply to this application.

Warringah Local Environment Plan 2000 (WLEP 2000)

WLEP 2000 applies to the subject land and the development application is made pursuant to this instrument. Under WLEP 2000, the subject site is within the B2 Oxford Falls Valley Locality.

The DFC statement for the B2 locality states:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

Definition and Category of Development

The development is defined by the WLEP 2000 Dictionary as other buildings, works, places or land uses that are not prohibited or in Category 1 or 3.

As such, the proposed development is classified as a Category 2 development under the B2 Oxford Falls Valley locality statement of the WLEP 2000.

Consideration of the development against the Desired Future Character statement (DFC)



Before granting consent, Clause 12(3)(b) of WLEP 2000 requires that the consent authority must consider the DFC described in the locality statement and the proposal being Category 2, must demonstrate consistency with the DFC statement. As such, the following provides consideration of the development against the various parts of the above DFC statement:

- ***Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.***

Comment:

The proposal involves ancillary earthworks to ensure the stability of the land and protect the existing dwelling and associated structures. The proposal will not increase the residential intensity of the site or the locality.

- ***There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.***

Comment:

The proposed excavation and landfilling works and low-lying structure of the proposed retaining wall will have negligible impacts on the existing skyline.

- ***The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.***

Comment:

The proposal seeks to stabilise the eastern portion of the site that is prone to landslip. By stabilising the slope and preventing soil erosion, the retaining wall preserves the natural landforms from further degradation and avoids the need for extensive land grading. The proposal is supported by a detailed landscape plan and Vegetation Management Plan, which minimises the impact on existing vegetation while contributing to the preservation of the natural landscape. The proposal is appropriately located with consideration of the site constraints and is considered to enhance the natural landscape, including landforms and vegetation, while minimise the disturbance from buildings.

- ***Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.***

Comment:

The proposal contributes to achieving the objective of encouraging buildings to blend with the colours and textures of the natural landscape by acting as a visual transition between the constructed structures and the surrounding environment. By using natural and earthy materials that harmonise with the landscape's colours and textures, the proposal sensitively integrates the built environment into the natural setting. In addition, the proposal's design incorporates features of vegetation, enhancing its ability to complement the surroundings.

- ***A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the***



streetscape.

Comment:

The proposal will occur at the rear of the site and will have no impact on vegetation at the front of the site which adjoins Forest Way. As above, a comprehensive replanting scheme is proposed to maintain the bushland character of the locality.

- ***Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.***

Comment:

The subject site is not located in close proximity to Narrabeen Lagoon, therefore this part of the DFC does not apply in this instance.

Conclusion on the DFC

Based upon the above considerations, the development is considered to be consistent with the DFC statement for the B2 Oxford Falls Valley locality.

Built Form Controls for Locality B2 Oxford Falls Valley

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Standard	Required	Proposed	Compliance
Housing Density	1 dwelling per 20ha	Unaltered	N/A
Building Height:	8.5m (Overall)	3m (Retaining wall)	Yes
	7.2m (Floor to upper ceiling)	Unaltered	N/A
Front Building Setback	20.0m	Forest Way: 146.6m Perentie Road: 28.8m	Yes Yes
Rear & Side Building Setback	10.0m	North: 8.0m South: 13.5m	North: No* South: Yes
Landscaped Open Space (LOS)	30% of the site area.	>30%	Yes

The proposed development does not comply with the Locality's Side Boundary Setback Built Form Control. Accordingly, further assessment is considered against the applicability of Clause 20(1).



Clause 20(1) stipulates:

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the General Principles of Development Control, the Desired Future Character of the locality and any relevant State Environmental Planning Policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal is consistent with the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See the discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is consistent with the B2 Oxford Falls Locality’s DFC Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered to be consistent with applicable State Environmental Planning Policies. (Refer to earlier discussion under ‘State Environmental Planning Policies’) Accordingly, the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

In order to fully consider the application the following provides an assessment of the non-compliances to the Side setbacks Built Form Control.

Side Boundary Setback Built Form Control

Built Form Standard	Required	Proposed	Compliant
Side boundary setback	10.0m (Northern) 10.0m (Southern)	8.0m >10m	No* Yes

Merit consideration of non-compliance

The proposed retaining wall results in a setback of 8.0 metres to the northern boundary, resulting in a variation of 20% (2.0 metres). See Figure 2 below.

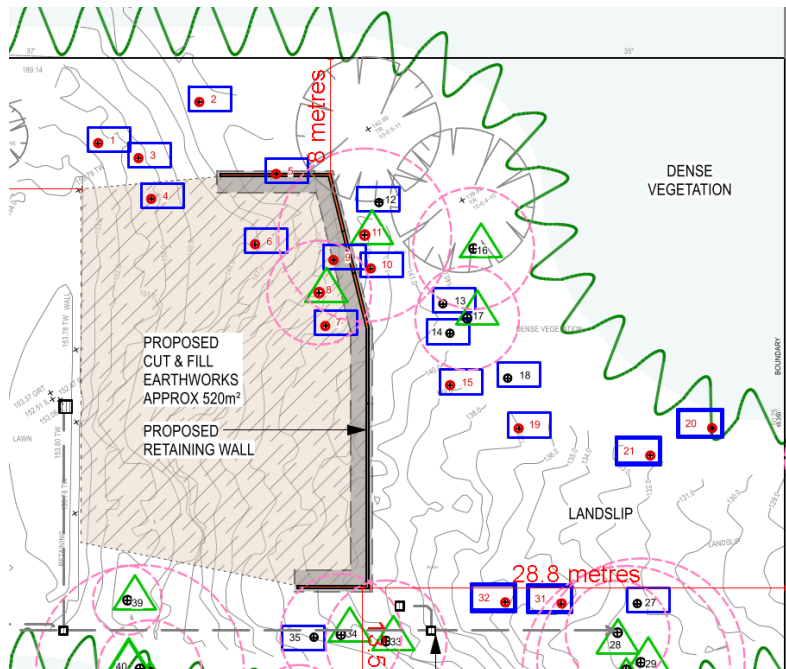


Figure 2 – Extent of Side setback breach to northern boundary

In assessing this element of the proposal, it is necessary to consider the merit considerations of the Side Boundary Setback Built Form Control. Accordingly, consistencies with the merit considerations are addressed below:

- ***Ensure that development does not become visually dominant by virtue of its height and bulk.***

Comment:

The proposed retaining wall has been designed to ensure that development does not become visually dominant by controlling and managing changes in elevation and slopes. The northern elevation of the structure is low-lying and suitably set back from the boundary minimising any unacceptable impact. In addition, the proposal incorporates natural finishes and landscaping to visually integrate the built environment with the existing landform.

- ***Preserve the amenity of the surrounding land.***

Comment:

The proposal seeks to appropriately preserve and protect the amenity of the surrounding land through the stabilisation of the portion of the site that was affected by the landslide event.

- ***Ensure that development responds to site topography.***

Comment:



The proposed retaining adapts to the natural contours and elevation changes of the land. The retaining wall has been strategically placed and configured to stabilise slopes, prevent further erosion, and accommodate the existing topography. By following the land's natural shape and integrating with the terrain, the retaining wall facilitates development that complements and harmonises with the site's unique characteristics. Furthermore, the proposed landscaping surrounding the retaining wall will ensure the development will not be readily perceived from the property located on the downslope.

- ***Provide separation between buildings.***

Comment:

Notwithstanding the numerically non-compliant setback to the northern side boundary, the proposed retaining wall in the rear yard is substantially set back from the adjoining northern dwelling.

- ***Provide opportunities for landscaping.***

Comment:

The landscape plan and Vegetation Management Plan accompanying the application demonstrates appropriate landscaping to the disturbed areas of the site to enhance the vegetation in line with the bushland character of the area.

- ***Create a sense of openness.***

Comment:

The proposed retaining wall is a low-lying structure that will not adversely impact the visual amenity of surrounding land nor impose an unreasonable sense of enclosure. In this regard, a sense of openness will be retained on the site.

Conclusion on Side Setback Variation

The development is considered to be consistent with the objectives underlying the Side Boundary Setback Built Form Control. In this respect, the variation to the Side Boundary Setback Built Form Control is supported.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Comments	Complies
CL38 Glare & reflections	The proposed finishes of the retaining wall are not anticipated to result in glare overspill.	Yes
CL42 Construction Sites	Subject to conditions of consent, the construction works will minimise impacts upon adjoining properties	Yes
CL48 Potentially Contaminated Land	Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land	Yes

General Principles	Comments	Complies
	uses. In this regard it is considered that the site poses no risk of contamination	
CL50 Safety & Security	The proposed retaining wall will not limit visibility between the dwelling house and Perentie Road.	Yes
CL56 Retaining Unique Environmental Features on Site	As per the accompanying Arborist Report and Vegetation Management Plan, the application involves the protection of vegetation at the rear of the site.	Yes
CL57 Development on Sloping Land	The application involves fill in excess of 1m.	No*
CL61 Views	Clause 61 stipulates 'Development is to allow for the reasonable sharing of views'.	Yes
CL62 Access to sunlight	The low lying nature of the retaining walls will not result in any overshadowing impacts to neighbouring properties	Yes
CL63 Landscaped Open Space	Sufficient landscaped open space will be retained on the subject site noting the proposal involves revegetation of disturbed areas of the site.	Yes
CL64 Private open space	Existing areas of private open space will be retained	Yes
CL66 Building bulk	The proposal is not considered to result in any additional unreasonable bulk or scale on the subject site.	Yes
CL76 Management of Stormwater	The application is accompanied by a Stormwater Management Plan and has been reviewed by Council's Development Engineer who has found the proposal to appropriately manage stormwater.	Yes
CL77 Landfill	The proposed revegetation of the site will ensure proposed landfill will not have any adverse impacts upon the visual or natural environment.	Yes
CL78 Erosion & Sedimentation	The application is accompanied by an Erosion and Sediment Control Plan which confirms that the development has been sited to minimise the potential for soil erosion	Yes

The proposed development contravenes the requirements of Clause 57 of WLEP 2000. Accordingly, further assessment has been considered as follows:

The proposed development involves fill greater than 1 metre in depth which is inconsistent with the requirements stipulated under Clause 57. The greater fill depth is required to stabilise the site, as confirmed by the Engineering Plans and documentation that accompany the application. Notwithstanding, the height and bulk of development, especially on sloping land's



downhill side, is suitably minimised by screen planting and compacted fill at the base of the wall.

The application is supported by a Geotechnical Report from a suitably qualified engineer as to the geotechnical stability of the land to support such development and an assessment of stormwater prepared by a suitably qualified hydraulic engineer has also been provided.

Therefore, the proposal's request for variation under Clause 20(1) of WLEP 2000 is acceptable in this instance.

Other relevant WLEP 2000 Clauses

Clause 13 - 'To what extent should neighbouring Locality Statements be considered?'

Clause 13 requires that, before granting consent for development within a locality, the consent authority must consider the provisions of a Locality Statement applying to a neighbouring locality, if the extent to which they should be considered is specifically described in the Locality Statement for the locality in which the development is proposed.

The DFC statement of the B2 Oxford Falls Valley locality does not specifically describe the extent to which a neighbouring Locality Statement should be considered. Therefore, no further assessment against the provisions of Clause 13 is required.

Schedule 8 - Site analysis

Clause 22(2)(a) of WLEP 2000 requires that the consent authority must consider a Site Analysis prepared in accordance with the criteria listed in Schedule 8.

It is considered that the submitted Site Analysis, in conjunction with the SEE adequately addresses how the development responds to its surrounds and the locality. A site inspection has also been conducted to the site on 31 July 2023.

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 \$8,859 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$885,910.

CONCLUSION

This Review of Determination Application for Earthworks and Construction of a retaining wall has been referred to the Development Determination Panel (DDP) due to the original application being determined by the DDP and also by virtue of it including a variation to the Side Building Setback development standard of more than 10% (variation of 2.0m or 20%).

When assessed against the WLEP 2000 objectives, the proposed development is considered to align with the relevant aims and requirements of these policies, noting that the environmental and amenity impacts resulting from the development are acceptable.



Moreover, the proposal is assessed as being consistent with the Desired Future Character statement in the B2 Locality Statement and the Clause 20 Variation in relation to the side setback built form control is supported.

The development is sympathetic of the character of the site and will maintain an appropriate visual relationship with the surrounding environment.

Therefore, the review application is supported and it is recommended that the original decision to refuse the Development Application should be altered such that the review application is approved (subject to conditions).

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2023/0015, being a review of DA2022/2034 for Earthworks and construction of a retaining wall on land at Lot 11 DP 737255, 175 Forest Way, BELROSE, subject to the conditions printed below:

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
Site Plan/Site Analysis – Drawing No.DA01 Revision B	26 June 2023	Cadence & Co
Detailed Site Plan – Drawing No.DA02 Revision B	26 June 2023	Cadence & Co
East Elevation and Sections – Drawing No.DA03 Revision B	26 June 2023	Cadence & Co

Engineering Plans		
Drawing No.	Dated	Prepared By
Retaining Wall Plan – Drawing No.198-22 Sheet 2	4 July 2022	CSG Engineers Pty Ltd
Section Plans – Drawing No.198-22 Sheet 3	4 July 2022	CSG Engineers Pty Ltd
RW1 – Typical Section – Drawing No.198-22 Sheet 4	4 July 2022	CSG Engineers Pty Ltd
RW1 – LG Return Elevation, Typical Detail Flushing Point and Inspection Point – Drawing No.198-22 Sheet 5	4 July 2022	CSG Engineers Pty Ltd
Site Plan – Drawing No.D03 Revision	1 August 2023	NB Consulting Engineers

D		
OSD Basin & Drainage Plan – Drawing No.DA04 Revision B	1 August 2023	NB Consulting Engineers
Typical Drainage Details – Drawing No.D05 Revision A	23 September 2022	NB Consulting Engineers
Typical Drainage Details – Drawing No.D06 Revision A	23 September 2022	NB Consulting Engineers
Level Spreader Detail – Drawing No.D07 Revision B	21 February 2023	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report Title / No.	Dated	Prepared By
Vegetation Management Plan	11 November 2022	Biosis
Geotechnical Report	4 November 2022	Crozier Geotechnical Consultants
Bushfire Report	25 August 2022	Bush Fire Planning Services
Arboricultural Impact Assessment	20 October 2022	Ezigrow

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
751_GA_02 – Issue A: Plant Schedule	23 June 2023	Myles Baldwin Design
751_GA_10 – Issue A: Landscape Plan	23 June 2023	Myles Baldwin Design
751_GA_10 – Issue A: Landscape Elevation	23 June 2023	Myles Baldwin Design

Waste Management Plan		
Report Title / No.	Dated	Prepared By
Waste Management Plan	10 November 2022	Cadence & Co

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



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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	5 July 2023
Aboriginal Heritage Office	AHO Referral Response	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 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.

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 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.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$8,859.10 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 \$885,910.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

Reason: To ensure adequate protection of Council's infrastructure

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

7. **No Clearing of Vegetation**

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



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

Reason: To protect native vegetation.

8. **Pre-clearance Survey**

A pre-clearance survey is to be undertaken by the Project Ecologist prior to any tree removals.

The survey is to include (but is not limited to) a stag-watch of any hollows/cavities over at least two consecutive nights, immediately prior to tree removal, and where possible, camera probing to search for evidence of fauna activity.

Details demonstrating compliance are to be prepared by the Project Ecologist and submitted to the Certifier prior to issue of Construction Certificate.

Reason: To protect native wildlife.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's "Water Management for Development Policy", and generally in accordance with the concept drainage plans prepared by NB consulting Engineers, drawing number [200999 D01B, D02A, D03D, D04B, D05A, D06A and D07B, dated 21/03/23, 23/09/22, 1/08/23 respectively.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

11. **Engagement of Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure compliance with any measures identified in the Vegetation Management Plan (VMP) which must implemented during construction/demolition.



The Project Ecologist must have one of the following memberships / accreditation:

- a) Practising member of the NSW Ecological Consultants Association
(<https://www.ecansw.org.au/find-a-consultant/>) OR
- b) Biodiversity Assessment Method Accredited Assessor under the relevant
legislation
(<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

12. 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.

13. Construction Traffic Management Plan

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

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- Details for loading and unloading of materials
- Provision of parking for workers which ensure traffic safety
- Details for maintaining access to adjacent properties
- The proposed method of access to and egress from the site for construction vehicles, for the purpose of minimising traffic congestion.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior



- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Take into consideration the combined construction activities of other development in the surrounding area.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The location and operation of any on site crane

The Construction Traffic Management Plan shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

14. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Project Arborist**

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

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

i) tree protection measures and works under section 4 Arboricultural Method Statement.

b) All tree protection measures specified 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 Project Arborist shall provide certification to the Certifier that all tree protection



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

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

16. Tree Removal Within the Property

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

- a) trees 1, 3 and 4 - *Brachychiton populneus*, trees 2, 8, 9, 10, 11, 15, 20, 31, and 32 - *Eucalyptus sieberi*, and tree 19 - *Pittosporum undulatum*,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

17. Tree Removal Within the Road Reserve

This consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

- a) tree 24 - *Casuarina littoralis*, tree 25 - *Kunzea ambigua*, tree 26 - *Eucalyptus sieberi*,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

18. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

19. Survey Certificate

Prior to the commencement of works, a registered surveyor is to accurately peg out the location of the wall relative to the approved plans and the boundaries. The Surveyor shall then provide certification to the Certifier that the location of the wall is to be wholly



within the boundaries of the subject site.

No works are to commence until the Certifier is satisfied that the works will be undertaken wholly within the subject site and not encroach over the boundary.

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Protection of Landscape Features and Sites of Significance**

All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

21. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining private properties,
 - iii) all road reserve trees and vegetation not approved for removal.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the Arboricultural Impact Appraisal and Method Statement dated 20 October 2022 prepared by Ezigrow and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - 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 the Project Arborist on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,



- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection

22. Condition of Trees

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

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



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

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

Reason: Protection of trees.

23. **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.

24. **Impacts to Protected Native Wildlife**

Trees approved for removal are to be inspected for native wildlife by the Project Ecologist prior to their removal. If native wildlife is found within habitat to be removed, the wildlife is to be safely relocated by the Project Ecologist or a licensed wildlife carer.

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 prepared by the Project Ecologist and provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

25. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

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

All logs and branches are to be salvaged from trees prior to any vegetation clearing and reused as fauna habitat within areas of retained native vegetation on the site.

Reason: To protect wildlife habitat.

27. **Site filling – Limited to Virgin Excavated Natural Material (VENM) and Quantity to Complete Approved Works**

Where site fill material is necessary to complete the project as detailed in the approved plans, those fill materials must:

1. Be Virgin Excavated Natural Material (VENM) only, as defined in: The Protection of the Environment Operations Act 1997
2. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.



3. The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifier for approval prior to importation of material.

Reason: To ensure any imported fill is clean and not more than what is required to complete the works as approved.

28. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

29. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

30. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Vegetation Management Plan dated 11 November 2022 prepared by Biosis, and inclusive of the following conditions:

- a) trees and revegetation shall be planted in accordance with the Section 6.2 Rehabilitation Works, and Figure 3 Management zones as outlined in the Vegetation Management Plan,
- b) 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.

31. **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.

32. **Certification of the wall**

Prior to the issue of an Occupation Certificate or within 3 months of practical completion of the wall (whichever comes first), the registered surveyor who marked out the location of the wall prior to the commencement of the work is to certify that the wall, footings and all associated parts of the wall are wholly within the boundaries of the subject site.

Any structure or part of the wall which encroaches over the boundary if identified is to be immediately removed. Council and the Certifier are to be notified of such an encroachment and its rectification.

Reason: To ensure that the approval is in accordance with the approved plans.

33. **Compliance with Vegetation Management Plan - post construction**

Satisfactory establishment/initiation of post-construction restoration measures identified in the approved Vegetation Management Plan is to be certified in writing by the Project Ecologist provided to the Principal Certifier prior to the issue of any Occupation Certificate. This includes replacement plantings and weed control actions.

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

34. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

35. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

36. **Protection of Habitat Features – Certified by Ecologist**

All natural landscape features, including any rock outcrops, native vegetation, soil



and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

37. **Relocation of Logs and Coarse Woody Debris – Certified by Ecologist**

All logs and branches are to be salvaged from cleared trees and reused as fauna habitat within areas of retained native vegetation on the site.

Details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

38. **Certification of Ongoing Work**

An ecological/bushland management contract for implementation of the approved Vegetation Management Plan (VMP), is to be entered into for a five year period.

Evidence of the five-year bushland management contract for implementation of the VMP is to be certified by the Project Ecologist and provided to Principal Certifier and Council's Biodiversity Manager prior to issue of any Occupation Certificate.

Reason: To protect and maintain native vegetation and wildlife habitat.

39. **Weed Removal and Management**

All weeds identified for control in the approved Vegetation Management Plan are to be controlled within the works area prior to issue of any Occupation Certificate.

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

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

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

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

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



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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

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

41. **Landscape Maintenance**

a) 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.

b) 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 Vegetation Management Plan and any conditions of consent.

Reason: To maintain local environmental amenity.

42. **Compliance with Vegetation Management Plan**

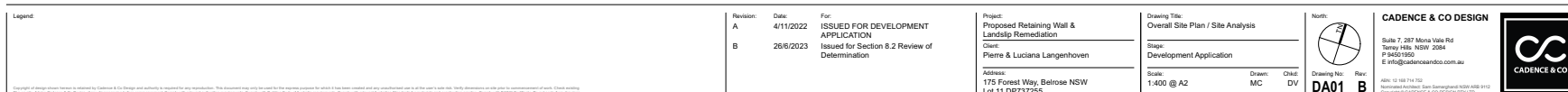
All vegetation management actions outlined in the approved Vegetation Management Plan are to be implemented over a five-year term.

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

43. **Geotechnical Recommendations**

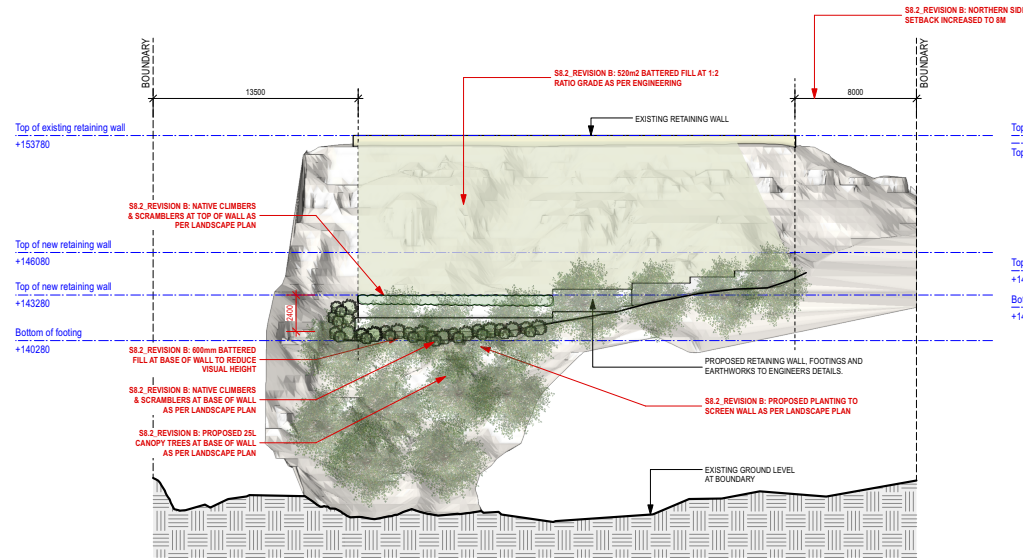
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

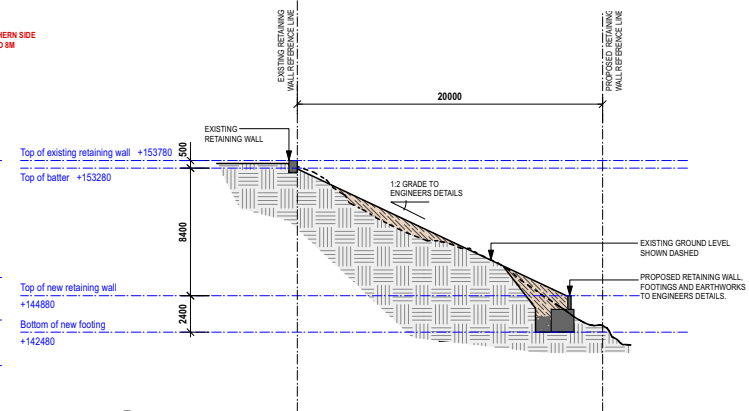


Note:
OSD basin and drainage to stormwater
engineers details. Refer to drawings ref:
200999 prepared by NB Consulting
Engineers.

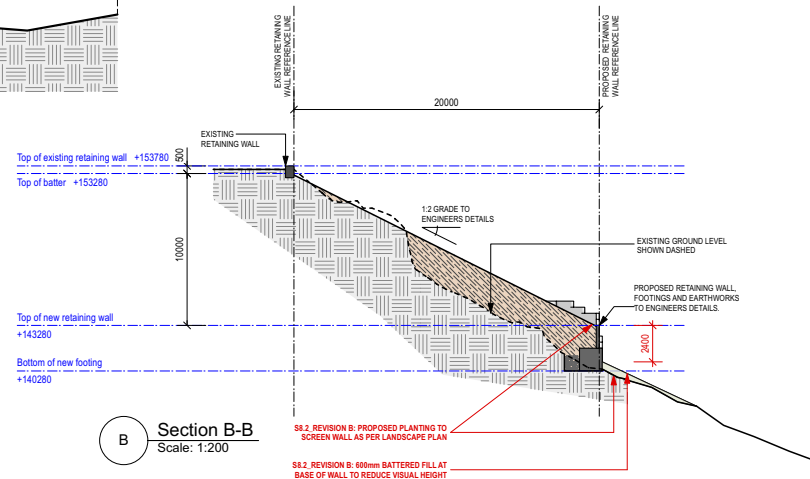
Final location, height and stepping of wall
subject to site conditions and engineers
details.



1 East Elevation
Scale: 1:200



A Section A-A
Scale: 1:200



B Section B-B
Scale: 1:200

Legend

Copyright of design ideas herein is retained by Cadence & Co Design and authority is reserved for any reproduction. This document may only be used for the intended purpose for which it has been created and any unauthorised use is at the user's sole risk. No liability is accepted for any loss or damage arising from the use of this document. All rights reserved. No part of this document may be reproduced without prior written permission from Cadence & Co Design. All rights reserved. No part of this document may be reproduced without prior written permission from Cadence & Co Design.

Revision: A Date: 4/11/2022 For: ISSUED FOR DEVELOPMENT APPLICATION
B Date: 26/6/2023 Issued for Section 8.2 Review of Determination

Project: Proposed Retaining Wall & Landslip Remediation
Client: Pierre & Luciana Langenhoven
Address: 175 Forest Way, Belrose NSW Lot 11 DP737255

Drawing Title: East Elevation and Sections
Stage: Development Application
Scale: 1:200 @ A2
Drawn: MC
Check: DV

North
Drawing No: DA03
Rev: B

CADENCE & CO DESIGN
Suite 7, 287 Mona Vale Rd
Terryville NSW 2084
P 94501955
E info@cadenceandco.com.au
ABN: 12 162 714 172
Incorporated in Australia
Copyright © CADENCE & CO DESIGN PTY LTD



ITEM 3.2**DA2022/1868 - 144 QUEENSCLIFF ROAD QUEENSCLIFF -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL****REPORTING MANAGER**

Rod Piggott

TRIM FILE REF

2023/485074

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2022/1868 for demolition works and construction of a dwelling house including swimming pool on land at Lot C DP 387170, 144 Queenscliff Road QUEENSCLIFF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1868
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot C DP 387170, 144 Queenscliff Road QUEENSCLIFF NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gregory Stuart Whiteley Michelle Wendy Whiteley
Applicant:	Gregory Stuart Whiteley
Application Lodged:	07/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	14/11/2022 to 28/11/2022
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	4.3 Height of buildings: 13.68%
Recommendation:	Approval
Estimated Cost of Works:	\$ 6,549,662.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house.

The application is referred to the Development Determination Panel (**DDP**) due to "5 or more" submissions having been received and the application proposing a greater than 10% variation to the Height of Buildings development standard.

Concerns raised in the objections predominantly relate to building height non-compliance, building bulk, amenity (solar access, privacy and view loss) and Warringah Development Control Plan (**WDGP**) 2011 built form non-compliance. This reports includes a detailed assessment of the objections, and finds that the totality of impact does not warrant the refusal of the application. These issues form the critical assessment issues for this assessment. A petition with 20 signatures was also submitted to Council by 127 Queenscliff Road, Queenscliff. As per the Northern Beaches Community Participation Plan, the petition is considered as a single submission.

The application proposes a maximum building height of 9.663m, non-compliant with the 8.5m development standard under clause 4.3 of the Warringah Local Environmental Plan (**WLEP**) 2011. This represents a 13.68% variation to the standard. The written 4.6 request for the non-compliance with the Height of Buildings development standard arises from the significant slope of the site from the front to down to the rear and the site being partially excavated. Based on extrapolated natural ground levels the height would be fully compliant with the development standard.

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

PROPOSED DEVELOPMENT IN DETAIL

Development Consent is sought for the demolition of existing structures and the construction of a dwelling house.

Specifically, the application seeks consent for the following elements:

- Demolition of an existing residential dwelling, garage and outbuildings;
- Construction of a four level dwelling house;
- Double garage;
- Pool spa;
- Tree removal;
- Associated landscaping; and
- Cut and fill earthworks;

AMENDED PLANS

Following a preliminary assessment of the application Council wrote to the applicant on 16 February 2023 outlining concerns that would not allow Council to support the application. The concerns related to Building Height non-compliance, view loss, privacy and built form non-compliances. Following receipt of the letter the applicant erected certified height poles on the site on 14 March 2023. Following a further view loss assessment, the applicant lodged amended plans to address concerns raised on 7 June 2023.

The amended plans incorporate the following change:

- Ground floor & main south roof reduced
- Roof terrace reduced
- Lower ground floor east facing balconies deleted and replaced with Juliette balconies
- Lap pool deleted
- Basement gym reduced
- Window alterations
- Garden store amended.

The proposed amendments will have a reduced environmental impact on the adjoining properties and public open space from the original proposal. The amended plans result in a reduction in the size of the development. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot C DP 387170 , 144 Queenscliff Road QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Queenscliff Road, Queenscliff.</p> <p>The site is irregular in shape with a frontage of 23.81m along Queenscliff Road and a depth of 39.63m. The site</p>

	<p>has a surveyed area of 647.2m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> <p>The site slopes from the north-east corner to the south-east corner approximately 10.1m</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by <describe the built form of the surrounding area>.</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:

PLM2021/0358 - Construction of a new dwelling house. (8 March 2022)

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

Section 4.15 Matters for Consideration	Comments
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is 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 14/11/2022 to 28/11/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Shane Peter Henning	27 / 127 Queenscliff Road QUEENSCLIFF NSW 2096
Petition	127 Queenscliff Road QUEENSCLIFF NSW 2096
Monica Lindin	3 / 127 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Marianne Francoise Yvernel	203 / 48 - 52 Sydney Road MANLY NSW 2095
Susanne Therese Pollmann	2 / 142 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Monique Danielle Licardy	20 Playfair Road NORTH CURL CURL NSW 2099
Mrs Tracy Davey	Level 4 Suite 67 330 Wattle Street ULTIMO NSW 2007
Withheld	MANLY NSW 2095
Withheld	QUEENSCLIFF NSW 2096

The following issues were raised in the submissions:

- **View loss**

- **Privacy**
- **Bulk and scale**
- **Biodiversity**
- **Built form non-compliance**
- **Excavation and construction impacts**
- **Stormwater**
- **Solar Access**

The above issues are addressed as follows:

- **View loss**

Concern was raised in regard to loss of water views from private open space from the adjoining properties to the north-west.

Comment:

The proposal has been assessed against the view loss provisions under Part D7 (Views) of the WDCP 2011 and the Land and Environment Court Planning Principle '*Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140' in this report (refer Part D7 (Views) under the WDCP 2011 section of this report). In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

- **Privacy**

Concern was raised by neighbouring properties in regards to the potential overlooking between the subject site and adjoining properties.

Comment:

The proposal has been assessed against the privacy provisions under Part D8 Privacy of the WDCP 2011. In summary, the amended proposal allows for reasonable levels of privacy between buildings.

- **Bulk and scale**

The submissions raised concerns about the bulk and scale of the dwelling.

Comment:

This matter is discussed in detail throughout the report. In summary, the bulk and scale of the proposed development is satisfactory given the constraints of the site, the level of impact on adjoining properties and size and scale of neighbouring properties. The proposed built form non-compliance and resultant bulk and scale are appropriate in this residential context and satisfy the requirements and objectives of the WDCP 2013. All relevant provisions of WDCP 2013 have been assessed in this report, with the bulk and scale of the proposed dwelling house deemed satisfactory.

- **Biodiversity**

The submissions raised concern about the potential impacts on flora and fauna species native to the area.

Comment:

The subject site is not located in a nominated threatened species area. The proposed dwelling house if built is not likely to unreasonably impact on threatened species.

- **Built form non-compliance**

Concern is raised in regards to general non-compliance with controls under the WLEP 2011 and WDCP 2011.

Comment:

This matter is addressed in detail elsewhere within this report (refer to the respective assessments in relation to clause 4.6 of the WLEP 2011 and Part B (built form controls) and D (Design) of the WDCP 2011 section of this report). With specific regard to the WDCP 2011, Clause 4.15(3A) of the EP&A Act requires Council to be flexible in the application of DCP provisions and allow reasonable alternative solutions that achieve the objects of those standards dealing with that aspect of the development. As such, where the proposal does not achieve strict compliance with an aspect of the DCP, an assessment of the proposal against the objectives of the control has been undertaken.

- **Excavation and Construction impacts**

Concern was raised in regards to the extent of the proposed excavation and the potential impacts.

Comment:

Concern was raised in regards to potential impacts from excavation works including vibration, soil stability and waste disposal. These matters have been considered against Clause 6.2 (Earthworks) of the WLEP 2011. In summary, the proposal is consistent with the relevant underlying objectives, subject to conditions. Further, the recommendations proposed under the Geotechnical report (prepared by Crozier dated June 2023) are imposed as part of this report/recommendation. The report considers issues related to the proposed excavation during and post construction.

- **Stormwater**

The submissions raised concerns with the management of stormwater.

Comment:

The application was referred to Council's Development Engineers for comment in regards to stormwater management. Suitable conditions have been recommended to ensure adequate stormwater management for the dwelling house and adjoining properties.

- **Solar Access**

The submissions raised concerns with regard to solar access.

Comment:

The application complies with the requirements of Part D6 (Access to Sunlight) of the WDCP 2011. Adequate solar access is maintained to adjoining properties.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Supported, subject to conditions</i></p> <p>The proposal is supported with regard to landscape issues.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation <p>Landscape Referral raises concern that the proposed development does not achieve the 40% landscaped open space under the WDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. It is noted the PLM stated the proposal could be supported if a variation of less than 10% is achieved. As stated in the PLM the Warringah LEP 2011 dictionary defines Landscape Area as '<i>...a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area</i>'. Should the development application be approved, steppers with groundcover infill planting shall replace the 'permeable surface' to the east of the pool and west of the dwelling, as shown on drawing 002 by Formed Gardens.</p> <p>The Arboricultural Impact Assessment (AIA) assessed 10 trees of which eight are located within the property boundary and two are on the neighbouring property. Of the eight trees within the property boundary six are exempt by species or height and as such do not require consent for removal. Tree 1 is an exotic species usually used for screen planting and as such its removal can be supported. Tree 10 is a native species with a low retention value and short useful life expectancy, and its removal can also be supported. The proposed tree replacement shown on the Landscape Plans will sufficiently offset any canopy loss. A Project Arborist shall be engaged to supervise excavation work along the eastern and western boundaries to ensure no impact occurs to neighbouring trees and vegetation.</p> <p>The landscape proposal is generally supported and all proposed planting shall meet the requirements outlined in the conditions of</p>

Internal Referral Body	Comments
	consent. The proposed planting in the road reserve shall be part of a Works within the Road Reserve application under section 138 and 139 of the Roads Act, for approval or otherwise and is not approved under the Landscape Referral. Landscape Referral only assesses the works within the property boundaries. All on slab landscaping shall meet Council's minimum soil depth requirements.
NECC (Bushland and Biodiversity)	<p>Supported, subject to conditions</p> <p>The application seeks approval for demolition works and construction of a dwelling house including swimming pool.</p> <p>The proposal has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - SEPP (Resilience and Hazards) 2021 - Chapter 2 - Development within the Coastal Environment - Warringah DCP - Clause E2 Prescribed Vegetation - Warringah DCP - Clause E4 Wildlife Corridors - Warringah DCP - Clause E6 Retaining Unique Environmental Features <p>The application has been submitted with an Arboricultural report that has determined the development will require the removal of a total of 8 trees with the vast majority being exempt under the current the current Northern Beaches Council tree preservation order. The site has previously been heavily disturbed and therefore, the proposal is unlikely to result in significant impacts to biodiversity, subject to proposed replacement landscaping with native species.</p> <p>Consideration of the proposal's impacts to amenity values on the site and neighbouring properties will be undertaken by the Landscape referrals section.</p>
NECC (Coast and Catchments)	<p>Supported, subject to conditions</p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p>

Internal Referral Body	Comments
	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Four Towns Pty Ltd dated 28 October 2022 the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>Warringah LEP 2011 and Warringah DCP 2011</p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p>
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>The submitted stormwater management plan is acceptable subject to conditions. The proposed driveway crossing width and grade are also acceptable.</p> <p>Development Engineering support the proposal subject to conditions as recommended.</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>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1338305S_07 dated 7 June 2023).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	66

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 proposal is consistent with considerations to maintain appropriate protection of the foreshore area, landscaping, water quality and natural features of the site. No known aboriginal relics are recorded on the site.

- 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 proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity. Suitable conditions are recommended to address the coastal location and environmental considerations.

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 development work is situated well above the Manly Lagoon water line on steeply sloping and adjacent existing houses. The house is styled similar to the existing art-deco home and across the main built area of the site. The proposal will remain consistent with the aims and considerations for the coastal environment of Queenscliff.

Division 5 General

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

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

Comment:

The proposal will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, hazards and geotechnical safety for excavation and building works. Suitable conditions are recommended to address the coastal location and environmental considerations.

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 will not create unreasonable impacts on the coastal environment in terms of runoff, coastal processes, ecology, landform, or scenic amenity. Suitable conditions are recommended to address the coastal location and environmental considerations.

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

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8m - 9.663m	13.68%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8m - 9.663m
Percentage variation to requirement:	13.68%

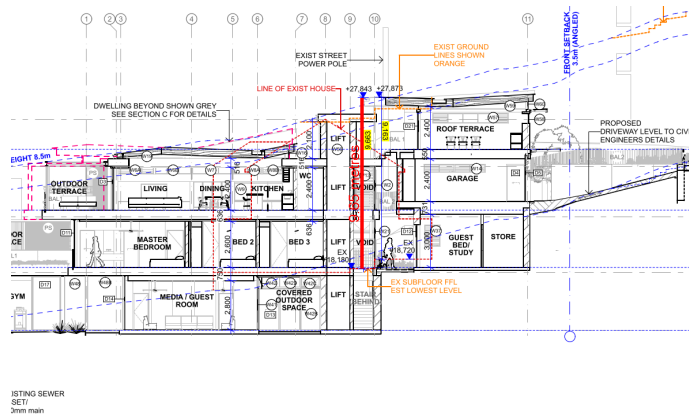


Figure 1 - Building Height non-compliance

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

standard unless:

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

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

(c) to promote the orderly and economic use and development of land,

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

The applicants written request argues, in part:

"Sufficient environmental planning grounds exist to justify the height of buildings variation namely the existing streetscape, existing man-made changes and the steep topography of the land which makes strict compliance difficult to achieve whilst appropriately distributing height and floor space, in the form of legitimate building footprints whilst minimising cut and fill, on this particular site. Further justification to support the proposed variation is provided below:

- *The proposed development is for a minor variation to the building height and is within the parameters of the existing streetscape in terms of bulk and scale, which have set the ground rules for the bulk, scale and mass of the proposal.*

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

- *The objectives of the WLEP2011 Height of Building control are achieved notwithstanding the technical non-compliance.*
- *The objectives of the WLEP2011 R2 Low Density Residential zone are achieved notwithstanding the technical non-compliance.*
- *The compliance with the development standard is both unreasonable and unnecessary.*
- *There are sufficient environmental planning grounds to support the proposed variation.*
- *The site has a steep topography and slopes to the rear by approximately 10m. The resulting constraints from the topography of the site along with the existing man-made building amendments contribute to the minor variation proposed.*
- *The proposed development is consistent with the building height, front setbacks and building bulk of Queenscliff Road. The proposal provides a compliant driveway, and an accessible entry pathway to meet NCC 2022 livable housing requirements on such a steep site, which restricts the height of the ground floor level and therefore determines the height of the roof above resulting in the minor variation to the roof height.*
- *The breach to the building is considered minimal and is under the front façade which has a maximum building height of 7.2m. It is also noted that the building is approximately 4.4m below the neighbour to the east.*
- *The breach will have no adverse impacts on neighbouring properties and will not result in a building of an unacceptable bulk and scale. The breach to the roof will have no adverse impact on adjoining neighbour's view corridors as it is set west of no.142 Queenscliff Road, south of no.146-148 Queenscliff Road, over 4m lower than the lowest balcony of no.125 Queenscliff Road and 4.9m below the lowest balcony of no.127 Queenscliff Road.*
- *The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.*
- *The breach to the building is minimal and is due to man made changes to the land which divert the original natural level of the site and the steep topography.*

It is noted that notwithstanding the proposed breach to the building height, the proposed dwelling

house has a front façade height of 7.2m to Queenscliff Road with the breach below the front façade and therefore not visible or providing an impact to the streetscape of Queenscliff Road. The non-compliance does not result in any unacceptable environmental consequences in terms of streetscape, or residential amenity. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and environmental constraints on the site. Such an outcome is achieved whilst realising the reasonable development potential of the land."

Council's Assessment of the Clause 4.6 Request:

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

- The development promotes the orderly and economic use and development of the land, in so far as the proposed development maintains the pattern of the neighbourhood including predominant heights.
- The development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property while maintaining suitable amenity for adjoining properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

This compliant presentation in the streetscape and appropriate response to the topography of the land ensures that the house would be compatible with the height and scale of the surrounding development.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The proposal minimises visual impact on amenity to a reasonable extent by providing modulation to the dwelling including side, front and rear setbacks that are compliant with the relevant controls under the WDCP 2011. As further assessed in this report under Part D7 - Views, the nature of these views and the views to be retained provide an outcome in which the impact on the views is not unreasonable. The proposed design also complies with the relevant controls for sunlight under the WDCP 2011 and involves a design with physical separation to sufficiently minimise privacy loss.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The proposed dwelling provides a two storey presentation in the streetscape and allows for soft landscaped area at the front and rear of the dwelling. This provides a situation in which the scenic quality of the area will be suitably maintained. Additionally, the maintenance of existing front setback allows for views to be reasonably maintained to the ocean.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The proposed non-compliance is towards the rear of the dwelling and wont be readily visible as viewed from Queenscliff Road.

Zone objectives

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

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

Comment:

The proposed development retains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposed is for a new dwelling house.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The development is consistent with the desired landscape setting, retaining landscaping to the front and rear of the dwelling.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

6.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment:

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

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
--------------------	-------------	----------	--------------	----------

B1 Wall height	7.2m	7.8m	8.33%	No
B3 Side Boundary Envelope	East - 5m	Outside envelope Height - 0m - 1.4m Length - 2.2m	28%	No
	West - 5m	Within envelope	-	Yes
B5 Side Boundary Setbacks	East -0.9m	basement -1.35m - 3.28m lower ground - 3.2m - 3.4m ground - 2m - 3.4m roof - 2m - 3.28m	- - - -	Yes
	West - 0.9m	retaining wall (basement) - 0.5m basement - 2.04m lower ground - 1.34m - 2.03m ground - 1.34m - 2.009m roof - 4.8m - 6.4m	45% - - - -	No Yes Yes Yes Yes
B7 Front Boundary Setbacks	6.5m	3.5m	46.8%	No
B9 Rear Boundary Setbacks	6m	6.61m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	36% (233sqm)	9%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The control limits the external height of walls to 7.2m above the existing ground level. The proposed maximum wall height for the development is 7.8m above natural ground level, which represents an 8.33% variation from the numeric requirement.

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The non-conforming wall height is attributable to the significant slope of the site. To offset the wall height non-compliance large side and rear setbacks are proposed to reduce the apparent bulk when viewed from neighbouring properties. It is noted that the proposed non-compliant

wall height is not one continuous wall plane, but the wall height is measured over the 3 levels which each level has an increased setback to the boundary.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The development is consistent with the size and character of surrounding dwellings. Overall, the proposal will therefore remain generally beneath the existing tree canopy level.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The proposed development does not result in any unreasonable impacts to views currently enjoyed from private or public spaces.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The non-compliant walls are located centrally within the development site and will not adversely impact surrounding properties.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed development does not propose significant excavation on the subject site. The level of excavation is minor and will not have a detrimental or unreasonable impact on adjoining properties.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The building provides a variety of roof forms for visual interest and variation.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

Under Clause B3 of Warringah Development Control Plan 2011, buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 5 metres above ground level (existing) at the side boundaries.

The proposal sits outside of the building envelope on the eastern facade as depicted in image 1. The eastern elevations obtains an encroachment of 0m - 1.4m in vertical height for a horizontal length of 2.2 metres, resulting in a maximum variation of 28%.

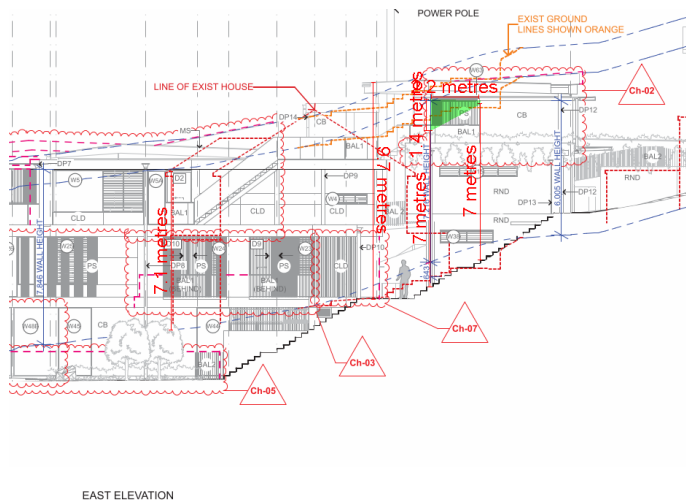


Image 1 - Eastern elevation building envelope non-compliance

Merit consideration

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

- To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposed non-compliance with the building envelope control is not found to cause any unreasonable visual impacts. The dwelling is appropriately setback from the both the eastern and western side boundaries. The overall built form is generally consistent with that of surrounding development.

- To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The encroachment to the side boundary envelope is not attributable to any unreasonable loss of light, solar access or visual and acoustic privacy.

- *To ensure that development responds to the topography of the site.*

Comment:

The building is excavated into the site in order to reduce its height and impacts on the views enjoyed by neighbours to the north-west. The building is stepped up the slope (above ground) in a manner responsive to the natural topography.

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

B5 Side Boundary Setbacks

Description of non-compliance

Clause B5 requires that structures have a setback of at least 0.9m from the side boundaries of a property.

The proposed retaining wall along the western side of the dwelling house is setback 0.5m, non-compliant with the numeric control.

The dwelling itself is compliant with the control.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

Whilst the proposal involves a variation to the Warringah DCP 2011 landscaped open space provision, adequate areas of deep soil landscaping have been provided within the front and rear yards.

- *To ensure that development does not become visually dominant.*

Comment:

The retaining wall is at ground level and will not lead to a visually dominant dwelling.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The retaining wall does not exacerbate the bulk and scale of the existing dwelling house.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The retaining wall does not compromise significant view lines from surrounding private and public land.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The proposed wall does not impact on any views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

Part B7 of the WDCP requires development be setback 6.5m from the front property boundary. The proposed garage is setback 3.5m from the front property boundary, non-compliant with the numeric control. This represents a 45% variation to the numeric control.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposal exhibits varying setbacks to the front boundary, demonstrating adequate articulation to reduce the development's visual dominance. Due to the site's location off a private driveway, there is substantial distance between the front of the site and the public domain which further maintains a sense of openness.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposal will not detract from the visual continuity and pattern of buildings that includes car parking facilities located within the front setback area as evident along Queenscliff Road.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed development is consistent with other front-facing garages along Queenscliff Road and complements the existing streetscape. The proposal helps protect and enhance the visual quality of streetscapes and public spaces.

- *To achieve reasonable view sharing.*

Comment:

The proposed non-compliant garage does compromise views from neighbouring properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Part D1 of the WDCP 2011 requires at least 40% of the subject site to be landscaped open space. The proposed development will provide a landscaped open space of 36% (233sqm). This represents a 9% variation to the numeric control.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposed works do not impact upon the potential for future planting on site. The proposed open space as presented to the street is not unreasonable in terms of visual impact or inconsistent with that of neighbouring properties.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

The site is not known to have any Indigenous vegetation or significant topographical features.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The proposed development maintains suitable landscaped open space to the front and rear of the site to allow for the future establishment of low lying shrubs and tree

- *To enhance privacy between buildings.*

Comment:

The landscape open space variation will not give rise to privacy impacts between buildings. The proposal includes adequate landscaping along the side boundaries to enhance privacy between properties.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

Sufficient dimensions of LOS are provided to adequately accommodate for the outdoor recreational needs of the occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

The site will retain satisfactory space for service functions, including clothes drying.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

Conditions of consent will be imposed which ensure stormwater from the new development is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management Policy and comply with the relevant Australian Standards and Codes. It is not considered the non-compliance will result in adverse stormwater runoff.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D7 Views

As a result of the public exhibition of the development application, Council received a number of submissions raising view loss as a concern (Apartments in 127 and 125 Queenscliff Road, Queenscliff).

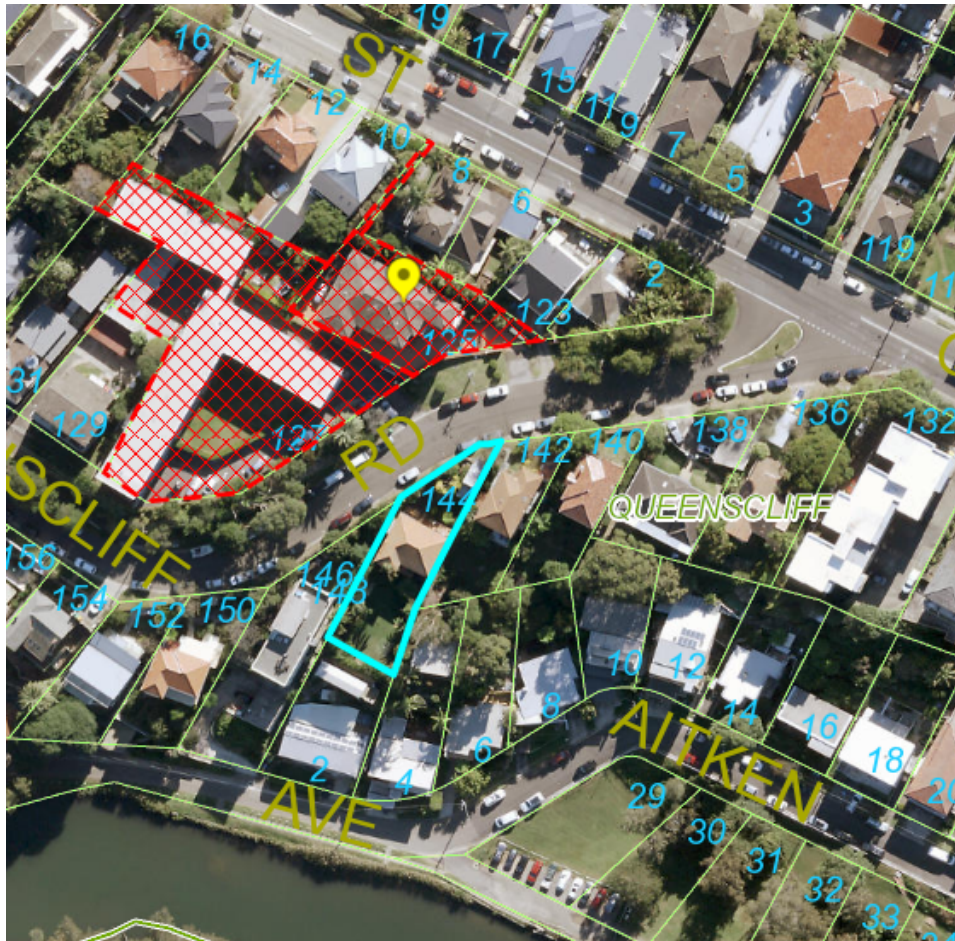


Image 1 - Subject site and adjoining properties.

To assist Council in its assessment of the application, a request was made for height poles to be erected on site to reflect the envelope of the original proposal. The applicant erected 3 poles to emulate the envelope of the original proposal. Survey confirmation of the pole heights and location were provided by the applicant on 9 March from Hammond Smeallie and Co, registered surveys confirming the height and location of the poles.

The location of the height poles is shown below:

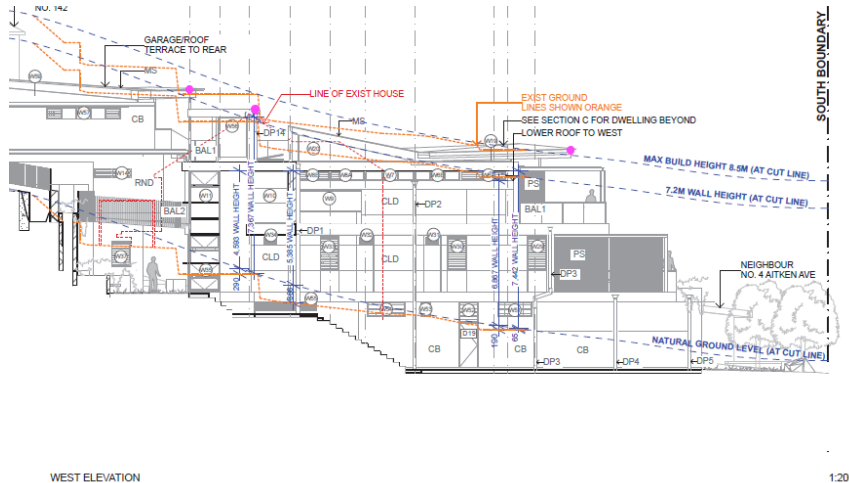


Image 2- Height poles position highlighted in pink (superseded western elevation plan)

Merit consideration

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

- To allow for the reasonable sharing of views.

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

Nos. 125 and 127 Queenscliff Road, Queenscliff

The nature of the view affected from these properties would be Manly lagoon. Existing views of the Ocean, Manly headland (including St. Patrick's Estate) and district views of Manly will not be impacted by the proposed development.

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

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

views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

Nos. 125 and 127 Queenscliff Road, Queenscliff

Existing views to Manly Lagoon are obtained from over the front boundary of the both apartment buildings from living rooms and balconies off living rooms from both a standing and sitting position. As stated above, existing views over the front boundary of the Ocean, Manly headland and district views of Manly will remain unaffected from the proposed development.

3. Extent of impact

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

Comment to Principle 3:

No. 3/125 Queenscliff Road, Queenscliff

The proposed development will impact existing views of the lagoon to a severe extent from the living room and balcony of this apartment from both a standing and sitting position. Existing views of Manly Headland and St. Patrick's Estate will be maintained. The extent of view loss from this property is deemed to be moderate.



Photo 1 - Balcony of living room (Standing)



Photo 2 - Living room (Standing)

No. 3/127 Queenscliff Road, Queenscliff

The proposed amended development will ensure highly valued views from this apartment are maintained. The proposed development will be largely hidden by the existing hedge to the communal open space area pictured below. The extent of impact is negligible.



Photo 3 - Communal open space of living room (Standing)



Photo 4 - Communal open space off living room (Standing)

No. 6/127 Queenscliff Road, Queenscliff

The proposed amended development will ensure highly valued views from this apartment are maintained. The proposed development will be largely hidden by the existing hedge to the communal open space area pictured below. The extent of impact is negligible.



Photo 6 - Communal open space off living room (Standing)



Photo 7 - Communal open space off living room (Standing)

Nos. 24/127 and 27/127 Queenscliff Road, Queenscliff

The proposed development will reduce lagoon views from high use areas, to a severe extent. Views of the Ocean and Manly headland will be maintained in full. Qualitatively and in consideration of all existing views from the Nos. 24/127 and 27/127 Queenscliff is minor. The view impact is not considered 'moderate or severe' given that existing ocean views will not be impacted. While views of the lagoon will be significantly impacted, it is noted that the ocean views and the headland are highly valued and will be retained. Therefore, in consideration of all views the extent of impact is minor. It is to be noted that access could not be acquired to this apartment during the assessment of this application. Despite this, a accurate view loss assessment is able to made considering access was provided at Apartment 24, which is on the same level as Apartment 27 and the vies in question are the same.



Photo 8 - Living room (Standing)



Photo 9 - Balcony (Standing)



Photo 10 - Balcony (Standing)

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed dwelling house exhibits non-compliance with the Height of Buildings development standard as well as the wall height and side boundary envelope WDCP 2011 controls. In relation to the building height, wall height and side boundary envelope, the non-compliance is primarily caused by the existing excavation on site and sloping topography. To provide a fully compliant building height and side boundary envelope would limit the design potential of the proposal and would not result in a significant improvement to the view loss outcome. Upon analysis of the views in question, the proposed development will maintain existing view corridors of the ocean and Manly Headland. Views of the lagoon however will be lost. Noting the availability of other views, and the distant/vulnerable nature of the view in question, the impact of the development on the whole is considered to be minor. The question of whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours, the proposal has maintained acceptably sized view corridor over the top of the development. Any further design mitigation would not deliver the same design potential for the site.

Overall, the proposal itself is acceptable and will result in a reasonable sharing of views.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal demonstrates a innovative design to retain view corridors and maintain amenity for adjoining properties.

- *To ensure existing canopy trees have priority over views.*

Comment:

The application does not seek the removal of any canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

Submissions in regards to privacy has been received from the adjoining neighbours of the residential flat building to the east No. 142 Queenscliff Road, Queenscliff. The objections raise concern with the proposed roof terrace, external stair access and garage door overlooking the

balconies and living rooms of the apartments.

Roof terrace

The amended plans submitted as part of this application has reduced the size and overall usability of the roof terrace. To further offset potential overlooking between the roof terrace and adjoining property a 1.8m height privacy screen has been fixed to the eastern side of the wall along the entrance way to the roof terrace.

Other

Concern is raised with regard to the external stair from the ground floor to the roof terrace. The proposed staircase will be used for access only. The staircase is not deemed to result in any unreasonable visual privacy impacts to the adjoining property, considering its sole purpose is to provide access to a secondary outdoor living area. Concern is also raised with regard to the privacy impact that results from location of the proposed garage door. The proposed garage door will be utilised for cars entering and exiting the site. A separate access for resident access is provided to the western side of the garage.

Concerns have also been raised regarding the privacy impacts to apartment building and surrounds of 127 Queenscliff Road, Queenscliff. The proposed living areas and windows will not have any unreasonable sightlines from private open space and window to this property. The level of separation and difference in topography between the two sites restricts any potential privacy impacts. No further privacy mitigation is required for this property.

The amended plans conditions imposed with regard to screening in the recommendation ensure a reasonable level of privacy for adjoining properties.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal, as amended, will result in an appropriate design suitable for the locality.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal is not anticipated to raise any issues with regards to issues with personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal represents an innovative and contemporary design not dissimilar to the bulk and scale of surrounding residential development.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

New development is sited behind the existing building line and will not be readily visible from the street frontage, with the exception of the garage and upper floor. Therefore, the proposed development will not be to the detriment of the streetscape. New works comprise enclosing and existing void and a small rear extension at a single storey level. The new works will not be visually imposing on adjoining properties

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 \$65,497 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,549,662.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of a dwelling house has been referred to the DDP due to the variation to the height of building development standard non-compliance.

The concerns raised in the objections have been addressed in detail within this report.

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

The proposal has therefore been recommended for **approval**.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height

of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/1868 for Demolition works and construction of a dwelling house including swimming pool on land at Lot C DP 387170, 144 Queenscliff Road, QUEENSCLIFF, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 101/ Revision 2	7 June 2023	DUO Architects
DA 102/ Revision 2	7 June 2023	DUO Architects
DA 103/ Revision 2	7 June 2023	DUO Architects
DA 110/ Revision 2	7 June 2023	DUO Architects
DA 111/ Revision 1	26 October 2022	DUO Architects
DA 112/ Revision 2	7 June 2023	DUO Architects
DA 113/ Revision 1	26 October 2022	DUO Architects
DA 101/ Revision 2	7 June 2023	DUO Architects
DA 114/ Revision 2	7 June 2023	DUO Architects
DA 115/ Revision 1	26 October 2022	DUO Architects
DA 116/ Revision 2	7 June 2023	DUO Architects
DA 117/ Revision 1	26 October 2022	DUO Architects
DA 118/ Revision 2	7 June 2023	DUO Architects
DA 119/ Revision 1	7 June 2023	DUO Architects
DA 200/ Revision 2	7 June 2023	DUO Architects
DA 201/ Revision 2	7 June 2023	DUO Architects
DA 202/ Revision 2	7 June 2023	DUO Architects
DA 203/ Revision 2	7 June 2023	DUO Architects

DA 204/ Revision 2	7 June 2023	DUO Architects
DA 300/ Revision 2	7 June 2023	DUO Architects
DA 301/ Revision 3	31 June 2023	DUO Architects
DA 302/ Revision 2	7 June 2023	DUO Architects
DA 303/ Revision 2	7 June 2023	DUO Architects
DA 304/ Revision 2	7 June 2023	DUO Architects
DA 305/ Revision 2	7 June 2023	DUO Architects
DA 306/ Revision 2	7 June 2023	DUO Architects
DA 700/ Revision 2	7 June 2023	DUO Architects
DA 701/ Revision 2	7 June 2023	DUO Architects
DA 702/ Revision 2	7 June 2023	DUO Architects
DA 703/ Revision 1	7 June 2023	DUO Architects
DA 704/ Revision 2	7 June 2023	DUO Architects
DA 705/ Revision 2	7 June 2023	DUO Architects
DA 804/ Revision 1	26 October 2022	DUO Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	10 October 2022	Tree repairs
BASIX Certificate No. 1338305S_07	7 June 2023	Efficient Living
Geotechnical Report	June 2023	Crozier

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
002/ Revision E	7 June 2023	Formed Gardens
003/ Revision E	7 June 2023	Formed Gardens
004/ Revision E	7 June 2023	Formed Gardens
005/ Revision E	7 June 2023	Formed Gardens
006/ Revision E	7 June 2023	Formed Gardens
007/ Revision E	7 June 2023	Formed Gardens
008/ Revision E	7 June 2023	Formed Gardens
009/ Revision E	7 June 2023	Formed Gardens
010/ Revision E	7 June 2023	Formed Gardens

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

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

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

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

3. Prescribed Conditions

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

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

- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. **No Approval for Secondary Dwelling**

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

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

5. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant

shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$65,496.62 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$6,549,662.00.

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

Details demonstrating compliance, by way of written receipts issued by Council, are to be

submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

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

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

7. **Security Bond**

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

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

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

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

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

8. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$33,000 as security against any damage to Council's stormwater drainage infrastructure as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **Amended Landscape Plan**

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

i) replace the 'permeable surface', to the east of the pool and west of the dwelling, as shown on drawing 002 (by Formed Gardens dated 13/10/22) with steppers and infill groundcover planting.

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

Reason: Landscape amenity.

10. **On Slab Landscape Works**

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

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

The following minimum soil depths are required to support landscaping as proposed:

- i) 300mm for groundcovers or native grasses,
- ii) 600mm for shrubs.

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

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

11. **Traffic Management and Control**

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

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

12. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the Council drainage pipe within the drainage easement in 146-148 Queenscliff Road.

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

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

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

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

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

14. Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are designed in accordance with Northern Beaches Council's Water Management for Development Policy Clause 6.1.

Details and certification prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

15. Elevated Parking Facility Design

The Applicant shall submit Structural Engineering drawings for the design of the elevated parking facility in accordance with the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls.

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

Reason: Safety.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

17. Structural Adequacy and Excavation Work

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

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

Reason: To provide public and private safety.

18. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

19. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

20. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval of the connection into the Council stormwater pipe located within the easement in 146-148 Queenscliff Road. The submission is to include Civil Engineering plans for the design of the connection which is to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

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

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

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

21. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2>

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

22. **Compliance with Standards**

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

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

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

23. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

24. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

25. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites.

a) The Project Arborist shall be in attendance and supervise all works in the tree protection zone of neighbouring trees, and in particular:

i) excavation work along the eastern and western boundaries.

b) Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

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

d) Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

26. Tree Removal Within the Property

This consent approves the removal of the following tree(s) within the property (as recommended and identified by tree number in the Arboricultural Impact Assessment):

- i) tree 1 - *Murraya paniculata*, and tree 10 - *Callistemon viminalis*,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

27. 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

28. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are

to be placed within the canopy dripline of trees and other vegetation required to be retained,
v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the 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 Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Principal Certifier must ensure that:

c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

29. Condition of Trees

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

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

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

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

Reason: Protection of trees.

30. **Impacts to Protected Native Wildlife**

All trees proposed for removal are to be inspected for native wildlife prior to their removal. If native wildlife is found within trees to be removed, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

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

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

Reason: To protect native wildlife.

31. **Wildlife Protection**

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

Reason: To protect native wildlife.

32. **Road Reserve**

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

Reason: Public safety.

33. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

34. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on

approved plans.

35. Traffic Control During Road Works

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

Reason: Public Safety.

36. Vehicle Crossings

The Applicant is to construct one vehicle crossing 3 metres wide at the kerb to 4 metres wide at the boundary in accordance with Northern Beaches Council Drawing Normal Low Profile and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

37. Landscape Completion

Landscaping is to be implemented in accordance with the approved Landscape Plan (drawing 002, 003, 004, 005 by Formed Gardens dated 13/10/2022), and inclusive of the amended Landscape Plan conditions, plus the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres or as otherwise scheduled if greater in size, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1 metre from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iii) mass planting shall be installed at minimum 1 plant per metre square for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at least 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

The landscape works under the development application is permitted only within the legal property boundaries, and the proposed landscape works within the road verge shall be part of a Works within the Road Reserve application under section 138 and 139 of the Roads Act, for approval or otherwise.

Reason: Environmental amenity.

38. **New Vegetation Planting**

Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the Curl Curl Ward native planting guide available on Council's website.

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

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

39. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2021 – 2026) are to be imported on to the site prior to or during construction works.

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

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

40. **Stormwater Disposal**

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

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

42. Certification of Structures Located Adjacent to Council Pipeline or Council Easement

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy Section 6.1 and the approved Construction Certificate plans.

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

Reason: Protection of Council's infrastructure.

43. Certification Elevated Parking Facility Work

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls.

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

Reason: Compliance with this consent.

44. Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Reason: Protection of Council's infrastructure.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**45. Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be

replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

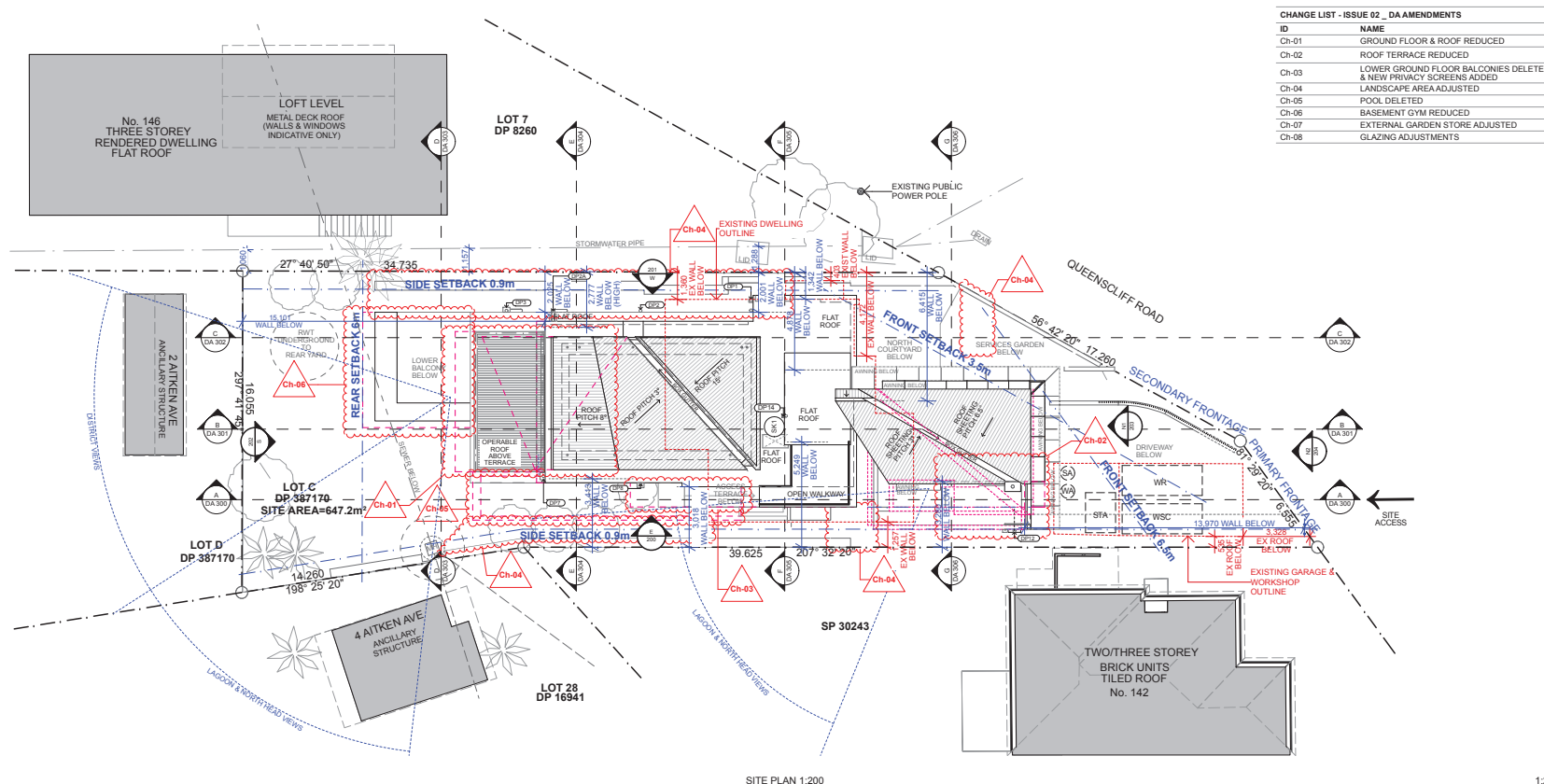
The approved landscaped areas as shown on drawing Landscape Area Diagram (001 by Formed Gardens dated 13/10/2022) shall remain as planting.

Reason: To maintain local environmental amenity.

46. **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.



CHANGE LIST - ISSUE 02 - DA AMENDMENTS	
ID	NAME
Ch-01	GROUND FLOOR & ROOF REDUCED
Ch-02	ROOF TERRACE REDUCED
Ch-03	LOWER GROUND FLOOR BALCONIES DELETED & NEW PRIVACY SCREENS ADDED
Ch-04	LANDSCAPE AREA ADJUSTED
Ch-05	POOL DELETED
Ch-06	BASEMENT GYM REDUCED
Ch-07	EXTERNAL GARDEN STORE ADJUSTED
Ch-08	GLAZING ADJUSTMENTS

BASIC REQUIREMENTS - BASIC CERTIFICATE NUMBER 13383055_07

Landscape

The applicant must plant indigenous or low water use species of vegetation throughout 190m² of the site.

Rainwater Tank

The applicant must install a rainwater tank of at least 8,000 litres on the site. This rainwater tank must meet and be installed in accordance with the requirements of all applicable regulatory authorities.

The applicant must configure the rainwater tank to collect rainwater runoff from at least 68.7m² of roof area.

Outdoor Spa

The spa must not have a volume greater than 7.2 kilolitres.

BASIC Thermal Comfort Commitments

Floors

Concrete slab on ground (175m²), Suspended floor / open sub floor (24m²), Suspended floor above Garage (all or part of the floor area)

BASIC Energy commitments

Hot Water

The applicant must install the following hot water system in the development: gas instantaneous & stars

Natural Lighting

The applicant must install a PV system in the kitchen & 3x Bathrooms/toilets of the dwelling for natural lighting

Alternative Energy

The applicant must install a PV system with the capacity to generate min 4.4 peak kW of electricity as part of the development & connect to the developments electrical system.

NATHERS INSULATION REQUIREMENTS - CERTIFICATE NUMBER HR-VLVARV-04

Floors

Concrete slab on ground with R2.0 insulation

Suspended concrete with R2.5 insulation (insulation only value) to open and enclosed suspended areas

Concrete between levels R2.5 insulation separating conditioned and unconditioned rooms

External Walls

Cavity block wall one core filled one hollow with K12 cavity board insulation R2.7

Cavity block wall one core filled internal stud plasterboard lined with R2.5

Lightweight cladding on framed walls with R2.50 insulation (insulation only value)

External Colour: Light (SA < 0.30)

Walls within dwellings

Plasterboard on studs, no insulation required

Cavity block wall one core filled one hollow

Cavity block wall one core filled one hollow with R2.5 insulation

Single concrete block core filled with R2.5 insulation

NATHERS INSULATION REQUIREMENTS - CERTIFICATE NUMBER HR-VLVARV-04 (CONT.)

Glazing Doors/Windows

Louvers: U-value: 4.50 (equal to or lower than) SHGC: 0.61 (±5%)

Sliding, fixed and double hung: U-value: 2.40 (equal to or lower than) SHGC: 0.53 (±5%)

Awning and Pivot: U-value: 2.40 (equal to or lower than) SHGC: 0.50 (±5%)

Glass bricks (modelling proxy used): U-value: 3.60 (equal to or lower than) SHGC: 0.54 (±5%)

Given values are AFRC total window system values (glass and frame)

Skylights: U-value: 2.58 and SHGC: 0.24

Roof and Ceilings

Concrete roof, with R2.5 insulation and internal plasterboard ceiling

Metal roof with a foil backed blanket (R11.3 and R11.3) R2.5 insulation and plasterboard ceiling

Concrete with R2.5 insulation separating conditioned and unconditioned rooms

External Colour: Medium (SA < 0.50)

Ceiling Penetrations

Sealed LED downlights not to exceed NATHERS certificate, Sealed exhaust fans to bathrooms, laundry and kitchen

1200mm ceiling fans to bedrooms, media and gym

Floor coverings: As per plans

External Shading: Shading as per stamped drawings

Ventilation: All external doors have weather seals, all exhaust fans and chimneys have dampers.



LEGEND	
	ELEMENTS-EXIST
	ELEMENTS-NEW
	ELEMENTS-DEMOLISHED
	ELEMENTS-LINE OF PREVIOUS DA SCHEME
	STACKPILE AREA
	WASH AREA
	STORAGE AREA
	WASTE STORAGE CONTAINER
	WASTE RECYCLING

NOTE

The Contractor shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the architect. Failure to notify constitutes acceptance of the drawings. Drawings shall not be used for construction purposes without the architect's approval. The architect is not responsible for any errors or omissions in the drawings. The architect is not responsible for any errors or omissions in the drawings. The architect is not responsible for any errors or omissions in the drawings.

All boundaries and contours are subject to relevant detailed survey drawing 10055, all levels to Australian Height Date, & the contractor responsible to confirm all measurements on site and locations of any services prior to work on site. All documents have either are subject to Australian Copyright Laws.

Project Partners

Refer to consultant documentation:
- Land Surveyor: HARRISON SMITH & CO PTY LTD
- Building Consultant: FOUR TOWNS PTY LTD
- Quantity Surveyor: TREE REPAIR PTY LTD
- Energy Consultant: EFFICIENT LIVING PTY LTD
- Civil Engineer: CHAZER USED TECHNICAL ENGINEERS
- Hydraulic & Civil Engineer: BARRELL HYDRAULIC DESIGN PTY LTD
- Landscaping Architect: FORTRESS GARDENS PTY LTD
- Structural Engineer: PARTIDGE ENGINEERS PTY LTD
- Carrier

RevID	Date	Transmittal Set Name
01	26/10/22	DA SUBMISSION
02	7/6/23	DA AMENDMENTS - FOR COUNCIL APPROVAL



DUO ARCHITECTS PTY LTD
ACN: 631 304 642
hello@duoarchitects.com
Teneil Van Dyck NSW ARB #9263
PO Box 708, Manly NSW 1555
www.duoarchitects.com

Drawn | Checked K2 & TVD
Plot Date: 7/6/23
Project NO: 21408
Project Status: DEVELOPMENT APPLICATION
Client: MICHELLE & GREG WHITELEY
Site: 144 Queenscliff Rd, Queenscliff NSW, 2096

DRAWING TITLE:
SITE PLAN + WASTE MANAGEMENT PLAN
PROJECT NAME:
144 QUEENSCLIFF RD, QUEENSCLIFF

REVISION NO.
02
DRAWING NO.
DA 101

CHANGE LIST - ISSUE 02 - DA AMENDMENTS	
ID	NAME
Ch-01	GROUND FLOOR & ROOF REDUCED
Ch-02	ROOF TERRACE REDUCED
Ch-03	LOWER GROUND FLOOR BALCONIES DELETED & NEW PRIVACY SCREENS ADDED
Ch-04	LANDSCAPE AREA ADJUSTED
Ch-05	POOL DELETED
Ch-06	BASEMENT GYM REDUCED
Ch-07	EXTERNAL GARDEN STORE ADJUSTED
Ch-08	GLAZING ADJUSTMENTS

BASIX REQUIREMENTS - BASIX CERTIFICATE NUMBER 13383055_07

BASIX Requirements

Landscape - The applicant must plant indigenous or low water use species of vegetation throughout 190m² of the site.

Rainwater Tank

-The applicant must install a rainwater tank of at least 8,000 litres on the site. This rainwater tank must meet and be installed in accordance with the requirements of all applicable regulatory authorities.

-The applicant must configure the rainwater tank to collect rainwater runoff from at least 68.7m² of roof area.

Outdoor Spa

-The spa must not have a volume greater than 7.2 kilolitres.

-The spa must be shielded.

BASIX Thermal Comfort Commitments

Floors

-Concrete slab on ground (175m²), Suspended floor / open sub floor (24m²), Suspended floor above Garage (all or part of the floor area)

Hot Water

-The applicant must install the following hot water system in the development: gas instantaneous 6 stars

Natural Lighting

-The applicant must install a window &/or skylight in the kitchen & 3x Bathrooms/toilets of the dwelling for natural lighting

Alternative Energy

-The applicant must install a PV system with the capacity to generate min 4.4 peak kW of electricity as part of the development & connect to the developments electrical system.

LEGEND

ELEMENTS- EXIST

ELEMENTS- NEW

ELEMENTS- DEMOLISHED

ELEMENTS- PREVIOUS DA SCHEME

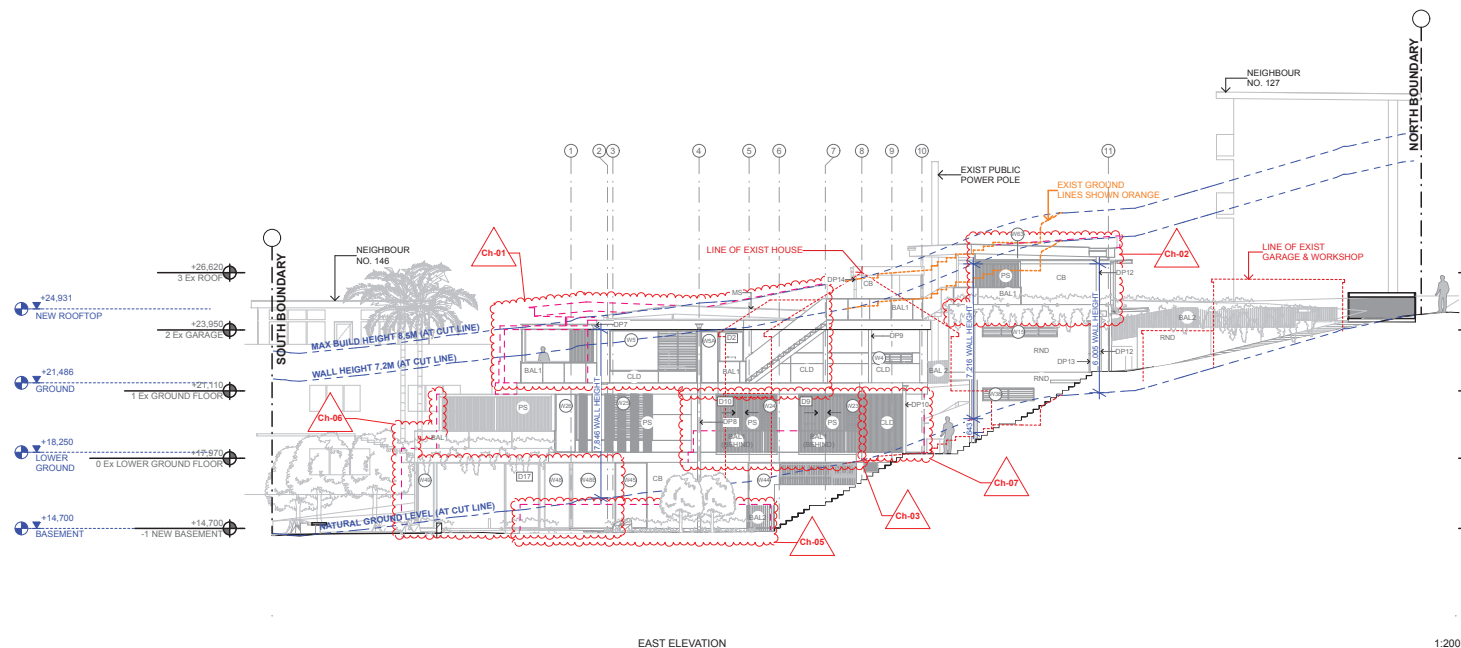
NATURAL GROUND LINE

EXISTING GROUND LINE

Note: the existing ground line is only represented where there is variation between the natural & existing ground levels.

LEGEND

BAL1	BALUSTRADE 1 - GLASS
BAL2	BALUSTRADE 2 - METAL
BR	BROCKWORK
CB	CONCRETE BLOCK
CLD	LIGHT WEIGHT CLADDING
D	DOOR
DP	DOWNPIPE
GRS	GRASS
GVL	GRAVEL
ID	INTERNAL DOOR
MS	METAL SHEETING (ROOF)
PW	PWERS
PG	PERMEABLE GRAVEL
PS	PRIVACY SCREENING
RND	RENDERED MASONRY
RWT	RAIN WATER TANK
TM	TIMER
SP	SOLAR PANELS
W	WINDOW



NOTE

The Contractor shall check all dimensions and levels on site prior to construction. Notify any errors, discrepancies or omissions to the architect. Refer to written dimensions only. Do not scale drawings. Drawings shall not be used for construction purposes and should be used for construction. To allow any alterations which may be required by DUO ARCHITECTS, the applicant must submit a written request to DUO ARCHITECTS, not for construction, sketch design & DA Approval only.

All boundaries and contours are subject to relevant detailed survey drawing 10055, all levels to Australian Height Data. It is the contractors responsibility to confirm all measurements on site and locations of any services prior to work on site. All documents have written are subject to Australian Copyright Laws.

Project Partners

Refer to consultant documentation:

Land Surveyor	HARRISON BRESNAN & CO PTY LTD
Building Consultant	FOUR TOWNS PTY LTD
Energy Consultant	CELESTIAL PTY LTD
Energy Consultant	CELESTIAL PTY LTD
Structural Engineer	GRIZZARD STRUCTURAL ENGINEERS
Hydraulic & Civil Engineer	BARRELL HYDRAULIC DESIGN PTY LTD
Landscaping Engineer	FORRESTER ENGINEERS PTY LTD
Structural Engineer	PARTRIDGE ENGINEERS PTY LTD
Cartographer	

RevID	Date	Transmittal Set Name
01	26/10/22	DA SUBMISSION
02	7/6/23	DA AMENDMENTS - FOR COUNCIL APPROVAL

DUO
Architects

DUO ARCHITECTS PTY LTD
ACN: 631 304 642
hello@duoarchitects.com
Terrell Van Dyck NSW ARB #9263
PO Box 708, Manly NSW 1555
www.duoarchitects.com

Drawn | Checked | K2 & TVD
Plot Date: 7/6/23
Project NO: 21-009
Project Status: DEVELOPMENT APPLICATION

Client: MICHELLE & GREG WHITELEY
Site: 144 Queenscliff Rd, Queenscliff NSW, 2096

DRAWING TITLE :

ELEVATION EAST

PROJECT NAME :
144 QUEENSCLIFF RD, QUEENSCLIFF

REVISION NO.

02

DRAWING NO.
DA 200



BASIC REQUIREMENTS- BASIC CERTIFICATE NUMBER 1333055-05

BASIC Requirements

Landscape The applicant must plant indigenous or low-water use species of vegetation throughout 190m² of the site.

Rainwater Tank The applicant must install a rainwater tank of at least 8,000 litres on the site. The rainwater tank must meet and be installed in accordance with the requirements of all applicable regulatory authorities.

The applicant must configure the rainwater tank to collect rain runoff from at least 68.7m² of roof area.

Outdoor Spa

The spa must not have a volume greater than 7.2 kilolitres.

The spa must be shaded.

BASIC Thermal Comfort Commitments

Floors

Concrete slab ground (175mm), Suspended floor / open sub floor (24mm), Suspended floor above Garage (all or part of the floor area)

BASIC Commitments

Hot Water

The applicant must install the following hot water system in the development: gas instantaneous 6 stars

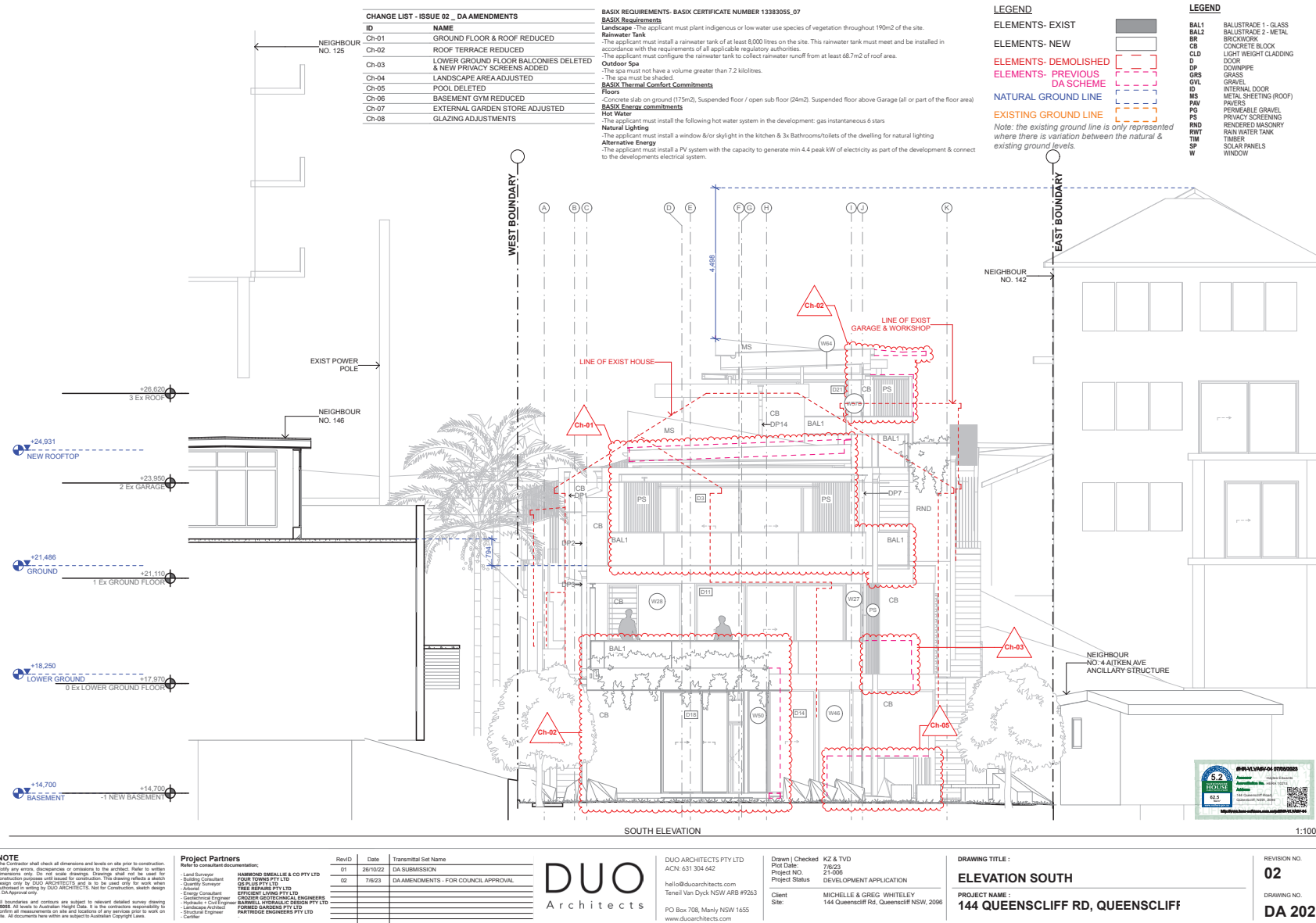
Natural Lighting

The applicant must install a window &/or skylight in the kitchen & 3 Bathrooms/toilets of the dwelling for natural lighting

The applicant must install a PV system with the capacity to generate max 4 peak kilw of electricity as part of the development & connect to the electricity grid.

1:200

REVISION NO.
02
DRAWING NO.
DA 201



BASIX Requirements - BASIC CERTIFICATE NUMBER 13283055-05

BASIX Requirements

Landscaping - The applicant must plant indigenous or low water use species of vegetation throughout 190m² of the site.

Rainwater Tank

- The applicant must install a rainwater tank of at least 8,000 litres on the site. This rainwater tank must meet and be installed in accordance with the requirements of all applicable regulatory authorities.
- The applicant must configure the rainwater tank to collect rainwater runoff from at least 68.7m² of roof area.

Outdoor Spa

- The spa must not have a volume greater than 7.2 kilolitres.
- The spa must be shaded.

BASIX Thermal Comfort Commitments

Floors

- Concrete slabs on ground (175mm), Suspended floor / open sub floor (24mm), Suspended floor above Garage (all or part of the floor area)

BASIX commitments

Hot Water

- The applicant must install the following hot water system in the development: gas instantaneous 5 stars

Natural Lighting

- The applicant must install a window / door / skylight in the kitchen and 3 x Bathrooms/toilets of the dwelling for natural lighting
- The applicant must install a PV system with the capacity to generate min 4 peak kW of electricity as part of the development & connect to the electricity grid

Note: the existing ground line is only represented where there is variation between the natural & existing ground levels.

BAL1	BALUSTRADE 1 - GLASS
BAL2	BALUSTRADE 2 - METAL
BR	BRICKWORK
CB	CONCRETE BLOCK
CLD	LIGHT WEIGHT CLADDING
D	DOOR
DP	DOWNPIPE
GRS	GRASS
GVL	GRAVEL
ID	INTERNAL DOOR
MS	METAL SHEETING (ROOF)
PAV	PAVERS
PG	PERMEABLE GRAVEL
PS	PRIVACY SCREENING
RND	RENDERED MASONRY
RWT	RAIN WATER TANK
TIM	TIMBER
SP	SOLAR PANELS
W	WINDOW



REVISION NO.
02

DRAWING NO.
DA 203

BASIC REQUIREMENTS- BASIC CERTIFICATE NUMBER 1338305.07

BASIC Requirements

Landscaping The applicant must plant indigenous or low water use species of vegetation throughout 190m2 of the site.

Watermain Tank

• The applicant must install a watermain tank of at least 8,000 litres on the site. This rainwater tank must meet and be installed in accordance with the requirements of all applicable regulatory authorities.

• The applicant must configure the rainwater tank to collect rainwater runoff from at least 68.7m2 of roof area.

Outdoor Spa

• The spa must have a volume greater than 7.2 kilolitres.

• The spa must be shaded.

BASIC Thermal Comfort Commitments

Floors

• Concrete slab on ground (175mm), Suspended floor / open slab floor (24mm), Suspended floor above Garage (all or part of the floor area)

Water Heating Commitments

Hot Water

• The applicant must install the following hot water system in the development: gas instantaneous 6 stars

Natural Lighting

• The applicant must install a window &/or skylight in the kitchen & 3 bedrooms/lofts of the dwelling for natural lighting

• The applicant must install a PV system with a capacity to generate min 4.4 kWh of electricity as part of the development & connect to the grid.

Note: the existing ground line is only represented where there is variation between the natural & existing ground levels.

REVISION NO.
02

DRAWING NO.
DA 204



**OBJECTION PURSUANT TO CLAUSE
4.6 OF WARRINGAH LOCAL
ENVIRONMENTAL PLAN 2011**

**VARIATION OF A DEVELOPMENT
STANDARD REGARDING THE HEIGHT
OF BUILDINGS AS DETAILED IN
CLAUSE 4.3 OF WARRINGAH LOCAL
ENVIRONMENTAL PLAN 2011**

**Demolition of Existing Dwelling
House and Construction of a New
Dwelling House, Swimming Pool and
Associated Works**

**144 Queenscliff Road, Queenscliff
NSW 2096**

✉ mathew@fourtowns.com.au

☎ 0425232018

www.fourtowns.com.au

PO Box 361, Balgowlah NSW 2093

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

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:

Duo Architects on behalf of Greg and Michelle Whiteley

31 July 2023

Disclaimer

This report has been prepared with due care and thoroughness by Four Towns Pty Ltd. The statements and opinions are given in good faith and in confidence that they are accurate and not misleading. In preparing this document, Four Towns Pty Ltd has relied upon information and documents provided by the Client or prepared by other Consultants. Four Towns Pty Ltd does not accept responsibility for any errors or omissions in any of the material provided by other parties.

© Four Towns Pty Ltd

NOTE: This document is the property of Four Towns Pty Ltd (trading as Four Towns Planning). This document is Copyright, no part may be reproduced in whole or in part, without the written permission of Four Towns Pty Ltd.

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. 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 Warringah Local Environmental Plan 2011 (WLEP 2011). It is noted that this request is made for the proposed demolition of an existing dwelling house and construction of a new dwelling house, swimming pool and associated works at 144 Queenscliff Road, Queenscliff.

It is important for Council to acknowledge that from the date of the pre-lodgement meeting to the submission of this application, Council has now changed the requirements of measuring building height due to NSW Land and Environment Court Case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. It is noted in the pre-lodgement meeting that Council supported the measurement through the natural ground level and extrapolated lines (as per *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070), refer to extract below:

With reference to the survey provided for this pre-lodgement meeting, it appears that the natural ground level extrapolated on the section plan is accurate for Council to assess and determine the height of building proposed as part of this development.

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, *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070, *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	8.5m
Proposed	9.663m
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	13.68%

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 WLEP 2011. The proposal is consistent with surrounding developments and the proposed minor variation is compatible with the locality and streetscape of Queenscliff Road.

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 WLEP2011 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the WLEP2011 R2 Low Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

- The site has a steep topography and slopes to the rear by approximately 10m. The resulting constraints from the topography of the site along with the existing man-made building amendments contribute to the minor variation proposed.
- The proposed development is consistent with the building height, front setbacks and building bulk of Queenscliff Road. The proposal provides a compliant driveway, and an accessible entry pathway to meet NCC 2022 livable housing requirements on such a steep site, which restricts the height of the ground floor level and therefore determines the height of the roof above resulting in the minor variation to the roof height.
- The breach to the building is considered minimal and is under the front façade which has a maximum building height of 7.2m. It is also noted that the building is approximately 4.4m below the neighbour to the east.
- The breach will have no adverse impacts on neighbouring properties and will not result in a building of an unacceptable bulk and scale. The breach to the roof will have no impact on adjoining neighbour's view corridors as it is set west of no.142 Queenscliff Road, south of no.146-148 Queenscliff Road, over 4m lower than the lowest balcony of no.125 Queenscliff Road and 4.9m below the lowest balcony of no.127 Queenscliff Road.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.
- The breach to the building is minimal and is due to man made changes to the land which divert the original natural level of the site and the steep topography.

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 Cases Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, Bettar v Council of the City of Sydney [2014] NSWLEC 1070, 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 standard 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

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

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.*

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

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—

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

- (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 C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 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 contain Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition or Zone R5 Large Lot Residential.

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

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

- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (ba) *clause 4.4, to the extent that it applies to land identified on the Key Sites Map as Site F, Site G, Site H or Site I,*
- (c) *clause 5.4,*
- (d) *clause 6.7, to the extent that it applies to land identified on the Key Sites Map as Site F or Site G.*
- (caa) *clause 5.5.*

(8A) *Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the Height of Buildings Map on land shown on the Centres Map as the Dee Why Town Centre.*

(8B) *Despite subclause (8A), development on Site C or Site E may exceed the maximum height of building shown on the Height of Buildings Map if the maximum height is allowable under clause 7.14.*

Comment: As detailed previously in this request, Clause 4.6 of WLEP2011 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 WLEP2011, 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:

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

- *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 ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

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

(2A) *If the [Height of Buildings Map](#) specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

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 WLEP2011 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and 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 proposal justifies and provides sufficient environmental planning grounds to warrant the variation and approval as submitted.

The development standard in Clause 4.3 (2) of the WLEP2011, 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 8.5m. 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—

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

(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)” under *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 WLEP2011 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, 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 as a result of the topography of the land and modified components, 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 principal project requirement was to comply with the NCC 2022 Livable Housing requirements and provide a step free access path from the garage to the entry door. The ground floor level is determined by required driveway gradient and connecting access ramp with a maximum 1:14 gradient to the main entry. The roof set out facilitates a 2.4m minimum ceiling height as required by the National Construction Code (NCC). The folded roof has a side setback of 3.2m to the west and 3.8m side setback to the east boundary. The folded roof form is a site specific response opening to the north, maximising natural light while maintaining a low roof pitch of 3 degrees to the south in order to work with the building height restrictions.

The project architects have worked tirelessly to design new modern high-end dwelling 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 Queenscliff Road streetscape. The proposal is below the 8.5m height limit when viewed from Queenscliff Road towards the front façade. Therefore, any building

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

elements breaching the height control are below the front façade and are a direct result of man-made changes and the steep topography of the land.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under WLEP2011 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height 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 WLEP2011 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 and the consistent bulk and scale built form along Queenscliff Road. Given the proposed application is considered to be minor and 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 Queenscliff precinct. As noted under the introduction, 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 WLEP2011 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the WLEP2011 R2 Low Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a steep topography and slopes to the rear by approximately 10m. The resulting constraints from the topography of the site along with the existing man-made building amendments contribute to the minor variation proposed.

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

- The proposed development is consistent with the building height, front setbacks and building bulk of Queenscliff Road. The proposal provides a compliant driveway, and an accessible entry pathway to meet NCC 2022 livable housing requirements on such a steep site, which restricts the height of the ground floor level and therefore determines the height of the roof above resulting in the minor variation to the roof height.
- The breach to the building is considered minimal and is under the front façade which has a maximum building height of 7.2m. It is also noted that the building is approximately 4.4m below the neighbour to the east.
- The breach will have no adverse impacts on neighbouring properties and will not result in a building of an unacceptable bulk and scale. The breach to the roof will have no impact on adjoining neighbour's view corridors as it is set west of no.142 Queenscliff Road, south of no.146-148 Queenscliff Road, over 4m lower than the lowest balcony of no.125 Queenscliff Road and 4.9m below the lowest balcony of no.127 Queenscliff Road.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.
- The breach to the building is minimal and is due to man made changes to the land which divert the original natural level of the site and the steep topography.

2. 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: In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court.

The court now 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 cases *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

It is noted that common-sense should prevail from the new court case “*Merman Investments Pty Ltd*” with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through ‘Bettar’.

As a result of the above, it is determined that the maximum building above ground level (existing) is 9.663m for the proposed development. This results in 1.163m variation or 13.68%. This is a result of the existing building structures on the land which prove that the site has been modified to its current form and measured through the definition of ground level (existing).

The proposed minor breach relates to two portions of the dwelling only in the form of an architecturally designed roof form and eaves and the lift overrun, due to the steep slope of the site, providing a compliant driveway and step free access from the garage to the entry and determines the Ground Floor FFL and in turn the roof level above. It is submitted that the proposal is consistent with the varying building heights of Queenscliff Road and is still lower and fits in with the adjoining

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

properties. The minor two breaches are outlined below and shown on the following pages through plan excerpts:

- Roof Terrace- 8.7m (to natural ground) 9.663m (to exist ground)
- Lift Roof- 8.661m (to natural ground) 8.931m (to exist ground)

It is noted from the date of the pre-lodgement meeting to the submission of this application, Council has now changed the requirements of measuring building height due to NSW Land and Environment Court Case *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. It is noted in the pre-lodgement meeting that Council supported the measurement through the natural ground level and extrapolated lines, refer to extract below:

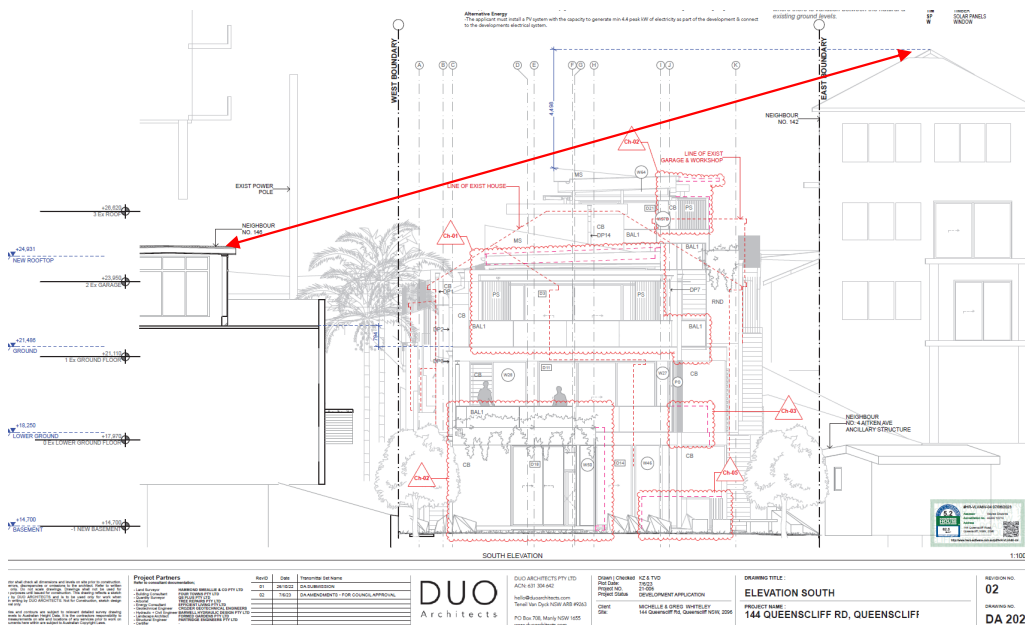
With reference to the survey provided for this pre-lodgement meeting, it appears that the natural ground level extrapolated on the section plan is accurate for Council to assess and determine the height of building proposed as part of this development.

As a result of the above, the application now proposes a variation to Clause 4.3 Height of Buildings. The review above allows a thorough analysis of the objectives of Clause 4.3, which confirms that the proposal is consistent with the objectives of the zone, as outlined below:

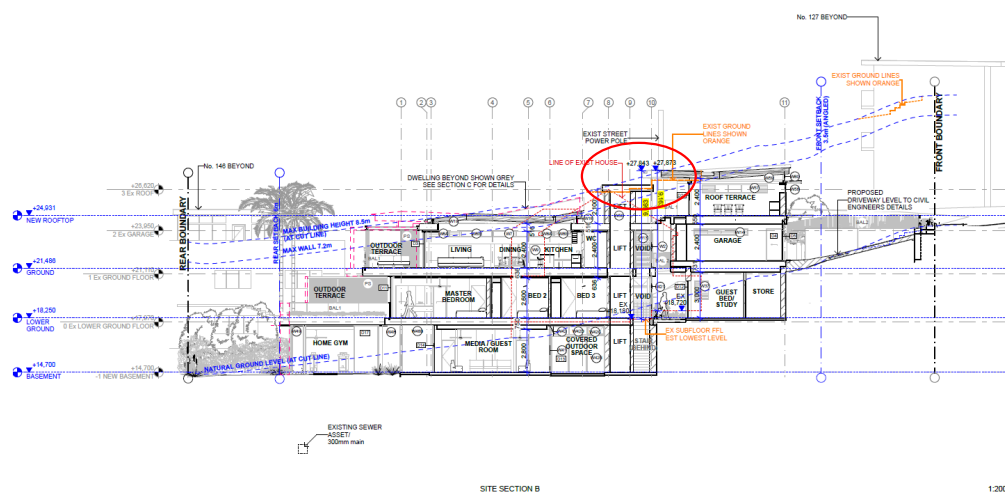
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

The site currently is not compatible with the height and scale of surrounding and nearby development noting the topography and fall from the street to the rear of the properties on the southern side of Queenscliff Road. Refer to the streetscape and visual analysis which outlines the bulk and scale and varying nature of Queenscliff Road with building heights in excess of 12m. The project architects have provided the building outlines of adjoining properties to show the disparity between the adjoining neighbours and that existing on our site. It is noted that notwithstanding the proposed minor breach to the building height, our proposal is still 4.4m below the building height of 142 Queenscliff Road when viewed from the street. It is important for Council to recognise and acknowledge the existing streetscape of Queenscliff Road has a varied appearance with three-four storey buildings, many built within the required front setback, three-four storeys in height and over the maximum 8.5m height limit. Strict adherence for our site would impact the existing streetscape and create a dwelling that is out of character, not compatible with the locality nor compliant with the NCC 2022 Livable Housing requirements. It is noted as per the excerpt below of the southern elevation plan that the project architects have created a dwelling which flows with the adjoining neighbours noting the topography changes from the east to the west. This effect notes that the proposal is more than 4.4m lower than the eastern neighbour known as 142 Queenscliff Road.

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff



It is noted that the proposed variation relates to a small portion of the proposed new roof. It is important to acknowledge that the owners are creating an architectural designed dwelling which will create visual interest while remiaing discreet and vitality to a run down area of Queenscliff (as a result of many old dwellings and residential flat buildings). The proposed roof design is a pragmatic response to facilitate northern solar ingress into the building mass increasing passive thermal comfort and reducing the energy and operational costs for artificial lighting and heating. As a result of the topography of the land, the proposal requires a variation as shown on the excerpts of various plans below:



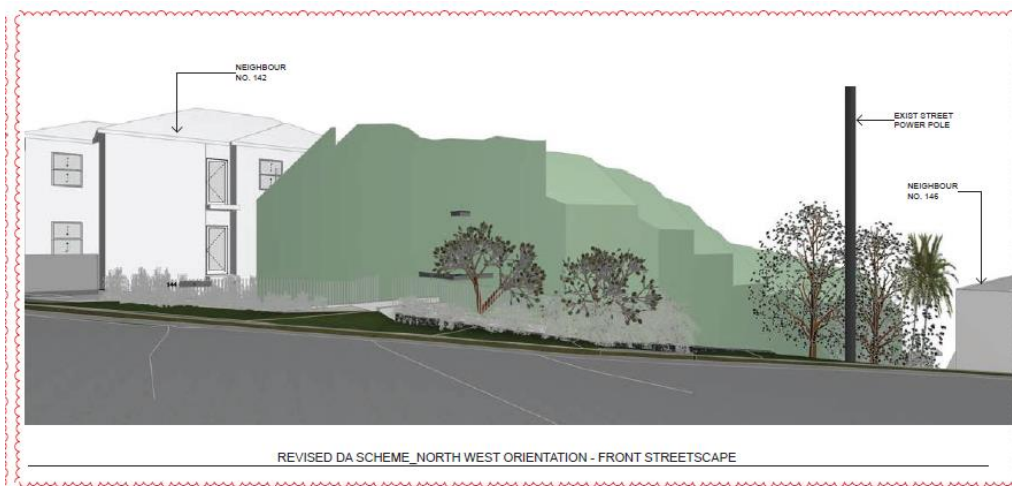
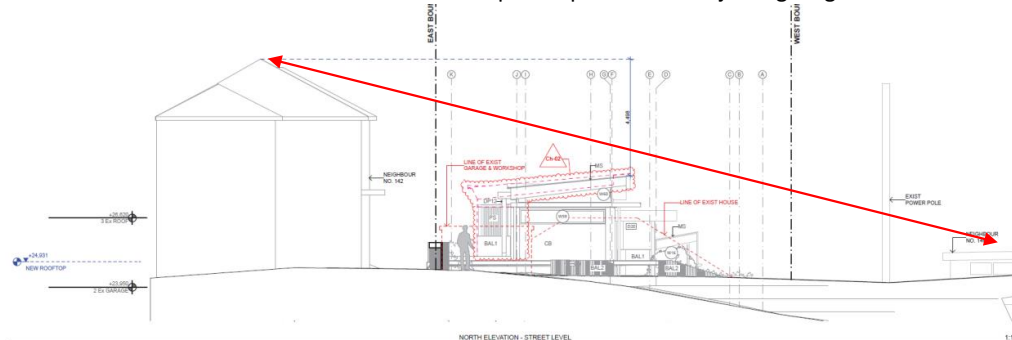
Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

It is our professional opinion that the proposal is consistent and compatible with the height and scale of the surrounding and nearby development. The proposal is of a bulk and scale acceptable for the area, noting the increased and varied side setbacks to ensure modulation and articulation to the dwelling.

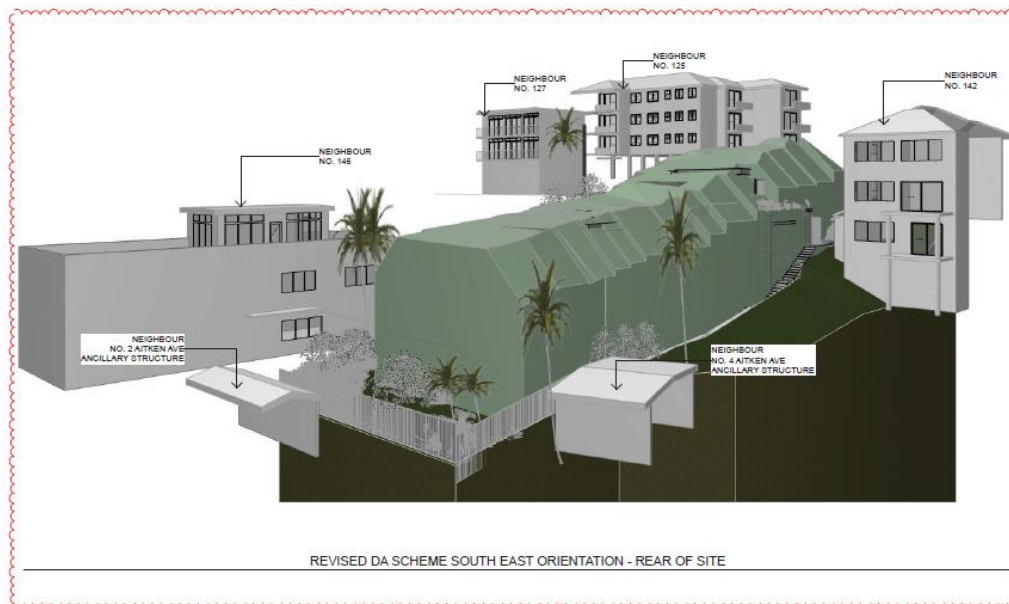
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

The proposal has been strategically designed by the project architect to have compliant and varying side setbacks and a compliant side boundary envelope. The proposal will not have a visual impact, will not adversely disrupt views, will not increase privacy or amenity impacts and will not create an unreasonable loss of solar access.

The excerpt below from the north elevation (street level) plan shows that the dwelling has been strategically designed to be consistent with the bulk and scale of the streetscape with the front façade, but has allowed for an increased access to privacy, sunlight and cross boundary views with a compliant rear setback. My clients have designed their dream home not only on their requirements, but also on the basis to ensure the future development potential of adjoining neighbours.



Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff



(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

The proposal has been designed as a quality, long term architectural solution which integrates the proposed dwelling with the landscaping on the site. This includes an integrated approach to provide a usable outdoor area while providing sufficient plantings to retain the foliage and canopy for the wildlife corridor and use as privacy to neighbouring properties while not impact views across the site. The proposal development is of lesser bulk and scale to existing neighbouring properties and is in fact narrower than the existing dwelling on the site, therefore the proposal will not dominate the scenic quality of Warringah's coastal and bush environments. On this basis, it is our professional opinion that the proposal meets objective (c).

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

As noted throughout the report, the site cannot be readily viewed from the foreshore or any relevant public places due to the natural screening created within the public landscape. It is our opinion that any views are filtered to the site. The visual impact of the proposal from Lagoon Park is consistent with the existing bulk and scale character of the adjoining neighbours. Architecture of the southern facades have been designed to be recessive in nature through the careful articulation of key facades and gently stepping the floor levels to reflect the sloping topography of the site. If the proposal were to comply with the building height it would create a disparity between the site and the adjoining properties. Due to the existing building heights, bulk and scale and the topography of the sites, the visual impact of the proposal is consistent with the Queenscliff Road precinct. Further, the variation relates in majority to roof eaves that are of architectural merit which provide visual interest, therefore not been of visual impact. On this basis, it is our professional opinion that the proposal meets objective (d).

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

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]*

Comment: It would indeed be unreasonable for Council to refuse the development that is proposed by way of relatively minor variation considering the existing bulk and scale along Queenscliff Road as the development 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 with the new dwelling to enhance the natural and built form of the locality.

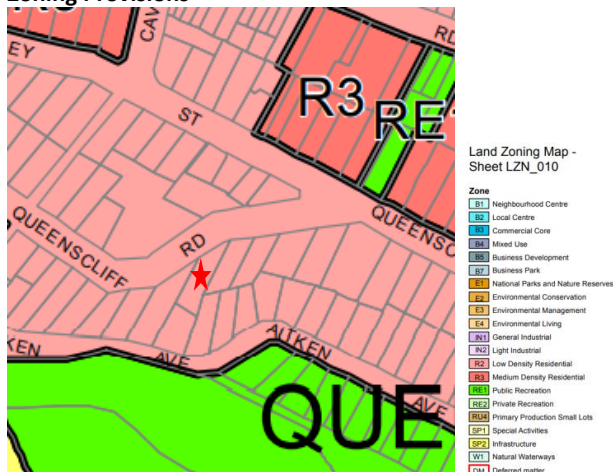
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.

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 the existing streetscape of Queenscliff Road shows that the development standard for Height of Buildings has been virtually abandoned or destroyed by Council's own decisions in granting development consents (and varying land uses), hence compliance with this development standard is unnecessary and unreasonable.

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

Zoning Provisions



Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

2 Permitted without consent

Home-based child care; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

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.

Objectives of the R2 Low Density Residential zone:**1 Objectives of zone**

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The site is zoned R2 Low Density Residential. A dwelling house is a permissible land use with Council's consent. The development meets the objectives of the zone as outlined below:

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

The site provides a new enhanced dwelling on the site that will be utilised for decades to come. The proposal creates a low density dwelling house (noting the variety of land uses in the immediate area) and creates a new landscape haven which integrates the dwelling with the existing natural environment.

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

Not applicable – the proposal retains the use of the site for residential purposes.

- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposal includes a new enhanced landscape setting with a new designed landscape scheme for the site that integrates the proposed dwelling with the existing natural environment. The proposal will be in harmony with the natural environment of Warringah.

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

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 existing streetscape, existing man-made changes and the steep topography of the land which makes strict compliance difficult to achieve whilst appropriately distributing height and floor space, in the form of legitimate building footprints whilst minimising cut and fill, on this particular site. Further justification to support the proposed variation is provided below:

- The proposed development is for a minor variation to the building height and is within the parameters of the existing streetscape in terms of bulk and scale, which have set the ground rules for the bulk, scale and mass of the proposal.
- 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 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 proposed development, represents a new functional design which enhances the site with a new modern dwelling while addressing the planning controls and streetscape of Queenscliff Road. Not only does this provide improved amenity for the occupants of the building, it complies with the objectives of the zone.

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

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

- The objectives of the WLEP2011 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the WLEP2011 R2 Low Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a steep topography and slopes to the rear by approximately 10m. The resulting constraints from the topography of the site along with the existing man-made building amendments contribute to the minor variation proposed.
- The proposed development is consistent with the building height, front setbacks and building bulk of Queenscliff Road. The proposal provides a compliant driveway, and an accessible entry pathway to meet NCC 2022 livable housing requirements on such a steep site, which restricts the height of the ground floor level and therefore determines the height of the roof above resulting in the minor variation to the roof height.
- The breach to the building is considered minimal and is under the front façade which has a maximum building height of 7.2m. It is also noted that the building is approximately 4.4m below the neighbour to the east.
- The breach will have no adverse impacts on neighbouring properties and will not result in a building of an unacceptable bulk and scale. The breach to the roof will have no adverse impact on adjoining neighbour's view corridors as it is set west of no.142 Queenscliff Road, south of no.146-148 Queenscliff Road, over 4m lower than the lowest balcony of no.125 Queenscliff Road and 4.9m below the lowest balcony of no.127 Queenscliff Road.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.
- The breach to the building is minimal and is due to man made changes to the land which divert the original natural level of the site and the steep topography.

It is noted that notwithstanding the proposed breach to the building height, the proposed dwelling house has a front façade height of 7.2m to Queenscliff Road with the breach below the front façade and therefore not visible or providing an impact to the streetscape of Queenscliff Road.

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 environmental 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 bulk, scale and mass of Queenscliff Road and the proposed development and associated components which will breach the development standard. This report finds that a merit assessment is applicable and determines that there is sufficient

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

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.

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. Additionally, the proposal adds significant social and healthy benefits through a new functional building. Council should encourage such building upgrades via support of positive intention to upgrade old residential buildings 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.

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

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.

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 144 Queenscliff Road, Queenscliff.

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 site's constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor and consistent with the streetscape of Queenscliff Road and 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 Queenscliff 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 grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the WLEP2011 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the WLEP2011 R2 Low Density Residential zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.

Construction of a Dwelling House, Swimming Pool and Associated Works
144 Queenscliff Road, Queenscliff

- The site has a steep topography and slopes to the rear by approximately 10m. The resulting constraints from the topography of the site along with the existing man-made building amendments contribute to the minor variation proposed.
- The proposed development is consistent with the building height, front setbacks and building bulk of Queenscliff Road. The proposal provides a compliant driveway, and an accessible entry pathway to meet NCC 2022 livable housing requirements on such a steep site, which restricts the height of the ground floor level and therefore determines the height of the roof above resulting in the minor variation to the roof height.
- The breach to the building is considered minimal and is under the front façade which has a maximum building height of 7.2m. It is also noted that the building is approximately 4.4m below the neighbour to the east.
- The breach will have no adverse impacts on neighbouring properties and will not result in a building of an unacceptable bulk and scale. The breach to the roof will have no adverse impact on adjoining neighbour's view corridors as it is set west of no.142 Queenscliff Road, south of no.146-148 Queenscliff Road, over 4m lower than the lowest balcony of no.125 Queenscliff Road and 4.9m below the lowest balcony of no.127 Queenscliff Road.
- The proposed development does not result in any adverse privacy or overshadowing impacts to neighbouring properties or any public place.
- The breach to the building is minimal and is due to man made changes to the land which divert the original natural level of the site and the steep topography.

In addition to the above justifications, the proposal is considered to meet the intent of Council's controls relating to Height of Building, the R2 Low Density Residential zoning 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. As noted, it is important to acknowledge the pre-lodgement notes which supported the measurements of the building height based on the natural ground level and extrapolated levels. This 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 3.3**MOD2023/0085 - 15 OYAMA AVENUE MANLY - MODIFICATION
OF DEVELOPMENT CONSENT DA2020/1372 GRANTED FOR
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE****REPORTING MANAGER****Rod Piggott****TRIM FILE REF****2023/504087****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to Mod2023/0085 for Modification of Development Consent DA2020/1372 granted for alterations and additions to a dwelling house on land at Lot 1 & 2 DP 1087597, 15 Oyama Avenue MANLY, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0085
----------------------------	--------------

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 1 DP 1087597, 15 Oyama Avenue MANLY NSW 2095 Lot 2 DP 1087597, 15 Oyama Avenue MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2020/1372 granted for Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Sheona Mary Mckenzie Devin
Applicant:	Sheona Mary Mckenzie Devin

Application Lodged:	28/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	04/04/2023 to 18/04/2023
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 32.9% 4.4 Floor space ratio: 19.1%
Recommendation:	Approval

EXECUTIVE SUMMARY

This development application seeks consent for Modification of Development Consent DA2020/1372 granted for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) as the application seeks the modification of a development consent under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* that was previously determined by the DDP and proposes amendments to a condition of development consent recommended in the Council assessment report but which was amended by the Panel (Condition 9).

Concerns raised in the objections predominantly relate to the increased parapet height, view loss, glare from solar panels, stated cost of works, planning process, and ability for neighbours to understand the application.

Critical assessment issues included, among others, the assessment of the proposals increased development within the foreshore area and the assessment of view loss related to the proposed increased parapet height (limited by Condition 9). These assessment issues are discussed in the following sections:

- Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
- Manly Development Control Plan - 3.4.3 Maintenance of Views
- Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

The report recommends that Condition 9(a) concerning parapet height be retained.

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

PROPOSED DEVELOPMENT IN DETAIL

The application is seeking Modification of Development Consent DA2020/1372 granted for alterations and additions to a dwelling house. Specifically, the proposal comprises of:

- Retain existing footprint of Bed 1 – no planter to western wall.
- Retain existing alignment of eastern wall to Bed 2.
- Maintain consistent parapet height – delete DA Condition 9(a).
- Change configuration of entry foyer.
- Change alignment of dining room wall.
- Changes to window configurations and sizes.
- Changes to batten screen configurations.
- Extend lower ground floor balcony towards western boundary within building footprint.
- Relocate spa pool to western side of dwelling house.

Condition 9 (as applied by the DDP in the determination of DA2020/1372) specified the following:

Condition 9 - Amendments to the approved plans

The approved plans are to be amended as follows:

- a) The height of the parapet wall on the western elevation above bedroom 1 is to be reduced to a height of RL 18.51.*
- b) The height of the front fence is to be a maximum height of 1800mm above ground level at the front boundary*

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

Reason: Maintain streetscape and views to surrounding properties

This conditions was recommended in the Council assessment report but was amended by the Development Determination Panel (which determined DA2020/1372) into the form above.

This application seeks to modify this condition to remove line (a), and allow for a parapet height as original proposed in DA2020/1372 and of the same height on all elevations. The RL of this proposed parapet is RL 18.75.

Additional information was requested in relation to MLEP 2013 Clause 6.10 Limited development on foreshore area. This additional information was provided and did not require re-notification in accordance with the Northern Beaches Council Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping
Manly Development Control Plan - 4.1.8 Development on Sloping Sites
Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 1 DP 1087597 , 15 Oyama Avenue MANLY NSW 2095 Lot 2 DP 1087597 , 15 Oyama Avenue MANLY NSW 2095
Detailed Site Description:	<p>The site is located at the end of Oyama Avenue in a culdesac, and is made up of two lots; Lot 1 DP 1087597 where the dwelling is located, and Lot 2 DP 1087597, which is mainly occupied by the existing garage. The parent application also related to 19A-21 Addison Road (Lot CP SP 13460), which shares a boundary with the subject site, as the works (as approved by DA2020/1372) involved demolition of an existing deck which encroached over the common boundary onto the Addison Road neighbour. The new additions and modification works under this proposal are confined to 15 Oyama Avenue.</p> <p>The site is irregular in shape, and is located overlooking Sydney Harbour to the west. It slopes steeply from the Oyama Avenue frontage down to the west, north and south west. The topography continues down from the site to meet the water.</p> <p>There is an existing three storey dwelling on site, with an attached single garage. Surrounding development generally consists of detached dwellings of various ages and styles along Oyama Avenue, and medium density development at 19A-21 Addison Road.</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:

Development Consent No. DA2020/1372 for alterations and additions to a dwelling house was approved by Council's Development Determination Panel on 10 March 2021. The Panel imposed several additional or modified conditions, in addition to the conditions outlined in the Assessment Report. This included the following:

Amend Condition 9 to read:

Amendments to Approved plans

The approved plans are to be amended as follows:

- a) The height of the parapet wall on the western elevation above bedroom 1 is to be reduced to a height to RL 18.51.*
- b) The height of the front fence is to be a maximum height of 1800mm above ground level at the front boundary*

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

Reason: Maintain streetscape and views to surrounding properties

This modification application is seeking the deletion of Condition 9(a), proposing a parapet height of RL 18.750 (as was originally proposed in DA2020/1372). The application therefore triggers referral to the Development Determination Panel as it is an application for Modification of Consent under section 4.55(2) in relation to a development application previously determined by the Development Determination Panel that proposes amendments to a condition of development consent recommended in the Council assessment report, but which was amended by the Panel.

Pre-Lodgment Meeting No. PLM2020/0094 for alterations and additions to a dwelling house was held with Council on 2 June 2020. This meeting was to discuss the proposal that became DA2020/1372. The notes from this meeting indicated that the proposal as presented was not acceptable, for a number of reasons, generally to do with the proposed built form. The plans provided with DA2020/1372 were substantially scaled back in response to those notes.

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 DA2020/1372, 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 DA2020/1372 for the following reasons:</p> <ul style="list-style-type: none"> • The proposal remains substantially same as approved by DA2020/1372, with no changes to principle development standards, other than a minor reduction in FSR. • The built form of the proposal remains qualitatively the same as approved by DA2020/1372.
(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 DA2020/1372 did not require concurrence from the relevant Minister, public authority or approval body.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires</p>	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.

Section 4.55 (2) - Other Modifications	Comments
the notification or advertising of applications for modification of a development consent, and	
(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 instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>requested in relation to MLEP 2013 Clause 6.10 Limited development on foreshore 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 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 04/04/2023 to 18/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Alan James Young	6 Oyama Avenue MANLY NSW 2095
Mr Richard Douglas Hayes	4 Oyama Avenue MANLY NSW 2095
Mr Paul Thomas Preisz	30 Ponsonby Parade SEAFORTH NSW 2092
Mr Nicholas Robert Forster	10 Oyama Avenue MANLY NSW 2095

The following issues were raised in the submissions:

- **Height of building / height of parapet / roof form and associated view loss concerns**

The submissions raised concerns that the proposal will increase the height of the building. In particular, concern was raised that the proposal seeks the removal of a condition in DA2020/1372 (Condition 9(a)) which limits the height of a section of the roof form. Associated concerns regarding view loss were also raised.

Comment:

The restriction of the parapet height along the western elevation was imposed by DA2020/1372 on the grounds of view loss. This modification application seeks to remove this condition to allow for an even parapet height across the roof of the development.

This element of the proposal has been assessed in detail within the sections of this report on Manly Development Control Plan Clause 3.4.3 Maintenance of Views and Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height). In summary, this assessment concurs with that undertaken during the assessment of DA2020/1372 in finding it appropriate to apply a condition restricting parapet height. Condition 9(a) is appropriate in achieving view sharing and mitigating the effect of the non-compliant wall height on the western elevation. The deletion of Condition 9(a) is not supported, and the restriction of parapet height imposed by the DDP is recommended to remain.

- **Stated cost of works**

The submissions raised concerns that the stated cost of works is an underestimate.

Comment:

The costs of works of \$942,000 was a figure provided and assessed within the assessment of DA2020/1372. The following was noted:

"The application includes a Cost Summary Report form, filled out by a registered architect. This is in accordance with the lodgement requirements for a development application of this type, with a cost of works over \$100,000. The application fulfils the relevant requirements in this regard. The cost of works (\$942,000) is considered reasonable given that the alterations and additions generally maintain the overall external 'shell' of the existing dwelling, and will not significantly alter the overall shape of the existing dwelling."

Monetary contributions were conditioned based on this provided cost (see Condition 5 of DA2020/1372). The development remains substantially the same as the development for which the consent was originally granted.

- **Solar panels**

The submissions raised concerns that the modified proposal includes roof top solar panels, due to potential glare impacts on adjoining properties.

Comment:

A condition of consent has been imposed requiring amendments to the approved plans removing solar panels from the proposal, as insufficient information has been provided with the application to assess the impact of excessive glare or reflectivity nuisance.

Note: The construction of solar energy systems may be undertaken as complying or exempt development as prescribed by an environmental planning instrument. Solar energy systems may be installed in accordance with these requirements, which provide detail as to how and where solar energy systems may be installed.

- **Planning process and understanding of application**

The submissions raised concerns regarding the planning process and ability for neighbours to understand the application.

Comment:

Sections 4.55 and 4.56 of the *Environmental Planning and Assessment Act 1979* enable modification applications to be made to Council. Where these applications are made, they are assessed by Council against the requirements and provisions of the *Environmental Planning and Assessment Act 1979* and the associated Regulations, as well as the Codes and Policies of Council. This is outlined thorough this report, which concludes that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed, and recommends approval, subject to conditions. Where additional information has been required to assess the application, this has been requested from the applicant, however, ultimately sufficient information was provided to understand and assess the development proposed. The application was notified in accordance with the Northern Beaches Council Community Participation Plan, with additional information and amended plans not requiring re-notification.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	SUPPORTED WITH CONDITIONS

Internal Referral Body	Comments
	<p>The proposal is to modify development consent DA202/1372, as illustrated and identified in Plans and Reports.</p> <p>In terms of landscape outcome, and as discussed in the Arboricultural Impact Assessment report submitted for the modification application, additional support columns supporting the suspended structures, shall require arboricultural tree and root management within the property during works in the vicinity of tree 1 located within adjoining property and tree 2 located within the property.</p> <p>The Tree and Vegetation protection condition (23) shall be modified to include additional requirements for arboricultural attendance and supervision.</p>
NECC (Bushland and Biodiversity)	<p>SUPPORTED WITH CONDITIONS</p> <p>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 (BC Act) • NSW Biodiversity Conservation Regulation 2017 (BC Regulation) • Manly LEP Clause 6.5 (Terrestrial Biodiversity) • Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) • Manly DCP Clause 3.3.1.a.v (Landscaping Design – bandicoot habitat) <p>Biodiversity Referral (1 May 2023)</p> <p>The subject site is located within the NSW Biodiversity Values Map (BV Map) and includes areas of the 'Little Penguin Declared Area of Outstanding Biodiversity Value' as declared under the BC Act.</p> <p>The proposed modification is unlikely to result in removal of existing penguin breeding habitat. However, the proposal to relocate the spa to the north-western side of the site will bring the spa and associated equipment closer to penguin breeding habitat below. The submitted biodiversity statement addresses direct impacts to penguin nests but does not provide an assessment of potential indirect impacts associated with spa construction and operation.</p> <p>Further information on potential indirect impacts is required in order to assess the proposal against the requirements of the BC Act and applicable planning controls. Indirect impacts to be considered include i) additional disturbance to breeding and moulting penguins associated with installation/construction of the spa and supporting structures; and ii) noise, vibration and human disturbance associated with ongoing operation of the spa. If it is determined that the modification will result in additional direct and/or indirect impacts to the AOBV/BV Map area, or is likely to result in a significant impact to Little Penguins, an updated Biodiversity Development Assessment</p>

Internal Referral Body	Comments
	<p>Report (BDAR) is required to be prepared and submitted.</p> <p>The updated ecological assessment/BDAR is to outline how the proposed modification will avoid and minimise impacts to penguins and their habitat, including any proposed impact mitigation measures. Any additional potential impacts to other wildlife habitat, including that of the endangered population of Long-nosed Bandicoots, are also to be assessed.</p> <p>Biodiversity Referral (22 June 2023) This updated referral is based on the following additional information:</p> <ul style="list-style-type: none"> • 'Ecologist Response to onsite meeting 5/5/23 s4.55 Design Modification of DA2020/1372 for a spa and deck at 15 Oyama Avenue, Manly' (GIS Environmental Consultants, 1 June 2023) <p>The ecologist response addresses concerns raised in the previous biodiversity referral regarding potential impacts to Little Penguins; these matters are outlined and discussed below.</p> <p><i>Recent History of Penguin Nest Use</i> Monitoring data for penguin nests located on the subject site has been requested from the NSW Department of Planning and Environment (DPE) to determine recent patterns of penguin activity and nest use. The absence of available data for the subject site nests suggests that they have not been utilised by penguins recently.</p> <p><i>Construction Impacts of Relocated Spa</i> The ecologist's statement refers to previous acoustic and vibration testing at the closest recently-used penguin nest site, and states that "The likely works for the installation of the proposed spa installation are not likely to produce noise or vibration that disturbs penguin nesting at nest site 85. We do not recommend any restrictions on works during the breeding season to install spa and deck as long as penguins are greater than 20m away in direct distance". The statement confirms that no additional footings are required to be installed to support the spa in the new location, and given that additional construction activities for the spa will be relatively low-intensity and within the limits of currently approved construction noise, there are no further concerns relating to this matter.</p> <p><i>Operational Impacts of Relocated Spa</i> Additional information has been provided regarding noise and vibration at penguin nest sites due to operation of the relocated spa. The ecologist's statement notes that noise generated by the spa pump has been tested to be 42 dB at a distance of 2m, slightly above ambient noise levels from previous testing (37.5 dB) but well below that of a passing ferry (which peaked at 86 dB). Given that the closest penguin nest will be approximately 20m from the new spa location, it is considered that ongoing operation of the spa is unlikely to increase noise levels at the nest such that an adverse impact will</p>

Internal Referral Body	Comments
	<p>result.</p> <p>The ecologist's statement concludes that "construction and ongoing use of proposed spa and decking is considered unlikely to deter Little Penguins from nesting or impact successful fledging". However, this is conditional upon the use of additional sound- and vibration-proofing materials (e.g. rubber feet between spa pumps and supporting decking) to reduce noise and vibration. This will be conditioned.</p> <p><i>Requirement for a Biodiversity Development Assessment Report (BDAR)</i></p> <p>Given that constructional and operational impacts of the relocated spa have been assessed as being generally within existing/ambient levels (as measured at the closest recently-active penguin nest), it is considered that additional assessment in the form of a BDAR is not required to be submitted for the modification.</p>
NECC (Coast and Catchments)	<p>SUPPORTED WITH CONDITIONS</p> <ul style="list-style-type: none"> • This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 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</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. 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>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</p> <p>Harbour Foreshores & Waterways AreaThe subject site is located within the Sydney Harbour Catchment and is identified as being within theForeshores and Waterways Area. Hence Part 2, Clause 14 and Part 3, Division 2 apply in assessing this DA.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Symons Goodyer Pty. Ltd. dated October 2020, it is determined that the Planning Principles and Matters for Consideration of the Area have been met.</p>

Internal Referral Body	Comments
	<p>Manly LEP 2013 and Manly DCP</p> <p>Landslide/ Landslip Hazard Management The subject site is also shown to be as "Landslide risk" on Council's Landslide Risk Map in Manly LEP2013. As such, Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>A Geotechnical Assessment & Risk Analysis-Update Report by D. Katauskas dated July2020 assessing landslide/landslip hazard has been submitted with the DA. The report assessed that the likelihood and consequences of an adverse event occurring, which could cause damage to the property or injury to people, is rare and insignificant. This warrants the application of a VERY LOW RISK category to the project, which is therefore ACCEPTABLE under Council's Risk Policy.</p> <p>As such, it is considered that the application does comply, subject to conditions, with the requirements of the Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013.</p> <p>Foreshores Scenic Protection Area Management 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 Symons Goodyer Pty. Ltd. dated October 2020, 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>
Parks, reserves, beaches, foreshore	<p>SUPPORTED WITHOUT CONDITIONS</p> <p>The proposal is to modify development consent DA202/1372, as illustrated and identified in Plans and Reports.</p> <p>On review of the proposed modifications no objections are raised.</p>

Internal Referral Body	Comments		
Strategic and Place Planning (Heritage Officer)	SUPPORTED WITHOUT CONDITIONS		
	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The application has been referred as the subject property is located within the vicinity of heritage items: Item I190 - House, “Trevitt House” - 12 Oyama Avenue Item I1 Harbour Foreshore - Extent of municipal boundary adjacent to the harbour		
	Details of heritage items affected		
	Details of the heritage items in the vicinity, as contained within the Manly Heritage Inventory are: Item I190 - House, “Trevitt House” <u>Statement of significance:</u> The subject property is considered to have historic, aesthetic, associative and representative heritage significance. The subdivision, development and ownership of the site has historic importance for its association with the subdivision of larger estates during the Federation era, the recovery of the building industry in Manly during the Great Depression and the popular retirement of wealthy country people to Manly. The building is designed in an Inter-War Mediterranean style. The building is also noted as having an association with prominent master builder Robert Wall and architect Frederick Harvey Fuller. <u>Physical description:</u> The building is consistent with the in Inter-War Mediterranean style. It is a two-storey rendered house with steeply pitched gable terracotta roof. 12 Oyama Road features square and Doric columns to front verandah and deck. First floor features include circular openings allowing light down into the front verandah. The front façade is also noted as retaining its original timber joinery. The street frontage is bound by a sandstone wall to the south and a modern double garage with trafficable roof to the northern portion.		
	Item I1 Harbour Foreshore <u>Statement of significance:</u> Natural landscape type - Aesthetic. <u>Physical description:</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	

Internal Referral Body	Comments		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>This application proposes modification of Consent DA2021/1372, which approved alterations and additions to the existing dwelling house at 15 Oyama Ave, Manly. These modifications involve a number of minor design changes to improve the amenity of the dwelling.</p> <p>The overall bulk and scale of the proposed dwelling remains the same as that originally approved, which was considered consistent with the existing character of the area. As a result, there will be no adverse impact upon the heritage items in the vicinity.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p>		
	Further Comments		
<p><u>Consider against the provisions of CL5.10 of WLEP 2011:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p>			

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>SUPPORTED WITH 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 WITH CONDITIONS</p> <p>Development Application No. Mod2023/0085 Description: Modification of Development Consent DA2020/1372 granted for Alterations and additions to a dwelling house Address: 19A-21 Addison Road and 15 Oyama Avenue MANLY</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p>

External Referral Body	Comments
	<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> <p><u>Planner Comments:</u> A condition of consent is included in the recommendations of this report to protect Aboriginal heritage, in addition to existing conditions in DA2020/1372 regarding Aboriginal heritage protection.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A488346, issued 17 February 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or

an application for modification of consent) for any development carried out:

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

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

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

Comment:

There is currently no adopted Coastal Vulnerability Area Map, however, Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, subject to conditions.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed development consists of alterations and additions to an existing dwelling. The works are not considered to have adverse impacts on the above matters. Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, subject to conditions.

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

Comment:

The proposed development has been sited so as not to cause adverse impacts on the coastal environment.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands,

Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and

- b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - 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 has been sited so as the above is considered.

Division 5 General

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

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

Comment:

The nature of the alterations and additions are such that the development will not result in an increased risk of coastal hazards. Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, subject to conditions.

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

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

Comment:

Council's Coasts and Catchments officers have reviewed the proposed development and it is supported, subject to conditions.

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

Chapter 4 – Remediation of Land

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

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	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.3m	No change	-	No but approved in DA2020/1372
Floor Space Ratio	FSR: 0.6:1 (219.42sqm)	FSR: 0.72:1 (263.04sqm)	FSR: 0.71:1 (261.29sqm)	19.1% (41.87sqm)	No but a reduction in FSR to approved by DA2020/1372

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
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
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

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

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted

by Clause 4.3 of the Manly LEP 2013, 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 the assessment of DA2020/1372 in regard to the objectives of the height of buildings development standard and the underlying objectives of the R1 General Residential zone. The proposed modification application does not alter the numerically non-compliant building height approved under DA2020/1372. Therefore, the outcome of the original consent is maintained and a further detailed merit assessment is not required in this instance.

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

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

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (219.42sqm)
Proposed:	0.71:1 (261.29sqm)
Percentage variation to requirement:	19.1%

Assessment of request to vary a development standard:

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the Manly LEP 2013, 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 the assessment of DA2020/1372 in regard to the objectives of the floor space ratio development standard and the underlying objectives of the R1 General Residential zone.

The proposed modification application reduces the numerically non-compliant floor space ratio approved under DA2020/1372, which approved an FSR of 0.72:1 (263.04sqm). The modified proposal reduces gross floor area by 1.75sqm. Therefore, the outcomes of the original consent are maintained, given the FSR has been reduced, and a further detailed merit assessment is not required in this instance.

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

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

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

6.8 Landslide risk

The applicant has submitted a Addendum to Preliminary Assessment by White Geotechnical Group (dated 16 March 2023) which states that the recommendations of an original Geotechnical Assessment (by D. Katauskas Consulting Geotechnical Engineer, dated 14 July 2020) submitted with DA2020/1372 are still valid and unchanged in consideration of the proposed modifications.

6.10 Limited development on foreshore area

Under Clause 6.10 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes, listed in Clause 6.10(2):

- the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,
- the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,
- 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 development includes extension / alteration / rebuilding of an existing building partly in the foreshore area. However, some elements of the proposal will result in the footprint of the building extending further into the foreshore area. This is therefore only partially applicable to the development.

The proposed development is for the erection of a building in the foreshore area (in this case the modified deck), where it is considered that the levels, depth or other exceptional features of the site make it appropriate to do so. This is due to the challenging topography of the site, allotment shape and existing built form. These elements are exceptional features which make it appropriate to position the decking and swimming pool within the foreshore area.

Furthermore, the proposed development includes a swimming pool. This is expressly permitted in the foreshore area by Clause 6.10(2).

Therefore, it is considered the proposed development is for the purposes listed in Clause 6.10(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, 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 consistent with the objectives of the R1 General Residential zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats or drainage patterns. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In satisfying itself about a matter mentioned in subclause (3)(e), the consent authority must give consideration to 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. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Therefore, the proposed development complies with the requirements of this Clause.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 365.7sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm	1	No change	Yes
	Minimum dwelling size: 117sqm	263.04sqm	261.29sqm	Yes
4.1.2.1 Wall Height	W: 7.4m (based on gradient 1:6.9)	11.3m*	see notation*	see notation*
	E: 7.3m (based on gradient 1:7.6)	7.6m	No change	No but approved in DA2020/1372
	S: 6.9m (based on gradient 1:22)	7.6m	No change	No but approved in DA2020/1372
	N: 7.4m (based on gradient 1:6.9)	11.3m	No change	No but approved in DA2020/1372
4.1.2.2 Number of Storeys	2	3	No change	No but approved in DA2020/1372
4.1.2.3 Roof Height	Height: 2.5m	1.45m	No change	Yes
	Parapet Height: 0.6m	0.25m (see discussion on Condition 9)	See discussion on Condition 9	Yes
	Pitch: maximum 35 degrees	37 degrees	No change	No but existing and approved in DA2020/1372
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Nil, consistent with prevailing setback	No change	Yes

4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 3.76m (based on wall height) S: 2.21m (at closest point)	5.8m 1.7m	5m No change	Yes No but approved in DA2020/1372
	Windows: 3m	N: 8m S: 1.5m	No change No change	No but approved in DA2020/1372
4.1.4.4 Rear Setbacks	8m	0.4m	No change	No but approved in DA2020/1372
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (201.1sqm)	53.9% (197sqm)	No change	No but approved in DA2020/1372
	Open space above ground no more than 25% (49.3sqm) of total open space	12% (24sqm)	24.2% (47.6sqm)	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (70.4sqm)	63.6% (125.3sqm)	51.5% (101.5sqm)	Yes
4.1.5.3 Private Open Space	18m per dwelling	60sqm	97.6sqm	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	Existing nil setback to be retained	No change	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.3m	3.7m	No
	1m curtilage/1.5m water side/rear setback	2.1m minimum	0.6m minimum to curtilage 1.1m to water line	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	No change	Yes

*The height of 11.3m is the maximum western elevation wall height before applying Condition 9. With Condition 9 applied, restricting the western elevation parapet to RL 18.510, the wall height is reduced by 0.24m. 11.3m was the listed western elevation wall height in the built form table of the DA2020/1372 assessment report. This modification application seeks to remove the condition restricting western elevation wall height, which will result in a western elevation wall height of 11.3m.

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.1.10 Fencing	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
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

A submission raised concerns that the modified proposal included roof top solar panels, raising issue with the potential for glare impacts to adjoining properties, particularly to 12 Oyama Avenue.

Clause 3.4.1.5 Excessive Glare or Reflectivity Nuisance requires that all external material and finishes incorporated into the development must consider and mitigate any excessive glare or reflectivity nuisance.

As such, a condition of consent has been imposed requiring amendments to the approved plans removing solar panels from the proposal, as insufficient information has been provided with the application to assess the impact of excessive glare or reflectivity nuisance.

Subject to this condition, the proposal complies with the requirements and objectives of Clause 3.4.1 Sunlight Access and Overshadowing.

It is noted that the construction of solar energy systems may be undertaken as complying or exempt development as prescribed by an environmental planning instrument. Solar energy systems may be installed in accordance with these requirements, which provide detail as to how and where solar energy systems may be installed.

3.4.3 Maintenance of Views

Submissions from neighbouring properties raised concerns regarding view loss. This is in regard to the proposed modification of Condition 9, which reads as follows:

Condition 9 - Amendments to the approved plans

The approved plans are to be amended as follows:

- a) The height of the parapet wall on the western elevation above bedroom 1 is to be reduced to a height of RL 18.51.*
- b) The height of the front fence is to be a maximum height of 1800mm above ground level at the front boundary*

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

Reason: Maintain streetscape and views to surrounding properties

This conditions was recommended in the Council assessment report but was amended by the Development Determination Panel (which determined DA2020/1372) into the form above.

This application seeks to modify this condition to remove line (a), and allow for a parapet height as original proposed in DA2020/1372 and of the same height on all elevations.

Summary of View Loss Assessment in DA2020/1372

View loss was a matter that was considered within the assessment of DA2020/1372. This included view loss assessments from two properties, 4 Oyama Avenue and 10 Oyama Avenue. The report notes that access to 10 Oyama Avenue could not be obtained at the time of that assessment, with a photo submitted by the owner used to assess view loss.

In summary, the view loss assessment outlined that the impact to 4 Oyama Avenue of the parapet

would be minor, impacting headland views above the roof of the existing dwelling but not impacting on land-water interface views or other valuable views obtained from the property to the north. Furthermore, the assessment noted that the view loss was caused not by the parapet element in question at the rear of the dwelling, but by elements at the front of the dwelling, which were compliant with controls.

The impact to 10 Oyama Avenue of the parapet was assessed as minor to moderate, with it outlined that the parapet would effect views of the the headland / water interface that is currently available over the existing dwelling at the subject site, but not impact on expansive views obtained from the property to the north.

Regarding the reasonableness of the proposal, assessment of DA2020/1372 concluded with the following:

"The proposal is non-compliant with the overall 8.5m height control, due to the steep drop off in the topography at the rear of the site. This will impact on the view from number 4 Oyama Avenue across the northern portion of existing flat roof. However, given the location and levels of 4 Oyama compared to the subject site, the view is impacted by the raising of the parapet height at the front of the dwelling, not the rear (where the non-compliance occurs). The front parapet on both the northern and southern portions of the flat roof areas will comply with the overall 8.5m height control, but will present a minor non-compliance to the wall height control at the northern end of the eastern elevation.

The view from number 10 Oyama is from a higher level than that of number 4, and it will be impacted by the increased parapet height at the rear of the subject site, which, although compliant with the 8.5m height limit, is significantly non-compliant with the wall height control in the DCP, being between 7.6m to 8.5m high as the land slopes away.

Given these considerations, a condition is recommended to delete the raising of the roof height and retain these views."

A condition was included in the recommendations of the assessment report, which as modified by DDP into Condition 9 that restricted the parapet height on the western elevation to RL 18.51.

Objections to Modification and Assessment

Both 4 Oyama Avenue and 10 Oyama Avenue have objected to the proposed modification, either directly referencing the view loss or objecting to further high increases. Furthermore, a submission from 12 Oyama Avenue has also raised view loss as a concern.

A site visit by the assessing officer to 10 Oyama Avenue was undertaken on 7 July 2023 to ascertain the extent of the view impact and other concerns raised. This included taking photographs. It was considered appropriate to further assess the impact with visual aids, and height poles / bars were requested to be established by the applicant to depict the position of the parapet. This was done and further photographs were provided by the owner of 10 Oyama Avenue depicting the view again (access was not obtained a second time).

Access to 4 Oyama Avenue and 12 Oyama Avenue was not obtained. Photographs from the assessment report of DA2020/1372 are included from 4 Oyama Avenue. The applicant for the modification provided photograph and video from 12 Oyama Avenue.

12 Oyama Avenue



Figure 1 - View from balcony of 12 Oyama Avenue Street looking at tree between the property and subject site (photograph provided by applicant).



Figure 2 - View from balcony of 12 Oyama Avenue Street looking at tree between the property and subject site (still image taken from video provided by applicant).

10 Oyama Avenue



Figure 3 - Wide view from balcony of 10 Oyama Avenue Street looking north-west towards subject site without height poles established (photograph taken by assessing officer on 7 July 2023).



Figure 4 - Wide view from balcony of 10 Oyama Avenue Street looking north (photograph taken by assessing officer on 7 July 2023).



Figure 5 - Zoomed view from balcony of 10 Oyama Avenue Street looking at subject site without height poles established (photograph taken by assessing officer on 7 July 2023).



Figure 6 - Wide view from balcony of 10 Oyama Avenue Street looking north-west towards subject site with height poles established (photograph provided by property owner).





Figure 7 - Zoomed view from balcony of 10 Oyama Avenue Street looking at subject site with height poles established (photograph provided by property owner).

4 Oyama Avenue



Figure 8 - Wide view from the ensuite of 4 Oyama Avenue looking west towards the subject side (photograph taken from DA2020/1372 Assessment Report).



Figure 9 - Zoomed view from the upper level bedroom window of 4 Oyama Avenue looking west towards the subject side (photograph taken from DA2020/1372 Assessment Report).

Merit consideration

The development is considered against the Objectives of the Control:

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

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

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

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

1. Nature of the views affected

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

Comment to Principle 1 (12, 10 & 4 Oyama Avenue)

Views in question from all properties concerned are of Sydney Harbor and surrounding headlands, including land / water interfaces. Whilst not impacted by the proposal, it is noted that views from 12 & 10 Oyama Avenue include views towards Manly, Manly Wharf and that area of surrounding harbor, which are of value.

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

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

Comment to Principle 2 (12 Oyama Avenue)

Based on photographs and videos provided, and observations made during a site visit to the neighbouring 10 Oyama Avenue and the subject site, a large tree in the front yard currently obscures view of the area of roof in question at the subject site where the parapet is proposed. As such, the change to the condition would not cause view loss to 12 Oyama Avenue. It was noted in the submissions from 12 Oyama Avenue this tree is sometimes pruned to maintain views of 12 Oyama Avenue. With the tree as is currently, the exact impact is undetermined, however, if the parapet was to obscure anything, based on levels this would be a small element of water or headland, whilst not impacting the majority of the view which is obtained regardless of the parapet or tree growth.

Comment to Principle 2 (10 Oyama Avenue)

The view is obtained over a side boundary with 12 Oyama Avenue and over front yards. The view is best obtained from a standing position from the upper level bedroom and front bedroom balcony.

Comment to Principle 2 (4 Oyama Avenue)

The assessment of DA2020/1372 outlined the following:

"The views are standing views obtained from windows in the upper level bedroom, ensuite and front bedroom deck. The views are directly across the side boundary, and from the deck are screened by an existing privacy screen."

This assessment is concurred with in respect to the modified proposal.

3. Extent of impact

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

Comment to Principle 3 (12 Oyama Avenue)

As discussed above, the exact impact is undetermined due to the current growth of a tree.

Comment to Principle 3 (10 Oyama Avenue)

The assessment of DA2020/1372 outlined the following:

"From number 10, the proposal will impact on the view of the headland / water interface, that is currently available over the existing flat portion of roofing on the southern side of the existing dwelling, and likely remove the land / water interface in that location. Like number 4, number 10 will retain expansive northern views completely unaffected by the proposal. The view affected does include slightly more valuable view (being the land / water interface) than from number 4, and for this reason, the view loss is considered to be minor to moderate."

This assessment is concurred with. Following attending the site, and viewing photographs provided depicting high poles representative of the proposal, the following is noted:

- The land-water interface currently visible between the tree and roof form is impacted by the proposed parapet when viewed at a lower position (i.e. sitting). This can be determined from viewing *Figure 6* (in which the land water interface is visible, therefore taken from a higher angle) and *Figure 7* (in which the land water interface is just obscured, therefore taken from a lower angle). As such, the view of the land-water interface at this location is obstructed partially by the parapet.
- Expansive views are retained to the north towards Manly.

Given the above, this assessment concurs with the assessment of DA2020/1372, that the view loss is minor to moderate.

Comment to Principle 3 (4 Oyama Avenue)

The assessment of DA2020/1372 outlined the following:

"From number 4, the proposal will impact on the current view of the top of the headland above the flat portions of the existing roof line, where the new parapet height is proposed 240mm above the existing height of the roof. The view corridor to the headland and water interface through the southern side of the subject site will be retained, as the alterations and additions are not proposed to be extended to the south. Given the expansive views that will remain unaffected to the north of 4 Oyama, the impact on the side view of the portion of headland is considered to be minor in the context of these principles."

This assessment is concurred with in respect to the modified proposal.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4 (12, 10 & 4 Oyama Avenue)

The assessment of DA2020/1372 outlined the following:

"The proposal is non-compliant with the overall 8.5m height control, due to the steep drop off in the topography at the rear of the site. This will impact on the view from number 4 Oyama Avenue across the northern portion of existing flat roof. However, given the location and levels of 4 Oyama compared to the subject site, the view is impacted by the raising of the parapet height at the front of the dwelling, not the rear (where the non-compliance occurs). The front parapet on both the northern and southern portions of the flat roof areas will comply with the overall 8.5m height control, but will present a minor non-compliance to the wall height control at the northern end of the eastern elevation.

The view from number 10 Oyama is from a higher level than that of number 4, and it will be impacted by the increased parapet height at the rear of the subject site, which, although compliant with the 8.5m height limit, is significantly non-compliant with the wall height control in the DCP, being between 7.6m to 8.5m high as the land slopes away."

As noted, the parapet element in question is compliant with the 8.5m height control, but presents non-compliance with the wall height control of the MDCP. The impact on 4 Oyama was considered acceptable due to the assessment that the view corridor will be obstructed by compliant elements of the proposal at the front of the dwelling, with the parapet in question at the rear (where the non-compliance occurs and Condition 9 is concerned). Therefore, the parapet element in question is not visible behind the compliant elements of the proposal. This assessment concurs with this.

In regard to 10 Oyama Avenue, this assessment again concurs with the assessment made in DA2020/1372. Following attendance of the site, and viewing photographs provided depicting high poles representative of the proposal, the modification has been considered and assessed (see points raised under the Comments to Principle 3). A wall height non-compliance is proposed, which directly contributes to the loss of a view to a land-water interface. Whilst unaffected views remain to the north, the reduction of the western elevation parapet (as conditioned by Condition 9) results in a design that reduces the non-compliance with wall height and preserves views.

In regard to 12 Oyama Avenue, as discussed above the exact impact is undetermined due to the current growth of a tree.

Conclusion

Following an assessment of view loss, this assessment concurs with that undertaken during the assessment of DA2020/1372 in finding it appropriate to apply a condition restricting parapet height. Condition 9(a) is appropriate in achieving view sharing and mitigating the effect of the non-compliant wall height on the western elevation.

Having regard to the above assessment, the deletion of Condition 9(a) is not supported, and the restriction of parapet height imposed by the DDP is recommended to remain. With this condition retained, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

Clause 4.1.2 of the MDCP 2013 relies on the slope of the land to determine the maximum external wall height. In calculating the slope of the land, the maximum wall height is as follows:

West Elevation: 7.4m (1:6.9 gradient) - Proposed 11.3m - see notation*

East Elevation: 7.3m (1:7.6 gradient) - Proposed 7.6m - approved by DA2020/1372, no change proposed by modification

South Elevation: 6.9m (1:22 gradient) - Proposed 7.6m - approved by DA2020/1372, no change proposed by modification

North Elevation: 7.4m (1:6.9 gradient) - Proposed 11.3m - approved by DA2020/1372, no change proposed by modification

Moreover, the control further limits buildings to 2 storeys in height. The proposal is 2-3 storeys in height, which does not satisfy this requirement. This was approved by DA2020/1372, and no change is proposed by this modification.

The proposed modification application does not alter the numerically non-compliant wall heights and number of storeys approved under DA2020/1372. However, the proposal does include the modification of Condition 9, which reads as follows:

The approved plans are to be amended as follows:

a) The height of the parapet wall on the western elevation above bedroom 1 is to be reduced to a height of RL 18.51.

b) The height of the front fence is to be a maximum height of 1800mm above ground level at the front boundary

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

Reason: Maintain streetscape and views to surrounding properties

This conditions was recommended in the Council assessment report but was amended by the Development Determination Panel (which determined DA2020/1372) into the form above.

The applications seeks to modify this condition to remove line (a), and allow for a parapet height as original proposed in DA2020/1372 and of the same height on all elevations, RL 18.75. This will change the wall height of the proposal.

*The height of 11.3m is the maximum western elevation wall height before applying Condition 9. With Condition 9 applied, restricting the western elevation parapet to RL 18.510, the wall height is reduced by 0.24m. 11.3m was the listed western elevation wall height in the built form table of the DA2020/1372 assessment report. This modification applications seeks to remove the the condition restricting western elevation wall height, which will result in a western elevation wall height of 11.3m.

Merit consideration

With the modification of a condition which restricted wall height proposed, the merits of the modification are assessed below.

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

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

Comment:

The modified proposal is considered to be consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. The wall height breach arises largely due to the topography of the land which slopes downwards towards the western boundary and foreshore, however, the proposed parapet increases the wall height breach. Nonetheless, the proposal is 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.

Comment:

The development incorporates articulation through varied setbacks and a flat roof which assists in minimising the bulk and scale of the dwelling. The parapet of this roof form is not considered to increase bulk or scale. Overall, the proposal is considered reasonable in terms of bulk and scale.

(c) to minimise disruption to the following—

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

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

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

Comment:

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. This assessment concurs with that undertaken during the assessment of DA2020/1372 in finding it appropriate to apply a condition restricting parapet height. This is due to the impact of the western elevation parapet on headland, water and land-water interface views. Therefore, this the retention of the condition restricting parapet height is recommended to be retained. Subject to this condition, the approved wall height will be retained and view sharing will be appropriately managed.

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

Comment:

The proposal will not create significant additional overshadowing of the southern neighbours or to the public domain.

(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:

15 Oyama Avenue is not located within a recreation or environmental protection zone. The adjacent 19-21 Addison Road is in the C4 Environmental Living zone. DA2020/1372 approved works located in this allotments to demolish and remove the existing deck encroachment onto that property. The new additions and modification works under this proposal are confined to 15 Oyama Avenue. The overall height and bulk of the proposal on 15 Oyama Avenue will not be significantly altered. It will not have any detrimental impacts on the adjacent C4 zone.

Having regard to the above assessment, the deletion of Condition 9(a) is not supported, and the restriction of parapet height imposed by the DDP is recommended to remain. With this condition retained, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The proposed modification application does not alter the numerically non-compliant setbacks to the rear and side boundaries approved under DA2020/1372, and in places where setbacks are altered, the new setback proposed is compliant with the controls. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

4.1.5 Open Space and Landscaping

The proposed modification application does not alter the numerically non-compliant open space provided on the site approved under DA2020/1372. The proposal increases open space above ground level and decreases landscaped area, however, these elements remain within the requirements stipulated by this Clause. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

4.1.8 Development on Sloping Sites

The original DA included a Geotechnical Assessment (prepared by D. Katauskas Consulting Geotechnical Engineer, dated 14 July 2020). An addendum Geotechnical Assessment has been provided (prepared by White Geotechnical Group, dated 16 March 2023) which states that "the risk of construction induced instability on the slope, along with the stability assessment of the site is considered unchanged to the original attached assessment". As such, compliance with the original Geotechnical Report will remain a condition of consent, as well as compliance with the addendum report.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Clause 4.1.9.1 Height above ground requires that swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. DA2020/1372 approved a numerically non-compliant pool height of 3.3m. The modification changes the location of the proposed spa, resulting in an increased pool height of 3.7m.

Clause 4.1.9.2 Location and Setbacks requires that the outer edge of any pool/spa curtilage must be setback from the side and rear boundaries at least 1m, and the water line must be at least 1.5m from the boundaries. The proposed location of the spa in DA2020/1372 complied with these requirements. The modification changes the location of the proposed spa, resulting in non-compliant setbacks of 0.6m (minimum) to the curtilage and 1.1m (minimum) to water line.

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:

The modified proposal is screened from neighbouring properties by existing vegetation along the western and northern boundary. The pool proposed is a relatively small spa which is not expected to cause an excessive amenity impact on adjoining properties. Furthermore, a condition of consent concerning Swimming Pool/Spa Motor Noise will be imposed to ensure the acoustic privacy of adjoining and surrounding dwellings is maintained.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality.

Comment:

The height variation is a result of the steeply sloping topography, which drops off at the rear of the property towards the foreshore. The spa will not be visible from the street given it is at the rear of the site. Dense landscaping and vegetation screen the proposed decking and spa from the foreshore and waterway. The proposal is considered to be consistent with the established character of the locality.

Objective 3) To integrate landscaping.

Comment:

The proposal meets landscape area requirements of the MDCP. As such, the pool is not considered to diminish the quality of the proposed landscaped solution for the site.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The site is not classified as bush fire prone land.

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

4.1.10 Fencing

This control requires front fences and walls to be no more than 1m in height. DA2020/1372 imposed a condition of consent limiting the height of the front wall to 1.8m. This modification application has reflected this condition within the submitted plans and does not propose any alteration to this condition. This condition will remain imposed. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

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;
- 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 Modification of Development Consent DA2020/1372 granted for alterations and additions to a dwelling house, has been referred to the Development Determination Panel (DDP) as the application seeks the modification of a development consent under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* that was previously determined by the DDP and proposes amendments to a condition of development consent recommended in the Council assessment report but which was amended by the Panel.

The concerns raised in the objections have been addressed and assessed.

Critical assessment issues included, among others, the assessment of the proposals increased development within the foreshore area and the assessment of view loss related to the proposed increased parapet height (limited by Condition 9). These assessment issues are discussed in the

following sections:

- Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
- Manly Development Control Plan - 3.4.3 Maintenance of Views
- Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

Overall, the development is of a design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval, subject to conditions. This includes the retention of Condition 9(a) concerning parapet height.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0085 for Modification of Development Consent DA2020/1372 granted for Alterations and additions to a dwelling house on land at Lot 1 DP 1087597, 15 Oyama Avenue, MANLY, Lot 2 DP 1087597, 15 Oyama Avenue, MANLY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-301743 Mod2023/0085	The date of this notice of determination	<p><u>Modification Summary.</u></p> <ul style="list-style-type: none"> • Retain existing footprint of Bed 1 – no planter to western wall. • Retain existing alignment of eastern wall to Bed 2. • Maintain consistent parapet height – delete DA Condition 9(a) - this is not supported and Condition 9(a) is to remain. • Change configuration of entry foyer. • Change alignment of dining room wall. • Changes to window configurations and sizes. • Changes to batten screen configurations. • Extend lower ground floor balcony towards western boundary within building footprint. • Relocate spa pool to western side of dwelling house.

		<p><u>Condition Summary.</u></p> <p>A. Amend Condition 1 - Approved Plans and Supporting Documentation</p> <p>B. Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements</p> <p>C. Modify Condition 9 - Amendments to the approved plans</p> <p>D. Modify Condition 19 - Nest Box Installation</p> <p>E. Modify Condition 23 - Tree and vegetation protection</p> <p>F. Add Condition 32A - Compliance with Ecologist's Recommendations - Vibration and Sound Proofing</p> <p>G. Add Condition 22A - Geotechnical Issues</p> <p>H. Add Condition 24A - Aboriginal Heritage</p> <p>I. Add Condition 16A - Installation and Maintenance of Sediment and Erosion Control</p> <p>J. Add Condition 38A - Swimming Pool/Spa Motor Noise</p>
--	--	--

Modified conditions as follows:

A. Condition 1 is amended to the extent as follows:

Condition No.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) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01, Rev 01, Site Plan	15 February 2023	Corben Architects
DA02, Rev 01, Proposed Plan - Subfloor	15 February 2023	Corben Architects
DA03, Rev 01, Proposed Plan - Lower Ground Floor	15 February 2023	Corben Architects
DA04, Rev 01, Proposed Plan - Ground Floor	15 February 2023	Corben Architects
DA05, Rev 01, Proposed Plan - First Floor	15 February 2023	Corben Architects
DA06, Rev 01, Proposed Plan - Roof	15 February 2023	Corben Architects
DA07, Rev 01, Proposed Elevation - East	15 February 2023	Corben Architects
DA08, Rev 01, Proposed Elevation - West	15 February 2023	Corben Architects
DA09, Rev 01, Proposed Elevation - South	15 February 2023	Corben Architects
DA10, Rev 01, Proposed Elevation - North	15 February 2023	Corben Architects
DA11, Rev 01, Proposed Section - A	15 February 2023	Corben Architects
DA12, Rev 01, Proposed Section - B	15 February 2023	Corben Architects
DA13, Rev 01, Proposed Section - C	15 February 2023	Corben Architects
DA14, Rev 01, Proposed Section - D	15 February 2023	Corben Architects
DA15, Rev 01, Proposed Section - E	15 February 2023	Corben Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A488346	17 February 2023	Corben Architects
Arboricultural Impact Assessment Report, Ref No RTC-8320	10 August 2020	Rain Tree Consulting
Arboricultural Impact Assessment Report, File No: 1423	15 February 2023	Rain Tree Consulting
Biodiversity Development Assessment, Report File Number: 15ORBDAR01	17 September 2020	GIS Environmental Consultants
Letter from GIS Environmental Consulting	Undated	GIS Environmental Consultants
Letter from GIS Environmental Consulting	1 June 2023	GIS Environmental Consultants
Geotechnical Assessment and Risk Analysis Ref: 1368-B	14 July 2020	D. Katauskas Consulting Geotechnical Engineer
Addendum to Preliminary Assessment, J3530D	16 March 2023	White Geotechnical Group
Construction Traffic Management Plan	1 August 2020	PCM Projects Pty Ltd

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.	Dated	Prepared By
Northern Beaches Council Waste Management Plan	28 July 2020	Chrofi Architects

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

B. Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements - to read as follows:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Not dated
Ausgrid	Ausgrid Referral Response - Overhead cables	14/04/2023 (on EDMS)
Ausgrid	Ausgrid Referral Response - OH and UG cables	14/04/2023 (on EDMS)

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

C. Modify Condition 9 - Amendments to the approved plans - to read as follows:

The approved plans are to be amended as follows:

- a) The height of the parapet wall on the western elevation above bedroom 1 is to be reduced to a height of RL 18.51.
- b) The height of the front fence is to be a maximum height of 1800mm above ground level at the front boundary.
- c) Solar panels are to be removed from the approved plans.

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

Reason: Maintain streetscape and views to surrounding properties

D. Modify Condition 19 - Nest Box Installation - to read as follows:

At least two nest boxes designed to suit Little Penguins are to be located on the subject site for the remaining duration of works. The nest boxes are to remain open and available to penguins. Should penguin activity (ie. presence of penguins, fresh scat or feathers) be identified in or within 5m of the nest boxes, no personnel other than the Project Ecologist or other licensed personnel may come within 5m of the nest boxes at any time.

It is an offence under Division 3.2 of the Biodiversity Conservation Regulation 2016 to interfere with a penguin nest or a penguin, or to be knowingly within 5m of a Little Penguin, within the Area of Outstanding Biodiversity Value, unless appropriately licensed to do so.

Compliance with this condition is to be certified by the Project Ecologist prior to any Occupation Certificate.

Reason: To provide additional safe sheltering habitat for Little Penguins during and after construction.

E. Modify Condition 23 - Tree and vegetation protection - to read as follows:

Tree and vegetation protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation not approved for removal.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with

minimum AQF Level 5 in arboriculture on site,
vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment reports dated 10 August 2020 and 15 February 2023, as listed in the following sections:

- i) 1.4 - Minimising of Development Impacts (report dated 10 August 2020),
- ii) 4.a, 4.b, 4.c, and 4.d - Minimising Development Impacts (report dated 15 February 2023).

The Certifying Authority must ensure that:

d) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

F. Add Condition 32A - Compliance with Ecologist's Recommendations - Vibration and Sound Proofing - to read as follows:

Sound proofing and vibration proofing measures are to be installed with the spa, in accordance with recommendations of the Project Ecologist. Evidence of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To mitigate potential noise/vibration impacts to breeding penguins.

G. Add Condition 22A - Geotechnical Issues - to read as follows:

All conditions outlined in the Stability Assessment prepared by White Geotechnical Group dated March

2023 are to be complied with and adhered to throughout development.

Reason: To ensure the new foundations on the downhill side, the proposed spa as well as other minor proposed structures are undertaken in an appropriate manner and structurally sound.

H. Add Condition 24A - Aboriginal Heritage - to read as follows:

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

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

Reason: Aboriginal Heritage Protection.

I. Add Condition 16A - Installation and Maintenance of Sediment and Erosion Control - to read as follows:

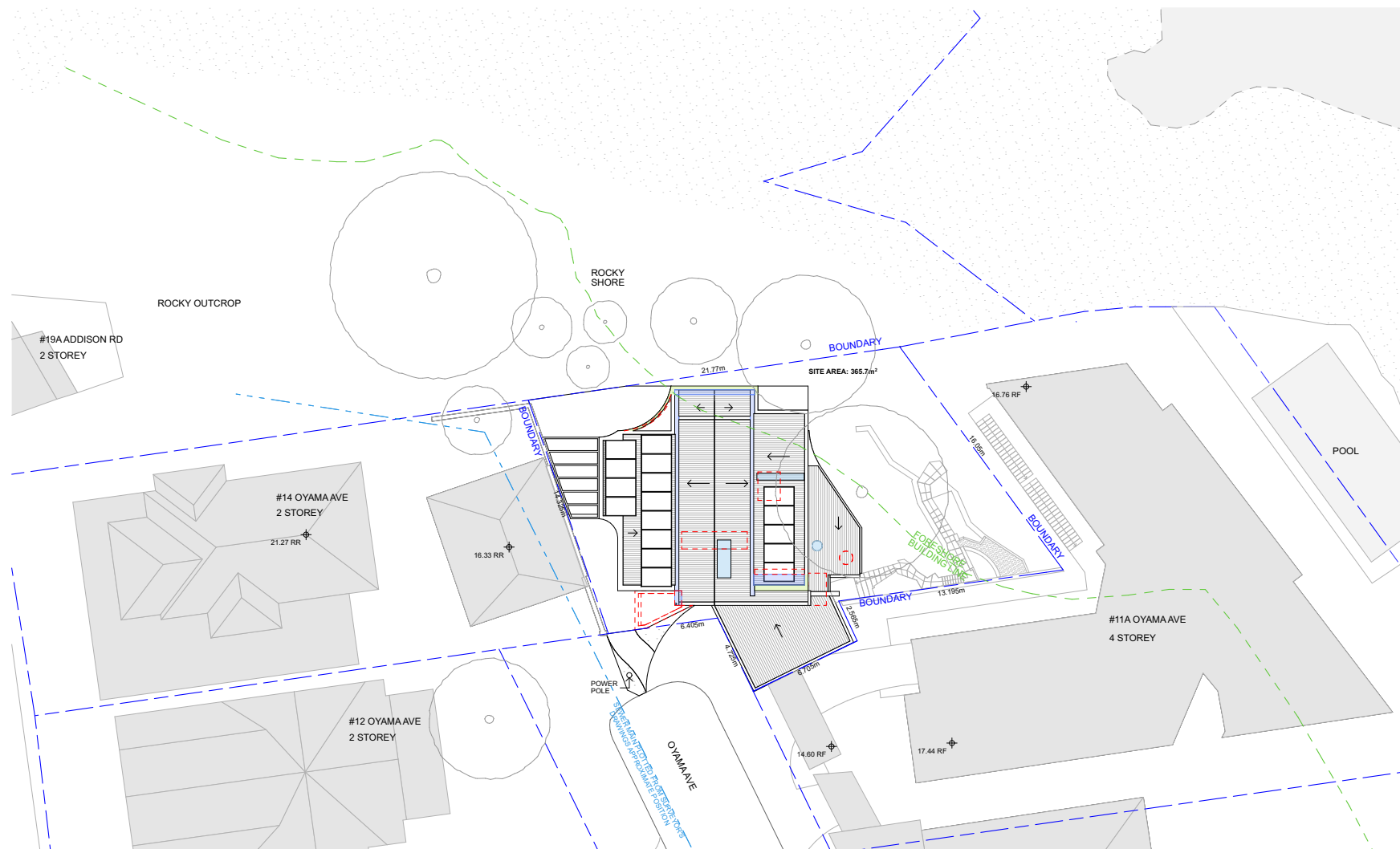
Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain 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.

J. Add Condition 38A - Swimming Pool/Spa Motor Noise - to read as follows:

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.



* Any discrepancies to be brought to Architect's attention
 * Use figure dimensions in preference to scaling
 * Only scale under direction from Architect
 * Builder to examine site and verify conditions and dimensions
 * This drawing remains the property of the Architect
 * Client is granted conditional licence to use the drawings
 * Transfer of the licence is prohibited
 * Architect reserves the right to terminate the licence
 * Electronic data transfer should be scanned for viruses before use
 * Any loss or damage (including consequential damage) caused to the recipient of electronic data, by its direct or indirect use, is not the liability of the Architect
 * Refer to hard copies for accuracy of electronic data
 * Copyright reserved by the Architect

revisions			description
rev	date		
01	15/2/23		Issue for S.4.5.5

notes

Re: DEVYB 7-230130 S4.55.pln
 print date & time: 17/02/23 9:12:13 am

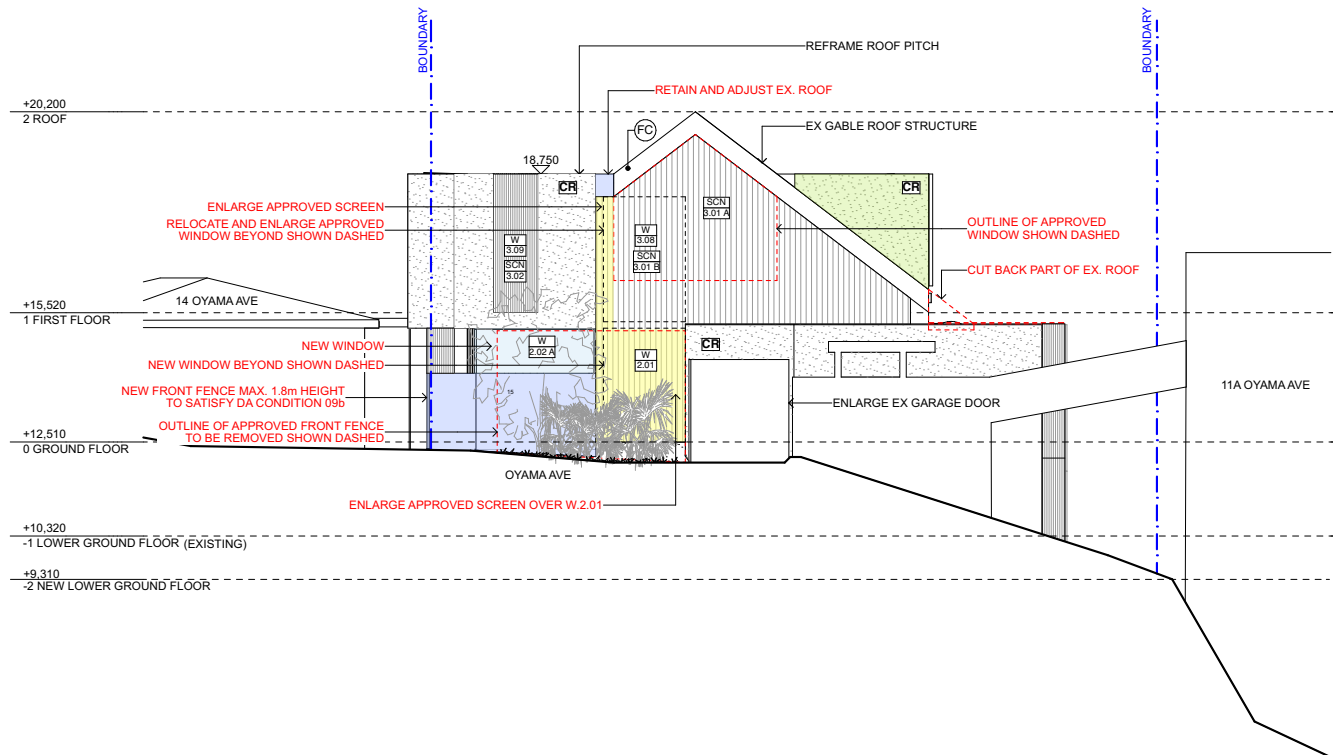


CORBEN ARCHITECTS
 PO Box 1021 Neutral Bay NSW 2089 Australia
 02 9504 1844
 mail@corben.com.au
 corben.com.au
 Nominated Architect Philip Corben (Reg No 6416)

project Devin House Manly
address 15 Oyama Avenue
 Manly NSW
client Sheona Devin

title SITE PLAN
issue Development Application

job no.	DEVY	dwg no.	DA01
drawn	PF	revision	
checked	AE		
scale	1:200 @ A3		01



Any discrepancies to be brought to Architect's attention
 Use figure dimensions in preference to scaling
 Only scale under direction from Architect
 Builder to examine site and verify conditions and dimensions
 This drawing remains the property of the Architect
 Client is granted conditional licence to use the drawings
 Transfer of the licence is prohibited
 Architect reserves the right to terminate the licence
 Electronic data transfer should be scanned for viruses before use
 Any loss or damage (including consequential damage) caused to the recipient of electronic data, by its direct or indirect use, is not the liability of the Architect
 Refer to hard copies for accuracy of electronic data
 Copyright reserved by the Architect

revisions		
rev	date	description
01	15/2/23	Issue for S.4.55

notes

See DEVYB 7-230130 S4.55.pln
 print date & time: 17/2/23 9:12:13 am

CORBEN ARCHITECTS

PO Box 1021 Neutral Bay NSW 2089 Australia
 02 9504 1844
 mail@corben.com.au
 corben.com.au

Nominated Architect Philip Corben (Reg No 4616)

project Devin House Manly
address 15 Oyama Avenue
 Manly NSW
client Sheona Devin

title PROPOSED ELEVATION - EAST
issue Development Application

job no.	DEVY	dwg no.
drawn	PF	DA07
checked	AE	revision
scale	1:100 @ A3	01

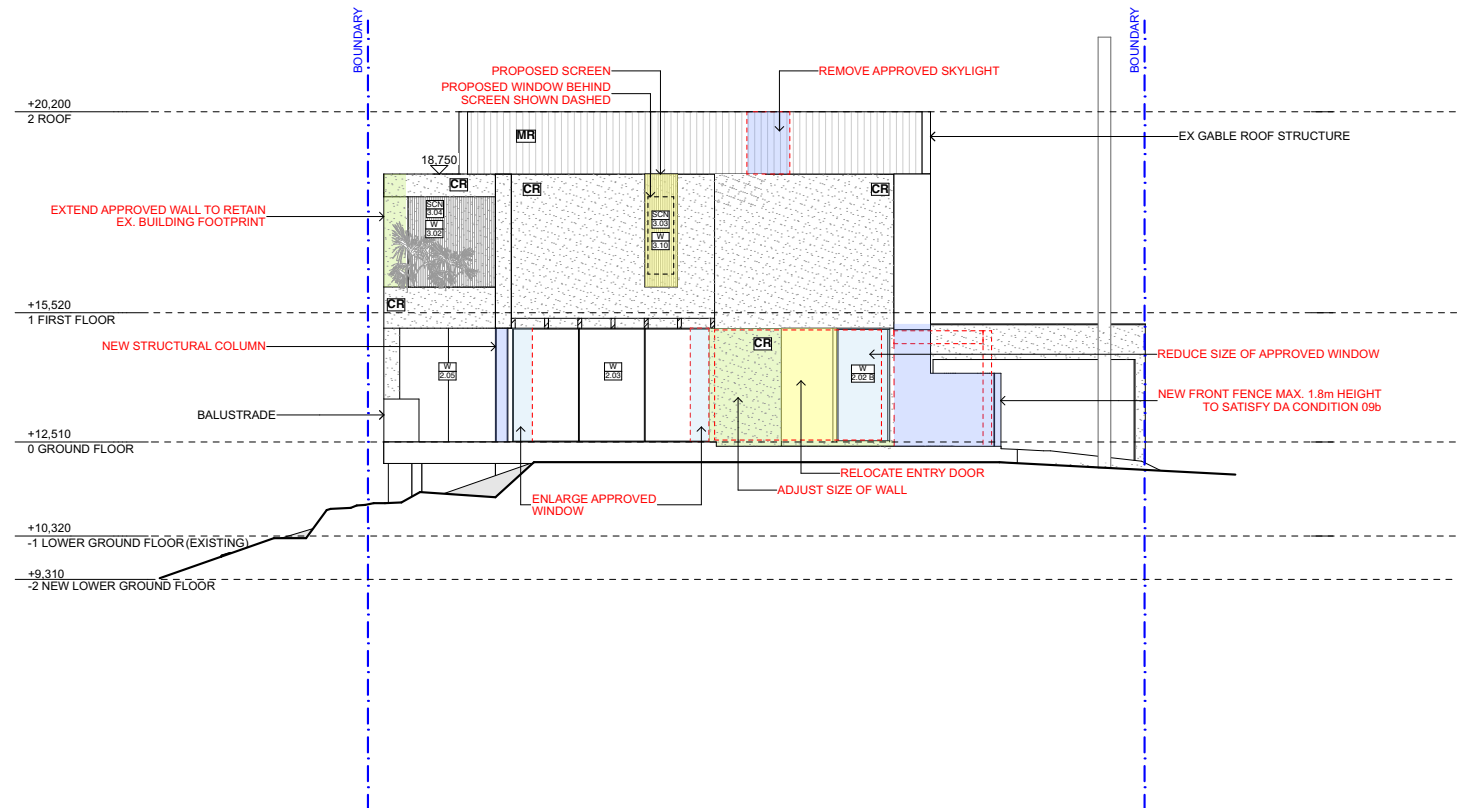


notes

file: DEVY6.7-230130 S4.55.pln
print date & time: 17/2/23@12:13 am

project	Devin House Manly
address	15 Oyama Avenue Manly NSW
client	Sheona Devin

title	PROPOSED ELEVATION - WEST	job no.	DEVY	dwg no.	DA08
		drawn	PF		
		checked	AE	revision	
issue	Development Application	scale	1:100 @ A3		01



Any discrepancies to be brought to Architect's attention
Use figure dimensions in preference to scaling
Only scale under direction from Architect
Builder to examine site and verify conditions and dimensions
This drawing remains the property of the Architect
Client is granted conditional licence to use the drawings
Transfer of the licence is prohibited
Architect reserves the right to terminate the licence
Electronic data transfer should be scanned for viruses before use
Any loss or damage (including consequential damage) caused to the recipient of electronic data, by its direct or indirect use, is not the liability of the Architect
Refer to hard copies for accuracy of electronic data
Copyright reserved by the Architect

revisions		
rev	date	description
01	15/2/23	Issue for S.4.5.5

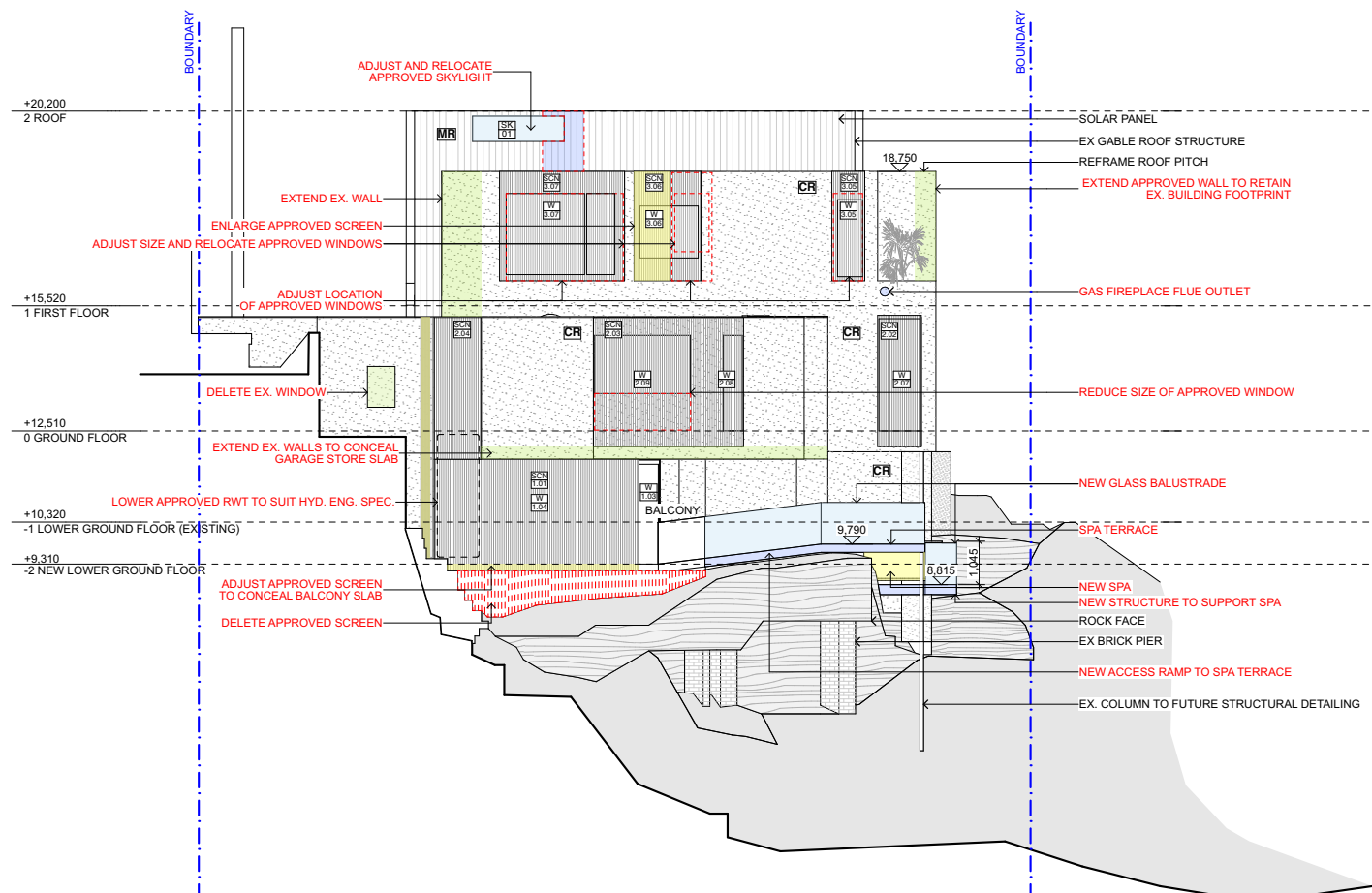
notes

See DEVYB 7-230130 S4.5.5.pln
print date & time: 17/2/2023 9:12:13 am

CORBEN ARCHITECTS
PO Box 1021 Neutral Bay NSW 2089 Australia
(02) 9504 1844
m@a@corben.com.au
corben.com.au
Nominated Architect Philip Corben (Reg No 6416)

project Devin House Manly
address 15 Oyama Avenue
Manly NSW
client Sheona Devin

title		PROPOSED ELEVATION - SOUTH		job no.	DEVY	dwg no.
drawn	PF	checked	AE	revision	DA09	01
scale	1:100 @ A3	issue	Development Application			



Any discrepancies to be brought to Architect's attention
 Use figure dimensions in preference to existing
 Only scale under direction from Architect
 Builder to examine site and verify conditions and dimensions
 This drawing remains the property of the Architect
 Client is granted conditional licence to use the drawings
 Transfer of the licence is prohibited
 Architect reserves the right to terminate the licence
 Electronic data transfer should be scanned for viruses before use
 Any loss or damage (including consequential damage) caused to the recipient of electronic data, by its direct or indirect use, is not the liability of the Architect
 Refer to hard copies for accuracy of electronic data
 Copyright reserved by the Architect

revisions			description
rev	date		
01	15/2/23		Issue for S.4.5.5

notes
 No. DEV18 7-230130 S4.55.pln
 print date & time: 17/2/23 9:12:13 am

CORBEN ARCHITECTS
 PO Box 1021 Neutral Bay NSW 2089 Australia
 02 9504 1844
 mail@corben.com.au
 corben.com.au
 Nominated Architect Philip Corben (Reg No. 4614)

project Devin House Manly
 address 15 Oyama Avenue
 Manly NSW
 client Sheona Devin

title		PROPOSED ELEVATION - NORTH		job no.	DEVY	dwg no.
drawn	PF	checked	AE	revision		DA10
scale	1:100 @ A3	issue	Development Application			01

ITEM 3.4**DA2023/0542 - 11 WYADRA AVENUE FRESHWATER -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING GARAGE, AND SECONDARY DWELLING****REPORTING MANAGER****Adam Richardson****TRIM FILE REF****2023/513553****ATTACHMENTS**

- 1** [↓](#)DDP Assessment Report
- 2** [↓](#)Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2023/0542 for demolition works and construction of a dwelling house including garage, and secondary dwelling on land at Lot 32 DP 14366, 11 Wyadra Avenue FRESHWATER, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0542
----------------------------	-------------

Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 32 DP 14366, 11 Wyadra Avenue FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house including garage, and secondary dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Veness Vernes Catic
Applicant:	Veness Vernes Catic

Application Lodged:	15/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	23/05/2023 to 06/06/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 908,000.00
---------------------------------	---------------

EXECUTIVE SUMMARY

This development application seeks consent for the demolition of the existing structures on site and construction of a dwelling house including garage, and secondary dwelling.

The application is referred to the Development Determination Panel (DDP) due to the application attracting five (5) objections during the notification period.

Concerns raised in the objections predominantly relate to the need for dilapidation reports as part of any approval, as well as the adequacy of off-street parking, privacy, and bulk and scale impacts. The

concerns raised have been considered in detail within this report, and do not warrant the refusal of the application.

Critical assessment issues include variations to the DCP controls which include a wall height variation, and a front setback variation, as well as general issues as they relate to privacy, and building bulk.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

Demolition Works

- Demolition of the existing dwelling house;

Proposed Lower Ground Floor Plan Dwelling House

- Entry and stairs;
- Guest bed with ensuite;
- Double garage;
- Subfloor;

Secondary Dwelling

- Entry;
- Kitchen, dining and living area;
- Bed 1;
- Bed 2;
- Bathroom and Laundry;

Proposed Ground Floor Plan

- Master bed with WIR and ensuite;
- Living, dining and kitchen areas;
- Study;
- Bathroom;
- Laundry;
- Rumpus;
- Alfresco with access to plunge pool;

Proposed Level 1 Floor Plan

- Bathroom;
- Bed 2 with WIR;
- Bed 3 with WIR;

Outdoor/Landscaping

- Plunge pool and integrated lawn access; and
- Landscaping works.

Amended plans were submitted by the applicant on 17 July 2023, and the amended plans included the following changes

- Reduced size of proposed secondary dwelling to be less than 60m²;
- Increased western side setback along the proposed garage;
- Increased southern front setback;
- Increased landscape areas;
- Amended external schedule of finishes and materials;
- Reduced roof height of first floor level;
- Clarification of front fence pedestrian gate location;
- Amendment of window sill heights; and
- Deletion of proposed plunge pool.

As such, the proposed development description been amended from: *Demolition works and construction of a dwelling house including garage, secondary dwelling, and swimming pool* to *Demolition works and construction of a dwelling house including garage, and secondary dwelling*.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Local Environmental Plan 2011 - 5.4 Controls relating to miscellaneous permissible uses
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 32 DP 14366 , 11 Wyadra Avenue FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Wyadra Avenue.</p> <p>The site is regular in shape with a frontage of 13.46 metres along Wyadra Avenue and a depth of 36.575 metres. The site has a surveyed area of 492.2m².</p> <p>The site is located within the R2 Low Density Residential zone from WLEP 2011 and accommodates a dwelling house, and shed currently on the site.</p> <p>The site slopes from the front south-western corner upwards to the rear north-eastern corner over approximately 2 metres.</p> <p>The site contains lawn areas with no significant trees or plantings. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses. Directly to the west of the subject site is a public reserve known as Cooksey Reserve.</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:

DA2003/1615

Development Application for Swimming Pool.
Approved on 9 March 2004.

DA2007/0983

Development Application for New two storey dwelling and boundary fencing following demolition of existing dwelling.
Approved on 20 May 2008.

CC2008/0963

Construction Certificate for New two storey dwelling and boundary fencing following demolition of existing dwelling.
Approved on 6 November 2008.

CC2008/1140

Construction Certificate for Swimming Pool.
Approved on 5 December 2008.

APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested additional information on 22 June 2023 in relation to Clause 4.3 Height of Buildings of Warringah Local Environmental Plan 2011 (WLEP 2011), Clause 5.4 Controls relating to miscellaneous permissible uses of WLEP 2011, and Clause 6.10 Development for the purposes of secondary dwellings in Zones R2 and R3 of WLEP 2011.

Further information was requested in relation to Clause B1 Wall Height of Warringah Development Control Plan 2011 (WDCP 2011), Clause B3 Side Boundary Envelope of WDCP 2011, Clause B5 Side Boundary Setbacks of WDCP 2011, Clause B7 Front Boundary Setbacks of WDCP 2011, Clause D12 Glare and Reflection of WDCP 2011, Clause D1 Landscaped Open Space and Bushland Setting of WDCP 2011, Clause D8 Privacy of WDCP 2011, and Clause D9 Building Bulk of WDCP 2011.

Subsequently, on 17 July 2023 the applicant submitted amended Master Plans, amended Landscape Plans, amended Stormwater Plans, and a RFI Response Letter. The amended plans constituted a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (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 Clause 4.3 Height of Buildings of Warringah Local Environmental Plan 2011 (WLEP 2011), Clause 5.4 Controls relating to miscellaneous permissible uses of WLEP 2011, and Clause 6.10 Development for the purposes of secondary dwellings in Zones R2 and R3 of WLEP 2011. Further information was requested in relation to Clause B1 Wall Height of Warringah Development Control Plan 2011 (WDCP 2011), Clause B3 Side Boundary Envelope of WDCP 2011, Clause B5 Side Boundary Setbacks of WDCP 2011, Clause B7 Front Boundary Setbacks of WDCP 2011, Clause D12 Glare and Reflection of WDCP 2011, Clause D1 Landscaped Open Space and Bushland Setting of WDCP 2011, Clause D8 Privacy of WDCP 2011, and Clause D9 Building Bulk of WDCP 2011.</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>

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/05/2023 to 06/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Guy Maxwell Smith	9 Wyadra Avenue FRESHWATER NSW 2096
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Mrs Judith Helen Grady	3 Cooksey Avenue FRESHWATER NSW 2096
Mrs Marjorie Dawn Middleton	45 Carlton Street FRESHWATER NSW 2096

Name:	Address:
Mr William Frederick Middleton	6 Wyadra Avenue FRESHWATER NSW 2096

The following issues were raised in the submissions:

- **Geotechnical Report**
- **Asbestos**
- **Off-Street Parking**
- **Traffic Control**
- **Privacy**
- **Plunge Pool**
- **Bulk and Scale**
- **Work Zone Parking Area**
- **Hours of Construction**
- **Glare and Reflection**
- **Clause 4.6**
- **Aims of Plan**
- **Zone Objectives**
- **Ground Level (existing)**
- **Wall Height**
- **Building Envelope/Streetscape**
- **Building Separation**
- **Garage Design**

The above issues are addressed as follows:

- **Geotechnical Report**

The submissions raised concerns that a Dilapidation Report has not been provided to No.9 Wyadra Avenue, Freshwater as detailed in the Geotechnical Report.

Comment:

The Geotechnical Report (prepared by Precision Engineering Group dated 31 January 2023) details recommendations subject to approval of the Development Application. As such, a condition have been recommended to ensure compliance with the Geotechnical Report. Furthermore, conditions have been recommended for Pre-Dilapidation Reports, and Post-Dilapidation Reports for No.9 Wyadra Avenue, Freshwater, and No.1 Cooksey Avenue, Freshwater as detailed in the Geotechnical Recommendations contained within the accompany Geotechnical Report. It is noted that No.45 Carlton Street, and No.6 Wyadra Avenue have requested Dilapidation Reports to be undertaken. It is considered that inline with the recommendations from the Geotechnical Report, and the distance across the road from the subject site to No.45 Carlton Street, and No.6 Wyadra Avenue that a Dilapidation Report is not necessary for these sites due to the distance from the development.

- **Asbestos**

The submissions raised concerns that the existing dwelling house may contains asbestos.

Comment:

Suitable conditions have been recommended to ensure the correct disposal of asbestos during the demolition phase of works. These conditions include the appropriate Removing, Handling and Disposing of Asbestos, and compliance with Australian Standard 2601 2001 The Demolition of Structures.

- **Off-Street Parking**

The submissions raised concerns that the proposed dwelling house, and secondary dwelling will not provide sufficient parking.

Comment:

In accordance with Clause C3 Parking Facilities of Warringah Development Control Plan 2011, the car parking requirements are to be in accordance with Appendix 1. Appendix 1 Car Parking Requirements details for dwelling houses to provide 2 spaces per dwelling. There are no requirements under Appendix 1 for secondary dwellings. However, under Clause 53(b) of *State Environmental Planning Policy (Housing) 2021* the following is stipulated: *b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.* As such, the subject site currently provides two (2) off-street parking spaces, and the proposal presents two (2) off-street parking spaces. Therefore, the proposed development is compliant with the car parking requirements under Warringah Development Control Plan 2011, and *State Environmental Planning Policy (Housing) 2021*.

- **Traffic Control**

The submissions raised concerns that the development should require traffic control as the site is located in proximity to a public school.

Comment:

Council's Development Engineer has reviewed the proposed development, and has not required traffic control for the proposed development. It is noted that Harbord Public School is located approximately 250 metres from the subject site.

- **Privacy**

The submissions raised concerns surrounding visual privacy from the proposed windows.

Comment:

A detailed assessment has been conducted under Clause D8 Privacy of Warringah Development Control Plan 2011. In summary, as per recommended conditions it is considered the proposal will provide for an acceptable privacy outcome for the subject site, and adjoining sites.

- **Plunge Pool**

The submissions raised concerns surrounding the proposed plunge pool in relation to sewer lines, boundary setbacks, height above ground level, privacy, and pool plant position.

Comment:

The amended plans have deleted the proposed plunge pool from the application, as such no

further consideration is required.

- **Bulk and Scale**

The submissions raised concerns that the overall bulk and scale of the dwelling is very large, and concern is raised for the overall streetscape and feel of the suburb.

Comment:

A detailed assessment has been conducted under Clause B9 Building Bulk of Warringah Development Control Plan 2011. In summary, the proposal is considered to be of appropriate bulk and scale, and demonstrates compliance with the objectives of the control.

- **Work Zone Parking Area**

The submissions raised concerns regarding a work zone parking area during the construction of the development.

Comment:

Council's Development Engineer has reviewed the proposed development, and a work zone parking area is not considered to be required for the proposed development.

- **Hours of Construction**

The submissions raised concerns surrounding the Hours of Construction.

Comment:

A condition is recommended for General Requirements that stipulates the following hours for construction:

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.

- **Glare and Reflection**

The submissions raised concerns surrounding glare and reflecting for roofing, panelling, and solar panels.

Comment:

An amended External Finishes & Materials Schedule has been provided that demonstrates the roof colour to be "Colorbond Windspray" that is consistent with Clause D12 Glare and Reflection of Warringah Development Control Plan 2011. Furthermore, a condition is recommended to ensure the roof colour is of a medium to dark range to minimise solar reflections to neighbouring properties. The proposed External Finishes & Materials Schedule is acceptable in this instance. Lastly, the proposal does not include any solar panels, and therefore consideration of solar panels is not required under this application.

- **Clause 4.6**

The submission raised concerns surrounding the requirement for a Clause 4.6.

Comment:

The proposal is compliant with Clause 4.3 Height of buildings of Warringah Local Environmental Plan 2011, and therefore there is no requirement for a Clause 4.6.

- **Aims of Plan**

The submission raised concerns that the proposed development is not consistent with Clause 1.2 Aims of Plan of Warringah Local Environmental Plan 2011.

Comment:

The proposed development has been assessed against Clause 1.2 Aims of Plan of Warringah Local Environmental Plan 2011, and it is considered the proposal has demonstrated consistency with the aims.

- **Zone Objectives**

The submission raised concerns surrounding the proposed development is inconsistent with the zone objectives.

Comment:

The proposal has been assessed against the objectives of zone under Zone R2 Low Density Residential contained within this report. In summary, the proposed development is consistent with the objectives of zone, and is permitted with consent.

- **Ground Level (existing)**

The submission raised concerns surrounding the spot levels on the Architectural Plans, and that the proposal presents a non-compliant height of building.

Comment:

The proposal has been assessed against the amended plans that include spot levels of the Architectural Plans. The proposal demonstrates a compliant height of buildings, and therefore there is no requirement for a Clause 4.6 as detailed above.

- **Wall Height**

The submission raised concerns surrounding the proposed wall height, and the non-compliance with the control, and objectives of the control.

Comment:

A detailed assessment has been conducted under Clause B1 Wall Height of Warringah Development Control Plan 2011. In summary, it is considered the proposal demonstrates compliance with the objectives of the control, and the variation is supportable.

- **Building Envelope/Streetscape**

The submission raised concerns surrounding the proposal does not present an adequate streetscape, and non-compliant envelope controls are visible from the street.

Comment:

It is considered that the proposal presents an appropriate streetscape, and the proposed

development is compliant with the building envelope control as detailed under the Built Form Control table contained within this report.

- **Building Separation**

The submission raised concerns surrounding the proposed side setbacks.

Comment:

The amended plans detail compliance with the side setback control, and therefore adequate building separation has been provided.

- **Garage Design**

The submission raised concerns surrounding the proposed garage design, specifically in relation to the side setback, and no car space for the secondary dwelling.

Comment:

The amended plans detail a compliant western side setback to the garage. Furthermore, the proposal is not required to provide a car space for the secondary dwelling as previous outlined under Off-Street Parking above.

Concluding Comments:

In summary, the concerns raised have been addressed and do not warrant the refusal of the proposed application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported - subject to conditions.</i></p> <p><u>Amended Plans - 7/7/23</u></p> <p>The amended application has been investigated with respect to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the previous attached conditions of approval and consideration of the notes below.</p> <p><i>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.</i></p> <p><u>Original Comments</u></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</p>

Internal Referral Body	Comments
	<p>of the attached conditions of approval and consideration of the notes below.</p> <p><i>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.</i></p>
Landscape Officer	<p>Supported - subject to conditions.</p> <p>The proposal is supported with regard to landscape issues.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation <p>Existing trees and vegetation in the neighbouring properties adjacent to the western boundary are isolated from the works by an existing masonry wall which will be retained. The existing wall and associated footing has likely reduced any root growth into the applicants property and as such no concerns are raised with impact to this vegetation. However, all trees and vegetation to be retained shall be protected during works, subject to the imposed conditions.</p> <p>The architectural plans show an area of on slab landscaping in the south west corner of the proposed dwelling which has not been shown on the Landscape Plans. Should the Development Application be approved, on slab landscaping shall meet Council's minimum soil depth requirements to support appropriate planting, and as such an amended Landscape Plan shall be submitted prior to issuing a Construction Certificate outlining the proposed planting for this area. The proposed tree planting and understory landscaping is generally supported, and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. All <i>Rhaphiolepis</i> species shall be substituted with a suitable alternative as Council deems this species an environmental threat.</p>
NECC (Development Engineering)	<p>Supported - subject to conditions.</p> <p>The site can drain to the street. On site detention is required and has been shown on the Stormwater Management flows. Conditions have been provided to lower the on site detention system. A Geotechnical report has been provided. The Control Pit and Overflow Pit must be contained wholly outside the proposed garage and accessible at all times. Vehicle crossing construction is proposed.</p>
Parks, reserves, beaches, foreshore	<p>Supported - subject to conditions.</p> <p>The property adjoins Cooksey Reserve downslope. No physical encroachments over the site boundaries are permitted, and</p>

Internal Referral Body	Comments
	structures and built elements are not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported - subject to conditions. The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1382901M dated 11 April 2023). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No.0008554720 dated 11 April 2023).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	53

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
<p>(2) Development consent must not be granted for development to which this Part applies unless—</p> <p>a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and</p> <p>b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and</p> <p>c) The total floor area of the secondary dwelling is:</p> <ol style="list-style-type: none"> no more than 60m², or if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area. 	<p>a) Compliant. The proposed development includes a principal dwelling and a secondary dwelling only on the land.</p> <p>b) Not Applicable. There is no floor space ratio control for the subject site under Warringah Local Environmental Control Plan 2011.</p> <p>c) Compliant. The total floor area of the secondary dwelling is less than 60m².</p>

Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
a) For a detached secondary dwelling - a minimum site area of 450m ² .	Not applicable. The proposed secondary dwelling is attached.
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Compliant. The existing site provides two (2) tandem car parking spaces, and the proposed development provides two (2) car parking spaces within the proposed garage.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.3m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

The site is located in land identified as Zone R2 Low Density Residential of Warringah Local Environmental Plan 2011.

The proposal has been assessed against the objectives of zones as detailed below:

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

Comment:

The proposal provides for housing needs of the community within a low density residential environment.

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

Comment:

The proposal provides appropriate land uses for a dwelling house, and secondary dwelling that will provide accommodation to meet the day to day needs of residents.

- ***To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.***

Comment:

The proposal provides for compliant landscaped areas that will result in a low density residential environment that is in harmony with the natural environment of Warringah.

5.4 Controls relating to miscellaneous permissible uses

Clause 5.4 Controls relating to miscellaneous permissible uses of Warringah Local Environmental Plan 2011 (WLEP 2011) stipulates the following:

(9) Secondary dwellings

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- (a) 60 square metres,*
- (b) 11% of the total floor area of the principal dwelling.*

Comment:

The proposed secondary dwelling is less than 60m² and therefore is compliant with Clause 5.4(9) of WLEP 2011.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.0m	11.11% (0.8m)	No
B3 Side Boundary Envelope	5m (East)	Within Envelope	-	Yes
	5m (West)	Within	-	Yes

		Envelope		
B5 Side Boundary Setbacks	0.9m (East)	1.2m	-	Yes
	0.9m (West)	0.9m	-	Yes
B7 Front Boundary Setbacks	6.5m (South)	5.7m	12.31% (0.8m)	No
B9 Rear Boundary Setbacks	6m (North)	10.7m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (196.88m ²)	40.67% (200.2m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposed wall height is 8.0 metres at the rear of the dwelling, presenting a variation of 11.11% (0.8 metres) to the required 7.2 metres control. The proposal wall height has been assessed against the objectives of the control, and as such it is considered that the proposal satisfies the objectives adequately. This is due to the top most level of the dwelling where the breach occurs being set within the middle of the building footprint, which breaks up the building mass and ensures that the wall plane is not read in a elevation, rather a stepped built form.

Therefore, the proposed variation to the wall height control is supportable in this circumstance.

Merit consideration:

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

- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.***

Comment:

The proposal has minimised the visual impact of development when viewed from adjoining properties, streets, and land zoned for public recreation through the implementation of varied, and increased side setbacks. It is considered that the increased side setbacks will present a development that has elements that are recessive, and as such will ensure an acceptable visual impact.

- ***To ensure development is generally beneath the existing tree canopy level***

Comment:

The proposed development is compliant with the maximum height of buildings development standard, and is considered to be beneath the tree canopy level apparent along Wyadra Avenue.

- ***To provide a reasonable sharing of views to and from public and private properties.***

Comment:

The proposal will ensure a reasonable sharing of views to and from public, and private properties.

- ***To minimise the impact of development on adjoining or nearby properties.***

Comment:

The proposal will minimise the impact of development on adjoining and nearby properties through the articulation between floors, and the articulation along the floor levels. It is considered that the variation of setbacks will result in an acceptable impact to adjoining, and nearby properties.

- ***To ensure that development responds to site topography and to discourage excavation of the natural landform.***

Comment:

The proposal will result in excavation, however it is considered the proposed excavation is acceptable to provide a levelled ground level. The proposal has appropriately responded to the sloping site topography, and is therefore supportable in this regard.

- ***To provide sufficient scope for innovative roof pitch and variation in roof design.***

Comment:

The proposal includes a innovative roof pitch that is of minimal pitch to ensure a compliant height of buildings. The proposed roof form is of a contemporary design that will limit any unreasonable roof height.

B7 Front Boundary Setbacks

Description of non-compliance

The proposal presents a variation to the front boundary control, with a setback of 5.7m to the ground floor planter box that results in a variation of 12.31% (0.8m). It is important to note the remainder of the proposed development is located behind the 6.5m required front boundary setback.

The proposed variation has been assessed against the objectives of the control, and it is considered the variation is supportable in this circumstance.

Merit consideration:

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

- ***To create a sense of openness.***

Comment:

The proposal will create a sense of openness as the front setback area is largely open, and consists of open lawn area, and the driveway, front path, and driveway.

- ***To maintain the visual continuity and pattern of buildings and landscape elements.***

Comment:

The proposed front boundary setback is consistent with the dwelling house of the adjoining site to the east at No.9 Wyadra Avenue. Therefore, it is considered that the proposal will maintain the visual continuity, pattern of buildings, and landscape elements.

- ***To protect and enhance the visual quality of streetscapes and public spaces.***

Comment:

The proposal will present an improved visual quality to the streetscape, and public spaces through the contemporary design of the proposed development.

- ***To achieve reasonable view sharing.***

Comment:

The proposal will not result in any unacceptable view sharing impacts to adjoining sites.

D8 Privacy

As detailed under Clause D8 Privacy the following requirements apply:

- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
- 3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
- 4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*
- 5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

Concern is raised from No.9 Wyadra Avenue in relation to the proposed windows located along the eastern elevation, particularly the office, laundry and bathroom windows on the ground floor plan. The amended plans include detail for windows W-G-01, W-G-02, and W-G-04 to be opaque glass. A condition is recommended for W-G-03 (window of the office) to have an increased sill height of 1.6m, or to be treated with obscure glass to a height of 1.6 metres from the ground floor finished level. Furthermore, a suitable condition has been recommended to ensure clarity of which windows to be treated with obscure glass. It is considered that the inclusion of the windows with obscure glass will provide adequate privacy for the adjoining site to the east.

Concern is raised from No.3 Cooksey Avenue in relation to the proposed windows on the northern side of the development. The proposed northern rear setback is more than compliant than the 6.0 metres control with a setback of 10.7 metres. As such, the proposed windows along the first floor northern elevation are within 9 metres of the rear yards of both No.3 Cooksey Avenue, and No.1 Cooksey Avenue. Therefore, a suitable condition has been recommended for Windows W-1-01, and W-1-09 to increase the sill height to 1.6 metres, or to be treated with obscure glass to a height of 1.6 metres from the first floor finished level. It is noted that Window W-1-02 presents a sill height of 1.6 metres.

Concern is raised from No.45 Carlton Street, and No.6 Wyadra Avenue in relation to the size of the

windows at the front of the dwelling (southern aspect) and the sight line to No.45 Carlton Street, and No.6 Wyadra. It is noted that No.45 Carlton Street, and No.6 Wyadra Avenue are located across Wyadra Road to the south, and are approximately 25 metres from the subject site. Therefore, it is considered that the proposed windows along the southern frontage of the development is appropriate. It is important to note, that the applicant has included privacy screening along the outside of the master bedroom on the ground floor to provide privacy for the residents, and adjoining residents.

Concern is raised from No.1 Cooksey Avenue in relation to the proposed pool, and alfresco deck. Further concern was raised in relation to Windows W-1-06, W-1-09, W-G-10, W-G-11, W-G-12. The windows have been reviewed, and it is considered that W-1-06, W-1-09, and W-G-11 will be recommended to increase the sill height to 1.6m, or to be treated with obscure glass to a height of 1.6m from the finished level. W-G-10 is located more than 9 metres from the rear of No.1 Cooksey Avenue, and therefore will not result in any unacceptable privacy impacts. W-G-12 will be screened by a fixed privacy screen along western edge of the alfresco area, and therefore will not be visible to No.1 Cooksey Avenue. It is considered that the rear alfresco area will not result in any unacceptable acoustic impacts, and the privacy screen will provide suitable visual privacy.

As recommended via condition, the proposal has demonstrated compliance with the objectives of the control as detailed below.

Merit consideration

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

- ***To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.***

Comment:

As amended via condition, the proposal will ensure the siting and design of buildings provides a high level of visual, and acoustic privacy for occupants, and neighbours. The recommended conditions will ensure appropriate privacy through the amendment of window design/treatment.

- ***To encourage innovative design solutions to improve the urban environment.***

Comment:

The proposal will ensure an innovative design that will provide an overall improvement to the urban environment.

- ***To provide personal and property security for occupants and visitors.***

Comment:

The proposal will provide for personal and property security for occupants and visitors through casual surveillance of the streetscape.

D9 Building Bulk

Clause D9 Building Bulk of Warringah Development Control Plan 2011 detail the following requirements:

1. Side and rear setbacks are to be progressively increased as wall height increases.
2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.
3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:
The amount of fill is not to exceed one metre in depth.
Fill is not to spread beyond the footprint of the building.
Excavation of the landform is to be minimised.
4. Building height and scale needs to relate to topography and site conditions.
5. Orientate development to address the street.
6. Use colour, materials and surface treatment to reduce building bulk.
7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.
8. Articulate walls to reduce building mass.

The proposal has been assessed against the requirements detailed above, and it is considered the proposed development has adequately incorporated the requirements to the development.

Merit consideration

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

- ***To encourage good design and innovative architecture to improve the urban environment.***

Comment:

The proposed development has been designed through consideration of the requirements of Clause B9 Building Bulk. Specifically, the proposal includes increased side setbacks as the wall height increase, varied building setbacks to provide visual relief, and an acceptable level of excavation to provide a levelled lower ground floor. Furthermore, the proposal presents a compliant height of buildings that is relative to the sloping topography of the site. The proposal has been orientated to the streetscape, and has included varied colours and materials to assist in providing visual relief. The proposal includes detailed Landscape Plans that will assist in softening the built form. Lastly, the proposal includes appropriate articulation that will reduce building mass.

- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.***

Comment:

The proposal will not result in an unacceptable visual impact of development when viewed from adjoining properties, streets, and land zoned for public recreation purposes.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$9,080 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$908,000.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for Demolition works and construction of a dwelling house including garage, and secondary dwelling has been referred to the Development Determination Panel (DDP) due to five (5) objections received for the proposed development.

The concerns raised in the objections have been addressed and resolved by the inclusion of recommended conditions as deemed suitable.

The critical assessment issues are considered supportable, and the variations sought have been

assessed against the objectives of the control. It is considered that the wall height variation, and front setback variation are acceptable. The concerns raised in relation to privacy have been mitigated by recommended conditions for window sill heights, and treatment of obscure glazing. It is considered the proposed development is of an appropriate building bulk, and is acceptable due to the varied setbacks and articulation.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/0542 for Demolition works and construction of a dwelling house including garage, and secondary dwelling on land at Lot 32 DP 14366, 11 Wyadra Avenue, FRESHWATER, 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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-000-50	03	Proposed Demolition Plan	Daniel Younan & Associates	12 April 2023
DA-000-60	04	Site Plan	Daniel Younan & Associates	7 July 2023
DA-100-00	04	Proposed Lower Ground Floor Plan	Daniel Younan & Associates	7 July 2023
DA-100-10	04	Proposed Ground Floor Plan	Daniel Younan & Associates	7 July 2023
DA-100-20	04	Proposed Level 1 Floor Plan	Daniel Younan & Associates	7 July 2023
DA-100-30	04	Proposed Roof Plan	Daniel Younan & Associates	7 July 2023

DA-200-00	04	Proposed South & North Elevations	Daniel Younan & Associates	7 July 2023
DA-200-01	04	Proposed West Elevation	Daniel Younan & Associates	7 July 2023
DA-200-02	04	Proposed East Elevation	Daniel Younan & Associates	7 July 2023
DA-200-50	04	Proposed Front Fence & Streetscape Elevation	Daniel Younan & Associates	7 July 2023
DA-300-00	04	Proposed Section A-A	Daniel Younan & Associates	7 July 2023
DA-300-01	04	Proposed Section B-B	Daniel Younan & Associates	7 July 2023
DA-300-02	04	Proposed Section C-C	Daniel Younan & Associates	7 July 2023
DA-300-03	04	Proposed Section D-D	Daniel Younan & Associates	7 July 2023
DA-300-04	04	Proposed Section E-E	Daniel Younan & Associates	7 July 2023
DA-300-05	04	Proposed Section F-F	Daniel Younan & Associates	7 July 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (No.1382901M)	-	Integreco Consulting Pty Ltd	11 April 2023
BCA Report	-	Design Right Consulting	5 May 2023
Geotechnical Report	A	Precision Engineering Group	31 January 2023
NatHERS Certificate (No.0008554720)	-	Integreco Consulting Pty Ltd	11 April 2023
External Finishes & Materials Schedule	04	Daniel Younan & Associates	7 July 2023
Waste Management Report	-	Vaness Catic	12 April 2023
Hardscape Plan & Calculation -LP23-234 - 01	B	Conzept Landscape Architects	13 July 2023
Landscape Plan - LP23-234 - 02	B	Conzept Landscape Architects	13 July 2023
Details - LP23-234 - 03	B	Conzept Landscape Architects	13 July 2023

Specification - LP23-234 - 04	B	Concept Landscape Architects	13 July 2023
Stormwater Drainage / Sediment Control Details - 2372 - S1/2	C	John Romanous & Associates	12 July 2023
Stormwater Drainage / Sediment Control Details - 2372 - S2/2	C	John Romanous & Associates	12 July 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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 - Underground Cables	30 May 2023
	Ausgrid Referral Response - OH and UG Cables	30 May 2023

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

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

3. 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 **dwelling house** and **secondary dwelling**, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

dwelling house means a building containing only one dwelling.

secondary dwelling means a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.

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.

4. Prescribed Conditions

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

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

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

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

on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

waste/recycling centres.

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

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

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

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

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,080.00 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 \$908,000.00.

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

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

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

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

7. Security Bond

A bond (determined from cost of works) of \$5,000 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. Amended Landscape Plan

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

- a) proposed planting scheme for the on slab planter in the south-west corner of the dwelling.

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

Reason: Landscape amenity.

9. On Slab Landscape Works

Details shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping:

- i) 300mm for groundcovers, perennials, grasses,
- ii) 600mm for shrubs.

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

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

10. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the street.

The following amendments to the stormwater management plans by John Romanous & Associates Drawing No. 2372-S1/2 rev C dated 12.07.2023 are required prior to Construction Certificate approval:

- 1. The onsite detention system design is to be amended/ lowered so that the surcharge flow path level, being the Overflow Pit Level is a minimum of 300mm below all habitable floor levels and 150mm below the garage level.
- 2. The On Site Detention Tank Detail shall be amended so that the Overflow Weir level is a minimum of 500 mm below any habitable floor level and 350 mm below the garage floor level. Show Overflow Weir level.
- 3. The Control Pit and the Overflow Pit shall have grated access and be located outside the proposed garage and shall be accessible for inspection at all times.

4. Show Emergency Overflow path from the Overflow Pit.

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

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

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

13. **Amendments to the approved plans**

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

- Windows W-G-01, W-G-02, and W-G-04 are to be treated with obscure glazing;
- Windows W-G-03, and W-G-11 are to be to either obscure glazing to a minimum height of 1.6 metres (when measured from the ground floor finished level), or the window sill is to be increased to a minimum height of 1.6 metres (when measured from from the ground floor finished level); and
- Windows W-1-01, W-1-06 and W-1-09 are to be to either obscure glazing to a minimum height of 1.6 metres (when measured from the first floor finished level), or the window sill is to be increased to a minimum height of 1.6 metres (when measured from from the first floor finished level).

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

14. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and waterways.

15. 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 Assessment Report prepared by Design Right Consulting and Construction Certification Solutions Pty Ltd, dated 5/5/2023, Project No. 117378, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate.

Details demonstrating compliance are to be provided to the Certifier, 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.

16. Building Class 2

The new building that is proposed to be constructed will result in a classification of a Class 2 building and is required to comply with Parts C, D, E & F of the Building Code of Australia (except where subject to an Alternate Solution).

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

17. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for

Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

18. **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.

19. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA rating M or D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

20. **Sydney Water "Tap In"**

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

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

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

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

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

21. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. **Installation and Maintenance of Sediment and Erosion Control**

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing

Urban Stormwater: Soils and Construction' (2004).

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

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.

23. Pre-Construction Dilapidation Report

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

Properties: No.9 Wyadra Avenue, Freshwater & No.1 Cooksey Avenue, Freshwater

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

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

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

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

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

24. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for

Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

DURING BUILDING WORK

25. Tree and Vegetation Protection

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

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

26. **Condition of Trees**

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

In this regard all protected trees shall not exhibit:

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

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

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

Reason: Protection of trees.

27. **Road Reserve**

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

Reason: Public safety.

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

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

Reason: Public safety, landscape amenity and tree protection.

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

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

Reason: Public safety and environmental protection.

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

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

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

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

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

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

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

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

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

32. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

33. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be

disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

34. Survey Certificate

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

35. Property Boundary Levels

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To maintain the existing profile of the nature strip/road reserve.

36. Vehicle Crossing

The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

37. 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

38. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

39. **Landscape Completion**

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

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- d) substitute all *Rhaphiolepis* species with a suitable alternative (although a cultivar is proposed, Council deems this species an environmental threat).

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.

40. **Stormwater Disposal**

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

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

41. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of

inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

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

42. Reinstatement of Kerb

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

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

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

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

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

44. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

45. **House / Building Number**

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

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

Reason: Proper identification of buildings.

46. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

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

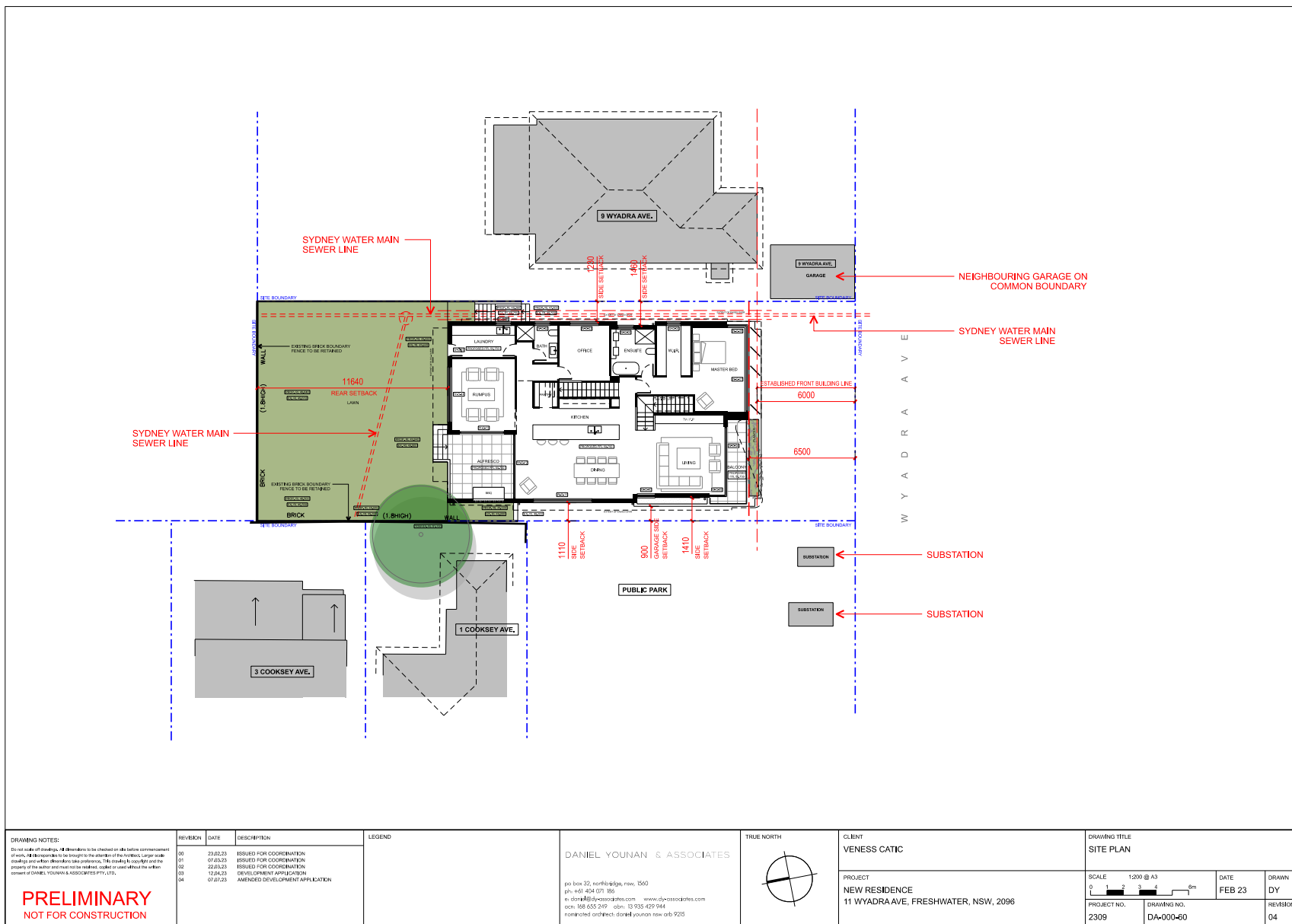
47. **Landscape Maintenance**

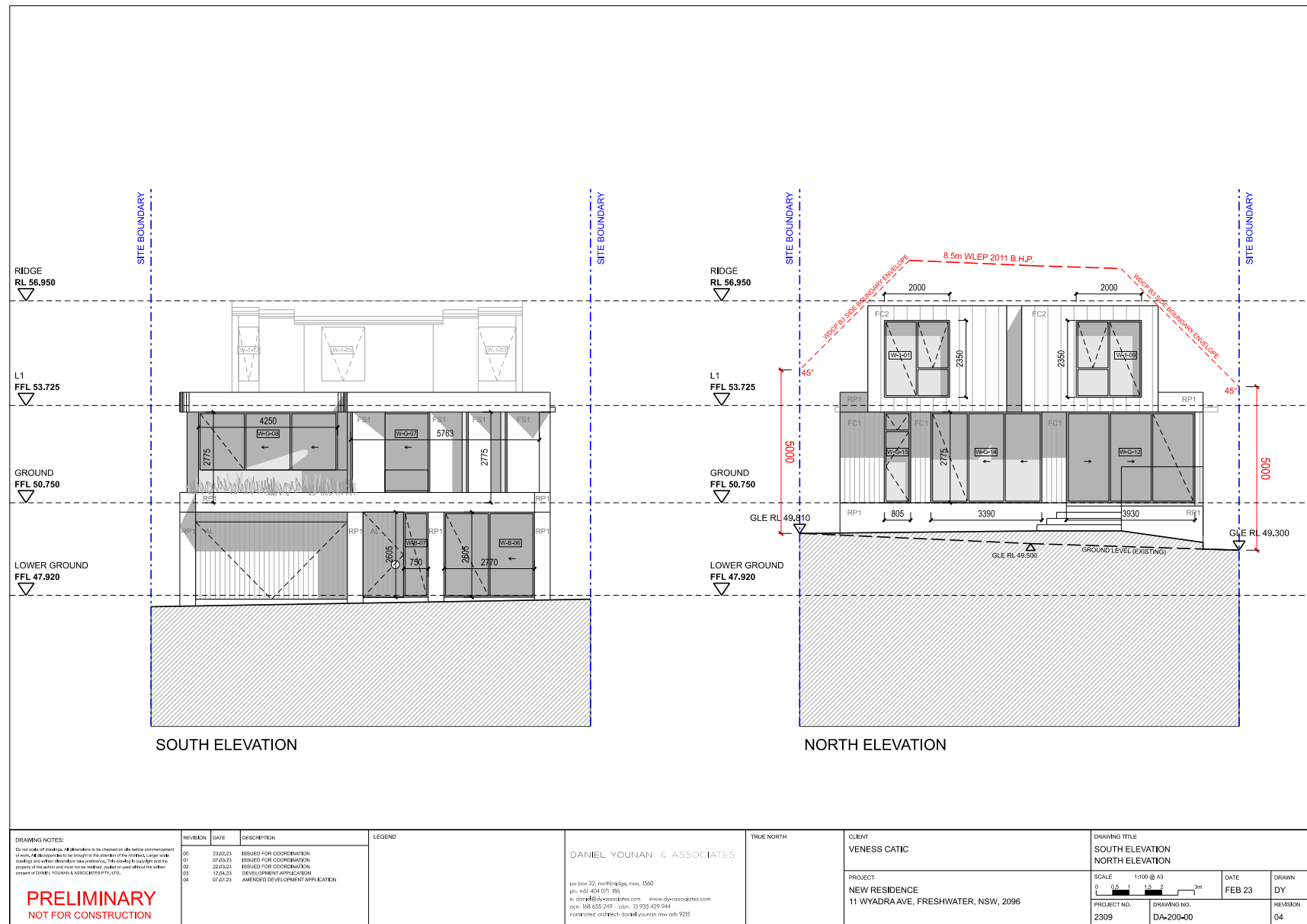
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub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

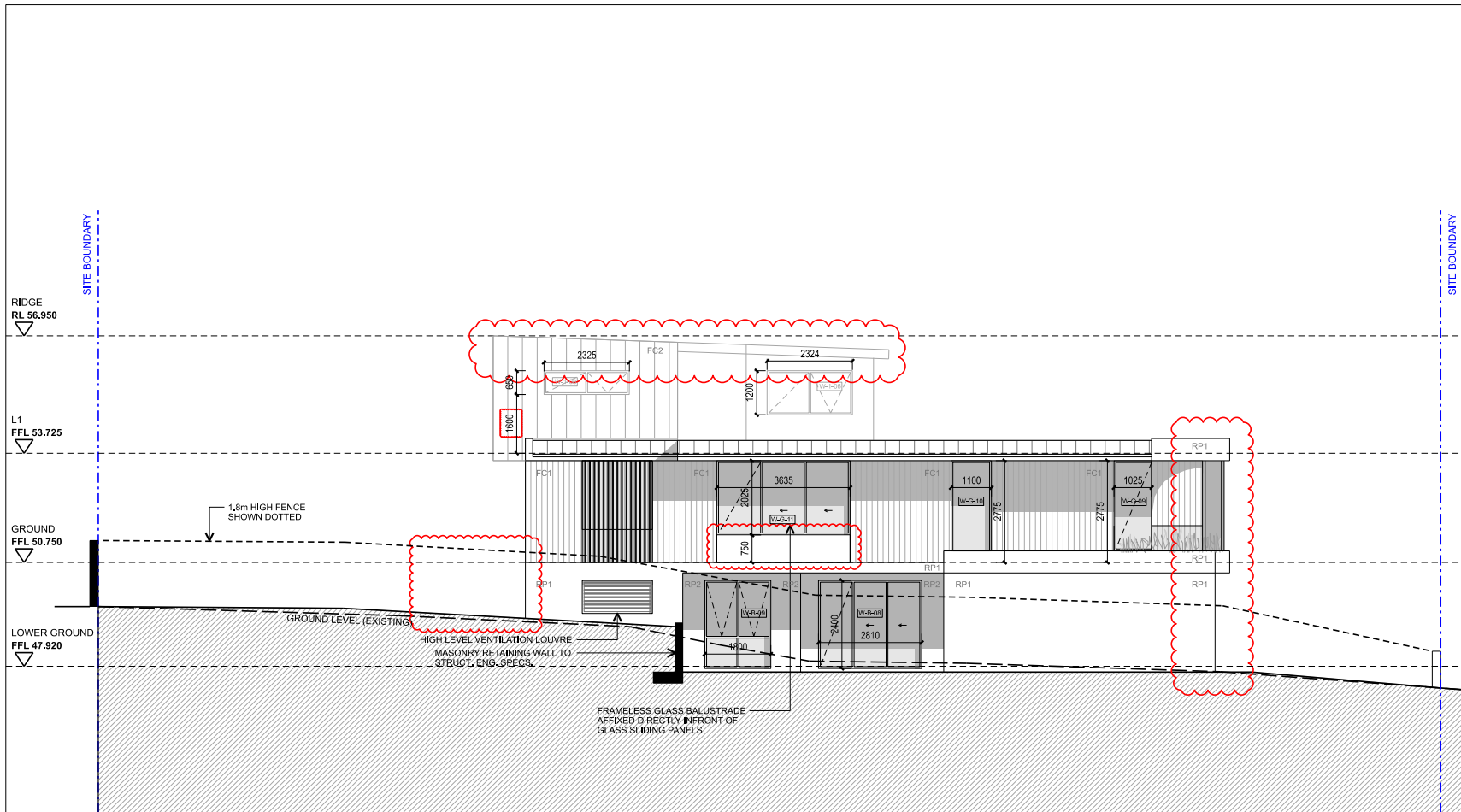
A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

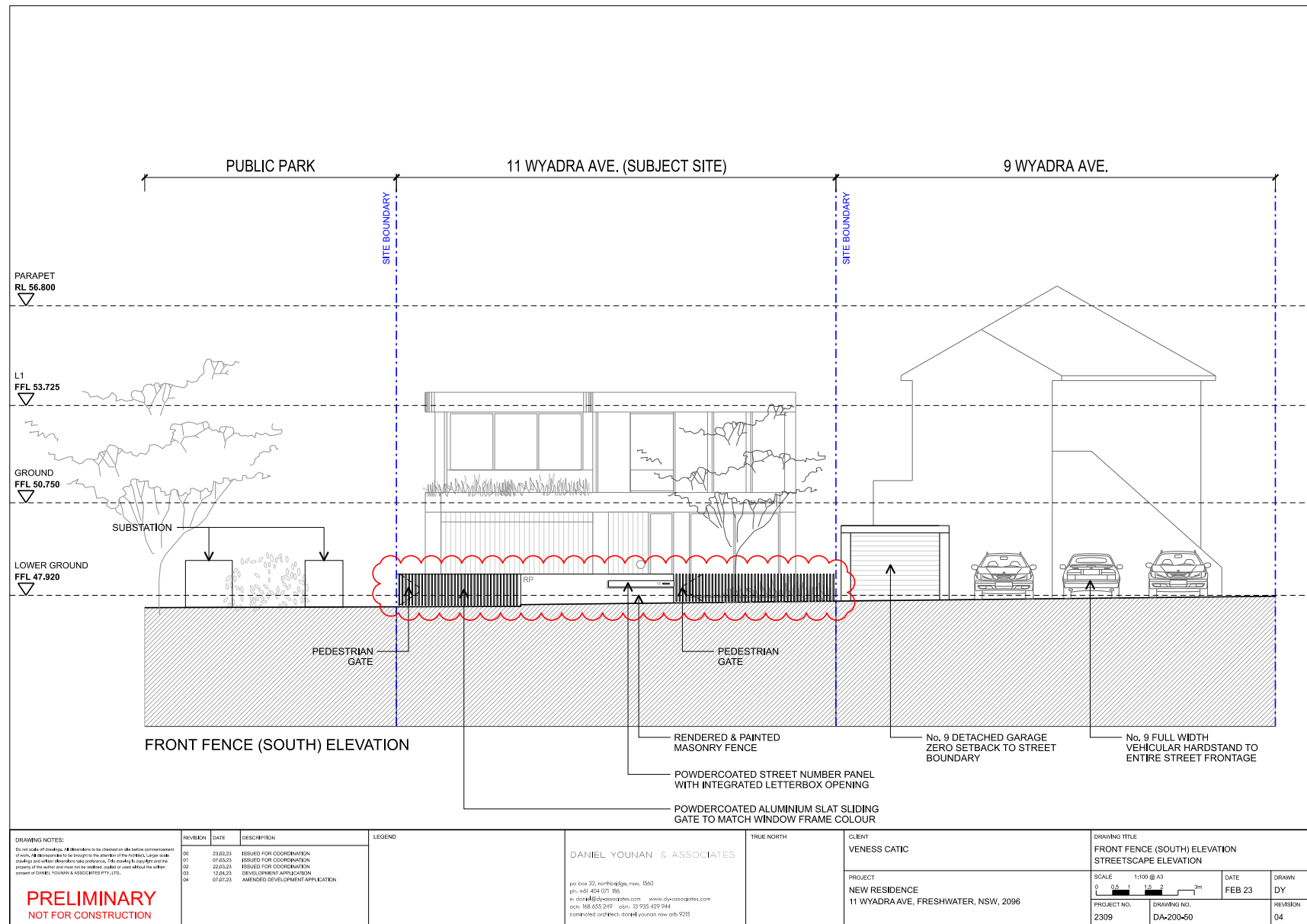






<div>DRAWING NOTES:</div> <div>Do not scale off drawings. All dimensions to be checked on site before commencement of work. All dimensions to be brought to the attention of the architect. Larger scale drawings and/or sections should be referred to. The drawing is copyright and the property of the author and must not be copied, copied or used without the written consent of DANIEL YOUNAN & ASSOCIATES PTY LTD.</div> <div>PRELIMINARY</div> <div>NOT FOR CONSTRUCTION</div>	<div>REVISION</div> <div>DATE</div> <div>DESCRIPTION</div>	<div>LEGEND</div>	<div>DANIEL YOUNAN & ASSOCIATES</div> <div>po box 32, northbridge, nsw, 1560 ph: +61 404 071 856 e: daniel@danieldyounan.com.au www.danieldyounan.com.au ccn: 168 655 249 ocn: 12 935 429 944 nominated architect daniel younan nsw arb 9215</div>	<div>TRUE NORTH</div>	<div>CLIENT</div> <div>VENESS CATIC</div> <div>PROJECT</div> <div>NEW RESIDENCE</div> <div>11 WYADRA AVE, FRESHWATER, NSW, 2096</div>	<div>DRAWING TITLE</div> <div>WEST ELEVATION</div> <div>SCALE 1:100 @ A3</div> <div><div>0</div><div>0.5</div><div>1</div><div>1.5</div><div>2</div><div>3m</div></div> <div>DATE</div> <div>FEB 23</div> <div>DRAWN</div> <div>DY</div> <div>PROJECT NO.</div> <div>2309</div> <div>DRAWING NO.</div> <div>DA-200-01</div> <div>REVISION</div> <div>04</div>
---	--	-------------------	--	-----------------------	---	---





ITEM 3.5**DA2022/1944 - 30 & 32 LAKEVIEW PARADE, WARRIEWOOD -
DEMOLITION WORK, TREE REMOVAL AND SUBDIVISION OF
TWO LOTS INTO FIVE LOTS****REPORTING MANAGER****Adam Richardson****TRIM FILE REF****2023/485097****ATTACHMENTS**

- 1** [↓](#) **Assessment Report**
- 2** [↓](#) **Subdivision Plan and Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Development Consent to DA2022/1944 for demolition work, tree removal and subdivision of two lots into five lots on land at Lot A & B DP 357717, 30 & 32 Lakeview Parade WARRIEWOOD, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1944
Responsible Officer:	Kimberley Kavwenje – Consultant Planner
Land to be developed (Address):	30 and 32 Lakeview Parade, Warriewood
Proposed Development:	Demolition work, tree removal and subdivision of two lots into five lots
Zoning:	R2 Low Density Residential zone & C4 Environmental Living zone
Development Permissible:	Yes
Existing Use Rights:	N/A
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Katherine Anne Newton, Patrick John Daley, Thomas Matthew Daley
Applicant:	Thomas Matthew Daley
Application Lodged:	21 November 2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	No
Notified:	The development application was notified twice between the following dates: 21/11/2022 to 09/12/2022 Amended plans - 03/04/2023 to 25/04/2023
Advertised:	N/A
Submissions Received:	Four (4) unique submissions were received within the first notice period. Four (4) submissions were received within the second notice period. Total of eight (8) submissions received.
Clause 4.6 Variation:	N/A
Recommendation:	Refusal
Estimated Cost of Works:	\$440,844



EXECUTIVE SUMMARY

This report is an assessment of a development application (DA) under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) on land at 30 and 32 Lakeview Parade, Warriewood (Lot B and A in DP 357717 respectively).

The DA seeks consent for demolition work, tree removal and Torrens Title subdivision of two lots into five lots. The site is located within two zones. The northern portion being within the C4 Environmental Living zone and the southern portion within the R2 Low Density Residential zone under *Pittwater Local Environmental Plan 2014* (PLEP 2014). The proposed development is permissible with consent.

The DA was notified between 21 November 2022 and 9 December 2022 in accordance with Council's Community Participation Plan, and in response, four (4) submissions were received.

Concerns raised in the submissions related to:

- The proposed development does not fit within the established character of the area and is considered out of context for the locality.
- The proposed development will impact on local traffic and parking on Lakeview Pde.
- The application received lacks important information regarding traffic, easement utilities, storm water drainage, and placement of garbage bins.
- Non compliances with B2.2 Subdivision - Low Density Areas, C4.7 Subdivision - Amenity and Design and Landscape Open Space requirements of the Pittwater 21 DCP.
- The removal of many trees on the site, and an inability for the proposed dwelling footprints to comply with the landscaped area requirements of the Pittwater 21 DCP.
- A new dwelling in the location of the proposed footprint on Lot 3 will significantly impact the light, privacy, and outlook from the primary living area of that dwelling, which adjoins the kitchen at 40 Lakeview Drive.

The application is referred to the Northern Beaches Development Determination Panel (DDP) due to the number of submissions received.

Throughout the assessment of the DA, the Applicant was requested to provide further information (RFI) on 21 February and in April 2023. Information was requested relating to:

- terms of the existing right of carriageway,
- vehicular access in terms of providing a passing bay,
- stormwater management plan to be submitted,
- concerns held in relation to the proposed subdivision
- non-compliances with the Pittwater Development Control Plan 2014 (PDCP).

Also, the provided building envelopes included insufficient and unrealistic detail on the future development of the allotments. It was recommended that the subdivision be revised to reduce the number of allotments.

The Applicant submitted amended plans and documents including conceptual dwelling designs for Lots 2-5 in the proposed subdivision, which partly responded to the concerns raised by Council. These amended plans were the subject of renotification. The amended plans were notified between 3 April 2023 and 25 April 2023. In response, four (4) submissions were received.



The assessment of the application has identified fundamental concerns in relation to the proposed subdivision which creates constrained environmentally sensitive allotments as outlined below:

- Lots 3, 4 and 5 and half of proposed Lot 2 are zoned C4 Environmental Living and containing ecological and aesthetically significant vegetation.
- Proposed Lots 3 and 5 do not meet the minimum required width of 16m.
- Lot 1 does not meet the 15m allotment width requirement.
- The proposed accessway traverses Lots 1, 2 and 4. The useable site area (width) of these allotments has not been increased to offset the accessway. The accessway has a width between 3.5m to 5.5m due to the number of allotments serviced and length of the accessway.
- Lots 2 and 3 has been designed to internally present to the accessway and have sited the building envelopes with reduced front setbacks, which increase the likelihood on impact upon adjoining properties.
- Lots 1, 2 and 4 contain significant vegetation which provides a physical constraint to the allotments. The building envelopes do not adequately respond to these constraints, and it has not been demonstrated the proposed allotments can be reasonably development in accordance with PDCP.
- The proposed subdivision is contrary to the subdivision requirements of PDCP.
- The creation of allotments which have physical and environmental constraints is not orderly development.
- The proposed subdivision pattern confines future building placement to an arrangement that will result in an abrupt built form and is unacceptable.
- The likelihood of adverse environmental and amenity impacts as a result of the development is high due to the topography, environmental constraints, and orientation of allotments.
- In this circumstance, it is considered the dwellings on these allotments should form part of the same application in which the subdivision is proposed to ensure the design satisfactorily responds to the dimensional and vegetative constraints.

Having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act*, it is recommended that Development Application DA2022/1944 be refused.

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for demolition of the existing dwelling at 32 Lakeview Road, Warriewood, removal of vegetation and the Torrens Title subdivision of two (2) existing allotments into five (5) allotments at 30 and 32 Lakeview Parade, Warriewood. The proposed works include:

- Demolition of the existing dwelling and outbuildings on land at 32 Lakeview Parade.
- Demolition of existing outbuildings on land at 30 Lakeview Parade, the existing dwelling is to be retained.
- Removal of the following seven (7) trees as described within the Applicant's arborist report,
 - Tree 7 - *Lophostemon confertus*, Brushbox,
 - Trees 10 and 12 - *Archontophoenix cunninghamiana*, Bangalow Palm,
 - Tree 15 - *Betula spp*, Birch,
 - Tree 26 - *Corymbia maculate*, Spotted Gum,
 - Tree 27 - *Banksia integrifolia*, Coastal Banksia and
 - Tree 40 - *Plumeria spp*, Frangipani.
- Torrens Title subdivision of the existing two (2) allotments to create five (5) allotments as identified in **Figure 1** below, and described in the following table.



- Construction of an internal driveway servicing Lots 2 – 5.
- Drainage works.
- Easements for access and services.

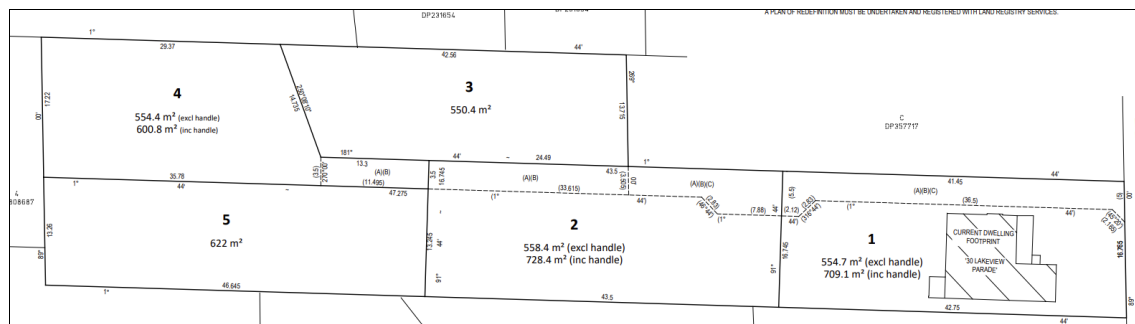


Figure 1: Proposed five (5) lot Torrens Title subdivision
Source: SDG, 28 March 2023

Allotment	Site Area	Dimensions
Lot 1	554.7m ² (709.1m ² including right of carriageway (ROC))	<p>Southern allotment presenting to Lakeview Parade and is rectangular in shape. The existing dwelling is to be retained.</p> <p>The proposed dimensions excluding the area associated with the ROC are:</p> <ul style="list-style-type: none"> - 13.715m southern boundary width, 42.75m western boundary length, 11.245m northern boundary width and irregular eastern boundary length 38m, 2.83m and 2.12m. <p>The proposed dimensions of the ROC are:</p> <ul style="list-style-type: none"> - Irregular western boundary length 2.165m, 36.5m, 2.83m and 2.12m. Northern boundary width of 5.5m and eastern boundary length of 41.45m.
Lot 2	558.4m ² (728.4m ² including ROC)	<p>The site is centrally located between Lot 5 and Lot 1 and is regular in shape.</p> <p>The proposed dimensions excluding the area associated with the ROC are:</p> <ul style="list-style-type: none"> - 11.245m southern boundary width, 43.5m western boundary length and 13.245m northern boundary width and a stepped eastern boundary length 7.88m, 2.83m and 33.615m. <p>The proposed dimensions of the ROC are:</p> <ul style="list-style-type: none"> - The ROC has 43.5m eastern boundary length, 5.5m southern width, stepped western boundary length 7.88m, 2.83m and 33.615m. The northern boundary width 3.5m.



Lot 3	550.4m ²	South eastern allotment. Irregular in shape. Eastern boundary length 42.56m, 13.715m southern boundary width, 37.79m western boundary length and splayed northern boundary 14.735m.
Lot 4	554.4m ² (600.8m ² including ROC)	Rear north eastern allotment. Irregular in shape. The proposed dimensions excluding the area associated with the ROC are: - 3.5m southern boundary, western boundary length 47.275m, northern boundary width 17.22m and eastern boundary length 29.37m, south eastern boundary 14.735m and eastern boundary 13.3m. The proposed dimensions of the ROC are: - 3.5m and western length 11.495m and eastern 13.3m.
Lot 5	622.0m ²	Rear south western allotment. Rectangular in shape. 13.245m southern boundary width, 46.645m western boundary length, 13.26m northern boundary width and 47.275m eastern boundary length.
ROC	370.8m ²	Overall the ROC includes the following dimensions: 98.25m eastern boundary length. 5m southern boundary which presenting to Lakeview Parade. Western boundary length is irregular with total length of 99.435m. Northern boundary width 3.5m.

Amended plans 30 March 2023

- Widening of the ROC at the southern boundary (Lakeview Parade) from 3.5m to 5m;
- Swept path diagrams provided;
- Amended Arborist report and Water Management Report;
- Amended engineering plans; and
- Indicative dwelling plans for proposed Lots 2 – 5.
- Legal advice pertaining to the right-of-carriageway.
- Written response from Northern Beach Planning in response to the RFI.



•

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) considering all relevant provisions of the Act and the associated regulations;
- A site inspection was conducted on 8 February 2023 and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, and referrals to relevant internal and external bodies was undertaken in accordance with the Act, Regulations, and relevant Community Participation Plan (CPP);
- A review and consideration of all submissions made by the public in relation to the application was undertaken;
- A review and consideration of all documentation provided with the application (up to the time of determination) was undertaken;
- A review and consideration of all referral comments provided by the relevant Council Officers, Agencies on the proposal was undertaken.

SUMMARY OF ASSESSMENT ISSUES

The DA proposes the demolition of the existing dwelling at 32 Lakeview Road, Warriewood, removal of vegetation and the Torrens title subdivision of two (2) existing allotments into five (5) allotments. The assessment issues are summarised below:

The assessment issues are summarised below:

- Pittwater 21 Development Controls Plan – A1.7 Considerations before consent is granted.
- Pittwater 21 Development Controls Plan – B2.2 Subdivision – Low Density Residential Areas
- Pittwater 21 Development Controls Plan – C1.1 Landscaping
- Pittwater 21 Development Controls Plan – C4.7 Subdivision – Amenity and Design
- Pittwater 21 Development Controls Plan – C4.8 Subdivision – Landscaping on the existing and proposed public road reserve frontage to subdivision lots.
- Pittwater 21 Development Controls Plan – D14.7 Front building line
- Pittwater 21 Development Controls Plan – D14.8 Side and rear building line
- Pittwater 21 Development Controls Plan – D14.13 Landscaped Area – Environmentally Sensitive Land



SITE DESCRIPTION

Property Description:	30 Lakeview Parade, Warriewood (Lot B DP 357717). 32 Lakeview Parade, Warriewood (Lot A DP 357717).
Detailed Site Description:	<p>The site is 30 and 32 Lakeview Parade, Warriewood (Lot B and A Deposited Plan 357717).</p> <p>30 Lakeview Parade is rectangular in shape and has a surveyed area of 835.2m² with a frontage to Lakeview Road of 13.715 metres and depth of 60.96 metres. The lot presently accommodates a single storey dwelling with vehicular access from Lakeview Parade to a single space garage (Figure 2). The dwelling contains a front balcony and a rear outdoor entertaining area.</p> <p>No. 30 is located within the R2 Low Density Residential zone pursuant to PLEP 2014.</p> <p>No. 32 Lakeview Parade is generally rectangular in shape; however the lot has an access 'handle' with a frontage width of 3.05 metres to Lakeview Parade. The length of the access handle is 60.96 metres (Figure 3). The rectangular area towards the rear, where the existing dwelling is located, has a width of 30.48 metres and depth of 71.935 metres. As such the total surveyed area of No. 32 is 2,375m². The lot accommodates a single storey dwelling house constructed of brick, with an attached garage and ancillary driveway (Figure 4). Vehicle access is via a right of way over the properties to the east being 42-50 Lakeview Road.</p> <p>No. 32 is located within the C4 Environmental Living zone pursuant to <i>Pittwater Local Environmental Plan 2014</i> (PLEP).</p> <p>The development site has total surveyed area of 3,210.2m² and is located on the northern side of Lakeview Parade, between Pittwater Road and Warriewood Road.</p> <p>The site falls from north to south, from the rear boundary of No. 32 to Lakeview Parade, with surface levels falling from approximately RL 38.0 to about RL 20.80 AHD.</p> <p>The site contains significant vegetation along the current boundaries.</p>



Figure 2: Existing dwelling at 30 Lakeview Parade, Warriewood proposed to be retained.
Source: <https://www.google.com/maps>



Figure 3: Existing right of carriageway between 30 Lakeview Parade and 34 Lakeview Parade looking north towards 32 Lakeview Parade.
Source: CPS 8 February 2023



Figure 4: Existing dwelling located at 32 Lakeview Parade that is proposed to be demolished.
Source: CPS 8 February 2023



Figure 5: Aerial photograph of the site and surrounding area
Source: Northern Beaches Council Mapping

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by single dwellings with varying allotment sizes, notably the subdivision pattern includes irregular shapes and is not uniform. Dwellings to the west of the subject site present to Lakeview Parade. To the east, there is an irregular lot configuration with dwellings located above the road level accessed from an existing right of carriageway (**Figure 8**).



The dwellings located at 48 – 38 Lakeview Parade rely upon the ROC providing vehicular access to Lakeview Parade. The dwellings located at the top of the site, No's 38 and 40 Lakeside Parade (**Figure 7**) descend along the ROC. The existing allotment at 32 Lakeview Parade is adjoined by 40 and 42 Lakeside Parade to the east (**Figure 6**).

These dwellings present to the ROC and includes single and two storey dwellings. Significant water views are available in an easterly and south easterly direction towards Warriewood and TriMet Head. To the south west, the low lying Warriewood wetlands are observable from the site.



Figure 6: Adjoining properties to the east, No.40 and 42 Lakeview Parade
Source: CPS 8 February 2023



Figure 7: Looking north with No. 38 Lakeview Parade and 40 Lakeview Parade access from ROC
Source: CPS 8 February 2023



Figure 8: Existing right of carriageway sited along the eastern side boundary providing access to 32 Lakeview Parade
Source: CPS 8 February 2023

SITE HISTORY

A search of Council's records has revealed the following relevant history for 32 Lakeview Parade:

- **Development Application N1152/00** for development of a carport and awning was submitted on 27 November 2000 and approved on 09 January 2001.
- **Development Application N0590/01** for development of alterations and additions to a dwelling house was submitted 04 July 2001 and approved 18 September 2001.
- **Application TA2018/0264** for the removal of 1-2 trees was submitted 28 November 2018 and was refused.

A search of Council's records has revealed there are no recent development applications for 30 Lakeview Parade.

Application history:

21 November 2022	DA was lodged.
21 November 2022 and 9 December 2022	The DA was notified to surrounding properties. In response, four (4) submissions were received.
8 February 2023	Inspection of the site and adjoining sites undertaken.
21 February 2023	A request for additional information (RFI) was sent to the Applicant. Concern was raised regarding: <ul style="list-style-type: none"> - Request for terms of the existing easement to be submitted. Potential concern raised regarding owners' consent being required from 34 Lakeview Parade given the terms of the

	<p>easement were to be significantly modified by the proposed development.</p> <ul style="list-style-type: none"> - Clarification sought regarding whether the proposed allotments are to benefit from the existing right of way over Lot 9, 10, 11, 12 and 13 on DP 231564. - To avoid queueing within Lakeview Parade, the driveway crossing must be 5 metres wide between the kerb and the boundary with a transition back to 3 metres. - Arboricultural Impact Assessment is updated to reflect the building encroachments on trees within the road reserve and adjoining properties. All plans and sections were requested to be amended to show the revised driveway width. - Request for stormwater drainage plans to demonstrate an inter-allotment drainage line servicing each of the proposed lots with a piped connection to Council's stormwater drainage line in Lakeview Parade. - The DRAFT Plan of Subdivision was requested to be amended to include an easement to drain water over the proposed inter-allotment drainage line and driveway and right of carriageway over the driveway widening in proposed Lot 1. - Concern raised regarding the proposed development and the response to the existing pattern of subdivision and landscape character of the locality. - A response was requested to submissions received.
3 March 2023	Online meeting held with consultant planner, assessing officer and Applicant/owner.
30 March 2023	The Applicant submits amended plans and further information.
3 April 2023 and 25 April 2023.	The DA was re-notified to surrounding properties. In response, four (4) submissions were received objecting to the development.
26 April 2023	Council's Water Management Officers advise that the application is not supported as there is no information demonstrating compliance with Council's Water Management for Development Policy.
12 May 2023	The Applicant submits a Water Quality Report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement.	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 104</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested 21 February 2023 The contents of the correspondence included:</p> <ul style="list-style-type: none"> - Stormwater drainage plans - Building envelopes - Water quality report - Amendments to the subdivision design relating to the ROC - Swept paths to demonstrate vehicle turning circles - Legal advice relating to the right-of-carriageway. - Written response to the RFI. <p><u>Clause 61(1)</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter can be addressed via a condition of consent in the event of DA approval.</p> <p><u>Clauses 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent in the event of DA approval.</p> <p><u>Clause 69(2)</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the <i>Home Building Act 1989</i>. This matter can be addressed via a condition of consent in the event of DA approval.</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 can be addressed via a condition of consent in the event of DA approval.</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 PDCCP section in this report and below. The development results in an unacceptable environmental impact.</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>

Section 4.15 'Matters for Consideration'	Comments
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development.	The site is not suitable for the development as currently proposed.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs.	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	For the reasons outlined within this report, the development is unacceptable and results in adverse impacts upon adjoining properties and results in unacceptable environmental impacts. Approval of the development would be contrary to the public interest and the application is recommended for refusal.

ENVIRONMENTAL IMPACT

The DA seeks consent for the removal of seven (7) trees.

- Tree 7 *Lophostemon confertus*, Brushbox,
- Trees 10 and 12 - *Archontophoenix cunninghamiana*, Bangalow Palm,
- Tree 15 - *Betula spp*, Birch,
- Tree 26 - *Corymbia maculate*, Spotted Gum,
- Tree 27 - *Banksia integrifolia*, Coastal Banksia and
- Tree 40 - *Plumeria spp*, Frangipani.

Trees 7 and 15 are identified as Category A trees by the Consulting Arborist, with the remaining identified as Category Z trees.

Trees 10 and 11 are identified as exempt species and do not require development consent for removal. Tree 7 is identified in **Figure 9** below, with the red indicating the structural root zone (SRZ), the blue the tree protection zone (TPZ) and the purple delineates the passing bay. The development will result in an encroachment of the SRZ.

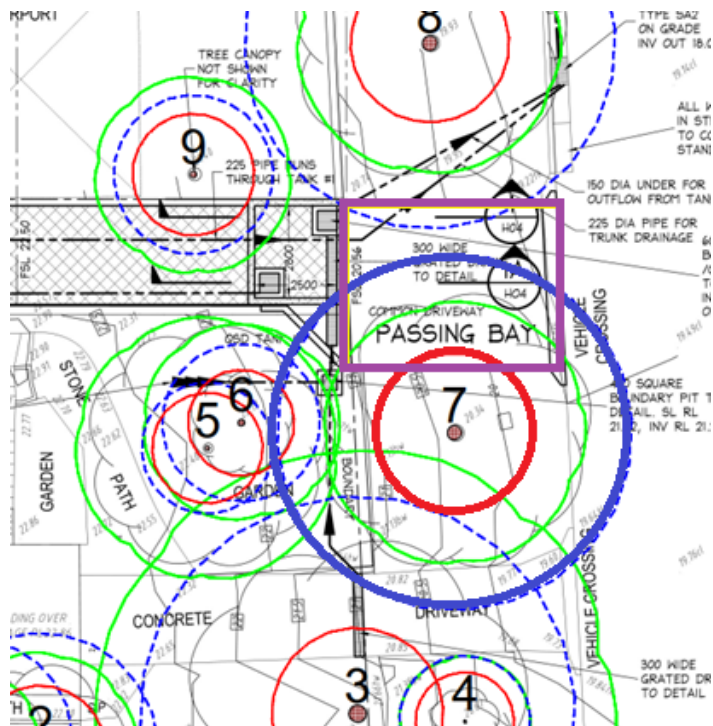


Figure 9: Tree identification map showing Tree 7 and structural root zone outlined in red.
Source: Hugh the Arborist. 29 March 2023

Council's Landscape Officer has recommended approval of the DA, however, has not supported the removal of Tree 7 stating:

An Arboricultural Impact Assessment is submitted that assesses the impact of subdivision and future residential dwelling works upon existing trees. However the recommendations for tree removal based on indicative building layouts are to be disregarded under this subdivision application and only existing trees impacted by the subdivision works (new crossover driveway and passing bay, new internal driveway, and installation of stormwater services shall be assessed for Council consideration. As interpreted by Landscape Referral the following existing trees are required for removal under the subdivision works: tree 10 (exempt Palm), tree 12 (exempt Palm), tree 15 (Betula), and tree 27 (Banksia). Additionally the updated Arboricultural Impact Assessment recommends removal of the existing street tree numbered 7, however Landscape Referral are of the opinion that the Bushbox street tree is viable for retention with tree sensitive construction utilised for the passing bay, and furthermore without any tree root investigation along the alignment of the passing bay extent, there is no justified reason to accept the recommendation for removal.

Despite the comments above, concern is held regarding the retention of Tree 7. The proposed development will result in an incursion of greater than 20% of the nominal TPZ of this tree. This incursion is classified as 'Major' under the provisions of AS470-2009 – Protection of trees on development sites and is likely to be unsustainable.

The conditions recommended by the Landscape Officer include root mapping. It is not appropriate to defer consideration of the likely environmental impacts of the development. The proposal has



not been accompanied by root mapping and therefore it cannot be known that Tree 7 is capable of retention simply by consent conditions.



Figure 10: Tree 7 – Queensland brushbox in road reserve
Source: 8 February 2023

The recommendations of the Landscape Officer only consider the tree removal necessary for works associated with the subdivision, such as the drainage works and driveway. Pursuant to Section 4.15(1)(b) of the Act, consideration must be given to the likely impacts of the development, including environmental impacts on both the natural and built environments. In this regard, the tree impacts cannot be deferred, and must be considered in determining the suitability of the subdivision in relation to tree impacts.

The AIA includes plans of the existing site plan and stormwater plans showing the TPZ and SRZ of trees on site. The trees on site, and their relationship with the future building envelopes anticipated for Lots 3, 4 and 5, is shown in **Figure 11**. Lot 1 and 2 is shown in **Figure 12**.

The AIA recommends the removal of seven (7) trees (two of which are Category A trees) in association with the proposed subdivision, and six (6) Category A trees in associated with the anticipated future building envelopes. The six (6) trees impacted upon by the future building envelopes require design amendments and sensitive construction methods to enable their retention.

The design amendments necessary cannot be accommodated with the proposed subdivision arrangement. This is because the current position of significant vegetation does not allow for alternative building envelope locations.

The concept plans have not taken into consideration the design amendment recommendations of the AIA. Based on the concept plans, the impacts of the future development will result in a loss of eight (8) Category A trees.

The proposal does not preserve the amenity of the area through the preservation of trees and other vegetation.

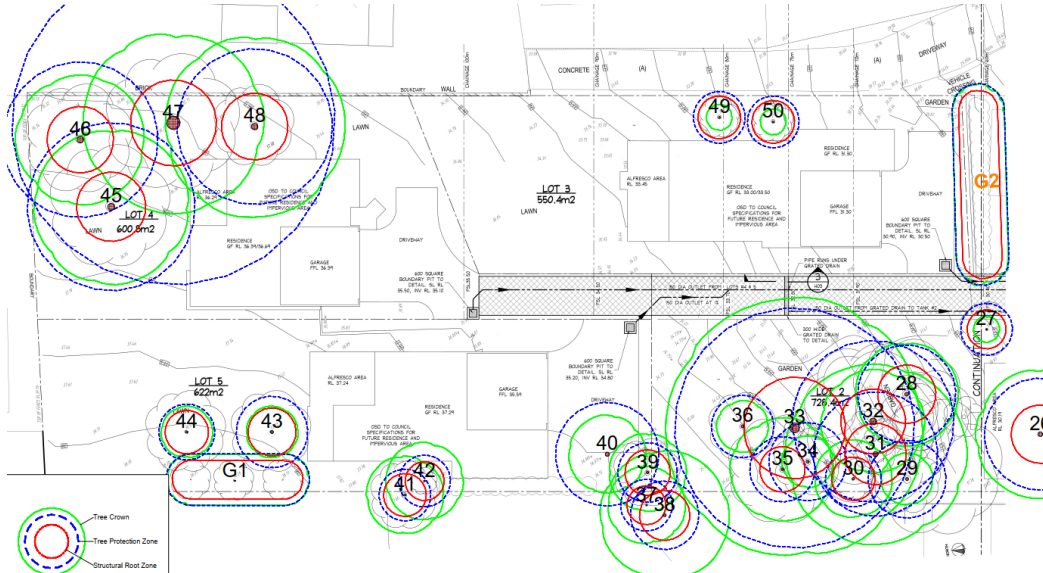


Figure 11: Tree Location Plan of Lots 3, 4 and 5. Green identified tree crown, TPZ shown in blue and red is SRZ.

Source: Hugh the Arborist, 29 March 2023

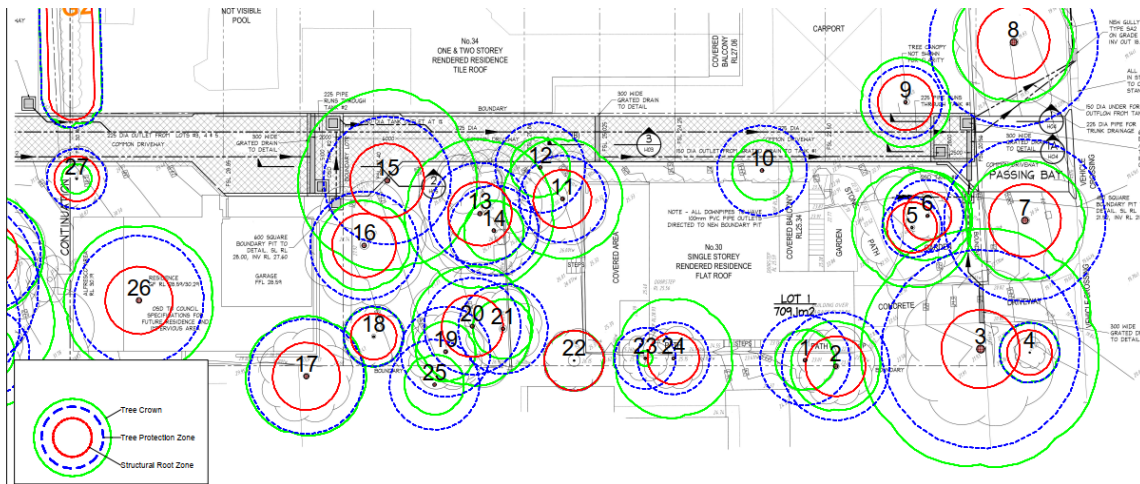


Figure 12: Tree Location Plan of Lots 1 and 2. Green identified tree crown, TPZ shown in blue and red is SRZ.

Source: Hugh the Arborist, 29 March 2023

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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



As a result of the public exhibition process for the DA as originally lodged, Council is in receipt of four (4) unique submissions; the number of submissions has been calculated in accordance with Council's CPP, in that all submissions received by or on behalf of the same dwelling will be considered as a single submission.

The amended plans were renotified between 3 April 2023 and 25 April 2023. In response, an additional four (4) unique submissions were received.

The details of these submissions and the addresses they relate to are as follows:

Name:	Address:
Michael Gallagher	28 Lakeview Parade, Warriewood
Joanna Pascuzzo	35 Lakeview Parade, Warriewood
Blackwattle Planning	40 & 42 Lakeview Parade, Warriewood
C. Russo & J. Greco	44 Lakeview Parade, Warriewood
Mr 7 Mrs Tatomirovic	61 Vineyard Street, Mona Vale
Unknown	No address provided.

The following list is a summary of the issues raised within received submissions, along with a comment provided by the assessing officer:

- ***There are no gutters within Lakeview Parade.***

Comment: The proposed subdivision does not create any new roads and does not necessitate construction of gutters within the existing road.

- ***The proposed development does not fit within the established character of the area and is considered out of context for the locality.***

Comment: The development is inconsistent with the desired future character. The proposed subdivision has not been supported by sufficient information to demonstrate an acceptable environmental outcome. The proposed subdivision creates constrained allotments due to the dimensions, orientation, topography and resulting location of significant vegetation within the proposed lots. The dwellings represented on the concept plans do not demonstrate the resultant lots can be developed in accordance with the suite of built form controls, and sufficiently avoid adverse impacts upon significant vegetation within the site and within adjoining properties.

- ***The proposed development will impact on local traffic, parking on Lakeview Pde.***

Comment: The DA has been accompanied by a Traffic Impact Assessment prepared by Terraffic Pty Ltd. The report indicates *the development will only generate 3 additional vehicle trips during the peak periods. This is a relatively minor increase and will not have any noticeable or unacceptable impact on the road network serving the site in terms of road network capacity or traffic-related environmental effect.* No concerns have been raised by Council's Development Engineer.



- ***The owner has no written agreement and legal right of way of the carriage easement on my section of the road, whereby, he has bought out other lots which we have not to date granted any permission, also with this development it has not been made clear where all this traffic and heavy vehicle traffic will be accessing this 5 lot subdivision, this road is inadequate for 2 cars to pass by with a blind spot.***
- ***All physical and any legal access across No. 40 and 42 Lakeview Parade cease and be relinquished.***

Comment: The subdivision includes drainage easements within the proposed accessway and does not rely upon the existing right-of-carriageway which 32 Lakeside Drive currently benefits from.

Clarification was however sought from the Applicant in relation to the existing access arrangement being modified by the proposed development with no consent having been obtained from the adjoining property that currently benefits from the right-of-carriageway.

No formal response was received from the Applicant despite Council's RFI.

- ***Safety issues***
 - ***Inadequate lighting which is a safety issue and has not been addressed.***
 - ***No turn around area, at the present moment cars are reversing back down the lane way, this is a great concern to us and other residents.***

Comment: Each of the proposed allotments include turning bays to enable vehicles in exit and enter the site in a forward direction. There is presently no lighting provided on the plans, but considering the length of the driveway and width, compliant sight lines are achieved consistent with the Australian Standard.

- ***Headlight pollution at night with full beams shining through my windows into the rooms when vehicles drive up. There also needs to be a speed limit put into place for safety reasons as some cars come speeding up.***

Comment: Whilst this concern is understood, it is also considered likely the development of these allotments would include provision of boundary fencing. Presently, there is no fencing along the eastern boundary which would ordinarily screen headlights from vehicles turning into proposed Lots 3 and 4 and shine into the dwellings at 36, 40 and 42 Lakeview Drive. It is considered this issue could be resolved by the provision of suitable boundary fencing.

- ***Insufficient information***
 - ***There remains concerns which has not been addressed with be impact statement on the DA is Storm Water & Sewage.***
 - ***Significant deficiency of the application in the absence of any information relating to stormwater disposal, and that no stormwater plan has been submitted.***
 - ***The application received lacks important information regarding Traffic , Easement Utilities, Storm Water Drainage & Placement of garbage bins etc,***

Comment: The DA was amended to provide a stormwater management and water quality report as further information. The DA also includes a traffic assessment. The placement of garbage bins is not referenced on the plans. It is agreed the DA has not been accompanied by sufficient information to demonstrate the likely impacts of the development. However, this is related to tree impacts and amenity impacts associated with the future development of the proposed allotments.



- **Non-compliance with Pittwater DCP**
 - **B2.2 Subdivision - Low Density Areas.**
 - **The new proposed lots 3 and 5 both fail to meet this requirement of 16m width. The variation proposed is more than minor being 14% and 17% respectively.**
 - **Non-compliance with C4.7 Subdivision - Amenity and Design.**
 - **Proposed Lots 1 and 2 do not comply with minimum width of 15m (Lot 1), the right of carriageway must be no greater than 3m. For a lot with a minimum width of 16m (Lot 2), the right of carriageway must be 3.2m. The proposed width of the right of carriageway for both lots are non-compliant, varying in width between 3.5-5.5m.**
 - **The proposed footprints are not able to comply with the 60% landscaped area provisions.**
 - **Non-compliance with Landscape Open Space requirements.**

Comment: The development is non-compliant with the provisions of Pittwater DCP in relation to the minimum widths of Lots 3 and 5 and the width of the accessway. Detailed discussions are provided against these provisions below under the PDCP considerations. The Applicant provided concept designs for Lots 2 – 5 to demonstrate the allotments can reasonably be developed in accordance with the provisions of the Parrott Planning Principle. The proposed subdivision creates constrained environmentally sensitive allotments and has not sufficiently demonstrated they can be reasonably developed. This forms part of the recommendation for refusal.

- **The removal of many significant trees on the site, and an inability for the proposed footprints to comply with the landscaped area requirements of Pittwater 21 DCP.**

Comment: Significant concerns are held regarding the impact upon existing vegetation. The proposal seeks to remove seven (7) trees as a result of the subdivision works alone, including two (2) Category A trees being Tree 7 within the road reserve, and Tree 15 located within proposed Lot 1 as a result of the accessway. The DA originally sought consent for the removal of additional trees but at the direction of the Landscape Officer this request has been declined.

The Applicant's submitted Arboricultural Impact Assessment (AIA) demonstrates the nominated building envelopes result in a major encroachment within the TPZ of an additional six (6) significant trees on site. The AIA includes recommendations on ways of mitigating these impacts through construction methods and design amendments. The concept plans do not reflect these changes and therefore the likely impact of the development is the loss of these additional six (6) trees. This is not considered reasonable and forms part of the recommendation for refusal.

- **The footprint proposed on Lot 3 will result in a dwelling that removes a valued vista from No. 40 Lakeview Parade. The outlook and views obtained from the front of No. 40 Lakeview Parade are of remnant bushland and the escarpment beyond.**

Comment: Consideration of the proposal in relation to the provisions of PCP are provided below in relation to view sharing and solar access.

C1.3 View Sharing

A submission has been received from 40 Lakeview Parade raising concerns with the potential loss of views from the future development of proposed Lot 3. The vista available is shown in **Figure 13**.



Figure 13: Vistas to the south west as viewed from the front entrance of 40 Lakeview Parade.
Source: Blackwattle Planning submission

A letter was issued to the Applicant and requested concept plans for the development of the proposed allotments be submitted. The Applicant provided a concept design for Lot 3. The siting of the concept dwelling in relation to the existing dwelling at 40 Lakeside Parade is shown in **Figure 14**.

The concept dwelling is shown to have a ridge height of RL38.70. The existing dwelling at 40 Lakeview Parade contains five (5) existing openings within the western elevation which adjoins the proposed allotment. The openings include the following levels:

Window	Sill	Lintel
1 – Western	RL34.39	RL35.23
2 – Western	RL34.39	RL35.22
3 – Western	RL34.40	RL35.23
4 -Western	RL33.20	RL35.20
5 – Western	RL33.94	RL35.12

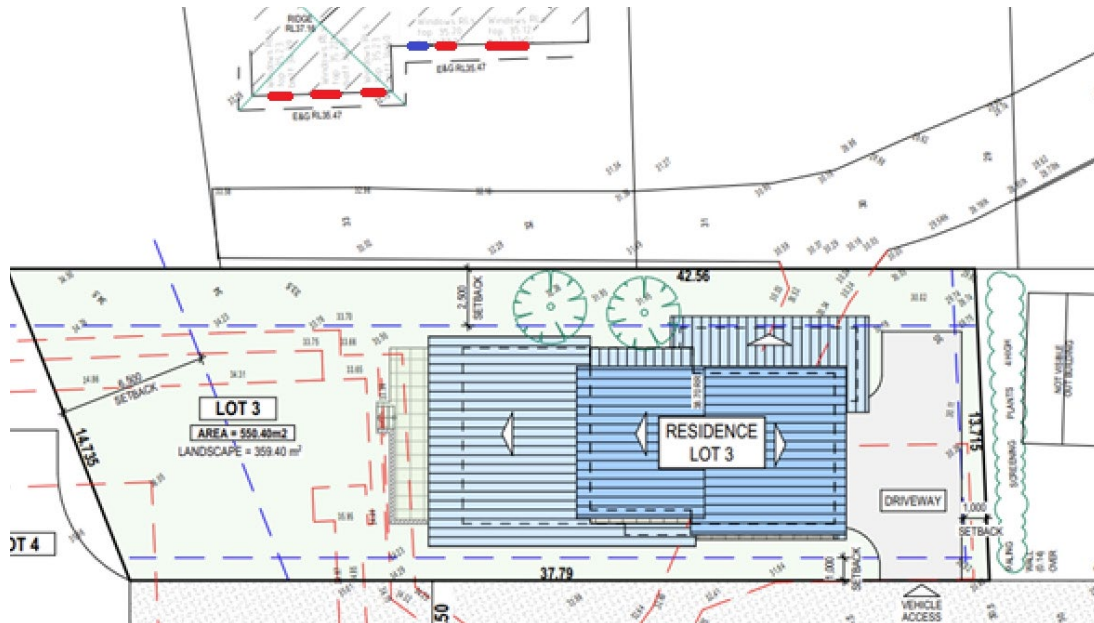


Figure 14: Concept plan for development of Lot 3. Existing dwelling at 40 Lakeside Parade. The red indicates windows and the blue is the front door.

Source: JJ Drafting, March 2023

The existing floor level of 40 Lakeview Parade is approximately RL33.19. The sightlines available from the dwelling would therefore be at a height of RL34.69. The outlook from the dwelling, would be impacted by a dwelling in the position shown on the concept plans.

The advisory notes of C1.3 View Sharing references consideration of *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. For reference, the four tests established in the planning principle are as follows:

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

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

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



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

An assessment of the level of impact regarding the four-step planning principle established has been undertaken:

1. The views available are not considered to be significant and is better considered as an outlook of the bushland and the Elanora Heights escarpment beyond.
2. The views are available across the front of the property. However, due to the orientation of the allotment presenting to the existing accessway, the dwelling has a west to east orientation. The proposed concept dwelling is orientated south to north and the views would be across the proposed side boundary. The outlook is presently available from both standing and seated positions. The existing development is sited at the top of the site and the current outlook is achieved across a deep front setback.
3. The three (3) windows to the west are associated with a walk in robe and ensuite. These are not considered to be significant areas as they are non-habitable secondary areas within the house (**Figure 15**). The small window is associated with the entrance hall and the large window associated with the family room. The outlook from this window would be considered more valuable.

The kitchen, living room and decking is orientated in a southern direction to capture the water views. The existing window associated with the kitchen (**Figure 16**), and visible from the family room, contains water views which will not be affected by the proposed development.

The dwelling would also have more significant views to the south east of water. The views would be achieved from the living room and associated decking (**Figure 17**). These more highly valued views would not be impacted by the proposed development.



Figure 15: Internal floor layout of 40 Lakeview Drive, Warriewood. Source: realestate.com.au
Source: realestate.com.au



Figure 16: Existing window associated with kitchen and visible from the family room.
Source: realestate.com.au



*Figure 17: Eastern (rear) elevation of 40 Lakeview Drive showing elevated decking.
Source: realestate.com.au*

The impact on the outlook would be considered minor. However, the more valued views of the water and beach are unaffected by the concept dwelling's siting.

4. The DA includes a concept dwelling only. The development is non-compliant. The siting of the development does cause impact. The site can accommodate a more skilful design. Lot 3 contains a deep setback to the northern boundary which can accommodate a future dwelling with a reduced impact.

- ***A new dwelling in the location of the proposed footprint will significantly impact the light, privacy, and outlook from the primary living area of that dwelling, which adjoins the kitchen.***

Comment: The concept plans provided for Lot 3 do not nominate any windows within the eastern elevation, which is considered highly unlikely given the adjacent views and the requirement to achieve cross ventilation. Nonetheless, the dwelling provides for a 2.5m setback from the eastern boundary. The accessway provides additional separation between the dwellings. The concept plan provides for a partially elevated outdoor entertainment area which generally aligns with the window associated with the bathroom. The concept plan would not result in any adverse privacy impact upon 40 Lakeview Parade.

The impact upon outlook is outlined above. In terms of solar access, the provisions of C1.4 Solar Access are considered. The controls require the following:

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



- Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).
- Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid-winter.
- Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.

The DA has not been accompanied by shadow diagrams in response to the concept dwellings. However, 40 Lakeview Parade is located to the east of Lot 3, and 42 Lakeview Parade is located to the southeast. Due to the siting of 40 Lakeview Parade, it is likely to be impacted only in the afternoon period and the development of Lot 3 would likely maintain compliant solar access to this dwelling. The siting of the dwelling would likely overshadow 42 Lakeview Parade from early afternoon, but it is unlikely that it would adversely overshadow this dwelling and lead to a noncompliance with the development controls.

REFERRALS

Internal Referral Body	Comments
Landscape	<p>Supported, subject to Conditions</p> <p><i>The application for subdivision of two existing allotments to create five allotments is assessed by Landscape Referral under Pittwater Development Control Plan clause C4.7 Subdivision - Amenity and Design.</i></p> <p><i>The proposed works under the subdivision include: Demolition of the existing dwelling and outbuildings at 32 Lakeview Parade; Demolition of existing outbuildings at 30 Lakeview Parade (with the existing dwelling to be retained); The creation of five new lots under Torrens Title; Construction an internal driveway servicing Lots 2-5; Installation of essential services to each lot; Easements for access and services; and tree removal impacted by subdivision works.</i></p> <p><i>An Arboricultural Impact Assessment is submitted that assesses the impact of subdivision and future residential dwelling works upon existing trees. However, the recommendations for tree removal based on indicative building layouts are to be disregarded under this subdivision application and only existing trees impacted by the subdivision works (new driveway and installation of services as shown on plans within the proposed easement (A) (B) and (C) shall be assessed for Council consideration. As interpreted by Landscape Referral the following existing trees are required for removal under the subdivision works: tree 10 (exempt Palm), tree 12 (exempt Palm), tree 15 (Betula), and tree 27 (Banksia).</i></p> <p><i>All other existing trees within the lots shall be retained under subdivision works the subject of this application. Future applications for new dwellings to each lot shall be assessed separately.</i></p> <p><i>As considered under C4.7 Subdivision - Amenity and Design, Landscape Referral raise no objections to the subdivision application, as the proposed lot arrangement provides opportunities to retain existing trees within the lots or otherwise provides adequate landscape area to support new tree and vegetation planting.</i></p>

Internal Referral Body	Comments
	<p><i>The proposal is therefore supported.</i></p> <p>Amended referral 15 February 2023:</p> <p>...</p> <p><i>An Arboricultural Impact Assessment is submitted that assesses the impact of subdivision and future residential dwelling works upon existing trees. However the recommendations for tree removal based on indicative building layouts are to be disregarded under this subdivision application and only existing trees impacted by the subdivision works (new driveway and installation of services as shown on plans within the proposed easement (A) (B) and (C) shall be assessed for Council consideration. As interpreted by Landscape Referral the following existing trees are required for removal under the subdivision works: tree 10 (exempt Palm), tree 11 (exempt Jacaranda), tree 12 (exempt Palm), tree 15 (Betula), tree 16 (Mulberry), and tree 27 (Banksia).</i></p> <p><i>All other existing trees within the lots shall be retained under subdivision works the subject of this application. Future applications for new dwellings to each lot shall be assessed separately...</i></p> <p><i>The proposal is therefore supported.</i></p> <p>Amended referral 4 April 2023</p> <p><i>The proposed works under the subdivision include: Demolition of the existing dwelling and outbuildings at 32 Lakeview Parade; Demolition of existing outbuildings at 30 Lakeview Parade (with the existing dwelling to be retained); The creation of five new lots under Torrens Title; Construction an internal driveway servicing Lots 2-5; Installation of essential services to each lot; Easements for access and services; and tree removal impacted by subdivision works.</i></p> <p><i>An Arboricultural Impact Assessment is submitted that assesses the impact of subdivision and future residential dwelling works upon existing trees. However the recommendations for tree removal based on indicative building layouts are to be disregarded under this subdivision application and only existing trees impacted by the subdivision works (new crossover driveway and passing bay, new internal driveway, and installation of stormwater services shall be assessed for Council consideration. As interpreted by Landscape Referral the following existing trees are required for removal under the subdivision works: tree 10 (exempt Palm), tree 12 (exempt Palm), tree 15 (Betula), and tree 27 (Banksia). Additionally the updated Arboricultural Impact Assessment recommends removal of the existing street tree numbered 7, however Landscape Referral are of the opinion that the Bushbox street tree is viable for retention with tree sensitive construction utilised for the passing bay, and furthermore without any tree root investigation along the alignment of the passing bay extent, there is no justified reason to accept the recommendation for removal.</i></p>

Internal Referral Body	Comments
	<p><i>All other existing trees within the lots shall be retained under subdivision works the subject of this application. Future applications for new dwellings to each lot shall be assessed separately, including any necessary tree removal impacted by dwelling and associated works. As considered under C4.7 Subdivision - Amenity and Design, Landscape Referral raise no objections to the subdivision application, as the proposed lot arrangement provides opportunities to retain existing trees of value within the lots or otherwise provides adequate landscape area to support new tree and vegetation planting.</i></p> <p><i>The proposal is therefore supported.</i></p>
Water Management	<p>Not supported</p> <p><i>The proposed subdivision is subject to the Council Water Management for Development Policy. A stormwater management plan is to be provided showing the project compliance with the Water Management for Development Policy.</i></p> <p><i>The General Water quality objectives stated in table 5 of the policy are likely to be applicable. Refer to 4.1.2 Standards of Design for the supporting documentation to be supplied.</i></p> <p><i>The proposal is therefore unsupported.</i></p> <p><i>Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.</i></p> <p>Amended referral 26 April 2023</p> <p><i>Not Supported.</i></p> <p><i>The proposed subdivision is subject to the Council Water Management for Development Policy. A stormwater management plan is to be provided showing the project compliance with the Water Management for Development Policy water quality objectives. Water quality treatment achieving the General Water quality objectives stated in table 5 of the policy is to be provided.</i></p> <p><i>Refer to 4.1.2 Standards of Design for the supporting documentation to be supplied.</i></p> <p><i>The proposal is therefore unsupported.</i></p> <p>Amended referral 30 March 2023</p> <p><i>This application was assessed in consideration of:</i></p> <ul style="list-style-type: none"> • <i>Supplied plans and reports;</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.8 and 2.12);</i> • <i>Northern Beaches Water Management for Development Policy (WM Policy); and</i> • <i>Relevant LEP and DCP clauses.</i>

Internal Referral Body	Comments
	<p><i>The proposed subdivision is subject to the Council Water Management for Development Policy. The proposed stormwater management strategy is satisfactory.</i></p> <p><i>NECC Water Management has no objections, subject to conditions.</i></p> <p><i>The proposal is therefore supported.</i></p>
Development Engineer	<p>Supported, subject to Conditions</p> <p><i>The proposal includes the demolition of an existing dwelling and the construction of a common driveway and subdivision of two lots into 5 lots.</i></p> <p><i>The submitted driveway plan and traffic report propose a driveway width of 3.0 metres within a proposed right of carriageway of 3.5 metres wide with a single passing bay 5.5 metres wide by 9.4 metres long. Council's DCP requires a passing bay 5 metres by 10 metres long however the traffic report includes vehicle paths demonstrating that two vehicles can pass adequately which is acceptable. Due to the length of the driveway it is considered that the driveway crossing must be 5 metres wide between the kerb and the boundary and continued for a distance of 3 metres within the site with a further transition for 1.5 metres back to the proposed 3 metres width within the front lot to ensure two vehicles can pass without stopping in the roadway. The plans and sections are to be amended to suit.</i></p> <p><i>The proposal has not included any stormwater drainage plans for the proposal. As the proposed impervious area exceeds 50 square metres, on-site stormwater detention (OSD) will be required for the proposal. Also the drainage plan must include the provision of an inter-allotment drainage line servicing each of the proposed lots with a piped connection to Council's stormwater drainage line in Lakeview Parade. Pit and pipe details must be included with the submission. Details for the drainage of the proposed access driveway must also be shown.</i></p> <p><i>The draft plan of subdivision must be amended to include an easement to drain water over the proposed inter-allotment drainage line and driveway and right of carriageway over the driveway widening in proposed lot 1 as discussed above.</i></p> <p><i>Development Engineering cannot support the proposal due to insufficient information to address stormwater, access and subdivision in accordance with clauses B5, B6 and C4.</i></p> <p>Amended referral 30 March 2023</p> <p><i>The submitted stormwater plan is acceptable. The widened driveway crossing and turning paths address the previous crossing width issue. The amended subdivision plan includes the new passing bay but does not include the required drainage easement. This issue has been conditioned.</i></p> <p><i>Development Engineering support the proposal, subject to conditions as recommended. The proposal is therefore supported.</i></p>



External Referral Body	Comments
Ausgrid	<p><i>Supported, subject to Conditions</i></p> <p>An external referral was made to the energy supply authority. An undated referral was received which did not raise any objections, subject to the satisfaction of Ausgrid requirements relating to underground cables and overhead power lines. Such requirements will be subject to conditions of consent in the event of approval.</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 acceptable against.

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

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS) AND STATE REGIONAL ENVIRONMENTAL PLANS (SREPS)

State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP)

Chapter 4 – Remediation of Land

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

State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP)

Chapter 2 Infrastructure

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

- within or immediately adjacent to an easement for electricity purposes (whether the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.



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

PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Detailed Assessment

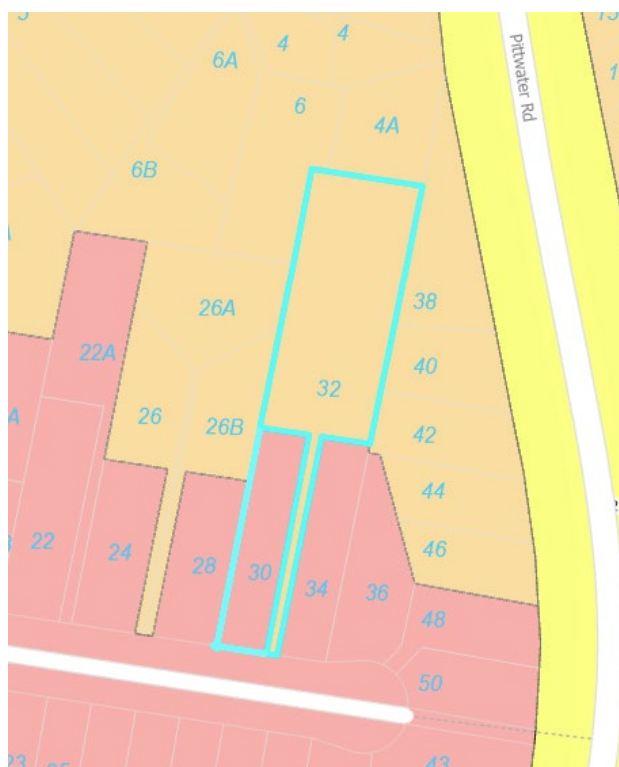


Figure 18: Extract of Zoning Map. Site outlined in blue.
Source: nsw.legislation.nsw.gov.au

The existing allotment at 32 Lakeview Parade is zoned C4 Environmental Living, and 30 Lakeview Parade is zoned R2 Low Density Residential (**Figure 18**). The subdivision results in Lot 1 being zoned R2 Low Density Residential, along with the front of proposed Lot 2 for approximately 15m. Proposed Lots 3, 4 and 5 are zoned C4 Environmental Living.

On 23 August 2022, Northern Beaches Council resolved to publicly exhibit the Conservation Zones Review and associated technical studies and maps. The Conservation Zones Review was exhibited between September and October 2022. 32 Lakeview Parade is identified within the residential zone and removed from the C4 Environmental Living zone. A draft LEP has not been prepared or exhibited and is therefore not imminent or certain. There is no statutory requirement for consideration of the Conservation Zones Review.



Zone C4 Environmental Living

The objectives of the zone are:

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

Comment: The site includes special ecological and aesthetic values given the existing significant vegetation on site.

The development, due to the proposed and likely tree loss is not low-impact. The proposed subdivision creates constrained allotments due to the dimensions, orientation, topography, and presence of significant vegetation. The dwellings represented on the concept plans do not demonstrate the sites can be developed in accordance with the suite of built form controls while at the same time avoid adverse impact upon significant vegetation.

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

Comment: The proposed subdivision has not been supported by sufficient information to demonstrate an acceptable environmental outcome. The subdivision will create constrained allotments, and has not demonstrated the allotments can be developed to ensure there are no adverse effects on the ecological and aesthetic values of the site.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment: The proposal does not demonstrate the subdivision can be appropriately developed in response to the landform and landscape. The concept plans necessitate excavation and provision of retaining walls, changing the levels of the site. These works result in impacts upon vegetation indicated to be retained, but are likely to be adversely affected by the extent of changes to the landform. It has not been demonstrated that the allotments can be developed with a low density and scale integrated with the local landform and landscape.

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

Comment: This objective is not relevant to the proposed development as the site is not riparian or foreshore land.

Zone R2 Low Density Residential

The objectives of the zone are:

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

Comment: The proposed development fails to satisfy the first objective of the zone. While the subdivision will provide for the housing needs of the community by future development and resultant density, proposed Lot 2 is a very constrained allotment. The proposal would result in a development incongruous with the low-density residential environment for the Warriewood locality.



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

Comment: This objective is not relevant to the proposed development.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Comment: This objective is not relevant to the proposed development.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	N/A There are existing right-of-carriageways but is not a restriction which is subject to Clause 1.9A.
2.6 Subdivision – consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	Yes – The Lot Size map identifies the minimum lot size for the site is 550m ² . Pursuant to Clause 4.1 (3A) the area of an access handle is not to be included in calculating the lot size. Each allotment to be created has a minimum lot size of at least 550m ² (550.4m ²) not including the access handle.
4.3 Height of Buildings	N/A – The proposal does not seek consent for any dwellings.
4.6 Exceptions to development standards	N/A
5.21 Flood planning	N/A – The site is not mapped as being within a flood planning area.
7.1 Acid Sulfate Soils	Yes - The site is mapped as being within Class 5 Acid Sulfate Soils. The proposal is considered unlikely to have any implications for acid sulfate soils given the nature of the proposed works.
7.2 Earthworks	No. The proposal includes excavation to a depth of 310mm within the proposed driveway. Retaining walls are provided along the eastern and western side of the driveway to a height of approximately 400mm. Concept plans have been provided to demonstrate the potential development of the proposed allotments. Lot 2 would necessitate 1.24m of excavation. Lot 5 demonstrates excavation necessary to a depth of 690mm. The objective of the clause is to ensure that earthworks do not to have a detrimental impact on environmental functions and process, neighbouring

Clause	Compliance with Requirements
	<p>uses, cultural or heritage items or features of surrounding land.</p> <p>The levels of the driveway in which consent is sought will establish the likely development levels of future dwellings on the proposed lots. The concept designs demonstrate that specific levels of excavation are required to facilitate reasonable development on the proposed lots. The excavation associated with Lot 2 and Lot 5 is located within the TPZs of significant trees on site and within adjoining properties. Insufficient consideration has been given to the impact of excavation upon vegetation.</p> <p>Subclause (3)(b) requires consideration of the effect of the development on the likely future use or redevelopment of land. Council cannot be satisfied the excavation works do not result in any adverse effect on the future development of the proposed allotments.</p>
7.10 Essential services	<p>Yes – the subject site is within an established area. As such, Council is satisfied that the proposed allotments can be connected to essential services (water, electricity, sewerage). Furthermore, Council's Development Engineer and Water Management Department are satisfied that appropriate stormwater measures are proposed, subject to conditions.</p>

PITTWATER 21 DEVELOPMENT CONTROL PLAN

Built Form Controls

Built form Control	Requirement	Proposed	%Variation*	Complies
B2.2 Subdivision – Low Density Residential Areas	Minimum lot depth of 27m	Lot 1 – 41.45m and 42.75m	N/A	Yes
		Lot 2 – 43.5m	N/A	Yes
		Lot 3 – 37.79m – 42.56m	N/A	Yes
		Lot 4 – 29.37m - 47.275m	N/A	Yes
		Lot 5 – 46.645m – 47.275m	N/A	Yes
	Area 1 – Landscape Area Map – minimum width 16m	Rear part of Lot 2 – 16.745m	N/A	Yes
		Lot 3 – 13.715m	14.28%	No

Built form Control	Requirement	Proposed	%Variation*	Complies
		Lot 4 – 17.22m	N/A	Yes
		Lot 5 – 13.245m	17.21%	No
	Area 2 or 3 – Landscape Area Map – minimum width 15m	Lot 1 – 11.765m	21.56%	No
		Front of Lot 2 – 16.745m	N/A	Yes
	Created lot slope less than 16.7 degrees (30%)	Lot 1 – 28.5 – 21 = 7.5/42.1 = 17.8%	N/A	Yes
		Lot 2 – 35.5 – 28 = 7.5/43.5 = 17.2%	N/A	Yes
		Lot 3 – 36- 29.66 = 6.84/40.175 = 17%	N/A	Yes
		Lot 4 – 37.10 – 34.731 = 2.37/44.97 = 5.2%	N/A	Yes
		Lot 5 – 38.28 – 34.731 = 3.549/46.96 = 7.55%	N/A	Yes
	Minimum building area 175m ²	Lot 1 – Existing dwelling and developed	N/A	N/A- Existing
		Lot 2 – 202.6m ²	N/A	Yes
		Lot 3 – 203.5m ²	N/A	Yes
		Lot 4 – 226.51m ²	N/A	Yes
		Lot 5 – 217.43m ²	N/A	Yes
C1.1 Landscaping	60% in front of the building line 171.76m ² area 103.05m ² - 60%	Lot 1 - 93.02m ² 54%	9.7%	No
C4.7 Subdivision – Amenity and Design	18m width given ROW	Lot 1 – 16.765m	6.96%	No
	Front 18m and rear 19.2m width given ROW	Lot 2 – 16.745m	6.97% front 12.78% rear	No
	19.2m width given ROW	Lot 4 – 17.22m	10.3%	No
D14.7 Front Building Line		Lot 1 -	Existing	Existing

Built form Control	Requirement	Proposed	%Variation*	Complies
	6.5m or established building line	Lot 2 – 2.0m southern	69.2%	No
		Lot 3 – 4.5m	30.7%	No
		Lot 4- 5.15m	20.76%	No
		Lot 5 – 7.55m	N/A	Yes
D14.6 Side and Rear Building Line	1m and 2.5m side building line	Lot 1- 5.05m from eastern and 1.75m from western – existing dwelling to be retained	N/A	Yes
		>6.5m rear	0	Yes
	6.5m rear building line	Lot 2 - 1.0m from western and 1.225m – 3.225m from eastern	N/A	Yes
		>6.5m rear		
		Lot 3 – 2.0m – 2.5m from western and 2.5m from eastern	N/A	Yes
		Rear >6.5m		
D14.11 Building Envelope	3.5m at 45° to max height	Lot 1	Existing	Existing
		Lot 2 Within	N/A	Yes
		Lot 3 - Within	N/A	Yes
		Lot 4 - Within	N/A	Yes
		Lot 5 - Within	N/A	Yes

Built form Control	Requirement	Proposed	%Variation*	Complies
D14.12 Landscaped Area – General – 50%	Lot 1 – 50% 354.55m ²	382.25m ² 53.9%%	N/A	Yes
	Lot 2 – 50% 364.2m ²	388.29m ² 53.3%	N/A	Yes
D14.13 Landscaped area – Environmentally Sensitive Land – 60%	Lot 2 - 60% - 437.04m ²	Lot 2 – 388.29m ² 53.3%	11.1%	No
	Lot 3 - 60% - 330.24m ²	Lot 3 – 305.76m ² 55%	7.4%	No
	Lot 4 - 60% - 360.48m ²	Lot 4 – 310.8m ² 51.7%	13.78%	No
	Lot 5 - 60% - 373.2m ²	Lot 5 – 373.65m ² 60%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater		
A1.7 Considerations before consent is granted	No	No
A4.14 Warriewood Locality	Yes	Yes
Section B General Controls		
B1 Heritage Controls		
B1.4 Aboriginal Heritage	Yes	Yes
B3 Hazard Controls		
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4 Controls Relating to the Natural Environment		
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5 Water Management		
B5.5 Rainwater Tanks	No	Yes
B5.15 Stormwater	Yes	Yes
B6 Access and Parking		
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8 Site Works Management		
B8.1 Construction and Demolition – Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition – Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition – Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition – Works in the Public Domain	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.6 Construction and Demolition – Traffic Management Plan	Yes	Yes
Section C Development Type Controls		
C1 Design Criteria for Residential Development		
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C4 Design Criteria for Subdivision		
C4.1 Subdivision - Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	Yes	Yes
C4.3 Subdivision - Transport and Traffic Management	Yes	Yes
C4.4 Subdivision - Public Roads, Footpath and Streetscape	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots	No	Yes
D14 Warriewood Locality		
D14.1 Character as viewed from a public place	Yes	Yes
D14.2 Scenic Protection – General	Yes	Yes
D14.15 Fences – General	N/A	N/A
D14.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

Development consent is not sought for any improvement or development of the proposed allotments. Consent is sought for subdivision and subdivision works only.

The DA has been accompanied by concept plans to represent how the proposed allotments can be developed. Consideration of the concept dwellings against the relevant provisions of the PDCP has been undertaken.

The assessment below demonstrates the allotments proposed under this DA cannot be developed in accordance with the suite of built form controls.

Planning Principle – Parrot v Kiama [2004] NSWLEC 77

An assessment of the proposed subdivision regarding the planning principle established by *Parrot v Kiama [2004] NSWLEC 77* has been undertaken below. For reference, the tests are as follows:



- 17 *When should a subdivision application include information on the buildings to be built on the resulting allotment(s)? It is normal practice in Australia to subdivide land without constraints on the buildings that can later be built. While this practice is appropriate in most cases, it is not always so. I have adopted the planning principle that a subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual, or environmentally sensitive or where significant impacts on neighbours is likely and needs careful design to minimise them.*

The proposed allotments are smaller than usual. Lots 2, 4 and 5 are environmentally sensitive due to the presence of existing significant vegetation. Lots 3, 4 and 5 and rear of Lot 2 are zoned C4 Environmental Living. The orientation of allotments, being south – north, along with the site slope, means there is the potential for impacts upon neighbouring properties.

Following the issue of an RFI, the Applicant submitted further information that included the provision of concept dwelling house designs for Lots 2 – 5.

Consideration of the proposed allotments and concept plan designs is included below with reference to the relevant subdivision provisions contained within the PDCP.

B2.2 Subdivision – Low Density Residential Areas

The relevant controls of this Part include:

- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot depth of 27 metres.*
- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 1 on the Landscaped Area Map shall have a minimum lot width at the building line of 16 metres.*
- *Any lot (or lots) to be created by a subdivision of an existing lot (or lots) on land identified as Area 2 or 3 on the Landscaped Area Map shall have a minimum lot width at the building line of 15 metres.*
- *A person shall not subdivide land if the allotment(s) intended to be created have a slope in excess of 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s)*
- *The minimum area for building shall be 175m².*
- *Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services.*

The development does not achieve consistency with the provisions of B2.2 Subdivision – Low Density Residential Areas. Lots 3 and 5 do not meet the 16m minimum allotment width, representing a 14.28% and 17.21% variation to the control. Lot 1 does not meet the 15m allotment width representing a 21.56% variation to the control.

The dimensions of the proposed allotments create a constraint for the future development of buildings on the allotments. The allotments are further constrained by the presence of significant trees contained within the proposed allotments. The development does not as a consequence of tree impacts achieve the desired future character of the locality, and does not satisfactorily maintain the environment.

C4.7 Subdivision – Amenity and Design



Under the provisions this Part, in reference to useable site area, where a right-of-carriageway to another lot is provided over a lot, the width of that right-of-carriageway shall not be more than 20% of the required minimum width of the lot over which it is located.

This control relates to Lots 1, 2 and 4. The proposed accessway exceeds the minimum width requirement of between 3 – 3.2m. The accessway width varies between 3.5m – 5.5m. Lot 1 results in a 6.96% variation to the control, with Lot 2 a 6.97% variation at the front and 12.78% at the rear. Lot 4 results in a 10.3% variation to the control. The purpose of this control is to ensure the width of a property which an accessway is located, is sufficient to accommodate a residential development.

The controls of Part B2.2 require Lot 1 and the front of Lot 2 have a minimum width of 15m, and Lot 4 to have a minimum width of 16m. Part A1.9 Definitions of PDCP defines **Lot width** as follows:

This is different to 'Effective Lot Width' in controls C6.8, C6.9 and D16.1.

Is the width of a lot measured from one side boundary to the other at the primary street front building line not including access handle.

For Lot 1, the width of the access handle is excluded when calculating the lot's width as Lot 1 presents to the primary street. The minimum width control of Part B2.2 does not exclude the accessway in relation to Lots 2 and 4. Lot 1 is non-compliant representing a 21.56% variation to the required lot width. Lots 2 and 4 all rely upon the width of the accessway to achieve compliance.

The width of access is reflective of the number allotments to be serviced by the accessway. As the accessway services more than two (2) allotments, and has a length in excess of 40m to enable the passing of vehicles, a width of 5.5m is required in part.

As a result of the above, design constraints for future development occurs. The constraints result in a concept design that is inconsistent with the controls of PDCP. It is undesirable to create allotments where future development cannot satisfy the requirements of the DCP.

The subdivision proposed as a result of these dimensional variations suggest an overdevelopment of the site.

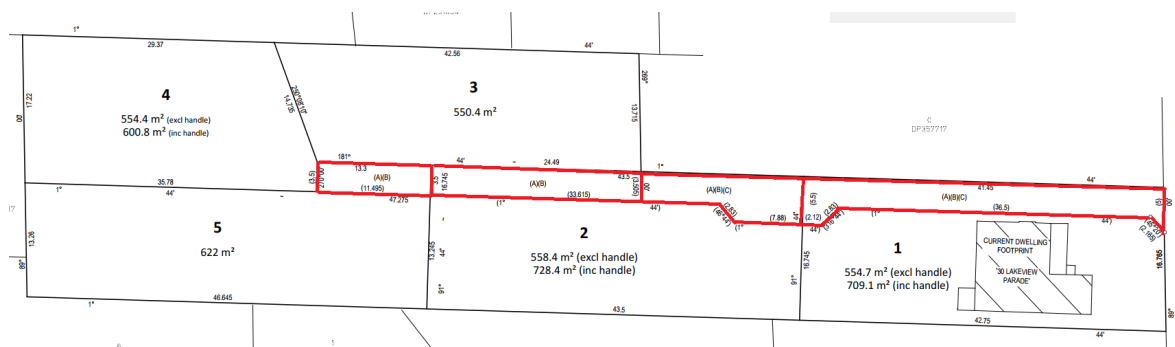


Figure: 19 Proposed subdivision showing accessway outlined in red.
Source: SDG, 28 March 2023 (CPS markup)

The subdivision design controls under C4.7 of PDCP seek to ensure that:



- *all properties, both existing and proposed, achieve/retain a level of amenity commensurate with the locality and the desired character of the area;*
- *the impact on the environment of the completed development (including buildings to be constructed on the proposed lots) has an acceptable impact on the environment.*

Below is a consideration of the provisions of Part A4.16 Warriewood Valley Locality which details the expectations for development within Warriewood.

A4.16 Warriewood Valley Locality

The desired future character for Warriewood is outlined in Part A4.14 Warriewood Locality of the PDCP. The desired character relevant to the proposal includes:

- *The Warriewood locality will remain characterised by a mix of residential, retail, commercial, industrial, recreational, and educational land uses.*
- *Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.*
- *Future development will maintain a building height limit below the tree canopy and minimise bulk and scale.*
- *Existing and new native vegetation, including canopy trees, will be integrated with the development.*
- *Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance.*
- *Development will be designed to be safe from hazards.*

A comprehensive site analysis is required to be submitted considering specific characteristics which includes:

- *the slope, topography, and any natural features (e.g. creeklines);*
- *trees and vegetation (particularly trees worthy of retention);*
- *viewlines from within the proposed lots and from adjoining properties;*
- *solar access to the subdivision site;*
- *the side, rear and front setbacks of future dwellings and structures in relation to the proposed new boundaries and development on adjoining properties;*
- *the visual impact of built development which will occur as a result of the subdivision process (building height, bulk and scale, visual impact of buildings);*
- *the provision of vehicular access to the future buildings on the proposed lots;*
- *the provision of landscaping and/or recreation space for each proposed lot;*
- *the provision of on-site car parking on each proposed lot;*
- *the provision of services to each lot, including sewerage, water, electricity, communications, and gas (where available);*
- *the provision of emergency services to each (bushfire, fire brigade, ambulance).*

The DA has been accompanied by an indicative building footprint plan (**Figure 20**). Through the assessment of the DA, more detailed information was requested to demonstrate the acceptability of the subdivision in relation to the key matters for consideration detailed above. Concept plans were submitted.

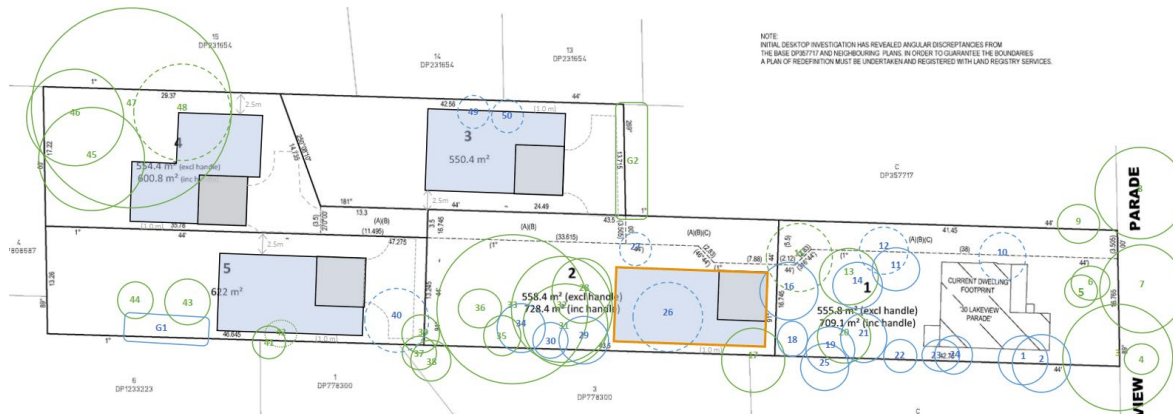


Figure 20: Applicant's Indicative Building Footprint Plan
Source: Northern Beaches Planning,

The control states, in order to demonstrate how the subdivision would meet these requirements, building envelopes are to be nominated on each allotment within which any future building is to be contained. The building envelope is required to clearly demonstrate that a building envelope can be built on the site that have regard to the following:

- *retention of trees and bushland,*
- *vehicular access,*
- *provision of services,*
- *provision of emergency services,*
- *and safety from hazard,*
- *A building which achieves the desired character of the area and is commensurate with the amenity standards of surrounding development, and does not overly impact on the environment, and can be erected within that envelope.*

A detailed discussion of the concerns in relation to the proposed allotments is provided below.

Proposed Lot 2

Lot 2 is centrally located between the existing dwelling to be retained on Lot 1 and the proposed Lot 5 to the rear. The entire eastern side of the allotment is burdened by the proposed accessway. The building envelope shown orientates the dwelling to present internally to the accessway. The allotment contains significant vegetation centrally and to the rear of the site. The allotment is constrained by its dimensions and vegetation as to the location of future buildings.

The northern portion of the site contains significant vegetation (Trees 31, 32, 33 and 36) which are identified for retention (**Figure 21**). The significant vegetation results in the building envelope being restricted to the southeastern corner of the allotment.

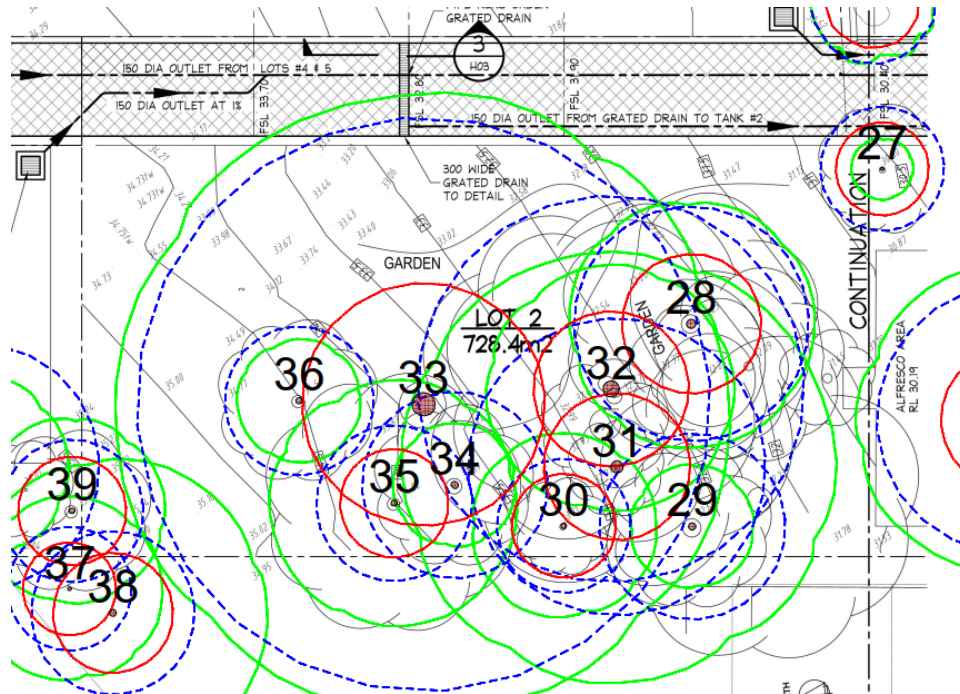


Figure 21: Tree Location Plan. Green identified tree crown, TPZ shown in blue and red is SRZ.
Source: Hugh the Arborist, 29 March 2023

Proposed Lot 2 will be zoned both R2 Low Density Residential and C4 Environmental Living (**Figure 22**). The front portion of the site is zoned R2, and the rear where significant vegetation is sited is zoned C4. As a result, the allotment is located within both Area 1 and Area 3 of the Pittwater Landscaped Area Map.

Despite these constraints, the Applicant submitted concept plans at the request of Council to demonstrate how the site can be developed in accordance with PDCP (**Figure 23**).

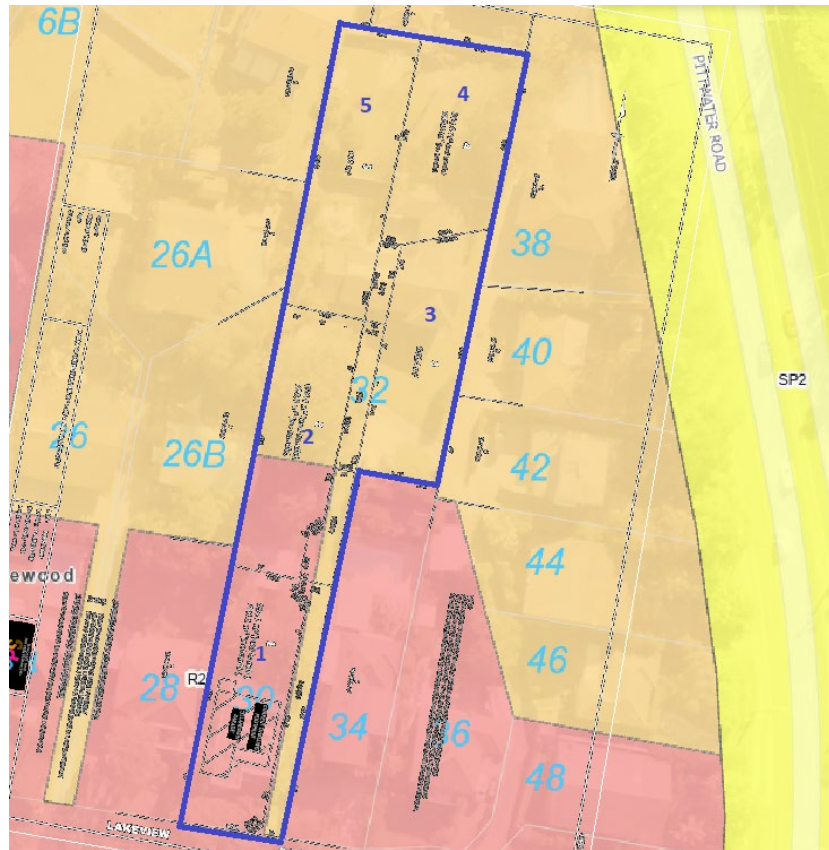


Figure 22: Extract of Pittwater Zoning Map. Proposed subdivision overlayed on map. Lot 2 is zoned both R2 Low Density Residential and the middle and rear of the site is zoned C4 Environmental Living where significant vegetation is located.
Source: www.legislation.nsw.gov.au, CPS markup

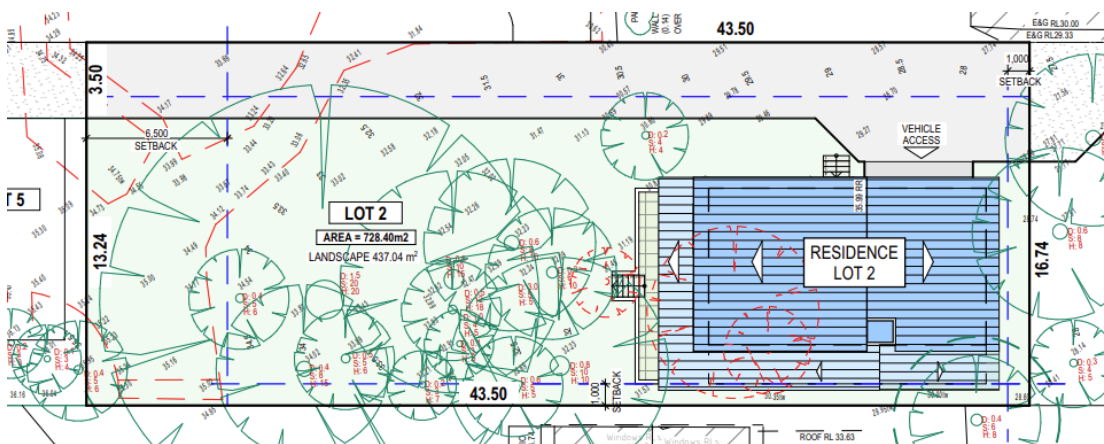


Figure 23: Concept plan of siting of development on proposed Lot 2
Source: JJ Drafting, March 2023

The concept plan submitted does not satisfactory demonstrate the site, despite these constraints, can reasonably be developed in for the following reasons:



- The dwelling is sited to provide a 2m setback from the southern boundary and 1m from the western boundary. The dwelling is setback 3.225m from the accessway and 6.725m from the eastern boundary of the accessway.

In order to achieve consistency with the dimensional requirements of B2.2 Subdivision – Low Density Residential Areas, Lot 2 unreasonably relies upon the area of the accessway. The dwelling is orientated internally to the accessway, indicating a compliant 6.725m setback is provided from the eastern side of the accessway, with the front building line requirement being satisfied.

- The dwelling provides a 1m setback from the western boundary, and 2m from the southern. Part D14.8 'Side and rear building line' requires a 6.5m rear setback. The orientation of the dwelling would mean the rear boundary is the western boundary which represents an 84.6% variation to the control.
- The 2m setback from the southern boundary, which is more appropriately considered the front setback, would result in a 69.2% variation to the control. C1.1 Landscaping requires at least 2 canopy trees in the front yard and 1 canopy tree in the rear yard. The site is not capable of accommodating canopy trees within the southern setback.
- The development of Lot 2 in the manner represented in the concept design provides the smallest setback from the southwestern corner of the site where it adjoins vegetation upon 28 Lakeview Parade. The siting of the dwelling at the southwestern corner results in a poor outcome and increases the likelihood of impact upon adjoining properties once this allotment is developed.
- The existing dwelling on Lot 1 to be retained is setback 16m from the rear boundary. Lot 2 is subject to a maximum height of 8.5m. The separation distance means, the development of Lot 2 being upslope and to the north of Lot 1, will result in overshadowing. The proposal has not provided shadow diagrams to demonstrate the likely resultant solar access impacts.
- The concept plan references a retaining wall along the southern and western setbacks. The retaining wall will range in height between 100mm - 690mm and is located within the setbacks. The retaining wall is necessary in response to the represented levels.

The retaining wall results in a major incursion of 13.7% of the TPZ of Tree 17 located on the neighbouring property at 28 Lakeview Parade. The Arborist recommendation is for the removal of this retaining wall. The retaining wall has been provided due to the necessary change in levels across the site to facilitate development. Without this wall, it is not known how suitable levels will be able to be achieved.

- The driveway is proposed to be constructed as part of the subject DA. The driveway will establish the likely levels of the future development of the Lot.

The concept design provides for multiple transitions within the dwelling. The dwelling is partly sited in the position of the existing garage/shed and concrete area within the rear of 30 Lakeview Parade. The concept dwelling is sited at the steepest part of the site.

The concept dwelling has a FFL of RL30.29, with the external spot levels ranging between RL31.19 and RL31.53. The outdoor entertainment area is excavated into the site. The level



difference is up to 1.24m. This would result in amenity impacts upon the private open space given it is located to the south of required retaining walls.

- The development has not demonstrated that it has an acceptable impact upon the environment. The concept dwelling result in unacceptable impacts upon existing vegetation. The Arborist recommendations for design amendments have not been reflected on the concept plans. These requirements will further constrain the development opportunity.
- Control D14.13 Landscaped Area – Environmentally Sensitive Land which is mapped as Area 3 Environmentally Sensitive Land requires 60% landscape area, and Area 1 is subject to a 50% requirement under the provisions of D14.12 Landscaped Area – General.

Given the split zoning, it is considered more appropriate to apply the 60% requirement to the site. In this regard, the development achieves a landscaped area of 53.3%, resulting in a 11.1% variation to the control.

It is not considered appropriate to automatically apply a 6% variation dispensation within the control, as has been indicated within the DA.

The outcomes of the control require consistency with the desired future character, reasonable level of amenity and solar access is provided and maintained, and vegetation is retained and enhanced to visually reduce the built form. From the information submitted and reasons discussed above, the development does not meet the outcomes and variation cannot reasonably be applied.

Proposed Lot 3

Submissions have been received from a neighbouring property at 40 Lakeview Drive raising concerns with the likely view loss and solar access impacts resulting from the future development on Lot 3. Specific consideration of solar access and view loss has been considered earlier in this report relating to the provision of C1.3 View Sharing and C1.4 Solar Access.

The development of Lot 3, whilst it has potential for shadow impact, would be limited to the afternoon period only and therefore the adjoining dwellings to the east will be capable of receiving adequate solar access.

Lot 3 is mapped within Area 1 Landscape Area Map which requires a minimum width of 16m. The lot has a width of 13.715m representing a 14.28% variation to control of B2.2 Subdivision – Low Density Residential Areas.

The concept design (**Figure 24**) sites the dwelling towards the southern boundary, and locates the driveway and turning bay within the front setback. The driveway is setback 1m from the southern boundary.

D14.7 Front Building Line requires a 6.5m front setback, yet the dwelling has a setback of 4.5m representing a 30.7% variation to the control. The Lot does not demonstrate compliance with the control for 60% landscaped area, with the Lot providing 55%, presenting a 7.4% variation.

The outcomes of the controls B2.2 Subdivision – Low Density Residential Areas, D14.7 Front Building Line, D14.13 Landscaped area – Environmentally Sensitive Land and C1.1 Landscaping



is to achieve the desired future character of the locality. This includes maintenance of the existing environment and vegetation being retained and enhanced to visually reduce the built form.

The Warriewood Locality desired future character is to maintain low-density residential dwellings with a maximum two storeys in a landscaped setting. Existing and new native vegetation, including canopy trees, is to integrate with the development.

The lot fails to comply with the minimum width and front setback controls, and does not provide for the required 60% landscaped area controls contained with the PDCP. The front setback is not sufficient to accommodate the required two canopy trees within the front setback. In this circumstance, support for these non-compliances is not justifiable.

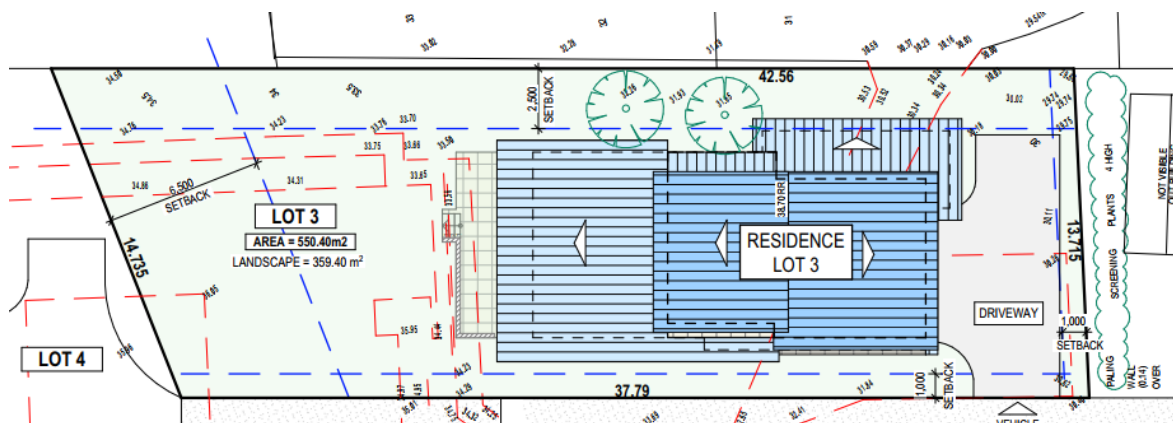


Figure 24: Concept dwelling for proposed Lot 3
Source: JJ Drafting, March 2023

Proposed Lot 4

Lot 4 contains significant vegetation to the northeastern corner of the site (**Figure 25**). The vegetation includes 3 x *Melaleuca quinquenervia* (Tree 45, 47 and 48) and 1 x *Araucaria heterophylla* (Tree 46).

The significant vegetation creates a constraint on the allotment. The Arborist report recommends the need for specific requirements for Trees 47 and 48 as the concept plan represents a major encroachment of the TPZ.

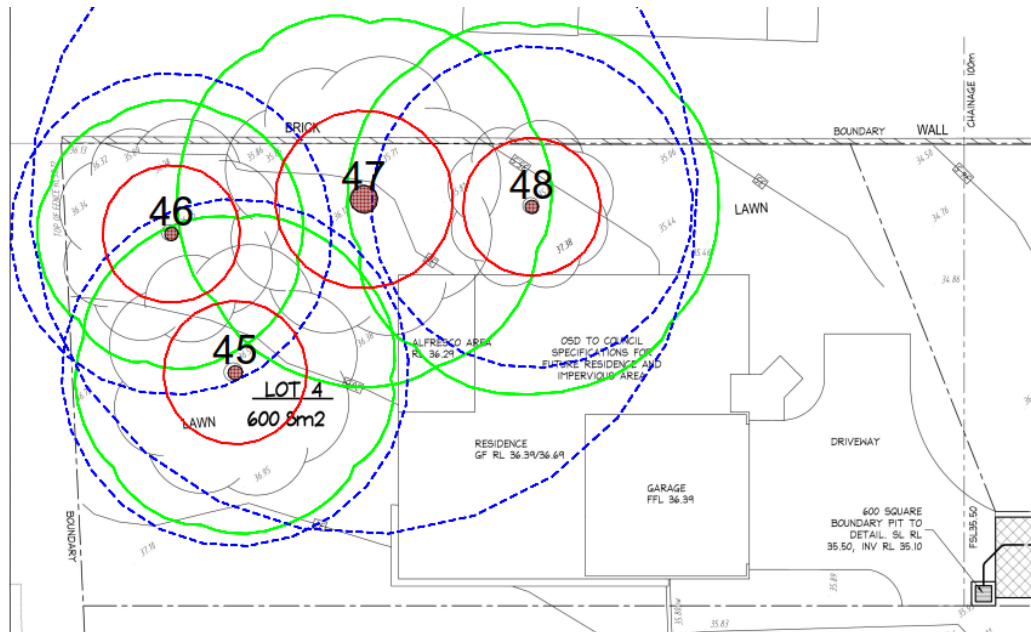


Figure 25: TPZ and SRZ of significant vegetation location on Lot 4 with concept dwelling shown.
Source: Hugh the Arborist, 29 March 2023

The Applicant has submitted a concept design for the lot (**Figure 26**). The concept plan does not demonstrate the significant vegetation can be retained. It cannot be said that the building would achieve the desired future character of the area and does not overly impact on the environment.

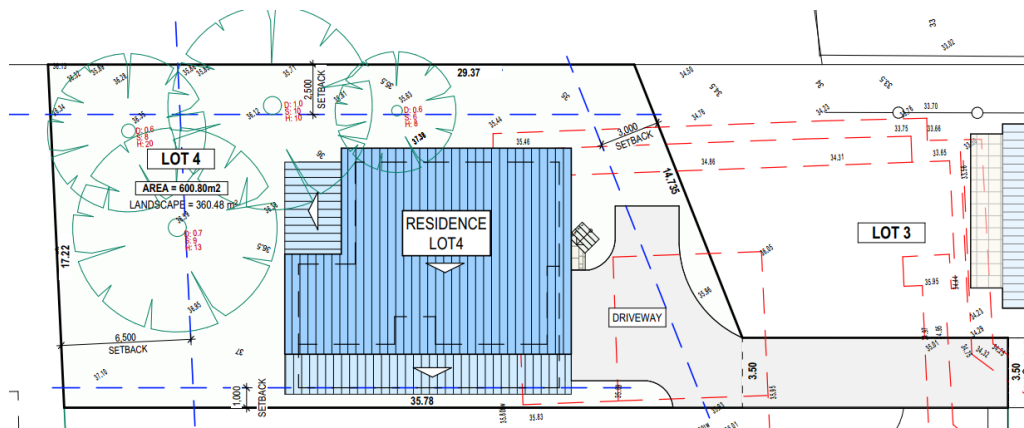


Figure 26: Concept plan for Lot 4
Source: JJ Drafting, March 2023

The allotment is contrary to the controls of C4.7 Subdivision – Amenity and Design as detailed above and does not achieve the outcomes of the controls. The proposal does not achieve the desired character of the locality, does not protect the natural environment.

Proposed Lot 5

The lot is mapped within Area 1 Landscape Area Map and the control requires a minimum width of 16m. The lot has a width of 13.245m representing a 17.21% variation to control of B2.2 Subdivision – Low Density Residential Areas and is non-compliant.

The concept design (**Figure 27**) positions the dwelling towards the southern boundary and locates the driveway with the turning bay within the front setback. The driveway is setback 1m from the southern boundary.

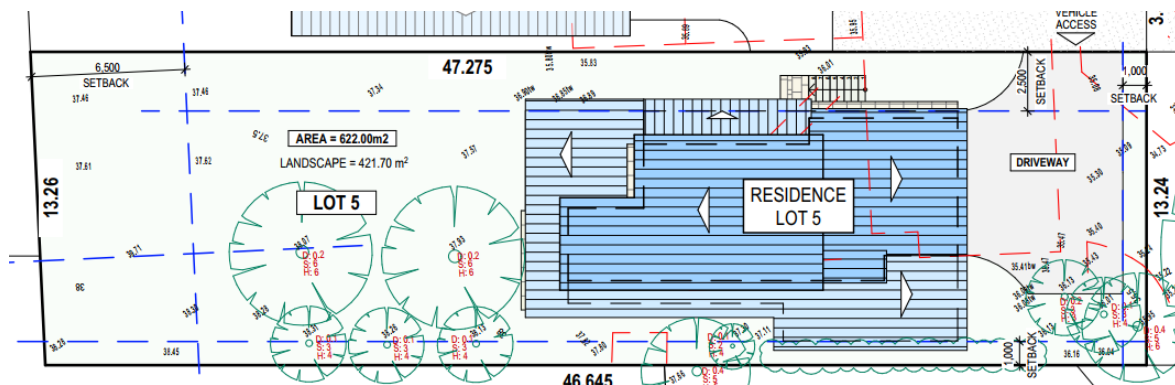


Figure 27: Concept plan for Lot 5
Source: JJ Drafting, March 2023

The site contains significant vegetation at the rear (Trees 43 and 44) and within the mid-block adjacent to the western boundary (Tree 42). Tree 41 is located on the adjoining property at 26A Lakeview Parade (**Figure 28**).

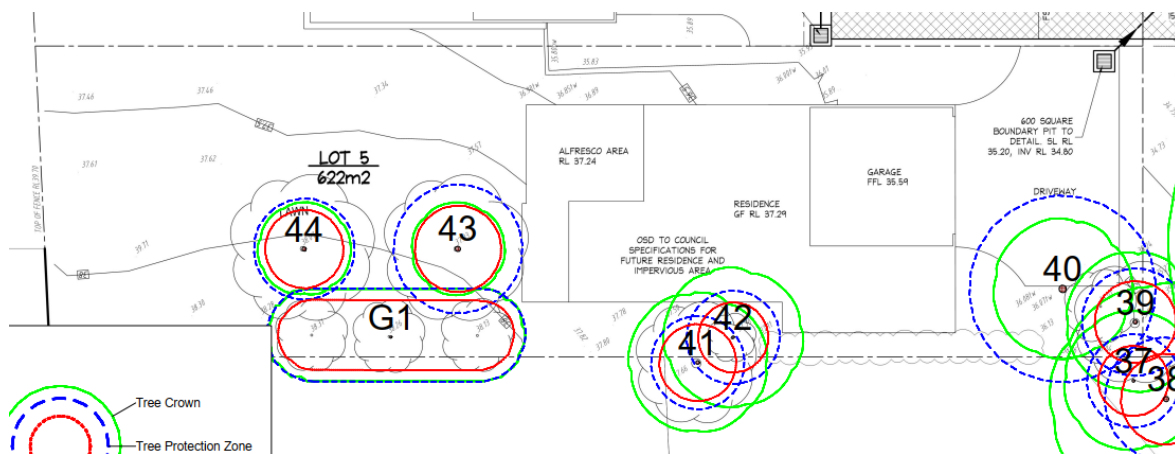


Figure 28: TPZ and SRZ of significant vegetation located on Lot 5 with concept dwelling shown.
Source: Hugh the Arborist, 29 March 2023

The concept dwelling design includes provision of a retaining wall along the rear western elevation and partially along the rear northern boundary. The retaining wall is necessary due to the proposed level and excavation necessary at the northwestern corner of the dwelling. The excavation is located within proximity of Tree 43.

The concept plan demonstrates this site can reasonably be developed in accordance with PDCP.



C4.8 Subdivision – Landscaping on the existing and proposed public road reserve frontage to subdivision lots

The control requires all existing trees over 3m in height and native vegetation and trees within the road reserve areas to be retained where practical. The road reserve contains a Queensland Brushbox, and the required widening of the access handle to accommodate the number of new allotments proposed will result in the removal of Tree 7.

The proposed development will result in an incursion of greater than 20% of the nominal TPZ of this tree. This incursion is classified as 'Major' under the provisions of AS470-2009 – Protection of trees on development sites and is likely to be unsustainable for tree.

As discussed above, Council's Landscape Officer requires retention of this tree to support the development. The Applicant's AIA indicates this tree is not capable of retention. The Landscape Officer recommendation relies upon the provision of further information which includes root mapping and specific construction methods. The DA does seek to retain this tree.

For the reasons outlined earlier in this report, it is not appropriate to delay the environmental assessment of significant vegetation until the construction certificate stage.

C1.1 Landscaping

The control requires that for the front of single dwellings, 60% (between the front boundary and any built structures) shall landscaped to screen those buildings from the street. The front building line area of Lot 1 is 171.76m², requiring a minimum landscaped area of 103.05m². The proposal results in a landscaped area of 93.02m² (54%), which represents a 9.7% variation to the control.

The controls also require provision of at least 2 canopy trees in the front yard and 1 canopy tree in the rear yard. Due to the provided front setbacks for Lots 2, 3 and 4 the allotments are not capable of accommodating the provision of 2 canopy trees. The allotments are configured to provide reduced setbacks or the provision of turning circles within the front boundaries thereby limiting the ability to accommodate the required canopy trees.

Development is required to provide for the reasonable retention and protection of existing significant trees, especially near property boundaries, and retention of natural features such as rock outcrops.

The development does not achieve the outcomes of the control for the following reasons:

- The reduced setbacks do not enable landscaping to be provided which reflects the scale and form of development. The concept dwellings are two storeys in scale. The front setbacks cannot accommodate a canopy tree.
- The concept plans demonstrate the building envelopes are located within the TPZ and SRZ of significant trees nominated for retention. The building envelopes have not been modified in response to the design recommendations of the Arborist report.
- The development does not retain existing native vegetation.

The development is unacceptable in this regard.



D14.7 Front Building Line

The allotments require a front building line of 6.5m, or the established building line whichever is greater. The setbacks reflected on the concept plans are as follows:

Lot	Proposed
2	2.0m - 69.2%
3	4.5m – 30.7%
4	5.15m – 20.76%

The allotments do not present to the streetscape. However, the development of the lots is nonetheless subject to setback requirements. In response to the RFI, the Applicant indicates Clause D14.7 of P21 DCP will not apply to Lots 2 – 5 as they do not have a street frontage. This is position is not agreed with.

'Building line' is not defined within the PDCP, but is defined within the Dictionary of the PLEP as follows:

Building line or setback means the horizontal distance between the property boundary to other stated boundary (measured at 90 degrees from the boundary) and –

- a. a building wall, or
- b. the outside face of any balcony, deck or the like, or
- c. the supporting posts of a carport or verandah roof.

Whichever distance is the shortest.

D14.7 does not specify that the front building line is measured to the street, nor does the building line definition within the PLEP. Rather, it references the front building line in relation to the property boundary. The DA has applied the rear building line to the northern boundary and side building lines to the eastern and western boundaries. Accordingly, the front building line of Lots 2 – 5 is taken to be the southern boundary.

The PDCP seeks to achieve a building separation distance of 13m across the rear boundaries of residential properties. This is achieved by a combination of 6.5m front building line and 6.5m rear building line controls working together across the rear boundaries of opposing allotments. By not subjecting proposed Lots 2 – 5 to the 6.5m front building line (as suggested by the Applicant), reduced building separation distances to that prescribed by the PDCP ensue. Instead of 13m per the DCP, shared equally between properties the development relies upon increased rear setbacks for Lots 1, 2 and 4 to achieve separation distances.

This arrangement places the burden of reasonable separation distances upon an adjoining allotment. This is not reasonable.

D14.7 does not specifically provide variation for battle axe allotments (or non-frontage lots). The PDCP does not include specific controls in terms of building lines or setbacks for battle axe allotments. If there were an intended difference in spatial characteristics for battle axe allotments, then this would be prescribed in the PDCP, but it is not.



The intention for all residential zoned properties not presenting to Mona Vale Road or the foreshore within Warriewood Locality is to achieve a 13m spatial separation distance between dwellings.

The outcomes of the control include:

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

The spatial characteristics of the urban environment are achieved through building lines/setbacks from the property boundaries. The purpose of the control is exclusive to setbacks from the street, but for all properties.

The proposal represents a design which provides for reduced setbacks from the southern boundary, and provision of an extending driveway and turning bays as shown in **Figures 29 and 30**) highlighted in red. Whilst the front building line can accommodate driveways, the subdivision and concept design locates turning bays within the front building line.

This arrangement provides for a further constraint of the proposed allotments and results in reduced areas for landscaping and separation between neighbouring sites.

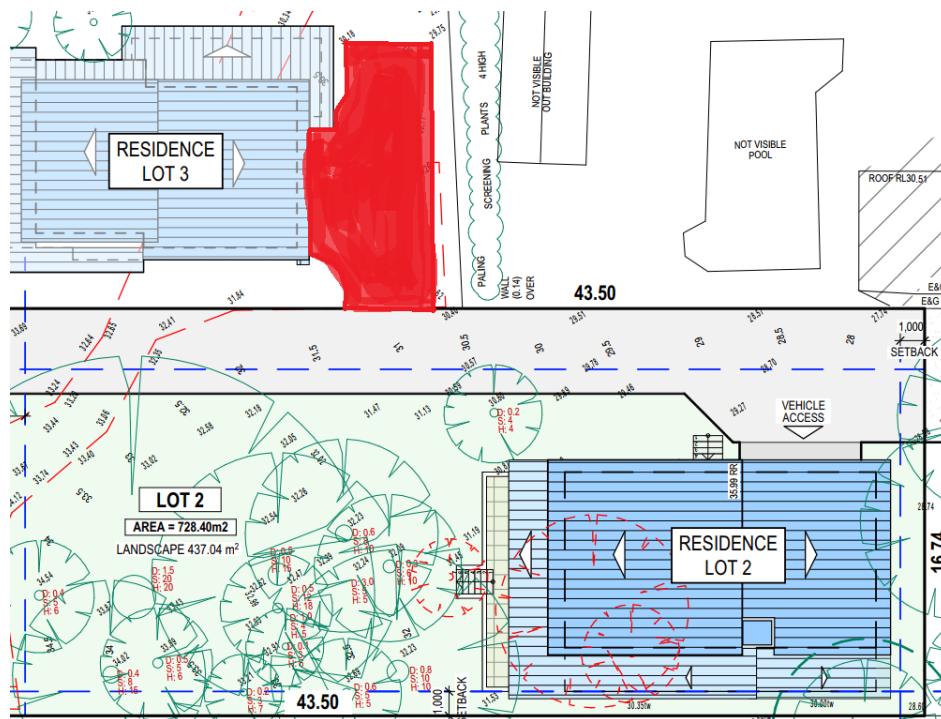


Figure 29: Proposed driveway and turning area within Lot 3 outlined in red.
Source: JJ Drafting, March 2023 (CPS markup)

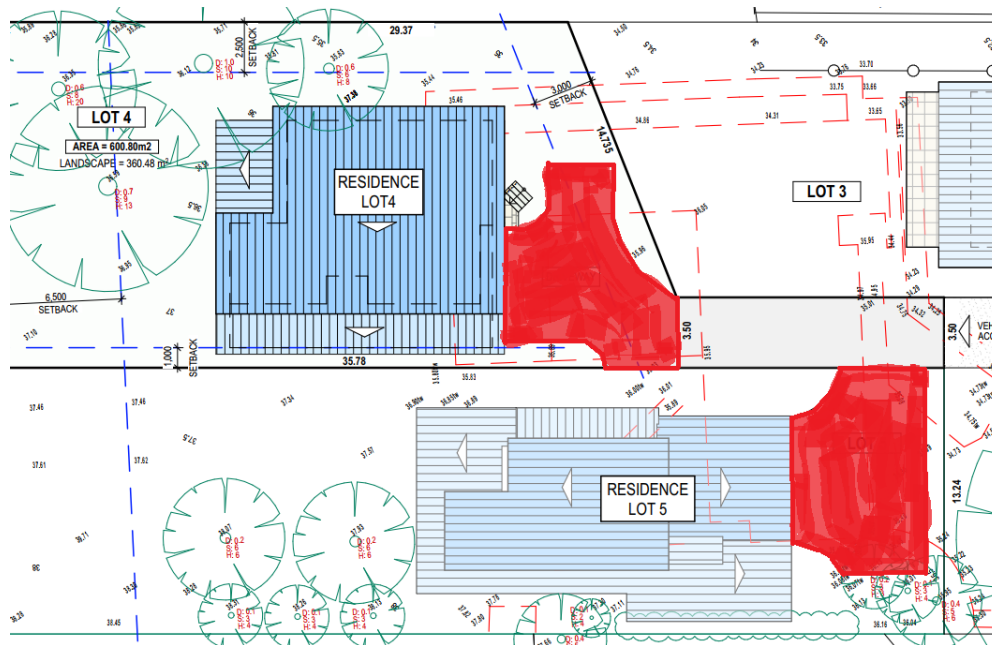


Figure 30: Driveway and turning area for Lots 4 and 5 within the front building line
Source: JJ Drafting, March 2023 (CPS markup)

Conclusion

The proposed subdivision works and concept dwelling plans fail to comply with the suite of PDCP controls for the following reasons:

- The proposed allotment arrangement results in reduced setbacks, resulting in potential conflict between properties.
- The DA has not demonstrated the environmental impacts of the development. The subdivision will result in the removal of significant vegetation. The concept building envelopes demonstrate future development of the land cannot be appropriately designed in response to the arborist recommendations to ensure significant vegetation can be retained on site.
- The development does not have an acceptable impact on the environment.
- The reduced width, and reduced front setbacks due to the siting of driveway and turning bays, does not achieve the designed landscape setting for the future development of allotments.
- Lots 2, 3, 4 and 5 cannot accommodate the required 2 canopy trees within the front yard due to the siting of the driveways and reduced setbacks.
- The building envelopes have not been designed to integrate with existing significant vegetation.
- The future development does not step down the allotments. The proposed levels of Lot 2 result in the provision of a retaining wall adjacent to the southern and western walls of the dwelling, and the outdoor entertainment area is excavated into the site. This results in a poor amenity outcome for the site.
- The excavation necessary will adversely affected trees to be retained on site and those on adjoining properties.

The Parrot planning principle is essentially a cautionary principle designed to ensure that lot sizes and lot configurations approved by a subdivision application are not subsequently going to



produce unacceptable environmental impacts on adjoining properties because of the size and configuration of the lots.

The likelihood of adverse impact as a result of the development is high due to the topography, environmental constraints, and orientation of allotments. In this circumstance, the development of these allotments may be better served if the same application in which the subdivision is proposed includes the dwellings to ensure the building design satisfactorily responds to the constraints.

It is not the orderly development of land to allow a subdivision which creates constrained allotments.

In the decision of *Rudder Developments Two Pty Ltd v Inner West Council* [2017] NSWLEC 1132, the Land and Environment Court upheld the Parrott planning principle. Where the proposed allotments are smaller than usual, environmentally sensitive, or where significant impacts on neighbours is likely – and careful design to minimise these impacts is required – it is appropriate for the consent authority to require the subdivision application to be accompanied by a development application for the proposed dwellings.

For the reasons detailed above, it is necessary in this circumstance for the subdivision to include the buildings proposed on each lot in the same development application to enable a complete assessment of the built form and environmental impacts.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022. The application is recommended for refusal and therefore no contribution is required.

CONCLUSION

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

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



This assessment has taken into consideration the submitted plans, Statement of Environmental Effects and other documentation supporting the application and public submissions. The development is unacceptable for the following reasons:

- The proposed five lot subdivision creates constrained allotments as the allotments are of non-compliant dimension and environmentally sensitive to future development of buildings.
- The likelihood of adverse impact as a result of the development is high due to the topography, environmental constraints, and orientation of allotments.
- The proposed allotment arrangement results in reduced setbacks, resulting in potential conflict between properties.
- The DA has not demonstrated the environmental impacts of the development. The subdivision will result in the removal of significant vegetation. The building envelopes have not been appropriately designed in response to the arborist recommendations to ensure significant vegetation can be retained on site.
- The development does not have an acceptable impact on the environment.
- The reduced width and reduced front setbacks due to the siting of driveway and turning bays does not achieve the designed landscape setting for the future development of allotments.
- The DA does not demonstrate the proposed allotments can be reasonably developed in accordance with the controls of PDCP.

PLANNING CONCLUSION

This proposal is referred to the Development Determination Panel (DDP) due to the application receiving eight (8) unique submissions.

Consideration has been given to the Parrot planning principle which is a cautionary principle designed to ensure that lot sizes and lot configurations approved by a subdivision application are not, subsequently, going to produce unacceptable environmental impacts on adjoining properties because of the size and configuration of the lots.

The proposed subdivision is contrary to the subdivision requirements of PDCP. The subdivision will create constrained and environmentally sensitive allotments. The information submitted has not demonstrate the allotments can be reasonably developed in accordance with PDCP.

The likelihood of adverse impact as a result of the development is high due to the topography, environmental constraints, and orientation of allotments. In this circumstance, consent for the erection of buildings on the allotments should form part of the same application in which the subdivision is proposed to ensure the dwelling designs satisfactorily respond to the constraints. The preliminary building envelopes submitted do not demonstrate this.

If the Applicant is not able to pursue reasonable building outcomes on all five allotments when having regard to the environmental constraints, consideration may need to be given to reducing the number of allotments proposed on the site.

The proposal has therefore been recommended for refusal.



RECOMMENDATION

That Northern Beaches Council as the consent authority refuse DA2022/1944 for demolition work, tree removal and subdivision of two lots into five lots on land at, 30 and 32 Lakeside Drive, Warriewood (Lot B and A in DP 357717 respectively) for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the development is inconsistent with the provisions of *Pittwater Local Environmental Plan 2014* in that:
 - The subdivision creates constrained allotments. A better planning and environmental outcome would be for the erection of buildings on the allotments forming part of the same application in which the subdivision is proposed to ensure the dwelling designs satisfactorily respond to the vegetation constraints on the land.
 - The development does not respond to the site's constraints and would have an adverse effect on the aesthetic value of the site and surrounds. The proposed subdivision pattern confines future building placement to an arrangement that will result in an abrupt built form change.
 - The extent of excavation required for the future development of allotments adversely impacts the existing environment and vegetation to be retained on site. The proposal is contrary with the provisions of Clause 6.2(3) of the PLEP.
 - The development does not achieve the objectives of the C4 Environmental Living zone. The site is ecologically and aesthetically significant due to existing vegetation. Any future residential development is to respond sympathetically and harmoniously to this feature by providing low impact residential development as prescribed by the C4 Environmental Living zone objectives of the PLEP.
2. The development is inconsistent with provisions of the *Pittwater Development Control Plan 2014*, specifically:
 - The development results in constrained allotments that are contrary to B2.2 Subdivision – Low Density Residential Areas and C4.7 Subdivision – Amenity and Design
 - o The building envelopes provided do not demonstrate or facilitate the retention of existing significant vegetation. The proposed allotments are constrained by existing significant vegetation which necessitates a considered design response to protect and maintain vegetation.
 - o The concept plans do not demonstrate a building which achieves the desired character of the area.
 - o The proposed allotment arrangement results in non-compliant setbacks, resulting in potential conflict between properties.
 - o The DA has not demonstrated the environmental impacts of the development. The subdivision will result in the removal of significant vegetation. The building envelopes have not been appropriately designed in response to the arborist recommendations to ensure significant vegetation can be retained on site.
 - o The development does not have an acceptable impact on the environment including Trees 7, 9, 27, 31, 32, 33, 36, 47, and 48.
 - o The reduced width and reduced front setbacks due to the siting of driveway and turning bays does not achieve the designed landscape setting for the future development of allotments.



- Lots 2, 3, 4 and 5 cannot accommodate the required 2 canopy trees within the front yard due to the siting and extent of the driveways and reduced setbacks.
 - The building envelopes have not been designed to integrate with existing significant vegetation.
 - The future development does not step down the allotments. The proposed levels of Lot 2 results in the provision of a retaining wall adjacent to the southern and western walls of the dwelling and the outdoor entertainment area excavated into the site. This results in a poor amenity outcome.
 - The excavation necessary will adversely affected trees to be retained on site and those on adjoining properties.
 - The development includes non-compliant setbacks contrary to Part D14.7 Front Building Line and D14.6 Side and Rear Building Line for Lots 2, 3, and 4.
 - The development results in the removal of significant trees within the road reserve (Tree 7) contrary to C4.8 Subdivision – Landscaping on the Existing and proposed public road reserve frontage to subdivision lots.
 - The development does not achieve the required 60% landscape open space on Lots 2, 3, 4 and 5, and fails to comply with D14.13 Landscaped Area – Environmentally Sensitive Land.
 - For the reasons outlined above, the development fails to achieve the objectives outlined in Part A1.7.
3. Pursuant to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, the development results in unacceptable and adverse impacts upon the natural and built environment in that:
- The subdivision creates constrained allotments by their dimensions and resultant environmentally sensitive land.
 - The subdivision will result in the removal of significant vegetation. The development results in unacceptable impacts upon trees contained within Lot 2, and 4.
 - The concept plans provided do not demonstrate the allotments can be developed without natural and built environment impacts.
 - The development does not adequately consider the resultant tree impacts.
4. Pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* the development is contrary to Section 1.3 Objects for the following reasons:
- The proposal does not promote the orderly and economic use and development of land. The development results in adverse impacts upon surrounding properties.
 - The proposal does not promote good design and amenity of the built environment. The development is not responsive to the site's topography, results in amenity impacts upon neighbouring properties, and is inconsistent with the suite of built form controls applying to the land.
5. The site is not suitable for the proposed development pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.



6. Having regard to the reasons noted above, pursuant to the provisions of Section 4.15(1)(d) and Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, approval of the development application is not in the public interest.

FINAL DECLARATION

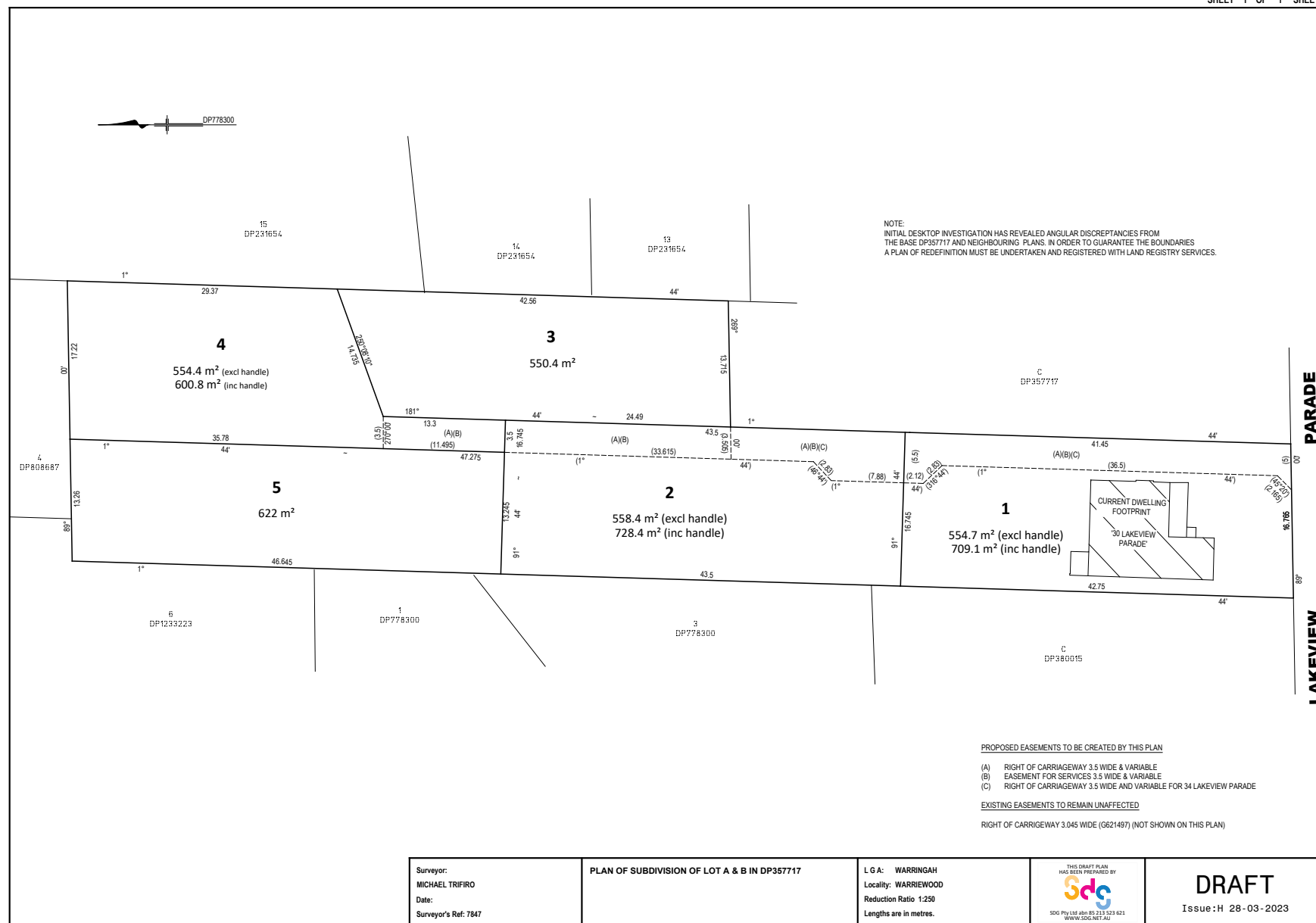
Consultant Name: Kimberley Kavwenje – Creative Planning Solutions

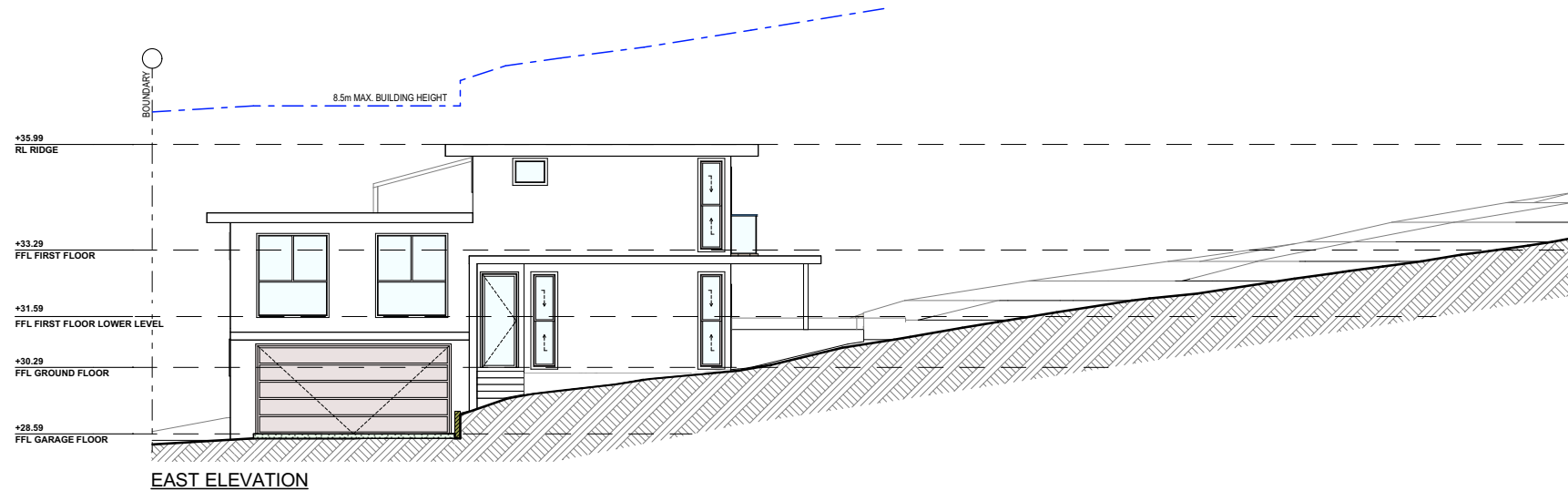
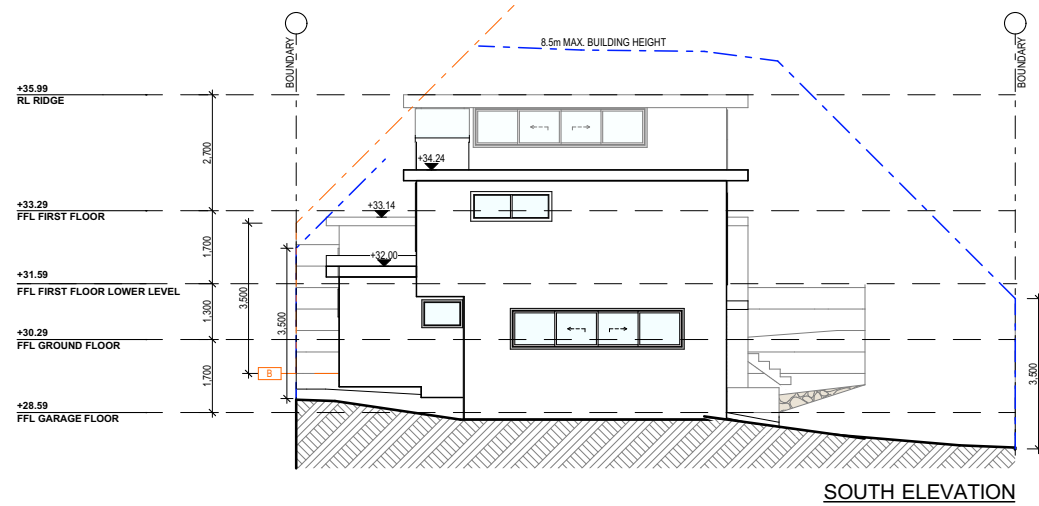
In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.



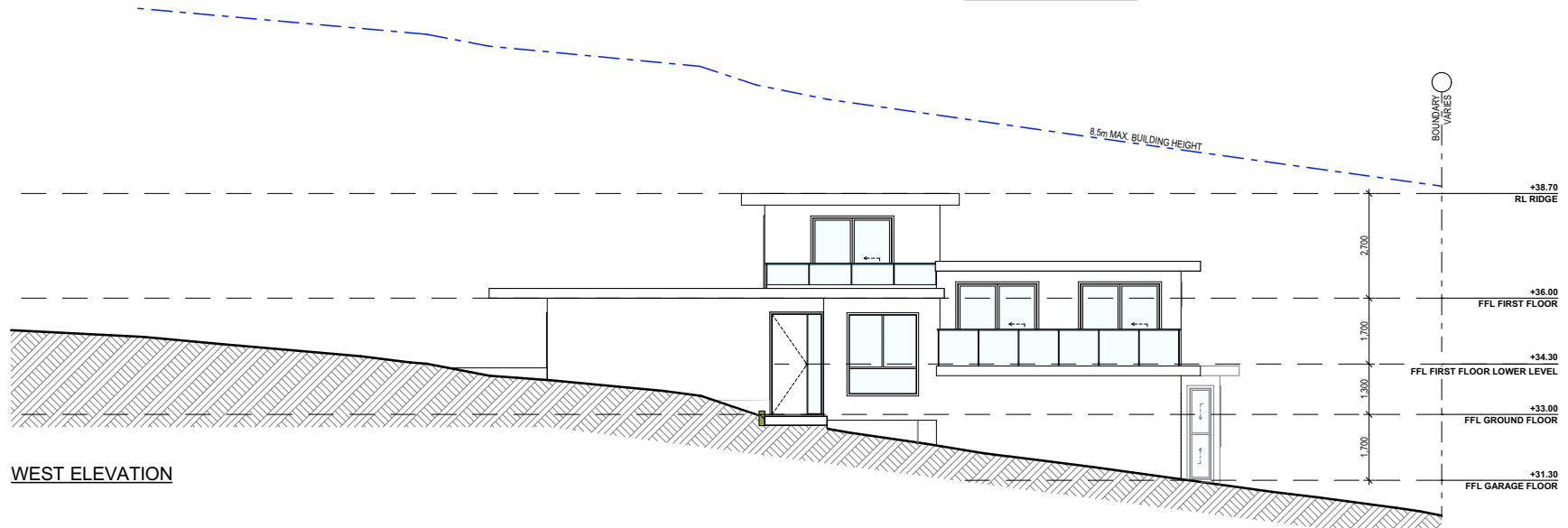
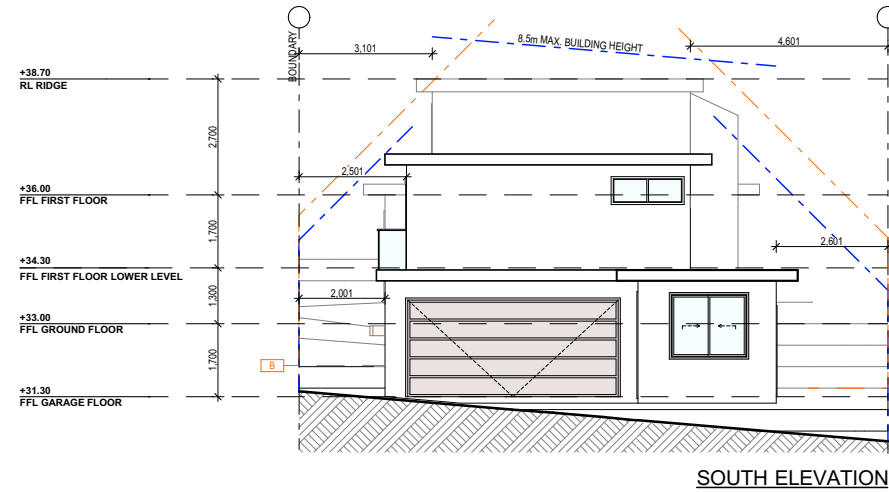
Kimberley Kavwenje
Consultant Planner

SHEET 1 OF 1 SHEETS

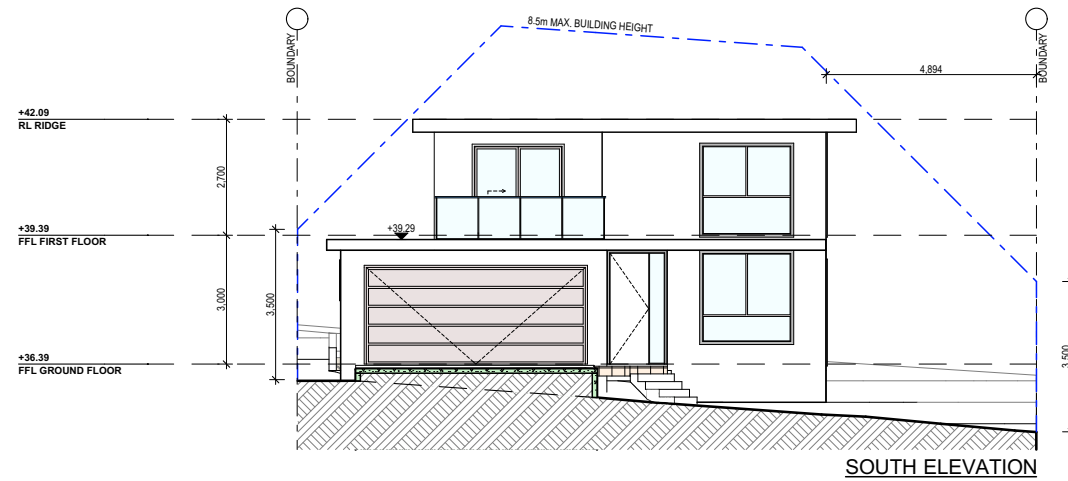




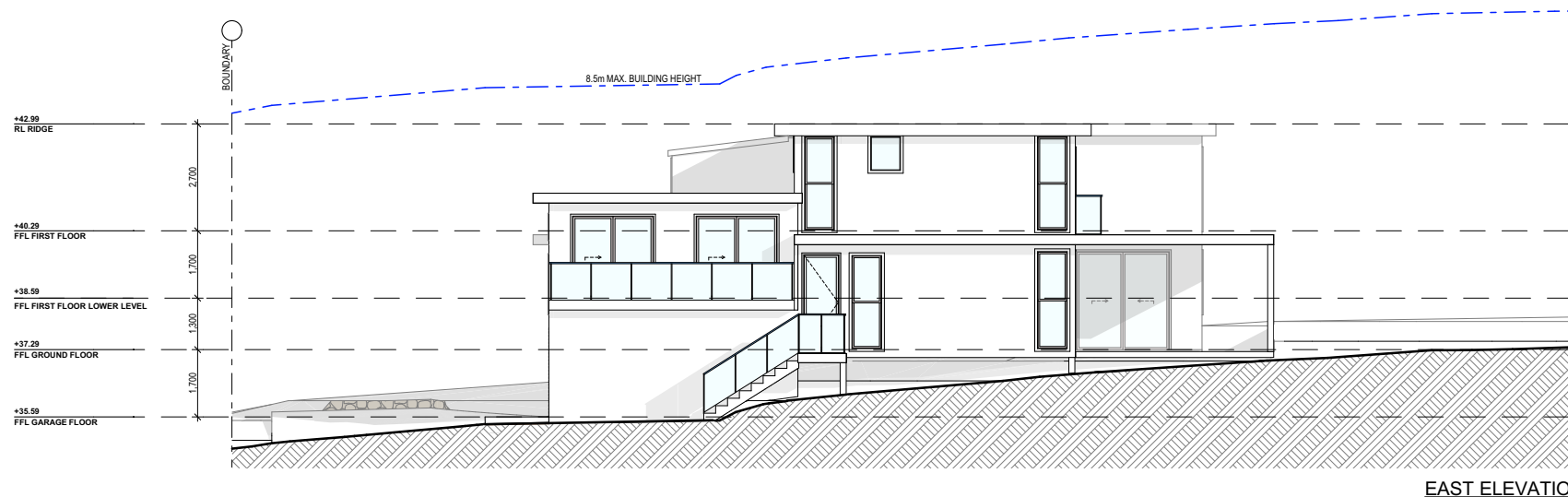
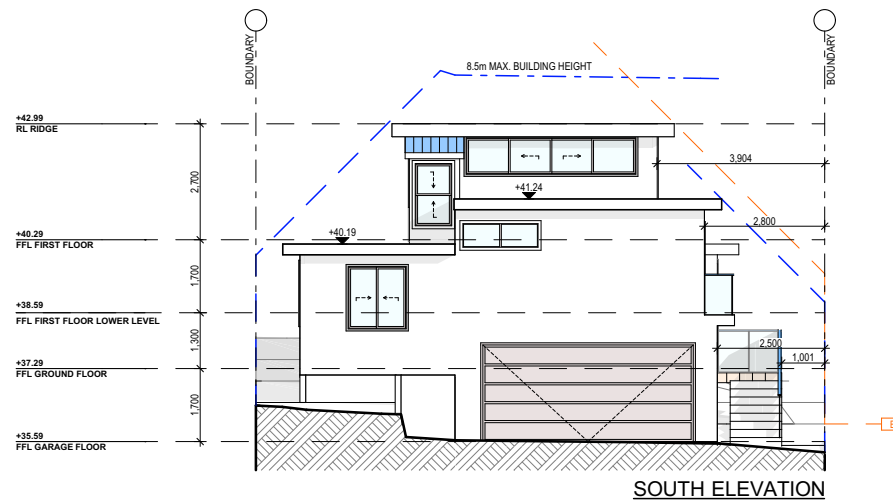
	<div>NOTES (E & OE)</div> <div><ul style="list-style-type: none">• All structures including stormwater & drainage to engineer's details.• Do not obtain dimensions by scaling drawings.• All dimensions are to be checked on site prior to starting work.• These drawings are to be read in conjunction with all other consultant's drawings and specifications.• All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.• New materials are to be used throughout unless otherwise noted.• Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.</div>	<div>JJ Drafting</div> <div>Australia P/L</div> <div>28/90 Mona Vale Road, Mona Vale, NSW, 2103</div> <div>PO Box 687, Dee Why, NSW, 2099</div> <div>Mob. 0414 717 541 Email: jjdraft@tpg.com.au</div> <div>www.jjdrafting.com.au</div>	<div>REV: DATE: DESCRIPTION:</div> <div>A 07.08.23 DRAWINGS UPDATED & SHADOWS DIAGRAM</div> <div></div> <div></div> <div></div> <div></div> <div></div>	<div>CONCEPT RESIDENCE PLANS</div> <div>30 - 32 Lakeview Parade - Warriewood NSW 2102</div> <div>CLIENT:</div> <div>Tom Daley</div> <div>DRAWING TITLE:</div> <div>ELEVATIONS</div>	<div>DATE:</div> <div>March/23</div> <div>JOB No:</div> <div>1130/23</div>	<div>DRAWN BY:</div> <div>LB</div> <div>CHECKED BY:</div> <div>JJ</div>	<div>SCALE:</div> <div>1:100 @ A3</div> <div>DRAWING No:</div> <div>LOT2_D04</div>



	<div>NOTES (E & OE)</div> <div><div><div>• All structures including stormwater & drainage to engineer's details.</div><div>• Do not obtain dimensions by scaling drawings.</div><div>• All dimensions are to be checked on site prior to starting work.</div><div>• These drawings are to be read in conjunction with all other consultant's drawings and specifications.</div></div><div><div>• All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.</div><div>• New materials are to be used throughout unless otherwise noted.</div><div>• Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.</div></div></div>	<div>JJ Drafting</div> <div>Australia P/L</div> <div>26/90 Mona Vale Road, Mona Vale, NSW, 2103</div> <div>PO Box 687, Dee Why, NSW, 2099</div> <div>Mob. 0414 717 541 Email: jjdraft@tpg.com.au</div> <div>www.jjdrafting.com.au</div>	REV:	DATE:	DESCRIPTION:	<div>CONCEPT RESIDENCE PLANS</div> <div>30 - 32 Lakeview Parade - Warriewood NSW 2102</div> <div>CLIENT:</div> <div>Tom Daley</div> <div>DRAWING TITLE:</div> <div>ELEVATIONS</div>	DATE:	DRAWN BY:	SCALE:
							March/23	LB	1:100 @ A3
							JOB No:	CHECKED BY:	DRAWING No:
							1130/23	JJ	LOT3_D04



	<div>NOTES (E & OE)</div> <ul style="list-style-type: none">• All structures including stormwater & drainage to engineer's details.• Do not obtain dimensions by scaling drawings.• All dimensions are to be checked on site prior to starting work.• These drawings are to be read in conjunction with all other consultant's drawings and specifications.• All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.• New materials are to be used throughout unless otherwise noted.• Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.	<div>JJ Drafting</div> <div>Australia P/L</div> <div>26/90 Mona Vale Road, Mona Vale, NSW, 2103</div> <div>PO Box 687, Dee Why, NSW, 2099</div> <div>Mob. 0414 717 541 Email: jjdraft@tpg.com.au</div> <div>www.jjdrafting.com.au</div> <div>ACN 651 693 346</div>	<div>REV:</div> <div>DATE:</div> <div>DESCRIPTION:</div>	<div>CONCEPT RESIDENCE PLANS</div> <div>30 - 32 Lakeview Parade - Warriewood NSW 2102</div> <div>CLIENT:</div> <div>Tom Daley</div>	<div>DATE:</div> <div>March/23</div>	<div>DRAWN BY:</div> <div>LB</div>	<div>SCALE:</div> <div>1:100 @ A3</div>
					<div>JOB No:</div> <div>1130/23</div>	<div>CHECKED BY:</div> <div>JJ</div>	<div>DRAWING No:</div> <div>LOT4_D04</div>



<div>NOTES (E & OE)</div> <ul style="list-style-type: none">• All structures including stormwater & drainage to engineer's details.• Do not obtain dimensions by scaling drawings.• All dimensions are to be checked on site prior to starting work.• These drawings are to be read in conjunction with all other consultant's drawings and specifications.• All workmanship & materials shall be in accordance with the requirements of current editions including amendments of the National Construction Code, relevant Australian Standards & local council requirements.• New materials are to be used throughout unless otherwise noted.• Concrete footings, slab, structural beams or any other structural members are to be designed by a practicing engineer.	<div>JJ Drafting Australia P/L</div> <div>26/90 Mona Vale Road, Mona Vale, NSW, 2103 PO Box 687, Dee Why, NSW, 2099 Mob. 0414 717 541 Email: jjdraft@tbg.com.au www.jjdrafting.com.au ACN 651 693 346</div>	<table><tr><th>REV:</th><th>DATE:</th><th>DESCRIPTION:</th></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td></tr></table>	REV:	DATE:	DESCRIPTION:																						<div>CONCEPT RESIDENCE PLANS</div> <div>30 - 32 Lakeview Parade - Warriewood NSW 2102</div> <div>CLIENT:</div> <div>Tom Daley</div>	<div>DATE:</div> <div>March/23</div>	<div>DRAWN BY:</div> <div>LB</div>	<div>SCALE:</div> <div>1:100 @ A3</div>
	REV:	DATE:	DESCRIPTION:																											
			<div>DRAWING TITLE:</div> <div>ELEVATIONS</div>	<div>JOB No:</div> <div>1130/23</div>	<div>CHECKED BY:</div> <div>JJ</div>	<div>DRAWING No:</div> <div>LOT5_D04</div>																								