AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 13 SEPTEMBER 2023

Ashleigh Sherry
Manager Business System and Administration

northern beaches council

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 13 September 2023 via teleconference Commencing at 10:00 AM

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ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 31 AUGUST 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 31 August 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	**DA2023/0518 - 7 MORGAN ROAD BELROSE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE, CONSTRUCTION OF A SINGLE GARAGE AND RETAINING WALLS, ALTERATIONS TO EXISTING DRIVEWAY AND ASSOCIATED LANDSCAPE WORKS**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/550778**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations
	3 ⇩Clause 20

PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 20 variation to the Side Building Setback and Front Building Setback.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Side Building Setback and Front Building Setback Standard pursuant to clause 20 of WLEP 2000 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2023/0518 for alterations and additions to a dwelling house, construction of a single garage and retaining walls, alterations to existing driveway and associated landscape works on land at Lot 2637 DP 752038, 7 Morgan Road BELROSE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0518

Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 2637 DP 752038, 7 Morgan Road BELROSE NSW 2085
Proposed Development:	Alterations and additions to a dwelling house, construction of a single garage and retaining walls, alterations to existing driveway and associated landscape works.
Locality:	B2 Oxford Falls Valley
Category:	Category 2 – Housing (and ancillary development)
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Craig William Watkinson Tanya Ellise Watkinson
Applicant:	J.A Bazire & M.J Leacy & M.J Steven

Application Lodged:	10/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/05/2023 to 02/06/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 20 Variation:	Yes
Recommendation:	Approval

Estimated Cost of Works:	$ 433,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house.

The site is located in an area identified as “Deferred Lands / Deferred matter” under Clause 1.3 (1A) of the Warringah Local Environmental Plan 2011 (WLEP 2000) and therefore the WLEP 2000 is the prevailing LEP.

The property is located within the B2 Oxford Falls Valley Locality pursuant to the Warringah Local Environmental Plan 2000 and the use of that land for the purpose of 'housing' is classified as a 'Category 2' land use.

The proposed application seeks a variation to the Side Building Setback and Front Building Setback development standards pursuant to Appendix B of the WLEP 2000. The proposal will result in a 15% breach to the 10m side setback requirement and a 40% to the 20m front setback requirement. The proposal requires to be determined by the Development Determination Panel as these breaches exceed 10%.

The Clause 4.6 variation requests for the non-compliances with the side building setback and front building setback arise primarily due to the siting of the existing dwelling and location of existing driveway access into the subject site.

The proposed breach to the side building setback relate to ancillary structures which will have no unreasonable amenity or visual impacts. The proposed structures within the side setback will be of minimal bulk and scale and the proposal will retain adequate building separation and landscaping within the side setback. The proposed breach to the front building setback relates to an open hardstand parking area and minor dwelling addition. Given the siting of the dwelling, the existing built form, and the retention of suitable landscaping, it is considered that the proposal will not result in unreasonable visual impact to the Desired Future Character of the B2 Oxford Falls Valley Locality. Further, the dwelling will not result in unreasonable amenity impacts on neighbouring properties in terms of view loss, overshadowing or privacy given the considerable distance from neighbouring dwellings due to the large lot sizes in the area.

The proposal complies with all other built form controls and no objections have been raised in the referrals (subject to conditions). Conditions have been imposed by Council's Landscape and Road Assets Officer that the proposed landscaping works within the Road Reserve are not approved as part of this Development Application and are subject to separate approval process.

No submissions were received from adjoining neighbours.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal is a suitable and appropriate development for the subject site, for the reasons outlined in this report.

Accordingly, it is recommended that the application be **APPROVED** subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

The new works involve demolition works and the construction of alterations and additions to an existing dwelling house.

Specifically, the proposed works consist of the following:

- Addition of single garage/storage at lower ground level;
- Addition of 2 rooms (bedroom and study), atop of existing and proposed garage;
- Internal reconfiguration;

- Addition of external access stairs from ground level balcony to rear garden, including extension of ground floor balcony;
- Entry structure;
- Widening of pool coping and updated poolsafe barrier to existing swimming pool;
- Fire pit with inbuilt seating;
- Updated paved outdoor areas and access paths, steppers and stairs to link house to garden and pool area;
- Upgraded driveway entry, cross over and front parking and turning area;
- Additional fencing to create an extra paddock for horses;
- New fencing;
- Retaining wall works;
- Landscaping works.

ASSESSMENT INTRODUCTION

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

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

SITE DESCRIPTION

The subject site consists of one (1) allotment located on the northern side of Morgan Road.

The site is irregular in shape with a frontage of 67.815m along Morgan Road, and a maximum depth of 101.5m. The site has a surveyed area of 6792sqm.

The site is located within the B2 Oxford Falls Valley locality and accommodates an existing double storey brick house with a tile roof and integrated double garage, two farm sheds, a

driveway and service access road, a horse training arena, a swimming pool, and multiple fenced paddocks.

The site predominantly falls towards the north-east by approx. 16m.

There are landscaped gardens to the rear, front and western side of the existing dwelling and there is a strip of retained native bush in the front along the western boundary and a large pocket of native bush in the front south-east corner of the property.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of low density and rural residential dwellings, seniors housing developments, low intensity commercial and industrial uses and public reserves.

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:

- **DA2014/1348** – Development Application for demolition works and construction of farm buildings, shed, driveway and retaining wall – Approved 02/03/2015
- **BC2014/0148** – Building Information Certificate for whole of the dwelling – Issued 14 October 2014

APPLICATION HSITORY

11/04/2023
Council wrote to the applicant, raising concerns primarily in relation to insufficient information.

01//08/2023
Amended plans and additional information were submitted to address Council's concerns.

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;

Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2000 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional

Section 4.15 'Matters for Consideration'	Comments
	information. No additional information was requested in this case. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	i) The environmental impacts of the proposal on the natural and built environment are addressed under the General Principles of Development Control in this report. In summary, the proposal is satisfactory with conditions, having regard to environmental impacts. (ii) The proposal will not have a detrimental social impact on the locality considering the residential character of the proposal. (iii) The proposal will not have a detrimental economic impact on the locality considering the mixed semi-rural uses within the surrounding locality and the existing and ongoing use of the site for residential purposes.

Section 4.15 'Matters for Consideration'	Comments
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 that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Building Code & Bushfire Hazard Solutions Pty Limited dated 28/02/2023). The report stated that the bushfire attack level of the site is "Flame Zone"

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

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/05/2023 to 02/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**Supported subject to conditions.** The proposal is supported with regard to landscape issues. <u>Updated Comment 02/08/23:</u> The landscape works under the development application are permitted only within the legal property boundaries,

	and the proposed landscape works within the road verge shall be part of a section 138 and 139 (of the Roads Act)

Internal Referral Body	Comments
	application, for approval or otherwise. Original Comment: *It shall be noted that Landscape Referral will only assess the proposed works within the property boundary thus the alterations and planting proposed in the road reserve shall be deferred to Council's Road Assets referral team for assessment and comment. Furthermore, Council's Bushland and Biodiversity referral team shall comment on the proposed removal of native vegetation in the road reserve.* *No concerns are raised with the works proposed within the property boundaries. Although the Arboricultural Impact Assessment (AIA) recommended the removal of tree 7, the Statement of Environmental Effects and plans identify all trees to be retained, and as such all trees and vegetation to be retained shall be protected during works as per the recommendations of the AIA, subject to the imposed conditions. All proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent and all natural rock outcrops outside the approved construction footprint shall be protected during works.*
NECC (Bushland and Biodiversity)	**Supported subject to conditions.** **UPDATED COMMENTS 03/08/2023** Please refer to the landscape referral comments, no landscaping works outside of the property boundary can be approved under this application. No additional biodiversity related conditions will apply. **ORIGINAL COMMENTS:** The proposal seeks approval for alterations and additions to a dwelling house, construction of a single garage and retaining walls, alterations to existing driveway and associated landscape works. The comments in this referral relate to the following applicable controls and provisions: • Biodiversity Conservation Act 2016 • Planning for Bushfire Protection 2019 • Warringah DCP Clause E2 - Prescribed Vegetation • Warringah DCP Clause E6 - Retaining unique environmental features The proposal has been submitted with the following biodiversity related documentation: • Bushfire Report (BC&BHS, February 2023) • Arboricultural Impact Assessment - AIA

	(Growing My Way, April 2023)

Internal Referral Body	Comments
	• Plans Master Set (Landart, January 2023) The comments relating to each of the documents are the following: • The bushfire report has determined that the level of risk awarded to the site is BAL-FZ (Flame Zone). Therefore, the site will have to be treated as an Asset Protection Zone (APZ) in perpetuity. However, the existing building footprints precludes the ability to provide compliant APZs and therefore, all grounds not built upon will have to be maintained in accordance with APZ requirements. • The AIA has concluded that a total of 7 trees would potentially be impacted by the proposed alterations and additions. However, Tree 4 has already removed due to failure. Tree 7 (Eucalyptus haemostoma) is a native tree in decline (confirmed via Desktop survey) and its removal will not be objected to subject to replacement planting taking place in an adequate space within the property boundary (APZ compliant). • The works will require Landscaping efforts to be done in the vicinity of unique environmental features (Areas with large rocks and native bushland) and therefore, conditions shall apply to ensure their protection during completion of works. • The removal of vegetation from the road reserve is not supported.
NECC (Development Engineering)	**Supported subject to conditions.** The site slopes to the rear and drainage via gravity to the street is not feasible. A stormwater plan has not been provided, however due to the rural nature of the site, this can be conditioned to ensure no adverse impacts on the downstream property. The site contains two (2) existing vehicle crossings which is not desirable. The application proposes to adjust the vehicle crossings. The application does not show the proposed width of the altered vehicle crossings, hence conditions have been provided limiting each crossing to a maximum of 4 metres.

Internal Referral Body	Comments
Road Reserve	There is some impact on existing road infrastructure. It is noted that mass plantings of native grass and native tree planting(Banksia or similar) has been proposed on Council verge to highlight and frame driveway entry. The two vehicle crossings are to have piped culvert crossings aligned with the existing swale drain and/or Council's specifications for culvert crossings. The culvert crossings are to be maintained by the owner to ensure continual free flow of stormwater in the table drain/ swale. The swale/table drain is to be retained and not to be filled in. The free flow of stormwater in the table drain is not to be impeded. Development Engineer to provide comments and conditions in relation to driveway access.
Environmental Health (Unsewered Lands)	**Supported subject to conditions.** General Comments Conditions recommended Recommendation APPROVAL - subject to conditions
NECC (Water Management)	**Supported subject to conditions.** This application was assessed in consideration of but not limited to: • Supplied plans and reports; • Relevant LEP and DCP clauses; • Northern Beaches Water Management for Development Policy A stormwater plan has not been provided, however due to the rural nature of the site, this can be conditioned to ensure no adverse impacts on the receiving environment. Supported, subject to conditions

External Referral Body	Comments

Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

External Referral Body	Comments
Rural Fire Service - Local Branch - EP&A Act, s4.14	**Supported subject to conditions.** The application was referred to the NSW Rural Fire Service. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.
Aboriginal Heritage Office	**Supported subject to conditions.** No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. 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.

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)

SEPP (Resilience and Hazards) 2021

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.

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.

Warringah Local Environmental Plan 2011 (WLEP 2011)

The WLEP 2000, B2 Oxford Falls Valley (which cover the land subject to this application) and C8 Belrose North Localities 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

The property is subject to Clause 1.3(1A) of the Warringah Local Environmental Plan 2011 and is classified as 'Deferred Land'. The development is therefore guided by the provisions of the Warringah Local Environment Plan 2000 and is located within the B2 Oxford Falls Valley locality.

B2 Oxford Falls Valley

The Desired Future Character Statement for Locality B2 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 proposed development is defined as "housing" under the WLEP 2000 dictionary. "Housing" is identified as Category 2 development in this locality.

Clause 12(3)(a) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality's DFC statement.

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:

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

Comment:

When the DFC refers to the 'present character', it is intending that the character should not be altered from the character exhibited at the time the instrument was gazetted (being that stipulated above). From the time the 'DFC' was set, the land is to be developed in accordance with the future directions stipulated within the DFC statement.

The character of the Oxford Falls Valley in 2000 is best described as:

- Predominantly natural landforms (which can include ridgetops and rock outcrops), remnant bushland (remnant indigenous flora, including canopy trees and understorey

vegetation, and on remnant native ground cover species), habitat for fauna, natural drainage lines and watercourses (including the catchments); and

- Interspersed detached dwelling houses (with associated ancillary structures).

Comment:

It is considered that the proposed development adequately provides for the preservation of this character for the reasons provided in the following sections of the DFC discussions. In summary, the application provides for a detached dwelling house with ancillary structures and does not unreasonably impact upon the natural landform and environment.

Accordingly, the relevant components of the DFC statement are 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.***

Comment:

The proposed development will retain a single detached dwelling house and ancillary structures which conforms 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.***

Comment:

The proposed works 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:
No significant vegetation or landscape features is proposed for removal as part of this application and the proposal complies with Landscaped Open Space. The proposal has been reviewed by Council's Bushland & Biodiversity Officer who has raised no objections (subject to conditions)

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

Comment:
The proposal will match the design of the existing dwelling.

- ***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 subject site does not adjoin Forest Way and Wakehurst Parkway. Suitable landscaping will be retained at the front of the site.

- ***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 – 1 dwelling	Yes
Building Height:	8.5m (Overall)	7.5m	Yes
	7.2m (Floor to upper ceiling)	6m	Yes
Front Building Setback	20.0m	12m – (Hardstand parking) 18.5m (Dwelling addition)	**No***
Rear & Side Building Setback	10.0m	North (rear): 45m East: 43m West: 8.5m (Seating) and 8.8m (entry arbour)	Yes Yes **No***
Landscaped Open Space (LOS)	30% of the site area (2038sqm)	>30%	Yes

The proposed development fails to satisfy the Locality's Front Building Setback and 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 front and side setbacks Built Form Control.

Side Boundary Setback Built Form Control

Built Form Standard	Required	Proposed	Compliant
Side boundary setback	10.0m (West) 10.0m (East)	8.5m (Seating) and 8.8m (entry arbour) In excess of 10m	**No** Yes

Merit consideration of non-compliance

The proposed garden fire pit and seating area results in a setback of 8.5 metres to the western boundary, resulting in a variation of 15% to the 10m requirement.

The proposed entry arbour structure results in a setback of 8.8 metres to the western boundary, resulting in a variation of 12% to the 10m requirement.

The applicant has lodged a request to vary Clause 20 of the WLEP 2000 which presents the following arguments to justify the departure with the side boundary control:

> *The arbour is located in alignment with the existing front entry door and as such has just a little less than 50% of the proposed arbour sitting within the western building setback. The arbour will visually become an integral part of the house and provide a link between the house and the garden and add softening to the built form. The arbour will reduce the visual bulk of the existing residence and will not be visible from the roadway or any neighbouring properties. As such the proposal still fully complies with the objectives of the clause.*
>
> *The rear built-in seating area / fire pit is located between the residence and the pool, at a point where there is just sufficient width between the house and pool to provide access from the house, via the lawn to the built-in seating area and from there to the pool area. The steep drop off from the house to the pool, limits the locating of the proposed in-built seating area and the required access from the house and the pool. Less than 40% of the proposed in-built seating area sits within the western building setback. The proposed built-in seating area is well sited and sunk into the slope between the house and the pool and with surrounding vegetation, will not be visible from the roadway or neighbouring properties. As such the built-in seating area / fire pit still fully complies with the objectives of the clause.*

Comment
The applicant's justification is supported. The minor encroachment of the side setback with ancillary structures will have no unreasonable amenity or visual impacts. The proposed structures within the side setback will be of minimal bulk and scale and the proposal will retain adequate building separation and landscaping within the side setback.

The development is 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.

Front Setback Built Form Control

Built Form Standard	Required	Proposed	Compliant
Front building setback	20.0m	12m – (Hardstand parking) 18.5m (Dwelling addition)	**No**

Merit consideration of non-compliance

The proposed hardstand parking area results in a setback of 12 metres from the front boundary, resulting in a variation of 40% to the 20m requirement.

The proposed dwelling additions results in a setback of 18.5 metres from the front boundary, resulting in a variation of 7.5% to the 20m requirement.

The applicant has lodged a request to vary Clause 20 of the WLEP 2000 which presents the following arguments to justify the departure with the side boundary control:

- *The proposed addition will be well screened with the existing native bush vegetation between the residence and the roadway. As such the objectives of keeping building bulk away from the roadway and visually screen such is still achieved. Furthermore, the retention of the existing character of a bush and rural setting is still fully maintained.*
- *The proposed addition is well placed within the existing setting and the minimal incursion into the front setback with the proposed addition is of no impact to the views and character of the area from within the site, from neighbouring properties and from the roadway*
- *The existing placement of the residence and garages on the property, dictates and restricts the locating of the proposed addition. This is further influenced by the existing large height difference in ground level of nominal 2.5 meters from the rear external lower ground areas down to the pool area, and of a narrow distance of only 9.75 meters from the north-east corner of the existing double garage to the existing pool, which restricts any further development to the northern side of the existing double garage.*

Comment
The applicant's justification is supported. The hardstand parking area will be open with no associated structures. As such, this area will retain the openness of the front setback area and not result in unreasonable amenity of streetscape impacts.

The minor encroachment of the front setback of the dwelling additions will have no unreasonable amenity or visual impacts. The proposed additions will complement the design of the existing dwelling and will meet required building height and envelope controls. The works will not result in the removal of substantial trees or vegetation and suitable landscaping will be retained within the front setback to minimise built form and retain the bushland character of the area.

The development is consistent with the objectives underlying the Front Boundary Setback Built Form Control. In this respect, the variation to the Front building setback Built Form Control is supported.

It is for these reasons that the variation to the Side Boundary Setback and Front Boundary Setback Built Form Control (Development Standard) pursuant to Clause 20(1) 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 application:

General Principles	Applies	Comments	Complies
CL38 Glare and reflections	Yes	Satisfactory A standard condition of consent will ensure new roofs are of dark, non-reflective materials.	Yes
CL42 Construction Sites	Yes	Subject to conditions of consent, the construction works will minimise impacts upon adjoining properties	Yes

General Principles	Applies	Comments	Complies
CL43 Noise	Yes	Satisfactory	Yes
CL44 Pollutants	Yes	Satisfactory	Yes
CL48 Potentially Contaminated Land and CL49 Remediation of Contaminated Land	Yes	The site has been used for residential purposes for a significant period of time and it is therefore considered that the site poses no risk of contamination.	Yes
CL50 Safety and Security	Yes	Satisfactory	Yes
CL51 Front fences and walls	Yes	The new front fence is proposed to be post and rail with a maximum height of 1.5m to match the existing front fence. The front entry gate and associated front wall will be 1.5m in height and will be consistent with other properties in the locality. Overall, the proposed fence is considered to be compatible with the existing streetscape character.	Yes
CL52 Development near parks, bushland reserves and other public open spaces	Yes	Satisfactory	Yes
CL54 Provision and Location of Utility Services	Yes	The proposal has been reviewed by Council's Environmental Health (Unsewered Lands) Officer who has raised no objections subject to conditions which require a copy of a s68 (Local Government Act 1993) approval to operate the wastewater system, and the wastewater system must be activated and effectively operating prior to the issue of the Occupation Certificate.	Yes
CL56 Retaining Unique Environmental Features on Site	Yes	Satisfactory The proposal has been reviewed by Council's Bushland & Biodiversity Officer who has raised no objections (subject to conditions)	Yes
CL57 Development on Sloping Land	Yes	Satisfactory	Yes
CL58 Protection of Existing Flora	Yes	Satisfactory	Yes

General Principles	Applies	Comments	Complies
		The proposed works are generally in areas which do not contain existing significant vegetation and will not result in the removal of large numbers of trees. Council's Natural Environment Unit has assessed the proposal and has not raised any concerns.	
CL60 Watercourses and Aquatic Habitats	Yes	Satisfactory The proposed development will not impact on the watercourse subject to appropriate conditions of consent that require sediment and erosion control measures to be implemented prior and during construction.	Yes
CL61 Views	Yes	Satisfactory No objections were received from neighbours to the proposal, and the site inspection conducted did not reveal any likely unreasonable view loss as a result of the proposed works.	Yes
CL62 Access to sunlight	Yes	Satisfactory The works will not create any unreasonable overshadowing of neighbours given the size of the site and the proposed setbacks	Yes
CL63 Landscaped Open Space	Yes	Satisfactory	Yes
CL63A Rear Building Setback	Yes	Satisfactory	Yes
CL64 Private open space	Yes	Satisfactory	Yes
CL65 Privacy	Yes	Satisfactory	Yes
CL66 Building bulk	Yes	Satisfactory	Yes
CL67 Roofs	Yes	Satisfactory	Yes
CL70 Site facilities	Yes	Satisfactory	Yes
CL71 Parking facilities (visual impact)	Yes	Satisfactory	Yes
CL72 Traffic access and safety	Yes	Satisfactory	Yes
CL74 Provision of Carparking	Yes	Satisfactory	Yes

General Principles	Applies	Comments	Complies
CL76 Management of Stormwater	Yes	Satisfactory The proposal has been reviewed by Council's Development Engineer who has raised no objections (subject to conditions)	Yes
CL77 Landfill	Yes	Satisfactory	Yes
CL78 Erosion and Sedimentation	Yes	Satisfactory If approved, suitable conditions are to be imposed to ensure erosion and sedimentation measures are implemented during works.	Yes

Schedules

Schedule	Applies	Complies
Schedule 5 State policies	Yes	Yes
Schedule 6 Preservation of bushland	Yes	Yes
Schedule 7 Matters for consideration in a subdivision of land	No	N/A
Schedule 8 Site analysis	Yes	Yes
Schedule 9 Notification requirements for remediation work	No	N/A
Schedule 10 Traffic generating development	No	N/A
Schedule 11 Koala feed tree species and plans of management	No	N/A
Schedule 12 Requirements for complying development	No	N/A
Schedule 13 Development guidelines for Collaroy/Narrabeen Beach	No	N/A
Schedule 14 Guiding principles for development near Middle Harbour	No	N/A
Schedule 15 Statement of environmental effects	Yes	Yes
Schedule 17 Carparking provision	N/A	N/A

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $4,330 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $433,000.

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 2000;
- Warringah Development Control Plan 2000; 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

This proposal for Earthworks and Construction of a retaining wall has been referred to the Development Determination Panel (DDP) due to the application proposing a variation to the Side Building Setback and Front Building Setback development standard of more than 10%

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.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/0518 for Alterations and additions to a dwelling house, construction of a single garage and retaining walls, alterations to existing driveway and associated landscape works. on land at Lot 2637 DP 752038, 7 Morgan Road, BELROSE, 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-9 Rev.B - Site Plan	20/02/2023	Landart Landscapes
DA-10 Rev.C - Landscape Master Plan	31/07/2023	Landart Landscapes
DA-11 Rev.C - Ground Floor Plan	31/07/2023	Landart Landscapes
DA-12 Rev.C - Lower Ground Floor Plan	31/07/2023	Landart Landscapes
DA-13 Rev.B - Northern House Elevations	20/02/2023	Landart Landscapes
DA-14 Rev.B - Eastern House Elevations	20/02/2023	Landart Landscapes
DA-15 Rev.B - Southern House Elevations	20/02/2023	Landart Landscapes
DA-16 Rev.B - Roof Plan	20/02/2023	Landart Landscapes
DA-20 Rev.A - Proposed Finishes	11/04/2023	Landart Landscapes
DA-21 Rev.A - House Sections	31/07/2023	Landart Landscapes

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
DA-17 Rev.C - Environmental Management Plan	31/07/2023	Landart Landscapes
DA-19 Rev.B - Drainage Plan	20/02/2023	Landart Landscapes

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (A48839)	27/02/2023	Landart Landscapes
Construction Impact & Management Statement for Development Application	April 2023	"GROWING MY WAY" Tree Consultancy
Bushfire Assessment Report (230647)	28/02/2023	Building Code & Bushfire Hazard Solutions Pty Limited

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
DA-10 Rev.C - Landscape Master Plan	31/07/2023	Landart Landscapes

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	-	-

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	16/05/2023

NSW Rural Fire Service	NSW Rural Fire Service - Referral Response	26/05/2023

(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, in accordance with the Dictionary of the Warringah Local Environmental Plan 2000, as follows:

A dwelling is defined as:
"dwelling means a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile."
(development is defined by the Warringah Local Environmental Plan 2000)

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. **Rural Fire Service Conditions/Requirements**
The development shall be carried out in accordance with all conditions and requirements raised by NSW RFS in their correspondence (Ref. CNR-55198- DA20230515002061-Original-1) dated 26 May 2023.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of the Construction Certificate and final Occupation Certificate.

Reason: To ensure the development is carried out with the requirements of RFS.

5. **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.

6. **No approval for landscaping works within Council the road reserve**
The landscape works under the development application are permitted only within the legal property boundaries, and the proposed landscape works within Council's Road Reserve shall be part of a minor Encroachments/ Constructions With Road Reserve Application for approval of landscaping works within the public road reserve

Reason: To ensure private works within the public road reserve are constructed in accordance with relevant standards and Council's specification and assign the responsibility for the structures on Council road reserve to the property owner.

7. **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.

8. **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.

9. **No Works on Adjoining Land**
All approved works are to be located entirely within the subject site. No Approval is granted under this consent for any works within or on the property boundaries of adjoining privately owned land.

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

FEES / CHARGES / CONTRIBUTIONS

10. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $4,330.00 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 $433,000.00.

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.

11. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

12. **Stormwater Disposal from Low Level Property**
The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's "Warringah Water Management Policy PL 850" in particular the Stormwater Drainage from Low Level Properties Technical Specification. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's "Warringah Water Management Policy PL 850" 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. **Erosion and Sediment Control Plan**
An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

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

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

Reason: Protection of the receiving environment.

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

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

Reason: Protection of the receiving environment.

15. **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.

16. **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.

17. **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.

18. **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, except where site conditions permit the following:
(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

19. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D)

in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

20. **Construction Site Management Plan**
Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:
- location and materials for protective fencing and hoardings to the perimeter on the site
- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- protective measures for on-site tree preservation (including in accordance with AS 4970- 2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures
- location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. **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.

22. **Submission of Minor Encroachment Application for Works in the Public Road**
The applicant is to submit a Minor Encroachments/ Constructions With Road Reserve Application for approval of landscaping works within the public road reserve(Form #4033). The applicant is to enter into any appropriate agreements with Council. All costs related to the above application are to be borne by the applicant.

Reason: To ensure private works within the public road reserve are constructed in accordance with relevant standards and Council's specification and assign the responsibility for the structures on Council road reserve to the property owner. To ensure all plants and trees in the road reserve are to be local native species and to conform to the native planting ward guidelines located on Council's website.

DURING BUILDING WORK

23. **Wastewater disposal areas**
Proposed works shall not impact on any wastewater disposal (Land Application Areas) building materials and equipment shall not be stored within the wastewater disposal areas on site.

Reason: To protect land and infrastructure in the wastewater disposal area from damage and failure.

24. **Protection of Rock and Sites of Significance**
All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

25. **Protection of Existing Street Trees & Vegetation**
All existing street trees and vegetation in the vicinity of the works shall be retained during all construction stages, and the street trees and vegetation fronting the development site shall be protected during works.

All street trees and vegetation within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) or vegetation is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

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

   b) Tree protection shall be undertaken as follows:
      i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,

ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,

vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,

vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/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.

27. **Condition of Trees**

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

arboricultural advice from an Arborist 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.

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

Reason: To protect native wildlife.

29. **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.

30. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

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. **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.

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

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

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

34. **Vehicle Crossings**
The Applicant is to construct or adjust two (2) vehicle crossings only at approximately the same location as the existing vehicle crossings. The property shall have a maximum of two (2)

vehicle crossings only. The vehicle crossings are to be a minimum of 3 metres and a maximum of 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 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 or another finish as approved in writing by Council. Any redundant crossings are to be restored to the satisfaction of Council. Prior to the pouring of concrete or commencement of construction 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.

35. **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.

36. **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.

37. **Stockpiling of Topsoil**
During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

38. **Landscape Completion**
Landscape works are to be implemented in accordance with the approved amended Landscape Plan(s), and inclusive of the following conditions:
a) the landscape works under the development application are permitted only within the legal property boundaries, and the proposed landscape works within the road verge shall be part of a section 138 and 139 (of the Roads Act) application, for approval or otherwise,
b) all tree planting shall be a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, 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, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
d) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
e) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.
Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

39. **Condition of Retained Vegetation**
Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans, 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.

40. **Replacement of Canopy Trees**
At least 1 Eucalyptus haemostoma (Scribbly gum) is to be planted on the site to replace protected trees approved for removal.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

41. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

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

42. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian

northern beaches council

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.

43. **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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management.

44. **Wastewater System**
Prior to the issuing of an Occupation Certificate, a copy of a s68 (Local Government Act 1993) approval to operate the wastewater system, and the wastewater system must be activated and effectively operating to the satisfaction of the Principal Certifier.

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

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

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.

47. **Swimming Pool Requirements (existing pool modified by works)**
The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:
(i) Swimming Pools Act 1992;
(ii) Swimming Pools Amendment Act 2009
(iii) Swimming Pools Regulation 2018;
(iv) Australian Standard AS1926 Swimming Pool Safety;
(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools;
(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
(b) A warning sign stating **'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING**

THIS POOL' has been installed.

(c) All signage shall be located in a prominent position within the pool area.

Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

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

48. **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.

Reason: To maintain local environmental amenity.

In signing this report, I declare that I do not have a Conflict of Interest.

Gareth David, Principal Planner

FOR DEVELOPMENT APPLICATION

Notes:
Do not scale from drawings.
The contractor is to determine on site existing dimensions and conditions before commencement of work. Any discrepancies are to be reported to the designer for instructions.
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GENERAL NOTES

- All civil, structural and hydraulic work associated with this project shall be to consulting engineer's details.

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CONSTRUCTION NOTES

Note 1: All materials and workmanship shall be in accordance with the latest relevant Australian Standard and Building Code of Australia. All plumbing and drainage works shall also be in accordance with the by-laws of Sydney Water.

Note 2: Written dimensions shall take precedence over scaled measurements, all dimensions and levels shall be verified by contractor on site, and initial setout approved by construction manager prior to commencement of work. If in doubt, contact Landscape Architect / Designer.

Note 3: Contractor shall confirm extent of existing vegetation to be removed / transplanted on site, prior to commencement of works.

Note 4: Excavator shall strip approved topsoil from all areas to be excavated and shall store material in an approved location on site. All excavation shall be carried out as necessary, including over-excavation in town areas (as required) to ensure min. 200mm depth of topsoil is able to be provided and for garden areas (as required) to ensure that min. 300mm topsoil depth is able to be provided. Topsoil depths refer to depth over subsoil, not over rock or concrete.

Note 5: Contractor shall ensure that damp proof courses on buildings are not breached and that air vents are not blocked or restricted.

Note 6: Retaining walls shall be constructed to heights as necessary to retain existing/proposed ground levels, with final extent of all walling to be as required and to construction manager's on-site approval.

Note 7: Waterproofing and drainage line in gravel filled trench, or other approved drainage layer, shall be installed to rear of all walls where retaining.

LEGEND

SCALE 1:200

REV	DATE	BY	REVISION NOTES
B	20/02/2023	CK	Amendments as per 13 March site meeting 13 March
A	20/02/2023	CK	For Council DA Submission

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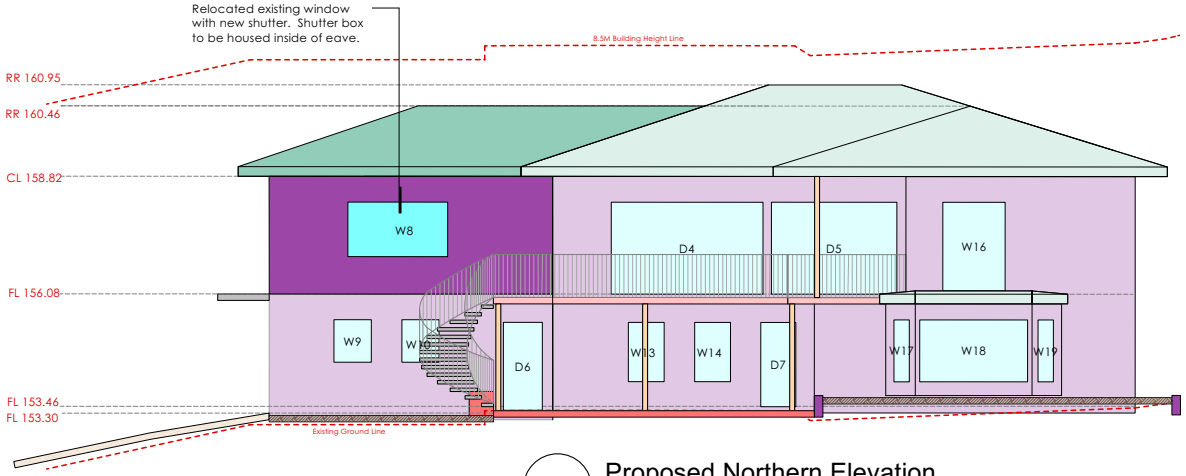
Development Application Plan

AT
7 Morgan Road, Belrose

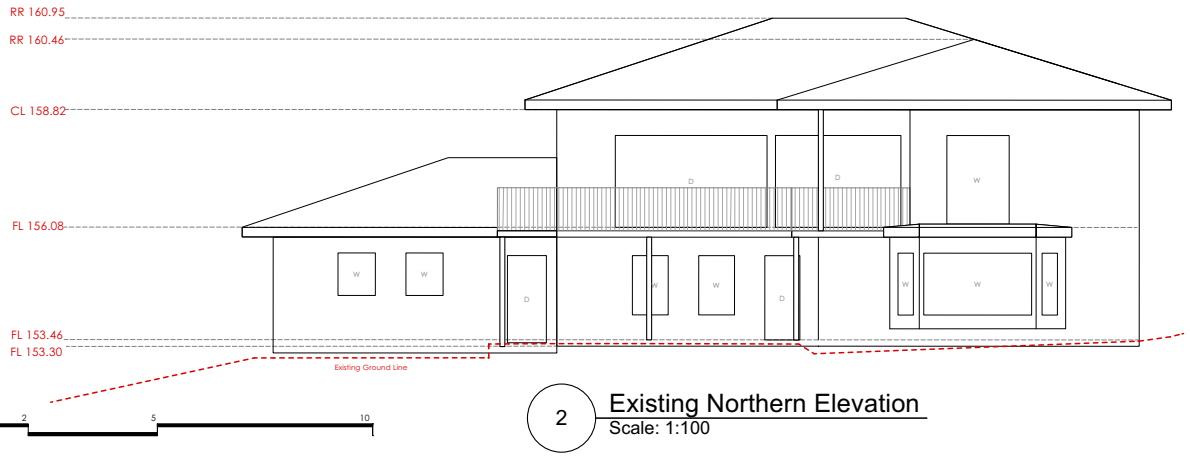
FOR
Craig & Tanya Watkinson

DRAWING
Site Plan

PROJECT NO:	22143	Project North	True North
DATE:	31/01/2023		
SCALE(A1):	1:200		
DWG NO:	DA-9 (A1)	Revision:	B



1 Proposed Northern Elevation
Scale: 1:100



2 Existing Northern Elevation
Scale: 1:100

0 1 2 5 10

SCALE 1:100

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FOR DEVELOPMENT APPLICATION

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BASIX NOTES: (see tables on DA-11 && DA-12)

- All new windows to comply with BASIX certificate. W3, W4, W6, W7 & W11 require no greater U-value than 3.67 and SHGC of 0.59

- All new external and internal walls and insulation to comply with BASIX certificate insulation requirements of R1.16 or 1.70 with construc.

- New bathroom toilet flush systems to comply with BASIX certificate of no greater than 4 litres per average flush or of 3 start water rating

- New showerheads to comply with BASIX certificate of no greater than 9 litres per minute of 3 start water rating

- New tap to comply with BASIX certificate of no greater than 9 litres per minute of 3 start water rating

- All new roofing sections and ceilings to comply with BASIX certificate of 1.45 up insulation for ceiling and 55mm foil blanket for roofing

- All new interior lighting to be LED lights

LEGEND

- EXISTING ROOFING (TILES)
- PROPOSED ROOFING (TILES TO MATCH EXISTING)
- EXISTING MASONARY (BRICK FOR RESIDENCE & BLOCK FOR GARDEN)
- PROPOSED MASONARY (BRICK FOR RESIDENCE & BLOCK FOR GARDEN)
- EXISTING WINDOWS & DOORS
- PROPOSED WINDOWS & DOORS
- EXISTING SLABS
- PROPOSED SLABS
- EXISTING TIMBER
- PROPOSED STEEL

B	20/02/2023	CK	Amendments as per 15 March site meeting 15 March
A	16/01/2023	CK	For Council DA Submission

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W: www.landart.com.au
T: (02) 9958 0462
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CONCEPT NOTES:

This drawing is for design guidance only. Not for construction. All work to comply with the Building Code of Australia + relevant by-laws. Verify all dimensions on site with a detailed site survey prior to fabrication. All work to be installed by licensed contractors to engineers drawings and specifications.

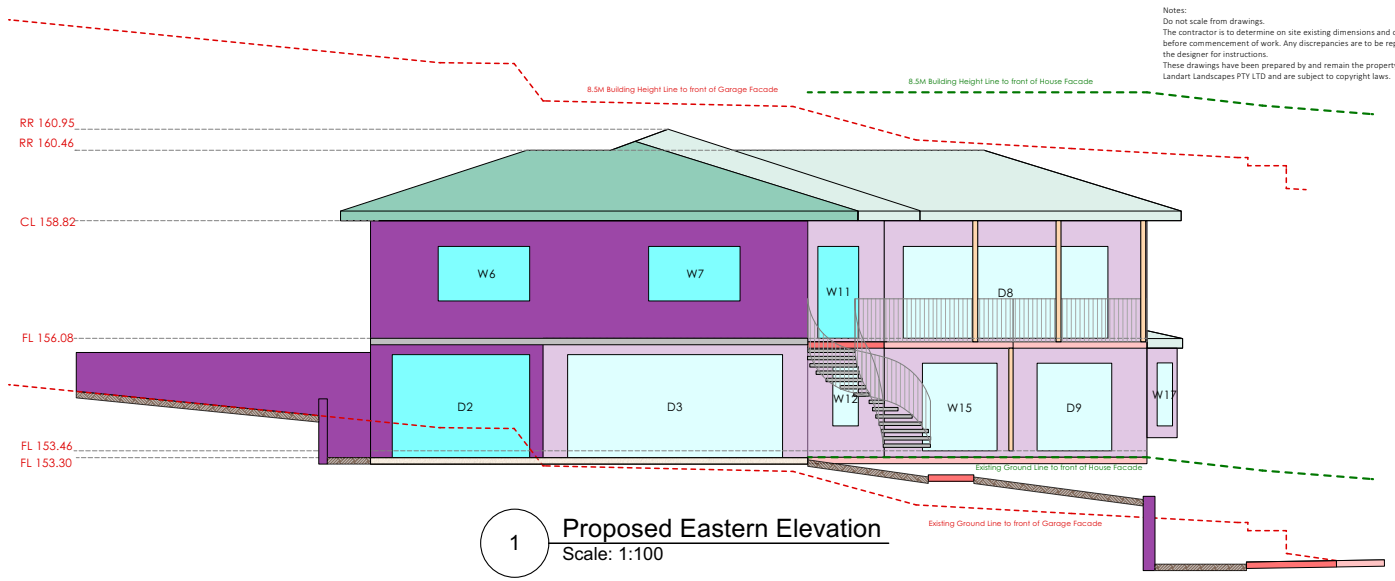
Development Application Plan
at
7 Morgan Road, Belrose
for
Craig & Tanya Watkinson

Project North True North

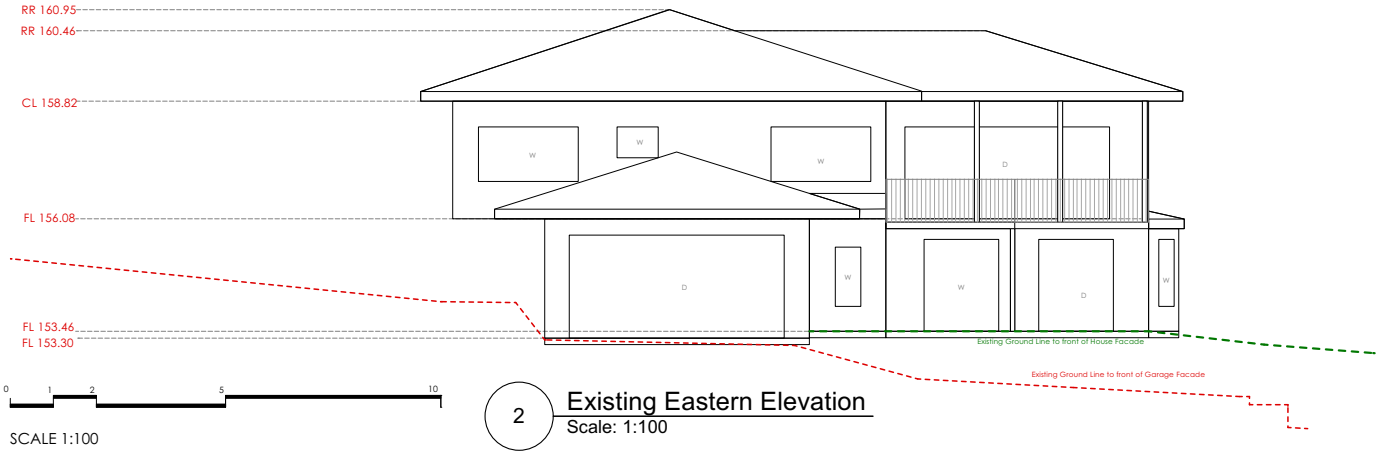
Northern House Elevations

SCALE @ A3	DATE	DRAWN BY
1:100	16/01/2023	CK

PROJECT	Drawing no.	REVISION
22143	DA-13	B



1 Proposed Eastern Elevation
Scale: 1:100



2 Existing Eastern Elevation
Scale: 1:100

0 1 2 5 10
SCALE 1:100

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FOR DEVELOPMENT APPLICATION

GENERAL NOTES

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BASIX NOTES: (see tables on DA-11 && DA-12)

- All new windows to comply with BASIX certificate. W3, W4, W6, W7 & W11 require no greater U-value than 3.67 and SHGC of 0.59
- All new external and internal walls and insulation to comply with BASIX certificate insulation requirements of R1.16 or 1.70 with construc.
- New bathroom toilet flush systems to comply with BASIX certificate of no greater than 4 litres per average flush or of 3 start water rating
- New showerheads to comply with BASIX certificate of no greater than 9 litres per minute of 3 start water rating
- New tap to comply with BASIX certificate of no greater than 9 litres per minute of 3 start water rating
- All new roofing sections and ceilings to comply with BASIX certificate of 1.45 up insulation for ceiling and 55mm foil blanket for roofing
- All new interior lighting to be LED lights

LEGEND

- EXISTING ROOFING (TILES)
- PROPOSED ROOFING (TILES TO MATCH EXISTING)
- EXISTING MASONARY (BRICK FOR RESIDENCE & BLOCK FOR GARDEN)
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- PROPOSED WINDOWS & DOORS
- EXISTING SLABS
- PROPOSED SLABS
- EXISTING TIMBER
- PROPOSED STEEL

B	20/02/2023	CK	Amendments as per 15 March site meeting 15 March
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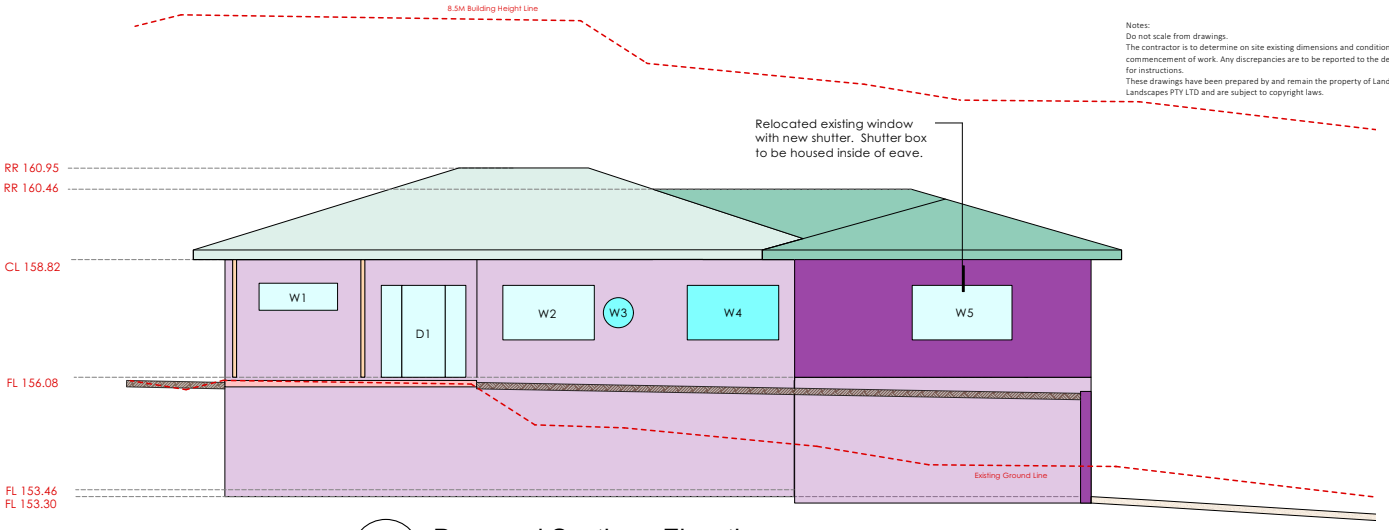
Development Application Plan
at
7 Morgan Road, Belrose
for
Craig & Tanya Watkinson

Project North True North

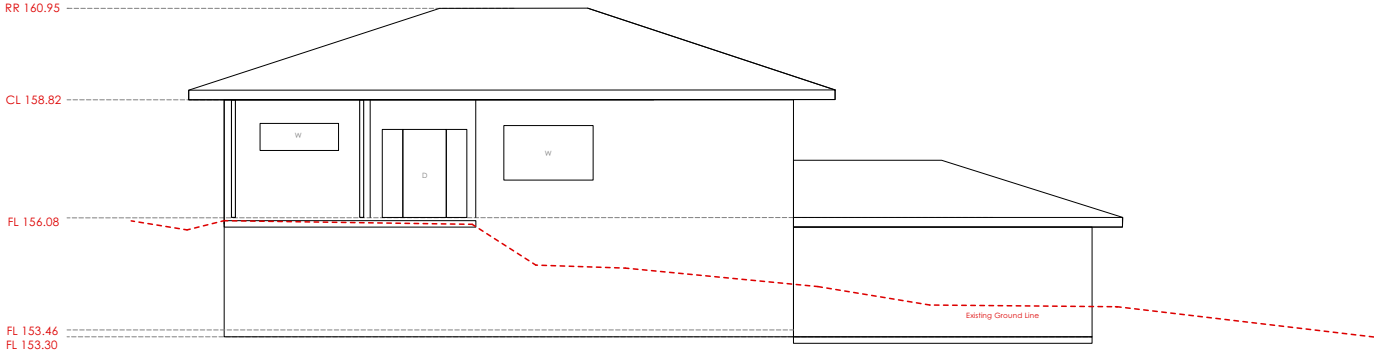
Eastern House Elevations

SCALE @ A3	DATE	DRAWN BY
1:100	16/01/2023	CK

PROJECT	Drawing no.	REVISION
22143	DA-14	B



1 Proposed Southern Elevation
Scale: 1:100



2 Existing Southern Elevation
Scale: 1:100

0 1 2 5 10

SCALE 1:100

Notes:
Do not scale from drawings.
The contractor is to determine on site existing dimensions and conditions before commencement of work. Any discrepancies are to be reported to the designer for instructions.
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FOR DEVELOPMENT APPLICATION

GENERAL NOTES

- All civil, structural and hydraulic work associated with this project shall be to consulting engineer's details.

- All levels have been taken from the survey prepared by Total Surveying Solutions on 11 October 2021.

- Exact location of site boundaries are to be confirmed on site by client or client's surveyor prior to commencement of work.

- The design of this project is Copyright and shall not be copied or reproduced in any way without the prior written permission of Landart Landscapes Pty. Ltd.

BASIX NOTES: (see tables on DA-11 && DA-12)

- All new windows to comply with BASIX certificate. W3, W4, W6, W7 & W11 require no greater U-value than 3.67 and SHGC of 0.59

- All new external and internal walls and insulation to comply with BASIX certificate insulation requirements of R1.16 or 1.70 with construc.

- New bathroom toilet flush systems to comply with BASIX certificate of no greater than 4 litres per average flush or of 3 start water rating

- New showerheads to comply with BASIX certificate of no greater than 9 litres per minute of 3 start water rating

- New tap to comply with BASIX certificate of no greater than 9 litres per minute of 3 start water rating

- All new roofing sections and ceilings to comply with BASIX certificate of 1.45 up insulation for ceiling and 55mm foil blanket for roofing

- All new interior lighting to be LED lights

LEGEND

- EXISTING ROOFING (TILES)
- PROPOSED ROOFING (TILES TO MATCH EXISTING)
- EXISTING MASONARY (BRICK FOR RESIDENCE & BLOCK FOR GARDEN)
- PROPOSED MASONARY (BRICK FOR RESIDENCE & BLOCK FOR GARDEN)
- EXISTING WINDOWS & DOORS
- PROPOSED WINDOWS & DOORS
- EXISTING SLABS
- PROPOSED SLABS
- EXISTING TIMBER
- PROPOSED STEEL

B	20/02/2023	CK	Amendments as per 15 March site meeting 15 March
A	16/01/2023	CK	For Council DA Submission

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398 Pittwater Road North Manly 2100
W: www.landart.com.au
T: (02) 9958 0462
F: (02) 9958 5426

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CONCEPT NOTES:

This drawing is for design guidance only. Not for construction. All work to comply with the Building Code of Australia + relevant by-laws. Verify all dimensions on site with a detailed site survey prior to fabrication. All work to be installed by licensed contractors to engineers drawings and specifications.

Development Application Plan
at
7 Morgan Road, Belrose
for
Craig & Tanya Watkinson

Project North True North

Southern House Elevations

SCALE @ A3	DATE	DRAWN BY
1:100	16/01/2023	CK

PROJECT	Drawing no.	REVISION
22143	DA-15	B

CLAUSE 20 VARIATION STATEMENT

PROPOSED ADDITION TO EXISTING DWELLING & UPGRADE OF DRIVEWAY AND SERVICE ACCESS, PLUS GENERAL ASSOCIATED LANDSCAPE WORKS

FOR

MR CRAIG AND MRS TANYA WATKINSON

7 MORGAN ROAD
BELROSE NSW 2085

REV B – JULY 2023

398 Pittwater Rd, North Manly 2100
P: 02 9199 0680 **ABN**: 711 3420 2850 www.landart.com.au

FRONT BUILDING SETBACK

The very southern extent of the proposed addition does not fully comply with the 20meter setback, being between 1256mm-1388mm within the 20 meter setback for a distance of 6,87m. The whole of the property lot frontage measures 67.9 meters. As such, this non compliance is a minimal incursion into the required setback of 20 meters from the front boundary.

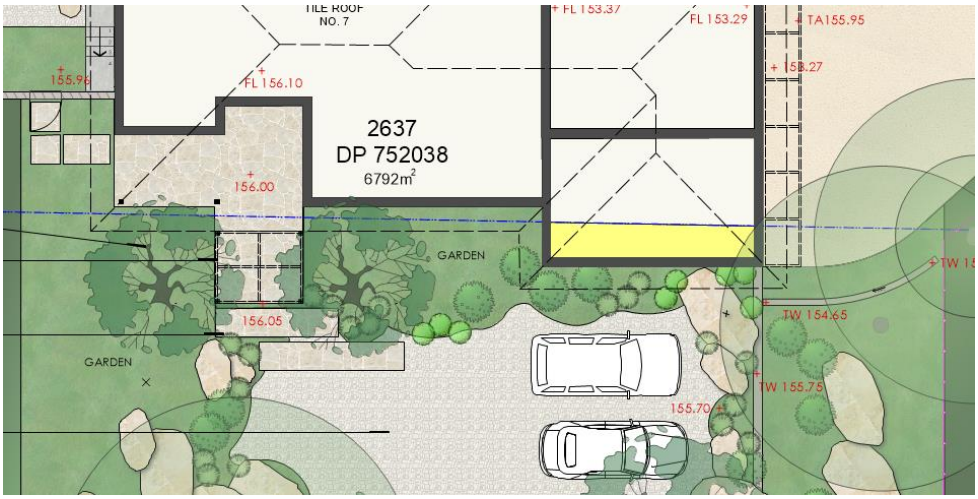


Fig 1 Building incursion into the front setback shown in yellow. Dashed blue line shows 20 meter front boundary setback.

The lower ground garage addition will not be visible at all from the roadway, due to existing topography and additional levelling of the front driveway arrival area. The proposed ground floor addition will be well screened with the existing native bush vegetation between the residence and the roadway, as well as additional proposed tree and shrub plantings to the front driveway area and nature strip. As such the objectives of keeping building bulk away from the roadway and visually screen such is still achieved. Furthermore, the retention of the existing character of a bush and rural setting is still fully maintained.

The existing placement of the residence and garages on the property, dictates and restricts the locating of the proposed addition. This is further influenced by the existing large height difference in ground level of nominal 2.5 meters from the rear external lower ground areas down to the pool area, and of a narrow distance of only 9.75 meters from the north-east corner of the existing double garage to the existing pool, which restricts any further development to the northern side of the existing double garage. Furthermore, there is also the

need to provide access from the rear lower level of the residence and from the existing garage side door, down to the farm sheds, as well as the protection of the existing Eucalyptus trees (2 off) in the south-east corner of the swimming pool area.

As such, the proposed addition is well placed within the existing setting and the minimal incursion into the front setback with the proposed addition is of no impact to the views and character of the area from within the site, from neighbouring properties and from the roadway. As such the proposal still fully complies with the objectives of this clause.

WESTERN BUILDING SETBACK

The existing placement of the property dictates the locating of a proposed front arbour, as well as a rear built-in seating area / fire pit.

The arbour is located in alignment with the existing front entry door and as such has just a little less than 50% of the proposed arbour sitting within the western building setback. The arbour will visually become an integral part of the house and provide a link between the house and the garden and add softening to the built form. The arbour will reduce the visual bulk of the existing residence and will not be visible from the roadway or any neighbouring properties. As such the proposal still fully complies with the objectives of the clause.

The rear built-in seating area / fire pit is located between the residence and the pool, at a point where there is just sufficient width between the house and pool to provide access from the house, via the lawn to the built-in seating area and from there to the pool area. The steep drop off from the house to the pool, limits the locating of the proposed in-built seating area and the required access from the house and the pool. Less than 40% of the proposed in-built seating area sits within the western building setback. The proposed built-in seating area is well sited and sunk into the slope between the house and the pool and with surrounding vegetation, will not be visible from the roadway or neighbouring properties. As such the built-in seating area / fire pit still fully complies with the objectives of the clause.

ITEM 3.2	**DA2023/0359 - 33 BEATTY STREET BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/504208**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2023/0359 for alterations and additions to a dwelling house on land at Lot 1 DP 565383, 33 Beatty Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0359

Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 1 DP 565383, 33 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Helen Margaret Peach Nigel Charles Peach
Applicant:	Roberto Bianco

Application Lodged:	03/04/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/04/2023 to 25/04/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Approval

Estimated Cost of Works:	$ 45,000.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) as the proposal includes a greater than 10% contravention of the Clause 4.3 Height of Buildings development standard of the Manly Local Environmental Plan 2013.

The subject development application has been publicly exhibited in accordance with the Northern Beaches Community Participation Plan. As a result of the public exhibition of the application, Council is receipt of one (1) submission.

Critical assessment issues included, among others, the assessment of the proposed contravention to the height of buildings development standard, proposed variations to Manly Development Control Plan controls and assessment of view loss and privacy impacts. These assessment issues are discussed in the following sections:

- Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
- Manly Development Control Plan - 3.4.2 Privacy and Security
- Manly Development Control Plan - 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

The 4.6 request for the non-compliance with the height standard arises from the site being partially excavated underneath the existing building, resulting in a proposed building height of 9.6m, a 12.9% variation to the 8.5m height control. Based on extrapolated natural ground levels the height would only be measured at a maximum of 8.3m. The variation is supported in the basis that the breach is a result of this existing excavation, topography and existing built form on the subject site. Furthermore, the resulting development is considered to be commensurate to surrounding residential development within the area and, following amendment, does not impose unreasonable amenity impacts on adjoining properties.

This report concludes with a recommendation that the DDP permit a contravention of the Clause 4.3 Height of Buildings development standard pursuant to Clause 4.6 of the MLEP 2013 and grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the construction of alterations and additions to a dwelling house. Specifically, the proposal comprises of the following:

Rumpus Room Level

- New timber deck located adjacent to the pool.
- Addition of a 1.8m privacy screen between timber deck and southern site boundary.

Ground Floor Level

- Alteration to existing walls between laundry and storage room to create a butler’s pantry adjacent to the kitchen.
- Extension of roof above the terrace and associated columns.

First Floor Level

- Extension to the south-eastern corner of existing terrace to be a non-trafficable roof extension.
- Eastern extension of roof over the terrace below.

Additional information was requested in relation to missing or inadequate architectural drawings and

4.6 Request (relating to the assessment of MLEP 2013 Clause 4.3 Height of Buildings & Clause 4.6 Exceptions to Development Standard), as well as in relation to MDCP Clause 3.4.3 Maintenance of Views (including a request to establish height poles), MDCP Clause 4.1.2.1 Wall Height and MDCP Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages. Additional and amended information and plans were provided. Additional information and amended plans 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 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 1 DP 565383 , 33 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Beatty Street. The site is irregular in shape with a frontage of 11.58mm along Beatty Street and a maximum depth of 53.815m. The site has a surveyed area of 959sqm.

	The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. The site slopes from the rear (west) down towards the front (east), with an approximate crossfall of 15.9m. The site contains lawn areas, garden beds and trees. There are no details of any threatened species on the subject site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by dwelling houses.

Map:

SITE HISTORY

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

- **DA0382/2004** - AMENDED PLANS-Alts & Adds to Dwelling incl. add. storey & alts to pool - Approved 5 May 2005.
- **DA0382/2004** - Part 2 - Section 96 Modification to modify DA 382/04 - Withdrawn.
- **DA0382/2004** - Part 3 - Section 96 to modify approved plans:Alterations & Additions to dwellingincluding additional storey & alterations to pool - Approved 1 November 2006.
- **DA2018/1776** - Alterations and additions to a dwelling house - Approved 6 June 2019
- **DA2022/2178** - Alterations and additions to a dwelling house - Returned at lodgment on 20 December 2022 due to inadequate and/or insufficient information.

APPLICATION HISTORY

The following Requests for Further Information were made to the applicant, summarised as follows:

- Letter dated 1 May 2023 – Issues raised related to missing or inadequate architectural drawings and missing 4.6 Request to vary height of buildings development standard.
- Letter dated 5 July 2023 – Request for height poles to be established to allow for assessment of view loss and visual impacts.
- Letter dated 1 August 2023 - Issues raise considering MLEP 2013 Clause 4.3 Height of Buildings & Clause 4.6 Exceptions to Development Standard, as well as MDCP Clause 4.1.2.1 Wall Height, MDCP Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages and MDCP Clause 3.4.3 Maintenance of Views. These issues all related to a proposed trafficable extended terrace and extended privacy screen located off the south-east corner of the existing terrace connected to bedroom 1 and 2 (not the non-trafficable extended roof form to the east of this terrace).

Subsequently, the proposal was amended to remove the proposed extended privacy screen along the southern elevation and revised to proposed this extension of the south-east corner of the terrace be non-trafficable. This addressed the cumulative impacts of the non-compliances raised with the applicant, including view loss (as assessed in the relevant section of this report).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	request additional information. Additional information was requested in relation to missing or inadequate architectural drawings and 4.6 Request (relating to the assessment of MLEP 2013 Clause 4.3 Height of Buildings & Clause 4.6 Exceptions to Development Standard), as well as in relation to MDCP Clause 3.4.3 Maintenance of Views (including a request to establish height poles), MDCP Clause 4.1.2.1 Wall Height and MDCP Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/04/2023 to 25/04/2023 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 1 submission/s from:

Name:	Address:
Withheld Withheld	BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submission:

- **View loss**

  The submission raised concerns that the development would create unreasonable view loss to the adjoining property to the south (31 Beatty Street).

  Comment:
  Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, issues were raised during the assessment process, including that of view sharing, which have resulted in an amended proposal. Following amendments, the proposal provides for view sharing for both existing and proposed development, to public and private spaces, and does not result in unreasonable view loss.

- **Privacy impacts**

  The submission raised concerns that the development would create and unreasonable privacy impact on the the adjoining property to the south (31 Beatty Street).

  Comment:
  Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, the proposal does not result in unreasonable privacy impacts to adjoining properties.

- **Increase in open space above ground level**

  The submission raised concerns that the subject site as existing is non-compliant with MDCP

Clause 4.1.5.1 Minimum Residential Total Open Space Requirements, noting the non-complaint level of total open space provided above ground level, and raising concern that the proposal seeks to further increase this.

Comment:
Refer to the section of this report on MDCP Clause 4.1.5 Open Space and Landscaping for a detailed assessment of total open space and landscaped area.

Whilst the proposal is non-complaint with open space provided above ground level, this is an existing feature of the site, owing to the significant existing front terraces. Although the proposal provides new decking around the pool, this is proposed within an existing raised landscaped area that is already considered as open space above ground level. Overall, the proposal (as amended to make extended terraces non-trafficable, therefore not included in total open space) decreases total open space provided above ground level, as by extending non-trafficable roofs at the upper terrace, the proposal covers areas of open space above ground level, thereby excluding them from being included in the total.

- **Decrease in landscaping & landscaped areas**

The submission raised concerns regarding landscaped area in regards to the MDCP Clause 4.1.5.1 Minimum Residential Total Open Space Requirements and also that some landscape areas required in prior development consents were not include on plans.

Comment:
Refer to the section of this report on MDCP Clause 4.1.5 Open Space and Landscaping for a detailed assessment of total open space and landscaped area. The proposal achieves compliance with the landscaped area control and therefore the proposed landscaped area is considered sufficient.

Regarding prior consents, the development must comply with the conditions imposed by previous development consents, unless considered exempt development. This assessment is of works proposed under this development application. If it is believed that works have been undertaken without development consent or not in accordance with a development consent, and the work are not exempt development, a complaint can be raised with Council for further investigation.

- **Building height and 4.6 Request**

The submission raised concerns regarding the proposed building height.

Comment:
The proposal has a building height of 9.6m, representing a 12.6% variation to the 8.5m development standard. The applicant has made a written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings.
Refer to the section of this report on MLEP 2013 Clause 4.6 Exceptions to development standards for a detailed assessment of building height and the 4.6 request. In summary, this report concludes that:

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

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

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

Therefore, this report recommends the approval of the variation request.

Relating to the measurement of building height, this is measured from the existing excavated ground level. Additional information was requested from the applicant requiring that this be depicted on architectural plans. A revised 4.6 Request and architect plans with detail sufficient to measurement height in accordance with the approach outlined in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* was provided.

- **Errors in documentation provided by the applicant**

The submission raised concerns that some errors were contained in documentation from the applicant, including incorrect descriptions and diagrams of development approved, but not yet constructed, on adjoining properties.

Comment:
It is noted that in a superseded 4.6 Report, a photograph/diagram incorrectly depicted the location of a deck recently approved at 31 Beatty Street. This assessment involved review of approved plans at 31 Beatty Street when considering impacts on amenity, including privacy and view loss, and did not rely on rough descriptions and diagrams of works approved provided by the applicant in supporting documentation. Nonetheless, this report was superseded during the assessment process.

The proposal, as amended, is not considered to unreasonably impact on the amenity of current or future development at 31 Beatty Street.

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	SUPPORTED WITH CONDITIONS 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. **State Environmental Planning Policy (Resilience & Hazards) 2021**

Internal Referral Body	Comments
	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. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by GAT & Associates dated December 2022, the DA satisfies requirements under clause 2.12 of the SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **State Environmental Planning Policy (Biodiversity & Conservation) 2021** **Harbour Foreshores & Waterways Area** The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.6 and 6.7, Division 2 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021 apply in assessing this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by GAT & Associates dated December 2022 , it is determined that the Planning Principles and Matters for Consideration of the Area have been met. **Manly LEP 2013 and Manly DCP**

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	SUPPORTED WITH CONDITIONS The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 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. The proposal will not result in adverse impacts on the coastal environment area.

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

Comment:
The proposal has been sited so as not to cause adverse impacts on the coastal environment. Council's Coasts and Catchments Officers have reviewed the proposed development and it is supported, subject to conditions.

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 proposal has been sited so as the above is considered. Council's Coasts and Catchments Officers have reviewed the proposed development and it is supported, subject to conditions.

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 development is such that the development will not result in an increased risk of coastal hazards.

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

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

management program that applies to the land.

Comment:
Council's Coasts and Catchments Officers have reviewed the proposed development (including regard to costal management programs) 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	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.6m	12.9%	**No**
Floor Space Ratio	FSR: 0.4:1	No change (works do not alter existing FSR)	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	N/A
4.5 Calculation of floor space ratio and site area	N/A
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.4 Floor space ratio

The only internal alterations proposed within this application are minor alterations to existing walls between laundry and storage room to create a butler's pantry adjacent to the kitchen. These internal alterations are within the existing dwelling and do not change the existing gross floor area or floor space ratio. All other elements proposed within this application are external, and also do not change the existing gross floor area or floor space ratio. As such, the floor space ratio of the development remains unchanged from existing and further merit assessment is not required.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	12.9%

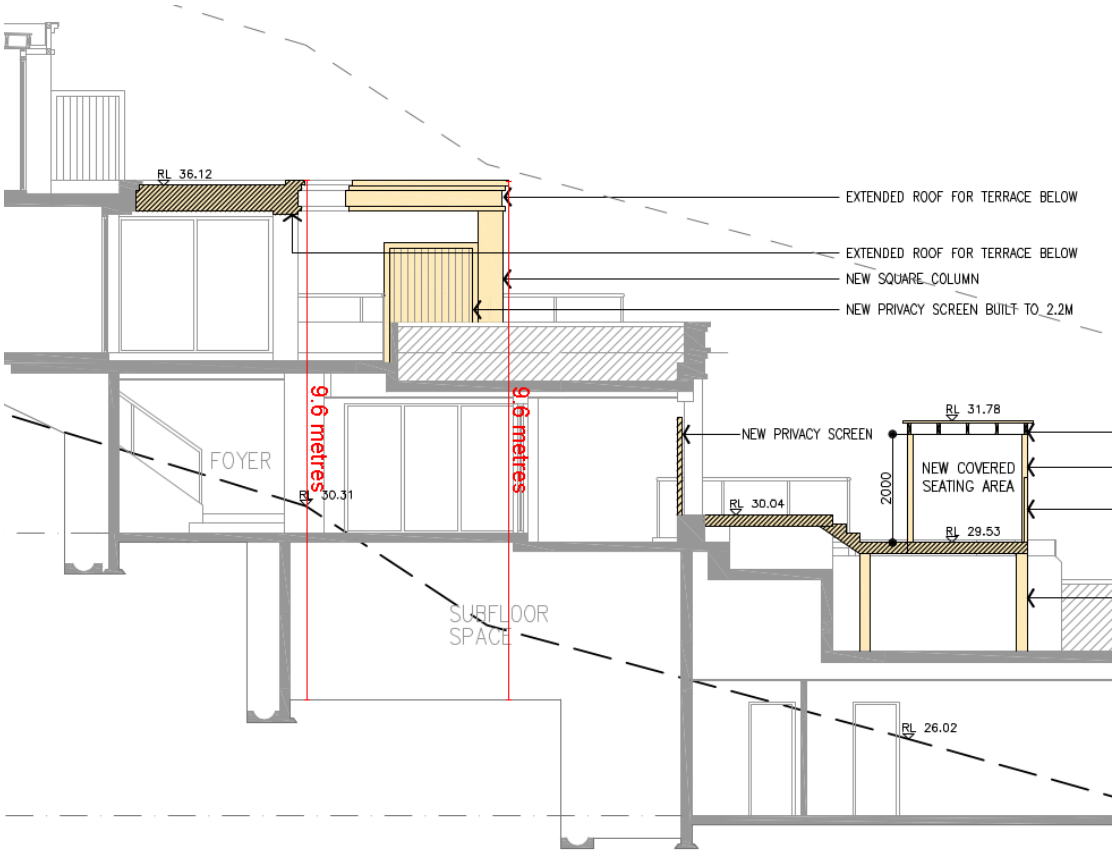


Figure 1 - Extract from Section A-A (Drawing No. A5, Issue C, dated 18 August 2023) depicting building height

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Comment:

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- The development complies with the relevant objectives of the R2 Low Density Residential Zone of the MLEP 2013.
- The development complies with the relevant objectives of the Height of Buildings development standard of the MLEP 2013, notwithstanding the non-compliance.
- The proposed development has been designed with respect for neighbouring amenity and does not result in unreasonable amenity impacts to the adjoining properties.
- The minimal non-compliance is not considered out of character to the streetscape, nor excessively discernable from the street.
- The development that originally accommodated the dwelling required excavation, which modified the 'existing' ground levels and placed subfloor void space within the dwelling footprint. The technical numerical variation to building height is inconsequential and not visibly perceived from the elevations of the dwelling, adjoining dwellings, nor the public streetscape.
- The site has a significant slope, of approximately 16m from east to west, resulting in a split-level dwelling of several levels requiring terraces to provide suitable outdoor amenity.
- The extent of the non-compliance to building height is a result of roof extensions, which are minor structures to improve the amenity of residents through the provision of shading and weather protection to outdoor private recreation areas.
- No habitable rooms breach the maximum height standard.
- The proposed alterations and additions are modest, and will integrate into the desired future character of the area as they have been design to integrate into the existing architectural form and presentation of the existing dwelling with no resulting environmental impact.

It is considered that the arguments provided by the applicant are acceptable. The non-compliance is considered to arise from the site being partially excavated underneath the existing building, resulting in a proposed building height of 9.6m, a 12.9% variation to the 8.5m height control. Based on extrapolated natural ground levels the height would only be measured at a maximum of 8.3m. Another factor is the steep topography, which requires a terraced design to the dwelling. Furthermore, the resulting development is considered to be commensurate to surrounding residential development within the area, which is characterised by similar large terraced houses, and, following amendment, does not impose unreasonable amenity impacts on adjoining properties. The proposal is not considered to be excessive in terms of bulk and scale given the context of the area and site constraints.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:
The variation arises from topography and existing excavation, creating minor breaches of the building height at the front of terraces. The majority of the building complies with the maximum height control and is commensurate to surrounding residential development, prevailing building heights and desired further streetscape within the area.

b) to control the bulk and scale of buildings,

Comment:
It is not considered that the breach of the Height of Buildings standard contributes to excessive bulk or scale, considering the surrounding residential environment, existing built form and topography.

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. In summary, following amendments to the proposal, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

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 development is not considered to create unreasonable overshadowing on pubic or private spaces.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other

aspect that might conflict with bushland and surrounding land uses.

Comment:
The subject site is not a recreation or environmental protection zone. Nonetheless, the height of the proposal is not considered to impact on existing vegetation. No significant trees or vegetation are required to be removed.

Zone objectives

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

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

  Comment:
  The proposal provides for the needs of current and future occupants 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:
  Non-residential land uses are not proposed on the subject site. However, the proposal includes adequate indoor and outdoor areas to provide for the residential needs of current and future occupants.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the Height of Buildings development standard and the R2 Low Density Residential zone of the MLEP 2013.

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 959sqm	Requirement	Proposed	% Variation*	Complies

4.1.2.1 Wall Height	South: 8m (based on gradient 1:4+)	7m (to south-east non-trafficable roof extension) 6.6m (to pool deck privacy screen)	- -	Yes Yes
4.1.2.2 Number of Storeys	2	4	100%	**No** but existing and unchanged
4.1.2.3 Roof Height	Height: 2.5m	N/A	N/A	N/A
	Parapet Height: 0.6m	N/A	N/A	N/A
	Pitch: maximum 35 degrees	N/A	N/A	N/A
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	11.8m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	South: 2.3m to south-east non-trafficable roof extension (from 7m wall height) 2.2m to pool deck privacy screen (from 6.6m wall height)	2.1m 1.2m	8.7% 45.5%	**No** **No**
	No windows within 3m of side boundaries	1 new window within 3m of boundary	N/A	**No**
4.1.4.4 Rear Setbacks	8m	13.6m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (575.4sqm)	44.6% (428.1sqm)	25.6% (147.3sqm)	**No**
	No more that 25% of total open space above ground level (107sqm)	55.8% (238.7sqm)	123.1% (137sqm)	**No**
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (171.2sqm)	66.2% (310.8sqm)	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 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
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

A submission raised concerns regarding the privacy impacts of the proposal on the adjoining neighbour to the south (31 Beatty Street), including acoustic privacy.

The following clauses within MDCP Clause 3.4.2 Privacy and Security are relevant:

3.4.2.2 Balconies and Terraces

a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment:
The proposal originally included an extended upper terrace, as well as additional decking around the

existing pool area. During the assessment process, the extended upper terrace was revised to only consist of non-trafficable roof extensions. Roof extensions will not feature privacy screens and conditions are included in the recommendations of this report to ensure these areas remain non-trafficable. With this in mind, the existing privacy outcome of the upper balcony adjacent to bedroom 1 and 2 is maintained, given no change is propose to the trafficable area or existing privacy screens.

Assessing the proposed changes around the pool at the rumpus room level, it is noted that a privacy screen is proposed around the additional decking. Recessing balconies or terraces is not an appropriate solution in this situation, given the existing layout, which places the terraces of both properties at roughly the same level, with very little existing setback. Whilst the proposed privacy screen is in close proximity to the above garage terrace at 31 Beatty Street, this terrace has a nil setback to the boundary as existing, putting it in proximity to the neighbouring subject site. Overall, the impact of the proposed privacy screen and decking is not considered to be unreasonable, considering the existing close proximity of the dwellings, and this screen is considered an appropriate architectural solution to protect visual privacy between the dwellings.

3.4.2.3 Acoustical Privacy (Noise Nuisance)

a) Consideration must be given to the protection of acoustical privacy in the design and management of development.
b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.

Comment:
The additional decking around the pool is not considered to significantly increase the acoustic impact of the development. This area is a pool area as existing, and the decking will not significantly increase noise generated from this area. This area does not directly abut bedroom and living areas of 31 Beatty Street, rather areas of private open space at 31 Beatty Street provide physical separation between the boundary and the dwelling.

Concluding Remarks:
It is noted again that the above garage terrace at 31 Beatty Street is built nil to the boundary, and existing terraces at 33 Beatty Street are in close proximity the the boundary. The physical closeness of these dwellings is an existing feature. The proposal is considered to incorporate architectural solutions to ensure privacy in close proximity through the use of privacy screens. The noise generated from terrace areas is not expected to significantly increase or cause unreasonable amenity impacts to neighbouring properties, considering the existing close proximity of private open space at both dwellings.

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:
As discussed above, the proposal is considered to be designed adequality to ensure acoustic and visual privacy, considering constraints including the existing proximity of the dwellings.

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

Comment:
Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, following amendments to the proposal, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss. The proposal is expected to maintain a reasonable level of access to light and air.

Objective 3) To encourage awareness of neighbourhood security.

Comment:
Existing levels of neighbourhood security are maintained.

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.

3.4.3 Maintenance of Views

A submission from a neighbouring property raised concerns regarding view loss. The assessment below has been undertaken considering the view from the adjoining neighbour to the south (31 Beatty Street). Two (2) site inspections were carried out at this adjacent property, the first on 16 June 2023 (before height poles had been established), and the second on 28 July 2023 (after height poles had been established as requested). *Figure 2* shows the positions of requested height poles, however, the proposal has since been amended to change much of this portion of the proposal, as will be discussed further in this section.

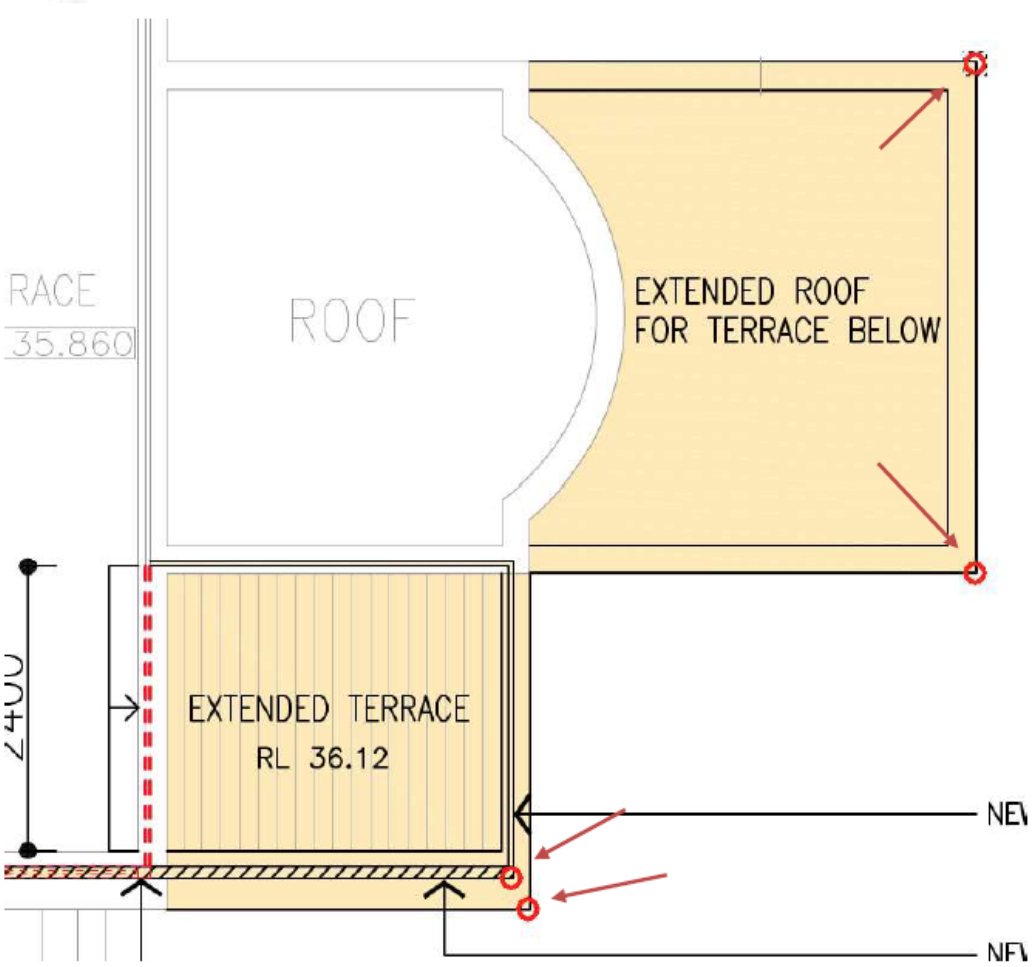


Figure 2 - Extract from Lower Floor Plan (Drawing No. A2, Issue B, dated 10 May 2023) with locations of height poles. Note: The proposal has changed in response to view loss concerns, superseding this plan.

Figure 3 - View looking east from the yard / above garage terrace at 31 Beatty Street (taken 16 June 2023 - no height poles).

Figure 4 - View looking east from the north-east corner of the first floor balcony of the secondary dwelling at 31 Beatty Street (taken 28 July 2023 - height poles established).

Figure 5 - View looking east from the south-east corner of the first floor balcony of the secondary dwelling at 31 Beatty Street (taken 28 July 2023 - height poles established).

Figure 6 - View looking east from the front of the open plan living / dining / kitchen through the doorway connecting to the first floor balcony of the secondary dwelling at 31 Beatty Street (taken 28 July 2023 - height poles established).

Figure 7 - View looking east from the rear of the open plan living / dining / kitchen through the doorway connecting to the first floor balcony of the secondary dwelling at 31 Beatty Street (taken 28 July 2023 - height poles established).

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.

Principle 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:
The view in question obtained from the lawn areas, above garage terrace and secondary dwelling of 31 Beatty Street is one east to North Harbour and its surrounds, including Fairlight, Manly and North Head. The land water interface is clearly visible along the foreshores of these areas. An element of this view that could be considered iconic is Manly Warf and its surround, which is located central to this view.

Figure 8 depicts the southern elevation of the proposal as originally proposed. During the assessment, concerns were raised with applicant that the upper floor terrace extension and privacy screen would have an unacceptable impact on the views from the secondary dwelling of 31 Beatty Street, particulrly noting the effect of the privacy screen on views of foreshore, Manly Wharf and its surrounds. Subsequently, the proposal was amended to remove the proposed extended privacy screen along the southern elevation and revised to proposed the extension of the south-east corner of the upper terrace be non-trafficable. The amendments did not change the proposed privacy screen along the lower rumpus / pool level terrace. *Figure 9* depicts the southern elevation as amended and currently proposed.

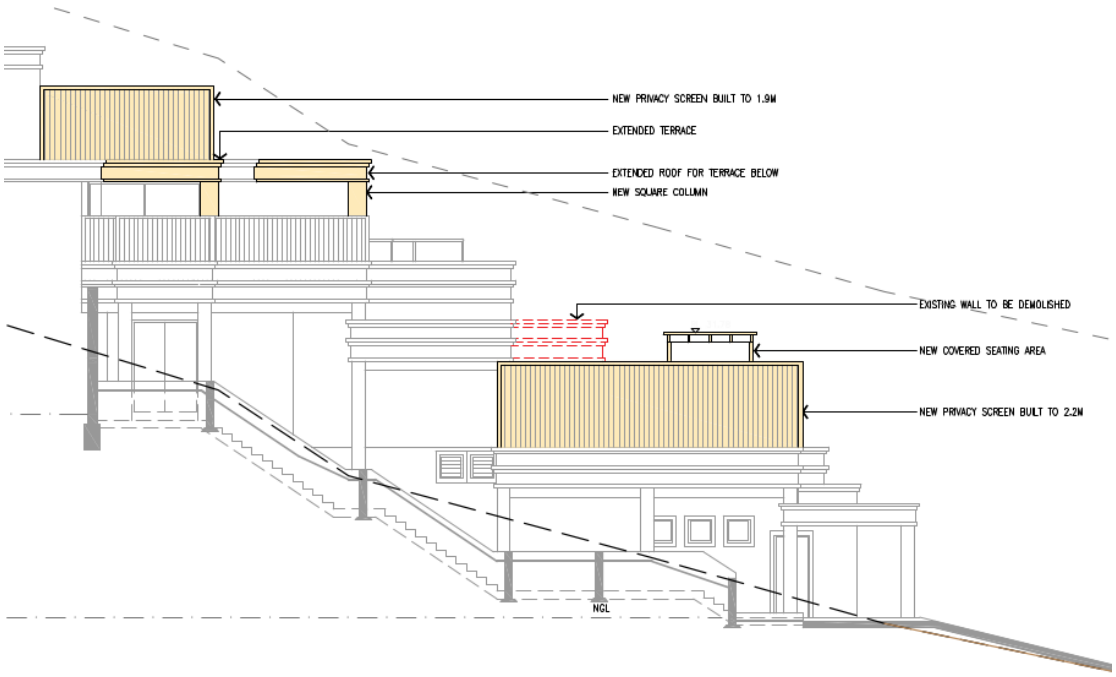


Figure 8 - Extract from Southern Elevation (Drawing No. A4, Issue B, dated 10 May 2023) prior to amendments.

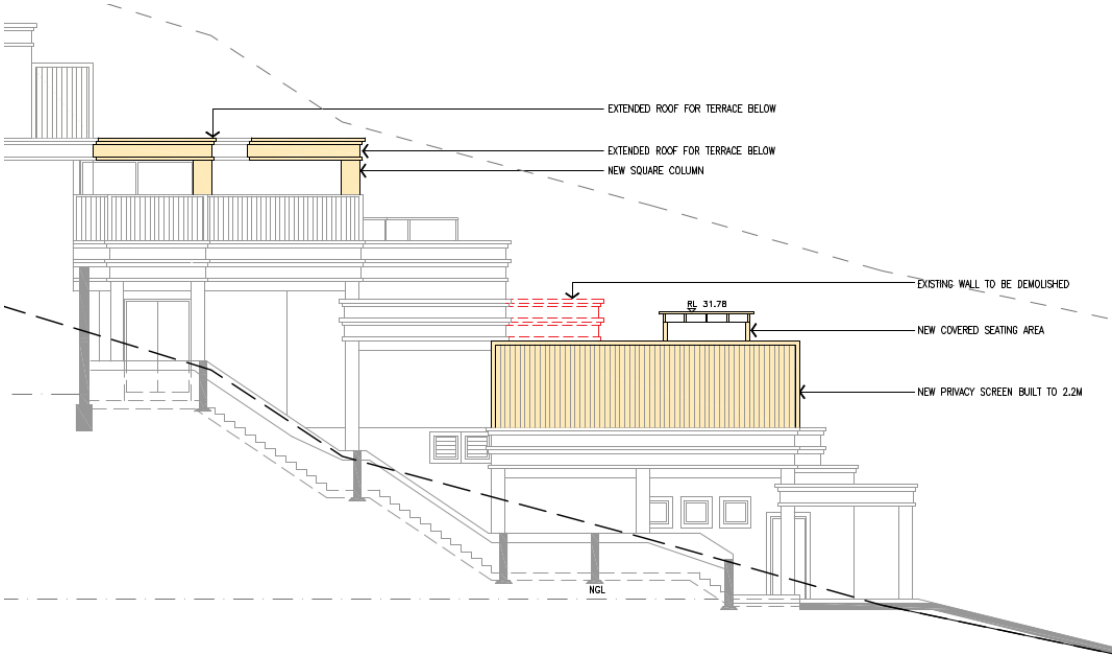


Figure 9 - Extract from Southern Elevation (Drawing No. A4, Issue C, dated 18 August 2023) after amendments .

Principle 2 - What part of the affected property are the views obtained

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

Comment to Principle 2:
The view that could potentially be impacted by the proposal can be obtained from the lawn and above garage terrace to the north of the primary dwelling at 31 Beatty Street, as well as the pool area at the front of the primary dwelling, however, the view from the pool is unaffected by the proposal. This view is over the front boundary and side boundary shared with the subject site, and can be observed sitting or standing.

Furthermore, the view is obtained from the secondary dwelling located at the rear of 31 Beatty Street. The view is obtained from the upper balcony of this secondary dwelling and from the connected living / dining / kitchen. This area forms a primary living area for the secondary dwelling, therefore making the view from it highly valued. This view is also obtained over the front boundary and side boundary shared with the subject site, and can be observed sitting or standing.

Principle 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:
From the lawn areas and above garage terrace, areas accessible from the principle dwelling of 31 Beatty Street, the privacy screen at the rumpus / pool level terrace will have roughly the same impact as the bamboo at this location currently has, in that views over the side boundary primarily north-east will be impacted. Views east to Manly Wharf and its surround will be unaffected at the front and best vantage points of this area, being the the above garage terrace, with views slowly obscured more as one moves back into the rear yard. It should also be noted that the front pool accessible at this level will be completely unaffected by the proposal and retains sweeping views of North Harbour. As such, considering the views is already obstructed by bamboo, is over a side boundary, and does not significantly impact the iconic and valuable elements of the view from the best vantage positions, the view loss from this level is considered negligible to minor.

From the secondary dwelling, the original proposal impacted views to Manly Wharf and surrounds from the primarily living area of the secondary dwelling. This impact likely would have been classed as moderate or higher. This impact has largely been addressed by amendments, which have removed the large extended privacy screen proposed at the upper level terrace. An existing privacy screen will remain (as can be seen in the photos from the secondary dwelling), and the proposed non-trafficable roof extensions will only impact very minor water glimpses through existing vegetation and built from at the very bottom of the view. As such, considering the amended proposal has been designed to promote view sharing, the very small portion of the view now effected, and lack of impact on the iconic and valuable elements of the sweeping view, the view loss from the secondary dwelling is considered negligible.

Principle 4 - Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:
The proposal presents a number of breaches to planning controls, including building height, number of storeys, side setback and total open space controls. However, the proposal is for additions and alterations to an existing dwelling, meaning it is constrained by existing building layout and existing non-compliances. The subject site, and surrounding sites, are constrained by natural sloping typography and large existing dwellings / built form (with many existing breaches to built form controls). The proposal is not out of character with the area, and proposes only alterations and additions of a relatively minor nature to the existing dwelling. The reasonableness of the proposed breaches to planning controls are assessed on merit within various sections of this report, concluding the proposal is supported on merit.

Overall, following amendments to the proposal, the proposal provides for view sharing for both existing and proposed development, to public and private spaces, and does not result in unreasonable view loss.

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

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

No change is proposed to the existing numerically non-compliant number of storeys, which is four (4) as existing, whereas the control requires two (2). The proposed development is compliant with wall height controls. As such, the proposal is compatible with the existing built form and a detailed merit assessment is not required in this instance.

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

Description of non-compliance

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height.

In relation to the southern side boundary, the proposal requires and proposes side setbacks as follows:

- 2.3m to south-east non-trafficable roof extension (from 7m wall height) - proposed 2.1m, a variation of 8.7%.
- 2.2m to pool deck privacy screen (from 6.6m wall height) - proposed 1.2m, a variation of 45.5%.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposal includes one (1) new window to the butlers pantry that is within 3m of a side boundary.

Merit consideration

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:
Works largely maintain the existing building with its existing non-compliant setbacks. The proposal comprises of alterations to the existing building, consisting of external works on terraces and internal reconfigurations. The works proposed within side setbacks are not considered to impact on the character of the street, given the terraced design of the building is existing, and proposed works are alterations to provide greater amenity to the occupants. As such, the proposal is considered to maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*

- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:
Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, the proposal does not result in unreasonable privacy impacts to adjoining properties.

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, following amendments to the proposal, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

The proposal is expected to maintain a reasonable level of access to light. The proposal is considered appropriate for the context of the site and will facilitate safe and adequate traffic conditions.

Regarding the setback of the pool privacy screen, the 2.2m requirement is taken as one third of the wall height of this screen, being 6.6m, measured from ground level existing. However, as perceived from the neighboring property to the south (31 Beatty Street), the full height of this 'wall' is not apparent, as 31 Beatty Street has garage with an above terrace that is setback nil from the boundary and is at a height slightly above the pool / rumpus room terrace at the subject site. This privacy screen therefore has more of a visual impact akin to a standard dividing fence that one usually sees between proprieties, given it is just 2.2m high measured from the level of the pool / rumpus room terrace (again, which is slightly lower than the level of the above ground terrace at 31 Beatty Street). This should also demonstrate the existing nature of the built from on the subject site and neighbouring proprieties, which is characterised by large houses, terraced design and minimal setback.

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

Comment:
Given the existing dwelling does not comply with the setback controls flexibility is required for any alterations and additions to the existing dwelling. The proposed alterations and additions are not expected to be detrimental to the streetscape or to result in any unreasonable amenity impacts on surrounding properties (as amended considering issues raised in the assessment process). As such, flexibility is warranted, in this instance.

Objective 4) To enhance and maintain natural features by:

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

Comment:
The proposal, whilst exhibiting a numerically non-compliant total open space and open space above

ground, is compliant with the MDCP landscaped area provisions. The proposed development does not necessitate the removal of any significant vegetation.

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

Comment:
The site is not located within land identified as bushfire prone.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area OS4, which requires at least 60% (575.4sqm) of the site to be open space. In addition, at least 40% (171.2sqm) of the proposed total open space is to be landscaped area. Additionally, no more than 25% (107sqm) of total open space can be provided above ground level.

The proposed development results in a numerically non-compliant total open space of 44.6% (428.1sqm), representing a variation of 25.6% (147.3sqm) to the requirement.

Furthermore, the proposal results in a numerically non-compliant level of total open space above ground level at 55.8% (238.7sqm), representing a variation of 123.1% (137sqm) to the requirements.

It is noted that the proposal achieves compliance with the landscaped area control, exhibiting a total of 66.2% (310.8sqm).

These features are all considered to be largely existing features of the subject site. Cumulatively, the proposal only results in:

- A minor decrease to landscaped area of 10.5sqm (resulting from the pool decks), whilst the landscaped area remains complaint.
- A minor decrease to total open space of 23.5sqm (resulting from the extended non-trafficable roofs).
- The same decrease to total open space above ground level (23.5sqm), as the extended non-trafficable roofs decrease open space that as existing is above ground level.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:
The proposal will not result in the removal of any significant topographical or landscape features. The

proposal does slightly decrease landscaped area, however, the development remains compliant with the landscaped area control.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:
The proposal does slightly decrease landscaped area, however, the development remains compliant with the landscaped area control. Whilst the proposal is non-complaint with open space provided above ground level, this is an existing feature of the site, owing to the significant front terraces. This proposal slightly reduces open space provided above ground level, as non-trafficable roofs cover areas of opens space on the existing terraces. However, this is a result of the existing layout of the dwelling and terraces.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:
Refer to the section of this report on MDCP Clause 3.4.2 Privacy and Security for a detailed assessment of privacy. In summary, the proposal does not result in unreasonable privacy impacts to adjoining properties.

Refer to the section of this report on MDCP Clause 3.4.3 Maintenance of Views for a detailed assessment of views. In summary, following amendments to the proposal, the proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

The proposal is expected to maintain a reasonable level of privacy and access to light, and will provide for sufficient building separation. The proposal is considered appropriate for the context of the site, and not out of character with the streetscape or locality.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:
An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area. Whilst a large amount of total open space is above ground level, this is an existing feature of the site.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:
The proposed development is not likely to increase the spread of any weeds, or degradation of private or public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:
The proposed works are not expected to affect wildlife habitat. Existing wildlife corridors will be retained.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house, has been referred to the Development Determination Panel (DDP) as the proposal includes a greater than 10% contravention of the Clause 4.3 Height of Buildings development standard of the Manly Local Environmental Plan 2013.

The concerns raised in the one (1) submission have been addressed and resolved.

Critical assessment issues included, among others, the assessment of the proposed contravention to the height of buildings development standard, proposed variations to Manly Development Control Plan controls and assessment of view loss and privacy impacts. These assessment issues are discussed in the following sections:

- Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
- Manly Development Control Plan - 3.4.2 Privacy and Security
- Manly Development Control Plan - 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

Overall, the proposed development, notwithstanding proposed variations which are supported on merit, performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

Accordingly, the proposal is recommended for approval, subject to conditions.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/0359 for

Alterations and additions to a dwelling house on land at Lot 1 DP 565383, 33 Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
A1, Issue C	18 August 2023	SCA Architects
A2, Issue C	18 August 2023	SCA Architects
A3, Issue C	18 August 2023	SCA Architects
A4, Issue C	18 August 2023	SCA Architects
A5, Issue C	18 August 2023	SCA Architects
A4-2, Issue C	18 August 2023	SCA Architects
A5-2, Issue C	18 August 2023	SCA Architects
A10, Issue C	18 August 2023	SCA Architects

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan - 33 Beatty Street, Balgowlah Heights	-	-

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

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

2. **Compliance with Other Department, Authority or Service Requirements**
The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	19/04/2023 (on EDMS)

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

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

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

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

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than

$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. **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.

7. **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

8. **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

9. **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.

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

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

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

11. **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.

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

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

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

13. **Non-Trafficable Roofs**
The extended roofs located off the terrace connected to bedroom 1 and 2 are to remain non-trafficable for the life of the development.

Reason: To ensure development minimises unreasonable impacts upon surrounding land and maintains adequate privacy between dwellings.

LEGEND
- STRUCTURE TO BE DEMOLISHED
- NEW–PROPOSED AREA
- LANDSCAPE AREA

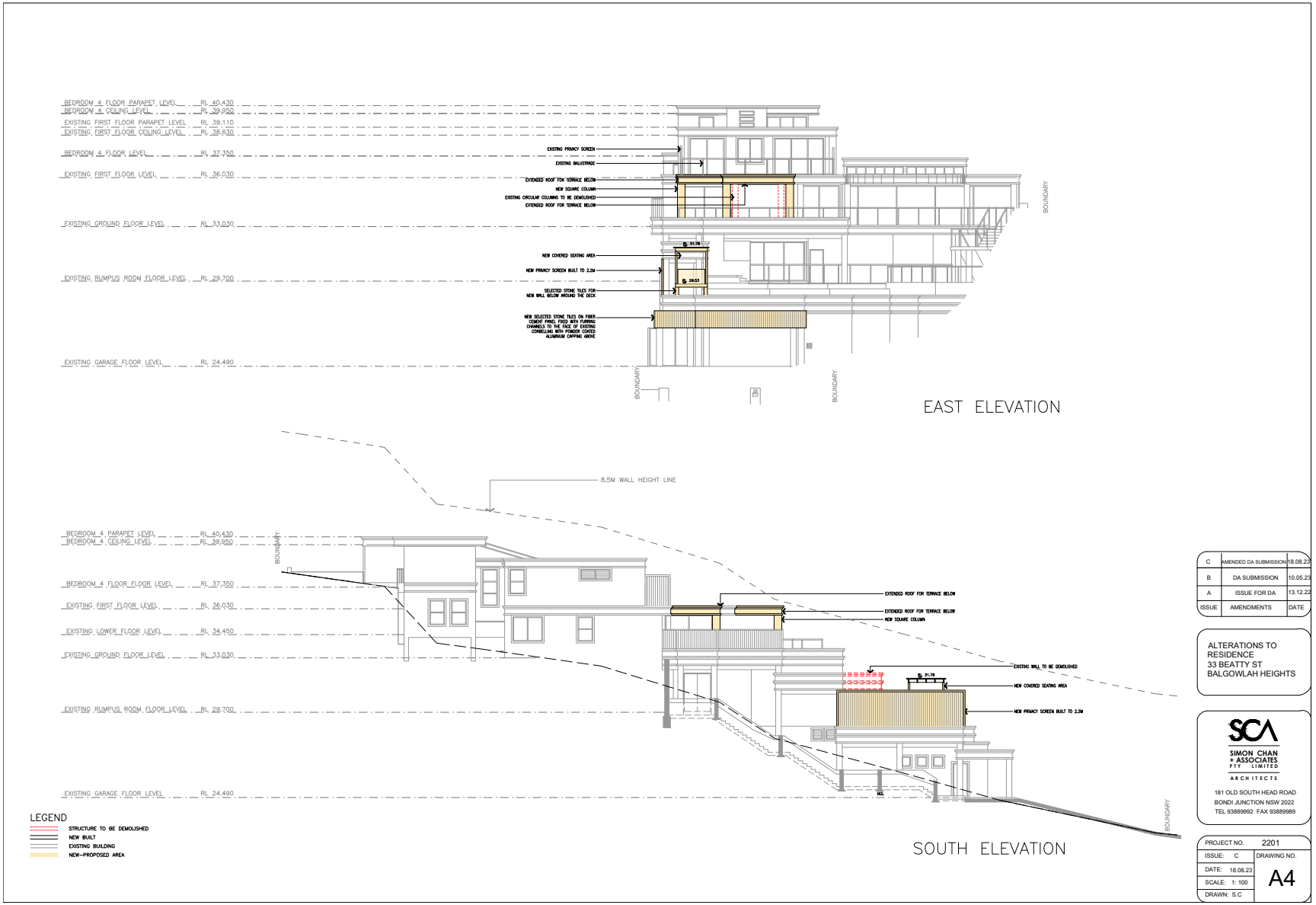
SITE PLAN
WITH NEW–PROPOSED AREA & LANDSCAPE AREA INDICATED

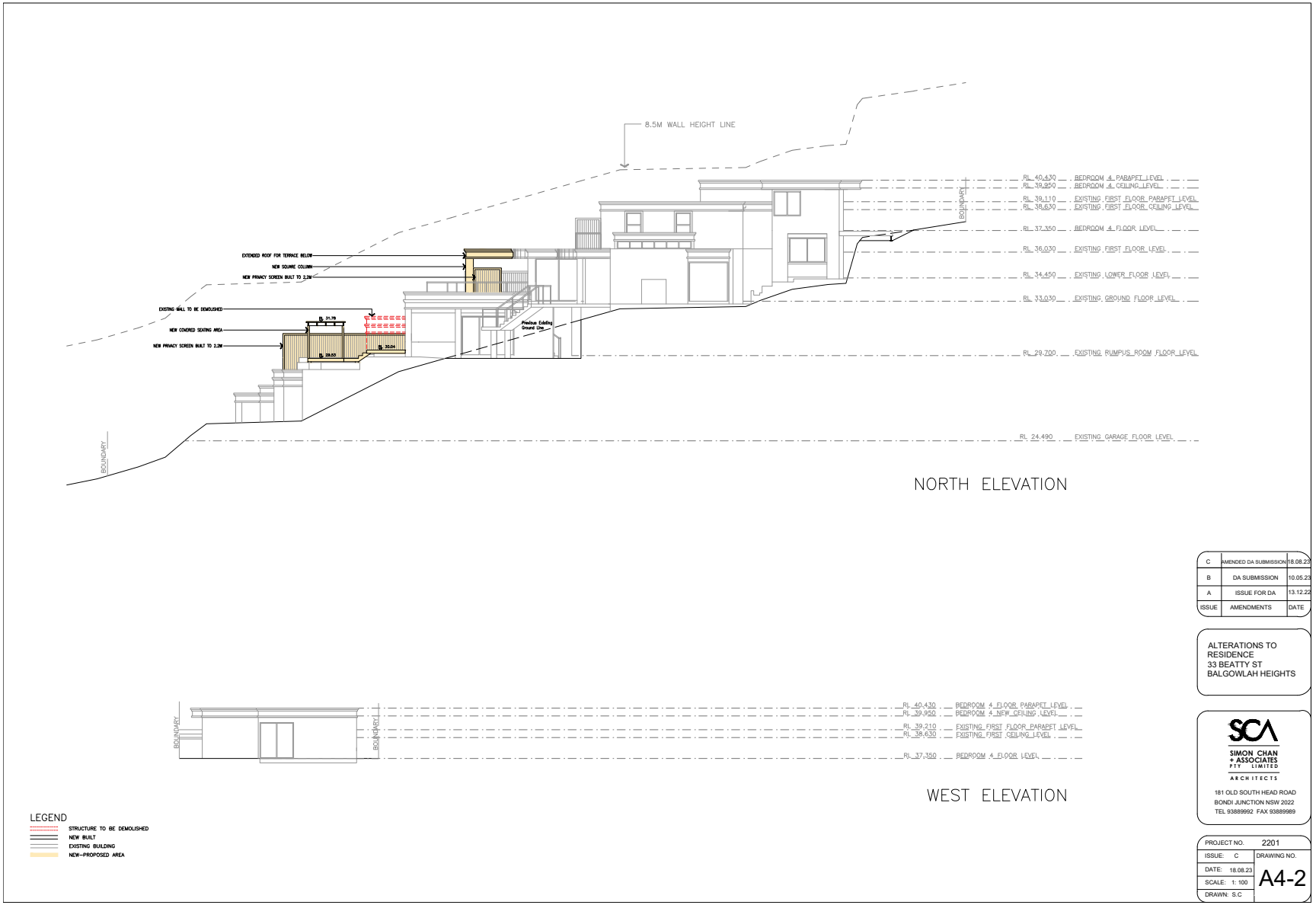
ISSUE	AMENDMENTS	DATE
C	AMENDED DA SUBMISSION	18.08.23
B	DA SUBMISSION	10.05.23
A	ISSUE FOR DA	13.11.22

ALTERATIONS TO RESIDENCE
33 BEATTY ST
BALGOWLAH HEIGHTS

SIMON CHAN + ASSOCIATES PTY LIMITED
ARCHITECTS
181 OLD SOUTH HEAD ROAD
BONDI JUNCTION NSW 2022
TEL 93889992 FAX 93889989

PROJECT NO.	2201
ISSUE: C	DRAWING NO.
DATE: 18.08.23	A10
SCALE: 1: 100	
DRAWN: G.Z	


BEDROOM 4 FLOOR PARAPET LEVEL RL 40.430
BEDROOM 4 CEILING LEVEL RL 39.950
EXISTING FIRST FLOOR PARAPET LEVEL RL 39.110
EXISTING FIRST FLOOR CEILING LEVEL RL 38.630
BEDROOM 4 FLOOR LEVEL RL 37.350
EXISTING FIRST FLOOR LEVEL RL 36.030
EXISTING GROUND FLOOR LEVEL RL 33.030
EXISTING RUMPUS ROOM FLOOR LEVEL RL 29.700
EXISTING GARAGE FLOOR LEVEL RL 24.490
EXISTING PRIVACY SCREEN
EXISTING BALUSTRADE
EXTENDED ROOF FOR TERRACE BELOW
NEW SQUARE COLUMN
EXISTING CIRCULAR COLUMNS TO BE DEMOLISHED
EXTENDED ROOF FOR TERRACE BELOW
NEW COVERED SEATING AREA
NEW PRIVACY SCREEN BUILT TO 2.2M
SELECTED STONE TILES FOR NEW WALL BELOW AROUND THE DECK
NEW SELECTED STONE TILES ON FIBER CEMENT PANEL FIXED WITH FURRING CHANNELS TO THE FACE OF EXISTING DWELLING WITH POWDER COATED ALUMINIUM CAPPING ABOVE
BOUNDARY
EAST ELEVATION
8.5M WALL HEIGHT LINE
EXTENDED ROOF FOR TERRACE BELOW
EXISTING WALL TO BE DEMOLISHED
SOUTH ELEVATION
LEGEND
STRUCTURE TO BE DEMOLISHED
NEW BUILT
EXISTING BUILDING
NEW-PROPOSED AREA
C AMENDED DA SUBMISSION 18.08.23
B DA SUBMISSION 10.05.23
A ISSUE FOR DA 13.12.22
ISSUE AMENDMENTS DATE
ALTERATIONS TO RESIDENCE
33 BEATTY ST
BALGOWLAH HEIGHTS
SCA
SIMON CHAN + ASSOCIATES PTY LIMITED
ARCHITECTS
181 OLD SOUTH HEAD ROAD
BONDI JUNCTION NSW 2022
TEL 93889992 FAX 93889989
PROJECT NO. 2201
ISSUE: C
DRAWING NO.
DATE: 18.08.23
SCALE: 1: 100
A4
DRAWN: S.C


8.5M WALL HEIGHT LINE
RL 40.430 BEDROOM 4 PARAPET LEVEL
RL 39.950 BEDROOM 4 CEILING LEVEL
RL 39.110 EXISTING FIRST FLOOR PARAPET LEVEL
RL 38.630 EXISTING FIRST FLOOR CEILING LEVEL
RL 37.350 BEDROOM 4 FLOOR LEVEL
RL 36.030 EXISTING FIRST FLOOR LEVEL
RL 34.450 EXISTING LOWER FLOOR LEVEL
RL 33.030 EXISTING GROUND FLOOR LEVEL
RL 29.700 EXISTING RUMPUS ROOM FLOOR LEVEL
RL 24.490 EXISTING GARAGE FLOOR LEVEL
BOUNDARY
EXTENDED ROOF FOR TERRACE BELOW
NEW SQUARE COLUMN
NEW PRIVACY SCREEN BUILT TO 2.2M
EXISTING WALL TO BE DEMOLISHED
NEW COVERED SEATING AREA
NEW PRIVACY SCREEN BUILT TO 2.2M
Previous Existing Ground Line
NORTH ELEVATION
RL 40.430 BEDROOM 4 FLOOR PARAPET LEVEL
RL 39.950 BEDROOM 4 NEW CEILING LEVEL
RL 39.210 EXISTING FIRST FLOOR PARAPET LEVEL
RL 38.630 EXISTING FIRST CEILING LEVEL
RL 37.350 BEDROOM 4 FLOOR LEVEL
BOUNDARY
BOUNDARY
WEST ELEVATION
LEGEND
STRUCTURE TO BE DEMOLISHED
NEW BUILT
EXISTING BUILDING
NEW-PROPOSED AREA
C AMENDED DA SUBMISSION 18.08.23
B DA SUBMISSION 10.05.23
A ISSUE FOR DA 13.12.22
ISSUE AMENDMENTS DATE
ALTERATIONS TO RESIDENCE
33 BEATTY ST
BALGOWLAH HEIGHTS
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ARCHITECTS
181 OLD SOUTH HEAD ROAD
BONDI JUNCTION NSW 2022
TEL 93889992 FAX 93889989
PROJECT NO. 2201
ISSUE: C
DRAWING NO.
DATE: 18.08.23
SCALE: 1: 100
A4-2
DRAWN: S.C

CLAUSE 4.6 VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

1. Introduction

This Clause 4.6 *'written variation to a development standard*' has been prepared with regards to a development application seeking alterations and additions to an existing residential dwelling at 33 Beatty Street, Balgowlah Heights. The proposed development results in a variation to Clause 4.3 of the Manly Local Environmental Plan 2013, being the development standard pertaining to **height of buildings**. It is demonstrated within this submissions that the proposed development meets the requirements prescribed under Clause 4.6 of the Manly LEP 2013.

This submission is made under Clause 4.6 of the Manly Local Environmental Plan 2013 – *Exceptions to development standards*. Clause 4.6 states the following:

> ***"4.6 Exceptions to development standards***
> *(1) The objectives of this clause are as follows—*
> *(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
> *(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
>
> *(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
>
> *(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
> *(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
> *(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
>
> *(4) Development consent must not be granted for development that contravenes a development standard unless—*
> *(a) the consent authority is satisfied that—*
> *(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
> *(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
> *(b) the concurrence of the Planning Secretary has been obtained.*
>
> *(5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
> *(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone 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 include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, 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,
(c) clause 5.4,
(caa) clause 5.5,
(ca) clause 6.15,
(cb) a development standard on land to which clause 6.19 applies."

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

(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

The Environmental Planning Instrument to which these variations relate to is the Manly Local Environmental Plan 2013.

The development standard to which this variation relates to is Clause 4.3 – Height of Buildings, which reads as follows:

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

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

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

(c) to minimise disruption to the following:
(i) views to nearby residential development to public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

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

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

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

Council's maps identify a maximum height of 8.5m to the subject site. Refer to Figure 1 on the following page.

The proposed maximum height is 9.57 metres, being a variation of 1.07m. It should be noted that the proposed alterations and additions do not exceed the highest RL of the existing dwelling (RL 40.43), with the additions stepped down with the built form to align with the existing first floor level (RL 36.03). The variation to building height is generally as a result of previous excavation works undertaken on the site, which have consequently lowered the ground level of the site.

A written justification is therefore required for the proposed variation to the maximum height of buildings development standard, in accordance with Clause 4.6 of the Manly Local Environmental Plan 2013.

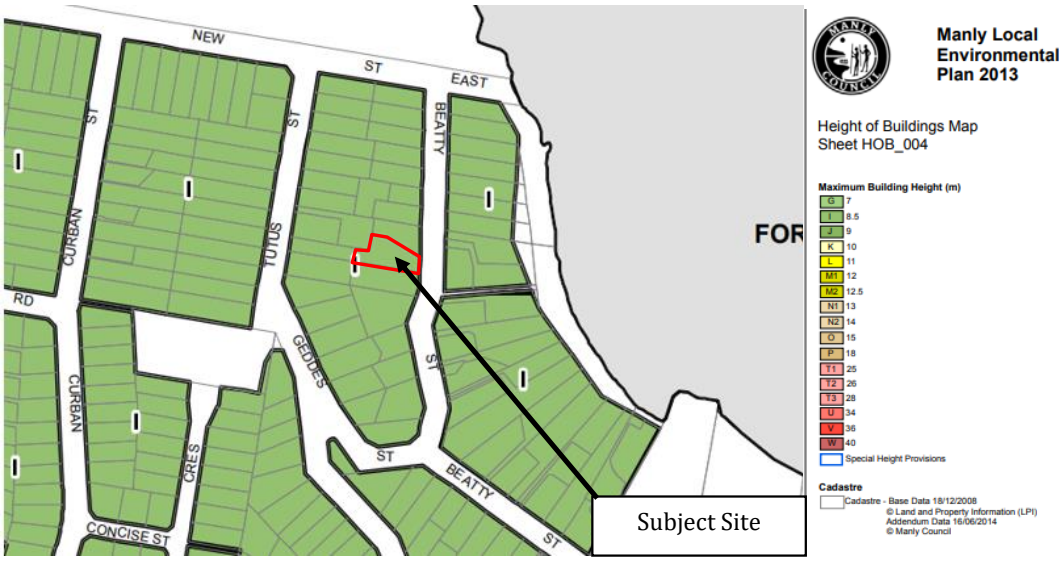


Figure 1 Height of Buildings Map (Source: NSW Legislation, MLEP13 map 004)

2. Site Background

The subject site is commonly known as 33 Beatty Street, Balgowlah Heights, and is legally described as Lot 1 in Deposited Plan 565383. The subject site is located on the western side of Beatty Street and is bound by residential properties to the north, west and south.

The site provides for a frontage of 11.580m to Beatty Street. The total site area is 959m^2. Refer to Figure 2 below.

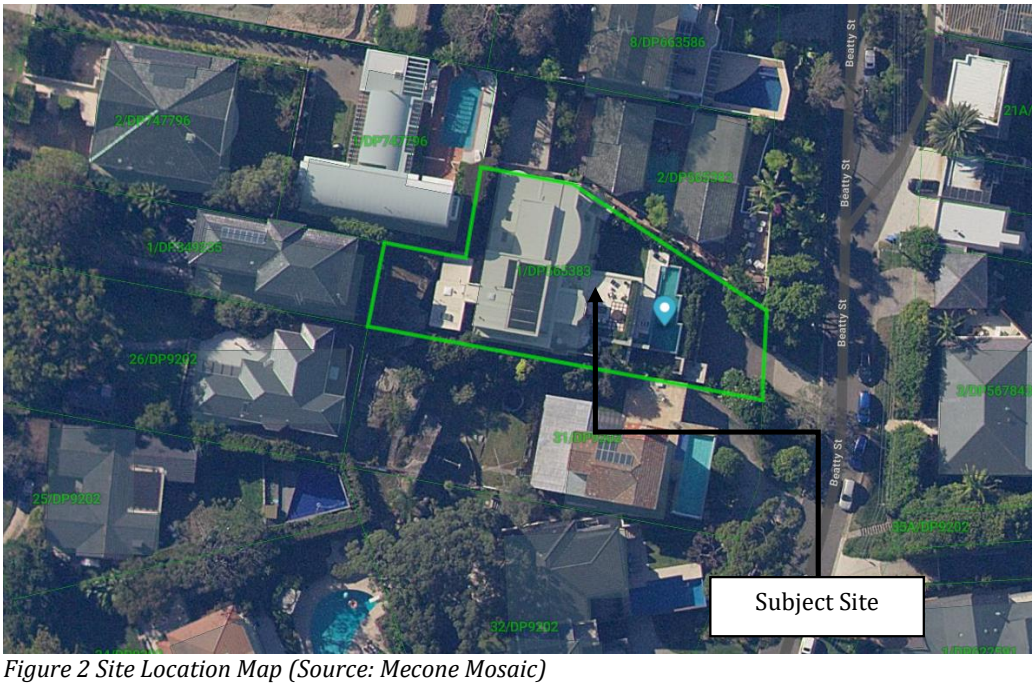


Figure 2 Site Location Map (Source: Mecone Mosaic)

Located on the subject site is a two-storey split-levelled dwelling house with swimming pool and garage. The site is heavily affected by a slope of approximately 16 metres, which falls from west to east.

Development in the area reflects the R2 Low Density Residential zoning, being comprised almost entirely of detached dwelling houses. The adjoining properties around the subject site are such, with the properties on the western side of Beatty Street similarly being constructed well above street level, reflective of the slope of the area.

Immediately adjoining the subject site to the north at No. 33A Beatty Street is a 2-storey brick dwelling with tiled roof. Currently adjoining the site to the south at No. 31 Beatty Street is a 2-storey brick dwelling with tiled roof. It should be noted that a first floor addition to the existing dwelling with a secondary dwelling at the rear of No. 31 Beatty Street are currently under construction as per DA2020/0803.

3. Extent of Non-Compliance

As noted above, Clause 4.3 of the Manly LEP 2013 states that the maximum height of the building must not exceed 8.5m.

The proposal seeks to extend the roof over the ground floor level terrace. Although the proposed alterations and additions sought do not exceed the existing overall heights of the dwelling, the proposed works are situated above previously excavated areas that resulted in unused subfloor voids beneath the dwelling. Subsequently, a portion of the proposed works sought are situated above the maximum 8.5m LEP building height standard, with the maximum variation sought equating to 9.57m above the existing ground level (Figure 3).

Therefore, the proposed alterations and additions before Council seek to vary the maximum MLEP13 building height standard by 1.07m (12.58)%.

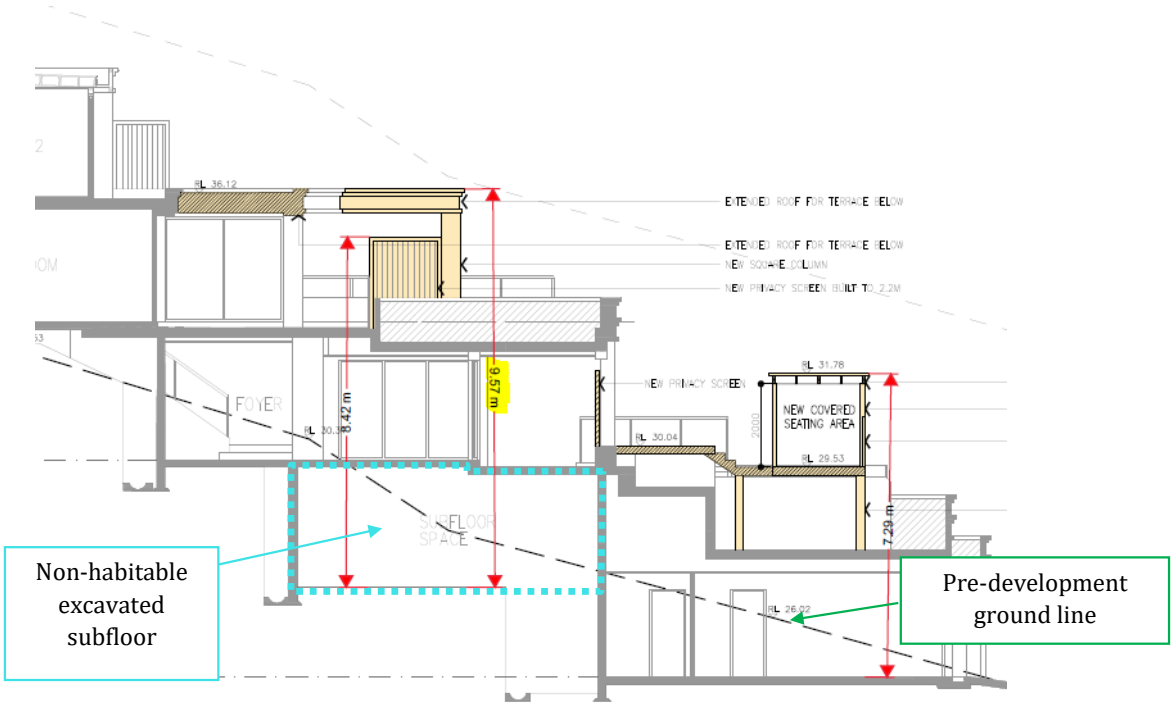


Figure 3 Excerpt of Section A-A showing the extent of variation (Source: Simon Chan + Associates)

Although a variation is sought, the proposal will not result in any adverse impacts to the adjoining lots, and will integrate with the bulk, scale and architectural detail of the existing dwelling, thus maintaining the desired future character of the area.

4. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable, established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827,* are considered.

In the matter of Four2Five, the Commissioner stated within the judgement the following, in reference to a variation:

> *"…the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."*

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827,* Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

First	*The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.* *The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.* ***(applicable)***
Second	*A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)*
Third	*A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)*
Fourth	*A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. (not applicable)*
Fifth	*A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)*

In respect of the height of buildings standard, **the first method is invoked**.

The objectives supporting the maximum height of buildings control identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

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

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

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

(c) to minimise disruption to the following:
(i) views to nearby residential development to public spaces (including the harbour and foreshores),
(ii) views from nearby residential development to public spaces (including the harbour and foreshores),
(iii) views between public spaces (including the harbour and foreshores),

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

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

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

With respect to **objective (a)**, the proposed alterations and additions have had regard to the site context and topography. The proposed roof extensions do not alter the existing levels of the site and will be situated below the existing highest levels of the dwelling to integrate into the existing building form. The variation to building height is generally as a result of previous excavation works undertaken on the site, which have lowered the ground level of the site and resulted in subfloor voids and drainage infrastructure, thus exacerbating the variation to the 8.5m building height standard. The maximum building height of 9.57m sought is measured from the top of the extended non-trafficable roof to the level of the subfloor space (Figure 3).

As the maximum building height is to an underfloor void, the proposed variation to building height will not be visually discernible from the streetscape, given that the proposed works are below the existing height of the dwelling and the subfloor space is not visible from Beatty Street, nor the side elevations. The street elevation (Figure 4; east elevation) plan demonstrates this point.

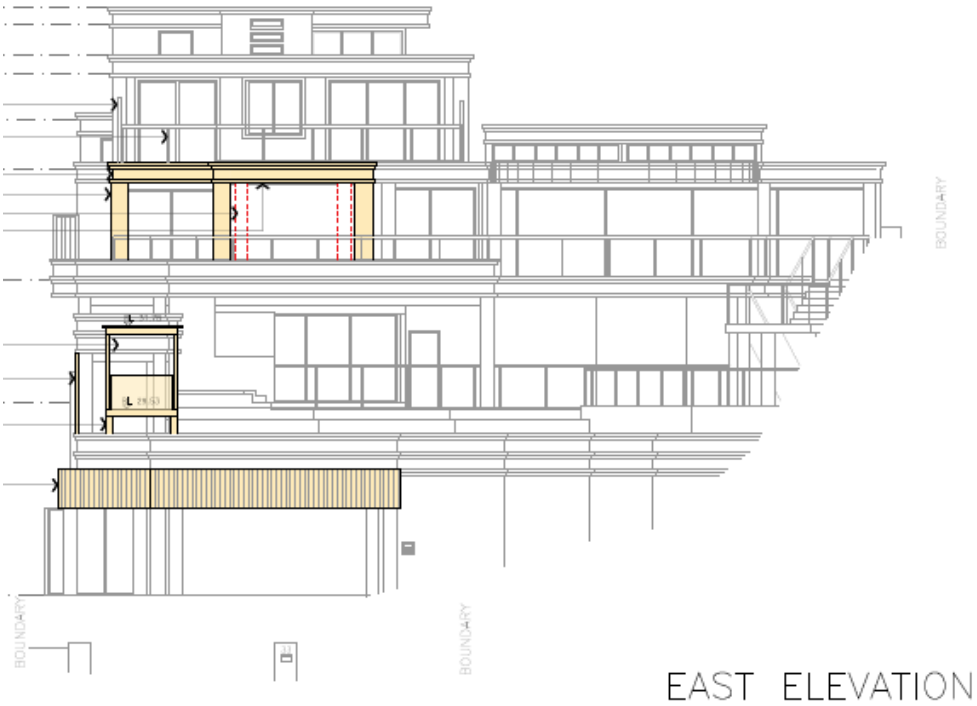


Figure 4: Extract of East Elevation Plan (Source: Simon Chan + Associates).

In regard to **objective (b)**, the proposed alterations and additions sought do not significantly alter the existing bulk and scale of the buildings. The proposed works do not alter the existing number of storeys or gross floor area of the dwelling. As previously outlined, although a variation to building height is sought, the proposed works are situated below the existing highest points (levels) of the dwelling, and nonetheless integrate into the overall architectural bulk and scale of the dwelling (Figure 4). Moreover, the variation to building height is generally as a result of previous excavation works undertaken on the site, which have lowered the 'existing' ground level of the site. Notably, the proposed alterations and additions would have complied with the maximum 8.5m building height standard prior to the excavation of the previous natural ground level of the site. The additional perceived bulk that will be generated by the proposed variation to building height can be attributed to subfloor space and will therefore incur no visual non-compliance to the bulk and scale, with no discernible impact to adjoining properties, nor the streetscape.

In response to **objective (c)**, the proposed alterations and additions sought on the site will have minimal to no impact to existing views of North Harbour. The proposed roof extensions align with the existing levels of the roof and sit below the existing height of the dwelling, thus will have no impact to views from rear adjoining properties.

In terms of No. 31 Beatty Street, the proposed roof extension will not obstruct any views from the primary or secondary dwelling, noting the living areas and bedrooms have been orientated to face east towards North Harbour. Height poles were installed on the site and certified by Cibar Land Surveyors. As evident in the Height Pole Positions plan prepared by Cibar Land Surveyors, the proposed roof extensions sought will be situated between RL36.11 and RL36.24 which is below the level of the secondary dwelling balcony (RL37.20) approved on the adjoining property at No.31 Beatty Street under DA2020/0803.

The proposal will not alter the existing view lines to the foreshore. As the proposal seeks to maintain the existing roof heights, there will be no view loss impact to the adjoining properties as a result of the proposal.

In regard to **objective (d)**, reference should be made to the shadow diagrams prepared by Simon Chan and Associates. The additional overshadowing generated by the proposed alterations and additions is inconsequential and will not impact solar access to the adjoining property at No. 31 Beatty Street (illustrated in light grey in Figures 5-7 below). The adjoining north facing terrace (currently under construction) will continue to receive direct solar access between 9am – 12pm during the winter solstice. No public open space areas will be impacted by overshadowing generated by the proposed alterations and additions.

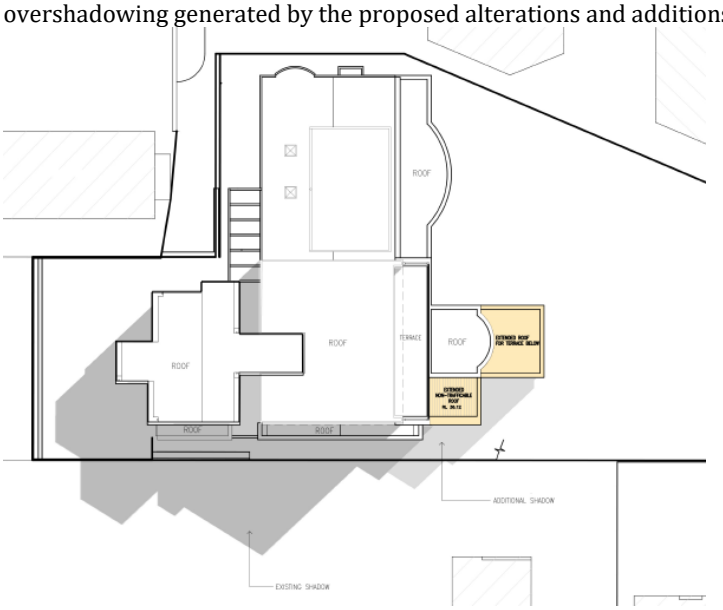


Figure 5: Extract of 9am shadow diagram (Source: Simon Chan + Associates).

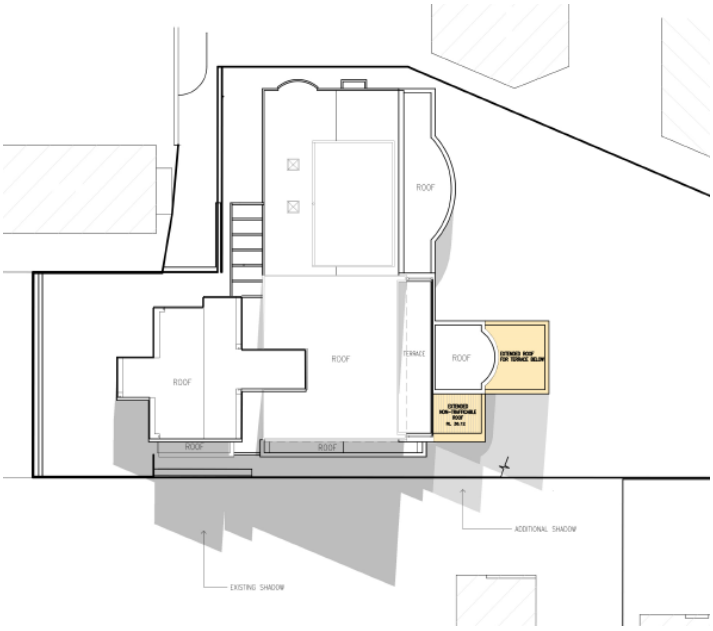


Figure 6: Extract of 12pm shadow diagram (Source: Simon Chan + Associates).

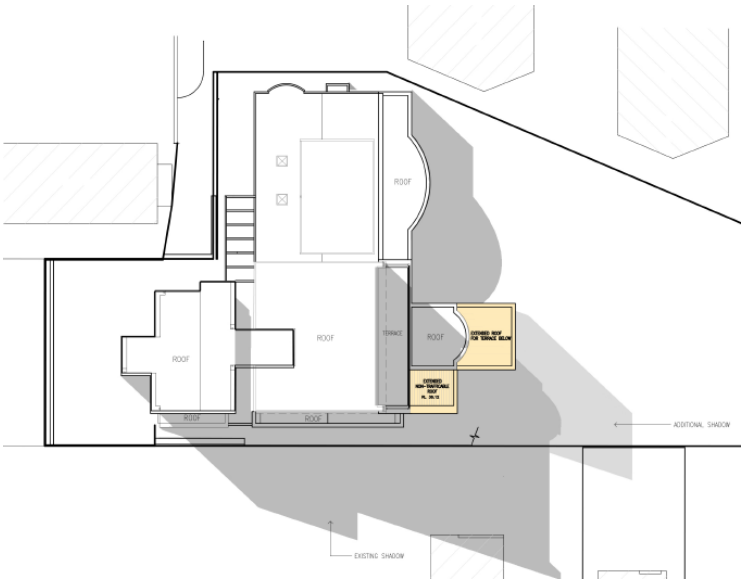


Figure 7: Extract of 3pm shadow diagram (Source: Simon Chan + Associates).

Objective **(e)** does not apply to the proposed development as the subject site is not within a recreational or environmental protection zone.

Therefore, the proposed development is considered to satisfy objectives (a) – (e) of the MLEP13 height of buildings standard.

It is considered that this submission demonstrates the proposal is consistent with the objectives of the standard to justify contravening the development standard. As demonstrated, compliance with the standard is unreasonable as the objectives of the standard have been achieved.

5. Are there Sufficient Environmental Planning Grounds?

The assessment above demonstrates that the resultant environmental impacts of the proposal will be satisfactory, as the objectives of the standard are achieved.

It is worthy to note that the proposed alterations and additions sought do not exceed the existing overall heights of the dwelling (Figure 3 and 4). The variation to building height is generally a result of previous excavation works undertaken on the site, which have lowered the ground level of the site, exacerbating the variation to the 8.5m building height standard. It should be noted that the proposed alterations and additions would have complied with the maximum 8.5m building height standard prior to the excavation of the previous natural ground level of the site.

Moreover, the majority of the proposed alterations and additions sought comply with the maximum 8.5m building height. The extent of variation sought is limited to the roof extension on the lower ground floor level which aligns with the existing levels of the roof. The variation sought is limited to outdoor spaces, with no habitable rooms located above the 8.5m building height standard.

As this variation has no impact on view corridors or results in any detrimental overshadowing, it is considered a variation with no negative impact to adjoining properties or the streetscape is an acceptable outcome for the site.

Thus, the key **environmental planning grounds** resulting in the non-compliance to the building height standard are:

- The development that originally accommodated the dwelling required excavation, which modified the 'existing' ground levels and placed subfloor void space within the dwelling footprint. The technical numerical variation to building height is inconsequential and not visibly perceived from the elevations of the dwelling, adjoining dwellings, nor the public streetscape.
- The site has a significant slope, of approximately 16m from east to west, resulting in a split-level dwelling of several levels requiring terraces to provide suitable outdoor amenity.
- The extent of the non-compliance to building height is a result of roof extensions, which are minor structures to improve the amenity of residents through the provision of shading and weather protection to outdoor private recreation areas.
- No habitable rooms breach the maximum height standard.
- The proposed alterations and additions are modest, and will integrate into the desired future character of the area as they have been design to integrate into the existing architectural form and presentation of the existing dwelling (Figure 4) with no resulting environmental impact.

In this case, strict compliance with the development standard for height of buildings in the Manly LEP 2013 is unnecessary and unreasonable given the proposed works are minor in nature and do not exceed the existing overall heights of the dwelling.

6. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the relevant standard, and the objectives for development within the zone in which the development is to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 5. Further, the development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3.

The alterations and additions are well-designed and are sympathetic to the adjoining properties in terms of bulk, scale, privacy mitigation and retaining view lines. The development complements, and will continue to contribute to, the general character and amenity of the locality.

The proposed roof extension, which aligns with the levels of the existing roof, will provide shading and weather protection to the existing terrace, improving the amenity and useability of the private open space within the site for current and future residents.

Furthermore, it is important to also consider the objectives of the R2 Low Density Residential zone in relation to the development, which are as follows:

Zone R2 Low Density Residential

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.*

In response to the above the following is provided:

- The proposed alterations and additions to the existing dwelling house on the site will maintain the current land use and will continue to provide for the housing needs of the community into the future.
- There are no other land uses proposed.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.

7. Public Benefit of Maintaining the Standard

It is considered that there is no benefit to the public or the community in maintaining the development standard. The proposed variation sought is in relation to a modest roof extension which aligns with the height of the existing roof above the rumpus room level terrace. The existing levels and number of storeys of the dwelling will not be altered by the proposed development. The proposed works will be situated below the existing highest points of the dwelling and will not be discernible from the streetscape (Figure 4).

The development is generally consistent with the current planning controls, as:

- The proposal would not create any adverse privacy, overshadowing and perceived bulk and scale impacts upon adjoining properties;
- The variation sought does not raise any matter of significance for State or regional environmental planning;
- The proposed development achieves the outcomes and objectives of the relevant planning controls.

9. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Manly Local Environmental Plan 2013 in that:

- Compliance with the development standard would be unreasonable and unrealistic in the circumstances of the proposal;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The variation is existing, and the works are proposed would not exaggerate this breach;
- The breach does not raise any matter of State of Regional Significance; and
- The proposal submitted generally aligns with other provisions of Council's Local Environmental Plan, as well as Council's Development Control Plan.

Based on the above, the variation is considered to be well founded.

10. General

Clause 4.6 also states that:

"(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 include 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 E3 Environmental Management or Zone E4 Environmental Living.*

(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,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 6.15,

(cb) a development standard on land to which clause 6.19 applies."

This variation does not relate to the subdivision of land in the stated land use zones. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

The proposed works sought do not require a BASIX certificate to be prepared.

Clause 5.4, Clause 5.5, Clause 6.15 and Clause 6.19 do not apply to the proposed development.

11. Conclusion

The proposal does not strictly comply with the maximum height of building controls as prescribed by Clause 4.3 of the Manly Local Environmental Plan 2013. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Manly Local Environmental Plan 2013 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Manly Local Environmental Plan 2013 to vary this development control is appropriate.

Based on the above, it is sensible to conclude that strict compliance with the height of building control is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

RBianco

Roberto Bianco
GAT & Associates
Plan 3268

Updated 22 August 2023

ITEM 3.3	**DA2023/0445 - 4 GREYCLIFFE STREET QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND CONSTRUCTION OF A GARAGE AND CARPORT**
REPORTING MANAGER	**Rod Piggott**
TRIM FILE REF	**2023/557852**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Clause 4.6**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2023/0445 for alterations and additions to a dwelling house and construction of a garage and carport on land at Lot 21A DP 333630, 4 Greycliffe Street QUEENSCLIFF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0445

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 21A DP 333630, 4 Greycliffe Street QUEENSCLIFF NSW 2096
Proposed Development:	Alterations and additions to a dwelling house and construction of a garage and carport
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:	Martha Jane Crummy
Applicant:	The Site Foreman (NSW) Pty Ltd

Application Lodged:	09/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	15/05/2023 to 29/05/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 25%
Recommendation:	Approval

Estimated Cost of Works:	$ 857,957.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing dwelling house, including the construction of a garage and carport.

The application is referred to the Development Determination Panel (DDP) due to a departure from the height of buildings development standard by more than 10%. The maximum height of the proposed development has been measured at 10.5 metres, which represents a variation of 25% to the prescribed 8.5 metre building height limit.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. Two submissions were received raising the following issues:

- Stormwater
- Covenants
- Garage and driveway works

The 4.6 request for the non-compliance with height standard arises as the existing building currently breaches the height limit significantly, with the extent of works being a 2.1 metre extension of the existing floor and installation of skylights. Specifically, the new skylights represents a maximum variation of 25%, while the extension to the dwelling represent a variation of 4.7%, to the height of buildings development standard.

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the existing built form on the site and in the wider locale. The proposed additions retain the low density residential character, while being built primarily upon the existing footprint and not resulting in the removal of any significant vegetation or require significant alteration to the landform.

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

PROPOSED DEVELOPMENT IN DETAIL

Development application for alterations and additions to a dwelling house and construction of a garage and carport. The works comprise:

- Demolition works, including removal of carport.
- Construction of a tandem garage.
- Construction of a single carport.
- Level 1 front extension to provide new kitchen, dinning, bathroom and deck.
- Level 1 rear extension to provide a new sitting room.

AMENDED PLANS
Following a preliminary assessment of the application, Council wrote to the applicant on 27 June 2023, outlining concerns with the application.

The concerns related to inadequate 4.6 request, bulk and scale, and works on the boundary.

The applicant lodged amended plans and a revised 4.6 request to address the concerns on 25 July 2023.

The amended plans incorporated the following changes:

- Deletion of the L1 parapet projections.
- Further clarification to confirm that the works are located entirely within the property boundaries.

Community Participation Plan
The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. 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 - 5.21 Flood planning
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
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 - C3 Parking Facilities
Warringah Development Control Plan - C9 Waste Management

SITE DESCRIPTION

Property Description:	Lot 21A DP 333630 , 4 Greycliffe Street QUEENSCLIFF NSW 2096
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Greycliffe Street. The site is legally known as Lot 21A DP 333630, No.4 Greycliffe Street. The site is irregular in shape with a splayed frontage of 18.4 metres along Greycliffe Street and a depth of varying between 41.4 metres / 37.2 metres. The site has a surveyed area of 458.9m². The site is located with the R2 Low Density Residential zone and accommodates a three (3) storey dwelling house.

	Surrounding development consists of a mixture of detached residential dwellings and existing residential flat buildings of up to and above 4 stories in height. The site has a southerly aspect with a steep slope stepping down the allotment in several parts from the front boundary to the rear, as much as 8 metres. There are medium sized palms on the site, with a rear area of turfed grass adjacent the rear boundary. The site is adjacent Queenscliff Lagoon.

Map:

SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/05/2023 to 29/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Wayne Keith Stacey	8 A Greycliffe Street QUEENSCLIFF NSW 2096
Christine Ann Roberts	2 / 8 Greycliffe Street QUEENSCLIFF NSW 2096

The following issues were raised in the submissions:

- **Stormwater**
- **Covenant**
- **Garage and driveway works**

The above issues are addressed as follows:

- **Stormwater**

  The submissions raised concerns that the proposal will impact upon existing drainage infrastructure and create unreasonable run-off.

  Comment:

  The application has undergone review by Council's Development Engineers, with consideration given to stormwater aspects. The Engineering team supports the proposal, contingent upon specific conditions. These conditions necessitate the applicant to provide evidence detailing how stormwater from the new development covered by this consent will be managed. This management could involve integration with an existing approved system or compliance with Northern Beaches Council’s Water Management for Development Policy. The applicant must furnish comprehensive details that demonstrate either the capacity of the existing approved

system to accommodate the additional stormwater flow or design a new system that is in accordance with the Water Management for Development policy. These details should be prepared by a suitably qualified Civil Engineer and submitted to the Certifier. The approval for these details is a prerequisite before the Construction Certificate can be issued. In conclusion, Council is confident that the proposed development will not result in significant adverse impacts due to stormwater discharge from the development site.

This matter does not warrant the refusal of the application.

- **Covenant**

The submissions raised concerns that the subject site is burdened by a covenant that prevents the use of metal roofing without written permission from No. 8 Greycliffe Street.

Comment:

Clause 1.9A (Suspension of Covenants, Agreements, and Instruments) within the Warringah Local Environmental Plan (WLEP) outlines that any covenant, with the exception of that mentioned in subclause (2), which imposes restrictions on land development, shall not be applicable. No evidence can be found within Council's records to suggest that the covenant was imposed for the purposes listed in subclause (2) and therefore does not apply in this instance. Notwithstanding, recommended conditions will ensure that the external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties.

This matter does not warrant the refusal of the application.

- **Garage and driveway works**

The submissions raised concerns with the the structural adequacy of the existing storeroom that supports the proposed garage above. In addition, concerns have also been raised that insufficient information has been provided for works to the driveway.

Comment:

Imposed conditions will require the applicant to provide a Structural Engineers' certificate certifying that the elevated parking facility has been constructed in accordance within this development consent and relevant Australian Standards.

This matter does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	**SUPPORTED WITH CONDITIONS** The application seeks consent for alterations and additions to a dwelling house and construction of a garage and carport. The Landscape Plan indicate that no significant landscape features

Internal Referral Body	Comments
	are impacted by the proposed works. No trees are to be removed. No objections are raised with regard to landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	**SUPPORTED WITH CONDITIONS** The proposal seeks approval for alterations and additions to a single dwelling. The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 21 - Coastal Environment Area • Warringah DCP Clause E2 Prescribed Vegetation • Warringah DCP Clause E4 Wildlife Corridors • Warringah DCP Clause E6 Retaining unique environmental features The proposed works would take place in a previously disturbed site and are unlikely to impact on native flora and fauna. No removal of trees and vegetation has been proposed as part of the works. No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	**SUPPORTED WITH CONDITIONS** This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021 and - Relevant LEP and DCP clauses **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the and 'Coastal Use Area' and 'Coastal Environment Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by The Site Foreman dated May 2023, 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

Internal Referral Body	Comments
	& Hazards) 2021 **Warringah LEP 2011 and Warringah DCP** **Landslide/ Landslip Hazard Management** The subject site is also shown to be as “Landslide risk C” on Council’s Landslide Risk Map in Warringah DCP 2011. As such, Part E10 (Landslip Risk) of the Warringah DCP 2011 will apply to proposed development on the site. A Preliminary Geotechnical Report by White Geotechnical Group dated May 2023 assessing landslide/landslip hazard has been submitted with the DA. The report assessed that the likelihood of the existing slope failing is assessed as ‘UNLIKELY’; the consequences of such a failure are assessed as ‘MINOR’. The risk to property is ‘LOW’. The existing conditions and proposed development are considered to constitute an ‘ACCEPTABLE’ risk to life and a ‘LOW’ risk to property provided that the recommendations outlined in Table 4 in Section 3.6 below are adhered to during design and construction. The proposed development is considered to be suitable for the site. No significant geotechnical hazards will result from the completion of the proposed development provided the recommendations presented in Table 4 are adhered to during design and construction. No other coastal planning or development controls relevant to the subject DA were identified.
NECC (Development Engineering)	**SUPPORTED WITH CONDITIONS** The submission proposes to discharge stormwater from the proposed development to an existing system. This is acceptable and will be conditioned. A geotechnical risk assessment has been carried out. No vehicle crossing construction is proposed.
NECC (Flooding)	**SUPPORTED WITHOUT CONDITIONS** The proposed development is outside of flood area. There are no flood related objections.
Parks, reserves, beaches, foreshore	**SUPPORTED WITH CONDITIONS** The development site adjoins Manly Lagoon that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the lagoon and reserve. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.

Internal Referral Body	Comments
	Public access and enjoyment to the lagoon and adjoining reserve is not impacted by the proposed development and the development is not detrimental to the landscape character with visual and physical separation to an acceptable level, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.

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

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. A493585 dated 13 April 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area
2.10 Development on land within the coastal environment area

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

g) the use of the surf zone.

Comment:
The site is located within the Coastal Environment Area.

The changes proposed to the existing dwelling are such that no impact will occur which adversely affect the matters raised in points (a) to (g). Conditions are also imposed to appropriately address construction activity such as structural adequacy and excavation work and erosion/sediment control to ensure that the development will not adversely affect the matters raised in Points (a) to (g).

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

Comment:
Council is satisfied that the development is designed, sited and will be managed (subject to condition) to avoid an adverse impact referred to in sub-clause (1).

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

Comment:
The development has been designed to ensure that no adverse impact will be caused to the matters

raised in Point (a)(i) to (v).

Therefore, Council is satisfied that the development has been designed, sited and will be managed (subject to condition) to avoid any adverse impact referred to in Point (a).

This assessment has considered the development against the applicable standards and controls to take into account the bulk, scale and size of the development within the surrounding coastal and built environment.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

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

Comment:
The proposed development is largely internal, and therefore it is not foreseen that the works would cause an increased risk or coastal hazards on the site itself or other land. No further assessment on this matter is required.

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:
Not applicable.

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	8.9m (Level 1 extension) 10.5m (Skylight)	4.7% 25%	**No** **No**

Compliance Assessment

Clause	Compliance with Requirements
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
5.21 Flood planning	Yes
6.1 Acid sulfate soils	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:	8.8m - 10.5m (Skylights) 8.9m (Level 1 extension)
Percentage variation to requirement:	4.7% - 25%

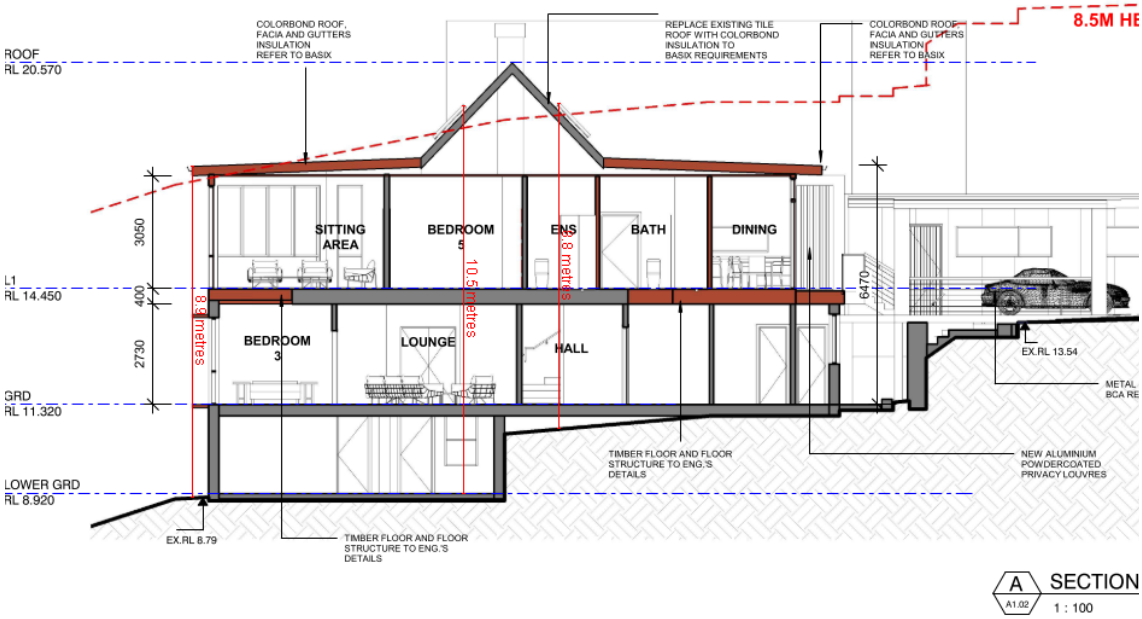


Figure 1. Building height diagram.

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).

In this regard, the Applicant's written request has not 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 that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

- *The proposed first floor alterations will be presented as a 2 storey building from the street frontage side, well below the 8.5m controls. The portion of the proposed Sitting area roof which is higher than the 8.5m control is located at the rear in the middle of the site and will not be clearly visible from the street.*
- *The existing roof is much higher than 8.5 m and proposed skylights will be incorporated to this existing roof so overall height of this roof will be not changed.*
- *The departure is supportable as a consequence of the slope.*
- *It is considered that flexibility in the application of the Standard is warranted, given that the existing building exceeds the Building Height Standard and that the proposed non-compliant element is less in height to the elements of the existing building above 8.5m.*

The extent of the non-compliance is limited to the rear portion (south) of the building, specifically, a minor area of the sitting area roof and two skylights. Additionally, it is acknowledged that the site contains various constraints that present a challenge in being able to strictly comply with the numerical building height requirement while also achieving an appropriate level of internal amenity for occupants of the dwelling. Furthermore, it is also considered that the minor non-compliance will not give rise to any adverse amenity impacts or result in unreasonable streetscape impacts.

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:

The development is located on the low (southern) side of Greycliffe Street, which is characterised by a fluctuating slope to Queenscliff Lagoon. As such, this creates a range of varying built forms along Greycliffe Street, with regards to height and scale. The projections above the 8.5 metres height limit are limited to the rear of the building with a minor area of the sitting area roof and two skylights (demonstrated in figure 1 above). This is largely consequence of the sloping topography and existing excavation, as the building footprint is situated on a slope that is approximately 19%. However, these encroachments are considered to be relatively minor and do not result in unacceptable neighbouring impacts. Overall, the proposed height is considered to be compatible and commensurate with the existing built form and therefore, remains consistent with the height and scale of surrounding and nearby development.

The development satisfies this objective.

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

Comment:

The proposed extensions have been designed to include a flat roof, which sits below the existing ridge line and limits any unreasonable view impacts. The applicant has submitted

shadow diagrams and detailed analysis of the overshadowing impact of the development and Council are satisfied that the adjoining site's will receive solar access to living room windows and private open space in accordance with the Warringah DCP. The development contains modest windows on the side elevations to limit overlooking and remains orientated to the south to take advantage of the ocean views.

The development satisfies this objective.

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

Comment:

The southern boundary of the subject site adjoins Queenscliff Beach reserve. The non-compliant elements of the proposal are situated a minimum of 15.1 metres from the rear boundary. This portion of the development will not be readily visible from the adjacent reserve, due to the retention of existing landscaping and noteable level difference. This landscaping will serve to soften and filter the built form. Consequently, the proposal will be effectively integrated into the pre-existing landscaped setting.

The development satisfies this objective.

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

Comment:

The proposal has been appropriately sited and articulated to minimise the visual impact when viewed from public places.

The development satisfies this objective.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

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

  Comment:

  The development will continue to provide for the housing needs of the community within a low density residential environment.

  It is considered that the development satisfies this objective.

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

  Comment:

  This is not applicable to the proposed development.

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 proposed development maintains sufficient landscaped area within the rear setback area to compliment the landscaped setting locality and is consistent with the objective.

  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).

5.21 Flood planning

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

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

Comment:
The subject site is affected by the Medium Flood Risk Precinct. As such, the development application was referred to Council's Natural Environment (Flood), who are supportive of the application, subject to conditions of consent. In this regard, it is considered that the development is consistent with the

objectives of this clause and the matters raised in points (a) - (e).

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

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

Comment:
As above, it is considered that the development is consistent with the objectives of this clause and the matters raised in points (a) - (d).

6.4 Development on sloping land

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

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

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 and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

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.

(c) the development will not impact on or affect the existing subsurface flow conditions.

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 result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.7m	20.8%	**No**
B3 Side Boundary Envelope	5m - East	Outside envelope	42%	**No**
	5m - West	Outside envelope	34%	**No**
B5 Side Boundary Setbacks	0.9m - East	Nil (Garage) 1.2m (Level 1)	100% N/A	**No** Yes
	0.9m - West	0.9m - 2.4m (Level 1)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Nil (Garage)	100%	**No**
B9 Rear Boundary Setbacks	6m	15.1m (Level 1)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	No additional hard surfaces	N/A	N/A

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	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	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
D14 Site Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D20 Safety and Security	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
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The DCP requires a maximum wall height of 7.2 metres. The proposed development has a maximum wall height of 8.6 metres at its highest point.

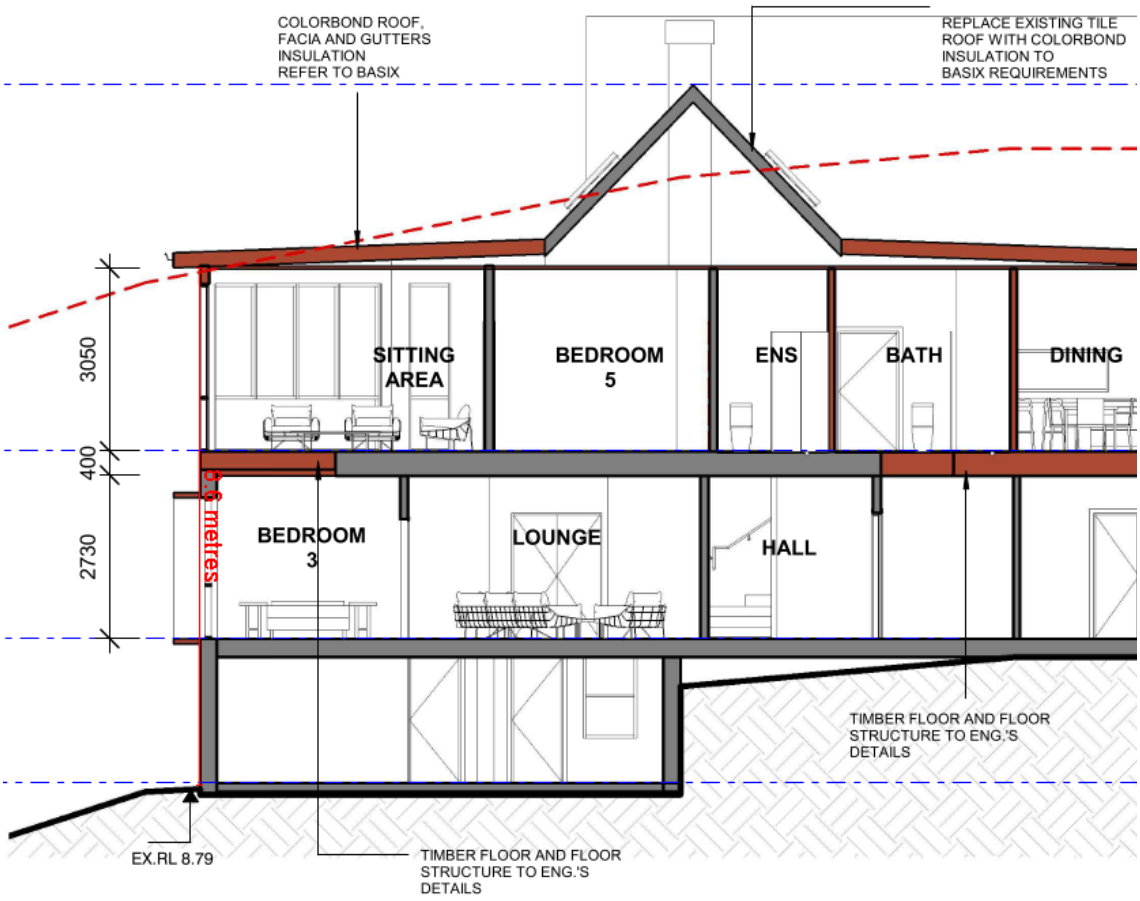


Figure 2. Wall height non-compliance.

Merit consideration:

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

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

  Comment:

  The non-compliance with the wall height control relates to the southern, eastern and western wall planes and is most pronounced toward the upper corner for the sitting area. These elements of the building will be visible from adjoining properties (east and west and visible from the public domain (such as Manly Lagoon reserve). Generally the building is visible from the coastal zone (Manly Beach / Queenscliff) but is consistent with the height and scale of

surrounding dwellings. The non-compliant elements are located at the rear of the building and will not have a discernible impact upon the streetscape. Overall, the proposed height is considered to be compatible and commensurate with the existing detached development within the locality and will not give rise to any unacceptable visual impacts.

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

  Comment:

  The steep nature of the site is part of the natural topography around Queenscliff and influences the pattern of surrounding development, where houses are positioned to make the most of the views and aim to accommodate additional elements like garages, pools, and such. The sandstone terrain limits the opportunity for large canopy trees due to the shallow soil. The site is on a south-facing slope with higher land to the north. Therefore, the height of the higher topography in the surrounding area provides a backdrop for development along Greycliffe Street / Queenscliff Street.

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

  Comment:

  The proposal will achieve reasonable view sharing.

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

  Comment:

  The proposal achieves acceptable building separation with generous side boundary setbacks. In addition, the portions of the development that exceed the maximum wall height do not contain any intrusive windows nor do they create unacceptable privacy or overshadowing impacts. Further, the proposal's flat roof design minimises overshadowing impacts to adjacent living rooms and private open space on the winter solstice (June 21). Overall, the proposed non-compliance is largely as consequence from the site being previously excavated for the existing ground floor in addition to the sloping topography. Notwithstanding, the proposal has been suitably designed to minimises the impact of development on adjoining and nearby properties.

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

  Comment:

  The proposed addition will be largely located above the existing building footprint and does not involve any significant earthworks. Overall, the proposal responds appropriately to the site's topography.

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

  Comment:

  Sufficient scope has been provided to enable the innovative roof form.

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

WDCP requires buildings to be sited within a building envelope determined by projecting planes at 45 degrees from 5.0 metres above ground level (existing) at the side boundaries. The proposed rear extension encroaches the prescribed envelope on both boundaries.

The proposal has one encroachment on the eastern elevation between 1.2 metres and 2.1 metres for a length of 5.8 metres. This represents a variation of 42%.

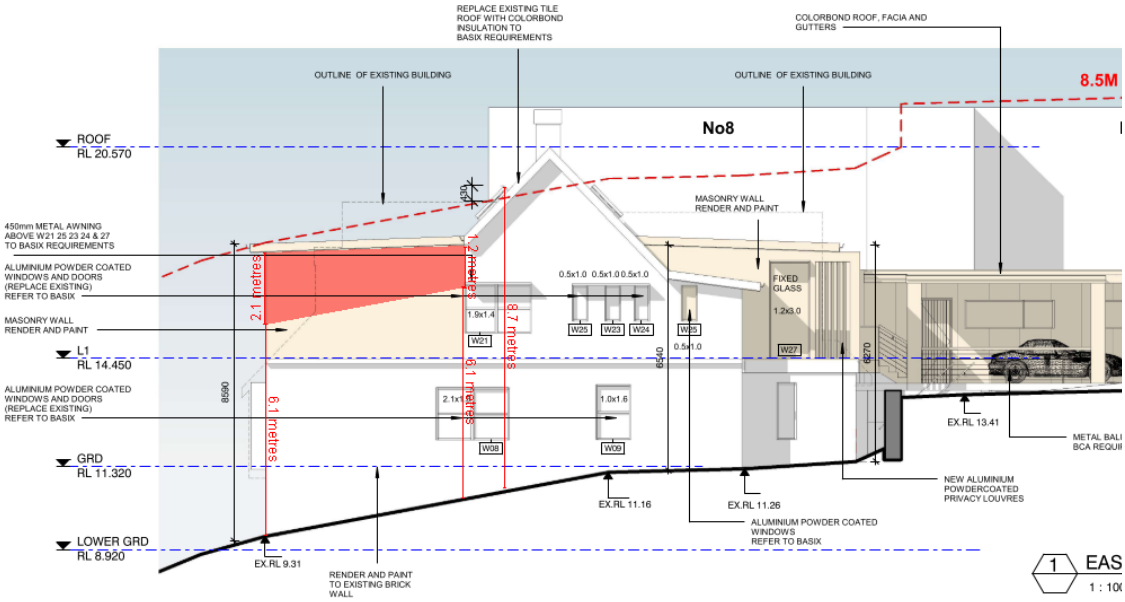


Figure 3. Extent of eastern side boundary envelope non-compliance.

The proposal has three encroachments on the western elevation as listed below:

- Garage - between 0.7 metres and 1.0 metre for a length of 3.0 metres. This represents a maximum variation of 20%.
- Kitchen, bedroom 4 and front deck - between 0.6 metres and 1.7 metre for a length of 6.6 metres. This represents a maximum variation of 34%.
- Sitting room - between 1 metres and 1.2 metre for a length of 1.3 metres. This represents a maximum variation of 26%.

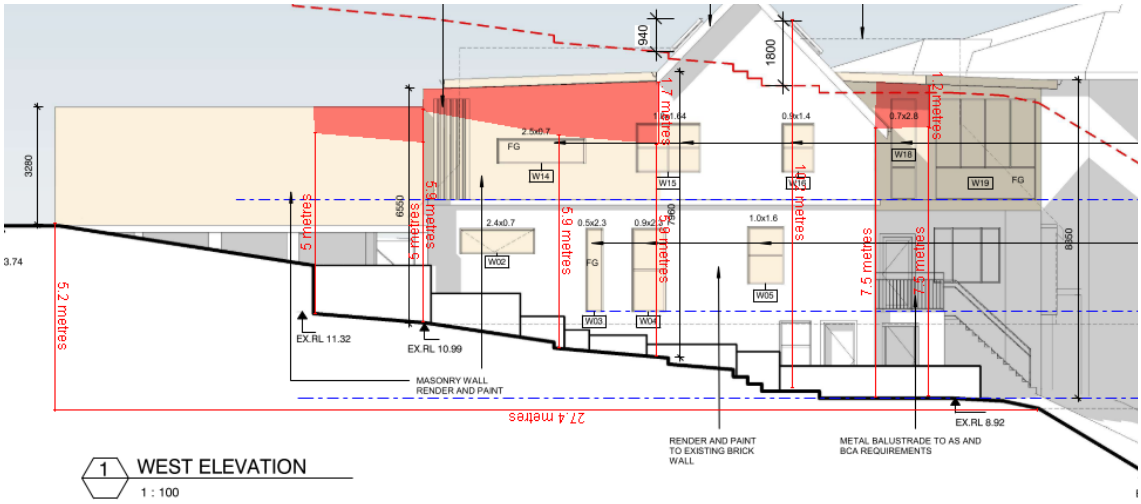


Figure 4. Extent of western side boundary envelope non-compliances.

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 encroachments outside of the prescribed envelope is consequent of following the existing building lines of the house and garage in addition to a notable slope in the ground from north to south. By way of following the existing building line of the house, it is found that the development has a lesser visual dominance compared to a scheme that did comply, which would result in an awkward building step that would draw more attention to the wall than what is proposed. Notwithstanding this, the proposal is appropriately articulated using recessed and modulated walls, fenestration, open balconies, eaves and changes in materials to break up built form. Overall, the proposal is not of an excessive scale and is designed in a contextually appropriate way to ensure it is congruent to the Queenscliff streetscape.

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

  Comment:

  The spatial separation proposed between buildings is considered appropriate within the low density setting. In addition, the variations sought to the side boundary envelope do not contain any intrusive windows. Furthermore, the submitted shadow diagrams demonstrates compliance with WDCP's access to sunlight control. Overall, it is considered that the proposal ensures adequate light, solar access and privacy by providing reasonable spatial separation

between buildings.

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

  Comment:

  The building makes appropriate level changes where required and is considered to respond appropriately to the topography of the site.

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.

B5 Side Boundary Setbacks

Description of non-compliance

The proposed tandem garage has a nil western side setback (see Figure 5.). WDCP requires a minimum side setback of 0.9 metres.

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:

  The proposal garage will be constructed above existing hard surfaces and will not require the removal of any deep soil landscaping.

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

  Comment:

  The proposal involves the removal of the existing double carport that is in a similar location on the site. Whilst the proposal will be enclosed and extended approximately 3.1 metres south, it maintains a single storey appearance and will remain reasonably screened by the neighbouring boundary wall. In addition, the southern side of Greycliffe Street includes various examples of sites with splayed frontages and car parking structures closely sited to the western side boundaries as a result. Overall, these works will enhance and modernise the appearance of the home and are considered visually commensurate to other comparable structures found within the streetscape.

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

  Comment:

  As above, the bulk of the proposal is consistent with the existing carport and nearby examples,

and the overall scale of the proposal is found to be consistent with the low density nature of the property.

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

  Comment:

  The proposed garage will be reconstructed within a similar position as the existing parking slab. Therefore, the established provision of spatial separation is reasonably maintained by this application, and thereby the level of amenity enjoyed by neighbouring properties is to remain.

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

  Comment:

  The proposed garage replaces an existing single carport in a similar location on the site and is not considered to impact on any views to or from the site.

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

The proposed double garage and single carport seeks to replace the existing dilapidated carport in the same location, providing a minimum nil front setback. In addition, the proposed Level 1 extension comprising a new bathroom, dining, and deck, also encroach the front setback, as displayed within the below diagram.

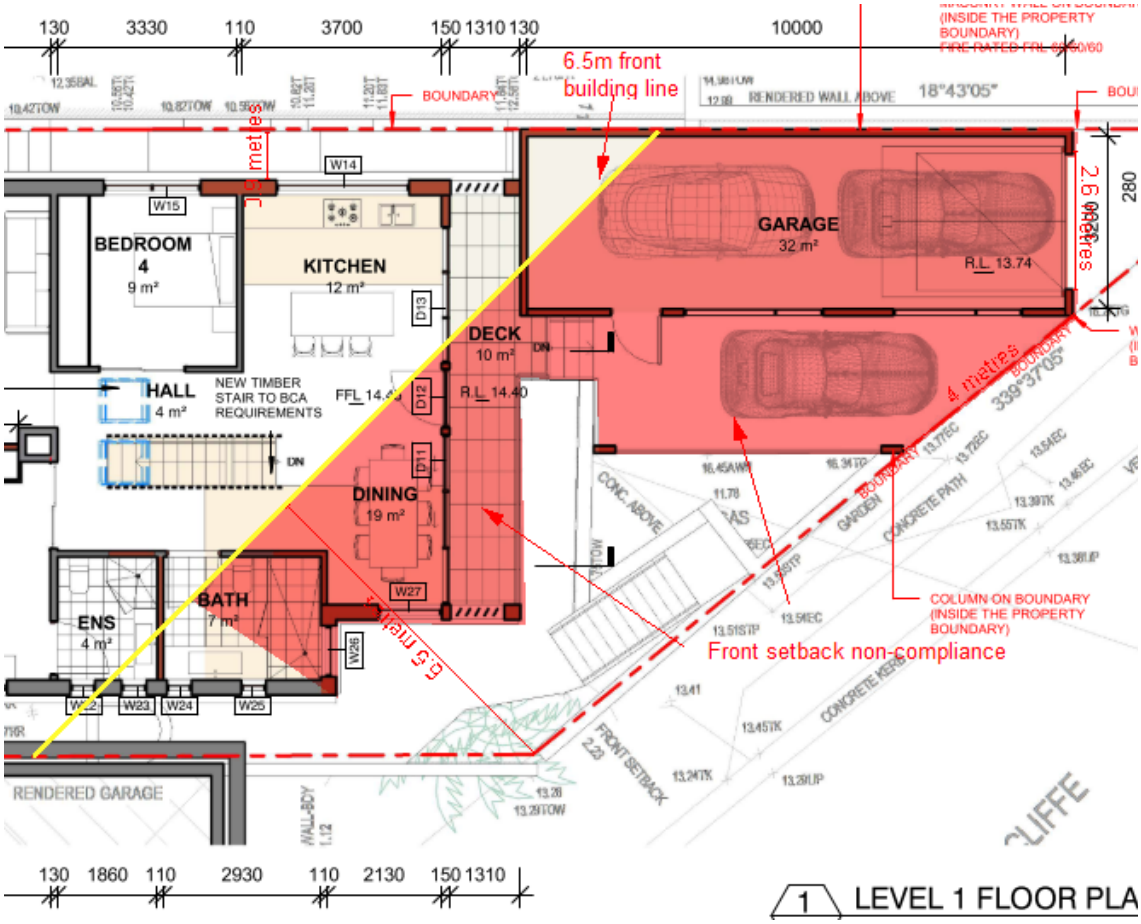


Figure 5. Front setback non-compliance.

Merit consideration:

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

- *To create a sense of openness.*

  Comment:

  The proposal will not result in an unacceptable reduction of openness, given that the development is replacing an existing structure which is consistent with that of surrounding developments. In addition, the proposal maintains a single storey appearance when viewed from the street and is considered to satisfy this requirement.

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

  Comment:

  The location and setback of the proposed development is consistent with that of surrounding

properties found on the southern side of Greycliffe Street.

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

  Comment:

  This part of Greycliffe Street is essentially for utilitarian functions, as carparking structures are found closely sited to the front boundary in response to the sloping topography. In this regard, the proposed development is considered to enhance the streetscape and provide safer vehicular and pedestrian access for the occupants.

- *To achieve reasonable view sharing.*

  Comment:

  The proposed development and its encroachment into the front boundary setback area does not cause any unreasonable impact upon the existing provision of view sharing enjoyed by surrounding 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.

C3 Parking Facilities

Description of non-compliance
The proposal is for a tandem garage and single carport that have a combined opening of 6.6 metres wide opening, which equates to 68.8% of the building width. WDCP requires garage openings to not exceed 6 metres or 50% of the building width, whichever is the lesser.

Merit consideration

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

- *To provide adequate off street carparking.*

  Comment:

  The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Dwelling house	2 per dwelling	2	3	1+

  The proposal will be enhancing the site's off-street parking in accordance with the WDCP minimum parking requirements.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposal's design is constrained by the placement of the existing dwelling, slope of the land and splayed frontage. Due to these constraints, there are numerous examples of off-street parking which are located on elevated platforms within front setback areas. The development is considered to be consistent with this feature and will not have any unreasonable visual impact upon the street frontage.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

  Comment:

  As above the proposal has been adequately designed and sited to minimise any unreasonable visual impact on the streetscape.

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.

C9 Waste Management

A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

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 $8,580 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $857,957.

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.

In summary, the application has been assessed with regard to the relevant Warringah LEP and DCP controls which guide the future desired character of the site and locality, along with the public submission received during the notification period.

The issues raised in the submissions are considered to be addressed by way of the amended plans and conditions of consent.

Subject to the recommended conditions of consent, it is considered that the proposal will result in a development that displays reasonable size, scale and density which is compatible with the existing site and surrounding development and will not result in unreasonable amenity impacts to surrounding properties. Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the DDP with a recommendation for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.
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 DA2023/0445 for Alterations and additions to a dwelling house and construction of a garage and carport on land at Lot 21A DP 333630, 4 Greycliffe Street, 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**
A1.01 - RevH: Site plan	17 July 2023	The Site Foreman
A1.02 - RevG: Ground floor demolition	17 July 2023	The Site Foreman
A1.03 - RevH: First floor demolition	17 July 2023	The Site Foreman
A1.04 - RevH: Ground floor plan	17 July 2023	The Site Foreman
A1.05 - RevI: First floor plan	17 July 2023	The Site Foreman
A1.06 - RevF: Roof plan	17 July 2023	The Site Foreman
A2.01 - RevG: North elevation	17 July 2023	The Site Foreman
A2.02 - RevG: East elevation	17 July 2023	The Site Foreman
A2.03 - RevG: West elevation	17 July 2023	The Site Foreman
A2.04 - RevG: South elevation	17 July 2023	The Site Foreman

A3.01 - RevF: Section AA	17 July 2023	The Site Foreman
A3.02 - RevD: Section DD	17 July 2023	The Site Foreman
A5.01 - RevD: Schedule of finishes	17 July 2023	The Site Foreman

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No.A493585	13 April 2023	CVMA Architects
Geotechnical Assessment	31 January 2023	AscentGeo

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**
C1 - Rev B: Landscape plan	18 November 2022	Contour Landscape Architecture

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

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

2. **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	15 May 2023
Aboriginal Heritage Office	AHO Referral Response	20 June 2023

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

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

3. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

(i) showing the name, address and telephone number of the Principal Certifier for the work, and

(ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

(iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

(i) in the case of work for which a principal contractor is required to be appointed:

A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

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

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **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 $8,579.57 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 $857,957.00.

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 $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **Stormwater Disposal from Low Level Property**
The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with Northern Beaches Council's policy by an appropriately qualified Civil Engineer 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.

9. **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.

10. **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.

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

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

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

12. **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.

13. **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.

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **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.

16. **Pre-Construction Dilapidation Report**
Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties

listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property:
- No. 8 Greycliffe Street, Queenscliff.

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.

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

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

DURING BUILDING WORK

19. **Protection of Rock and Sites of Significance**
a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

b) 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.

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

Reason: Preservation of significant environmental features.

20. **Tree and Vegetation Protection**

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

- i) all trees within the site,
- 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.

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

Reason: To protect native wildlife.

22. **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.

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. **No Access Through Land Owned or Managed by Council**
Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

25. **Storage of Materials on Land Owned or Managed by Council Prohibited**
The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

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

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993. Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

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

27. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- 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.

28. **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.

29. **Survey Certificate**
A survey certificate prepared by a Registered Surveyor at the following stages of construction:

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

contained entirely within the property boundaries.

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

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

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

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

30. **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.

31. **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.

32. **Geotechnical Issues**
All conditions outlined in Geotechnical Assessment prepared by AscentGeo dated January are to be complied with and adhered to throughout development.

Reason: To ensure partial demolition of existing dwelling, various internal modifications to the existing dwelling, construction of new roof, covered deck, covered garage and carport and Various soft and hard landscaping detail are undertaken in an appropriate manner and structurally sound.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

33. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

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

34. **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.

35. **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.

36. **Certification Elevated Parking Facility Work**
The Applicant shall submit a Structural Engineers' certificate certifiying 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 the Occupation Certificate.

Reason: Compliance with this consent.

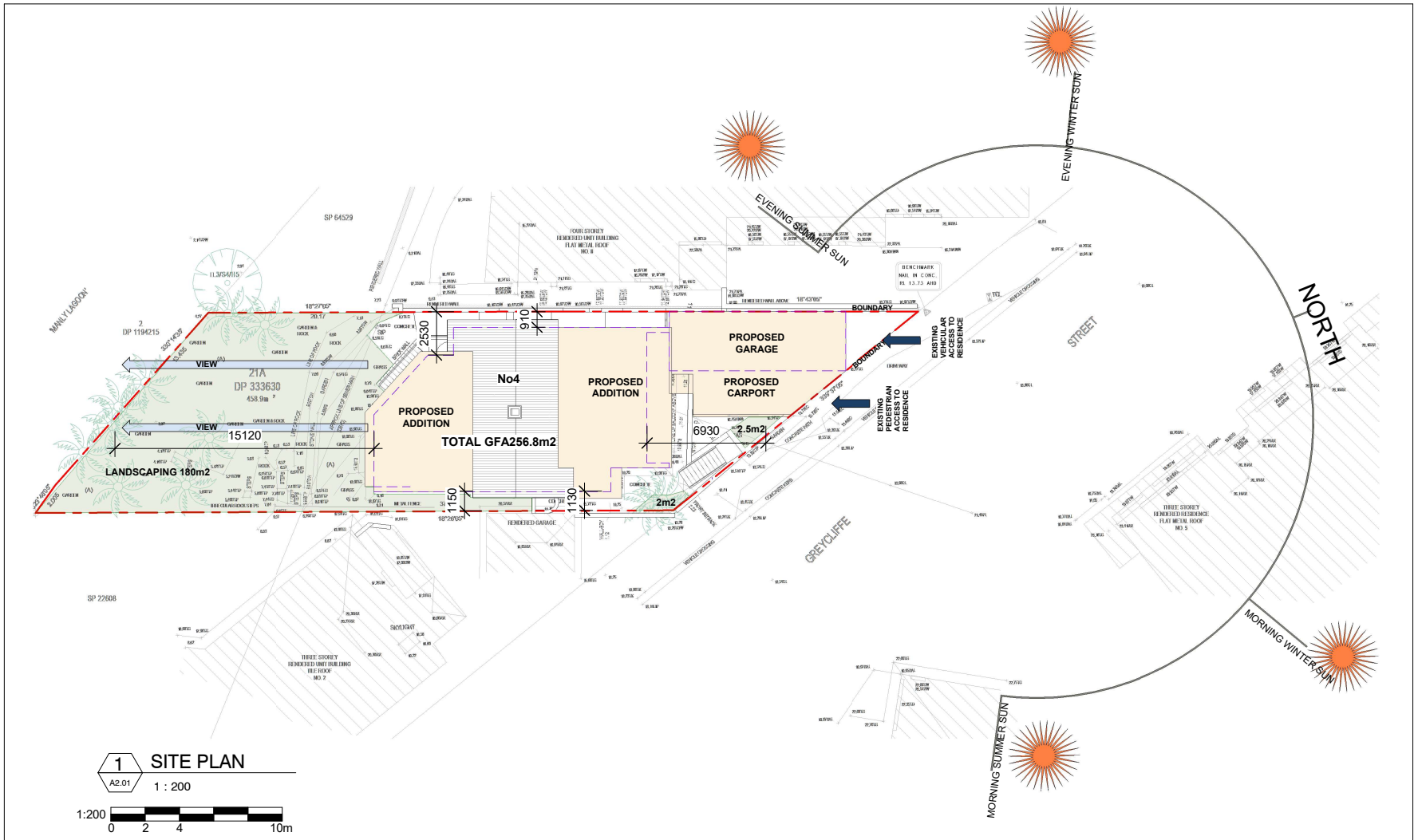
37. **Removal of All Temporary Structures/Material and Construction Rubbish**
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

38. **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.



1 / A2.01 SITE PLAN
1 : 200

1:200 0 2 4 10m

THE SITE FOREMAN Architects + Project Managers
TSF ARCHITECTS

T: 1300 728 006
E: SERVICE@TSFARCHITECTS.COM.AU
INNER WEST:
692-694 PARRAMATTA ROAD, CROYDON NSW 2132
EASTERN SUBURBS:
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G	DA ISSUE	04/04/2023
H	DA ISSUE	17/07/2023

DRAWING TITLE	SITE AND SITE ANALYSIS PLAN
PROJECT	ALTERATIONS AND ADDITIONS
ADDRESS	4 GREYCLIFFE STREET, QUEENSCLIFF NSW

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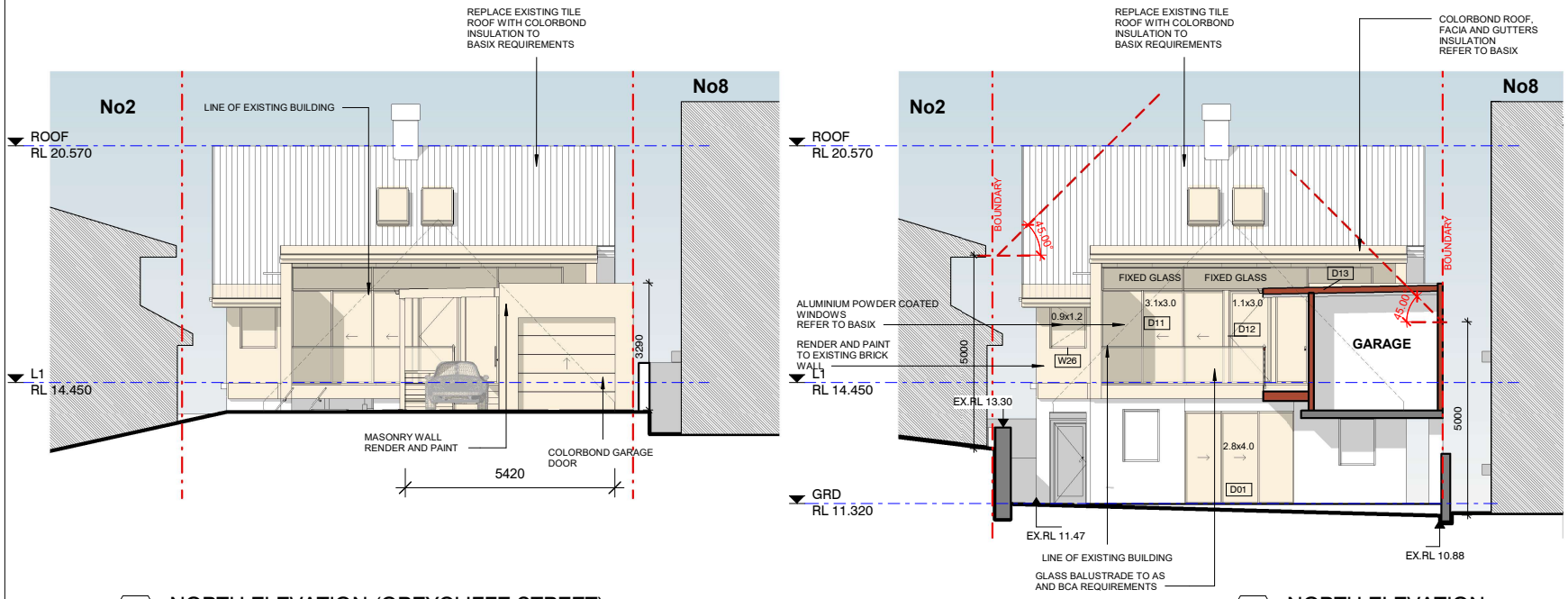

1 NORTH ELEVATION (GREYCLIFFE STREET)
1 : 100

2 NORTH ELEVATION
1 : 100

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E: SERVICE@TSFARCHITECTS.COM.AU
INNER WEST:
692-694 PARRAMATTA ROAD, CROYDON NSW 2132
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DRAWING TITLE	NORTH ELEVATIONS
PROJECT	ALTERATIONS AND ADDITIONS
ADDRESS	4 GREYCLIFFE STREET, QUEENSCLIFF NSW

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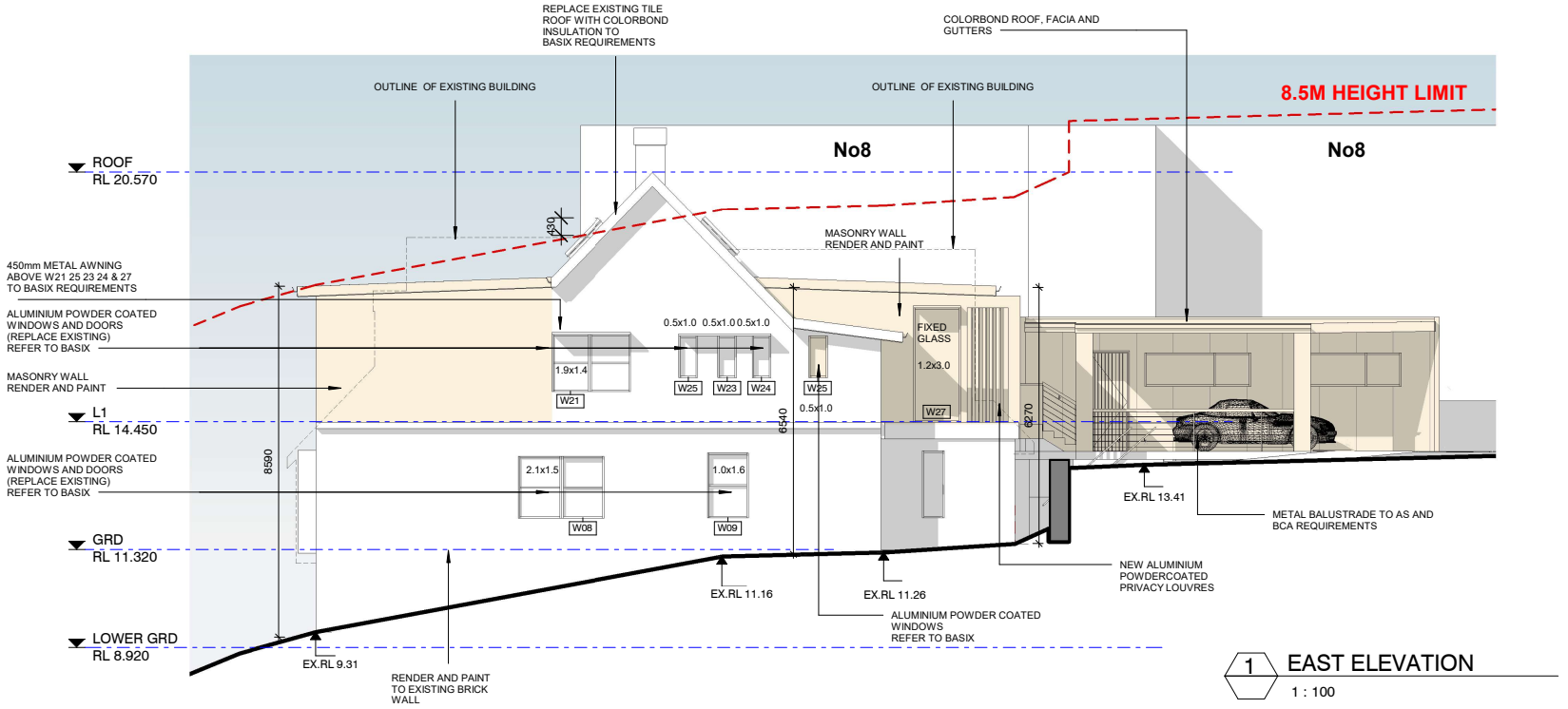
JOB NO	2879
DRAWING NO:	A2.01 REV: G



1 EAST ELEVATION
1 : 100

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TSF ARCHITECTS

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DRAWING TITLE	EAST ELEVATION
PROJECT	ALTERATIONS AND ADDITIONS
ADDRESS	4 GREYCLIFFE STREET, QUEENSCLIFF NSW

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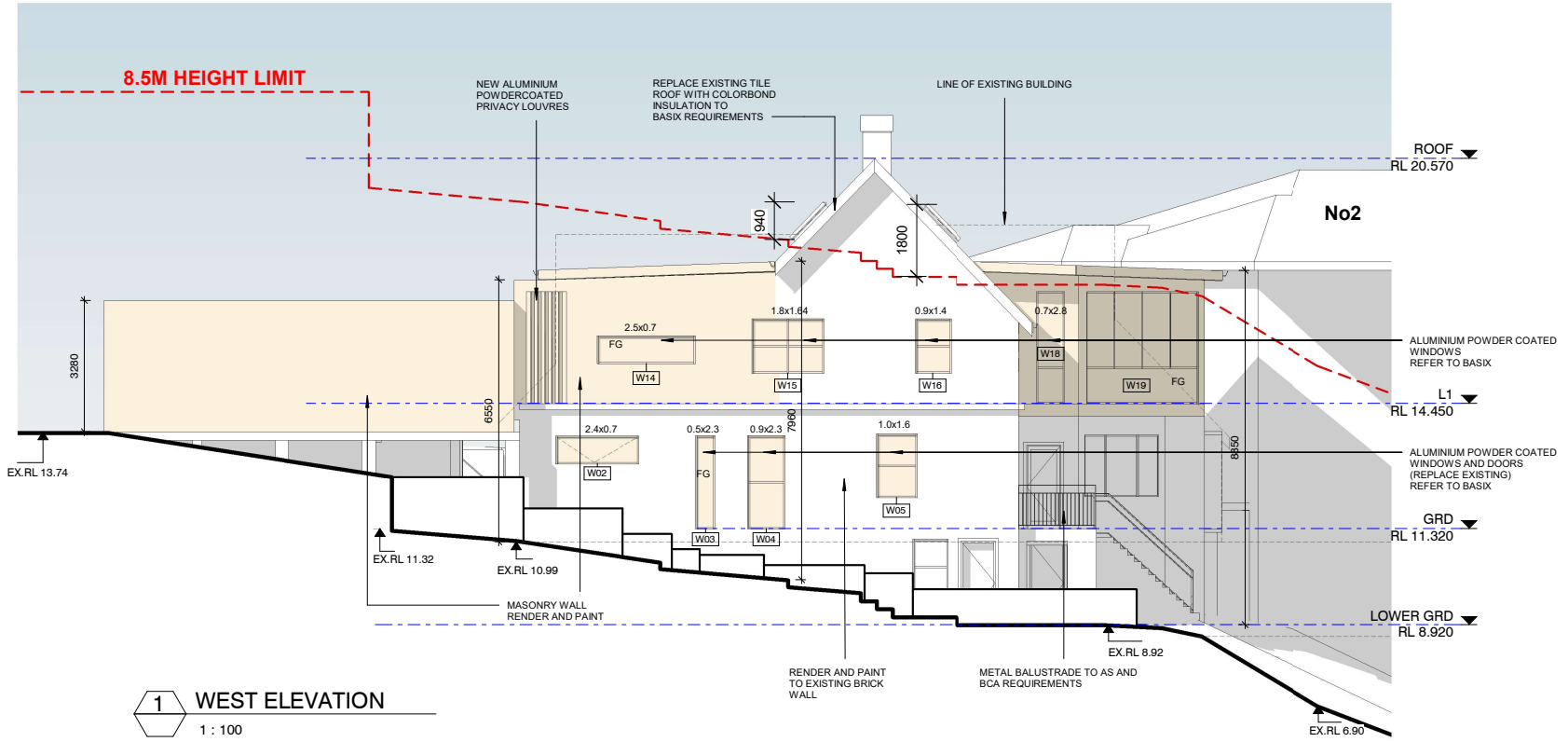
DRAWING NO: A2.02	REV: G



1 WEST ELEVATION
1 : 100

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DRAWING TITLE	WEST ELEVATION
PROJECT	ALTERATIONS AND ADDITIONS
ADDRESS	4 GREYCLIFFE STREET, QUEENSCLIFF NSW

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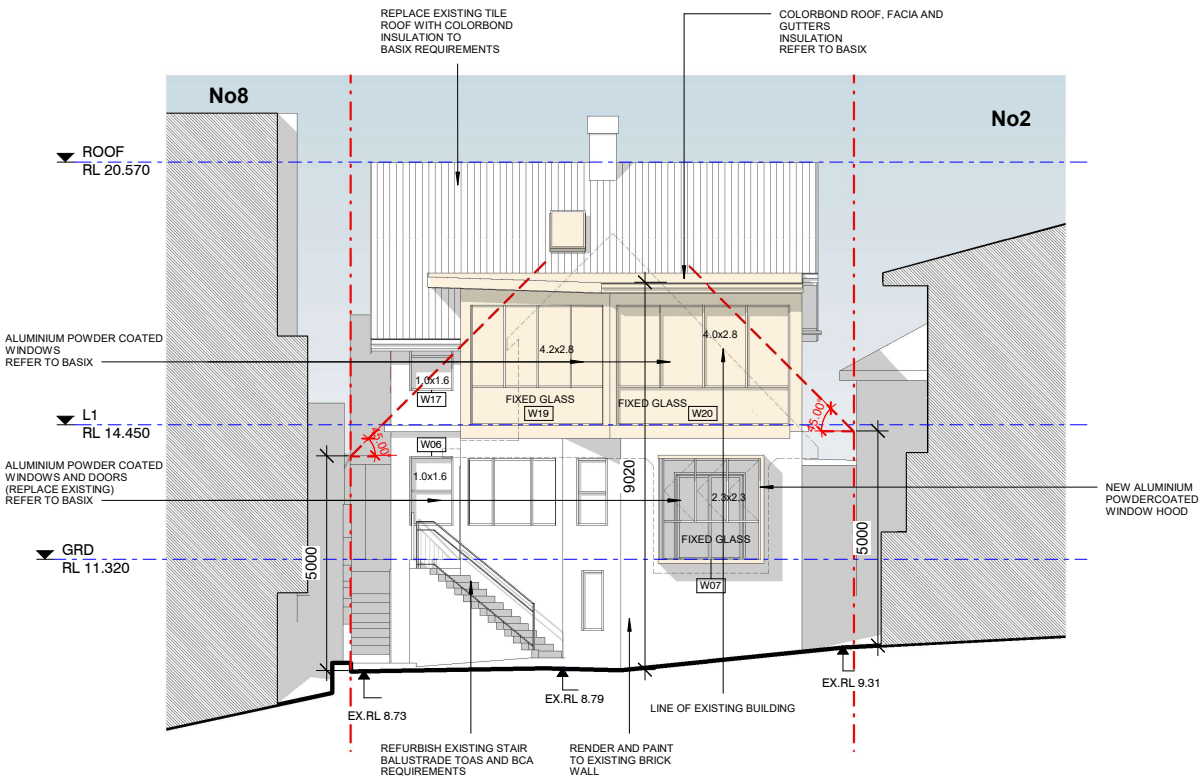

1 SOUTH ELEVATION
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TSF ARCHITECTS

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E: SERVICE@TSFARCHITECTS.COM.AU
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DRAWING TITLE	SOUTH ELEVATION	DRAWN/DESIGNED BY	NV
PROJECT	ALTERATIONS AND ADDITIONS	CHECKED BY	AC
ADDRESS	4 GREYCLIFFE STREET, QUEENSCLIFF NSW	SCALE	1 : 100@A3
		JOB NO	2879
		DRAWING NO: A2.04	REV: G

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REQUEST PURSUANT TO CLAUSE 4.6, FOR EXCEPTION TO COMPLIANCE WITH CLAUSE 4.3 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

This Clause 4.6 Exception Submission has been prepared by The Site Foreman (NSW) Pty Ltd in relation to a Development Application for the property at No.4 Greycliffe Street Queenscliff (the site).

This Submission is made to The Northern Beaches Council in support of a Development Application (DA) for alterations and additions to the existing house at the site.

This request has been prepared having regard to:
• Land and Environment Court of NSW judgment in Winten Property v North Sydney Council [2001];
• Land and Environment Court of NSW judgment in Wehbe v Pittwater Council [2007];
• Land and Environment Court of NSW judgments in Four2Five Pty Ltd v Ashfield Council [2015];
• NSW Department of Planning and Infrastructure's Varying Development Standards: A Guide 2015;

1.0 WHAT IS THE CLAUSE SOUGHT TO BE VARIED?

1.1 Clause 4.3 of Warringah Local Environmental Plan 2011

Clause 4.3 of WLEP 2011 states:
"The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map."

The Height of Buildings map specifies a maximum building height of 8.5m at the site.

To this end, the existing building exceeds the maximum permitted 8.5 m height standard. As expected on a sloping site, the dwelling exceeds the height control on the rear elevation (max. 8.85m proposed).

Compliance – No, but only a small portion of the proposed first floor extension in the rear of the site will exceed the 8.5m limit.

Most of the proposed alterations and additions are below the maximum 8.5 m height control.

The proposal incorporates an existing first floor alterations with a a maximum height of 8.59 m (rear roof 6.12% variation) and **10.3m (new rear skylight - i.e. 21.17% variation maximum).**
The existing roof is much higher than 8.5 m and proposed skylights will be incorporated to this existing roof so overall height of this roof will be not changed.

2.0 CLAUSE 4.6 OBJECTIVES

Clause 4.6 of WLEP 2011 has the following objectives:
(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."

As discussed below, it is considered appropriate to invoke the provisions of Clause 4.6 of WLEP 2011, in order to achieve a positive planning outcome at the site.

3.0 CLAUSE 4.6(3) PROVISIONS

Clause 4.6(3) states that 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 the following:
(a) "that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard."

The following discussion constitutes a written request seeking to justify the contravention of Clause 4.3 of WLEP 2011.

4.0 CLAUSE 4.6(3)(a) - IS COMPLIANCE WITH THE STANDARD UNREASONABLE AND UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

4.1 Warringah LEP 20121aims

Clause 1.2(2) of WLEP 2011 contains the following aims:

(1) This Plan aims to make local environmental planning provisions for land in that part of Northern Beaches local government area to which this Plan applies (in this Plan referred to as Warringah) in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.
(2) The particular aims of this Plan are as follows—
(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,
(a) to create a land use framework for controlling development in Warringah that allows detailed provisions to be made in any development control plan made by the Council,
(b) to recognise the role of Dee Why and Brookvale as the major centres and employment areas for the sub-region,
(c) to maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,
(d) in relation to residential development, to—
(i) protect and enhance the residential use and amenity of existing residential environments, and
(ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and
(iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,
(e) in relation to non-residential development, to—
(i) ensure that non-residential development does not have an adverse effect on the amenity of residential properties and public places, and
(ii) maintain a diversity of employment, services, cultural and recreational facilities,
(f) in relation to environmental quality, to—
(i) achieve development outcomes of quality urban design, and

(ii) encourage development that demonstrates efficient and sustainable use of energy and resources, and
(iii) achieve land use relationships that promote the efficient use of infrastructure, and
(iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and
(v) protect, conserve and manage biodiversity and the natural environment, and
(vi) manage environmental constraints to development including acid sulfate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,
(g) in relation to environmental heritage, to recognise, protect and conserve items and areas of natural, indigenous and built heritage that contribute to the environmental and cultural heritage of Warringah,
(h) in relation to community well-being, to—
(i) ensure good management of public assets and promote opportunities for social, cultural and community activities, and
(ii) ensure that the social and economic effects of development are appropriate.

The proposed development is generally consistent with the above stated aims, as follows:

• The proposed altered house use will continue to provide residential housing within the locality with improvements to the level of amenity currently achieved within the site;

• The proposal incorporates façade refurbishment and repainting, and a first floor alterations to the existing building which will ensure that the contribution that the existing building makes to the streetscape within which the site is located, will be maintained and enhanced.
The proposed first floor alterations will be presented as a 2 storey building from the street frontage side, well below the 8.5m controls. The portion of the proposed Sitting area roof which is higher than the 8.5m control is located at the rear in the middle of the site and will not be clearly visible from the street.

In this regard, the proposal meets the aims of LEP 2011, despite the noncompliance with Clause 4.3.

4.2 R2 General Residential Zone objectives

The site is located within the R2 Low Density Residential zone, pursuant to WLEP 2011. The objectives of the R2 zone are as follows:

• To provide for the housing needs of the community within a low density residential environment.
• To enable other land uses that provide facilities or services to meet the day to day needs of residents.
• To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

The proposed development, incorporating alterations and additions to the existing house, is permissible with consent in the R2 zone, and is consistent with the above stated zone objectives, as follows:

The proposal will maintain a residential use at the site, consistent with the predominantly residential character of the locality.

In this regard, the proposal meets the objectives of the zone, despite the noncompliance with Clause 4.3(2).

4.3 Clause 4.3 Objectives

The objectives of the Building Height development standard in WLEP 2011 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.

On this basis, the proposed development will maintain the status quo in terms of the scale of the existing building and its appropriateness in the context, which is mixed and comprises buildings displaying a mix of building types, architectural styles and forms, of between two and three and four storeys in height.
Proposed roof forms that are consistent with the topographic and landscape streetscape character in the locality.
The proposed additions and alterations has a maximum height of approximately 8.85m metres.
The departure is supportable as a consequence of the slope. Further, the walls are not readily discernible as they are broken and recessed. The intent of the control is to avoid large expanses of unbroken wall plane and this objective is achieved.
The building will contain up to three storeys at limited portions, due the fall in levels. Visually to the surrounding properties to the east, north, the building will however maintain its existing two storey scale.
The proposed wall height and overall height are compatible with the existing and the surrounding development, which are influenced by the substantial slope to the south. The wall heights of the proposal are comparable with the adjoining developments.
The proposal retains equitable sharing of views for the surrounding properties. The proposal does not unreasonably obstruct any significant views from private property or the public domain.
Given the location of the proposed first floor alterations, there will be minimal impact on views from any properties or public spaces in the vicinity of the site.
The existing roof is much higher than 8.5 m and proposed skylights will be incorporated to this existing roof so overall height of this roof will be not changed.
The proposal is therefore considered to be consistent with objective of Clause 4.3 WLEP 2011.

5.0 CLAUSE 4.6(3)(b) - ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

As can be seen from the preceding discussion, the proposed development has a minimal and acceptable level of impact in relation to neighbouring

properties and the streetscape. The proposed development will create a high quality built form, which will make a positive contribution to the locality. Furthermore, having regard to the merits of the proposal, demonstrated consistency with the zone and Building Height Development Standard, it is considered that there are sufficient environmental planning grounds to justify contravening the Building Height Development Standard.
On this basis, it is considered that the proposal satisfies the requirements of Clause 4.6 of WLEP 2011.

6.0 CLAUSE 4.6(5)(a) - MATTERS OF STATE OR REGIONAL ENVIRONMENTAL PLANNING

The proposed contravention of the Standard does not raise any matter of significance for State or regional environmental planning.

7.0 CLAUSE 4.6(5)(b) - THE PUBLIC INTEREST

Having regard to the acceptable environmental impacts, and the merits of the proposed development, it is considered that the public interest is being met by the proposed development, despite the non-compliance with the maximum permitted Building Height.
On this basis, the public benefit is considered to have been met regardless of the non-compliance.

8.0 CLAUSE 4.6(5)(c) – ANY OTHER MATTERS REQUIRED TO BE CONSIDERED

There are no other known matters required to be taken into consideration before assuming the concurrence of the Secretary, pursuant to PS 18-003.

9.0 IS THE OBJECTION WELL FOUNDED?

In considering if this Objection is well-founded, consideration of the following five-part test, established by the NSW Land and Environment Court is required to be made:
1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

9.1 Are the objectives of the standard achieved despite the non-compliance?

As outlined above in **Section 4.3** the objectives of the Development Standard are achieved despite the non-compliance.

9.2 Is the underlying objective or purpose of the standard not relevant to the development, such that compliance is unnecessary?

It is not considered that the underlying objective of the Standard is irrelevant to the proposal, however, as demonstrated herein, it is submitted that the proposal is able to achieve consistency with the intent of the Standard, despite the non-compliance.

9.3 Would the underlying object or purpose of the standard be defeated or thwarted if compliance was required?

The underlying object of the Standard would not be thwarted if compliance with the Standard was not required. However, it is considered that the proposal, incorporating a first floor alterations, represents the efficient use of the existing building and allows the provision of an additional sitting room and bathroom, which enjoys a high level of amenity, without any unreasonable adverse environmental impacts. The proposed alterations will comply with floor space ratio.
Compliance with the standard could be achieved by deleting part of proposed first floor extension, however this would have no positive impacts as the essence and significant elements of the external form of the building would remain in their current form.

9.4 Has the standard been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard?

It is not considered that the Standard has been virtually abandoned or destroyed by Council's actions; however, having regard to the particulars of this Application, it is considered that flexibility in the application of the Standard is warranted, given that the existing building exceeds the Building Height Standard and that the proposed non-compliant element is **less in height to** the elements of the existing building above 8.5m.

9.5 Is compliance with the development standard unreasonable or inappropriate due to existing use of land and current environmental character of the land?

The proposed alterations and additions will enable the efficient use of the existing building on the site, demonstrating consistency with principles of ESD.
As discussed, it is considered that, based on the current environmental character of the site, compliance with the Building Height standard is inappropriate as the existing building already exceeds the maximum permitted by the Building Height control; and
the proposed alterations are consistent with the topographic and landscape streetscape character in the locality. The existing landscaping will remain along with all of the proposed alterations located within the existing building footprint.

10.0 CONCLUSION

Having regard to the discussion contained herein, it is considered that the matters required to be addressed, pursuant to Clause 4.6 of WLEP 2011, the five part test established in the Land and Environment Court and the Varying Development Standards: A Guide, have been fully canvassed herein.
Having regard to the particulars of the proposal, as outlined above, it is considered that there would be no material benefit to requiring the proposal to comply with Clause 4.3 of WLEP 2011 and on this basis, an exception to the Standard, pursuant to Clause 4.6 of WLEP 2011, is considered well-founded, and worthy of Council's support.

ITEM 3.4	**DA2022/1474 - 12 & 14 GLADYS AVENUE FRENCHS FOREST - DEMOLITION WORKS, SUBDIVISION OF TWO LOTS INTO FOUR LOTS, INCLUDING THE CONSTRUCTION OF AN ACCESS DRIVEWAY, STORMWATER WORKS, AND THE CONSTRUCTION OF FOUR DWELLING HOUSES**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2023/552046**
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 **Defers Commencement Approval** to Development Consent DA2022/1474 for demolition works, subdivision of two lots into four lots, including the construction of an access driveway, stormwater works, and the construction of four dwelling houses on land at Lot A & B DP 393276, 12 & 14 Gladys Avenue FRENCHS FOREST, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1474

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot B DP 393276, 14 Gladys Avenue FRENCHS FOREST NSW 2086 Lot A DP 393276, 12 Gladys Avenue FRENCHS FOREST NSW 2086
Proposed Development:	Demolition works, subdivision of two lots into four lots, including the construction of an access driveway, stormwater works, and the construction of four dwelling houses
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:	Jian Zhang
Applicant:	Keeplan Pty Ltd

Application Lodged:	26/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	04/10/2022 to 18/10/2022
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	$ 4,026,000.00

EXECUTIVE SUMMARY

This application seeks approval for a torrens title subdivision into four (4) residential lots and the construction of four (4) dwellings.

The application is referred to the DDP as the proposal has attracted six (6) submissions.

Concerns raised in the objections predominantly relate to:

- Amenity impacts
- Stormwater
- Building height
- Construction hazards
- Property values

The critical assessment issues include; impact on views and privacy, numerical non-compliances with the subdivision controls, wall height, and side boundary setback controls.

The non-compliance with the built form controls is limited to Lot 2, and is a result of the steep slope of the site, particularly the cliffline situated within the middle portion of the site, which reaches a height of up to 4.5 meters. This unique topographical feature results in an abrupt change in the terrain of the site.

There were a number of amendments made to the proposal to address the issues raised during the assessment of the application.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of a torrens title subdivision into four (4) residential lots and the construction of four (4) dwellings.

Specifically, the proposed development consists of:

Land Subdivision (exclusive of access handle)
Lot 1 - 731.7sqm
Lot 2 - 1,258sqm
Lot 3 - 1,330sqm
Lot 4 - 686.8sqm

- Civil works for the installation of services, drainage and the construction of a common accessway;
- Construction of four (4) dwellings on each lot, each consisting of a double garage/carport (see below for detailed summary);
- Associated landscaping and retaining walls.

Dwelling on Lot 1

- Ground floor: double garage, guest room, bathroom, kitchen, living and dinning.
- First floor: four bedrooms and three bathrooms.

Dwelling on Lot 2:

- Ground floor: guest room, rumpus and bathroom.
- First floor: three bedroom and three bathrooms.
- Second floor: detached double carport, entry, bathroom, study, kitchen, living and dinning.

Dwelling on Lot 3

- Ground floor: double garage, guest room, bathroom, kitchen, living and dinning.
- First floor: four bedrooms, three bathrooms, living area, media room and study.

Dwelling on Lot 4

- Ground floor: double garage, guest room, bathroom, kitchen, living and dinning.
- First floor: four bedrooms, three bathrooms, living area and study.

AMENDED PLANS
Following a preliminary assessment of the application, Council wrote to the applicant on 24 February 2023, outlining concerns with the application.

The concerns related to view loss, retention of unique environmental features, land-use categorisation, and earthworks.

The applicant lodged amended plans and additional information to address the concerns on 18 May 2023.

Additional amended plans were lodged with Council, further reducing the bulk and scale of the proposed development on 29 June 2023, BASIX certificates were also lodged to accompany the design changes as well.

The amended plans incorporated the following changes:

- **Subdivision**: amendment to ROW to allow Small Rigid Vehicle (SRV) reversing to Lots 3, 2 and 1.
- **Lot 1**: relocate dwelling 2.8 metres eastward and reduce the first floor to allow additional view corridors from the south.
- **Lot 2**: convert double garage to carport and delete ground floor kitchenette.
- **Lot 3**: raise garage FFL to match the ground floor (190mm increase).
- **Lot 4**: reduce size of porch, delete first floor south balcony and alterations to south facing windows.

Community Participation Plan
The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. The amended plans result in a significantly reduced size development.

Therefore, formal re-notification was not required in accordance with Northern Beaches Community Participation Plan, however an informal notification was carried out on 26 May 2023.

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 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - C1 Subdivision
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot B DP 393276 , 14 Gladys Avenue FRENCHS FOREST NSW 2086 Lot A DP 393276 , 12 Gladys Avenue FRENCHS FOREST NSW 2086
Detailed Site Description:	The subject site consists of two (2) lots, namely: Lot A, Deposited Plan No. 393276, 12 Gladys Avenue Frenchs Forest; Lot B, Deposited Plan No. 393276, 14 Gladys Avenue Frenchs Forest. The battle axe shaped allotments are located northern side of Gladys Avenue. 12 Gladys Avenue is battle axe shaped allotment with a single storey dwelling that is accessed via narrow a concrete driveway from Gladys Avenue. The site has an above ground swimming pool that is located below the cliff and is accessed by a set of stairs along the site's eastern boundary. 12 Gladys Avenue has a total site area of 2262m^2. 14 Gladys Avenue is battle axe shaped allotment with a two storey dwelling that is accessed via narrow a concrete driveway from Gladys Avenue. The site has a detached carport and an in-ground swimming pool. 14 Gladys Avenue has a total site area of 2442m2. The site is located within the R2 Low Density Residential zone from the WLEP 2011.

	A large rock shelf sits near the centre of the site that in effect, cuts the site in half in terms of usable land and creates a platform on the southern side that can accommodate the new dwellings. The northern portion of the site that sits below the rock shelf is densely vegetated. **Detailed Description of Adjoining/Surrounding Development** The surrounding development consists of single and two storey detached dwellings in established landscaped settings. The site is in the vicinity of the Northern Beaches Hospital (approximately 200m to the south east)

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:

DA2019/1076
Development Application for the subdivision of two lots into six lots. The application was withdrawn on 14 January 2020, due to issues with; site planning, access, and stormwater.

PLM2022/0106
A Pre-lodgement meeting was held with Northern Beaches Council on 9 June 2022 for the subdivision of 2 lots into 4 lots and construction of dwelling houses.

The notes advised as follows:

"*The applicant has taken on Council's previous feedback and reduced the proposal from a six (6) lot subdivision to a four (4) lot subdivision, with only one (1) lot below the rock outcrop. This is considered an appropriate response to the site constraints and Council would be able to support a four (4) lot subdivision layout.*

A quality landscape plan is to be provided with the application to demonstrate the proposal will meet the R2 Low Density Residential Zone Objectives and the site will continue to provide opportunity for retention and enhancement of landscape to compliment the character of the area."

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 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to in relation to bulk and scale and insufficient information. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/10/2022 to 18/10/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mrs Alice Sarah Magniac	10 Gladys Avenue FRENCHS FOREST NSW 2086
Mr Daniel Merrill Egbert	3 Arden Place FRENCHS FOREST NSW 2086
Mr Theodorus Herman Lambooy Catharina Wilhelmina Lambooy	4 Arden Place FRENCHS FOREST NSW 2086
Mrs Deborah Nadilo	7 Naree Road FRENCHS FOREST NSW 2086
Eric Edward Blewitt	10 B Gladys Avenue FRENCHS FOREST NSW 2086
David Gerard Ballesty Annemiek Ballesty	10 A Gladys Avenue FRENCHS FOREST NSW 2086

The following issues were raised in the submissions:

- **Amenity impacts**
- **Stormwater**
- **Building height**
- **Construction hazards**
- **Property values**

The above issues are addressed as follows:

- **Amenity impacts**

  The submissions raised concerns that the proposal will result in unacceptable amenity impacts in relation to view loss, privacy and overshadowing.

  Comment:

  The above-mentioned amenity impacts have been individually discussed in further detail in the relevant sections of this report. In summary, these matters have been satisfactorily addressed and mitigated through the amended plans, as the proposal includes suitable design measures to offset any unacceptable amenity impacts to the adjoining sites.

  This matter does not warrant the refusal of the application.

- **Stormwater**

  The submissions raised concerns that the additional runoff created by the proposal will unreasonably impact the properties downslope of the development.

  Comment:

  Details have been provided by the applicant to address stormwater management for the proposed development. The proposed method of stormwater discharge is via easement through the adjoining property to the west No. 29 Bluegum Crescent to connect to the Council stormwater pipe. The applicant has provided a letter of consent from the owners of the properties raising no objection to the stormwater easement. Council's Development Engineer is supportive of the proposal 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.

- **Building height**

  The submissions raised concerns with the proposed dwellings building height.

  Comment:

The proposed dwellings all comply with the 8.5m development standard under Warringah LEP 2011. Notwithstanding this, it is noted that the proposed dwelling on Lot 2 is noncompliant with the Warringah DCP wall height control. Despite this, the merits of this non-compliance have been assessed against the objectives of the relevant control. In summary, the non-compliance is largely a consequence of the slope of the land and it will not result in any unacceptable impacts. Overall, the proposed dwellings achieve an high level of compliance with the critical planning controls that regulate building height within the locality.

This matter does not warrant the refusal of the application.

- **Construction hazards**

The submissions raised concerns that the subject site contains various hazards that will potentially impact construction.

Comment:

The proposal includes a detailed demolition plan for the more highly constrained allotment (Lot 2) and suitable conditions regarding construction management have been incorporated within the recommendation of this report.

This matter does not warrant the refusal of the application.

- **Property values**

The submissions raised concerns that the proposal will impact surrounding property values.

Comment:

This matter is not a relevant consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

This matter does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	**Supported – Subject to Conditions** Application is for the demolition of an existing residential dwelling and subdivision with the construction of four dwelling houses. Given that the land is currently residential the risk of contamination is low. However, given the age of the building there is likely to be the presence of hazardous building materials such as asbestos. As such, Environmental Health recommends that a Hazardous Building Materials Survey be carried out prior to the issue of the Construction Certificate.
Landscape Officer	**Supported – Subject to Conditions** Additional Information Comment 04/07/23: The amended plans are noted. The previous comments and imposed conditions remain valid. Original Comment: *An Arboricultural Impact Assessment (AIA) and Landscape Plans are included in the application and will be assessed as part of the Landscape Referral. The AIA assessed 68 trees of which trees 8, 50 and 51 have previously been removed, trees 6, 7, 9, 10, 11, 13-23, 26, 29, 31, 34-36, 38 and 41 are proposed to be removed although are exempt by species and tree 39 is exempt by height, therefore do not require consent for removal. Although 5 'A' retention value trees are proposed to be removed the Landscape Plan includes 6 replacement trees, and the proposal will retain 22 'A' retention value trees (and a total of 30 trees across the site). Furthermore, trees 24, 30, 40, 52 can be supported for removal due to their low retention value and short useful life expectancy. Supported tree removal is outlined in the conditions of consent.*

Internal Referral Body	Comments
	Tree 5 is of high significance and must be retained. The proposed driveway has been designed to minimise the impact to tree 5, and as seen in the Driveway Cross Sections (drawing TPC-2022-10658-002) the proposed driveway levels around tree 5 match the existing driveway levels .Tree 5 shall be retained and protected and tree sensitive construction methods (excavation avoided) used for the proposed driveway within its tree protection zone. Trees 1, 4, 48 and 54 also require tree sensitive construction methods. All trees shown to be retained shall be protected as per the recommendations in the AIA and the requirements outlined in the conditions of consent. A Project Arborist shall be engaged to supervise all work within the tree protection zones of trees to be retained and in particular those trees requiring tree sensitive construction methods, subject to the imposed conditions. *The bin storage area will encroach on neighbouring tree 1 and no detrimental impact to tree 1 is acceptable. The permeable paving system is supported and as indicated on the plans it shall be installed on the existing ground level with no excavation unless the Project Arborist advises otherwise.* *The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the conditions of consent. The 2 Pyrus calleryana shall be replaced with native species, subject to the imposed conditions.*
NECC (Development Engineering)	**Supported – Subject to Conditions** **Updated comments 20/7/23** The updated stormwater management plans detail a smaller volume tank adjacent to the boundary of Lot 2. (3.56cumecs) The updated plans are generally consistent with the previous approved plans . No objections to the 4 lot subdivision subject to conditions. **Comments 12/5/23** The applicants engineer has now amended the stormwater management plans and DRAINS model and has demonstrated that the site bypass has been limited to below 20%. This is an acceptable drainage outcome as a downstream properties have been affected by the subject sites overland flow. The design proposes at rear OSD tank at adjacent to the boundary of lot 3. The detention volumes have increased compared to the previous stormwater management plan. No objections subject to conditions. **Previous Comments** The proposed 4 Lot subdivision has been reviewed and is not supported for the following reasons; 1) The applicant is to submit a DRAINS model for Council review to support the proposed on site stormwater detention design in accordance with Councils water management for development policy. Noting that minimum allowable site bypass is to be **limited to 20%**. 2) The stormwater drainage plans are to amended to feature the minimum information as required by Clause 9.7.3 of Councils Water management for development policy. 3) The DRAINS model for the downstream Council drainage system capacity check cannot be opened and is required to be resubmitted for Council review. 4) Engineering plans are to be prepared for the proposed concrete Right of way and are to include longsections/cross-sections at suitable intervals and retaining wall locations in accordance with Councils Auspec One minimum information requirements.
NECC (Water Management)	**Supported – Subject to Conditions** This application was assessed in consideration of: • Supplied plans and reports; • State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.8 and 2.12); • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses. Rainwater tanks to comply with Basix certificates. The proposed strata subdivision is subject to the Council Water Management for Development Policy.

Internal Referral Body	Comments
	Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.
Waste Officer	**Supported – Subject to Conditions** No issues with the proposal subject to the recommended conditions.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	**Supported – Subject to Conditions** The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	**Supported – Subject to Conditions** An Aboriginal Cultural Heritage and Archaeological Advice (Due Diligence) was prepared for the property by Unearthed Archaeology & Heritage in March 2023. Recommendations made in the report are: 1. There is no objection to the proposed demolition, subdivision or construction on Aboriginal archaeological grounds. 2. No Aboriginal objects or rock shelters or overhangs suitable for Aboriginal habitation were recorded during the site inspection. It is considered highly unlikely that any archaeological deposits exist within the study area or would be impacted upon by the proposal. 3. No further investigation in respect of Aboriginal archaeology or cultural heritage is required. 4. It is not necessary to undertake consultation with the Aboriginal community in accordance with the Aboriginal cultural heritage consultation requirements for proponents 2010 or prepare an Aboriginal Cultural Heritage Assessment Report (ACHAR). 5. If, during the proposed works, any Aboriginal objects or evidence of Aboriginal occupation are uncovered, all work must cease in the vicinity of the suspected Aboriginal objects or evidence of occupation, and further advice should be sought from a qualified and experienced archaeologist. The AHO agrees with the recommendations outlined in the March 2023 report. 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.

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 for each proposed dwelling with the application. The BASIX Certificate is supported by an ABSA Assessor Certificate for each dwelling.

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

Commitment	Required Target	Proposed
Water	40	40-47
Thermal Comfort	Pass	Pass
Energy	50	50-51

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who 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	Complies
Minimum Subdivision Lot Size	600m^2	Lot 1: 731.7m^2	Yes
		Lot 2: 1258m^2	Yes
		Lot 3: 1330m^2	Yes

		Lot 4: 686.8m^2	Yes
Height of Buildings	8.5m	Lot 1: 6.4m	Yes
		Lot 2: 8.5m	Yes
		Lot 3: 6.3m	Yes
		Lot 4: 6.5m	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

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.

6.4 Development on sloping land

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

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

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 and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

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.

(c) the development will not impact on or affect the existing subsurface flow conditions.

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 result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Controls - Lot 1	**Requirement**	**Proposed**	**% Variation***	**Complies**
B1 Wall height	7.2m	6.1m	N/A	Yes
B3 Side Boundary Envelope	4m - North	No encroachment	N/A	Yes
	4m - South	No encroachment	N/A	Yes
	4m - East	No encroachment	N/A	Yes
B5 Side Boundary Setbacks	0.9m - North	5.0m (Deck)	N/A	Yes
	0.9m - South	3.6m (Dwelling)	N/A	Yes
	0.9m - East	1.4m (Porch)	N/A	Yes
B7 Front Boundary Setbacks	Battle-axe	N/A	N/A	N/A
B9 Rear Boundary Setbacks	6m - West	10.5m (Dwelling)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	63.1% (461.6m^2)	N/A	Yes

Built Form Controls - Lot 2	**Requirement**	**Proposed**	**% Variation***	**Complies**
B1 Wall height	7.2m	7.5m	4.2%	**No**
B3 Side Boundary Envelope	4m - South	No encroachment	N/A	Yes
	4m - East	No encroachment	N/A	Yes
	4m - West	No encroachment	N/A	Yes
B5 Side Boundary Setbacks	0.9m - South	0.5m (Carport) 5.2m (Dwelling)	44.4% N/A	**No** Yes
	0.9m - East	4.0m (Porch)	N/A	Yes
	0.9m - West	6.2m (Dwelling)	N/A	Yes

B7 Front Boundary Setbacks	Battle-axe	N/A	N/A	N/A
B9 Rear Boundary Setbacks	6m - North	17.2m (Deck)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	78.0% (981.5m^2)	N/A	Yes

Built Form Controls - Lot 3	**Requirement**	**Proposed**	**% Variation***	**Complies**
B1 Wall height	7.2m	4.9m	N/A	Yes
B3 Side Boundary Envelope	4m - South	No encroachment	N/A	Yes
	4m - East	No encroachment	N/A	Yes
	4m - West	No encroachment	N/A	Yes
B5 Side Boundary Setbacks	0.9m - South	6.9m (Dwelling)	N/A	Yes
	0.9m - East	2.9m (Dwelling)	N/A	Yes
	0.9m - West	3.9m (Porch)	N/A	Yes
B7 Front Boundary Setbacks	Battle-axe	N/A	N/A	N/A
B9 Rear Boundary Setbacks	6m - North	31.8m (Deck)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	77.9% (1035.7m^2)	N/A	Yes

Built Form Controls - Lot 4	**Requirement**	**Proposed**	**% Variation***	**Complies**
B1 Wall height	7.2m	6.0m	N/A	Yes
B3 Side Boundary Envelope	4m - South	No encroachment	N/A	Yes
	4m - East	No encroachment	N/A	Yes
	4m - West	No encroachment	N/A	Yes
B5 Side Boundary Setbacks	0.9m - South	2.3m (Garage)	N/A	Yes
	0.9m - East	2.8m (Dwelling)	N/A	Yes
	0.9m - West	2.3m (Dwelling)	N/A	Yes
B7 Front Boundary Setbacks	Battle-axe	N/A	N/A	N/A
B9 Rear Boundary Setbacks	6m - North	6.4m (Deck)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	49.9% (342.5m^2)	N/A	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	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of Non-compliance

The proposed dwelling on Lot 2 includes a maximum wall height up to 7.5 metres.

The control prescribes a maximum wall height in a continuous plane of 7.2 metres measured from existing ground level.

The non-compliance occurs along both elevations of the second floor, as indicated in the below diagram;

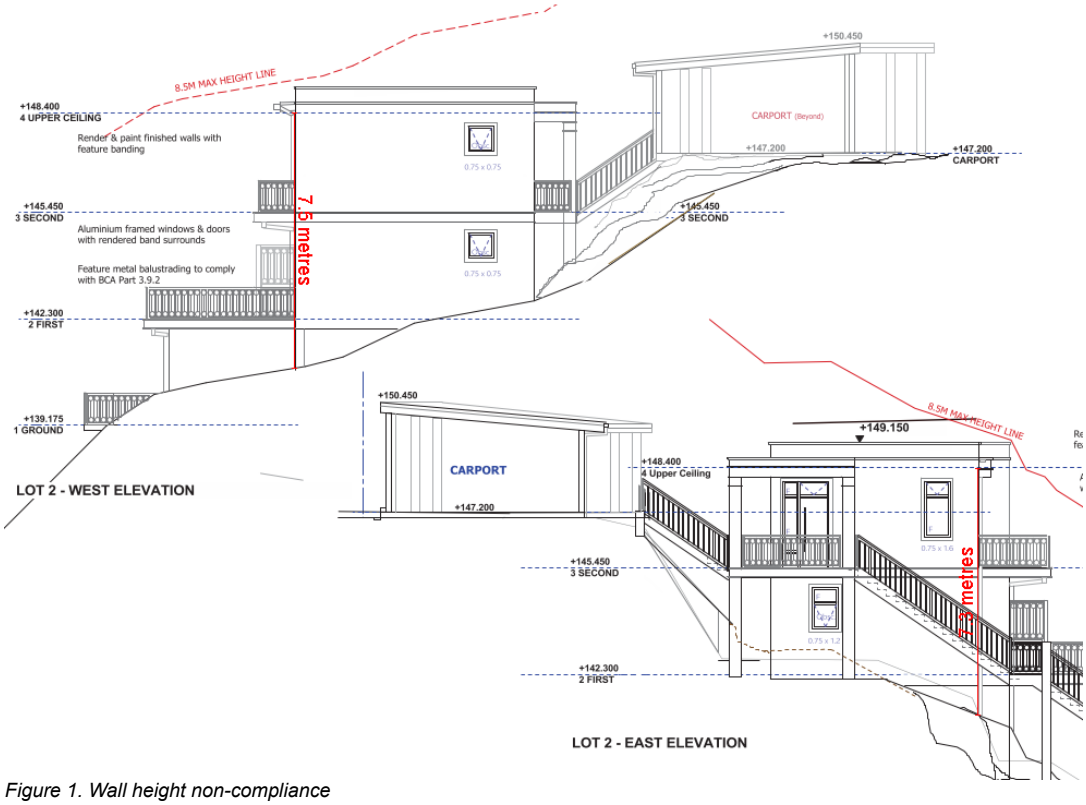


Figure 1. Wall height non-compliance

Merit Consideration

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

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

  Comment:

  The proposed wall height breach is largely a consequence of site sloping to the north. Notwithstanding, the dwelling is located on a rear allotment of the proposed subdivision and is not readily visible from the public domain. Furthermore, suitable articulation is achieved using recessed and modulated walls, fenestration, balconies, eaves and changes in materials so as to provide visual relief to the second floor. In this regard, whilst the non-compliance would be visible from the adjoining properties, the scale of the wall is of such proportions that it would not create an unacceptable visual impact to those properties. Overall, the proposal remains consistent with the scale of development anticipated for the site and the development will not have an unreasonable visual impact when viewed from the streetscape and surrounding properties.

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

  Comment:

  The proposed dwelling is generally located beneath the existing tree canopy level within the locality.

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

  Comment:

  The non-compliant wall height does not create an unreasonable view sharing scenario.

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

  Comment:

  The proposed dwelling achieves acceptable building separation with compliant boundary setbacks. In addition, the portions of the development that exceed the maximum wall height do not contain any intrusive windows nor do they create unacceptable privacy or overshadowing impacts. Further, the proposal's design minimises overshadowing impacts to adjacent living rooms and private open space on June 21. Overall, the proposed non-compliance is largely as consequence of the slope of the land, notwithstanding, the proposal has been suitably designed to minimises the impact of development on adjoining and nearby properties.

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

  Comment:

  The proposed dwelling's stepped design makes appropriate level changes where required to sensitively relate to the abrupt slope of the land. Furthermore, the proposed dwelling on Lot 2 does not involve significant earthworks.

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

  Comment:

  Sufficient scope has been provided to enable the innovative roof form and to remain under the 8.5 metre building height plane.

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.

B5 Side Boundary Setbacks

Description of Non-compliance

The proposed carport on Lot 2 sits 0.5 metres from the southern side boundary. The control requires a minimum setback of 0.9 metres.

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:

  The proposal provides a landscape setting that exceeds the minimum requirements of Part D1 Landscaped Open Space and Bushland Setting of WDCP with 78.0% (981.5m^2). In addition, the proposed carport will not involve the removal of any significant vegetation.

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

  Comment:

  The proposal is located on a rear allotment on a battle-axe subdivision and will not be visually prominent within the streetscape. In addition, the proposal is contained within the prescribed building envelope, while also incorporating an open and lightweight design to moderate building bulk.

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

  Comment:

  The bulk of the proposal is found to be consistent with the domestic nature of the property.

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

  Comment:

  The carport results in negligible amenity impacts to neighbouring properties, specifically with regards to privacy, solar access, view sharing and visual bulk.

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

  Comment:

  The development does not result in the loss of views from any private properties or from the public domain.

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.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot Requirements	R2 Low Density Residential zone requirements: Proposed new allotments: a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m²	Lot 1: a) Minimum width: 10.7 metres b) Minimum depth: 30.5 metres c) Minimum building area: >150m²	**No** - Refer to discussion below this table
		Lot 2: a) Minimum width: 30.5 metres b) Minimum depth: 33.1 metres c) Minimum building area: >150m²	Yes
		Lot 3: a) Minimum width: 22.4 metres b) Minimum depth: 33.1 metres c) Minimum building area: >150m²	Yes
		Lot 4: a) Minimum width: 22.4 metres	**No** - Refer to discussion below this table

<table>
<tr><td></td><td></td><td>b) Minimum depth: 20.9 metres
c) Minimum building area: >150m²</td><td></td></tr>
<tr><td>Access</td><td>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.

Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council’s satisfaction.

Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.

Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.

Driveways in excess of 200 metres will not be allowed for residential development.

Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.

Passing bays should have regard to sight conditions and minimise vehicular conflict.

Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.

Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.

Width of accessways are to be as follows:

<table><tr><td>Number of lots to be serviced</td><td>Width of clear constructed accessway (m)</td></tr><tr><td>1 - 5</td><td>3.5</td></tr><tr><td>6 - 10</td><td>5.0</td></tr><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table>
Provision of services in rights of carriageway are as follows:</td><td>The proposal includes an access driveways to the allotments. These have been assessed by Council's Development Engineers as satisfactory.

The width of the driveways access can satisfactorily accommodate the provision of services.

Access for Council service vehicles, emergency vehicles and garbage collection vehicles is not inhibited.

The driveway gradients has been reviewed by Council's Development Engineers as acceptable.

Driveway less than 200m.</td><td>Yes</td></tr>
</table>

	<table><tr><th>Number of lots to be serviced</th><th>Additional width to be provided in Right of Carriageway (m)</th></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>		
Design and construction	All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards. Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.	The proposed development is accompanied by civil engineering plans demonstrating the proposed works are capable of meeting Council's specifications. Council's engineers have reviewed the proposal and recommend approval subject to conditions of consent.	Yes
Drainage	Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.	The applicant has proposed the land to drain to Council's stormwater network via a proposed stormwater easement over No. 29 Bluegum Crescent. The owners of each property have provided a letter of support for this easement. Council will require the easement to be obtained prior to the consent becoming operational via a deferred commencement condition.	Yes
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	All necessary easements within the site will be required to be created upon the title as specified within the conditions of consent. These easements include easements for services, right of Carriageway and positive covenant for on-site detention.	Yes
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The proposed rear allotments (Lots 2 and 3) are slope affected. The proposed built forms on these allotments have been suitably designed and sited to minimise landslip risk. In addition, 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. Therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within	The site is not identified as bushfire prone land.	Yes

	the property boundaries of the new subdivision.		

Description of Non-compliance

Lots 1 and 4 are slightly under the minimum dimensions prescribed under this control. Lot 1 includes a minimum width of 10.7 metres, which is non-compliant with the 13 metre requirement. Lot 4 includes a minimum depth of 20.9 metres, which is non-compliant with the 27 metre 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 regulate the density of development.*

  Comment:

  Suitably sized dwellings have been proposed as part of the application and the applicant has demonstrated to the satisfaction of Council that a dwelling-house can be appropriately positioned on each lot.

- *To limit the impact of new development and to protect the natural landscape and topography.*

  Comment:

  The centre of the site includes a significant rock outcrop which cuts through Lots 2 and 3, which is a notable site constraint for the development. Notwithstanding, the proposed dwellings on these allotments have been suitably designed to limit the impact of new development and to protect the natural landscape and topography.

- *To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.*

  Comment:

  The proposed subdivision pattern provides appropriate opportunity for landscaping to surround the site. There is also adequate area for private open space within each of the new allotments. Subject to conditions, drainage and services will be adequately provided to the site.

- *To maximise and protect solar access for each dwelling.*

  Comment:

  The proposed subdivision pattern provides opportunity for solar access from the north to the dwellings within the proposed pattern and existing surrounding dwellings. This is as a result of the dwellings generally having a northern orientation and therefore maximises solar access to each new allotment.

- *To maximise the use of existing infrastructure.*

  Comment:

  The subdivision is unlikely to create any adverse impact upon the existing infrastructure in and around the site.

- *To protect the amenity of adjoining properties.*

  Comment:

  The proposed dwellings have been appropriately sited to protect neighbouring amenity.

- *To minimise the risk from potential hazards including bushfires, land slip and flooding.*

  Comment:

  The site is not located in or near to bushfire prone. As discussed above the proposal is consistent with the relevant land slip controls under the Warringah LEP 2011 and DCP 2011.

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.

C2 Traffic, Access and Safety

The proposed development is accompanied by civil engineering plans demonstrating the proposed works are capable of meeting Council's specifications.

Council's engineers have reviewed the proposal and recommend approval subject to conditions of consent.

C4 Stormwater

Details have been provided by the applicant to address stormwater management for the proposed development.

The proposed method of stormwater discharge is via easement through the adjoining property to the west No. 29 Bluegum Crescent to connect to the council stormwater pipe.

The applicant has provided a letter of consent from the owners of the properties raising no objection to the stormwater easement.

The requirement to obtain this easement will be enforced via deferred commencement condition.

The applicant will be required to obtain this easement prior to the consent becoming operational.

D6 Access to Sunlight

Detailed shadow diagrams have been provided with the application that demonstrate that each dwelling will receive the required amount of solar access in accordance with the DCP control.

For the purpose of the control, the required amount of POS for each dwelling is $60m^2$, therefore, each dwelling must receive a minimum 3 hours of solar access to 50% ($30m^2$) of POS between 9am and 3pm on 21 June.

A detailed review is undertaken below:

- Lot 1 - Full $60m^2$ area receives solar access between 9am and 3pm.
- Lot 2 - Full $60m^2$ area receives solar access between 9am and 3pm.
- Lot 3 - Full $60m^2$ area receives solar access between 9am and 3pm.
- Lot 4 - Full $60m^2$ area receives solar access between 9am and 3pm.

The proposed development will not have an unreasonable impact upon the adjoining properties in regards to solar access.

The adjoining properties will retain solar access in accordance with the WDCP control.

D7 Views

Merit Consideration

Multiple submissions were received from adjoining properties along Gladys Avenue, raising concerns regarding potential view loss as a result of the proposed development.

Height poles were erected and certified for accuracy.

View loss inspections were undertaken at the following properties:

- **No. 10 Gladys Avenue (southern neighbour)**
- **No. 10A Gladys Avenue (southern neighbour)**
- **No. 10B Gladys Avenue (southern neighbour)**

Figure 2. Site context map, subject site highlighted in yellow.

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 step planning principle 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. 10, 10A, and 10B Gladys Avenue:
  These properties adjoin the site to the south. The views affected are district views of trees and houses, which are generally obscured by existing canopy trees and existing residential development in the foreground. They are not considered highly valuable views in the context of these principles.

Figure 3. No. 10 Gladys Avenue first floor bedroom balcony facing north, across the side boundary from a standing position. Note height poles are indicative of the dwelling proposed on Lot 4.

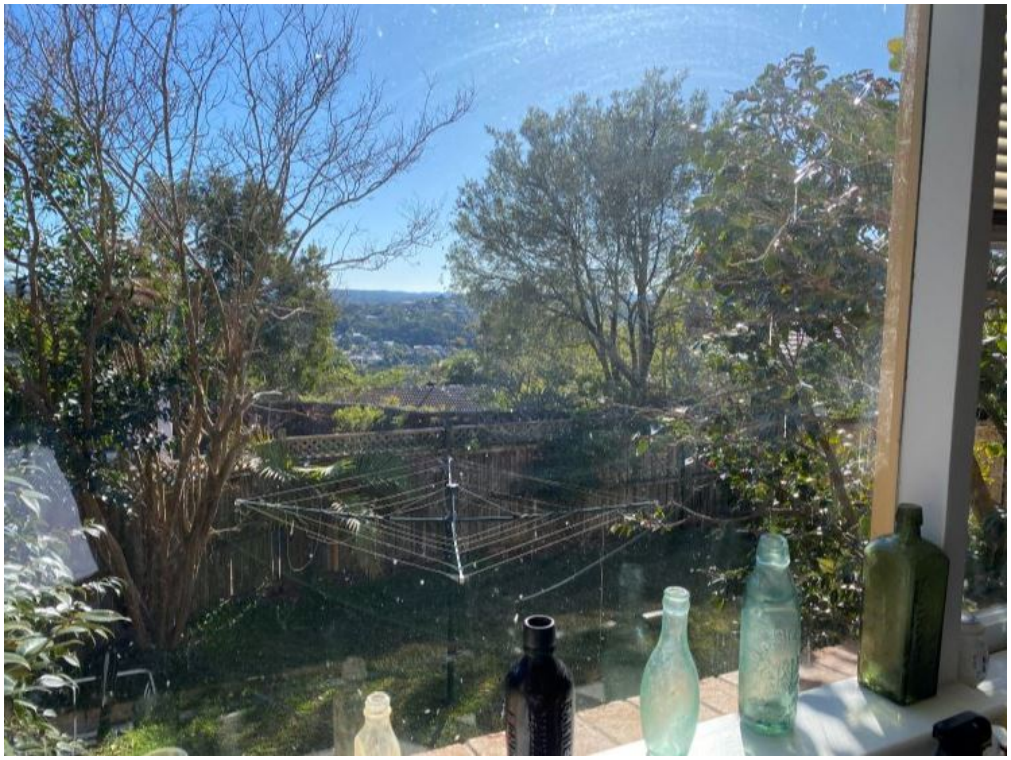


Figure 4. No. 10A Gladys Avenue ground floor kitchen facing north, across the rear boundary from a standing position. Please note that the height poles reflect the original dwelling proposed for Lot 1 and have not been updated to align with the amended plans.

Figure 5. No. 10B Gladys Avenue ground floor private open space facing north, across the rear boundary from a standing position. Please note that the height poles reflect the original dwelling proposed for Lot 1 and have not been updated to align with the amended plans.

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:

No. 10 Gladys Avenue
The views impacted by the proposal are directly across the side boundary, from both sitting and standing positions. The views are from the first floor bedrooms.

No. 10A Gladys Avenue
The views impacted by the proposal are directly across the rear boundary, generally from standing positions. The views are from the ground floor kitchen.

No. 10B Gladys Avenue
The views impacted by the proposal are directly across the rear boundary, generally from standing positions. The views are from the ground floor private open space.

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. 10 Gladys Avenue

The views will be partially impacted, with most impacts occurring to eastern bedroom. Given the value of the views and that they are directly across a side boundary, the view loss is considered **negligible** in the context of these principles.

No. 10A Gladys Avenue
The views will be partially impacted, with most impacts occurring to the ground floor kitchen. Given the minor reduction and value of the views, the view loss is considered **negligible** in the context of these principles.

No. 10B Gladys Avenue
The views will be marginally impacted, as the amended proposal, relocated the dwelling on Lot 1 2.8 metres eastward and reduced the first floor to allow substantial view corridors from the south. Given the minor reduction and value of the views, the view loss is considered **negligible** in the context of these principles.

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:

Clause D7 Views and the intent of Tenacity goes towards the idea of view sharing - rather than view retention. The proposed development is not assessed as having any 'devastating' impacts as it will not block the entirety of anyone's views. However, it is noted that the proposal will result in the loss of views that are clearly important and valuable to the residents surrounding residents. Notwithstanding, the proposed dwellings located on Lot 1 and 4 are fully compliant with the critical controls relating to view loss, being building height, building envelope, and setbacks. In this regard, it is not considered reasonable to require redesign of the development, considering the nature of the view loss as discussed above. The proposal is considered to maintain a reasonable sharing of views, taking into account the considerations discussed above.

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

  Comment:

  Given that the proposal will maintain a reasonable sharing of views, it is considered sufficiently innovative.

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

  Comment:

  The proposal involves the removal of several trees - most of which are exempt - to facilitate the works. The application has been reviewed by Council's Landscape division who are supportive subject to adequate tree replacement.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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

Concern has been received that the proposed dwelling on Lot 4 will result in unacceptable privacy impacts to No. 10 Gladys Avenue (south of the dwelling).

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:
  From the first floor, the proposed southern (front) elevation includes six windows that are sited between 4.0 meters - 13.4 meters from the southern boundary and are approximately 25.4 metres from the concerned dwelling (No. 10 Gladys Avenue). However, these windows are associated with bedrooms, ensuites and a stairway, which are not considered to be highly used parts of the dwelling, as established within the planning principal of *Meriton v Sydney City Council [2004] NSWLEC 313*, where overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time. Notwithstanding, the amended plans demonstrate that all efforts have been made to encourage a high level of visual and acoustic privacy. Deletion of the first-floor balcony and minimising openings along the southern elevation are indicative of this.

  Overall, the proposed dwelling has been appropriately designed prevent any significant visual privacy impacts, given the generous building separation, elevation difference and appropriate privacy treatment.

  All other windows and openings are considered to be acceptable and will not result in unreasonable impacts to the privacy of adjacent properties are are not recommended to incorporate additional privacy treatment.

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

  Comment:
  As above, the amended proposal will achieve an innovative design solution, which improves the urban environment.

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

  Comment:
  The proposed development will result in personal and property security for the occupants of the subject site, and those of 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 $40,260 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $4,026,000.

CONCLUSION

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

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

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

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

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

In summary, the application has been assessed with regard to the relevant Warringah LEP and DCP controls which guide the future desired character of the site and locality, along with the public submission received during the notification period.

The issues raised in the submissions are considered to be addressed by way of the amended plans and conditions of consent.

Subject to the recommended conditions of consent, it is considered that the proposal will result in a development that displays reasonable size, scale and density which is compatible with the existing site and surrounding development and will not result in unreasonable amenity impacts to surrounding properties. Overall, the proposal is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the DDP with a recommendation for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2022/1474 for Demolition works, subdivision of two lots into four lots, including the construction of an access driveway, stormwater works, and the construction of four dwelling houses on land at Lot B DP 393276,14 Gladys Avenue, FRENCHS FOREST, Lot A DP 393276,12 Gladys Avenue, FRENCHS FOREST, subject to the conditions printed below:

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

Terms and Reasons for Conditions

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

DEFERRED COMMENCEMENT CONDITIONS

1. **Stormwater Drainage Easement**
   As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be in accordance with the drainage plan submitted by JCO consultants DRW NO DA-SW200 Issue 9. The drainage easement 1.0m wide is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919 , burdening No 29 Bluegum cres (Lot 92 DP 30700). The applicant must provide Council with evidence of the created easement on title in order to activate the consent.

   Stormwater drainage plans are to be submitted to Council for written approval detailing disposal of stormwater from the site in accordance with Council's Water Management Policy.

   Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

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

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

GENERAL CONDITIONS

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
Sheet 1 - Rev 1: Plan of subdivision	16 June 2023	Simon Pak Yan Ho
Sheet 1 - Issue D: Demolition plan	21 July 2022	RK Designs
Sheet 1 - Ver 1: Site driveway plan	27 June 2023	The Traffic Plans Company
Sheet 2 - Ver 1: Site driveway section	27 June 2023	The Traffic Plans Company
Bin enclosure plan	Not dated	Architectural Solutions
DA301 - Rev 2: Site plan	4 August 2023	Eric Architecture
DA01 - Rev G: Lot 1 plan	7 August 2023	Eric Architecture
Sheet 3 - Issue D: Lot 3 plan	21 July 2023	RK Designs
DA04 - Rev G: Lot 4 plan	7 August 2023	Eric Architecture
Lot 1 - External material and colour finishes schedule	1 August 2022	RK Designs
Lot 3 - External material and colour finishes schedule	1 August 2022	RK Designs
Lot 4 - External material and colour finishes schedule	1 August 2022	RK Designs
DA01 - Rev C: Lot 2 - Site plan	27 April 2023	NKP Architecture
DA02 - Rev C: Lot 2 - Second floor plan	27 April 2023	NKP Architecture
DA03 - Rev B: Lot 2 - First floor plan	15 August 2022	NKP Architecture
DA04 - Rev C: Lot 2 - Ground floor plan	12 March 2023	NKP Architecture
DA05 - Rev C: Lot 2 - Section	27 April 2023	NKP Architecture
DA06 - Rev C: Lot 2 - East & west elevation	27 April 2023	NKP Architecture
DA07 - Rev B: Lot 2 - North & south elevation	15 August 2022	NKP Architecture
DA08 - Rev A: Lot 2 -Carport	26 June 2023	NKP Architecture
Lot 2 - External material and colour finishes schedule	30 March 2022	NKP Architecture

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
DA-SW100 - Rev 9	30 June 2023	JCO Consultants
DA-SW200 - Rev 9	30 June 2023	JCO Consultants
DA-SW201 - Rev 9	30 June 2023	JCO Consultants
DA-SW300 - Rev 9	30 June 2023	JCO Consultants
DA-SW500 - Rev 9	30 June 2023	JCO Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Aboriginal Due Diligence Assessment	14 March 2023	Unearthed Archaeology & Heritage
Arboricultural Impact Assessment Report	15 September 2022	Hugh The Arborist
BASIX Certificate No. 1326764S_02 - Lot 1	8 August 2023	RK Designs

BASIX Certificate No. 1298296S_04 - Lot 2	19 August 2022	Enviiro Pty Ltd
BASIX Certificate No. 1326834S - Lot 3	3 August 2022	RK Designs
BASIX Certificate No. 1327054S_02 - Lot 4	8 August 2023	RK Designs
Geotechnical Report	19 August 2022	White Geotechnical Group
Geotechnical Report - Lot 2	19 May 2022	White Geotechnical Group
Water Sensitive Urban Design	18 August 2022	JCO Consultants

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
LA01 - Rev B	4 August 2022	Apex Studio
LA02 - Rev A	4 August 2022	Apex Studio
LA03 - Rev A	4 August 2022	Apex Studio
LA04- Rev A	4 August 2022	Apex Studio
LA05 - Rev A	4 August 2022	Apex Studio
LA06 - Rev A	4 August 2022	Apex Studio

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	2 August 2022	RK Designs

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

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

3. **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	30 September 2022
Aboriginal Heritage Office	Aboriginal Heritage Office Referral Response	12 April 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.

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.

6. **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 on Lot 2 for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

FEES / CHARGES / CONTRIBUTIONS

7. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $40,260.00 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 $4,026,000.00.

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.

8. **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.

9. **Construction, Excavation and Associated Works Bond (Drainage works)**
The applicant is to lodge a bond of $3000 as security against any damage or failure to complete the construction of stormwater drainage connection works to Councils existing stormwater pit 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.

10. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**
The applicant is to lodge a Bond of $8000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required 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.

11. **Construction, Excavation and Associated Works (Road Damage Security Bond)**
A bond of $5000 as security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site.

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

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

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

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

Reason: Protection of the receiving environment.

13. **Detailed Design of Stormwater Treatment Measures - Major**
A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the WSUD strategy report (JCO Consultants Pty Ltd), stormwater plan (JCO Consultants Pty Ltd rev.6 05.09.2022) and Council's Water Management for Development Policy.

The certificate shall be submitted to the Principal Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

14. **Hazardous Building Materials Survey**

A hazardous building materials survey is to be conducted by a suitably qualified and experienced person. The survey is to include a survey of hazardous building materials including but not limited to asbestos, lead, SMF and PCBs. Following the survey a Hazardous Building Materials Register is to be prepared for the premises providing recommendations for the safe management/removal of hazardous building material.

Reason: To protect human health.

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

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

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

16. **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.

17. **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.

18. **Waste and Recycling Requirements**
Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Principal Certifier prior to the issue of any Construction Certificate.

If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

19. **Subdivision Works Certificate**
A Subdivision Works Certificate is to be approved by Certifier for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifier for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979.

Civil Engineering /stormwater drainage plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1 and Council Water management for development policy. The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering. The design must include the following information:

1. 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 [in accordance with the concept drainage plans prepared by JCO Consultants , drawing number DA-SW200-SW201 Issue 9 dated 30/6/23 ,DA -SW300 Issue 9,DA-SW500 Issue 9,DA-SW501 Issue 9,dated 30/6/23. 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 (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:
i. A catch drain at the rear of Lot 2 to capture all the lot overland flow . The catch drains location is to have no impacts on existing trees to be retained.
ii. The locations of any boundary retaining walls.
iii.Typical cross sections of detention tanks 1 and 2.
1v. Proposed stormwater connection detail to Councils existing Pit SPO 1245
v. Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.
vi: The project arborist is to confirm the position of OSD Tank 2 will have no impacts of the trees to be retained on site , if there are any impacts OSD Tank 2 is to be relocated to suit.
2. Engineering details of the proposed common concrete access driveway/passing bays including structural details, long sections and typical crossing sections.

The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specifications.

20. **Utilities Services**
Prior to the issue of the Subdivision Works Certificate, the Applicant is to obtain the following:

(a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
(b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

21. **Pre-Commencement Dilapidation Report**
The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the

existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifier prior to the issue of the any Subdivision Works Certificate and the commencement of any works including demolition.

Reason: Protection of Council's Infrastructure during construction.

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

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

23. **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, except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. **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, and the recommendations of the 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 under section 8.2 Tree Sensitive Construction Specification (for trees 1, 4, 48, 54 and including tree 5), section 9 Recommendations, and Section 10 AMS and Tree Protection Requirements,
ii) works under section 11 Hold Points,
iii) construction of the bin storage area,
iv) all stormwater infrastructure excavation and installation,
v) additionally, the Project Arborist shall be in attendance and supervise any landscaping works within the TPZ of all existing trees to be retained.

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.

25. **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 2 - *Eucalyptus resinifera*, tree 12 - *Callistemon viminalis*, tree 24, 25, 30 - *Melaleuca quinquenervia*, tree 37 - *Banksia integrifolia*, tree 40 - *Eucalyptus resinifera*, tree 42 - *Banksia integrifolia*, tree 52 - *Angophora costata*,
ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised building works.

DURING BUILDING WORK

26. **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 sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

27. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees 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.

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

29. **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.

30. **Installation and Maintenance of Sediment and Erosion Controls**
Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

31. **Substitution of Stormwater Treatment Measures**
The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must submitted to the Principal Certifier for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

32. **Removing, Handling and Disposing of Asbestos**
Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:
- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

33. **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. **Progress Certification (Road & Subdivision)**
The applicant shall provide written compliance certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Council for the following stages of works:

(a) Laying of stormwater pipes and construction of pits

(b) Access driveway base course and sub-grade trimmed and compacted **

(c) Prior to pouring of concrete Pavement

(d) Clean-up of site, and of adjoining Council roadway and drainage system.
(**To be tested by a recognised N.A.T.A. approved laboratory).

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

Reason: To ensure compliance of civil works with Council's specification for engineering works.

36. **Civil Works Supervision**
The Applicant shall ensure all civil works approved in the Subdivision works certificate are supervised by an appropriately qualified and practising Civil Engineer who has RPENG or NER registration.

Details demonstrating compliance are to be submitted to the Principal Certifier and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

37. **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.

38. **Vehicle Crossings**
The Applicant is to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ normal low 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.

39. **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.

40. **Requirement to Notify about New Contamination Evidence**
Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifier.

Reason: To protect human health and the environment.

41. **Compliance with Recommendations within Hazardous Building Materials Register**
Any recommendations within the Hazardous Building Materials Register are to be implemented during works.

Reason: To protect human health.

42. **Asbestos**
All removal, repair or disturbance of or to asbestos materials must comply with the relevant guidelines and legislation including the following:
• The Work Health and Safety Act 2011;
• The Work Health and Safety Regulation 2017;
• NSW SafeWork Code of Practice - How to Safely Remove Asbestos; and
• NSW SafeWork Code of Practice - How to Manage and Control Asbestos in the Workplace.

All asbestos waste must be disposed of at a lawful waste disposal facility that accepts asbestos waste.

Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Following the removal of asbestos containing materials an asbestos clearance certificate is to be issued by a suitably qualified and experienced professional such as an Occupational Hygienist or Licenced Asbestos Assessor before the recommencement of any work.

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

Reason: To protect human health.

43. **Classification of Waste & Off-site Disposal of Waste (fill and/or soil material)**

Prior to the exportation of waste (fill and/or soil) from the site, the waste materials must be tested and classified in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW EPA Waste Classification Guidelines, Part 1: Classification of Waste (November 2014).

Testing is required prior to off-site disposal. In accordance with DECC Waste Classification Guidelines (2014) materials identified for off-site disposal must be removed by a suitably qualified contractor to an appropriately licensed waste facility.

'Chain of Custody' documentation including receipts shall be kept for the exportation of waste (fill and/or soil material) from the site.
Details demonstrating compliance are to be submitted to the Principal Certifying Authority within seven (7) days of transport and made available to Council upon request.

Reason: Appropriate disposal of waste and protection of the environment.

44. **Waste/Recycling Requirements (Waste Plan Submitted)**
During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

45. **Waste/Recycling Requirements (Materials)**
During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

46. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan (drawing LA02 to LA06 by Apex Studio), and inclusive of the following conditions:
i) substitute the 2 *Pyrus calleryana* with a suitable native alternative to achieve at least 6 metres height at maturity, selected from Northern Beaches Council's Native Plant Species Guide - Frenchs Forest Ward, or Council's Tree Guide,
ii) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
iii) 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,
iv) 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 75mm depth of mulch,
v) 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.

Reason: Environmental amenity.

47. **Condition of Retained Vegetation - Project Arborist**
Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained, including the following information:
i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree protection.

48. **Certification for the Installation of Stormwater Treatment Measures**
A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the stormwater wsud strategy and plans prepared by JCO Consultants Pty Ltd. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifier prior to the release of an Occupation Certificate.

Reason: Protection of the receiving environment.

49. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**
A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater

treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

50. **Stormwater Treatment Measures Operation and Maintenance Plan**
An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:
a) Work as executed drawings
b) Intent of the stormwater treatment measures including modelled pollutant removal rates
c) Site detail showing catchment for each device
d) Vegetation species list associated with each type of vegetated stormwater treatment measure
e) Impervious area restrictions to maintain the water balance for the site
f) Funding arrangements for the maintenance of all stormwater treatment measures
g) Identification of maintenance and management responsibilities
h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
a) Activity description, and duration and frequency of visits
Additionally for vegetated devices:
b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing
a) Activity description, and duration and frequency of visits
b) Routine maintenance requirements
c) Work Health and Safety requirements
d) Waste management and disposal
e) Traffic control (if required)
f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

51. **Works as Executed Drawings - Stormwater Treatment Measures**
Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

52. **Community Title Management Statement**
The Community Management Statement must specifically list the stormwater treatment measures that will be maintained under community title. The statement must also include the Stormwater Treatment Measure Operation and Maintenance Plan.

Details demonstrating compliance shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

53. **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.

54. **Garbage and Recycling Facilities**
All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.
Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

55. **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.

56. **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.

57. **Undergrounding of Telecommunications Services**
Arrangements are to be made for the provision of underground telecommunications services to the building.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services.

58. **Waste and Recycling Facilities Certificate of Compliance**
The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

59. **Waste/Recycling Compliance Documentation**
Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

60. **Positive Covenant for Council and Contractor Indemnity**
A positive covenant shall be created on the title of the land prior to the issue of an Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

61. **Authorisation of Legal Documentation Required for Waste Services**
The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of an Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Principal Certifier, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

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

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

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

Reason: To maintain local environmental amenity.

63. **Maintenance of Stormwater Treatment Measures - Major**
Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

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

Reason: Protection of the receiving environment.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

64. **Certification of Engineering Works and Works as Executed Data within Private Land**
The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed road and drainage works have been constructed in accordance with this consent and the approved Subdivision Certificate plans. Works as Executed data (details overdrawn on a copy of the approved SWC plan) certified by a registered surveyor and submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance of drainage works with Council's specification for engineering works.

65. **Positive Covenant for On-site Stormwater Detention**
A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches

Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site detention system.

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

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

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

67. **Right of Carriageway**
The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas.

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

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

68. **Restriction as to User (On-site Stormwater Detention)**
The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements. Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval.

69. **Services**
The Applicant shall ensure all utilities/services and street lighting is installed. The Applicant is to submit a Certification stating the above requirement has been complied with by the relevant authority(s) and/or authorised contractor.

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

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

70. **Certification of On-site Detention System (New Subdivision)**
A Certificate is to be submitted by the design Civil Engineer confirming to the satisfaction of the Council/Principal Certifier that the on-site stormwater detention has been constructed in accordance with the approved subdivision certificate plans and the Development Consent and relevant conditions of Development Consent.
Work as executed stormwater drainage with variations overlain in red and a compliance certificate is to be issued by the design engineer accordingly.

The Subdivision Certificate will not be released until this certification has been submitted to Council and confirmed that all relevant this conditions have been satisfied.

Reason: To ensure the On-site Detention System has been built to the appropriate standard

71. **Sydney Water Compliance Certification**
The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <http://www.sydneywater.com.au> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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

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

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

72. **Easement for Drainage**
The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

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

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

73. **Easement for Services**
The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

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

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

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

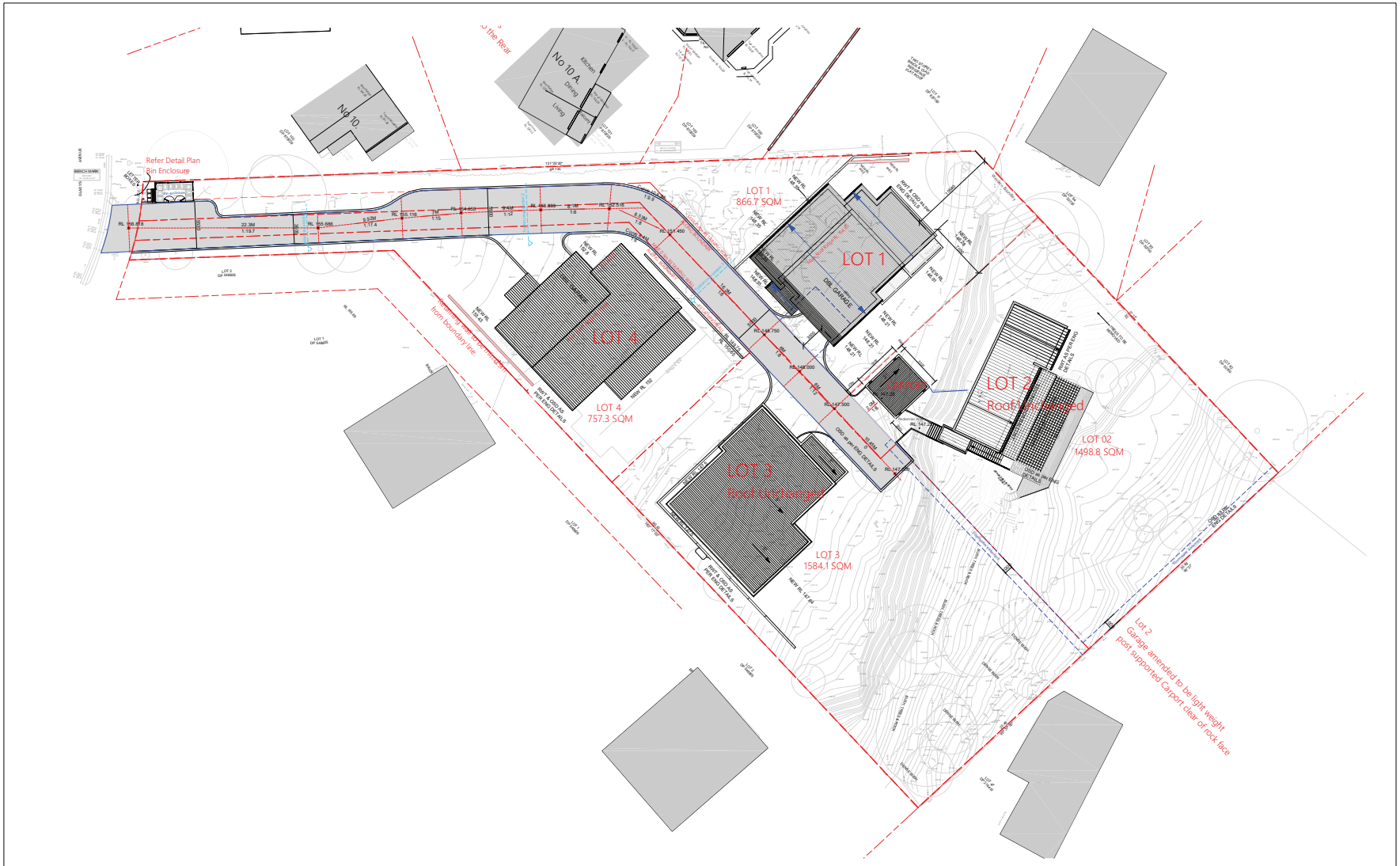
75. **Subdivision Certificate Application**
The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four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

Reason: Statutory requirement of the Conveyancing Act 1919.

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

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

Reason: To ensure proper management of land.



ARCHITECTURE

Eric Architecture Pty Ltd
ABN 46 694 932 245
ACN: 694 932 245
Nominated Architect: Yuan Tao (NSW 12177)
22 Stevens street, Ermington NSW 2115
W: www.eaaa.online
E: ericyuantao@gmail.com
P: 0434 610 973
Architecture | Development | Interior | Landscape | Consultancy

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CLIENT:

PROJECT ADDRESS:
No. 12-14 GLADYS AVENUE, FRENCHS FOREST NSW 2086

REVISION HISTORY:

DATE	COMMENT	REV.
21.07.22	*Previous DESIGN*	*0*
26.06.23	Updated roof & driveway	1
4.08.23	Updated OSD location	2

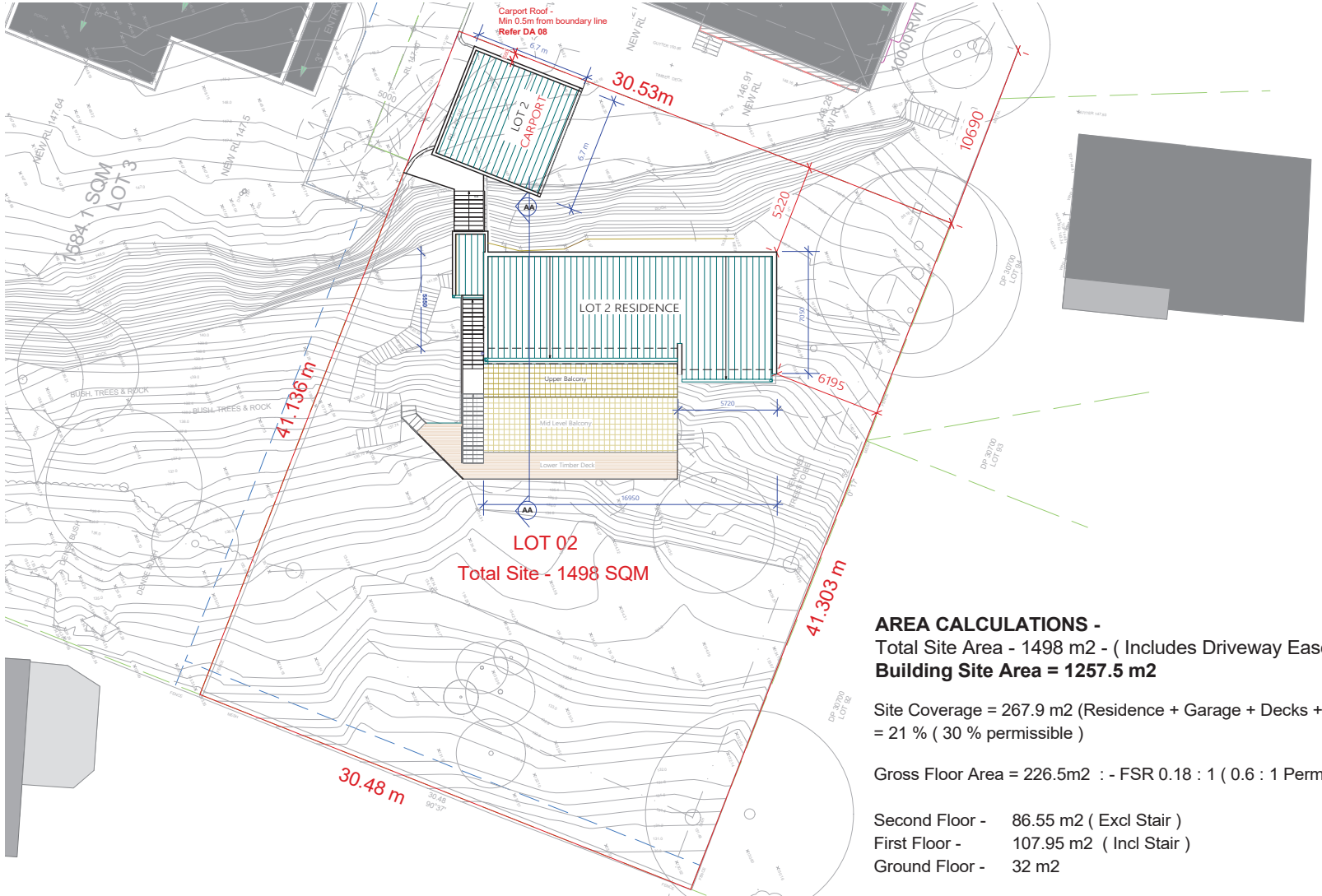
GENERAL NOTES:
- These plans are subject copyright and must not be used, copied or reproduced without the authority of the designer.
- The Builder is to verify dimensions prior to commencement.
- If any discrepancies arise they are to be reported to the designer prior to the commencement of the works.
- Do not scale, use figured dimensions only. If a dimension is not shown or is required consult with the designer.
- Do not alter the design either architecturally or structurally without prior consultation with the designer or engineer.

DRAWING:
ROOF & SITE PLAN

NORTH

SCALE:
@ A3

DRAWING NO.
DA301



AREA CALCULATIONS -
Total Site Area - 1498 m2 - (Includes Driveway Easement)
Building Site Area = 1257.5 m2

Site Coverage = 267.9 m2 (Residence + Garage + Decks + Stairs & Path)
= 21 % (30 % permissible)

Gross Floor Area = 226.5m2 : - FSR 0.18 : 1 (0.6 : 1 Permissible)

Second Floor -	86.55 m2 (Excl Stair)
First Floor -	107.95 m2 (Incl Stair)
Ground Floor -	32 m2

NKP ARCHITECURE
NSW ARB No. 10425
BEVERLY HILLS
SYDNEY NSW 2209
M: 04 2072 5400
E: neil@nkparchitecture.com.au
W: nkparchitecture.com.au

CLIENT:
MR JACK ZHANG

PROJECT ADDRESS:
No. 12-14 GLADYS AVENUE, FRENCHS FOREST NSW 2030

REVISION HISTORY:

DATE	COMMENT	REV.
16.03.22	FOR CONSULTANTS	A
23.03.22	FOR CONSULTANTS	A
30.03.22	FOR CONSULTANTS	A
15 Aug.22	Issued for DA	B
27 April 23	Garage deleted for Carport	C

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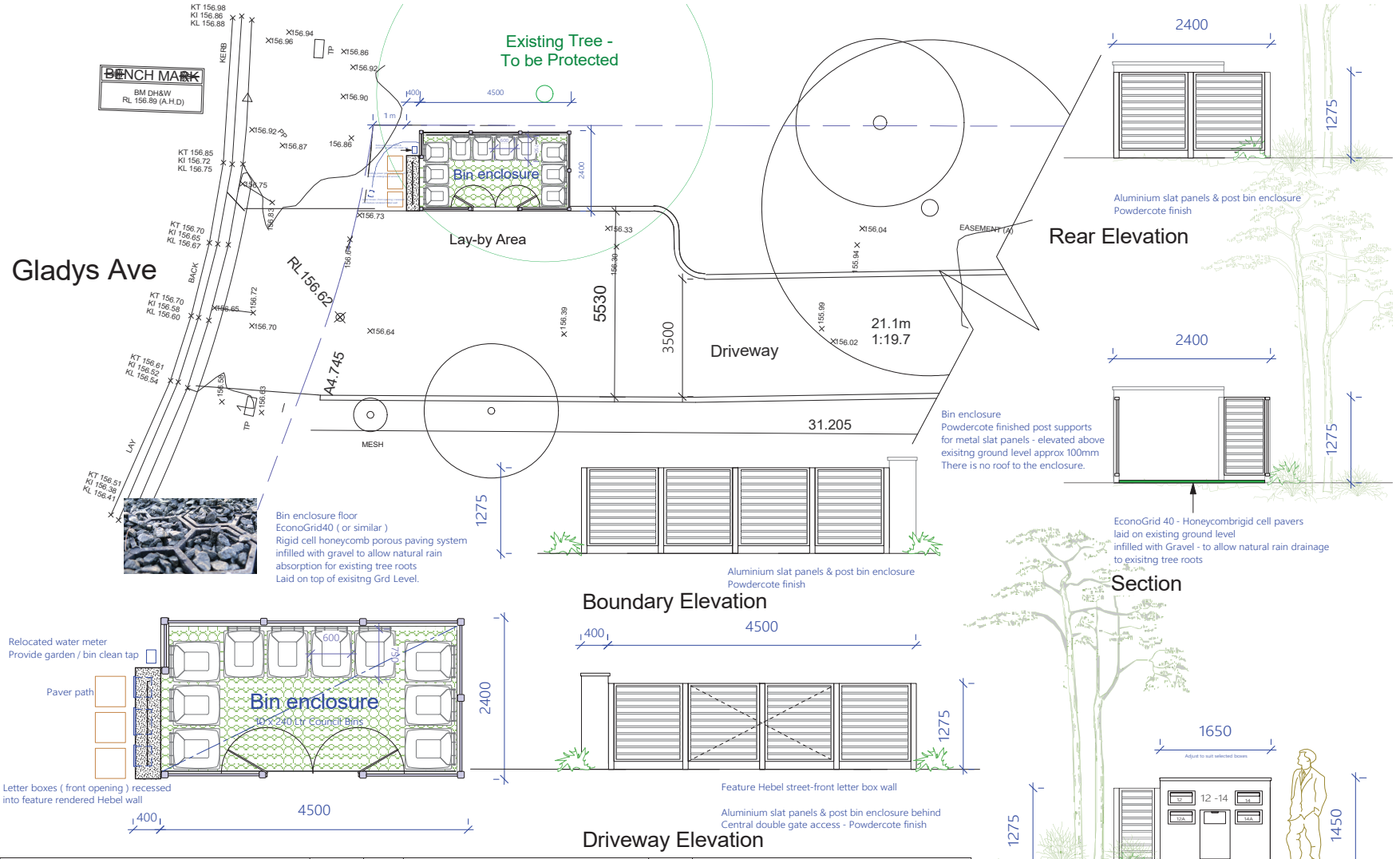
- Do not alter the design either architecturally or structurally without prior consultation with the designer or engineer

DRAWING:
LOT 2 - PROPOSED SITE & ROOF PLAN

Magnetic North

SCALE:
1: 200 @ A3

DRAWING NO.
DA 01



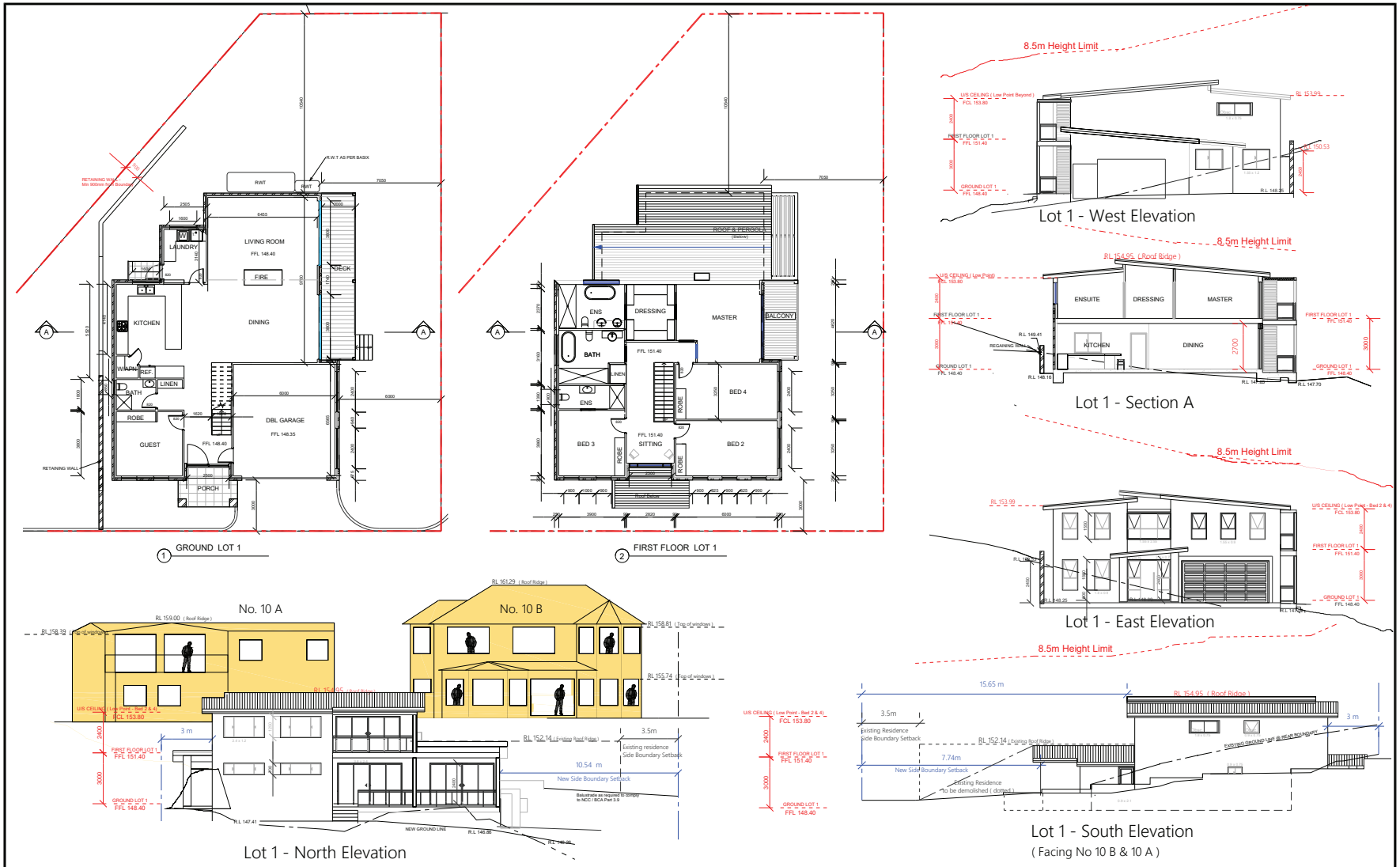
Amendments	Date	Issue

No.12 - 14 Gladys Ave,
Frenchs Forest
Proposed Subdivision and New Dwellings
Mr Jack Zhang

D A
Diana Prowse Reg. 5740 - Nominated Architect
Di-Signed
rchitectural Solutions
96A Pacific Highway, Roseville
PO Box 408 Roseville, NSW 2069
Email - diana@archsolutions.net.au
Mob 0414 931 018

Drawing No.

Scale



ARCHITECTURE

Eric Architecture Pty Ltd
ABN: 46 664 932 245
ACN: 664 932 245
Nominated Architect: Yuan Tao (NSW 12177)
22 Stevens street, Ermington NSW 2115
W: www.aaea.online
E: ericyuanlee@gmail.com
P: 0434 810 873
Architecture | Development | Interior | Landscape | Consultancy

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CLIENT:
MR JACK ZHANG

PROJECT ADDRESS:
SUBDIV. OF LAND, 2 LOTS INTO 4 LOTS,
PROP.CONSTRUCT. OF 3 X 2 STRY DWELLINGS AT
No. 12-14 GLADYS AVENUE,FRENCHS FOREST NSW 2030

REVISION HISTORY:

DATE	COMMENT	REV.
03/05/22	ISSUE FOR CLIENT	A
18/05/22	RE-DESIGN-A	B
08/06/22	ISSUE FOR PRE DA - RK Designs	C
21/07/22	ISSUE FOR DA - RK Designs	D
27/04/23	HEIGHT REVISED - Upper Floor Lowered and Roof Form Altered FIRST FLOOR AREA REDUCED & Building moved Building Height Plane Added Architectural Plans by Architectural Drafting Pty Ltd Added window dimensions	E F
07/08/23	Added window dimension - Eric Architecture Pty Ltd	G

GENERAL NOTES:
. All dimensions are to be confirmed on site by the builder/subcontractor, any incongruencies must be reported to the Designer before commencement of any work.
. No Survey has been made on the boundaries, all bearings, distances and areas have been taken from the contour survey plan. A Survey must be carried out to confirm the exact boundary locations.
. No construction work shall commence until a site survey confirming the site boundaries has been completed. The contractor is to ensure that the boundary setbacks are confirmed and used, the boundary setbacks take precedence over all other dimensions. The Survey work must be performed by a registered Surveyor.
. In the event of encountering any discrepancies on these drawings, specification or subsequent instructions issued, the Builder/Subcontractor shall contact the designer before proceeding further with any work.
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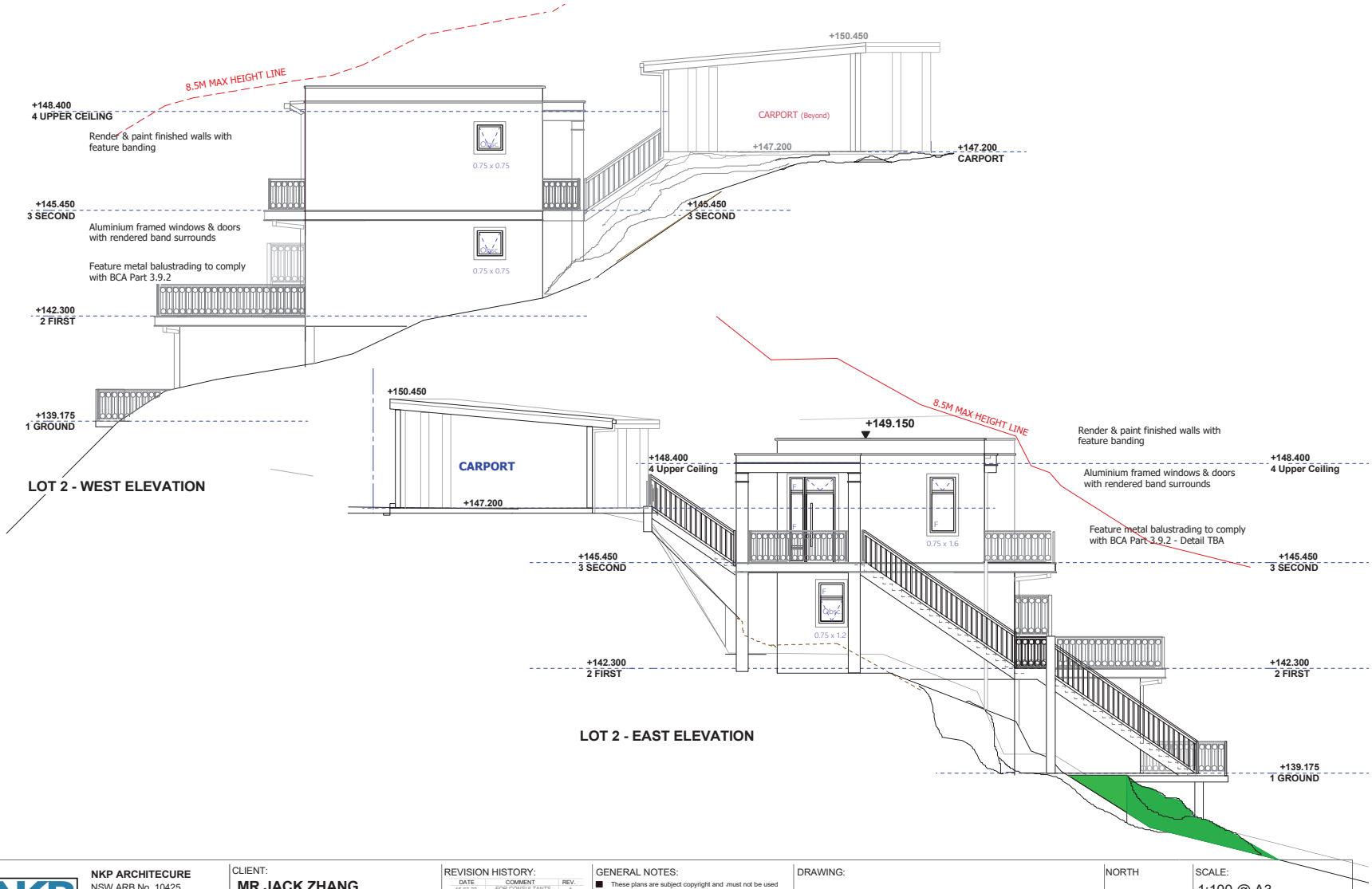
. Measurements for the fabrication of secondary components such as, windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.
. All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.
. All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

DRAWING:
Lot 1

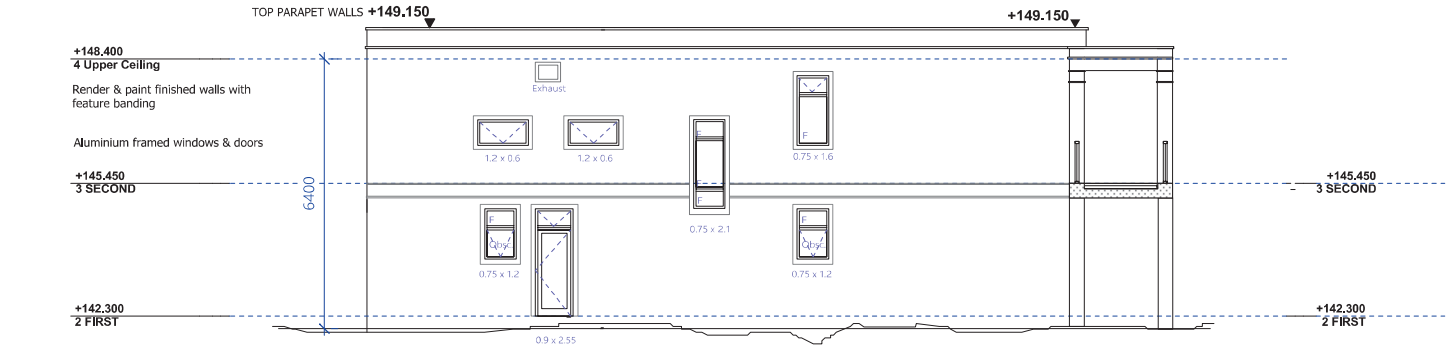
NORTH

SCALE:
1:100@ A3

DRAWING NO.
DA 01



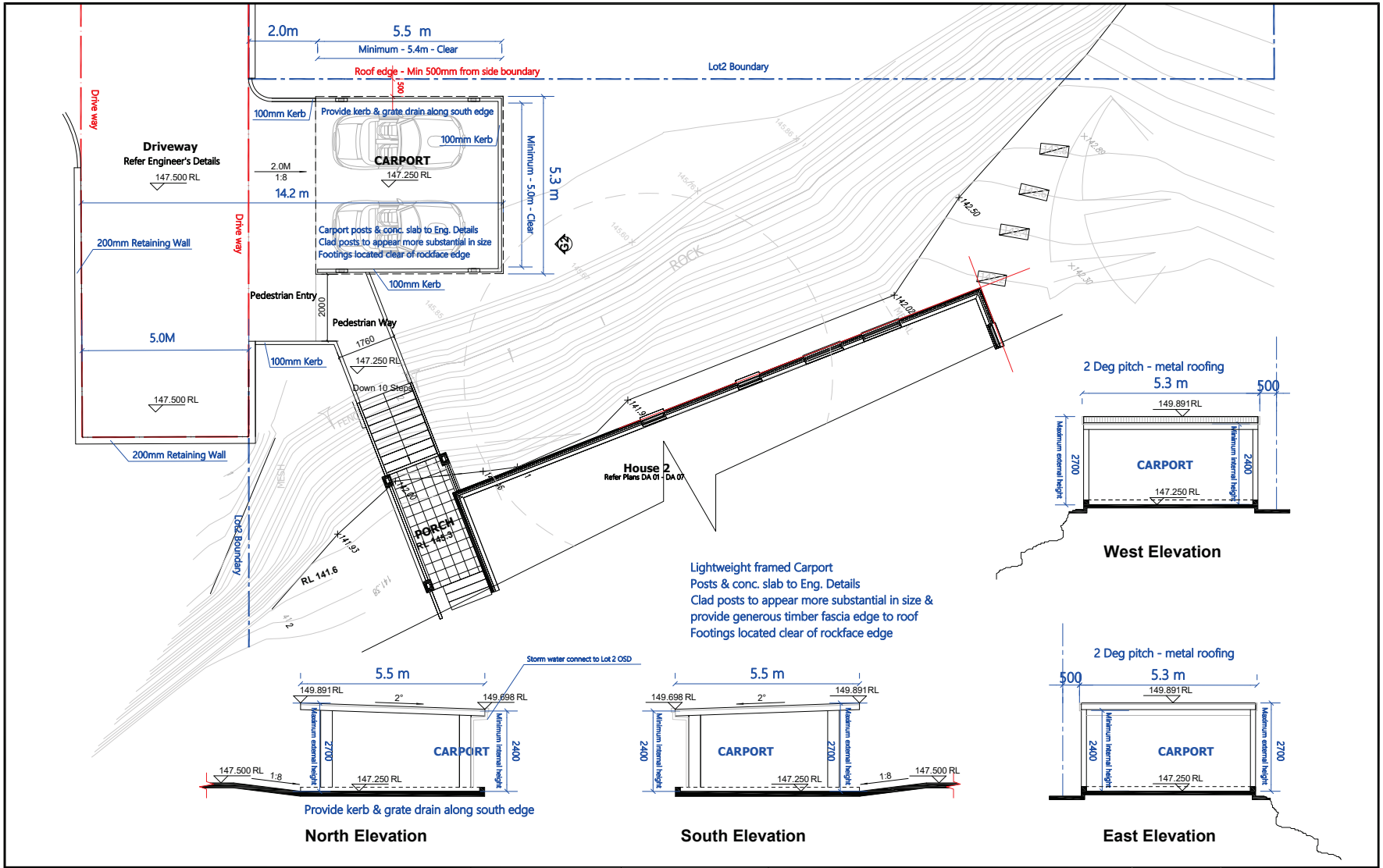
NKP ARCHITECURE NSW ARB No. 10425 BEVERLY HILLS SYDNEY NSW 2209 M: 04 2072 5400 E: neil@nkparchitecture.com.au W: nkparchitecture.com.au	CLIENT: **MR JACK ZHANG** PROJECT ADDRESS: **No. 12-14 GLADYS AVENUE, FRENCHS FOREST NSW 2030**	REVISION HISTORY: DATE / COMMENT / REV. 16.03.22 FOR CONSULTANTS A 23.03.22 FOR CONSULTANTS A 30.03.22 FOR CONSULTANTS A 15 Aug 22 Issued for DA B 27 April 23 Garage deleted for Carport C	GENERAL NOTES: ■ These plans are subject copyright and must not be used copied or reproduced without the authority of the designer ■ The Builder is to verify dimensions prior to commencement ■ If any discrepancies arise they are to be reported to the designer prior to the commencement of the works ■ Do not scale figured dimension is not shown or is required consult with the designer ■ Do not alter the design either architecturally or structurally without prior consultation with the designer or engineer	DRAWING: **LOT 2 - EAST & WEST ELEVATION**	NORTH	SCALE: 1:100 @ A3 DRAWING NO. **DA 06**



LOT 2 - SOUTH ELEVATION

LOT 2 - NORTH ELEVATION

NKP ARCHITECURE NSW ARB No. 10425 BEVERLY HILLS SYDNEY NSW 2209 M: 04 2072 5400 E: neil@nkparchitecture.com.au W: nkparchitecture.com.au	CLIENT: **MR JACK ZHANG** PROJECT ADDRESS: **No. 12-14 GLADYS AVENUE, FRENCHS FOREST NSW 2030**	REVISION HISTORY: DATE / COMMENT / REV. 16.03.22 / FOR CONSULTANTS / A 23.03.22 / FOR CONSULTANTS / A 30.03.22 / FOR CONSULTANTS / A 15 Aug.22 / Issued for DA / B	GENERAL NOTES: ■ These plans are subject copyright and must not be used copied or reproduced without the authority of the designer ■ The Builder is to verify dimensions prior to commencement ■ If any discrepancies arise they are to be reported to the designer prior to the commencement of the works ■ Do not scale figured dimensions the dimension is not shown or is required consult with the designer ■ Do not alter the design either architecturally or structurally without prior consultation with the designer or engineer	DRAWING: **LOT 2 - NORTH & SOUTH ELEVATION**	NORTH	SCALE: 1:100 @ A3 DRAWING NO. **DA 07**


2.0m
5.5 m
Minimum - 5.4m - Clear
Roof edge - Min 500mm from side boundary
Lot2 Boundary
Drive way
Driveway
Refer Engineer's Details
147.500 RL
100mm Kerb
Provide kerb & grate drain along south edge
CARPORT
147.250 RL
Minimum - 5.0m - Clear
5.3 m
2.0M
1:8
14.2 m
Carport posts & conc. slab to Eng. Details
Clad posts to appear more substantial in size
Footings located clear of rockface edge
200mm Retaining Wall
Pedestrian Entry
Pedestrian Way
2000
1760
Down 10 Steps
5.0M
House 2
Refer Plans DA 01 - DA 07
PORCH
RL 145.3
RL 141.6
Lot2 Boundary
ROCK
2 Deg pitch - metal roofing
149.891RL
Maximum external height
Minimum internal height
2700
2400
West Elevation
Lightweight framed Carport
Posts & conc. slab to Eng. Details
Clad posts to appear more substantial in size &
provide generous timber fascia edge to roof
Footings located clear of rockface edge
Storm water connect to Lot 2 OSD
149.698 RL
147.500 RL
North Elevation
South Elevation
East Elevation
ARCHITECTURE
Eric Architecture Pty Ltd
Architecture | Development | Interior | Landscape | Consultancy
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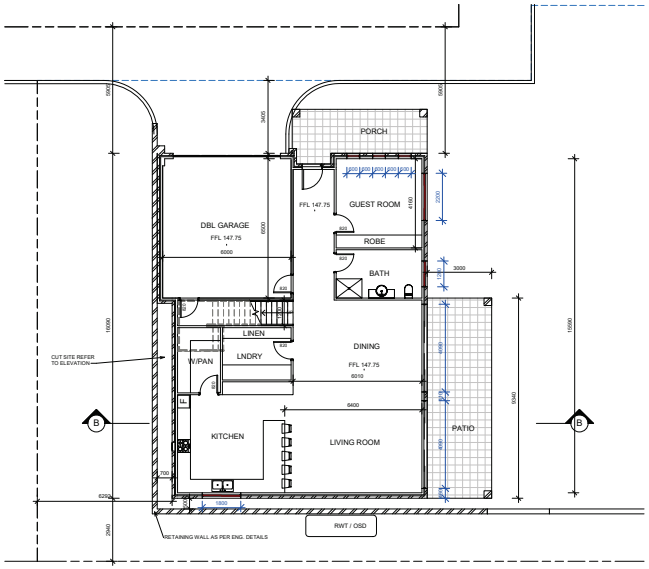
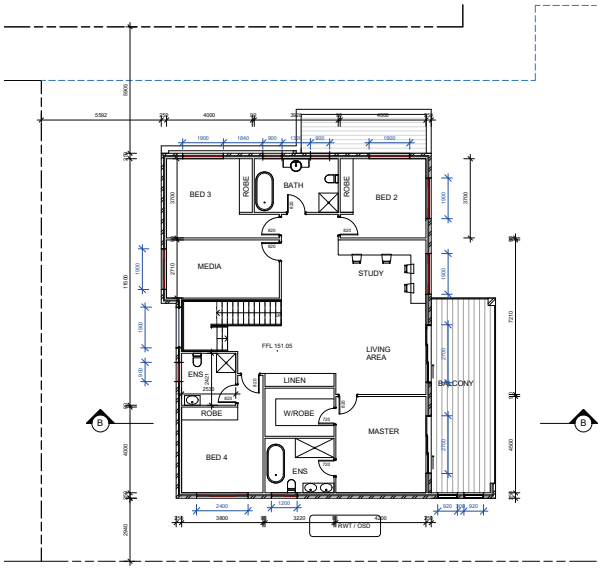
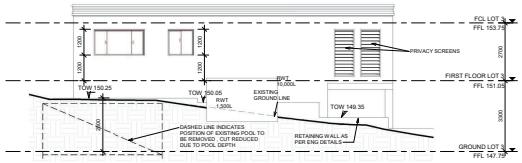
CLIENT:
MR JACK ZHANG
PROJECT ADDRESS:
No. 12-14 GLADYS AVENUE,
FRENCHS FOREST NSW 2030
REVISION HISTORY:
DATE
COMMENT
REV.
CONCEPT DESIGN
GENERAL NOTES:
DRAWING:
Lot 2 Carport
NORTH
SCALE:
1:100@ A3
DRAWING NO.
DA 08



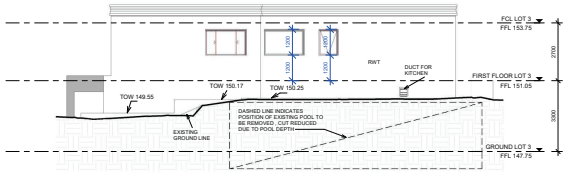
1 GROUND LOT 3
1 : 100



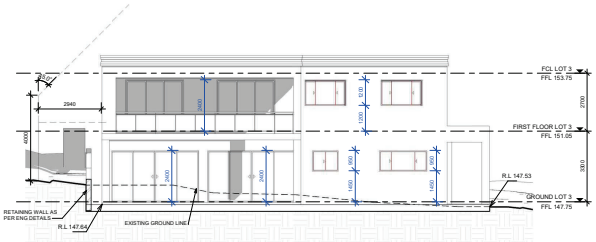
2 FIRST FLOOR LOT 3
1 : 100



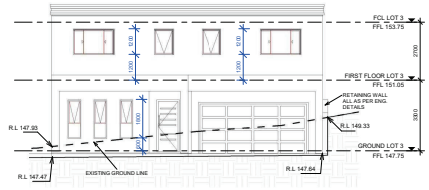
3 EAST ELEVATION L3
1 : 100



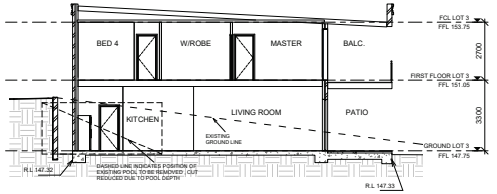
5 SOUTH ELEVATION L3
1 : 100



4 NORTH ELEVATION L3
1 : 100



6 WEST ELEVATION L3
1 : 100



7 SECTION B - B
1 : 100

GENERAL NOTES
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Measurements for the fabrication of secondary components such as, windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.
All structural members shall be designed and certified by a practising and registered structural engineer.
All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

	date	issue	amendment
SJ	03/03/22	A	ISSUE FOR CLIENT
RK	18/03/22	B	REVISION B
RK	06/05/22	C	ISSUE FOR PRE DA
RK	21/07/22	D	ISSUE FOR DA

project
SUBDIV. OF LAND, 2 LOTS INTO 4 LOTS.
PROP.CONSTRUCT. OF 3 X 2 STRY DWELLINGS AT
12-14 GLADYS AVENUE, FRENCHS FOREST, NSW, 2086

bdaa ACCREDITED BUILDING DESIGNERS

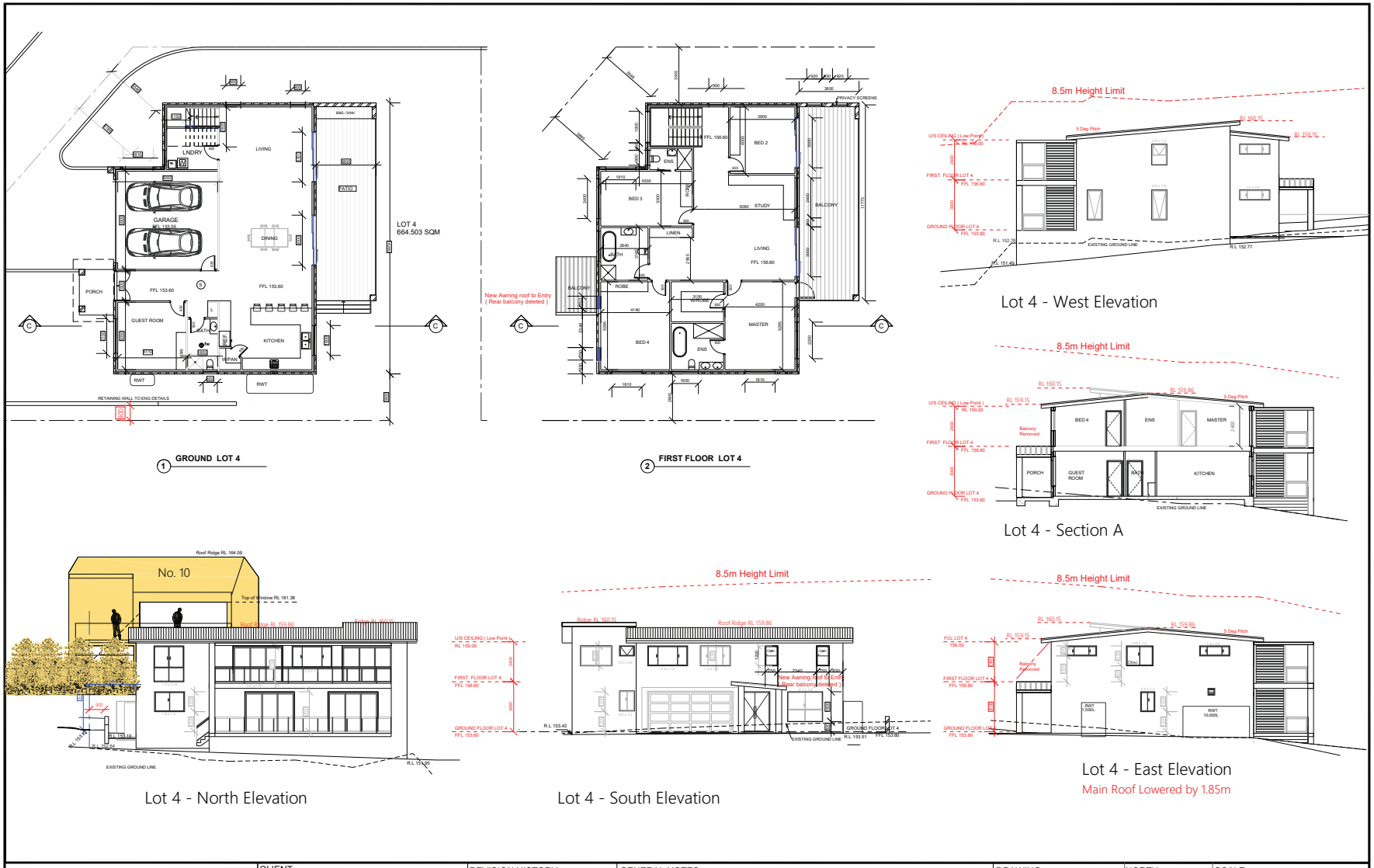
6/7 Parkes Street, Parramatta NSW 2150
www.rkdesigns.com.au
admin@rkdesigns.com.au
02 9633 4767
abn. 68 609 200 389
specialists designed for life

client
JACK ZHANG

true north | drawing
LOT 3

project no | date | sheet no. | scale @ A1 | issue | checked
22-46 | 03/05/22 | 3 | 1 : 100 | D | RK

RK DESIGNS



ARCHITECTURE

Eric Architecture Pty Ltd
ABN: 46 664 932 245
ACN: 664 932 245
Nominated Architect: Yuan Tao (NSW 12177)
22 Stevens street, Ermington NSW 2115
W: www.aaea.online
E: ericyuantao@gmail.com
P: 0434 610 873
Architecture | Development | Interior | Landscape | Consultancy

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CLIENT:
MR JACK ZHANG

PROJECT ADDRESS:
SUBDIV. OF LAND, 2 LOTS INTO 4 LOTS,
PROP.CONSTRUCT. OF 3 X 2 STRY DWELLINGS AT
No. 12-14 GLADYS AVENUE,FRENCHS FOREST NSW 2030

REVISION HISTORY:

DATE	COMMENT	REV.
03/05/22	ISSUE FOR CLIENT	A
18/05/22	REVISION B	B
08/06/22	ISSUE FOR PRE DA	C
21/07/22	ISSUE FOR DA	D
27/04/23	HEIGHT REDUCED - Upper Floor Lowered and Roof Floor Altered - Rear balcony removed	E
27/06/23	Altered Southern windows for neighbour's privacy	F
07/08/23	Added window dimension - Eric Architecture Pty Ltd	G

GENERAL NOTES:
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DRAWING:
Lot 4

NORTH

SCALE:
1:100@ A3

DRAWING NO.
DA 04

ITEM 3.5	**MOD2022/0471 - 1955 PITTWATER ROAD BAYVIEW - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0154 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2023/557972**
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 Mod2022/0471 for Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development on land at Lot 1 DP 373531, 1955 Pittwater Road BAYVIEW, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0471

Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 1 DP 373531, 1955 Pittwater Road BAYVIEW NSW 2104
Proposed Development:	Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development
Zoning:	R2 Low Density Residential
Development Permissible:	Yes, under Yes, under SEPP (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Ian Francis Westaway Jan Elizabeth Westaway J A Westaway & Son (Developments) Pty Ltd Cap One Developments Pty Ltd
Applicant:	The Trustee For The 1955 Pr Bay Unit Trust

Application Lodged:	29/09/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	24/03/2023 to 07/04/2023
Advertised:	24/03/2023
Submissions Received:	8
Clause 4.6 Variation:	4.3 Height of buildings: 9.4%
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks to modify Development Consent No.DA2019/0154 which was granted for a seniors housing development by the NSW Land and Environment Court.

The application is referred to the Development Determination Panel due to seven (7) objections being received.

The proposal includes a number of changes to the approved development, including the provision of fire hydrant booster, tree removal, addition of rooftop plant and enclosure/screening; increase in roof parapet height; change in floor levels; new curved balcony design to the front facade and increase in balcony sizes; increase in size of rooftop terrace and a modified landscaping scheme. The proposal also seeks consent for the "use" of existing as built works, which include concrete retaining walls and capping beam slab extension on the site. The physical aspect of these works have been regularised by way of a Building Information Certificate (BC2023/0102).

DA2019/0154 has had two (2) previous modifications approved, one of which approved the construction and use of the basement void area as storage areas for each unit.

A total of seven (7) submissions were received in response to the notification. The submissions include; incompatibility with the character of the area; building height and bulk; amenity issues (primarily regarding solar access, visual privacy and view loss); use of the basement storage area; and non-compliance with relevant planning controls within *SEPP (Housing for Seniors or People with a Disability) 2004* and Pittwater LEP and DCP.

Notification and preliminary assessment raised a number of concerns. These concerns included; insufficient information; unauthorised works on site; design of the storage area facade/opening; height and building bulk; potential view loss; building colours and materials and internal referral concerns.

Amended plans and additional information were submitted by the applicant to address these concerns.

A Building Information Certificate (BC2023/0102) was also submitted to Council's Building Control department to address/regulaise existing building works onsite.

Importantly, the proposal seeks to increase the height of the approved development. The maximum ceiling height will be 8.5m, which is non-complaint with the 8.0m under *SEPP (Housing for Seniors or People with a Disability) 2004*. Additionally, the parapet height of the roof ridge will increase by 662mm, the terrace roof will extend to the north-east by 1m and the overall roof height will measure 9.1m, which does not comply with the 8.5m height requirement stipulated within Pittwater LEP.

The current application is assessed under the provisions of *SEPP (Housing for Seniors or People with a Disability) 2004,* it being noted that it has recently been repealed and replaced with S*tate Environmental Planning Policy (Housing) 2021* (SEPP Housing). It is noted that SEPP Housing permits a building height of 9.5m and servicing equipment on the roof of the building to a maximum height of 11.5m. The proposed modification will meet these requirements. The vast majority of the proposal will be below the applicable height control. The minor height non-compliance is associated with the slope of the site and the rooftop structures will not result in excessive height and scale. The modified proposal steps with the topography, such that it will transition and maintain compatibility with the height and scale of the adjoining development.

The proposal also has a minor encroachment into the rear 25% of the site by a maximum of 0.5m, representing a variation of 4.6% to standards specified in Clause 40 of SEPP HSPD. The encroachment will not have an adverse impact on the amenity of neighbouring properties or character of the area.

The applicant has advised that the works are required to facilitate necessary fire hydrant booster assembly and associated access at the front of the site and has submitted evidence to support this.

Impacts on adjoining properties will be reasonable within the context and setting, however, conditions have been imposed requiring additional privacy measures.

On balance, the proposal represents a relatively modest change to the built form of that approved under DA2019/0154 (and subsequent modifications). The overall setbacks, built form, scale and appearance of the building is substantially the same as the approved development, with the proposed changes primarily due to further design refinement and achievement with relevant standards. The resultant development is acceptable for the subject site, for the reasons outlined in this report.

The modified proposal has been refined and enhanced using a new project architect, and represents a significant and substantial improvement in the character, design and external appearance of the approved development, with enhanced architecture, landscaping and external colours and finishes.

Overall, it is considered the modification is reasonable and satisfactory on its merits.

Accordingly, it is recommended that the application be APPROVED subject to modified conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify Development Consent DA2019/0154 approved via the Land and Environment Court Order 1326 (of 2020) for the 'demolition works and construction of a seniors housing development'.

Specifically, the application includes the following changes (as outlined by the applicant within the Statement of Modifications):

- Entry Pedestrian Ramp – Increased pedestrian ramp width to 1600mm for Accessibility
- Building Entry - New centrally sited awning and vertical louvre screen to the entry lobby
- Vertical Screening - Continuation of vertical screening over lift shaft to accentuate recess between the two modulated built forms.
- Balcony Articulation - New curved balcony design to front facade. This will increase the balcony terrace areas for all units
- New front fencing and retaining wall
- The provision of fire hydrant booster assembly, requiring removal of tree T3 and associated works on the road reserve
- Rooftop plant including lift overrun, air conditioning and exhaust and associated enclosure/screening
- First Floor Roof Deck/ Landscaping - Change in configuration and increase in size of First Floor roof deck. New landscape buffer around perimeter of First Floor roof deck.
- Increase in parapet height roof level and first floor level
- Roof & Floor RL - Adjustment in floor-to-floor heights
- Vehicular Access altered to comply with accessibility & Australian Standards.
- Carpark Floor Plan – Parking reconfiguration
- Lower Ground Floor Plan – Increase in Unit 4 storage area and new doors and panels for maintenance and ventilation.
- Lower Ground Floor Plan –New terrace and plant storage adjoining unit 1 and increase in unit 1 and 3 storage areas.
- Proposed terrace extensions at the front and rear of the site
- Unit layouts - Internal reconfiguration and increase in unit sizes
- Removal of wall break in east elevation of Units 3 and 4. Revised façade and window treatments.
- Boundary Fence - 1.8m high painted capped and lapped fencing.
- The implementation of a modified landscape regime including on slab planting over the retained capping beam slab within the south-eastern setback.

The proposal also seeks consent for the "use" of existing as built works, which include concrete retaining walls and capping beam slab extension.

The physical component of these works have been regularised by way of a recently issued Building Information Certificate (BC2023/0102).

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - A4.4 Church Point and Bayview Locality
Pittwater 21 Development Control Plan - B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land
Pittwater 21 Development Control Plan - B4.14 Development in the Vicinity of Wetlands
Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - B8.5 Construction and Demolition - Works in the Public Domain
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.7 Private Open Space
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure
Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run
Pittwater 21 Development Control Plan - D4.3 Building colours and materials
Pittwater 21 Development Control Plan - D4.6 Side and rear building line
Pittwater 21 Development Control Plan - D4.8 Building envelope
Pittwater 21 Development Control Plan - D4.11 Fences - General
Pittwater 21 Development Control Plan - D4.14 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 1 DP 373531 , 1955 Pittwater Road BAYVIEW NSW 2104
Detailed Site Description:	The subject site consists of one (1) allotment located on the southwestern side of Pittwater Road. The site is irregular in shape with a frontage of 32.64m along Pittwater Road and a depth of 43m. The site has an area of 1296.5m². The site is located within the R2 Low Density Residential zone and and is currently under construction pursuant to DA2019/0154 approved for a seniors housing development. The site falls approximately 12m from the south towards the north. The site is generally free of any vegetation due to ongoing construction works. Three canopy trees are located in the street verge along with ground-cover vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by predominantly 1-3 storey dwelling houses. St Luke's Primary School is located nearby to the west and Bayview Anchorage Marina nearby to the east.

Map:

SITE HISTORY

- Application **DA2019/0154** for Demolition works and construction of a seniors housing development was refused on 16/10/2019 by the Northern Beaches Local Planning Panel. The determination was appealed to the NSW Land and Environment Court which upheld the appeal with amended plans on 28/07/2020 after a conciliation conference between Council and the applicant.
- Application **Mod2021/0101** for Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development was approved on 12/05/2021 by Council staff.
- Application **Mod2021/0343** for Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development was approved on 27/07/2021 by Council staff. This modification approved the use the basement void area approved under Mod2021/0101 as storage areas for each dwelling.
- **BC2023/0102** - Building Information Certificate (149D Unauthorised) - Shotcrete retaining walls and associated capping beams - Issued 14/08/2023

APPLICATION HISTORY

16 December 2022
Council sent an RFI letter to the applicant, raising concerns primarily in relation to:

- Insufficient information
- Existing works on site
- Use of storage areas
- Height and building bulk
- View analysis
- Privacy

- Building colours and materials
- Internal referral concerns

17 March 2023
Amended plans and additional information were submitted to address Council's concerns.

20 March 2023
Amended plans were re-notified and re-advertised

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 DA2019/0154, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	**Comments**
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0154. • The modifications will not change the approved use of the site; • The modifications will retain the approved number of units; • The amount of floor space remains generally consistent with the previous approval and modifications.

Section 4.56- Other Modifications	Comments
	• The modifications will not significantly alter the form of development that was originally approved, • From qualitative and quantitative perspectives, the proposal will not be significantly altered by the proposed modifications.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2019/0154
(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 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 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 in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) 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 24/03/2023 to 07/04/2023 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 8 submission/s from:

Name:	Address:
Mr Leonard William Baillie	58 Alexandra Crescent BAYVIEW NSW 2104
Mr Peter William Gorian Ms Toni Capel	60 Alexandra Crescent BAYVIEW NSW 2104
Mrs Caroline McFarlane	Po Box 583 MONA VALE NSW 1660
Mr Richard Pearse	52 Alexandra Crescent BAYVIEW NSW 2104
Mr David James Carruthers	1957 Pittwater Road BAYVIEW NSW 2104
Claire Louise Young	62 Alexandra Crescent BAYVIEW NSW 2104
Jeromy Young	62 Alexandra Crescent BAYVIEW NSW 2104

Name:	Address:
Mrs Ellen May Barker	56 Alexandra Crescent BAYVIEW NSW 2104

The following issues were raised in the submissions:

- **Building Height**

  Comment:
  Concern was raised with the proposed height of the modified development and that the proposal does not meet the stipulated height requirement. Following this submission, amended plans were received, which reduced the extent of the proposed height non-compliance. The proposed non-compliance relates to a small section of terrace roof and proposed rooftop plant and is not considered to result unreasonable impacts to the character of the area or the amenity of adjoining neighbours. An assessment of the building height has been undertaken within the relevant section of this report (see *Clause 4.3 Height of buildings of PLEP2014*).

- **View loss**

  Comment:
  The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section *C1.3 View Sharing* of the P21 DCP. The requirements of this clause and the view sharing principles of T*enacity Consulting vs Warringah Council [2004] NSWLEC 140* have been addressed and the issues raised within the residents submissions in relation to view loss do not warrant further amendment or refusal of the application.

  Concern was also raised with potential view loss from proposed tree planting. The inclusion of tree planting is reasonable to satisfy the objectives C1.1 and D4.1 of P21 DCP . Furthermore, the objectives of clause C1.3 View Sharing of P21 DCP specifies that canopy trees take priority over views. In consideration of the location of pre-existing canopy trees within the view corridor (on the subject site) as well as the requirements and objectives of P21DCP, the replacement tree planting is supported and associated view loss is considered reasonable in this instance. Additionally, the location of canopy tree planting within the rear is generally consistent with the approved landscaping within the original approval (DA2019/0154).

- **Privacy impacts**

  Comment:
  The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Section *C1.5 Visual Privacy* of the P21 DCP. In summary, the proposal results in reasonable levels of privacy to adjoining properties (subject to recommended conditions).

- **Over-development, bulk and scale and not in the character of the area**

  Comment:
  This matter has been addressed throughout this report, particularly within the section of the report relating to *Clause 4.3 Height of buildings of PLEP2014; A4.4 Church Point and Bayview*

Locality and D4.8 Building envelope of the Pittwater 21 DCP and SEPP (Housing for Seniors or People with a Disability) 2004. In summary, the proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is not considered to result in unreasonable additional bulk and scale and will maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement.

- **Fencing detail and impacts of new fencing on views from rear properties**

  Comment:
  Following this submission, amended plans were received which includes fence details. The proposal also includes side and rear boundary fencing. In order to ensure that the proposed fencing does not result in unreasonable visual or view impacts to neighbours, conditions will be imposed ensuring that side and rear boundary fencing does not exceed 1.8m from existing ground level and is designed to step with the fall of the land, and is constructed wholly within the boundaries of the subject property. This matter has been addressed within D*4.11 Fences - General* of this report. New fencing is not considered to result in unreasonable view loss given the elevation of properties to the rear.

- **Visual and acoustic privacy from roof terrace and impacts from structures and lighting on this terrace**

  Comment:
  Concern has been raised by adjoining neighbours with regards to the proposed roof top terrace and associated amenity impacts. The rooftop terrace was approved within the original consent (DA2019/0154). The subject modification seeks to increase the overall size of this roof terrace area.

  As detailed within Section *C1.5 Visual Privacy* of the P21 DCP, the proposed increase in size of the rooftop terrace area is not considered to result in unreasonable acoustic or visual privacy impacts to the neightbours to the rear. The trafficable area of the terrace will be over 10m from the rear boundary and will be at a lower elevation than the principal private open space and windows of the properties to the rear. This terrace will also be separated from these properties by proposed screen planting and fencing. Given the spatial separation and differences in levels, the increase in the size of this terrace is not considered to result in unreasonable acoustic, visual privacy or lighting impacts to these neighbours.

  The trafficable area of the roof terrace will be setback 6m from the north-western side boundary and within 9m of windows and private open space of the adjoining neighbour to the north-west (1957 Pittwater Road). This terrace will be elevated above the windows and private open space of this adjoining neighbour, which may result in real and perceived downward overlooking. Given the scale and orientation of this terrace, and use as the principal private open space for Unit 4, a condition of consent is recommended to require a privacy screen measuring 1.5m in height on the on the north-western elevation of this roof terrace area to mitigate potential privacy impacts.

  The terrace will serve one unit (Unit 4) and is not considered to result in unreasonable acoustic impacts.

  If approved, conditions will be imposed to ensure that there are to be no permanent structures located on the rooftop terrace and that any temporary shade structures are to be taken down when not in use.

- **Photomonatge required**

  Comment:
  Following these concerns amended plans were received, which included an updated photomonatge of the modified proposal.

- **Insufficient community consultation**

  Comment:
  It is considered that the proposal was adequately notified and advertised in accordance with the provisions of the EPA Regulations and the Northern Beaches Community Participation Plan.

- **Solar Access**

  Comment:
  It is considered that proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to *Section C1.4 Solar Access* of the P21 DCP.

- **Impacts to watercourse and stormwater**

  Comment:
  The proposal was referred to Council's Development Engineer; Coast and Catchments Officer; Riparian Lands and Creeks Officer and Water Management Officer, who have raised no objection to the proposed development and impacts to watercourses and stormwater.

- **Impacts to property value**

  Comment:
  Under Section 4.15 '*Matters for Consideration*' of the Environmental Planning and Assessment Act 1979, this concern is not a matter for consideration. It is therefore considered that this issue does not warrant refusal of this application.

- **Concern with use of storage areas for habitable purposes**

  The submissions raised concerns that the lower ground floor storage areas will be used for habitable purposes rather than for storage.

  Comment:
  The lower ground floor storage area was approved within a previous modification application (Mod2021/0343). The subject application will result in a minor increase in the floor area of this storage area. However, during the assessment of the application, Council raised concern with the inclusion of openable glazed doors on the north-east elevation and the resultant appearance of an additional lower ground floor habitable area. Following these concerns, amended plans were received, which reduced the size of the access door with a louvred door and ventilation panel now being proposed.

  If this application is approved, conditions are to be imposed to ensure that this area is not to be

used for habitable purposes and shall not to contain any cooking, bathroom/toilet or laundry facilities.

- **Insufficient detail of roof colours**

  Comment:
  The original approval (DA2019/0154) included the following condition of consent:

  External Roofing - The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

  This condition will remain applicable to the development.

- **Number of storeys of the development**

  The submissions raised concerns that the number of storeys proposed would not meet the requirements of S*EPP (Housing for Seniors or People with a Disability) 2004*

  Comment:
  The subject application will not increase the number of storeys when compared with previous the modification approval (Mod2021/0343). The additional storey approved within previous modifications (for storage purposes) was predominantly below pre-existing (natural ground) level. The resultant built form of this application will generally retain the approved built form and will not increase the number of storeys proposed.

  As addressed within S*EPP (Housing for Seniors or People with a Disability) 2004* of this report, the proposal seeks to increase the footprint of the first floor unit (unit 4) to the rear by 0.5m. This will result in a minor portion of the first floor of the building encroaching into the rear 25% of the site by a maximum of 0.5m. This portion of the development will retain a rear setback of 10.2m from the rear boundary and will be well below building height control, within building envelope control and well exceed Council's rear building line control. The encroachment into the rear 25% will be for a minor portion of the site and is not anticipated to result in unreasonable amenity impacts to adjoining neighbours or character of the area.

  The remainder of the site will be single storey above pre-existing (natural ground) ground level within the rear 25% setback.

- **Concern regarding potential future roof additions**

  Comment:
  Future roof additions will be subject to a separate development application.

- **Geotechncial and structural concerns of existing excavation**

  Comment:
  Geotechncial and structural concerns associated with the existing excavation works on site were raised. These existing earthworks and structural retaining elements elements have been sought to be regularised through a Building Information Certificate (BC2023/0102). The application has been investigated with respect to aspects relevant to the Building Information Certification by Council's Building Control Officer (responsible for Building Information Certificate BC2023/0102) who has raised no objections to approval of the development, and has been issued.

The remaining earthworks seeking consent as part of this application, have been reviewed Council's Development Engineer and Water Management Officer, who have raised no objection to the application subject to recommended conditions. A geotechnical report has also been submitted with the application and the Building Information Certificate, that the proposed works as part of this modification are considered minor from a geotechnical perspective and do not alter the recommendations original report conditioned in the original consent. In order to ensure that there are no adverse impacts on the adjoining neighbours, conditions were imposed on the original consent which ensure structural adequacy of landfill and excavation work; require a dilapidation report for the adjoining properties; ensure the structural adequacy of proposed retaining wall; ensure the proper installation and maintenance of sediment and erosion control. These conditions will remain on the consent.

- **DCP Non-compliance with C1.25 Plant, Equipment Boxes and Lift Over-Run**

  Comment:
  This matter has been addressed within the section of this report relating to *C1.25 Plant, Equipment Boxes and Lift Over-Run* of the P21 DCP. In summary, the mechanical services on the roof form are appropriately screened and sufficiently set in from the roof edge to ensure the services are not prominent from the public domain. The area of the mechanical services has been minimised and appropriately screened to integrate into the deign of the building. The proposal meets the requirements of the SEPP. The design, scale and density of the proposed development is generally consistent with the existing approved development and the mechanical services on the roof are not considered to result in unreasonable impacts to the character of the locality.

- **Inconsistent with the provisions of S*EPP (Housing for Seniors or People with a Disability) 2004***

  Comment:
  This matter has been addressed within in section of this report relating to S*EPP (Housing for Seniors or People with a Disability) 2004*

- **Concerns with unauthorised development**

  Comment:
  As discussed throughout this report, significant earthworks and basement wall construction has been undertaken on the subject site. These were predominantly approved through the previous development consent and subsequent modifications. However, a site inspection has reveled that there are minor discrepancies between the location and extent of approved excavation and structural basement wall elements and the as-built structural components of the development. These existing earthworks and structural retaining elements have been sought to be regularised through Building Information Certificate (BC2023/0102). The application has been investigated with respect to aspects relevant to the Building Information Certification by Council's Building Control Officer (responsible for Building Information Certificate BC2023/0102) who has raised no objections to approval of the development and has issued the certificate.

- **Ensuring that the development is built in accordance with approved plans**

  Comment:
  It is the role of the principal certifying authority to ensure that the works are carried out in accordance with the approved plans. If there are concerns that the proposed works are not carried out in accordance with the approved plans or conditions of consent, a complaint should be made with Council's Compliance department who will investigate the matter accordingly.

- **Concerns with how "existing ground levels" have been calculated**

  The submissions raised concerns with how existing ground levels were calculated in the original approval and how they relate to the subject modification.

  Comment:
  As discussed throughout this report, the original Development Application (DA2019/0154) was assessed based on extrapolated ground levels for the site (pre-excavation). As such, the building height for this modification will be assessed on extrapolated ground levels for the site (pre-excavation), consistent with the original assessment (within DA2019/0154). This was based on a survey provided with the original application. The relevant ground levels to accurately determine the height of the building are extrapolated from survey points around the perimeter of the site which generally align with contour mapping.

- **Incomplete plans and insufficient information**

  Comment:
  Following these submissions, amended plans and additional information was received to provide the necessary information to make a accurate assessment of the application. This included detailed "comparison plans" to demonstrate the proposed changes when compared to previous approvals.

- **The proposed modification is not substantially the same as the original approval**

  Comment:
  The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0154.

- **Non-compliance with DCP Controls**

  Comment:
  For each of the numerical non-compliances, a merit assessment was carried out against the objectives of that control in this report. The assessment has found the proposed non-compliances to be reasonable in this instance (subject to conditions).

- **Additional gross floor area**

  Comment:
  The proposed modification seeks an additional 25sqm of gross floor area. The floor area of the lower ground floor storage area was approved within previous modifications. It should be noted that the definition of gross floor area within *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004,* excludes storage areas and therefore not included

within the Floor Space Ratio calculation.

- **Tree Removal and replacement planting**

  Comment:
  The proposed modification seeks to remove a Corymbia maculata, commonly known as Spotted Gum, from the Council's Road Reserve. The applicant has advised that the removal of this tree cannot be avoided, as the fire hydrant booster assembly is required at the front of the site. The application is supported with advice from *Innova Services Australia Pty Ltd* which confirms that the proposed booster assembly location is the only location on the site that meets the Australian Standard and FRNSW operational requirements, and that there is no feasible alternative location. The application has been reviewed by Council's Landscape and Biodiversity Officers, who have raised no objections subject to recommended conditions and replacement planting.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	**SUPPORTED SUBJECT TO CONDITIONS** **Amended Plans - (20/2/2023 - 17/3/2023)** The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. 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.
Landscape Officer	**SUPPORTED SUBJECT TO CONDITIONS** The application is for modification to development consent DA2019/0154. Additional Information Comment 20/03/23: The information provided by Innova Services states "the current proposed location is the only location on the site that meets the Australian Standard and FRNSW operational requirements..." and as such the hydrant location and associated access will necessitate the removal of tree 1 (previously identified as tree 3) as identified in the Arboricultural Impact Assessment by Waratah Eco Works (August 2022). Conditions 46. Removal of trees within the road reserve, 49. Tree and vegetation protection, 56. Landscape Works, and 57. Condition of Retained Vegetation, imposed in DA2019/0154, shall be

Internal Referral Body	Comments
	amended as part of this modification. All other conditions remain. Original Comment Summary: • the location of the hydrant and extent of hardstand was questioned due to the requirement to remove a significant tree in the road reserve.
NECC (Bushland and Biodiversity)	**SUPPORTED SUBJECT TO CONDITIONS** The modifications to this proposal have been assessed against the following provisions: • SEPP (Resilience and Hazards) 2014 - Coastal Wetland Proximity Area • Pittwater LEP 2014 - cl. 7.6 Biodiversity Protection • Pittwater 21 DCP - cl. B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land A total of 9 modifications have been submitted in the master plans as well as an additional arborist report where Tree #3 (as per Arborist report submitted with DA2019/0154), now Tree #1, a mature Corymbia maculata with a high landscape value is the subject of discussion due to impacts stemming from the proposed modifications. The arborist report also alludes to the presence of multiple habitat hollows that could currently be in use by arboreal mammals and birds. Therefore, and as per the Landscape Referral Response, until further documentation has been submitted demonstrating the exhaustion of alternatives to avoid removal of Tree #1, assessment against the relevant biodiversity controls cannot be finalised. AMENDED COMMENTS 20/03/2023 The response to the Landscape Referral Response has been noted as well as the proposed replacements for the loss of the canopy tree due to the requirement of the new hydrant. However, due to the presence of hollows and age of the tree conditions will apply to ensure compliance with PDCP B4.5.
NECC (Coast and Catchments)	**SUPPORTED WITHOUT CONDITIONS** The modification application has been assessed in consideration of the *Coastal Management Act 2016,* State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.

Internal Referral Body	Comments
	Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed modifications are in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Proximity to Coastal Wetlands Area', 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.8, 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Comment: On internal assessment, the DA satisfies requirements under clauses 2.8, 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. **Pittwater LEP 2014 and Pittwater 21 DCP** No other coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.
NECC (Development Engineering)	**SUPPORTED SUBJECT TO CONDITIONS** The proposed modification to the basement level has not included any sections, dimensions or levels to determine the grade of the revised driveway from the kerb to the basement. Also the dimension of the proposed driveway width is less than the approved width of 5.5 metres and does not indicate the required depth of 6 metres within the property which will not be supported. The new retaining wall in the road reserve to provide a hardstand adjacent to the fire hydrant booster appears excessive and it is unclear if this hardstand needs to be between the boundary and the kerb. The proposed wall must be reviewed by Council's Road Asset Engineers prior to approval from Development Engineering.

Internal Referral Body	Comments
	Development Engineering cannot support the proposal due to insufficient information in accordance with clause B6 of the DCP. **Amended Plans submitted 8/05/2023** The hardstand area has been amended to turf and the proposal has been supported by Road Assets and Landscaping. Development Engineering support the proposal, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	**SUPPORTED** The changes proposed under this modification, Mod2022/0471, do not result in any changes to the riparian lands and creeks referral. Therefore, the proposal is supported.
NECC (Water Management)	**SUPPORTED** The proposed changes under the Mod2022/0471 do not result in any changes to the water management referral.
Road Reserve	**SUPPORTED SUBJECT TO CONDITIONS** The proposed retaining wall and hard stand area providing access to fire booster is excessive and is not supported. An at grade pathway would be sufficient or relocate booster structure elsewhere within the property adjacent to existing pathways or driveways. 20/3/2023 Grasscell pavers or similar are not supported on the verge. No details of retaining wall across verge. Development engineering to condition with s138 Road Act application to ensure design complies with Council requirements. 8/5/2023 Amended plans showing removal of grasscel pavers are noted. Development engineering to condition with s138 Road Act application to ensure design of driveway, access path and other walls within the road reserve complies with Council requirements .
Strategic and Place Planning (Heritage Officer)	**HERITAGE COMMENTS - SUPPORTED** Discussion of reason for referral The proposal has been referred it is within the vicinity of a local heritage item, being ***Item 2270340 - Maybanke House ('Stoneleigh') and plaque - 1945 Pittwater Road, Bayview.*** Details of heritage items affected Details of the heritage item in the vicinity, as contained within the Heritage Inventory, are:

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
Statement of Significance:
This house, built at 1945 Pittwater Road, Bayview, in 1901 is historically significant for its association with the early development of Bayview and with the Australian feminist and writer Maybanke Anderson. Maybanke Anderson wrote the first history of Pittwater and was a passionate educator and feminist. The plaque is a tribute to Maybanke and the adjacent cove named after her. For this reason, both the house and the stone boulder mount and plaque at 1945 Pittwater Road, Bayview are socially significant for the local community. The house offers views to the water.
Physical description:
The house is located on a steep sloped site covered with trees and luxuriant vegetation with scenic views over Pittwater. It is a two-storey sandstone cottage with a tiled roof and veranda on the east and north sides. The house has a terrazzo floor featuring Australian animals and birds

<table>
<tr><td colspan="3">Other relevant heritage listings</td></tr>
<tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td>Comment if applicable</td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>No</td><td></td></tr>
</table>
Consideration of Application
This application is for modifications of a seniors housing development approved by the Land & Environment Court in July 2020 (DA2019/0154). The modifications include a change in floor levels which results in an overall increase in height, along with a number of modifications to the detailing of the building, including the balconies.

The heritage item in the vicinity, "Maybanke", is located to the south of the site, separated by by 2 properties, 1953 and 1951 Pittwater Road. Additionally, the heritage item is setback from Pittwater Road on elevated land, due to its location on a large battle axe lot.

Given this spatial separation and change in elevation, the proposed development will not have any adverse impact upon the heritage significance of "Maybanke".

Therefore, no objections are raised on heritage grounds and no conditions required.
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Internal Referral Body	Comments
	Consider against the provisions of CL5.10 of PLEP 2014: 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 N/A provided? Further Comments
Strategic and Place Planning (Urban Design)	**SUPPORTED** This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for their consideration and coordination with the overall assessment. The application seeks consent to modify the Land and Environment Court of New South Wales (the Court) granted development consent (Proceedings 2019/00199786) (DA2019/0154). The application includes but is not limited to the follow modifications: · Changes to floor-to-floor heights and an increase in height; · Amendments to the approved building envelope & appearance; · Increased pedestrian ramp width; · A new awning and louvre screen; · Curved balustrades to the balconies; · New fencing; · New rooftop plant enclosure; · New landscaping elements; · Addition of vehicular access, hard standing for fire truck, and fire booster assembly; · Amendments to the vehicular access; · Removal of a tree on public land;

Internal Referral Body	Comments
	Urban Design require the following additional information to be able to assess the application: ~~1. The following heights added to the drawings as dotted lines:~~ ~~a. 8m.~~ ~~b. 9.5m~~ ~~c. 11.5.~~ ~~2. Confirmation that the 'shadows cast by existing approval' (in blue) are the shadows cast by the original unaltered LEC approval and not those of subsequent modifications. Please show the shadows in greater detail and similar to the shadow diagrams in the original LEC approved drawings.~~ ~~3. Please provide a drawing illustrating the number, location, & size of trees that were to be retained as a part of the original LEC approval, and a drawing of how many trees it is currently proposed to retain.~~ ~~4. Inclusion of any proposed booster assembly~~, including any housing is to be shown~~ on the 3D perspective and the drawn documentation.~~ The applicant has provided the additional information requested, however; the updated photomontage shows the bare exposed pipes of the fire assembly, and the fire booster assembly is not integrated into the design of the building, and no housing is proposed. The exposed fire assembly is in a prominent location when viewed from the public domain. Please provide details of a suitably designed housing that is integrated with the overall design of the building that enhances the streetscape and character as viewed from a public place. Urban Design have received the additional information requested and have no further comment. **Please note**: Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Councils Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Councils Landscape Officers.

Internal Referral Body	Comments
Traffic Engineer	**SUPPORTED** The proposed changes under the MOD do not result in any changes to the parking requirements or traffic generation from the development and are not opposed on traffic grounds.
Waste Officer	**SUPPORTED SUBJECT TO CONDITIONS** Waste Management Assessment Recommendation - Supported with conditions. Existing LEC waste conditions of consent to remain.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Integrated Development - Roads and Maritime Services - Roads Act 1993, s138 - Works on classified road where Council is not the consent authority	The proposal was referred to referred to Transport for NSW (TfNSW) for concurrence in accordance with Section 138 of the Roads Act, 1993. TfNSW has reviewed the proposal and provided a response stating that the proposal is acceptable and raises no objection as the proposed development.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.991214M_04).

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

Commitment	Required Target	Proposed
Water	40	40

Thermal Comfort	Pass	Pass
Energy	50	36

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

SEPP (Housing for Seniors or People with a Disability) 2004

The application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for in-fill self-care housing.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will:

(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
(b) make efficient use of existing infrastructure and services, and
(c) be of good design.

Comment:
a) The modified development is consistent with aim (a) of the Policy as the development for Seniors Housing will provide an increase supply of accommodation to meet the needs of seniors or people with a disability.

b) The proposal is within an established low density residential area with access to public transport (buses) and a main road to enable travel to the central business areas of Mona Vale, Dee Why, Brookvale, Frenchs Forest, Manly and the city. Existing infrastructure including sewer and reticulated water, electricity and telecommunication's services are all available to the site.

c) Development Application **DA2019/0154** (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to be a suitable design as detailed throughout this report.

Chapter 2 – Key Concepts

Comment
The proposal satisfies this element of the SEPP HSPD in that the development is for purpose built self-contained dwellings that are for self-care accommodation of seniors or persons with a disability.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an

assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria		
Clause	**Requirement**	**Complies**
PART 2 - Site Related Requirements		
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c)the practice of a general medical practitioner	**Complies** Development Application **DA2019/0154** (subject of this modification) was approved through the NSW Land and Environment Court. Within this approval, the location and access to facilities and services was deemed acceptable (subject to conditions). The subject modification application will not result in a change the approved requirements and conditions will be retained requiring the construction a footpath 1.5 metres wide from the proposed new driveway crossing for the site up to the existing bus stop in front of 1973 Pittwater Road.
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	**Complies** Development Application **DA2019/0154** (subject of this modification) was approved through the NSW Land and Environment Court. Within this approval the location and access to facilities and services was deemed acceptable (subject to conditions). The subject modification application will not result in a change the approved requirements and conditions will be retained requiring the construction a footpath 1.5 metres wide from the proposed new driveway crossing for the site up to the existing bus stop in front of 1973 Pittwater Road.
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	**Complies** The proposal is subject to Sydney Water requirements via a "Section 73 Certificate".
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v):	**Complies** Development Application **DA2019/0154** (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain compliance with this requirement. The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management

Development Criteria		
Clause	**Requirement**	**Complies**
	i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	Officer, and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment
PART 3 - Design Requirements – Division 1		
30	A site analysis is provided.	**Complies**

Clause 31 Design of in-fill self-care housing
Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or	**Complies** Development Application **DA2019/0154** (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change

Section	Requirements	Comment
	DCPs where they may describe the character and key elements of an area that contribute to its unique character.	in built form and the amended scheme is considered to maintain compliance with this requirement. The non-compliances with Pittlwater LEP and DCP controls have been addressed within this report.
2. Site Planning and design	Objectives of this section are to: -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	**Complies** Development Application **DA2019/0154** (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain compliance with this requirement.
3. Impacts on streetscape	Objectives of this section are to: -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape.	**Complies** The proposed modification works are not considered to result in unreasonable streetscape impacts. The proposal will retain suitable front setback and will retain sufficient landscaping to minimise the built form, as viewed from the street.
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	**Complies** The proposed modification works subject of this application are not considered to result in unreasonable impacts on neighbours. This has been addressed throughout this report.
5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	**Complies** The site layout provides appropriate and safe access to each unit.

Clause 32 Design of residential development
In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	Development Application **DA2019/0154** (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain compliance with this requirement (as discussed throughout this report).	**Complies**
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	Councils Heritage Officers have assessed the application due to the sites close proximity to the heritage listed "Maybanks House (Stoneleigh) and plaque". The proposal will not have any unreasonable impact on the nearby heritage item.	**Complies**
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the	Development Application **DA2019/0154** (subject of this modification) was approved through the NSW Land and Environment Court. The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain compliance with this requirement (as discussed throughout this report).	**Complies**

Control	Requirement	Proposed	Compliance
	boundary walls on neighbors.		
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	The proposed modifications will predominantly retain the approved front building line and is consistent with adjoining properties.	**Complies**
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	Council's Landscape Officer has reviewed the proposed landscape plan and has raised no objections (subject to conditions).	**Complies**
	f. retain , wherever reasonable, major existing trees, and	The proposed modification seeks to remove a Corymbia maculata, commonly known as Spotted Gum from the Council's Road Reserve. The applicant has advised that the removal of this tree is required to facilitate necessary fire hydrant booster assembly at the front of the site. The application is supported with advice from Innova Services Australia which confirms that proposed booster assembly location is the only location on the site that meets the Australian standard and FRNSW operational requirements and that there is no feasible alternative location. The application has been reviewed by Council's Landscape and Biodiversity Officers who have raised no objections subject to recommended conditions and replacement planting.	**Complies - subject to conditions**
	g. be designed so that no building is constructed in a riparian zone.	Council's Riparian Lands and Creeks Officer has reviewed the proposal and has raised no objections.	**Complies**
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic	The proposal will comply subject to recommended conditions. Please see *C1.5 Visual Privacy* of this	**Complies**

Control	Requirement	Proposed	Compliance
	privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	report for further discussion on privacy.	
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living ad dining areas in a northerly direction.	The proposed modification works will not unreasonably impact solar access to the subject site or adjoining neighbours. The proposed development retains terraces and living rooms with northerly aspects. Please see *C1.4 Solar Access* of this report for further discussion on solar access.	**Complies**
CL 36 Stormwater	Control and minimise the disturbance and impacts of	The proposal has been reviewed by Council's Water Management Officer and Development Engineer	**Complies**

Control	Requirement	Proposed	Compliance
	stormwater runoff and where practical include on-site detention and water re-use.	who have raised no objections in regards to stormwater.	
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	The units will be oriented to allow for observation of public areas, driveways and streets.	**Complies**
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that	Development Application **DA2019/0154** (subject of this modification) was approved through the NSW Land and Environment Court. Within this approval the location and access	**Complies**

Control	Requirement	Proposed	Compliance
	provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	to facilities and services was deemed acceptable (subject to conditions). The subject modification application will not result in a change the approved requirements and conditions will be retained requiring the construction a footpath 1.5 metres wide from the proposed new driveway crossing for the site up to the existing bus stop in front of 1973 Pittwater Road. The proposed development will retain convenient access and parking for residents and visitors. The proposal has been reviewed by Council's Traffic Officer who has raised no objections to the works.	
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposal has been reviewed by Council's Waste Officer who has raised no objections in regards to waste management.	**Complies**

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height
Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.
The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1,296.5sqm	**Complies**
Site frontage	20 metres	32.6sqm	**Complies**
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Development Application DA2019/0154 approved the ceiling height at RL18.2 (Unit 4) The proposed modification proposes a ceiling height of RL18.62 (Unit 4) and maximum ridge height of RL19.973.	**Non-compliant** - Acceptable on merit. Please see discussion within *Clause 4.3 Height of buildings* of PLEP 2014.
	A building that is adjacent to a	As approved in previous Development Application and	**As previously approved**

Control	Required	Proposed	Compliance
	boundary of the site must not be more than 2 storeys in height.	subsequent modifications. The subject application will not increase the number of storeys adjacent to the boundary of the site. The additional storey approved within previous modifications (for storage purposes) was predominantly below pre-existing (natural ground) level. The resultant built form of this modification will retain a maximum of 2 storeys in height from pre-existing (natural ground) level.	
	A building located in the rear 25% of the site must not exceed 1 storey in height	The proposal seeks to increase the footprint of the first floor unit (unit 4) to the rear by 0.5m. This will result in a minor portion of the first floor of building encroaching into the rear 25% of the site by a maximum of 0.5m, representing a variation of 4.6% to this control. This portion of the development will retain a rear setback of 10.2m from the rear boundary and will be well below building height control, within building envelope control and well exceed Council's rear building line control. The encroachment into the rear 25% will be for a minor portion of the site and is not anticipated to result in unreasonable amenity impacts to adjoining neighbours or character of the area. The remainder of the site will be single storey above pre-existing (natural ground) ground level within the rear 25% setback. While the application will be assessed under the priovisions of *SEPP (Housing for Seniors or People with a Disability) 2004,* it should be noted that on 26 November 2021 this SEPP was repealed and replaced with S*tate Environmental Planning Policy (Housing) 2021* (SEPP Hosuing). *SEPP Housing*	**Does not comply**

Control	Required	Proposed	Compliance
		2021 permits Seniors Housing development to be two storeys within the rear 25% of the site.	

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.	The proposed modification works will not unreasonably alter the access arrangements as approved within the original Development Application and subsequent modifications. The whole of the site adjoins a public road and wheelchair access via a continuous accessible path of travel (incorporating lifts) is provided to all dwellings, as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Complies**
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Capable of compliance**
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable, and	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Capable of compliance**

Control	Required	Proposed	Compliance
	(c) must be located together in a central location adjacent to the street entry.		
Private car accommodation	(a)Carparking space must comply with AS2890 (b)One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c)any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd. Each unit is shown to have a car parking spaces with an overall width of 3.8 metres.	**Capable of compliance**
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Complies**
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Complies**
Bedroom	At least one bedroom within each welling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Capable of compliance**

Control	Required	Proposed	Compliance
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Complies**
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Capable of compliance**
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Capable of compliance**
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Capable of compliance**
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Capable of compliance**
Living & dining room	A living room must have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Complies**
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Capable of compliance as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Capable of compliance**
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Complies**
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	Compliant as confirmed by the Access Report (ref: P000737) by Cheung Access Pty Ltd.	**Complies**
Storage	A self-contained dwelling must be provided with a linen	Capable of compliance as confirmed by the Access	**Capable of compliance**

Control	Required	Proposed	Compliance
	storage in accordance with Clause 4.11.5 of AS4299	Report (ref: P000737) by Cheung Access Pty Ltd	
Garbage	A garbage storage area must be provided in an accessible location.	A communal bin room is located on the car park level consistent with the original approval.	**Complies**

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Development Application DA2019/0154 approved the ceiling height at RL18.2 (Unit 4) The proposed modification proposes a ceiling height of RL18.62 (Unit 4) and maximum ridge height of RL19.973.	**Does not comply** - see discussion within Clause 4.3 Height of buildings of PLEP 2014.
Density and scale	0.5:1	0.495:1	**Compliant**
Landscaped area	30% of the site area is to be landscaped	45.5%	**Compliant**
Deep soil zone	15% of the site area .Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	34% (441sqm) Less than two thirds of total deep soil provided in rear, however, this is generally in accordance with previous approvals. Additionally, more than two the of the required 15% of deep soil will be located in the rear.	**Compliant**
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development	The location of the living room windows and private open space (in particular the north east facing balconies) would	**Compliant**

Control	Required	Proposed	Compliance
	receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	remain consistent with the original approval.	
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area	The proposal will increase the size of usable private open space.	**Compliant**
Parking	(10 bedrooms proposed – 5 carparking spaces required)	9 spaces proved	**Compliant**
Visitor parking	None required if less than 8 dwellings	1 visitor space provided	**Compliant**

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.

Roads and Maritime Service (RMS)
Section 2.118 - Development with frontage to classified road states:
The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—
(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and
(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:
The application was referred to Transport for NSW who did not raise any objection to the proposal. The application has been reviewed by Council's Traffic and Development Engineers who have raised no objections subject to conditions.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

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

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

Comment:
The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Water Management Officer, and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding wetland environment (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 works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed works do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes. Council's Coastal, Biodiversity Officer, Riparian lands and Water Management Officer have reviewed the proposal and have raised no objection to the proposal.

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

Comment:
Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

Division 4 Coastal use area
2.11 Development on land within the coastal use area

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

Comment:
The proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunnelling or unreasonable impact on the loss of views from public places to foreshores.

The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage.

It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the aforementioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the approved development on the site and surrounding coastal and built environment, The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the

consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:
Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land. The proposal has been reviewed by Council's Coastal and Riparian Lands Officer who has raised no objections.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.3m (Roof RL18.48)	9.1m (Roof RL 19.142) 9.3m (Lift and servicing equipment RL 19.973)	9.4%	**No**

Note: In consideration of the decision in Alexakis Building Pty Ltd v Waverley Council [2016] NSWLEC 1129, as a modification application to a development consent, it is appropriate to consider the existing ground levels on the site survey submitted as part of the development application package, rather than the excavated ground levels currently on site. The original Development application was also assessed based on extrapolated ground levels for the site (pre-excavation). As such, the building height for this modification will be assessed on extrapolated ground levels for the site (pre-excavation), consistent with the original assessment (within DA2019/0154)*

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes

Clause	Compliance with Requirements
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Clause 4.3 (2) of PLEP stipulates that 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 subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The original Development Application, which is the subject of this modification, was assessed under the provisions of *SEPP (Housing for Seniors or People with a Disability) 2004* (SEPP HSPD). Clause 40 (4) of SEPP HSPD specified that the height of the development is to be 8.0 metres or less. SEPP HSPD defined height in relation to a building, as the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

The maximum ceiling height of Unit 4 was approved within the original Development Application subject of this modification (DA2019/0154) at RL18.2 which met the 8.0m requirement.

In consideration of the decision in *Alexakis Building Pty Ltd v Waverley Council* [2016] NSWLEC 1129, as a modification application to a development consent, it is appropriate to consider the existing ground levels on the site survey submitted as part of the development application package, rather than the excavated ground levels currently on site. The original Development Application was also assessed based on extrapolated ground levels for the site (pre-excavation). As such, the building height for this modification will be assessed on extrapolated ground levels for the site (pre-excavation), consistent with the original assessment (within DA2019/0154).

The proposed height of the modified proposal is as follows (based on pre-existing ground levels and extrapolated ground levels as was assessed within the original Development Application)

- The ceiling height of Unit 4 was approved within DA2019/0154 at RL18.2. The modification seeks a new ceiling height of Unit 4 of RL18.493 which will result in an increase in height of **293mm**. The unit 4 terrace roof will also extend to the north-east (downslope) by approximately 1.0m. This will result in the maximum ceiling height of Unit 4 being 8.5m which is non-complaint with the 8.0m requirement. It is of note that this will occur for a minor section of the terrace ceiling which is located centrally onsite. This is depicted in Figure 1 below. The remainder of the ceiling will comply with the 8.0m requirement.

- The parapet height of the roof ridge (located over unit 4) was approved within DA2019/0154 at RL18.48. The modification seeks a new parapet height of RL19.142, which will result in an increase in height of **662mm**. The Unit 4 terrace roof will also extend to the north-east (downslope) by approximately 1.0m. This will result in the overall roof height measuring

9.1m. This is depicted in Figure 1 below. It is of note that this will occur for a minor section of the terrace roof which is located centrally onsite.

- The modification application also seeks approval for rooftop plant including lift overrun, and associated enclosure/screening with an RL of 19.973, which will result in an increase in height of **1.49m** from the approved ridge height for these elements. This will result in the overall height measuring approximately 9.3m (from pre-existing extrapolated ground levels). This is depicted in figure 2 below.

While the application will be assessed under the provisions of *SEPP (Housing for Seniors or People with a Disability) 2004,* it should be noted that on 26 November 2021, this SEPP was repealed and replaced with *State Environmental Planning Policy (Housing) 2021* (SEPP Housing). SEPP Housing permits Seniors Housing development to have a maximum building height of 9.5m and servicing equipment on the roof of the building to a maximum height of 11.5m. The proposed modification will meet these contemporary requirements.

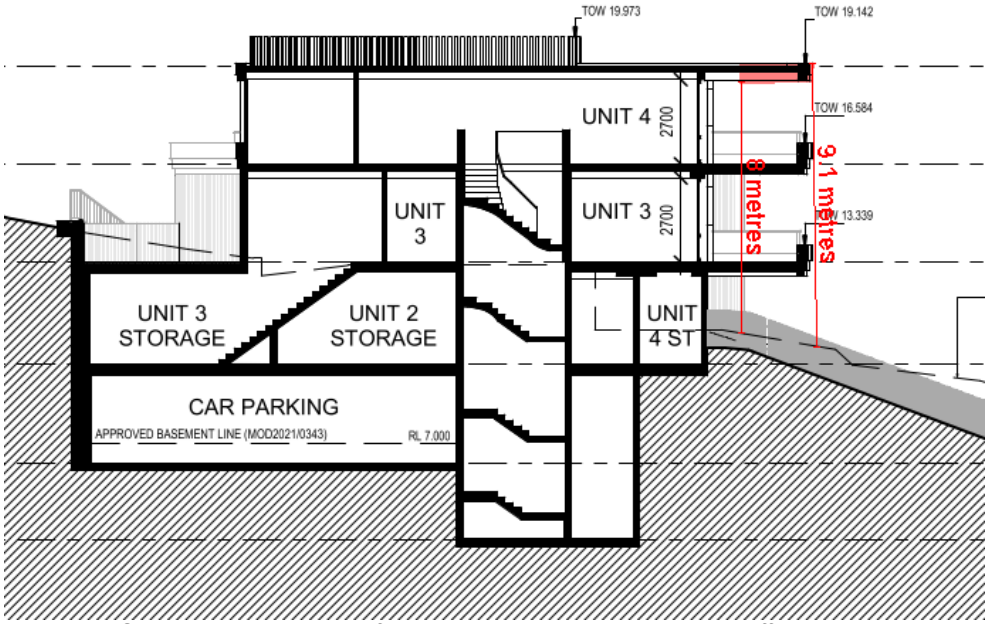


Figure 1: *Section Plan - Height of building variation in pink (based off pre-existing extrapolated ground levels as assessed within DA2019/0154)*

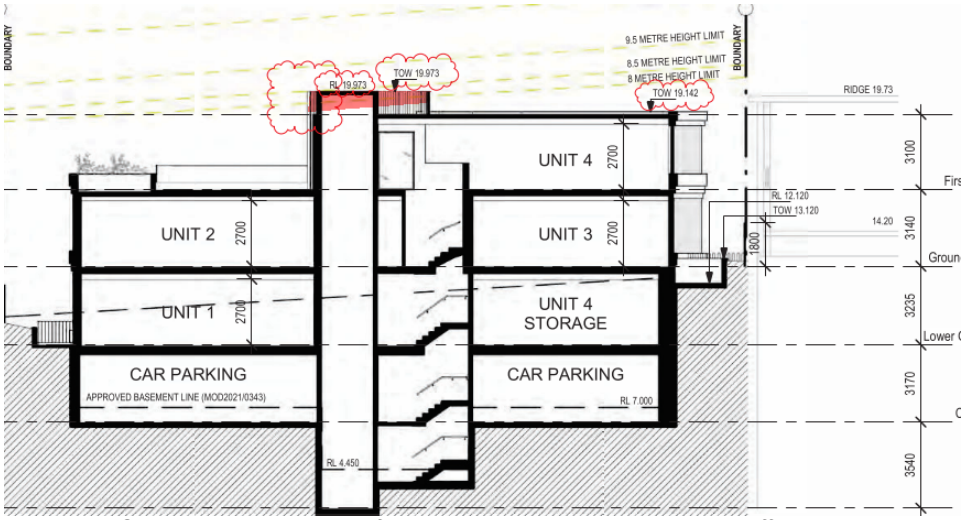


Figure 2: *Section Plan - Height of building variation in pink (based off pre-existing extrapolated ground levels as assessed within DA2019/0154)*

Assessment of Request to Vary a Development Standard

Whilst the modification application will result in a building height that exceeds the maximum permitted by *SEPP (Housing for Seniors or People with a Disability) 2004 and* Clause 4.3 of the Pittwater LEP 2014, the application does not strictly need to address the requirements of Clause 4.6 of PLEP 2014.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

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

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R2 Low Density Residential zone.

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

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

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

Comment:
As discussed within the section of the report relating to Clause A4.4 of the Pittwater 21 DCP and throughout this report, the proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement. The vast majority of the proposal will be below the height of building requirement. The proposed height non-compliance is largely contained to the north-eastern portion of the building as the land falls away. The rooftop plant including lift overrun will be centrally sited and appropriately screened and will not contribute to excessive height and scale. The proposal also steps with the fall of the land to the north-west, which will suitably transition and maintain compatibility with the height and scale of the adjoining neighbour to the north-west. As outlined above, while the application will be assessed under the provisions of *SEPP (Housing for Seniors or People with a Disability) 2004,* it should be noted that on 26 November 2021 this SEPP was repealed and replaced with S*tate Environmental Planning Policy (Housing) 2021* (SEPP Housing). *SEPP Housing 2021* permits Seniors Housing development to have a maximum building height of 9.5m and servicing equipment on the roof of the building to a maximum height of 11.5m. The proposed modification will meet these requirements and therefore is consistent with the intended character of future seniors housing development in the locality.

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

Comment:
The development is located on the upward slope of Pittwater Road which is characterised by undulating topography. This results in variable built forms along the road, such that there is an eclectic mix of height and scale in which to be compatible with. The roof parapet height of RL19.142 will be below the ridge height of the adjoining neighbour to the south-east (No.1953 Pittwater Road with a ridge height of 19.73). The vast majority of the proposal will be below the height of building requirement. The proposed height non-compliance is largely contained to the north-eastern portion of the building as the land falls away. The rooftop plant including lift overrun will be centrally sited and appropriately screened and will not contribute to excessive height and scale. The proposal also steps with the fall of the land to the north west, which will suitably transition and maintain compatibility with the height and scale of the adjoining neighbour to the north-west. Overall, the proposal presents a compatible height and scale with the original DA (DA2019/0154) and surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties,

Comment:
The submitted shadow diagrams demonstrate that the building height breaching elements will not contribute to unreasonable shadow impact on neighbouring properties. This further detailed in the section of this report relating to *Section C1.4 Solar Access* of the P21 DCP.

d) to allow for the reasonable sharing of views,

Comment:
The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to *Clause C1.3 View Sharing* of the P21 DCP. Given associated level differences of the nearby built form,

existing views and vistas are anticipated to be equitably retained.

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

Comment:
As above, the proposed changes subject of this modification represent a relatively modest change in built form to the original DA (DA2019/0154), and do not result in unreasonable additional excavation. The proposal steps with the fall of the land to the north west, which will suitably transition and maintain compatibility with the topography of the land and the height and scale of the adjoining neighbour to the north-west. The proposal will be setback 12m from the front boundary retains suitable landscaping along the front boundary.

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

Comment:
Proposed landscaping, in conjunction with required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Council's Heritage Officer has reviewed the application and is satisfied that the proposal will not have an adverse impact on surrounding heritage items.

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 use of the development for the purpose of seniors housing or housing for persons with a disability will afford members of the community with alternate housing choices to accommodate varying needs and lifestyles.

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

  Comment:
  This development is for residential accommodation. The SEPP HSPD requires particular distances and accessibility to various services to meet the needs of residents of the development, and this matter has been addressed earlier in this report (see Section: SEPP HSPD). Accordingly, the site is afforded with access to other land uses which provide facilities or services to meet the day to day needs of residents.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

  Comment:
  The intensity and scale of the proposed development is generally consistent with the original approval (DA2019/0154). The minor increase in height does not result in unreasonable amenity impacts to surrounding properties and the proposal is considered compatible with the surrounding land uses.

5.10 Heritage conservation

The proposal has been reviewed by Council's Heritage Officer who has raised no objections on heritage grounds. Please refer to the Strategic and Place Planning (Heritage Officer) referral response in this report for more detail.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

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

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

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

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

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

(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 original consent 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.

(f) the likelihood of disturbing relics

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

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

Comment: The development has been assessed by Council's Water Management Officer, Riparian Lands Officer, Coast & Catchment Officer and Biodiversity Officers, who have raised no objection to the proposal subject to conditions.

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

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

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

Comment: The proposal has been reviewed by Council's Heritage Officer who has raised no objection to the works.

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

7.6 Biodiversity protection

Before determining an application for development on land to which this clause applies, this clause requires the consent authority to consider:

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

Comment:
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

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

Comment:
The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

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

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

Comment:
The proposed development is supported by a geotechnical assessment letter that demonstrate geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

Comment:
The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	10m	12.8m	12m	Yes
Rear building line	3m (Where wall height is less than 3m) (Based on wall height above 3m)	Carpark 5.5m-6.5m Lower ground : 5.6m - 8.8m GF: 8.8m - 10.75m FF: 8.9m-10.7m	Carpark: 4.8m - 5.5m Lower ground: 4.8m - 5.5m GF Terrace: 5.2 -6m GF: 8.8m - 10.4m FF: 8.8m-10.2m	Yes
Side building line	NW - 3m (Where wall height is less than 3m) 4m - 4.4m (Based on wall height above 3m)	1.5m (Lower floor) 3m (Carpark, GF & FF)	1.5m (Lower floor) 2.5m (Carpark) 3m (GF & FF)	**No**
	SE - 3m (Where wall height is less than 3m) 3.7m - 4.2m (Based on wall height above 3m)	3m (Carpark, GF & FF)	1.6m (Lower floor terrace) 3m (Lower floor, GF, FF)	**No**
Building envelope	3.5m (NW)	Within envelope	Within envelope	Yes
	3.5m (SE)	Within envelope	Outside envelope	**No**
Landscaped area	50% (648.25sqm) *	53%	45.5% 590sqm * 51.5% (with variation)	**No* Complies with SEPP**

Note: SEPP (Housing for Seniors or People with a Disability) 2004 requires 30% Landscaped Area, and 15% Deep Soil Zone (inclusive)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	No	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B4.14 Development in the Vicinity of Wetlands	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	No	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	No	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	No	Yes
D4.5 Front building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.6 Side and rear building line	No	Yes
D4.8 Building envelope	No	Yes
D4.9 Landscaped Area - General	Yes	Yes
D4.11 Fences - General	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.4 Church Point and Bayview Locality

Development Application DA2019/0154 (subject of this modification) was approved through the NSW Land and Environment Court.

The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement for the following reasons:

- The proposal steps with the fall of the land to the north west, which will suitably transition and maintain compatibility with the height and scale of the adjoining neighbours. This also modulates the built form and breaks up the visual massing of the proposal. Overall, the proposal presents a compatible height and scale with the original DA (DA2019/0154) and surrounding and nearby development;
- The proposal will be setback 12m from the front boundary and proposes suitable landscaping along the front, side and rear of the site. Whilst there is tree removal required as part of the development, multiple canopy trees are proposed to be planted to compensate in order to visually reduce the built form. The application is also supported by a amended landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application will also comply with Landscaped area under SEPP HSPD.
- The modification works do not increase the approved number of storeys and do not unreasonably increase excavation;
- The proposal is appropriately articulated using balconies, eaves, planters and changes in materials and roof formation to break up built form. The proposal includes suitable articulation of the building and balconies and varied use of materials to provide for a high quality building facade that maintain acceptable presentation to the streetscape, including surrounding built forms.

Overall, the proposed modification works will maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement.

B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land

The development has been assessed by Council's Biodiversity Team, who raised no objections to an approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land (subject to

conditions).

B4.14 Development in the Vicinity of Wetlands

Council's Coastal Officer, Biodiversity Officer, Riparian lands and Water Management Officer have reviewed the proposal and have raised no objection to the proposal and potential impacts to surrounding wetlands.

B4.22 Preservation of Trees and Bushland Vegetation

The proposed modification seeks to remove a Corymbia maculata, commonly known as Spotted Gum, from the Council's Road Reserve. The applicant has advised that the removal of this tree is required to facilitate necessary fire hydrant booster assembly at the front of the site.

The application is supported with advice from Innova Services Australia Pty Ltd which confirms that proposed booster assembly location is the only location on the site that meets the Australian standard and FRNSW operational requirements and that there is no feasible alternative location.

The application has been reviewed by Council's Landscape and Biodiversity Officers who have raised no objections subject to recommended conditions and replacement planting.

B6.1 Access driveways and Works on the Public Road Reserve

The proposed modification seeks works on Council's road reserve, including excavation, retaining walls and tree removal.

The applicant has advised that the works are required to facilitate necessary fire hydrant booster assembly and associated access at the front of the site. The application is supported with advice from Innova Services Australia which confirms that proposed booster assembly location is the only location on the site that meets the Australian standard and FRNSW operational requirements and that there is no feasible alternative location.

Council's Road Assets Officer, Development Engineer and Landscape Officer have reviewed the proposed works on the Road Reserve and have raised no objection subject to conditions. Such conditions ensure appropriate approval under the provisions of the Roads Act 1993 and ensure the woks structurally adequate and meet appropriate engineering standards.

If approved, conditions are to be imposed that the proposed retaining wall on the Road Reserve is constructed of sandstone-like finishes inline with the requirements of this control.

B8.1 Construction and Demolition - Excavation and Landfill

As discussed throughout this report, significant earthworks have been undertaken on the subject site. The works have been predominantly approved through previous development consents and subsequent modifications.

A site inspection reveled that there are minor discrepancies between the location and extent of approved excavation and structural basement wall elements and the as built structural components of the development. As such, these existing earthworks and structural retaining elements have been sought to be regularised through a submitted Building Information Certificate (BC2023/0102). The application has been investigated with respect to aspects relevant to the Building Information Certification by Council's Building Control Officer (responsible for Building Information Certificate BC2023/0102) who has raised no objections to approval of the development and the certificate has bene

issued.

The remaining earthworks seeking consent as part of this application, have been reviewed Council's Development Engineer and Water Management Officer, who have raised no objection to the application subject to recommended conditions.

A geotechnical report has also been submitted with the application and Building Information Certificate that the proposed works as part of this modification are considered minor from a geotechnical perspective and do not alter the recommendations original report conditioned in the original consent.

In order to ensure that there are no adverse impacts on the adjoining neighbours, conditions were imposed on the original consent which:

- Ensure structural adequacy of landfill and excavation work;
- Require a dilapidation report for the adjoining properties
- Ensure the structural adequacy of proposed retaining walls
- Ensure the proper installation and maintenance of sediment and erosion control

The proposal has also been assessed by Council's Bushland and Biodiversity; Riparian; Landscape Officer; Water Management Officer and Coast & Catchment Officer who have raised no objection to the proposal in relation to the natural environment subject to recommended conditions.

B8.5 Construction and Demolition - Works in the Public Domain

The proposed works within the public domain have been reviewed by Council's Roads Assets Officer and Development Engineer who has raised no objections subject to conditions.

B8.6 Construction and Demolition - Traffic Management Plan

The original consent (DA2019/0154) included conditions which required the preparation and implementation of a Construction Traffic Management Plan prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team. This condition will remain on modified consent.

C1.3 View Sharing

Merit Consideration

Five (5) submissions were received from the following properties which included concerns regarding view loss from a private property:

- 52 Alexandra Crescent, Bayview
- 56 Alexandra Crescent, Bayview
- 58 Alexandra Crescent, Bayview
- 60 Alexandra Crescent, Bayview
- 62 Alexandra Crescent, Bayview

Figure 1 below shows the origin of the submissions relative to the subject site, and the view angles of the sites over the subject site (outlined in blue).

***Figure 1**: View angles over the subject site*

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

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:

- **No.52 Alexandra Crescent, Bayview**

A site visit revealed that the proposal will not result in view loss to No.52 Alexandra Crescent. This property will retain expansive views of Pittwater waterway to the north and north east. As such, no further view loss assessment is required for this property.

- **No.56 Alexandra Crescent, Bayview**

The views from No.56 Alexandra Crescent that are the concern, are to the north-west and include views of Pittwater Waterway. The view is heavily obstructed by existing vegetation. Expansive views of Pittwater waterway, land and water interface, Scotland Island and foreshore areas to the north and north-east remain unaffected by the proposal. This is demonstrated in the photos below.

***Photo 1**: Existing views from No.56 Alexandra Crescent to the north-west (first floor balcony located off the living room). Views are unobstructed by the proposal.*

***Photo 2**: Existing views from No.56 Alexandra Crescent to the north-east (first floor living room). Views are unobstructed by the proposal.*

- **No.58 Alexandra Crescent, Bayview**

The views from No.58 Alexandra Crescent that are the concern are to the north and include views of Pittwater Waterway. The view is partially obstructed by existing vegetation. Expansive views of Pittwater waterway, land and water interface, Scotland Island and foreshore areas to the north and north-east remain unaffected by the proposal. This is demonstrated below in the photos and view

assessment photomontages prepared by the applicant.

***Photo 3**: Existing views from No.58 Alexandra Crescent to the north (first floor balcony located off the living room). Views are unobstructed by the proposal.*
Note Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.*

***Photo 4**: Existing views from No.58 Alexandra Crescent to the north-east (first floor balcony located off the living room). Views are unobstructed by the proposal.*

- **No.60 Alexandra Crescent, Bayview**

The views from No.60 Alexandra Crescent that are the concern are to the north-east and include views of Pittwater Waterway. The view is partially obstructed by existing vegetation and buildings. Expansive views of Pittwater waterway, land and water interface, Scotland Island and foreshore areas to the

north-east and north-west remain unaffected by the proposal. This is demonstrated below in the photos and view assessment photomontages prepared by the applicant.

***Photo 5**: Existing views from No.60 Alexandra Crescent to the north-east (ground floor rear garden/private open space).*
Note :Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.*

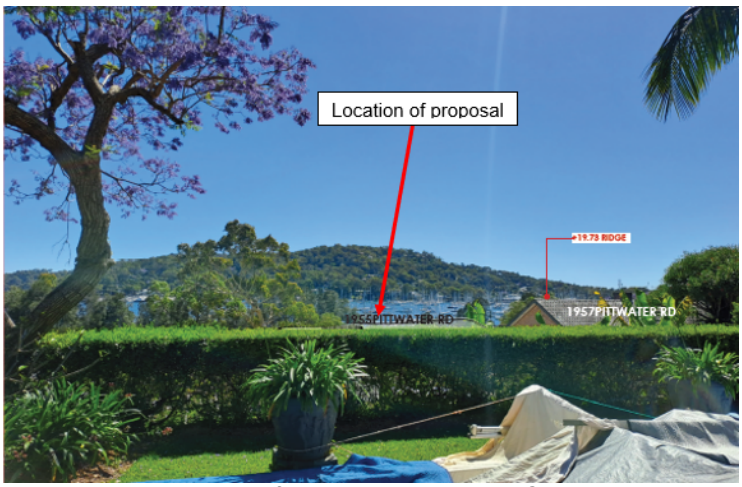


***Photo 6**: Existing views from No.60 Alexandra Crescent to the north-east (ground floor rear garden/private open space).*
Note : Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.*

***Photo 7**: Existing views from No.60 Alexandra Crescent to the north-east (upper floor balcony located off living rooms).*
Note : Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.*

***Photo 8**: Existing views from No.60 Alexandra Crescent to the north-east (upper floor dining room). Views are unobstructed by the proposal.*

- **No.62 Alexandra Crescent, Bayview**

The views from No.62 Alexandra Crescent that are the concern are to the north-east and include views of Pittwater Waterway. The view is partially obstructed by existing vegetation. Expansive views of Pittwater waterway, land and water interface, Scotland Island and foreshore areas to the north and north-west remain unaffected by the proposal. This is demonstrated below in the photos and view assessment photomontages prepared by the applicant.

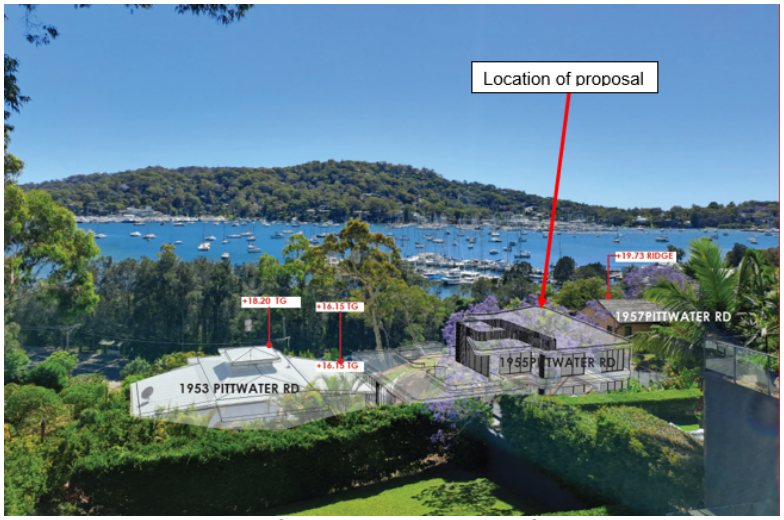


***Photo 9**: Existing views from No.62 Alexandra Crescent to the north-east (upper floor balcony located off living rooms).*
Note : Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.*

***Photo 9**: Existing views from No.62 Alexandra Crescent to the north-east (ground floor private open space).*
Note : Photomontage of the proposal prepared by the applicant within the submitted "View Study Analysis" (prepared by APLUS DESIGN GROUP) using site inspection photos taken by Council's Planning Officer.*

***Photo 10**: Existing views from No.62 Alexandra Crescent to the north-east (upper floor balcony located off living rooms). Views are unobstructed by the proposal.*

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:

- **No.56 Alexandra Crescent, Bayview**

Views are primarily obtained from the upper floor balcony (and principal private open space) located off the living room and the upper floor living room. The view of Pittwater waterway is obtained from both a sitting and standing position over the north-eastern rear boundary and north-western side boundary.

- **No.58 Alexandra Crescent, Bayview**

Views are primarily obtained from the upper floor living room and the balcony located off this room and the lower floor living room and the balcony located off this room. The view of Pittwater waterway is obtained from both a sitting and standing position over the north-eastern rear boundary and north-western side boundary.

- **No.60 Alexandra Crescent, Bayview**

Views are primarily obtained from the upper floor living room and the balcony located off this room; upper floor dining and kitchen and the balcony located off these rooms; upper floor

bedroom; ground floor balcony located off rumpus; garden and pool level private open space; lower garden level. The view of Pittwater waterway is obtained from both a sitting and standing position over the north-eastern rear boundary and north-western side boundary.

- **No.62 Alexandra Crescent, Bayview**

Views are primarily obtained from the upper level living, dining and bedroom and balcony located off these rooms; mid level bedrooms and balcony located off these rooms; ground level living and dining room and balcony located off these rooms and ground floor private open space and garden level. The view of Pittwater waterway is obtained from both a sitting and standing position over the north-eastern rear boundary and north-western side boundary.

3. Extent of impact

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

Comment to Principle 3:

- **No.56 Alexandra Crescent, Bayview**

Given the location of the proposal in relation to No.56 Alexandra Crescent, no view loss impacts are anticipated. Expansive views of Pittwater Waterway will be retained form this property. This can be seen within photos 1 and 2 above.

In consideration of the proportion of view lost in comparison to views retained, the extent of the impact is considered to be **negligible**.

- **No.58 Alexandra Crescent, Bayview**

Given the location and elevation of No.58 Alexandra Crescent above the proposal no unreasonable view loss impacts are anticipated. Expansive views of Pittwater Waterway will be retained form this property overt the proposed development and to the north-east. This can be seen within photos 3 and 4 above.

In consideration of the proportion of view lost in comparison to views retained, the extent of the impact is considered to be **negligible**.

- **No.60 Alexandra Crescent, Bayview**

As viewed from No.60 Alexandra Crescent, the proposal would result in the partial loss of Pittwater Waterway views available from the ground floor rear garden/private open space. The proposal will also result in loss of Pittwater Waterway views from the lower garden level which is currently being used as a vegetable garden. Expansive views are anticipated to be retained from the upper floor living room and the balcony located off this room; upper floor dining and kitchen and the balcony located off these rooms; upper floor bedroom; ground floor balcony located off rumpus; and rear garden above and to the side of the proposed development. This can be seen within photos 5 to 8 above.

In consideration of the proportion of view lost in comparison to views retained, and that views will be wholly retained from principle living areas, the extent of the impact is considered to be **minor**.

- **No.62 Alexandra Crescent, Bayview**

As viewed from No.62 Alexandra Crescent, the proposal would result in the partial loss of Pittwater Waterway views available from the ground floor rear garden/private open space. Expansive views are anticipated to be retained from upper level living, dining and bedroom and balcony located off these rooms; mid level bedrooms and balcony located off these rooms; ground level living and dining room and balcony located off these rooms.

In consideration of the proportion of view lost in comparison to views retained, and that views will be wholly retained from principle living areas, the extent of the impact is considered to be **minor**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal is not considered to result in an unreasonable view loss to surrounding neighbours and will satisfy the provisions of this clause. A reasonable sharing of view is considered to be retained.

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

  Comment:
  Views from adjoining roads and public places will be maintained.

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

  Comment:
  Refer to comments from Council's Landscape Officer and Bushland and Biodiversity Officer. Subject to recommended conditions and replacement planting, the site will have suitable

canopy tree planting within the front setback.

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

C1.4 Solar Access

The proposed modifications will not result in an unreasonable impacts to solar access received by the units of the subject site. The development will retain north-east facing terraces and living areas which will retain adequate solar access.

The submitted shadow diagrams indicate that the subject site and neighbouring dwellings will receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

The site most affected by overshadowing with respect to the proposed development is the adjoining neighbour to the south-east (No.1953 Pittwater Road). A submission has been received by this neighbour in relation to overshadowing impacts associated with the development.

The application is supported by shadow diagrams which demonstrates that the proposed development will result in slight increase in overshadowing when compared with the original approval (DA2019/0154).

The submitted shadow diagrams indicate that the north-eastern facing first floor balcony, north-eastern facing ground floor terrace and north eastern facing living rooms of No.1953 Pittwater Road will retain 3 hours of sunlight in the morning and early afternoon inline with the requirements of this control.

Overall, the proposed modifications are not anticipated to result in unreasonable overshadowing impacts and No.1953 Pittwater Road is anticipated to retain adequate solar access to north-eastern living areas/private open space.

C1.5 Visual Privacy

Clause C1.5 of the P21DCP stipulates that private open space areas and windows of adjoining properties are to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation.

Merit Assessment

- **Proposed Windows**

Eastern elevation:
The proposed eastern facing windows to ground floor Unit 3 Ensuite and the first floor Unit 4 Ensuite would be 3m from the side boundary and west facing windows of the adjoining neighbour to the south-east (1953 Pittwater Road). In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for these windows to be fitted with obscure glazing.

Western elevation:
The proposed western facing windows to ground floor Unit 2 would be 3m of the side boundary and balcony of the adjoining neighbour to the north-west (1957 Pittwater Road). In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for this windows to be fitted with obscure glazing. The western facing bedroom windows are proposed to be affixed with privacy louvres to mitigate overlooking.

- **Proposed terrace/balcony extensions**

Eastern elevation:
The proposed modification seeks to extend the front street (north-east) facing terraces to all units. The proposed terrace extensions to Unit 3 and Unit 4 would be 3m from the side boundary of the adjoining neighbour to the south-east (1953 Pittwater Road). However, it is considered that this balcony extension will be suitably offset from this neighbours adjoining private open space. Additionally, the area of proposed terrace area adjoining the side boundary will be approximately 1.2m in width and located off a bedroom and will have a front facing orientation. The size of this terrace area does not facilitate high recreational usage adjacent to the side boundary. As such, the proposed terrace additions are not considered to result in unreasonable privacy impacts.

Western elevation:
The proposed modification seeks to extend the front street (north-east) facing terraces to all units. The proposed terrace extensions to Unit 1 and Unit 2 will contain fixed privacy screens along the western elevation and will have a front facing orientation. As such these terrace extensions are not considered to result in unreasonable privacy impacts to the adjoining neighbour to the north-west (1957 Pittwater Road).

- **Roof terrace extension**

The proposal seeks to increase the size and height of the approved rooftop terrace area of Unit 4. Submissions in relation to privacy impacts from this terrace have been received from adjoining neighbours to the rear/south-west (60 Alexandra Crescent and 62 Alexandra Crescent) and side/north-west (1957 Pittwater Road).

The trafficable area of the terrace will be over 10m from the rear boundary and will be generally at a lower elevation than the principle private open space and windows of the properties to the rear/south-west (60 Alexandra Crescent and 62 Alexandra Crescent). This terrace will also be separated from these properties by proposed screen planting and fencing. Given the spatial separation, differences in levels and proposed screen planting, the increase in the size of this terrace is not considered to result in unreasonable acoustic or visual privacy impacts to these neighbours.

The trafficable area of the roof terrace will be setback 6m from the north-western side boundary and within 9m of windows and private open space of the adjoining neighbour to the north-west (1957 Pittwater Road). This terrace will be elevated above the windows and private open space of this adjoining neighbour which may result in real and perceived downward overlooking. Given the scale and orientation of this terrace and use as the principle private open space for Unit 4, a condition of consent is recommended to require a privacy screen measuring 1.5m in height on the on the north-western elevation of this roof terrace area to mitigate potential privacy impacts.

The proposal also proposes side boundary fencing and will retain suitable areas of landscaping along side and rear boundaries to assist in mitigating potential privacy impacts.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is **supported** on merit, subject to conditions.

C1.7 Private Open Space

The proposed modification will increase and enhance the private open space provided for each unit. The proposal also complies with the requirements of SEPP HSPD which requires at least 15m2 of private open space per dwelling. The requirements of SEPP HSPD takes precedent over the DCP requirements.

C1.14 Separately Accessible Structures

If approved, conditions are to be imposed to ensure that the lower ground floor unit storage areas are not used for habitable purposes and do not contain cooking facilities.

C1.24 Public Road Reserve - Landscaping and Infrastructure

The proposed modification seeks works on Council's road reserve, including excavation, retaining walls and tree removal.

The applicant has advised that the works are required to facilitate necessary fire hydrant booster assembly and associated access at the front of the site. The application is supported with advice from Innova Services Australia which confirms that proposed booster assembly location is the only location on the site that meets the Australian standard and FRNSW operational requirements and that there is no feasible alternative location.

The application has been reviewed by Council's Landscape Officer, Biodiversity Officer and Road assets Officer who have raised no objections subject to recommended conditions and replacement planting.

C1.25 Plant, Equipment Boxes and Lift Over-Run

Description of Non-compliance

The proposal seeks consent for mechanical services including air conditioning units, lift overrun and car park exhaust to be placed on the roof of the development, which does not satisfy the prescribed requirement.

Merit Consideration

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

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

Comment:
The mechanical services on the roof are appropriately screened and sufficiently set in from the roof edge to ensure the services are not prominent from the public domain. The area of the mechanical services has been minimised and appropriately screened to integrate into the deign of the building. The proposal meets the requirements of the SEPP which permits servicing equipment on the roof of a building. The design, scale and density of the proposed development is generally consistent with the existing approved development and the mechanical services on the roof are not considered to result in unreasonable impacts to the character of the locality. The overall ridge height of the development would be generally consistent with adjoining development.

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

Comment:
The bulk and scale of the built form is acceptable and generally consistent with the original approval. The area of the mechanical services has been minimised and appropriately screened to integrate into the deign of the building. The proposal meets the requirements of *SEPP Housing 2021* which permits servicing equipment on the roof of a building.

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

Comment:
The mechanical services do not result in unreasonable view loss from surrounding properties. Reasonable view sharing is maintained for surrounding properties. This is further detailed in the section of this report relating to Clause *C1.3 View Sharing* of the P21 DCP.

- *To achieve reduction in visual clutter.*

Comment:
The area of the mechanical services has been minimised and appropriately screened to integrate into the deign of the building. This will prevent visual clutter.

- *The appropriate location and design of noise generating equipment.*

Comment:
The mechanical servicing is site centrally on the site and appropriately located to prevent adverse acoustical privacy impacts. If approved, conditions are to be imposed to ensure plant equipment associated with the development, including the passenger lift and air conditioning unit, must be installed and operated at times so as not to cause ‘offensive noise’.

D4.3 Building colours and materials

Part D4.3 of the P 21 DCP requires that buildings be finished in a medium to dark range colour and natural/earthy tones.

The proposal predominantly utilises sandstone and dark finishes which is consistent with the

requirements of the control. However, the proposal consists of light beige along the exterior of the terraces and roof. While not strictly compliant with the requirements of this control, it is considered that the proposed colours scheme is acceptable in this instance as the variation in colours and materials assists in breaking down the visual massing of the proposal.

D4.6 Side and rear building line

Clause *D4.6 – Side and Rear Building Line* of P21 DCP requires side and rear setbacks of 3 metres where the wall height of the building is 3 metres or less. This control also requires that where the wall height is more than 3 metres above ground level, the minimum distance from any point on the external wall and a side/rear boundary is greater than 3 metres (based on the wall height). In consideration of the decision in *Alexakis Building Pty Ltd v Waverley Council* [2016] NSWLEC 1129, as a modification application to a development consent, it is appropriate to consider the existing ground levels on the site survey submitted as part of the development application package, rather than the excavated ground levels currently on site.

The proposed development has wall heights of up to 7.5 metres (from pre-existing ground levels), which requires setbacks of between 4 metres and 4.4 metres for the upper floor.

Development Application No. **DA2019/0154** (subject of this modification) and the subsequent modification applications have been approved with the following side setbacks:

Approved north-western side setback:

- 3m (Carpark, Lower Ground Floor; GF & FF)
- 1.5m (Lower Ground Floor pathway and retaining wall)

Approved south-eastern side setback:

- 3m (Carpark, Lower Ground Floor; GF & FF)

The proposed modification application proposes the following side setbacks:

Proposed north-western side setback:

- 2.5m (Carpark)
- 1.5m (Lower Ground Floor pathway)
- 3.0m (Lower ground floor)
- 3.0m (Ground floor and terrace)
- 1.5m (Lower Ground Floor pathway and retaining wall)

Proposed south-eastern side setback:

- 2.7m (Carpark)
- 3.0m (Lower ground floor)
- 1.6m (Lower ground floor terrace)
- 3.0m (Ground floor and terrace and roof garden)
- 6.2m (First floor roof deck)

The side setbacks will be generally consistent with that approved within DA2019/0154 (subject of this

modification) and the subsequent modification applications. The changes to side setbacks will predominately relate to lower floor levels and terrace areas which will not contribute to additional building bulk.

Merit Consideration

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

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

Comment:
As discussed within the section of the report relating to Clause A4.4 of the Pittwater 21 DCP, the proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement.

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

Comment:
The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is not considered to unreasonably increase the bulk and scale of the built form. The proposal is appropriately articulated using balconies, eaves, planters and changes in materials and roof formation to break up built form. Additionally, the proposal steps with the fall of the land to the north west, which will suitably transition and maintain compatibility with the height and scale of the adjoining neighbours. Vegetation and landscaping will be retained along front, side and rear setbacks. The application is also supported by an amended landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form.

- *Equitable preservation of views and vistas to and/or from public/private places.*
- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:
This matter has been addressed elsewhere within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal is considered to equitably preserve the available views and vistas to and/or from public and private places. The side setback non-compliance will not result in unreasonable view loss impacts.

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

Comment:
As detailed elsewhere within this report (refer to Clause C1.5 Visual privacy and C1.4 Solar access), a reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings (subject to conditions).

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

Comment:
The side setback variation will not result in the removal of significant landscaping or vegetation. Vegetation and landscaping will be retained along front, side and rear setbacks. The application is also supported by a amended landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application will also comply with Landscaped area under SEPP HSPD. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation would appropriately break up the building massing and reduce the visual impact of the proposal

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

Comment:
The modified development demonstrates flexibility in the siting of buildings and access by generally being located within the approved building footprint.

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

Comment:
The side setback variation will not result in the removal of significant landscaping or vegetation. Vegetation and landscaping will be retained along front, side and rear setbacks. The application is also supported by a amended landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application will also comply with Landscaped area under SEPP HSPD. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation would appropriately break up the building massing and reduce the visual impact of the proposal

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

Comment:
The proposed development does not adjoin a commercial zone.

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

D4.8 Building envelope

Description of Non-compliance

The clause stipulates that buildings are to be projected at 45 degrees from 3.5m above the existing ground level, measured from the side boundaries.

The proposal has a minor encroachment into the prescribed building envelope along the eastern elevations. This variation is represented in Figure 1 below.

Clause D4.8 includes a variation which specifies that eaves or shading devices that provide shade in summer and maximise sunlight in winter, shall be permitted to extend outside the building envelope. Therefore the roof eaves and parapet additions subject of this modification is not applicable to this assessment.

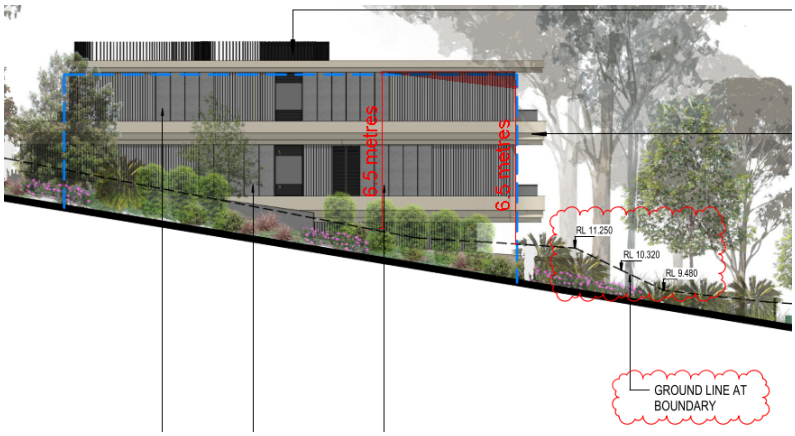


Figure 1 - Building envelope non-compliance (shown in shaded red)

Merit Consideration

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

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

Comment:
As discussed within the section of the report relating to Clause A4.4 of the Pittwater 21 DCP, the proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain consistency with the intent of the Church Point and Bayview Desired Locality Statement.

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

Comment:

The minor building envelope exceedance will not unreasonably impact on the streetscape or result in a building scale or density that is above the height of surrounding natural and built environment. The application will retain suitable areas of deep soil planting and canopy tree planting within the front setback area to provide screening of the development from the street.

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

Comment:
The proposed development provides modulation in the built form and maintains landscaping to surround the site. The application is supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer; Landscape Officer and Riparian Lands Officer who have raised no objection to the proposal subject to recommended conditions.

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

Comment:
The proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is not considered to unreasonably increase the bulk and scale of the built form. The proposal will be setback 12m from the front boundary retains suitable landscaping along the front, side and rear boundaries to minimise the visual impact of the development to the adjoining neighbours and the street. The proposal is appropriately articulated using balconies, eaves, planters and changes in materials and roof formation to break up built form. Additionally, the proposal steps with the fall of the land to the north west, which will suitably transition and maintain compatibility with the height and scale of the adjoining neighbours. Overall, the proposal presents a compatible height and scale with the original DA (DA2019/0154) and surrounding and nearby development.

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

Comment:
The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause *C1.3 View Sharing* of the P21 DCP. The minor envelope non-compliance is not anticipated to result in unreasonable view loss.

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

Comment:
As detailed elsewhere within this report (refer to Clause C1.5 Visual privacy and C1.4 Solar access), a reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings (subject to conditions)..

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

Comment:
Whilst there is tree removal required as part of the development, multiple canopy trees are proposed to be planted to compensate in order to visually reduce the built form. Vegetation and landscaping will be retained along front, side and rear setbacks.

The application is also supported by an amended landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application will also comply with Landscaped area under SEPP HSPD. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions. Overall, retained and proposed vegetation would appropriately break up the building massing and reduce the visual impact of the proposal

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

D4.11 Fences - General

The application proposes a new front fence on the front boundary. The control requires front fences to be no higher than 1.0m. The fence is proposed to be constructed of black aluminum flat bars.

To ensure consistency with the objectives of the clause, conditions are to be imposed to ensure the proposed front fence does not exceed maximum height of 1.0 metre above existing ground level at any point and the fence is designed to 50% or more open. The degree of transparency required by the condition combined will ensure the fence is compatible with the streetscape character.

The proposal also includes side and rear boundary fencing. In order to maintain consistency with this control, conditions will be imposed ensuring that side and rear boundary fencing does not exceed 1.8m from existing ground level and is designed to step with the fall of the lands and is constructed wholly within the boundaries of the subject property.

D4.14 Scenic Protection Category One Areas

The application will retain suitable areas of deep soil planting and canopy tree planting within the front setback area to provide screening of the development form the waterway, inline with the provisions of this control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

The application seeks to modify Development Consent No.DA2019/0154 for a seniors housing development. The application is referred to the Development Determination Panel due to seven (7) objections being received in response to the notification.

The concerns raised in the objections have been addressed and resolved by amended plans and additional information, as well as imposed conditions of consent.

The critical assessment issues include building height; tree removal; *SEPP (Housing for Seniors or People with a Disability) 2004*; view sharing; visual privacy; building envelope; and side building line.

The modified proposal satisfies the test of being substantially the same development as that which was approved originally by the Land and Environment Court.

Overall, the proposed changes subject of this modification represent a relatively modest change in built form. Subject to the recommended conditions of consent, it is considered that the amended proposal will result in a development that displays reasonable size, scale and density which is compatible with the approved built form and surrounding development and will not result in

unreasonable amenity impacts to surrounding properties.

The changes to building height, setbacks and treatment of the curtilage of the building do not translate into adverse impacts. The significant tree to be removed for the fire fighting infrastructure is unavoidable and will be compensated by native tree replanting.

In relation to concerns raised by residents about privacy, suitable conditions have been recommended to mitigate potential privacy impacts.

The modified proposal has been refined and enhanced using a new project architect, and represents a significant and substantial improvement in the character, design and external appearance of the approved development, with enhanced architecture, landscaping and external colours and finishes, which will be more complementary to the local character and fit in with the other seniors housing developments along this stretch of Pittwater Road.

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

Accordingly, the application is referred to the DDP with a recommendation for APPROVAL.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0471 for Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development on land at Lot 1 DP 373531,1955 Pittwater Road, BAYVIEW, 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-254758 MOD2022/0471	The date of this notice of determination	Modification of Development Consent DA2019/0154 granted for demolition works and construction of a seniors housing development. • Add Condition No.1C (Modification of Consent - Approved Plans and supporting Documentation) • Add Condition 28A (Access and Facilities for Persons with Disabilities) • Add Condition 28B (Submission Roads Act Application for Civil Works in the Public Road (Retaining Wall Works))

		• Add Condition 28C (Amendments to the approved plans) • Add Condition 51A (Impacts to Protected Native Wildlife) • Add Condition 51B (Wildlife Protection) • Add Condition 57A (No Weeds Imported On To The Site) • Add Condition 57B (Priority Weed Removal and Management) • Add Condition 71 (Replacement of Canopy Trees) • Add Condition 72 (Plant Noise) • Add Condition 73 (Use of the Roof Terrace) • Add Condition 74 (Use of "Lower Ground Floor storage areas") • Modify Condition 2 (Compliance with Other Department, Authority or Service Requirements) • Modify Condition 46 (Removal of trees within the road reserve) • Modify Condition 49 (Tree and vegetation protection) • Modify Condition 56 (Landscape Works) • Modify Condition 57 (Condition of Retained Vegetation)
PAN-106400 MOD2021/0343	27/07/2021	Modify development consent DA2019/0154 granted for demolition works and construction of a seniors housing development to use the basement void area approved under Mod2021/0101 as storage areas for each dwelling • Add Condition No.1B (Modification of Consent - Approved Plans and supporting Documentation)
PAN-78870 MOD2021/0101	12/05/2021	Modify development consent DA2019/0154 granted for demolition works and construction of a seniors housing development to amend the location and method of piling and shoring and the reinforced concrete block work retaining walls associated with the excavated carpark levels. • Add Condition No.1A (Modification of Consent - Approved Plans and supporting Documentation)

Modified conditions

A. Add Condition No.1C - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA.101 Rev. F - Site Plan	29/03/2023	A+ Design Group
DA.201 Rev.E - Entry Floor Plan	29/03/2023	A+ Design Group
DA.202 Rev.E - Carpark Floor Plan	29/03/2023	A+ Design Group
DA.203 Rev.F - Lower Ground Floor Plan	04/05/2023	A+ Design Group
DA.204 Rev.C - Ground Floor Plan	28/01/2023	A+ Design Group
DA.205 Rev.C - First Floor Plan	28/01/2023	A+ Design Group
DA.301 Rev.E - Section AA	08/03/2023	A+ Design Group
DA.302 Rev.E - Section BB	08/03/2023	A+ Design Group
DA.303 Rev.A - Section CC	21/06/2023	A+ Design Group
DA.401 Rev.D - North Elevation	29/03/2023	A+ Design Group
DA.402 Rev.F - West Elevation	14/07/2023	A+ Design Group
DA.403 Rev.D - South Elevation	28/01/2023	A+ Design Group
DA.404 Rev.F - East Elevation	14/07/2023	A+ Design Group
DA.803 - Schedule of Materials & Finishes	28/01/2023	A+ Design Group

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate (99121M_04)	11/08/2022	Efficient Living
NatHERS Certificate (0005395090)	11/08/2022	Efficient Living
Disability Access Report Rev.4 (P000737)	10/02/2023	Inclusive Places
Geotechnical Report (SRE/1020/BV/22)	16/09/2022	Soilsrock Engineering Pty Ltd
Geotechnical Report (SRE/1020/BV/23)	20/04/2023	Soilsrock Engineering Pty Ltd
Arborist Report	01/08/2022	Waratah Eco Works

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**
000 Issue.E - Landscape Coversheet	02/03/2023	Site Image Landscape Architects
001 Issue.D - Landscape Area Plan	03/03/2023	Site Image Landscape Architects
101 Issue.D - Landscape Plan - Ground Floor	02/03/2023	Site Image Landscape Architects
201 Issue.D - Landscape Plan - First Floor	02/03/2023	Site Image Landscape Architects

501 Issue.A - Landscape Details	03/08/0222	Site Image Landscape Architects
601 Issue.C - Landscape Sections	02/03/2023	Site Image Landscape Architects
901 Issue.B - Tree Retention Plan	10/02/2023	Site Image Landscape 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:

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
New South Wales Roads & Maritime Services	Response NSW RMS Referral	18 October 2019
Ausgrid	Ausgrid Referral Response	05 October 2022

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

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

C. Modify Condition 46 (Removal of trees within the road reserve) to read as follows:

This consent includes approval to remove the following numbered existing species located within the road reserve:
3 - Corymbia maculata (identified as tree 1 in the Arboricultural Impact Assessment prepared by Waratah Eco Works August 2022),
4 - Ficus rubiginosa, subject to replacement within the road reserve,
5 - Cocus Palm,
6 - Buckinghamiana celsissima.

Removal of approval trees in the road reserve shall be undertaken only by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Tree Services section.

Reason: public safety.

D. Modify Condition 49 (Tree and vegetation protection) to read as follows:

a) Existing trees and vegetation shall be retained and protected in accordance with AS4970-2009 Protection of Trees on Development Sites, including:
i) all trees and vegetation located on adjoining properties, and
ii) all road reserve trees and vegetation not approved for removal, being existing trees 1 and 2.

b) Tree protection shall be generally undertaken as follows:
i) all tree protection shall be in accordance with AS4970-2009 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 remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
iii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
v) to minimise the impact on trees and vegetation to be retained and protected, 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,
vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,
ix) should either or all of vi), vii) and viii) occur during site establishment and constructionworks, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
x) 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 AS 4970-2009, xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

Reason: to retain and protect significant planting on development and adjoining sites.

E. Modify Condition 56 (Landscape Works) to read as follows:

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawings 000, 101, 201 by Site Image dated 02/03/23), and inclusive of the following conditions:
1) Each tree shall be installed at minimum 75 litre container size, and shall be planted at least 3 metres from buildings or more, and at least 1.5 metres from common boundaries,
2) Tree planting shall be located in consideration of neighbouring solar access to living internal and external living spaces and any significant views.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

F. Modify Condition 57 (Condition of Retained Vegetation) to read as follows:

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQZ Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained in proximity to development works, being existing trees 1, 2 and 25, including the following information:
i) compliance to any Arborist recommendations for tree protection and excavation works.
ii) extent of damage sustained by vegetation as a result of the construction works.
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to retain and protect significant planting on development sites.

G. Add Condition 28A (Access and Facilities for Persons with Disabilities) to read as follows:

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. In this regard the recommendations contained in the Disability Access Report prepared by Inclusive Places , Reference No. P000737, dated 10/02/2023 are to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

H. Add Condition 28B (Submission Roads Act Application for Civil Works in the Public Road (Retaining Wall Works)) to read as follows:

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

The application is to include four (4) copies of Civil Engineering plans for the design of the retaining wall and turf area required for the proposed fire hydrant access for the building which are to be generally in accordance with the Council’s specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. Set-out plan with dimensions and proposed retaining wall height.
2. Structural plans for the retaining wall.
3. Geotechnical certification for the proposed design.
4. Landscaping plan for turf and associated landscaping works behind the retaining wall within the road reserve.
5. Services plan and concurrence from the relevant service authority for any services affected by the proposed works. All costs associated with the relocation of any services are to be borne by the applicant.

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

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

Reason: To ensure engineering works are constructed in accordance with relevant standards and

Council's specification.

I. Add Condition 28C (Amendments to the approved plans) to read as follows:

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

a) The proposed "ground floor " eastern facing window to the "Unit 3 ensuite" shall be fitted with obscured glazing

b) The proposed "first floor "eastern facing window to the "Unit 4 ensuite" shall be fitted with obscured glazing

c) The proposed "ground floor " western facing window to the "Unit 2 ensuite" shall be fitted with obscured glazing

d) A privacy screen with a minimum height of 1.5 metres (measured from finished floor level) is to be erected for the entire length of the outermost north-western edge (of the trafficable section) of the "Unit 4 Roof Deck". The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

e) The proposed front fence as shown on the approved plans shall not exceed 1 metre in height from existing ground level and shall be designed to step with the fall of the land. This fence shall be designed to be minimum of 50% open/transparent and constructed of dark-coloured, non-reflective materials.

f) The proposed side and rear boundary fencing shall not exceed 1.8m in height from existing ground levels and shall be designed to step with the fall of the land. This fencing shall be located wholly within the boundaries of the subject site and shall be constructed of dark-coloured, non-reflective materials.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

J. Add Condition 51A (Impacts to Protected Native Wildlife) to read as follows:

Habitat for native wildlife including Tree 1 (Corymbia maculata) is to be inspected for native wildlife prior to removal. If native wildlife is found within habitat 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.

K. Add Condition 51B (Wildlife Protection) to read as follows:

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.

Habitat for native wildlife including Tree 1 (Corymbia maculata) is to be inspected for native wildlife prior to removal. If native wildlife is found within habitat 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.

L. Add Condition 57A (No Weeds Imported On To The Site) to read as follows:

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

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

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

M. Add Condition 57B (Priority Weed Removal and Management) to read as follows:

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed.

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.

N. Add Condition 71 (Replacement of Canopy Trees) to read as follows:

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

O. Add Condition 72 (Plant Noise) to read as follows:

Any plant equipment associated with the development, including the passenger lift and air conditioning unit, must be installed and operated at times so as not to cause ‘offensive noise’. It must be demonstrated that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

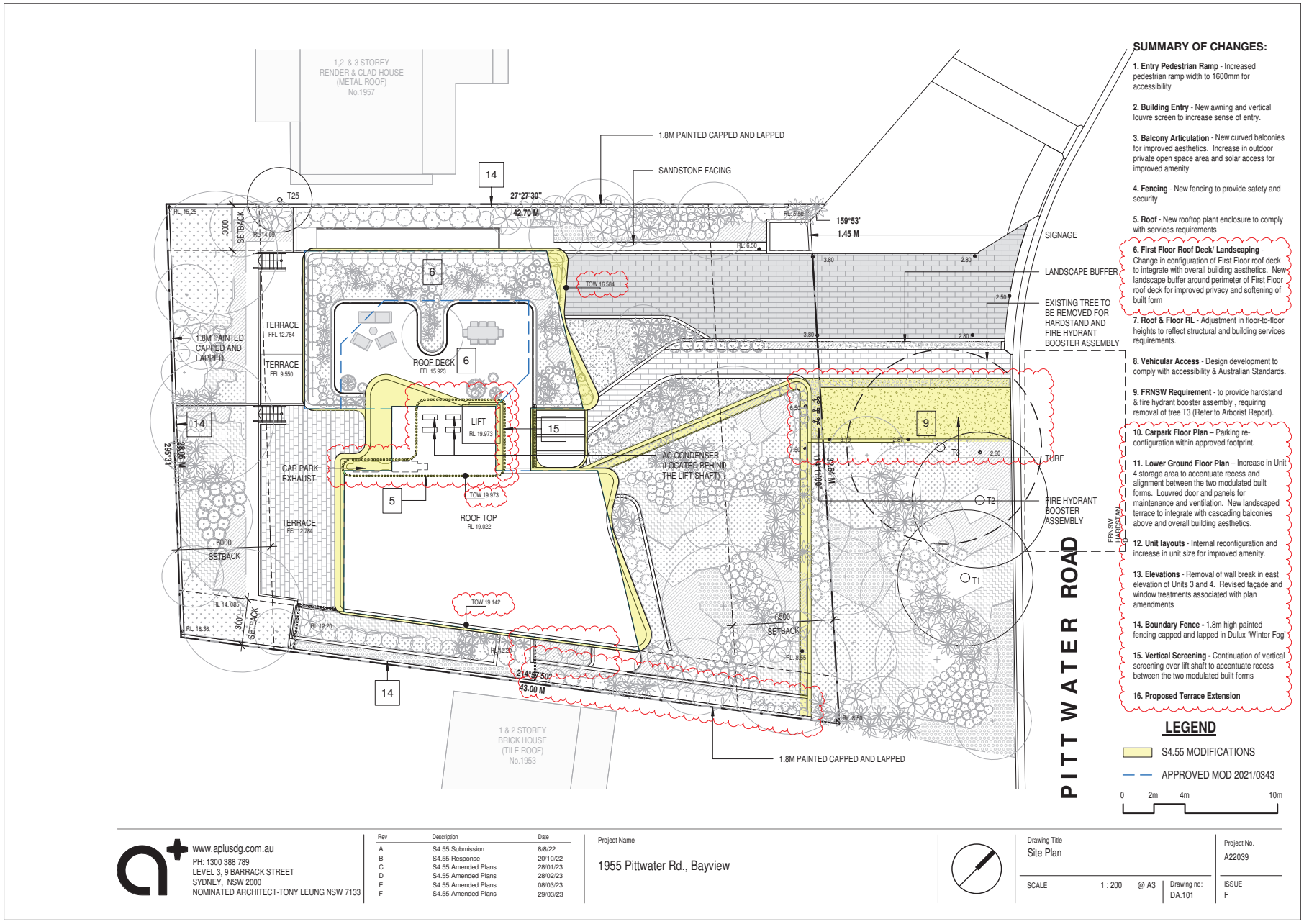
Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

P. Add Condition 73 (Use of the Roof Terrace) to read as follows:
There are to be no permanent structures located on the rooftop terrace. Any temporary shade structures are to be taken down when not in use.

Reason: To minimise impact on private views toward Pittwater.

Q. Add Condition 74 (Use of "Lower Ground Floor storage areas") to read as follows:
The "lower ground floor level" unit storage areas, labelled "UNIT 1 ST"; UNIT 2 ST"; "UNIT 3 ST"; "UNIT 4 ST"; shall not to be used for habitable purposes and shall not to contain any cooking, bathroom/toilet or laundry facilities.

Reason: To ensure that the storage areas are used for their intended purpose.



SUMMARY OF CHANGES:

1. **Entry Pedestrian Ramp** - Increased pedestrian ramp width to 1600mm for accessibility
2. **Building Entry** - New awning and vertical louvre screen to increase sense of entry.
3. **Balcony Articulation** - New curved balconies for improved aesthetics. Increase in outdoor private open space area and solar access for improved amenity
4. **Fencing** - New fencing to provide safety and security
5. **Roof** - New rooftop plant enclosure to comply with services requirements
6. **First Floor Roof Deck/ Landscaping** - Change in configuration of First Floor roof deck to integrate with overall building aesthetics. New landscape buffer around perimeter of First Floor roof deck for improved privacy and softening of built form
7. **Roof & Floor RL** - Adjustment in floor-to-floor heights to reflect structural and building services requirements.
8. **Vehicular Access** - Design development to comply with accessibility & Australian Standards.
9. **FRNSW Requirement** - to provide hardstand & fire hydrant booster assembly , requiring removal of tree T3 (Refer to Arborist Report).
10. **Carpark Floor Plan** – Parking re-configuration within approved footprint.
11. **Lower Ground Floor Plan** – Increase in Unit 4 storage area to accentuate recess and alignment between the two modulated built forms. Louvred door and panels for maintenance and ventilation. New landscaped terrace to integrate with cascading balconies above and overall building aesthetics.
12. **Unit layouts** - Internal reconfiguration and increase in unit size for improved amenity.
13. **Elevations** - Removal of wall break in east elevation of Units 3 and 4. Revised façade and window treatments associated with plan amendments
14. **Boundary Fence -** 1.8m high painted fencing capped and lapped in Dulux 'Winter Fog'
15. **Vertical Screening -** Continuation of vertical screening over lift shaft to accentuate recess between the two modulated built forms
16. **Proposed Terrace Extension**

LEGEND

S4.55 MODIFICATIONS

APPROVED MOD 2021/0343

0 2m 4m 10m

www.aplusdg.com.au
PH: 1300 388 789
LEVEL 3, 9 BARRACK STREET
SYDNEY, NSW 2000
NOMINATED ARCHITECT-TONY LEUNG NSW 7133

Rev	Description	Date
A	S4.55 Submission	8/8/22
B	S4.55 Response	20/10/22
C	S4.55 Amended Plans	28/01/23
D	S4.55 Amended Plans	28/02/23
E	S4.55 Amended Plans	08/03/23
F	S4.55 Amended Plans	29/03/23

Project Name: 1955 Pittwater Rd., Bayview

Drawing Title: Site Plan
Project No.: A22039
SCALE: 1 : 200 @ A3
Drawing no.: DA.101
ISSUE: F

SUMMARY OF CHANGES:

1. Entry Pedestrian Ramp - Increased pedestrian ramp width to 1600mm for accessibility

2. Building Entry - New awning and vertical louvre screen to increase sense of entry.

3. Balcony Articulation - New curved balconies for improved aesthetics. Increase in outdoor private open space area and solar access for improved amenity

4. Fencing - New fencing to provide safety and security

5. Roof - New rooftop plant enclosure to comply with services requirements

6. First Floor Roof Deck/ Landscaping - Change in configuration of First Floor roof deck to integrate with overall building aesthetics. New landscape buffer around perimeter of First Floor roof deck for improved privacy and softening of built form

7. Roof & Floor RL - Adjustment in floor-to-floor heights to reflect structural and building services requirements.

8. Vehicular Access - Design development to comply with accessibility & Australian Standards.

9. FRNSW Requirement - to provide hardstand & fire hydrant booster assembly , requiring removal of tree T3 (Refer to Arborist Report).

10. Carpark Floor Plan – Parking re-configuration within approved footprint.

11. Lower Ground Floor Plan – Increase in Unit 4 storage area to accentuate recess and alignment between the two modulated built forms. Louvred door and panels for maintenance and ventilation. New landscaped terrace to integrate with cascading balconies above and overall building aesthetics.

12. Unit layouts - Internal reconfiguration and increase in unit size for improved amenity.

13. Elevations - Removal of wall break in east elevation of Units 3 and 4. Revised façade and window treatments associated with plan amendments

14. Boundary Fence - 1.8m high painted fencing capped and lapped in Dulux 'Winter Fog'

15. Vertical Screening - Continuation of vertical screening over lift shaft to accentuate recess between the two modulated built forms

16. Proposed Terrace Extension

Fire Hydrant Booster Assembly
(to future supplier details)

Booster assemblies are manufactured to conform to the requirement of AS2419 & to relevant local authorities.
All components comply to the requirements of AS2419.
Any fabricated components are Hot Dipped Galvanised as required in AS2419.
Backflow prevention devices can be supplied and designed into assemblies.
Backflow devices comply to AS2845.1.
All components will withstand pressure testing up to 2100kpa. (Note: Fire Brigade test pressure is 1700kpa.)
All booster units can be supplied as individual components or fully part assembled.

APPROVED BUILDING OUTLINE MOD 2021/0101

0 2m 4m 10m

www.aplusdg.com.au
PH: 1300 388 789
LEVEL 3, 9 BARRACK STREET
SYDNEY, NSW 2000
NOMINATED ARCHITECT-TONY LEUNG NSW 7133

Rev	Description	Date
A	S4.55 Submission	8/8/22
B	S4.55 Response	20/10/22
C	S4.55 Amended Plans	28/01/23
D	S4.55 Amended Plans	29/03/23

Project Name
1955 Pittwater Rd., Bayview

Drawing Title
North Elevation

SCALE 1 : 200 @ A3

Drawing no: DA.401

Project No. A22039

ISSUE D

SUMMARY OF CHANGES:

1. Entry Pedestrian Ramp - Increased pedestrian ramp width to 1600mm for accessibility

2. Building Entry - New awning and vertical louvre screen to increase sense of entry.

3. Balcony Articulation - New curved balconies for improved aesthetics. Increase in outdoor private open space area and solar access for improved amenity

4. Fencing - New fencing to provide safety and security

5. Roof - New rooftop plant enclosure to comply with services requirements

6. First Floor Roof Deck/ Landscaping - Change in configuration of First Floor roof deck to integrate with overall building aesthetics. New landscape buffer around perimeter of First Floor roof deck for improved privacy and softening of built form

7. Roof & Floor RL - Adjustment in floor-to-floor heights to reflect structural and building services requirements.

8. Vehicular Access - Design development to comply with accessibility & Australian Standards.

9. FRNSW Requirement - to provide hardstand & fire hydrant booster assembly , requiring removal of tree T3 (Refer to Arborist Report).

10. Carpark Floor Plan – Parking re-configuration within approved footprint.

11. Lower Ground Floor Plan – Increase in Unit 4 storage area to accentuate recess and alignment between the two modulated built forms. Louvred door and panels for maintenance and ventilation. New landscaped terrace to integrate with cascading balconies above and overall building aesthetics.

12. Unit layouts - Internal reconfiguration and increase in unit size for improved amenity.

13. Elevations - Removal of wall break in east elevation of Units 3 and 4. Revised façade and window treatments associated with plan amendments

14. Boundary Fence - 1.8m high painted fencing capped and lapped in Dulux 'Winter Fog'

15. Vertical Screening - Continuation of vertical screening over lift shaft to accentuate recess between the two modulated built forms

16. Proposed Terrace Extension

APPROVED BUILDING OUTLINE MOD 2021/0101

0 2m 4m 10m

www.aplusdg.com.au
PH: 1300 388 789
LEVEL 3, 9 BARRACK STREET
SYDNEY, NSW 2000
NOMINATED ARCHITECT-TONY LEUNG NSW 7133

Rev	Description	Date
A	S4.55 Submission	8/8/22
B	S4.55 Response	20/10/22
C	S4.55 Amended Plans	28/01/23
D	S4.55 Amended Plans	29/03/23
E	Additional Information	21/04/23
F	S4.55 Amended Plans	14/07/23

Project Name
1955 Pittwater Rd., Bayview

Drawing Title
West Elevation

Project No.
A22039

SCALE 1 : 200 @ A3

Drawing no: DA.402

ISSUE F

SUMMARY OF CHANGES:

1. Entry Pedestrian Ramp - Increased pedestrian ramp width to 1600mm for accessibility

2. Building Entry - New awning and vertical louvre screen to increase sense of entry.

3. Balcony Articulation - New curved balconies for improved aesthetics. Increase in outdoor private open space area and solar access for improved amenity

4. Fencing - New fencing to provide safety and security

5. Roof - New rooftop plant enclosure to comply with services requirements

6. First Floor Roof Deck/ Landscaping - Change in configuration of First Floor roof deck to integrate with overall building aesthetics. New landscape buffer around perimeter of First Floor roof deck for improved privacy and softening of built form

7. Roof & Floor RL - Adjustment in floor-to-floor heights to reflect structural and building services requirements.

8. Vehicular Access - Design development to comply with accessibility & Australian Standards.

9. FRNSW Requirement - to provide hardstand & fire hydrant booster assembly , requiring removal of tree T3 (Refer to Arborist Report).

10. Carpark Floor Plan – Parking re-configuration within approved footprint.

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16. Proposed Terrace Extension

APPROVED BUILDING OUTLINE MOD 2021/0101

0 2m 4m 10m

www.aplusdg.com.au
PH: 1300 388 789
LEVEL 3, 9 BARRACK STREET
SYDNEY, NSW 2000
NOMINATED ARCHITECT-TONY LEUNG NSW 7133

Rev	Description	Date
A	S4.55 Submission	8/8/22
B	S4.55 Response	20/10/22
C	S4.55 Amended Plans	28/01/23

Project Name
1955 Pittwater Rd., Bayview

Drawing Title
South Elevation

Project No.
A22039

SCALE 1 : 200 @ A3

Drawing no: DA.403

ISSUE C

SUMMARY OF CHANGES:

1. Entry Pedestrian Ramp - Increased pedestrian ramp width to 1600mm for accessibility

2. Building Entry - New awning and vertical louvre screen to increase sense of entry.

3. Balcony Articulation - New curved balconies for improved aesthetics. Increase in outdoor private open space area and solar access for improved amenity

4. Fencing - New fencing to provide safety and security

5. Roof - New rooftop plant enclosure to comply with services requirements

6. First Floor Roof Deck/ Landscaping - Change in configuration of First Floor roof deck to integrate with overall building aesthetics. New landscape buffer around perimeter of First Floor roof deck for improved privacy and softening of built form

7. Roof & Floor RL - Adjustment in floor-to-floor heights to reflect structural and building services requirements.

8. Vehicular Access - Design development to comply with accessibility & Australian Standards.

9. FRNSW Requirement - to provide hardstand & fire hydrant booster assembly , requiring removal of tree T3 (Refer to Arborist Report).

10. Carpark Floor Plan – Parking re-configuration within approved footprint.

11. Lower Ground Floor Plan – Increase in Unit 4 storage area to accentuate recess and alignment between the two modulated built forms. Louvred door and panels for maintenance and ventilation. New landscaped terrace to integrate with cascading balconies above and overall building aesthetics.

12. Unit layouts - Internal reconfiguration and increase in unit size for improved amenity.

13. Elevations - Removal of wall break in east elevation of Units 3 and 4. Revised façade and window treatments associated with plan amendments

14. Boundary Fence - 1.8m high painted fencing capped and lapped in Dulux 'Winter Fog'

15. Vertical Screening - Continuation of vertical screening over lift shaft to accentuate recess between the two modulated built forms

16. Proposed Terrace Extension

APPROVED BUILDING OUTLINE MOD 2021/0101

0 2m 4m 10m

www.aplusdg.com.au
PH: 1300 388 789
LEVEL 3, 9 BARRACK STREET
SYDNEY, NSW 2000
NOMINATED ARCHITECT-TONY LEUNG NSW 7133

Rev	Description	Date
A	S4.55 Submission	8/8/22
B	S4.55 Response	20/10/22
C	S4.55 Amended Plans	28/01/23
D	Additional Information	21/04/23
E	S4.55 Amended Plans	17/05/23
F	S4.55 Amended Plans	14/07/23

Project Name
1955 Pittwater Rd., Bayview

Drawing Title
East Elevation

Project No.
A22039

SCALE 1 : 200 @ A3

Drawing no: DA.404

ISSUE F

ITEM 3.6	**MOD2023/0109 - 40 SUNRISE ROAD PALM BEACH - MODIFICATION OF DEVELOPMENT CONSENT DA2021/0900 GRANTED FOR CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL AND SPA**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2023/557742**
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 Mod2023/0109 for modification of Development Consent DA2021/0900 granted for construction of a dwelling house including a swimming pool and spa on land at Lot 151 DP 6937, 40 Sunrise Road PALM BEACH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0109

Responsible Officer:	Steven Findlay
Land to be developed (Address):	Lot 151 DP 6937, 40 Sunrise Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2021/0900 granted for Construction of a dwelling house including a swimming pool and spa
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Susan Elizabeth Rothwell
Applicant:	Susan Elizabeth Rothwell

Application Lodged:	21/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	27/03/2023 to 10/04/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 3%
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal is to modify Development Consent No. DA2021/0900, granted for construction of a dwelling house including a swimming pool and spa. The application is required to be determined by the Development Determination Panel (DDP) due to it being a s4.55(2) modification that seeks to alter or delete conditions imposed previously by the Panel. In this instance, the relevant conditions are Conditions 1 and 17, relating to the approved plans and imposed requirements for a terrace set to be enclosed.

The proposal involves minor changes to the approved design that are largely internal and therefore do not present issues to future residents, neighbours or the natural environment.

Key issues in the assessment are the increase in building height and additional excavation involved with the proposal. The building height is related to alterations to Terrace 3, where the design is altered to include new pier and hob. The addition of the hob presents an element that is 10.3m from natural ground level, which is non-compliant with the maximum building height of 10m (via clause 2D) and presents a 3% variation on the control. The additional excavation is proposed to take place laterally into the slope, in order to add a plant/equipment room on the approved lower ground floor level.

Overall, it is considered that the proposed changes are minor in nature and do not create adverse outcomes for neighbours or the natural environment.

The modification of consent is therefore recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to modify consent for the construction of a dwelling house, including a swimming pool and spa. Specific changes include the following:

Lower Ground:

- Extending excavation south of the Laundry to form an Electrical Plant room
- Relocating spa to be within the pool
- Replacing pool concourse with lawn
- Addition of a pier to Terrace 3
- Alterations to Bedroom and Ensuite walls

Ground Floor:

- Deletion of Terrace 4, incorporated into kitchen
- Addition of a pergola over Terrace 3
- Amendment of driveway levels
- Relocation of fireplace within the Dining Room
- Addition of stone cladding around lift shaft

First Floor:

- Extension of planter box over enclosed Terrace 4
- Modification of Window W301 size, addition of W301c to the stair
- Addition of stone cladding around lift shaft
- Addition of a profiled hob around the flat roof over Dining Room

External:

- Change of roof material from slate to copper sheeting with standing seams
- Change of flat roof over the lift to pitched roof with copper sheeting

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental

Planning and Assessment Act 1979 and the associated Regulations. In this regard:

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

SUMMARY OF ASSESSMENT ISSUES

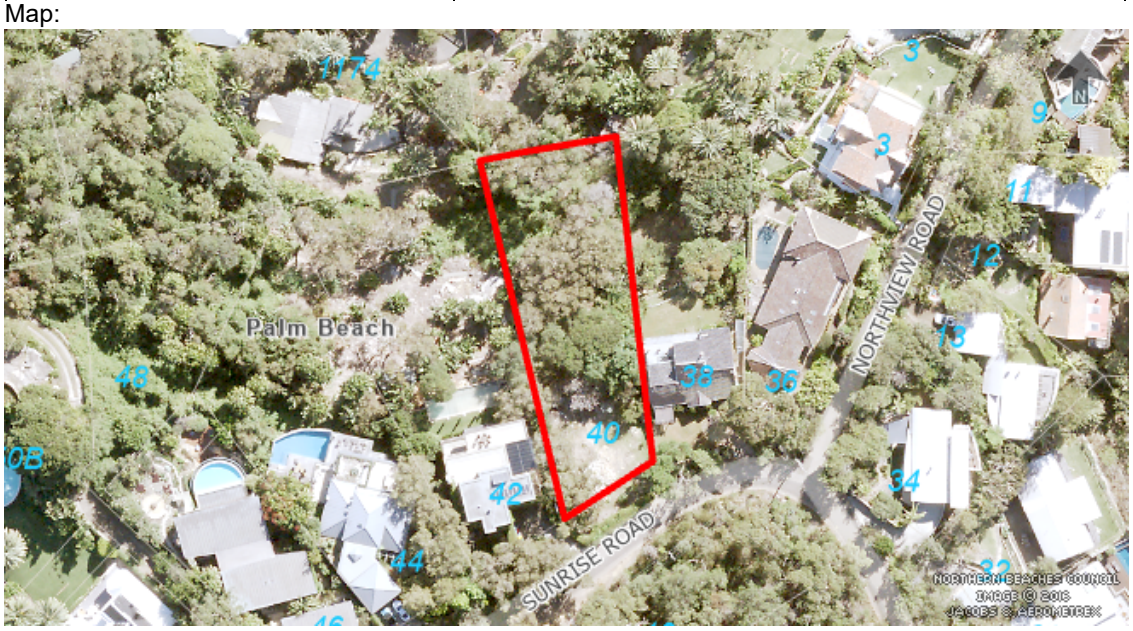
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater 21 Development Control Plan - B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 151 DP 6937 , 40 Sunrise Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Sunrise Road. The site is trapezoidal in shape with a frontage of 26.875m along Sunrise Road and a depth of 71.09m along the eastern side boundary. The site has a surveyed area of 1528m². The site is located within the C4 Environmental Living zone and is currently a vacant lot, occupied by no developed buildings or structures. The site has a sloping topography, falling approximately 28 metres from the south to the north. The site has is heavily vegetated, featuring a range of indigenous and exotic trees and shrubs. Council records do not indicate the presence of any threatened species on

	site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by multi-storey dwelling houses of varying architectural styles and construction ages within an environmental setting.

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:

- N0094/12 - Demolition of the existing dwelling
- DA2021/0790 - Construction of a dwelling house, returned on 10 June 2021
- DA2021/0877 - Construction of a dwelling house, returned on 21 June 2021
- DA2021/0900 - Construction of a dwelling house including a swimming pool and spa, approved on 19 April 2022 by NBDDP

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 DA2021/0900, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/0900 for the following reasons: • The modification retains the use of the site as a dwelling house within a low density residential setting. • No reductions in landscaping are proposed • Proposed changes are predominantly internal and do not involve changes to the building footprint
(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 DA2021/0900 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental

Section 4.55 (2) - Other Modifications	Comments
(i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

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

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

Section 4.15 'Matters for Consideration'	Comments
accordance with the EPA Act or EPA Regs	
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 27/03/2023 to 10/04/2023 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	**The proposal:** Lower Ground; a1. Extending the excavation south of the Laundry to form an Electrical Plant Room a2. Relocating the Spa to be within the pool and replacing the pool concourse paving with lawn a3. Adding a new pier in-line with Terrace 3 over a4. Minor planning amendments to the Bedroom and Ensuite walls Ground floor; b1. Enclosure of Terrace 4 to be part of the Kitchen b2. Adding a new pergola over Terrace 3 b3. Amendment to the driveway levels to suit council's requirements b4. Relocation of the fireplace within the Dining Room b5. Adding new stone cladding around the lift shaft First Floor; c1. Extending the western planter box over the proposed enclosure of Terrace 4 below c2. Modifying the window size of W301 and adding a new window W301c to the stair c3. Adding new stone cladding around the lift shaft c4. Adding a profiled hob around the flat roof over the Dining Room Roof Level; d1. Changing the roof material from slate to copper sheeting with standing seams d2. Replacing the flat roof over the lift with a new pitched roof with copper sheeting

Internal Referral Body	Comments
	A condition already applies in DA2021/0900 Installation of solid/fuel burning heaters No approval is granted for the installation of a solid/fuel burning heater. Reason: To preserve the amenity and environmental health of adjoining properties It is understood that the fireplace/heater is gas not a solid fuel or open wood burning fire place. Environmental Health supports the proposal without additional conditions.
Landscape Officer	The application is for modification to development consent DA2021/0900. The proposed amendments will not change the landscape outcome approved in DA2021/0900, and as per the Arboricultural Impact Assessment Addendum the modifications will not change the potential impacts to any retained trees. The original conditions remain and no further conditions are imposed.
NECC (Bushland and Biodiversity)	The proposal seeks approval for the modification of Development Consent DA2021/0900 granted for Construction of a dwelling house including a swimming pool and spa. The comments on this referral relate to the following applicable biodiversity controls: • Biodiversity Conservation Act 2016 • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor • Pittwater 21 DCP cl. B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor. The following biodiversity related reports/documentation were reviewed as part of this assessment: • Arboricultural Impact Statement (Naturally Trees, March 2023) The propose modifications would take place in disturbed areas of the site and would be unlikely to impact on native flora and fauna. No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Water Management)	Supported As the works result in minimal change to impervious area on the site,

Internal Referral Body	Comments
	the approved stormwater system remains current.
Road Reserve	There is low impact on existing road infrastructure assets. It is noted that no details of any work to the public road reserve verge are provided and an existing hedge will restrict safe sight distances for vehicles exiting the driveway. Sunrise Road is on the Pittwater Scenic Streets Register and the existing hedge currently obstructs views. Council policy guidelines require plantings and structures including retaining walls, on the nature strip must not block pedestrian or vehicle access. Hedging on the nature strip is to be planted adjacent to and against the property boundary. As such, the existing hedge is to be removed. Any works to install landscaping on the public road reserve will require Council approval. Development Engineer to provide comments and conditions in relation to driveway access.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS Discussion of reason for referral The proposal has been referred to Heritage as the subject site adjoins two heritage items **'Villa D'este' (house) -** 3 Northview Road Palm Beach **C6 Sunrise Hill Heritage Conservation Area** - Sunrise Road Details of heritage items affected **Villa D'Este** Statement of Significance Villa D'este at 3 Northview Road in Palm Beach, was built in 1933 to the design of Fred Verrills as a holiday house, has historic and aesthetic significance as a rare and intact example of Spanish Mission House typical of the early Pittwater subdivisions. Physical Description The house is located on a slightly raised site screened by a short stone fence and vegetation with scenic views over Ocean Beach. The house comprises of a rendered brick two-storey building characterised by typical Spanish Mission style features. These include: the asymmetrical facade, shaped gable facade, barley-twist columns, semi-circular arches, rendered brick walls, decorative sunrise motif, wrought-iron door hardware, gabled chimney stack, arched veranda, timber shutters, front steps, timber pergola, stucco finish and decorative parapet. **Sunrise Hill Heritage Conservation Area**

<table>
<tr><th>Internal Referral Body</th><th>Comments</th></tr>
<tr><td></td><td>
<u>Statement of Significance</u>
The Sunrise Hill Heritage Conservation Area includes the curtilage of a number of historic properties
representing the earliest phase of residential development at Palm Beach.

<u>Physical Description</u>
Conservation area includes houses at 50, 52, 54, 56, 58-60,35 and public reserve at summit of Sunrise Hill.

<table>
<tr><th colspan="3">Other relevant heritage listings</th></tr>
<tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr>
<tr><td>Australian Heritage Register</td><td>No</td><td></td></tr>
<tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr>
<tr><td>National Trust of Aust (NSW) Register</td><td></td><td></td></tr>
<tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr>
<tr><td>Other</td><td>N/A</td><td></td></tr>
</table>

Consideration of Application
The proposal seeks consent for modifications to DA2021/0900. Proposed changes include a new plant room, external materials, changing the roof profile, addition of a pergola and internal layout. The conservation area is located directly to the south of the subject property and includes the road reservation outside the property. However the significant component of the conservation area in this location is the bushland reserve located opposite which is unlikely to be impacted by the proposed modifications and no concerns are raised in relation to this conservation area.

Villa D'este is located to the north east of the subject property in Northview Road. It is built close to
the road reserve. However, given the subdivision pattern, one of its lot extends to the west and
eventually shares a common boundary with the subject site. However the proposed dwelling is to
be located close to the road reserve with no works proposed in the rear vegetated portion of the site.
The proposed modifications wont change the adequate physical and visual separation between the site and this item.

Therefore Heritage raises no objections and requires no conditions.
</td></tr>
</table>

Internal Referral Body	Comments
	Consider against the provisions of CL5.10 of PLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Reference is made to the proposed development at the above area and Aboriginal heritage. 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. 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.
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	The modification was referred to TfNSW in accordance with s138 of the Roads Act 1993. Upon review, TfNSW has requested no requirements as the proposal is said to have a negligible impact on the classified road network.

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. 1163660S_04, dated 14 March 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.

Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and

(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
(i) the design of the vehicular access to the land, or
(ii) the emission of smoke or dust from the development, or
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land,

and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

No objections have been raised by transport authorities or Council in relation to the modification.

Section 2.119 - Impact of road noise or vibration on non-road development states:

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—
(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Comment:

There are no concerns that the prescribed noise limits will be breached as a result of the modification.

The application was referred to Transport for NSW who did not raise any objection to the proposal.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	10m *Clause 2D applies	9.9m	10.3m	3%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Description of non-compliance:

The PLEP allows development in the locality to reach a building height of 8.5 metres from ground level. A height of 9.9m was approved under the previous consent in accordance with Clause 2D, allowing a height of up to 10m where Council is satisfied that subclauses 2D(a) to 2D(d) are satisfied. The proposed modification seeks to increase building height for a section of Terrace 3 through the addition of a pergola and hob. The proposed height is 10.3m at the greatest extent, creating a non-compliance and a 3% variation on the control.

Merit assessment:

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

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

Comment:

In line with the desired future character of the Palm Beach locality, the site maintains use as dwelling house in a low density, landscaped setting. No new storeys are proposed as a part of the modification. The height addition from the hob is minor, keeping the overall building height in line with the existing character of the street where examples exist of roof features in excess of 10 metres from ground level.

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

Comment:

The height of buildings breach from the hob is considered a minor addition to the built form that will not fundamentally alter the perception of bulk and scale when viewed from adjoining properties or public spaces. As noted above, Sunrise Road hosts existing structures on sloping sites where roof features extend beyond 10 metres from ground level. The proposal is therefore considered in line with the prevailing character of the locality from a height and scale perspective.

- (c) to minimise any overshadowing of neighbouring properties,

Comment:

Shadow diagrams supplied with the application indicate that the proposed modification will not create adverse overshadowing impacts. All surrounding dwellings receive direct sunlight consistent with the requirements of the PDCP. It is further noted that overshadowing is limited to the frontages and side passages of nearby dwellings for short periods of time.

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

Comment:

The proposal is considered to allow for a reasonable sharing of views. It is noted that the site and adjoining sites are at the upper reaches of a hillslope and enjoy views to the north that would be unaffected by the modified proposal. Land immediately south of the dwelling is undeveloped bushland and would therefore be unaffected.

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

Comment:

The development steps down with the sloping topography, responding appropriately to site conditions. With reference to the non-compliant hob, the addition is minor and will not meaningfully discourage building design that responds to topography.

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

Comment:

It is noted that the addition will be visible only from adjoining dwellings and functionally invisible from the street. It is considered that the minor addition will not have an adverse visible impact on nearby environmental features, heritage items or conservation areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control 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.

7.2 Earthworks

The proposed modification involves an increase in the earthworks approved under the original consent. Excavation is proposed to be extended laterally into the hillslope in order to accommodate a plant room adjacent to the proposed laundry. Geotechnical reporting submitted with the application suggests these works are minor and can be undertaken in a manner that mitigates the associated risks to an acceptable degree. Compliance with the recommendations provided have been imposed as conditions of consent. With regard for the issues unrelated to landslip risk, Council has reviewed the proposal and found there to be no substantial risk related to the factors outlined in 7.2 Earthworks.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	5.2m (garage)	unaltered	Yes
		4.9m (porch)	unaltered	Yes
		5.9m (lift)	unaltered	Yes
		6.0m (laundry)	unaltered	Yes
Rear building line	6.5m	35.0m	unaltered	Yes
Side building line	2.5m (W)	2.1m (Bed 6)	unaltered	Yes
		2.2m (formerly Terrace 4, now enclosed)	unaltered	Yes
	1m (E)	1.0m	unaltered	Yes
Building envelope	3.5m (W)	Outside envelope	Outside envelope	**No**
	3.5m (E)	Outside envelope	Outside envelope	**No**
Landscaped area	60% (916.8m^2)	71% (1087m^2)	72.6% (1109.3m^2)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
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
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor

The proposal does not involve an increase in the building footprint approved by the original consent. Further, a letter was supplied by the consulting Arborist confirming that the plans do not create any notable impacts on trees to be retained as per the original consent conditions. As such, it is considered that the modified proposal will not have an impact on flora, fauna or the site's utility as a wildlife corridor.

B8.6 Construction and Demolition - Traffic Management Plan

The Waste Management Plan supplied with the original application suggests that excavated material will be in excess of 100m3. It is however noted that excavated material is to be reused as fill on site. As the material will not be transported elsewhere, a traffic management plan is not required.

C1.23 Eaves

The eaves are consistent with that of the approved consent, despite their technical non-compliance with the requirements of the control. It is considered that the unaltered nature of the eaves on all elevations does not require additional assessment.

D12.10 Landscaped Area - Environmentally Sensitive Land

No landscape plan has been provided with the application. Notwithstanding, the proposed modification involves no expansion of the building footprint and will therefore have no impact on the proportion of landscaped open space on site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for a modification of consent DA2021/0900 for the construction of a dwelling house including a swimming pool and spa has been referred to the Development Determination Panel (DDP) due to the application's status as a s4.55(2) modification seeking to alter or delete conditions imposed by the panel on the original application. The conditions in question include Condition 1, relating to the approved plans and Condition 17 which imposes conditions on a terrace set to be enclosed.

No submissions have been received in relation to the proposed modification.

The critical assessment issues are the increase in building height and excavation involved with the proposal. On the former, the proposal increases the maximum height of the building in one area beyond both the approved consent and the 10m limit established by the height of buildings control in this instance. On the latter, additional excavation is proposed to accommodate a plant room on the lower ground floor.

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 modified 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 approval to Modification Application No. Mod2023/0109 for Modification of Development Consent DA2021/0900 granted for Construction of a dwelling house including a swimming pool and spa on land at Lot 151 DP 6937,40 Sunrise Road, PALM BEACH, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA100 - Site and Roof Plan, Issue D	13/03/2023	Susan Rothwell Architects
DA101 - Lower Ground Floor Plan, Issue E	13/03/2023	Susan Rothwell Architects
DA102 - Ground Floor Plan, Issue E	13/03/2023	Susan Rothwell Architects
DA103 - First Floor Plan, Issue E	13/03/2023	Susan Rothwell Architects
DA104 - North Elevation, Issue D	13/03/2023	Susan Rothwell Architects
DA105 - South Elevation, Issue E	13/03/2023	Susan Rothwell Architects
DA106 - East and West Elevation, Issue E	13/03/2023	Susan Rothwell Architects
DA107 - Section, Issue D	13/03/2023	Susan Rothwell Architects
DA108 - Section, Issue E	13/03/2023	Susan Rothwell Architects
DA109 - Section, Issue D	13/03/2023	Susan Rothwell Architects
DA110 - Section, Issue D	13/03/2023	Susan Rothwell Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate	14/03/2023	Andrew Spaile & Associates Pty Ltd
NatHERS Certificate	13/03/2023	Susan Rothwell Architects
Geotechnical Assessment	13/03/2023	JK Geotechnics
Addendum to Arboricultural IA and MS (letter)	17/03/2023	Naturally Trees

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of

this consent as approved in writing by Council.

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

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

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

B. Condition 26A - Adherence to Natural Environment Consent Conditions to read as follows:

All biodiversity-related conditions of consent under previous development applications are to be adhered to, including DA2021/0900, unless amended by these biodiversity-related conditions of consent.

Reason: To protect biodiversity values.

C. Modify Condition 17 - Amendments to the approved plans to read as follows:
The following amendments are to be made to the approved plans:

a) **"Ground Floor" Windows (W202 and W203)** - Privacy screens are to be installed on the "ground floor" eastern windows labelled W202 and W203 adjoining the "garage" as shown on the approved plans. The privacy screens shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

b) **"Ground Floor" Windows (W211; W209 and W208)** - Privacy screens are to be installed on the "ground floor" western windows labelled W211 (adjoining the "kitchen") and W209 and W208 (adjoining the "living room") as shown on the approved plans. The privacy screens shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

c) **"First Floor" Window (W302)** - A Privacy screen is to be installed on the "first floor" eastern window labelled W302 (adjoining the "ensuite") as shown on the approved plans. The privacy screen shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

d) **"First Floor" Window (W307)** - A Privacy screen is to be installed on the "first floor" western window labelled W307 (adjoining "Bed 2") as shown on the approved plans. The privacy screen shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

e) **"Lower Ground Floor" Windows (W110 and W109)** - Privacy screens are to be installed on the "lower ground floor" western windows labelled W110 and W109 (adjoining "Bed 5 ensuite" and "Bed 6 ensuite") as shown on the approved plans. The privacy screens shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in

materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

f) **"Terrace 1" Privacy Screen** - A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western and eastern edges of the "first floor" terrace labelled "Terrace 1" located off the "Bed 1 & Bed 2" as shown on the approved plans. The privacy screen shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle (angled from the terrace outwards), in materials that complement the design of the approved development.

g) **"Terrace 3" Privacy Screen** - A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the "ground floor" terrace labelled "Terrace 3" located off the "living room" as shown on the approved plans. The privacy screen shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in materials that complement the design of the approved development.

h) **DELETED**.

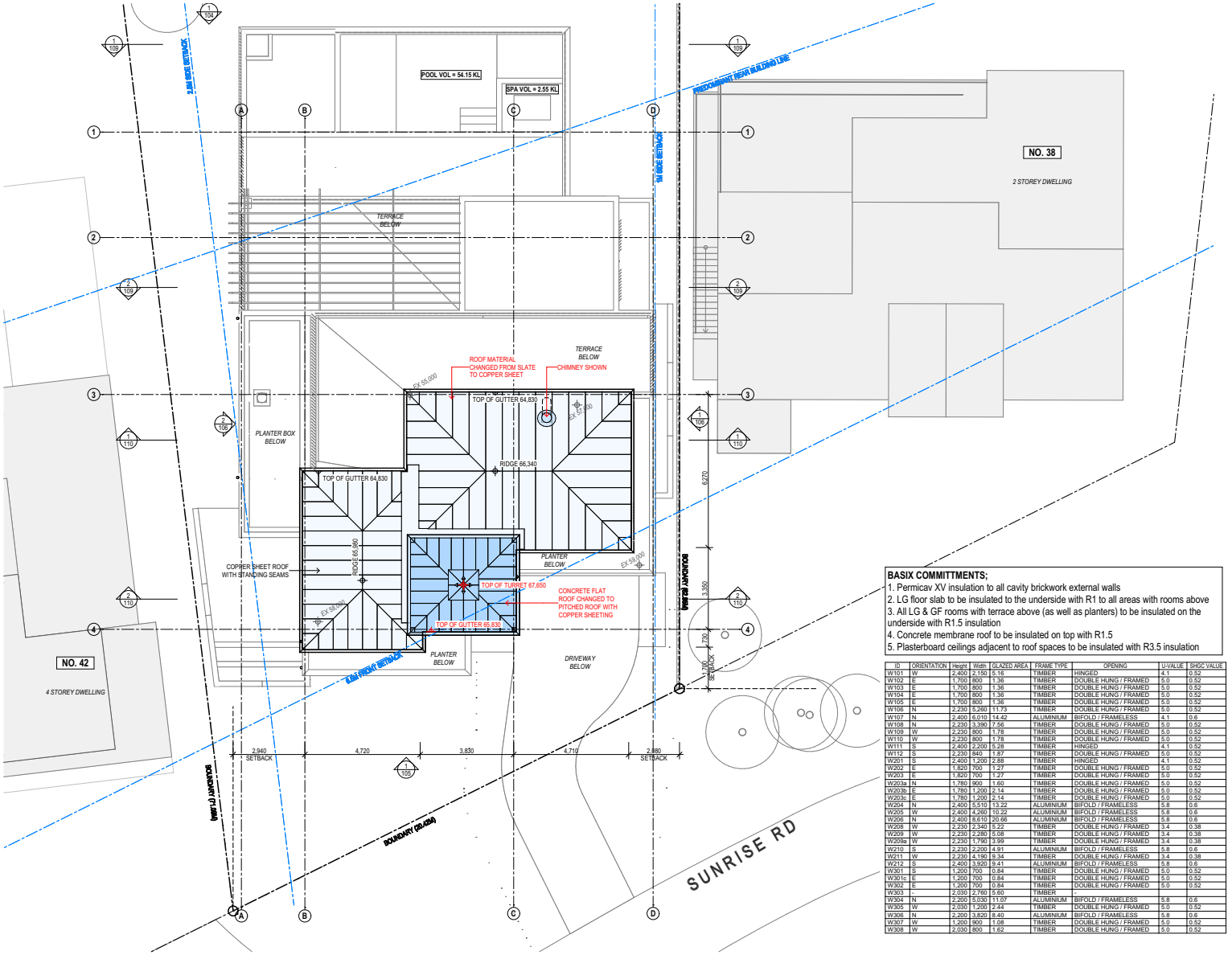
i) **"Swimming Pool Lawn" Privacy Screen** - A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the "lower ground floor" lawn area adjoining the proposed swimming pool as shown on the approved plans. The privacy screen shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle (angled from the lawn outwards), in materials that complement the design of the approved development.

j) **"Swimming Pool and Spa" Balustrading/fence** - The proposed swimming pool and spa is to incorporate solid balustrading/fencing for the entire length of the eastern elevation. This balustrading is to be constructed of nontransparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level.

k) **Swimming Pool and OSD wall** - The exterior of the wall below the proposed swimming pool and OSD tank shall be covered in sandstone cladding or similar which uses dark, earthy and natural coloured finishes and materials of low reflectivity

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.



BASIX COMMITTMENTS;
1. Permicav XV insulation to all cavity brickwork external walls
2. LG floor slab to be insulated to the underside with R1 to all areas with rooms above
3. All LG & GF rooms with terrace above (as well as planters) to be insulated on the underside with R1.5 insulation
4. Concrete membrane roof to be insulated on top with R1.5
5. Plasterboard ceilings adjacent to roof spaces to be insulated with R3.5 insulation

ID	ORIENTATION	Height	Width	GLAZED AREA	FRAME TYPE	OPENING	U-VALUE	SHGC VALUE
W101	W	2,400	2,150	5.16	TIMBER	HINGED	4.1	0.52
W102	E	1,700	800	1.36	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W103	E	1,700	800	1.36	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W104	E	1,700	800	1.36	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W105	E	1,700	800	1.36	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W106	N	2,230	5,260	11.73	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W107	N	2,400	6,010	14.42	ALUMINIUM	BIFOLD / FRAMELESS	4.1	0.6
W108	N	2,230	3,390	7.56	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W109	W	2,230	800	1.78	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W110	W	2,230	800	1.78	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W111	S	2,400	2,200	5.28	TIMBER	HINGED	4.1	0.52
W112	S	2,230	840	1.87	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W201	S	2,400	1,200	2.88	TIMBER	HINGED	4.1	0.52
W202	E	1,820	700	1.27	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W203	E	1,820	700	1.27	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W203a	N	1,780	900	1.60	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W203b	E	1,780	1,200	2.14	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W203c	E	1,780	1,200	2.14	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W204	N	2,400	5,510	13.22	ALUMINIUM	BIFOLD / FRAMELESS	5.8	0.6
W205	W	2,400	4,260	10.22	ALUMINIUM	BIFOLD / FRAMELESS	5.8	0.6
W206	N	2,400	8,610	20.66	ALUMINIUM	BIFOLD / FRAMELESS	5.8	0.6
W208	W	2,230	2,340	5.22	TIMBER	DOUBLE HUNG / FRAMED	3.4	0.38
W209	W	2,230	2,280	5.08	TIMBER	DOUBLE HUNG / FRAMED	3.4	0.38
W209a	W	2,230	1,790	3.99	TIMBER	DOUBLE HUNG / FRAMED	3.4	0.38
W210	S	2,230	2,200	4.91	ALUMINIUM	BIFOLD / FRAMELESS	5.8	0.6
W211	W	2,230	4,190	9.34	TIMBER	DOUBLE HUNG / FRAMED	3.4	0.38
W212	S	2,400	3,920	9.41	ALUMINIUM	BIFOLD / FRAMELESS	5.8	0.6
W301	S	1,200	700	0.84	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W301c	E	1,200	700	0.84	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W302	E	1,200	700	0.84	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W303	-	2,030	2,760	5.60	TIMBER	-	-	-
W304	N	2,200	5,030	11.07	ALUMINIUM	BIFOLD / FRAMELESS	5.8	0.6
W305	W	2,030	1,200	2.44	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W306	N	2,200	3,820	8.40	ALUMINIUM	BIFOLD / FRAMELESS	5.8	0.6
W307	W	1,200	900	1.08	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52
W308	W	2,030	800	1.62	TIMBER	DOUBLE HUNG / FRAMED	5.0	0.52

SUSAN ROTHWELL ARCHITECTS
38 SERPENTINE RD GREENWICH N.S.W 2065
TEL: (02) 9439 2380 FAX: (02) 9901 3185
EMAIL: susan@rothwellarchitects.com.au

N

NEW RESIDENCE
AT 40 SUNRISE ROAD, PALM BEACH
FOR SUSAN ROTHWELL

ISSUE

A: FOR DA SUBMISSION (05/21)

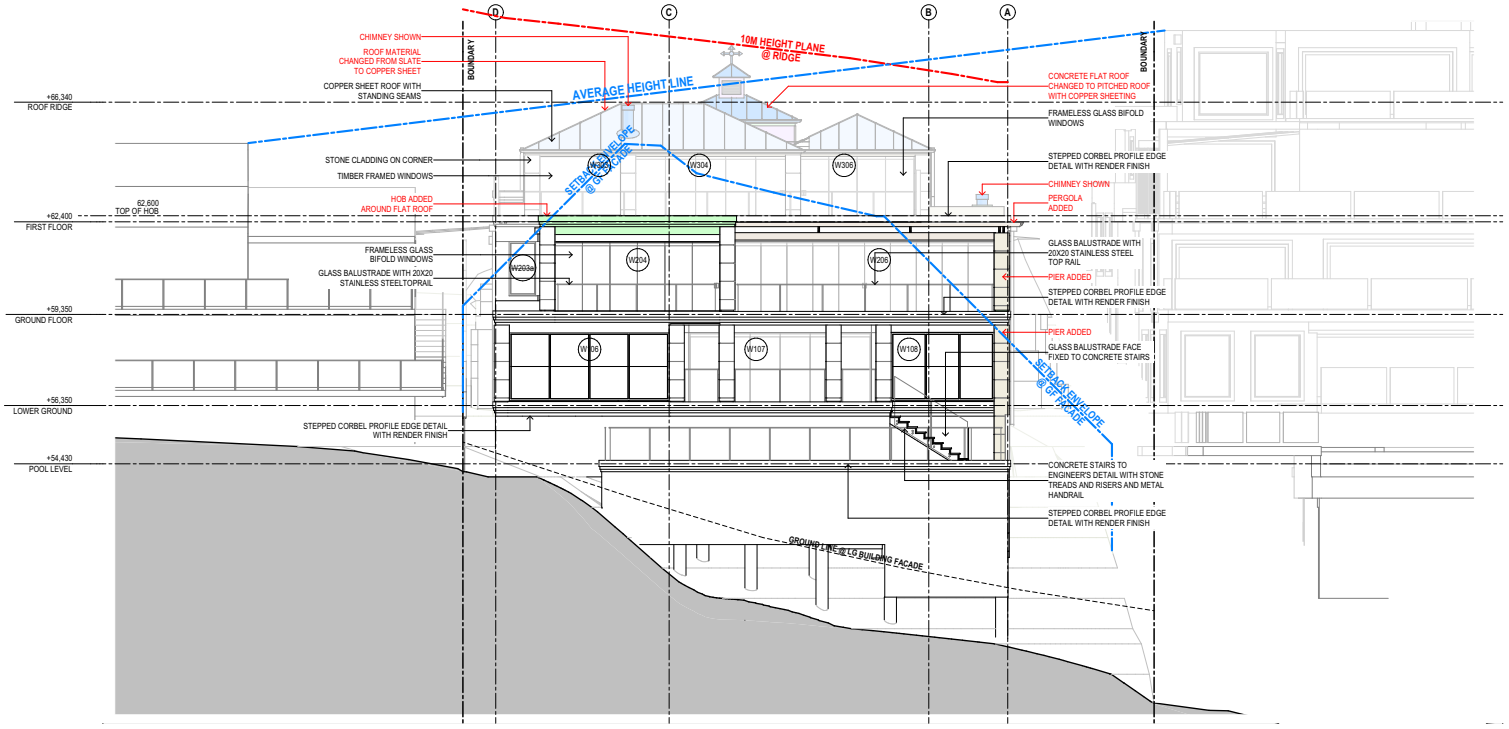
B: POOL SETBACK INCREADED AND ROOF LEVEL LOWERED IN RESPONSE TO COUNCIL COMMENTS (10/21)

C: FOR CC SUBMISSION (02/21)

D: ROOF MATERIAL CHANGED TO COPPER SHEETING, CHIMNEYS SHOWN, AND FLAT ROOF OVER LIFT CHANGED TO A PITCHED ROOF FOR 4.55 SUBMISSION (03/21)

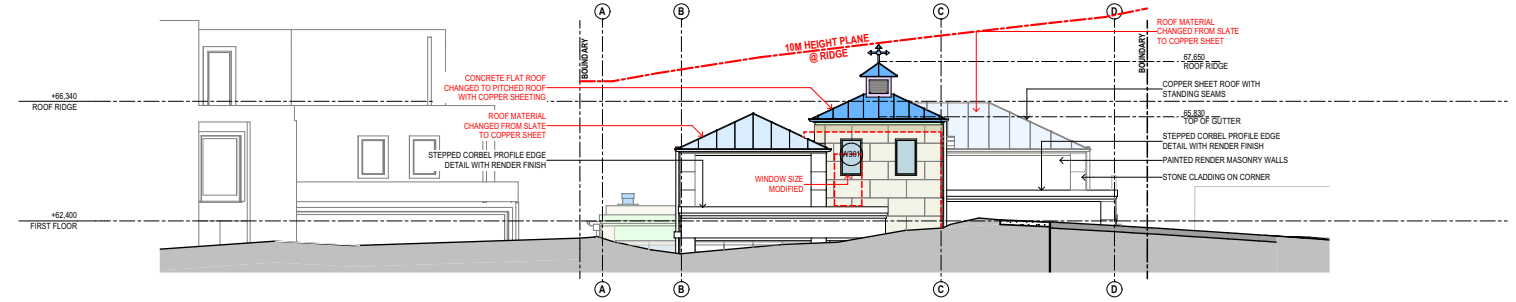
SITE AND ROOF PLAN

SCALE	1:100@A2
DATE	13/03/23
JOB NO.	SRSP
DWG. NO.	DA100
ISSUE	D

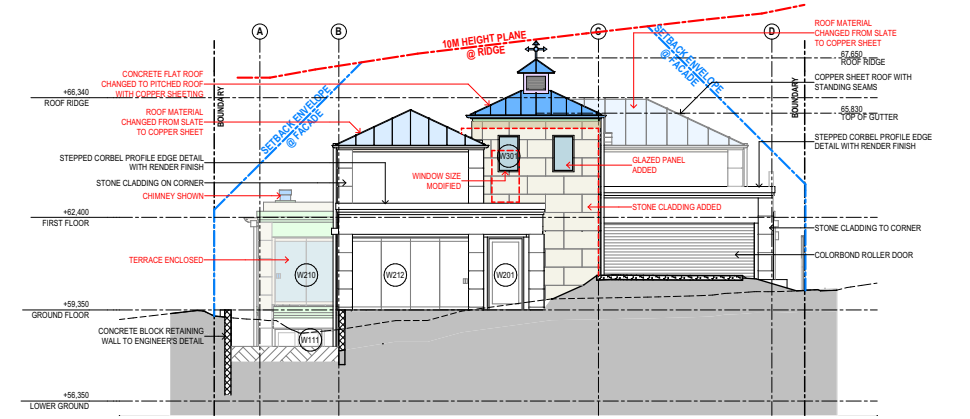


1 - NORTH ELEVATION
1:100

SUSAN ROTHWELL ARCHITECTS 38 SERPENTINE RD GREENWICH N.S.W 2065 TEL: (02) 9439 2380 FAX: (02) 9901 3185 EMAIL: susan@rothwellarchitects.com.au	**NEW RESIDENCE** AT 40 SUNRISE ROAD, PALM BEACH LOT 151 / DP 6937 FOR SUSAN ROTHWELL	D. HOB ADDED TO FLAT ROOF OVER D/N'G. PERGOLA ADDED. ROOF MATERIAL CHANGED TO COPPER SHEETING. CHIMNEYS SHOWN AND FLAT ROOF OVER LIFT CHANGED TO PITCHED ROOF FOR 4.55 SUBMISSION (10/21) C. FOR CC SUBMISSION (02/21) B. BUILDING LEVELS LOWERED AND DINING ROOM SETBACK INCREASED IN RESPONSE TO COUNCIL COMMENTS (10/21) A. FOR DA SUBMISSION (09/21) ISSUE
NORTH ELEVATION SCALE: 1:100@A2 DATE: 13/03/23 PROJECT: SRSP DWG NO.: DA104 ISSUE: D		



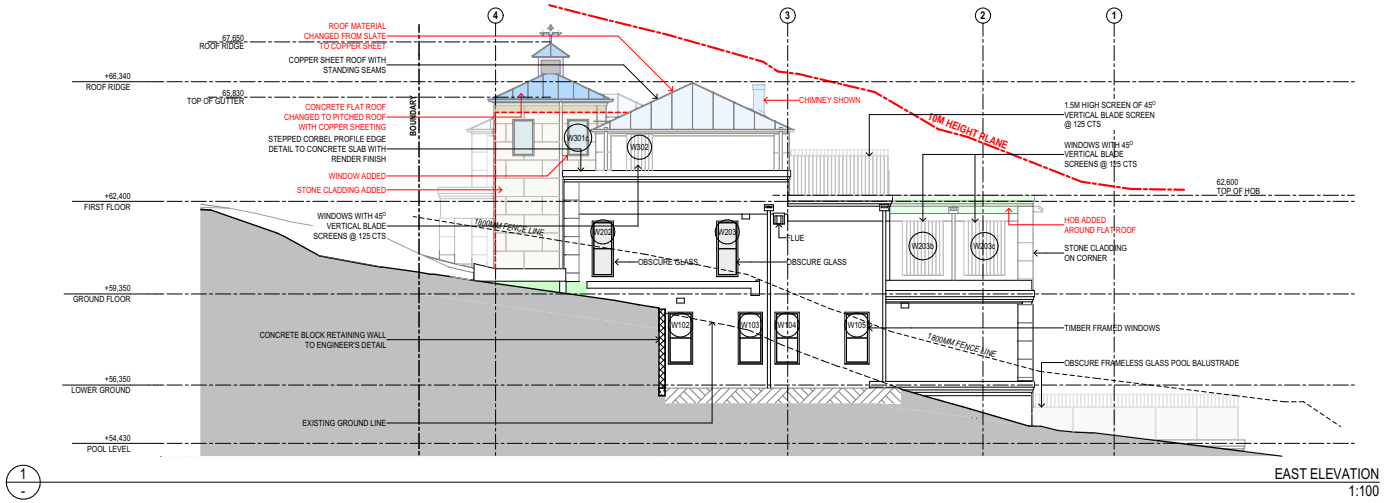
1 - SOUTH ELEVATION (STREET VIEW) 1:100



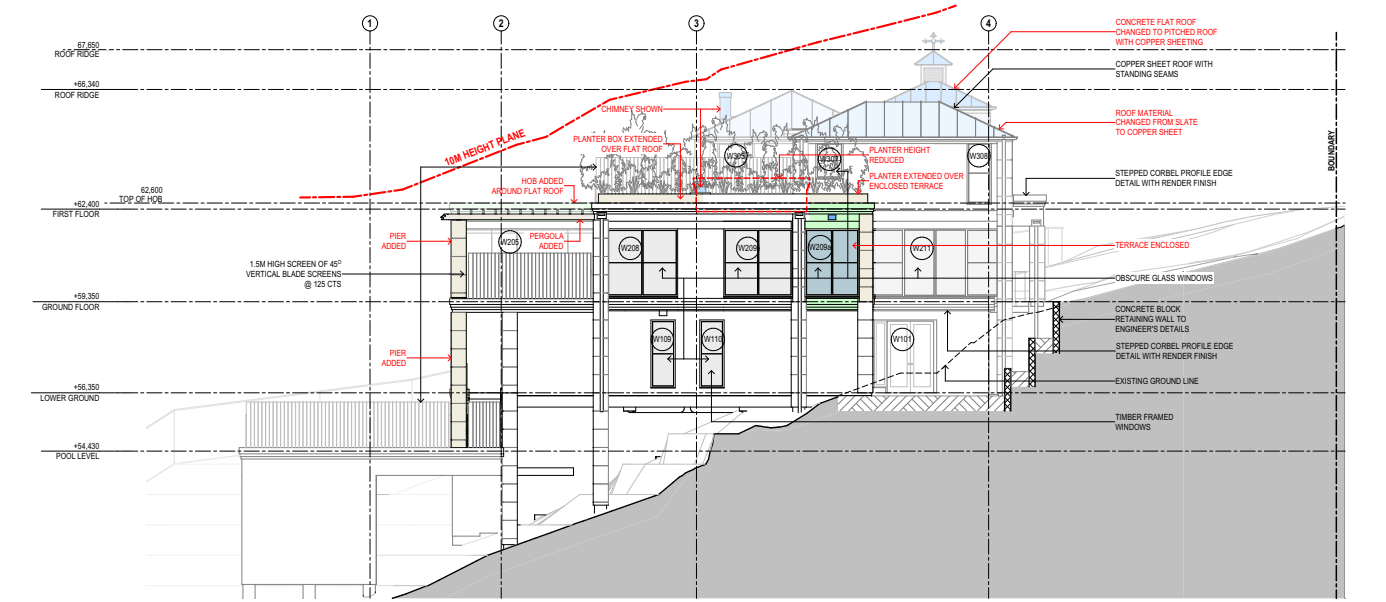
2 - SOUTH ELEVATION (AT FACADE) 1:100

SUSAN ROTHWELL ARCHITECTS 38 SERPENTINE RD GREENWICH N.S.W 2065 TEL: (02) 9439 2380 FAX: (02) 9901 3185 EMAIL: susan@rothwellarchitects.com.au	**NEW RESIDENCE** AT 40 SUNRISE ROAD, PALM BEACH LOT 151 / DP 6937 FOR SUSAN ROTHWELL	SOUTH ELEVATION SCALE: 1:100@A2 DATE: 13/03/23 PROJECT: SRSP DWG NO.: DA105 ISSUE: E

ISSUE
E. ROOF MATERIAL CHANGED TO COPPER SHEETING, CHIMNEYS SHOWN, ROOF OVER LIFT CHANGED TO PITCHED, ROOF, STONE CLADDING ADDED TO LIFT LOBBY AND TERRACE ENCLOSED FOR 4.55 SUBMISSION (03/21)
D. FOR CC SUBMISSION (02/21)
C. TERRACE 4 DELETED AND WINDOW W4 EXTENDED FOR 4.55 SUBMISSION (10/22)
B. BUILDING LEVELS LOWERED IN RESPONSE TO COUNCIL COMMENTS (10/21)
A. FOR DA SUBMISSION (09/21)



1 - EAST ELEVATION 1:100



2 - WEST ELEVATION 1:100

SUSAN ROTHWELL ARCHITECTS
38 SERPENTINE RD GREENWICH N.S.W 2065
TEL: (02) 9439 2380 FAX: (02) 9901 3185
EMAIL: susan@rothwellarchitects.com.au

N

NEW RESIDENCE
AT 40 SUNRISE ROAD, PALM BEACH
FOR SUSAN ROTHWELL

ISSUE

A: FOR DA SUBMISSION (05/21)

B: GARAGE SETBACK INCREASED, DINING ROOM SETBACK INCREASED AND FLOOR LEVELS LOWERED IN RESPONSE TO COUNCIL COMMENTS (10/21)

C: TERRACE 4 DELETED AND LIVING ROOM EXTENDED FOR 4.55 SUBMISSION (10/22)

D: FOR CC SUBMISSION (02/21)

E: FOR 4.55 SUBMISSION (02/21)

F: HOB ADDED TO FLAT ROOF OVER DINING, PERGOLA ADDED, PLANTER HEIGHT REDUCED AND LENGTH EXTENDED OVER ENCLOSED TERRACE UNDER, ROOF MATERIAL CHANGED TO COPPER SHEETING, CHIMNEYS SHOWN, ROOF OVER LIFT CHANGED TO A PITCHED ROOF, STONE CLADDING ADDED TO LIFT LOBBY AND TERRACE ENCLOSED FOR 4.55 SUBMISSION (03/21)

EAST AND WEST ELEVATIONS

SCALE	1:100@A2
DATE	13/03/23
JOB NO.	SRSP
DWG. NO.	DA106
ISSUE	E

ITEM 3.7	**DA2023/0564 - 25B BAKERS ROAD CHURCH POINT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE**
REPORTING MANAGER	**Steve Findlay**
TRIM FILE REF	**2023/558013**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations** **3 ⇩Report - 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 PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. THAT Council as the consent authority **approves** Development Consent to DA2023/0564 for alterations and additions to a dwelling house on land at Lot 18 DP 748987, 25B Bakers Road CHURCH POINT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0564

Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 18 DP 748987, 25 B Bakers Road CHURCH POINT NSW 2105
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Samuel Antony Van Dyke Sarah Frances Laman
Applicant:	Sarah Frances Laman

Application Lodged:	19/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/05/2023 to 12/06/2023
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: 46.6%
Recommendation:	Approval

Estimated Cost of Works:	$ 495,000.00

EXECUTIVE SUMMARY

This application seeks consent for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to a departure from the height of buildings development standard by more than 10%. The maximum height of the proposed development has been measured at 12.46m, which represents a variation of 46.6% to the prescribed 8.5m building height limit. The application is also required to be determined by DDP due to the number of submissions, see below.

The clause 4.6 request for the non-compliance with the building height standard arises from the

sloping nature of the site towards the north-east and the existing parking area excavation, based on the height measurement under Merman. The height non-compliance is limited to the proposed lift shaft. Based on extrapolated natural ground levels under Bettar, the height of this structure would only be measured at a maximum of 8.5m. The remainder of the building is compliant with the 8.5m height limit.

The application was notified in accordance with Council's Community Participation Plan. Six (6) submissions were received, including five (5) objections which raised several issues including building envelope and setback non-compliance, access and parking issues, landslip hazard and impacts upon solar access, views and wildlife corridors.

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the prevailing built form of the locality and will not cause unreasonable impact to the amenity of adjacent properties, including solar access, privacy and view sharing. The proposed additions retain the low density residential character, while being built primarily upon the existing footprint and not resulting in the removal of any significant vegetation or require significant alteration to the landform.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling including a first floor addition and garage.

As outlined in the submitted SEE, the proposal involves the following elements:

- Construct a new double garage with a car lift (to accommodate 4 vehicles off road) and a mezzanine storage in the location of the existing hardstand off the driveway. No excavation required.
- Add a passenger lift to the garage to connect to the main living level of the existing dwelling,
- At the lower ground floor level convert the store room to a bedroom, add a media room and covered deck under the existing dwelling, with the deck connecting to the lift.
- At the ground floor level, increase the existing deck towards the north boundary to connect to the new lift, add a pergola over the deck for all-weather use and cover from the lift to the house
- At the ground floor level, add a bedroom, ensuite and laundry addition towards the south boundary at a mid floor level to a new upper floor. Remove two small trees to accommodate this area.
- Add an upper floor level consisting of a 'parents retreat' type area of a bedroom, ensuite and walk-in robe.

AMENDED PLANS

During assessment, the applicant submitted amended plans that lowered the leading edge of the garage and storage area roof by 900mm (RL 58.745 to RL 57.845). This amendment was made to reduce the visual bulk of the structure on the eastern adjacent property.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D4.6 Side and rear building line
Pittwater 21 Development Control Plan - D4.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 18 DP 748987 , 25 B Bakers Road CHURCH POINT NSW 2105
Detailed Site Description:	The subject site consists of one (1) allotment located on the southwestern side of Bakers Road. The site is battle-axe in shape with a frontage of 1.5m along Bakers Road, an access handle length of 76.385m, a width of 39.365m and a depth of 33.035m. The site has a surveyed area of 912.3m² (797.7m^2 excluding the access handle). The site is located within the C4 Environmental Living zone and accommodates a single storey residential dwelling house. The site has a complex topography and falls approx. 22m from the west towards the east (excluding the fall of the access handle) with an average gradient of 31%. The site is predominantly vegetated with several canopy trees and undergrowth vegetation. Several exposed rock

	outcrops are found throughout the site. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by low density residential dwellings within a bushland setting.

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:

Application **N0889/02** for a single dwelling and carparking area was approved on 16/08/2003.

Application **N0552/06** for a new steel framed, 2 bedroom dwelling with open plan living space and associated decking was approved on 29/01/2007 by the former Pittwater Development Unit.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an amended stormwater management plan. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic

Section 4.15 Matters for Consideration	Comments
	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 29/05/2023 to 12/06/2023 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 6 submission/s from:

Name:	Address:
Mrs Simona Jane Salinger	4 Corniche Road CHURCH POINT NSW 2105
Peter Cotton	27 A Bakers Road CHURCH POINT NSW 2105
Ms Susan Leslie Rose	13 Bakers Road CHURCH POINT NSW 2105
Mr Bruno Buras	25 A Bakers Road CHURCH POINT NSW 2105
Mrs Jacqueline Yvonne Challenor Mr Andrew Mark Challenor	23 B Bakers Road CHURCH POINT NSW 2105
Mr Sydney Francis Dyer	PO Box 1506 WARRIEWOOD SHOPPING SQUARE NSW 2102

The notification resulted in six (6) submissions, five (5) of which objected to the proposal and one (1) supported the proposal.

The following issues were raised in the submissions:

- Setbacks

- Overshadowing
- Landslip hazard
- Access and parking
- View impact
- Acoustic impact
- Excavation
- Consistency with zone objectives
- Accuracy of submitted plans and documentation

The above issues are addressed as follows:

- **Setbacks**

  The submissions raised concerns that the proposed development does not comply with the minimum boundary setback requirements.

  Comment:

  A detailed assessment of the setbacks of the proposed development is included in this report under part D4.6 of P21DCP. Overall, the setbacks of the proposed development are considered to be generally consistent with the outcomes of the control.

- **Overshadowing**

  The submissions raised concerns that the proposed development will result in unreasonable overshadowing of adjacent properties.

  Comment:

  Overall, the proposed development demonstrates consistency with the outcomes and requirements of the solar access control. To reduce the extent of overshadowing of the garage and storage area on the eastern adjacent dwelling during the afternoon, the applicant submitted amended plans to lower the leading edge of the roof above the storage area by 900mm. This will improve solar access to the adjacent property and reduce the visual bulk of the structure.

- **Landslip hazard**

  The submissions raised concerns that the site is vulnerable to landslip at that the proposed development poses an unacceptable risk to landslip.

  Comment:

  The applicant has submitted a Geotechnical Report, which has been reviewed by Council's Development Engineer and they raised no objection to the report, subject to the implementation of the report's recommendations. The proposed development is considered to appropriately respond to the geotechnical and landslip hazards of the site and is unlikely to result in an increased landslip risk.

- **Access and parking**

The submissions raised concerns that the proposed parking solution is not acceptable for the site and that vehicle access to the site is not sufficient.

Comment:

The applicant proposes four (4) off-street parking spaces utilising two car stackers in the proposed garage. This is an increase of two spaces to the existing development. It is considered the additional parking spaces are appropriate for the site due to the limited on-street parking availability and narrow street. The proposal will reduce the on-street parking demand and improve traffic safety on Bakers Road. The spatial characteristics of the proposed parking solution are similar to that of the existing situation, which is considered acceptable.

- **View impact**

  The submissions raised concerns that the proposed development impacts upon view corridors towards the Pittwater waterway.

  Comment:

  This assessment has taken into consideration the potential view impacts of the development on adjacent and nearby properties in accordance with the planning principle set out in Tenacity Consulting v Warringah [2004] NSWLEC 140. The proposed development is not expected to unreasonably impact upon existing view corridors towards the Pittwater waterway, as the primary view corridor is towards the north-east. Relative to the siting of other nearby dwellings, the proposed development is to the north and north-west, which is outside of the primary north-east view corridor. The bulk and scale of the proposed development is generally commensurate to that of other dwellings in the locality.

- **Acoustic impact**

  The submissions raised concerns that the proposed lift will cause unreasonable acoustic amenity impacts.

  Comment:

  A condition is recommended to ensure noise from the lift motor is limited to 5dBA above background levels at the nearest property boundary. This will ensure unreasonable acoustic impacts can be mitigated.

- **Excavation**

  The submissions raised concerns that the proposed development includes excavation that will unreasonably impact upon the site and surrounds.

  Comment:

  The proposed development does not involve any significant excavation. The proposed garage is to utilise the existing excavated area currently used for parking. No additional excavation is required to facilitate the proposed garage.

- **Consistency with zone objectives**

  The submissions raised concerns that the proposed development is inconsistent with the

objectives of the C4 Environmental Living zone.

Comment:

The proposed development is considered to adequately address the objectives of the C4 Environmental Living zone. A detailed assessment of the proposal in relation to the zone objectives is included in this report under clause 4.6 of PLEP 2014.

- **Accuracy of submitted plans and documentation**

  The submissions raised concerns that the submitted plans and documentation do not accurately reflect the proposed development and its impacts upon adjacent properties.

  Comment:

  The plans and documentation submitted by the applicant have been reviewed and are considered to conform with Council's DA Lodgement Requirements. Despite what is depicted on the submitted plans or supporting documentation, the potential impacts of the proposed development upon all adjacent properties has been considered in this assessment.

One objection received included concerns regarding a matter not related to the subject site or proposed development. As these concerns do not relate to the proposed development, they are not a matter for consideration for the purpose of this assessment.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (PDCP) controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D4 Church Point and Bayview Locality The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. In terms of natural landscape features the property supports many locally native trees and a natural rock outcrop. It is noted the property falls within the Biodiversity Values Map (BVM) under the Biodiversity Conservation Act, and any tree removal within the BVM may trigger the Biodiversity Offsets Scheme (BOS). This specific matter is deferred to Council's Bushland & Biodiversity Referral team. The submitted Arboricultural Impact Assessment includes the recommendation to remove one native Black She-Oak (tree 6)

Internal Referral Body	Comments
	suppressed by surrounding trees and located within the footprint of the proposed addition, and it is noted that this tree appears to be outside of the identified BVM zone. Subject to confirmation from Council's Bushland & Biodiversity Referral team that tree 6 is outside of the BVM zone, Landscape Referral raise no objections to removal should the application be approved. One tree impacted by the proposed works is identified as an exempt species (tree 7 - Port Jackson Fig) by height in the Arboricultural Impact Assessment, and it is noted that this tree appears to be outside of the identified BVM zone. Subject to confirmation from Council's Bushland & Biodiversity Referral team that tree 7 is outside of the BVM zone, Landscape Referral raise no objections to removal should the application be approved, and removal of tree does not require Council consent for management or removal should it be outside of the BVM zone. The Arboricultural Impact Assessment provides tree protection measures including the requirements for engagement of a project arborist, and conditions shall be imposed. The proposed development works results in the removal of two locally native trees (trees 6 and 7), and the retention of seventeen locally native trees including fourteen assessed with high retention value. The proposed addition includes development over the existing rock outcrop in part however this is not considered detrimental to the principles of the C4 Environmental Living zone, and the proposal incorporates the natural rock outcrop into the design scheme and the natural rock outcrop remains visible and featured as part of the design scheme. The landscape setting of the property is maintained and not impacted by the proposed development, and the landscape outcomes of PLEP C4 Environmental Living zone and PDCP B4.22, C1.1 and D4 are satisfied in terms of the landscape objectives.
NECC (Bushland and Biodiversity)	The proposal seeks approval for alterations and additions to a single dwelling. The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater LEP 2014 - Part 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development

Internal Referral Body	Comments
	Assessment Report (BDAR). However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS. An arboricultural impact assessment has been submitted with the application and recommended the removal of Tree 6 (Allocasuarina littoralis) and Tree 7 (Ficus rubiginosa) which are both native prescribed species. However, Tree 7 is considered exempt under current rules as it is under 5 metres in height. Conditions will be imposed to ensure compliance with applicable controls. Retention of vegetation in BV Map areas is required and replacement of canopy trees approved for removal is to take place. Removal of weeds will be required to improve conditions for naturally occurring native vegetation. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Development Engineering)	The submission has not addressed the requirements for on site detention as per Section 9.3.1 of Councils *Water Management for Development Policy Version 2 dated 26 February 2021.* Amended plans need to address these requirements. **Engineering Comments 24.08.23** Amended Stormwater Management Plans have been submitted showing on sit detention for the development area. A Geotechnical report has been submitted. I have no further objections to the proposed development.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	If areas of in situ sandstone outcrop are in the proposed development area or revealed during works (i.e. platforms over 2m square), the Aboriginal Heritage Office would recommend a preliminary inspection by a qualified Aboriginal heritage professional prior to any further development. If there are no existing sandstone outcrops present (or if any outcrops that were present were properly excluded from future impacts), then no further assessment is required and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal.

External Referral Body	Comments
	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.

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. A496434, dated 10/05/2023). 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.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m (Subclause 2D - 10m)	Dwelling - 8.5m	N/A	Yes
		Lift - 12.46m	46.6%	**No**

Compliance Assessment

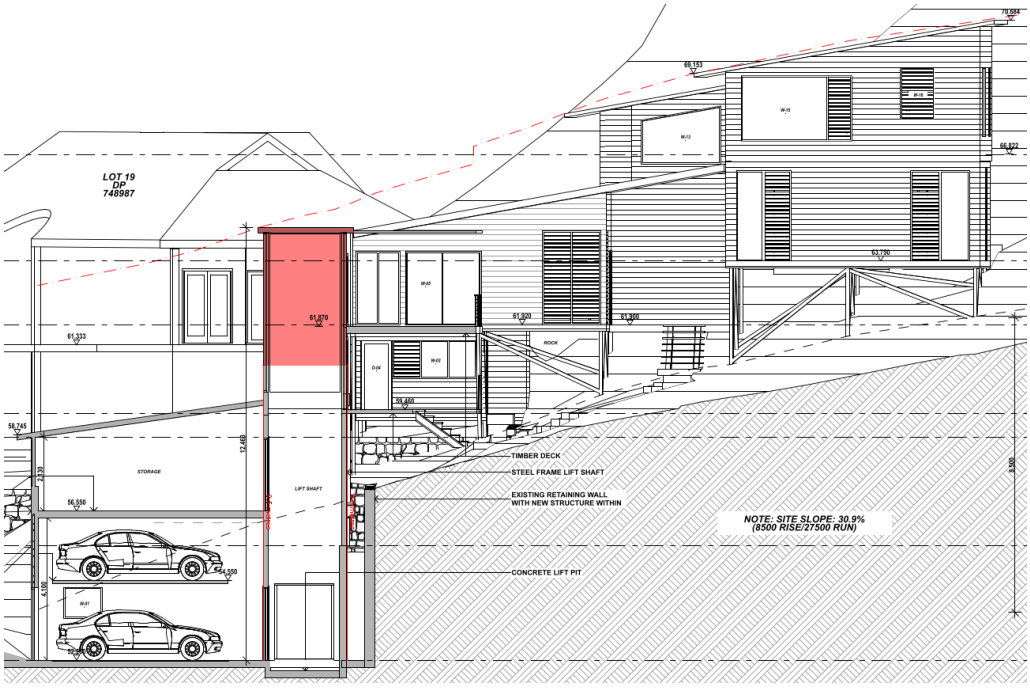
Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard	Height of buildings
Requirement	8.5m
Proposed	12.46m
Percentage variation to requirement	46.6%



Assessment of Request to Vary a Development Standard

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

Clause 4.6 Exceptions to Development Standards

(1) The objectives of this clause are as follows:
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Comment:

Clause 4.3 - Height of Buildings development standard is not expressly excluded from the operation of

this clause.

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)
The objects of this Act are as follows:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
(c) to promote the orderly and economic use and development of land,
(d) to promote the delivery and maintenance of affordable housing,
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

Applicants Written Request

The applicants written request argues, in part:

Existing Excavation
The proposed height breach is a direct consequence of existing excavation at the garage floor level. As demonstrated in Figure 1, the proposed upper floor is maintained below the 8.5m height plane when measured to extrapolated/assumed pre-existing ground levels.

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

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

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider C4 Zone.

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 building height is artificially accentuated due to the existing area of excavation relative to the prevailing slope of the site and surrounds.
- The proposed development generally 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 C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

While the proposal includes some numerically non-compliant built form elements, the bulk and scale of the development is considered to be reasonably managed to limit impact on other

properties, given the geographical characteristics of the site and surrounds. The proposed development will not impact upon the existing and desired streetscape character as the dwelling is sited behind existing dwellings of Bakers Road and cannot be easily seen from the street.

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

Comment:

The height and scale of the proposed garage and dwelling is generally consistent with that of similar structures and dwellings in the site vicinity.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development will not cause unreasonable overshadowing of adjacent properties.

d) to allow for the reasonable sharing of views,

Comment:

No views or vistas are expected to be unreasonably impacted as a result of the development.

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

Comment:

The proposed development is appropriately stepped to respond with the steep topography of the site while also ensuring functional residential development can be provided on the site.

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

Comment:

Majority of the existing trees and vegetation are to be retained. The existing canopy trees and vegetation on and around the site will soften the built form and its visual impact on the natural environment.

Zone Objectives

The underlying objectives of the C4 Environmental Living zone are:

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

  Comment:

  Through its design and siting, the proposed development is considered to have low impact on the ecological and aesthetic values of the site.

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

  Comment:

  The proposed development is not expected to cause adverse impacts to the ecological and aesthetic values on the site.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

  Comment:

  The proposed development provides for a low density residential dwelling with ancillary structures that provide greater functionality than the existing conditions.

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

  Comment:

  The proposed development is not expected to cause unreasonable impact to wildlife corridors that the site may contain.

Conclusion:

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

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	6.5m	>6.5m	N/A	Yes
Rear building line	6.5m	6.0m	7.7%	**No**
Side building line	SE - 2.5m	12.3m (dwelling)	N/A	Yes

		3.0m (garage)	N/A	Yes
	NW - 1.0m	1.2m (dwelling)	N/A	Yes
	NE - 1.0m	3.8m (dwelling)	N/A	Yes
		2.2m (balcony)	N/A	Yes
		2.0m (garage)	N/A	Yes
Building envelope	SE - 3.5m	Within envelope	N/A	Yes
	NW - 3.5m	Outside envelope	64%	**No**
	NE - 3.5m	Outside envelope	27.4%	**No**
Landscaped area	60% (478.6m^2)	62.7% (499.8m^2)	N/A	Yes

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	No	Yes
D4.8 Building envelope	No	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D4.6 Side and rear building line

Description of Non-compliance

The control prescribes a side setback of 2.5m to one side and 1.0m to the other sides and a rear setback of 6.5m. For this assessment, the 2.5m side building line applied to the south-eastern boundary and the 1.0m side building line is applied to the north-western and north-eastern (excluding street frontage) boundaries. The rear setback building line is applied to the south-western boundary line.

The proposed development is setback 6.0m from the rear boundary, which is a 7.7% variation to the control requirement.

The proposed development demonstrates compliance with all other building setback requirements.

Merit Consideration

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

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

  Comment:

  The proposed works will maintain a low density residential build, with spatial proportions that are considered consistent with the surrounding development. The works will achieve the desired future character of the Church Point and Bayview Locality.

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

  Comment:

  The side and rear setback areas consists of well-maintained landscaped areas including various shrubs and trees, the vegetation will aid in the mitigation of any perceivable bulk and

scale. The proposal retains existing rear setback and is expected to be of a built form that is compatible with the surrounding streetscape. In addition, existing canopy trees on site will be maintained to continue to soften the built form.

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

  Comment:

  The proposed works exhibits a building height generally complaint with the 8.5m standard (excluding the proposed lift) and is not considered to result in unacceptable view loss to surrounding private properties or the public domain.

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

  Comment:

  As above, the works have been positioned in an acceptable manner, and is not considered to result in unacceptable view loss.

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

  Comment:

  It is considered that the proposal provides adequate spatial separation between adjoining buildings, and has been accompanied with compliant shadow diagrams. The works are not considered to unacceptably impact upon the amenity or reduce privacy levels the to neighbouring properties.

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

  Comment:

  As mentioned above, the site will retain existing canopy trees and will comprise of amply vegetation within the building setbacks. The proposed works do not necessitate in the removal of any significant trees or plantings and is considered to continue to aid in the visual reduction of the the built form.

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

  Comment:

  The proposal maintains the original access arrangements on site and will remain flexible in terms of the siting of the building.

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

Comment:

The existing vegetation and mature trees on site will be retained and will continue to enhance and reduce the built form of the development. In addition, the proposal provides a compliant landscaped area.

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

  Comment:

  Not applicable.

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

D4.8 Building envelope

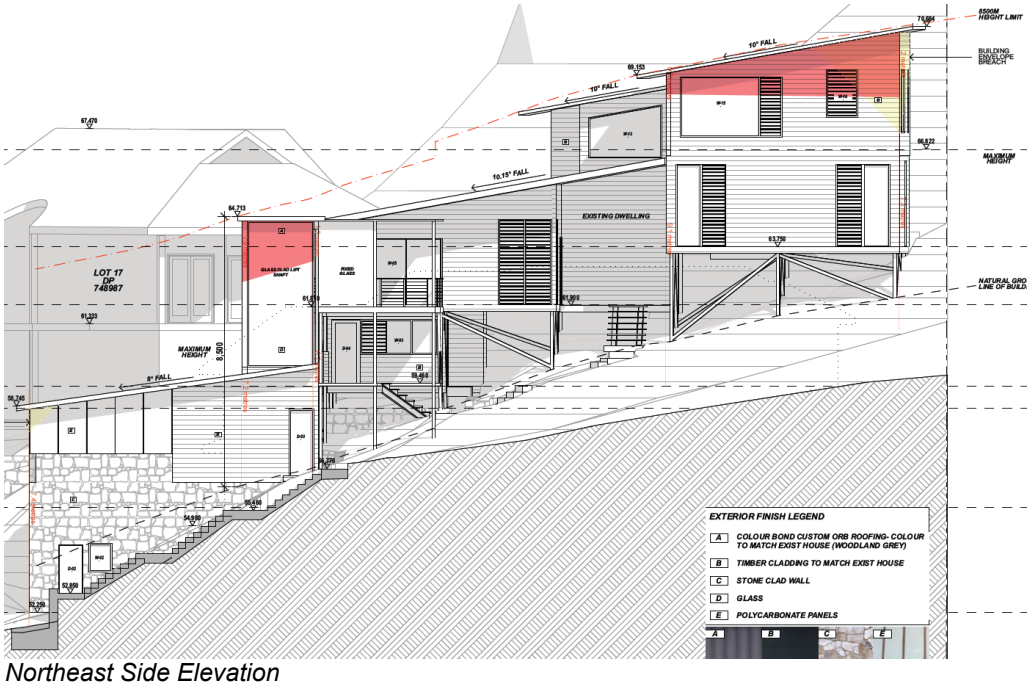
Description of Non-compliance

The control requires development to be within a building envelope projected at 45 degrees at a height of 3.5m above the side boundary.

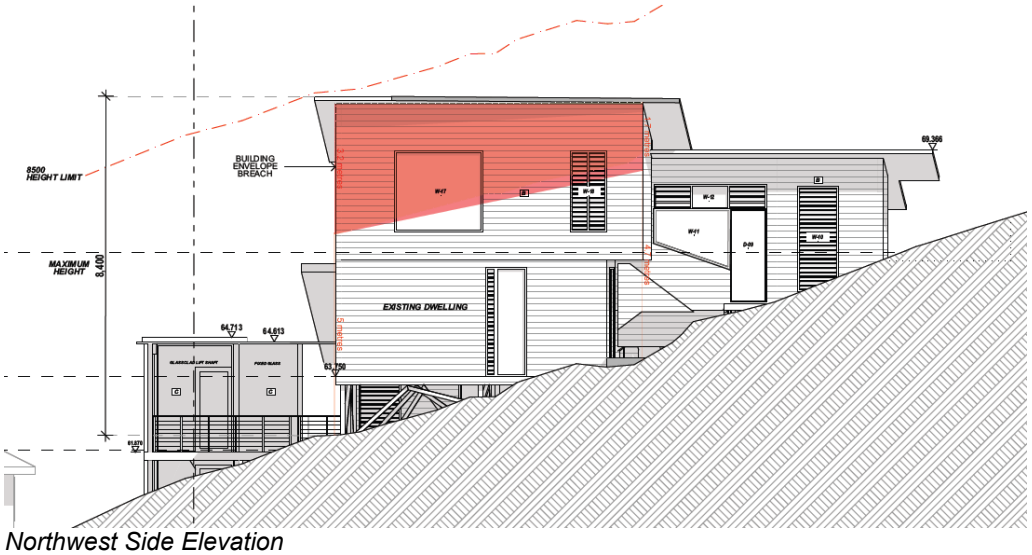
Where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis.

The proposed first floor addition encroaches beyond the building envelope along the north-east elevation up to 2m (27.4%) and north-west elevation up to 3.2m (64%).

The proposed lift shaft encroaches beyond the building envelope along the north-east elevation up to 1.9m (26.4%).



Northeast Side Elevation



Northwest Side Elevation

Merit Consideration

With regard to the consideration of the variation, the development is considered under the outcomes of the control below

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

  Comment:

The proposed development generally maintains the existing footprint of the dwelling. It is considered that the proposal is consistent with the desired future character of the Church Point and Bayview locality.

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

  Comment:

  The building envelope non-compliance will not unreasonably impact on the streetscape or result in a building scale or density that is below the height of trees.

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

  Comment:

  The proposal appropriately relates to the spatial characteristics of the existing development and the natural environment.

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

  Comment:

  Overall, the proposed development is not considered to unreasonably increase the bulk and scale of the built form of the existing dwelling and demonstrates consistency with the bulk and scale of existing development in the locality. To further reduce the bulk and scale of the proposed development, the applicant submitted amended plans to lower the leading edge of the storage area roof by 900mm.

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

  Comment:

  No views or vistas will be unreasonably impacted as a result of the proposal. Adequate building separation will be maintained between adjoining and surrounding properties which will contribute to the equitable preservation of views and vistas to and/or from public/private places.

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

  Comment:

  No unreasonable additional impact on the levels of amenity and solar access to adjoining properties are expected.

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

  Comment:

  Existing and proposed vegetation is considered to adequately reduce the visual bulk of the built form.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $4,950 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $495,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the development exceeding the building height development standard by more than 10% and there being 5 or more submissions objecting to the application.

The concerns raised in the objections have been addressed, with some resolved by conditions of consent.

The critical assessment issues are the variations to the permitted building height, rear setback, building envelope, overshadowing and visual privacy.

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 PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/0564 for Alterations and additions to a dwelling house on land at Lot 18 DP 748987, 25 B Bakers Road, CHURCH POINT, 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**
2304 A-01 Issue A	01/05/2023	Gartner Trovato Architects
2304 A-03 Issue A	01/05/2023	Gartner Trovato Architects
2304 A-04 Issue A	01/05/2023	Gartner Trovato Architects
2304 A-05 Issue A	01/05/2023	Gartner Trovato Architects
2304 A-06 Issue A	01/05/2023	Gartner Trovato Architects
2304 A-07 Issue A	01/05/2023	Gartner Trovato Architects
2304 A-08 Issue B	30/08/2023	Gartner Trovato Architects
2304 A-09 Issue A	01/05/2023	Gartner Trovato Architects
2304 A-10 Issue B	30/08/2023	Gartner Trovato Architects
2304 A-11 Issue B	30/08/2023	Gartner Trovato Architects
2304 A-12 Issue B	30/08/2023	Gartner Trovato Architects
2304 A-13 Issue A	01/05/2023	Gartner Trovato Architects

Engineering Plans		
Drawing No.	**Dated**	**Prepared By**
230803 SW1 Issue DA	14/08/2023	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate No. A496434	10/05/2023	Gartner Trovato Architects
Arboricultural Impact Assessment	April 2023	Treeism Arboricultural Services
Geotechnical Assessment (Ref: 2023-078)	08/05/2023	Crozier Geotechnical Consultants

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

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

Waste Management Plan		
Drawing No/Title.	**Dated**	**Prepared By**
Waste Management Plan	Undated	Unnamed

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	01/06/2023

(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 the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014.

Any variation to the approved land use 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. **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. **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.

6. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.

(c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be

maintained in a safe and clean state until such time as new construction works commence.

(e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than $250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

i) Building/s that are to be erected

ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place

iii) Building/s that are to be demolished

iv) For any work/s that is to be carried out

v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

(1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in 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

7. **Policy Controls**
Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of $4,950.00 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 $495,000.00.

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.

8. **Security Bond**

A bond (determined from cost of works) of $2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **No Clearing of Vegetation**
Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

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 to the street through an on site detention system.

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 of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 08.05.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Boundary Identification Survey**
A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

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

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

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

14. **External Finishes to Roof**
The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

15. **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

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

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
a) section 5. Recommendations.

All tree protection measures specified must:
a) be in place before work commences on the site, and
b) be maintained in good condition during the construction period, and
c) remain in place for the duration of the construction works.

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

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

Reason: Tree protection.

17. **Tree Removal Within the Property**
This consent approves the removal of existing tree(s) on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:
a) tree 6,
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.

18. **Pre-Construction Dilapidation Report**
Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of the driveway and any associated structure shared with Lots 15, 16, 17 and 19 DP 748987.

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

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

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

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

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

DURING BUILDING WORK

19. **Protection of Rock and Sites of Significance**
All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works. Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council (MLALC) are to be contacted.

Reason: Preservation of significant environmental features.

20. **Tree and Vegetation Protection**
a) Existing trees and vegetation shall be retained and protected, including:
i) all trees 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.

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

Reason: To protect native wildlife.

22. **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.

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. **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.

25. **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.

26. **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.

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

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

28. **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.

29. **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.

30. **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.

If areas of in situ sandstone outcrop are in the proposed development area or revealed during works (i.e. platforms over $2m^2$), a preliminary inspection by a qualified Aboriginal heritage professional must be conducted prior to any further development.

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

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. **Replacement of Canopy Trees**
At least 2 locally native canopy trees are to be planted on the site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Native Planting Guide available on Council's website.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

33. **No Weeds Imported On To The Site**
No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

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

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

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

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

35. **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.

36. **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.

37. **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.

38. **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.

39. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

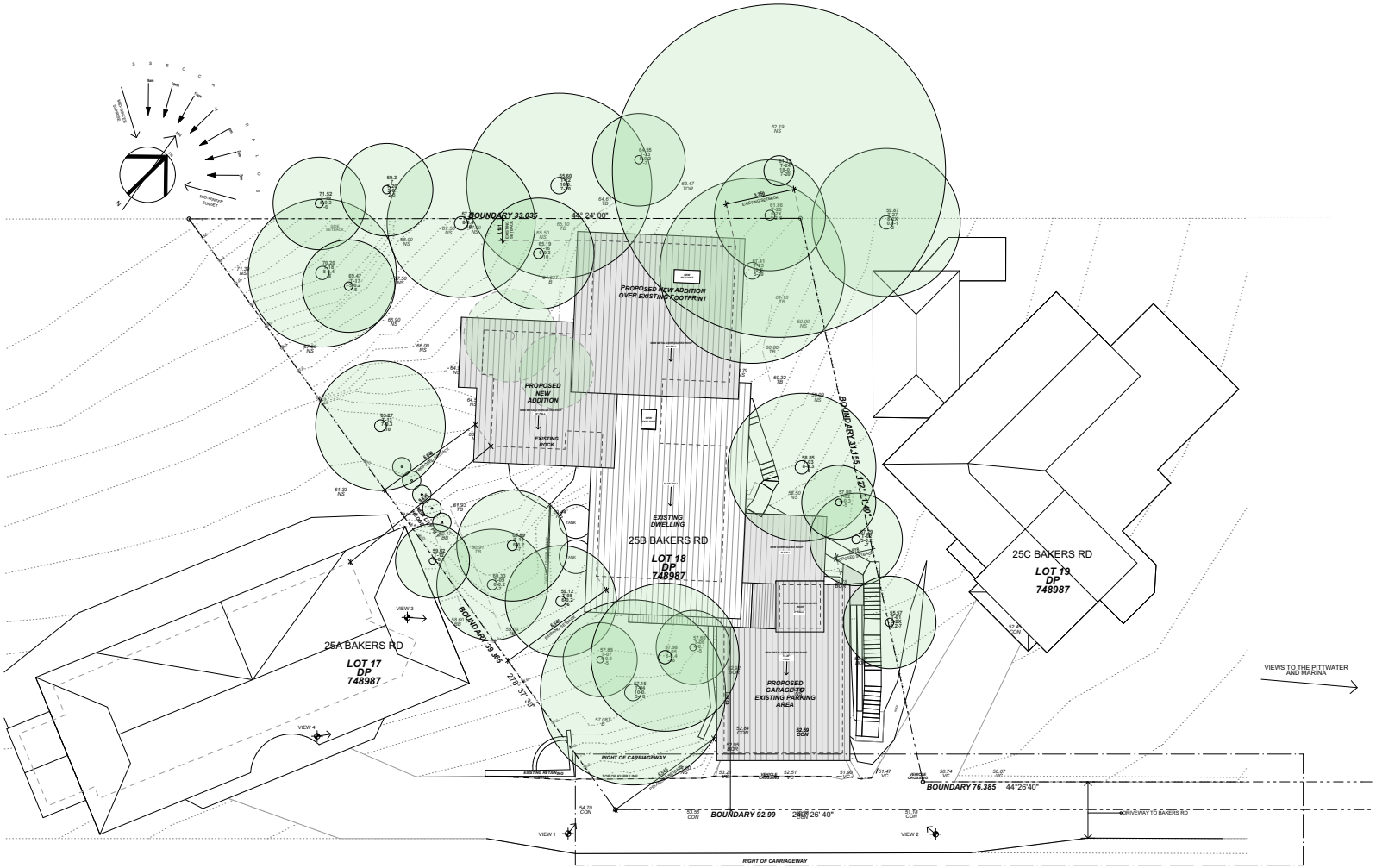
40. **Geotechnical Recommendations**
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to me maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

41. **Lift Motor Noise**
The lift motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

SITE PLAN_____1:100 (A1)

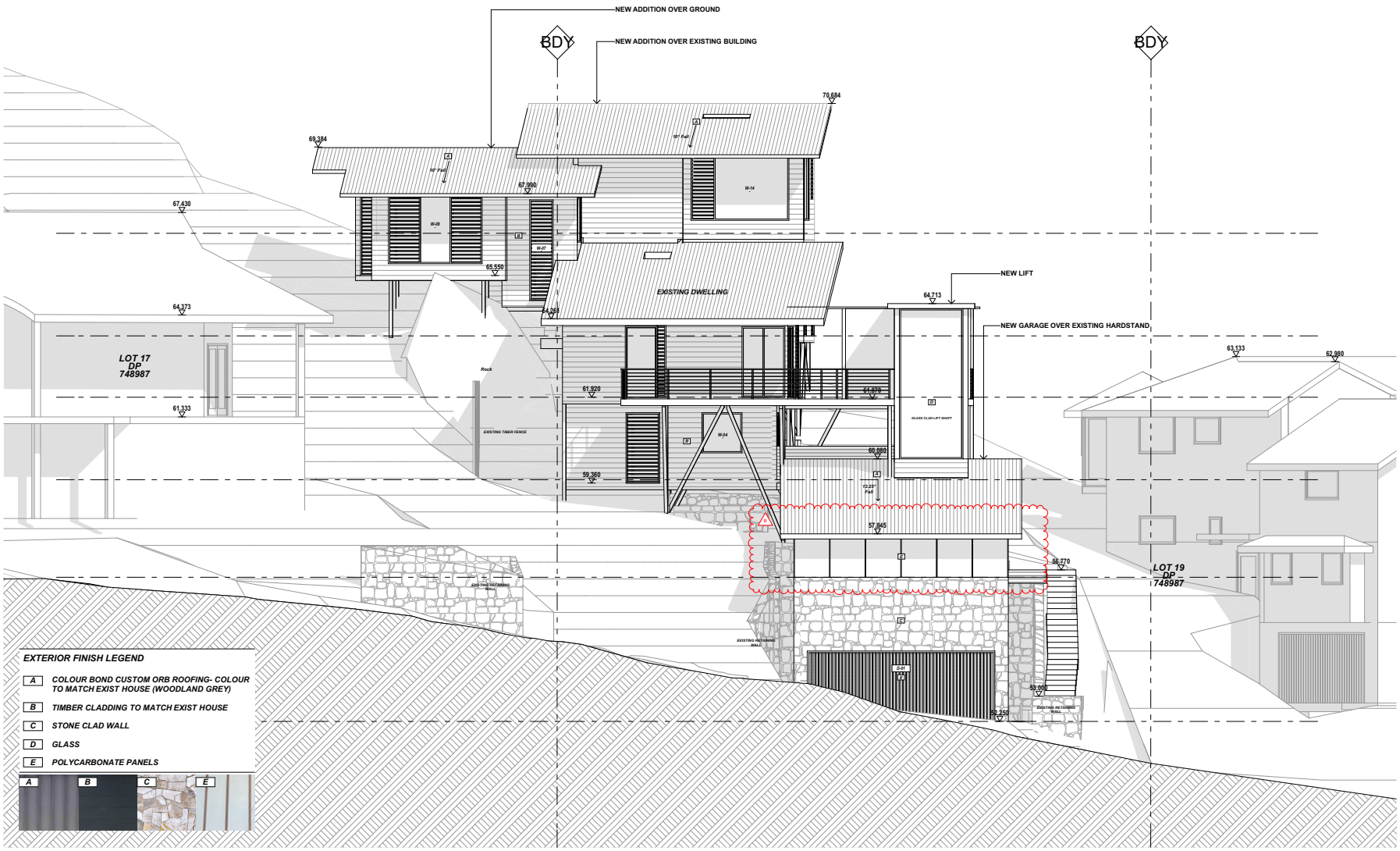


Date	Issue	Description	Date	Issue	Description	Date	Issue	Description	Date	Issue	Description
01/05/23	A	DEVELOPMENT APPLICATION									

The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

GARTNERTROVATO ARCHITECTS

Project :	VAN DYKE HOUSE 25B BAKERS RD, CHURCH POINT, 2105	Drawn/Designed :	SC/TC
Client :	VAN DYKE	Project Number :	2304
Drawing :	SITE PLAN	Drawing No. :	A-01
		Date :	01/05/23
		Scale :	1:100 @ (A1)
		Issue :	A



1 SOUTH 1:50

Date	Issue	Description
01/05/23	A	DEVELOPMENT APPLICATION
30/08/23	B	AMENDED DEVELOPMENT APPLICATION

The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

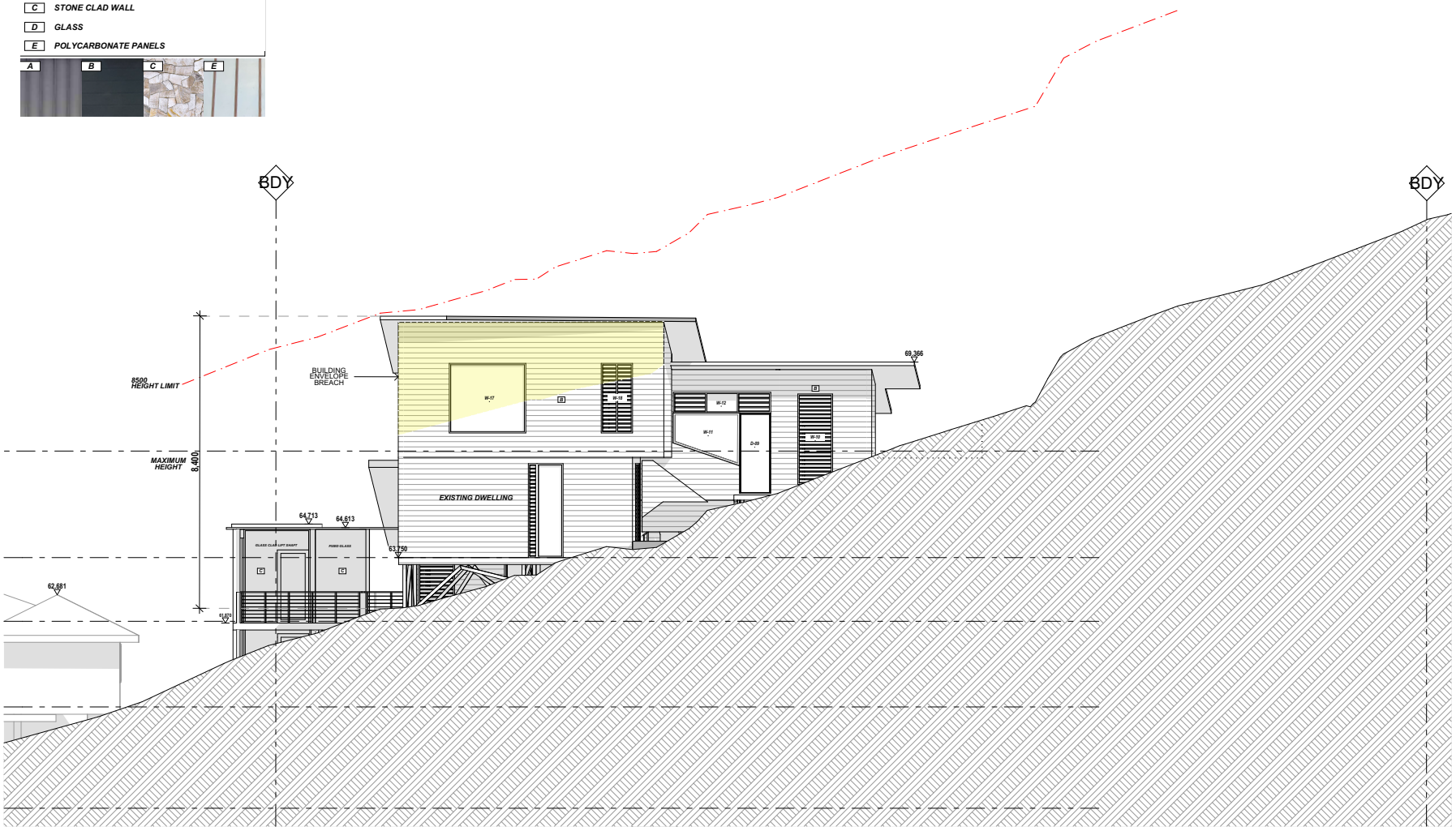
GARTNERTROVATO ARCHITECTS

Project : VAN DYKE HOUSE
258 BAKERS RD, CHURCH POINT, 2105
Client : VAN DYKE
Drawing : SOUTH

Drawn/Designed : SG/TC
Date : 01/05/23
Project Number : 2304
Scale : 1:100, 1:20 @ (A1)
Drawing No. : A-08
Issue : B

EXTERIOR FINISH LEGEND

A	COLOUR BOND CUSTOM ORB ROOFING- COLOUR TO MATCH EXIST HOUSE (WOODLAND GREY)
B	TIMBER CLADDING TO MATCH EXIST HOUSE
C	STONE CLAD WALL
D	GLASS
E	POLYCARBONATE PANELS



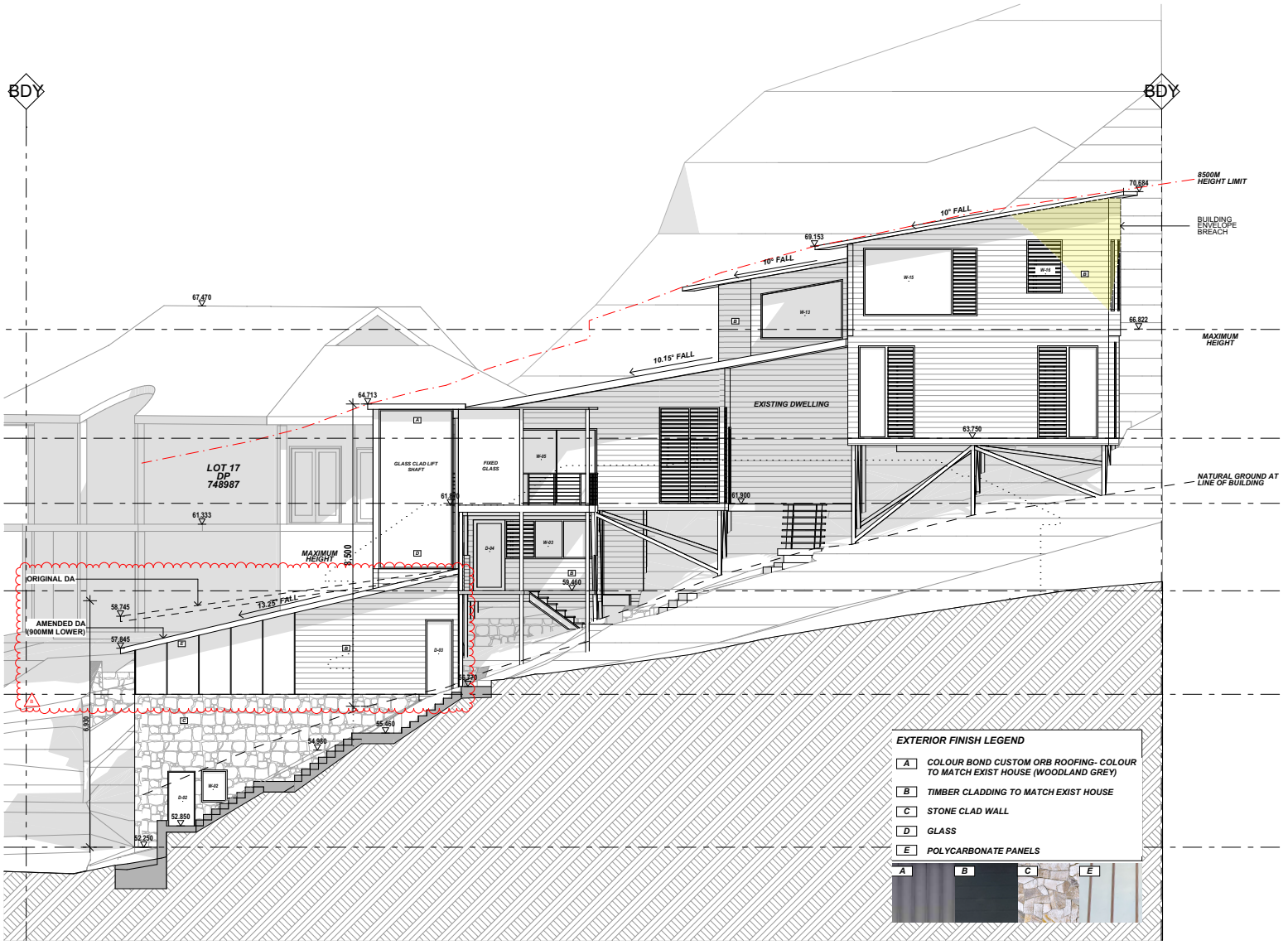
1 NORTH 1:50

Date	Issue	Description
01/05/23	A	DEVELOPMENT APPLICATION

The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

GARTNERTROVATO ARCHITECTS

Project :	VAN DYKE HOUSE 258 BAKERS RD, CHURCH POINT, 2105
Client :	VANDYKE
Drawing :	NORTH
Drawn/Designed :	SC/TC
Date :	01/05/23
Project Number :	2304
Scale	1:100, 1:20 @ (A1)
Drawing No. :	A-09
Issue :	A



1 EAST 1:50

Date	Issue	Description
01/05/23	A	DEVELOPMENT APPLICATION
30/08/23	B	AMENDED DEVELOPMENT APPLICATION

The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

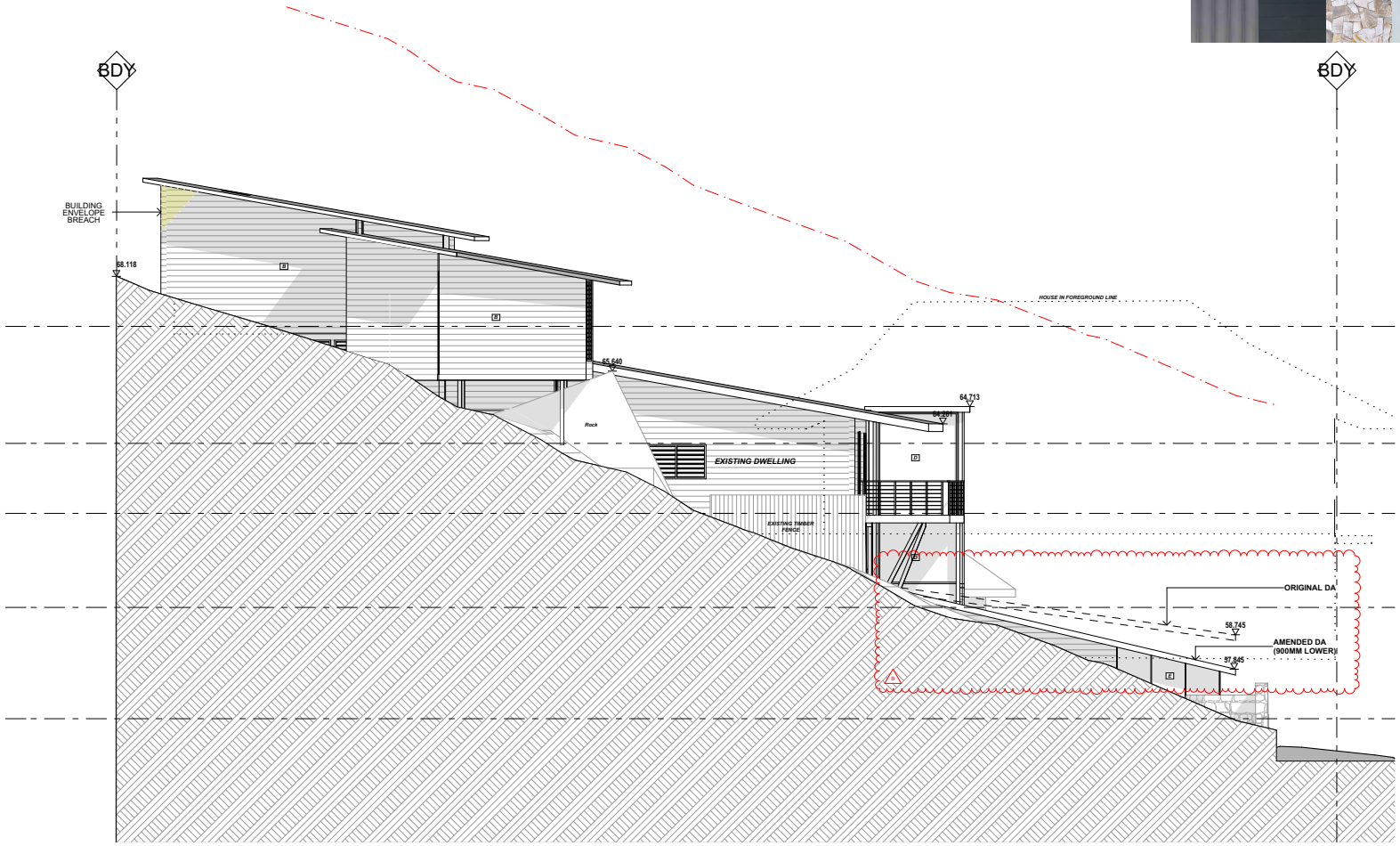
GARTNERTROVATO ARCHITECTS

Project : VAN DYKE HOUSE
258 BAKERS RD, CHURCH POINT, 2105
Client : VANDYKE
Drawing : EAST

Drawn/Designed : SC/TC
Date : 01/05/23
Project Number : 2304
Scale : 1:100, 1:20 @ (A1)
Drawing No. : A-10
Issue : B

EXTERIOR FINISH LEGEND

- A — *COLOUR BOND CUSTOM ORB ROOFING- COLOUR TO MATCH EXIST HOUSE (WOODLAND GREY)*
- B — *TIMBER CLADDING TO MATCH EXIST HOUSE*
- C — *STONE CLAD WALL*
- D — *GLASS*
- E — *POLYCARBONATE PANELS*



1 WEST 1:50

Date	Issue	Description	Date	Issue	Description	Date	Issue	Description	Date	Issue	Description
01/05/23	A	DEVELOPMENT APPLICATION									
30/08/23	B	AMENDED DEVELOPMENT APPLICATION									

The builder shall check and verify all dimensions and verify all errors and omissions to the Architect. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Architect for construction.

GARTNERTROVATO ARCHITECTS

Project :	VAN DYKE HOUSE 258 BAKERS RD, CHURCH POINT, 2105
Client :	VANDYKE
Drawing :	WEST
Drawn/Designed :	SC/TC
Date :	01/05/23
Project Number :	2304
Scale	1:20, 1:100 @ (A1)
Drawing No. :	A-11
Issue :	B

Clause 4.6 Variation to a Development Standard – Building Height

Alterations & Additions to an Existing Dwelling @ 25b Bakers Road, Church Point

Prepared For S Van Dyke & S Laman

*GARTNER*TROVATO Architects
Pty Ltd

ABN 51 673 668 317
ACN 115 186 206

Suite 13, Level 1
10 Park Street
(PO Box 1122)
Mona Vale
NSW, 2103

P +612 9979 4411
F +612 9979 4422
E gta@g-t.com.au

Nominated Architects
Sean Gartner # 6072
Luke Trovato # 7094

project no	2304
date	May 2023
issue	A

1.0 INTRODUCTION

This request to vary a development standard has been prepared on behalf of S Van Dyke & S Laman, owners of the property at 25b Bakers Road, Church Point in relation to a development application for alterations and additions to an existing dwelling, garage and lift.

This request is made pursuant to clause 4.6 of Pittwater Local Environmental Plan (PLEP 2014) and with regard to relevant case law including Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe)* at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney [2019]* NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 STANDARD TO BE VARIED

The standard in the PLEP 2014 that is proposed to be varied, is Clause 4.3 Height of Buildings.

Clause 4.3 (2) requires *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 map indicated that the height on any land is not to exceed 8.5m in height. Building Height is defined as:

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

b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground Level (existing) is defined as:

the existing level of a site at any point.

The stated objectives of such control, Clause 4.3 (1) are as follows:

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

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

c) to minimise any overshadowing of neighbouring properties

d) to allow for the reasonable sharing of views

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

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

3.0 EXTENT OF THE PROPOSED BREACH

The application seeks consent for new work (garage & lift) and alterations and additions to the existing dwelling. The proposal retains the existing level of the car hardstand for the garage as an excavated level, and proposes additions to the dwelling above natural ground.

The alterations and additions above ground provide compliance with the height standard and remain below 8.5m above ground. The proposed insertion of the garage and lift sits below 8.5m above natural ground, but the lift does not sit below 8.5m above *existing ground* due to the existing excavated ground level of the car hardstand into the slope of the land that the house is upon.

The proposed maximum height above *existing ground* being the excavated garage floor, is 12.463m

The breach occurs only to the lift shaft. The breach only occurs above excavated ground as shown in the section below with the maximum height of 12.643m, due to the existing excavation being 4m below natural ground. The extent of the breach is 3.963m or 46% of the building height development standard.

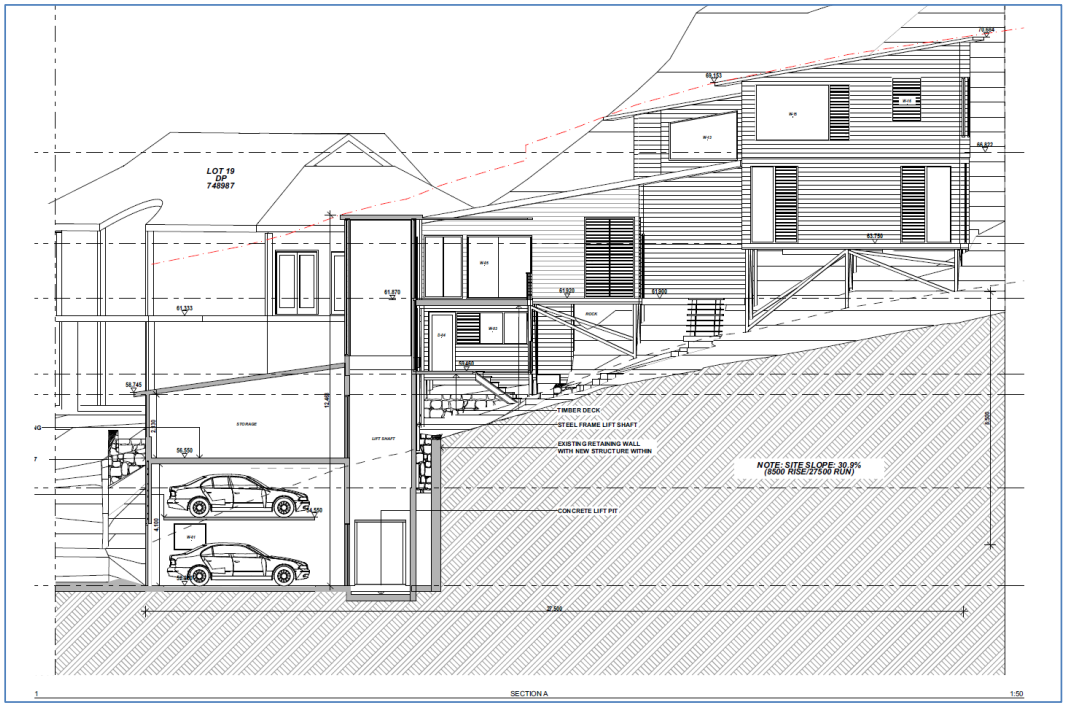


Figure 1. Extract of Section drawing from drawing A12 (C)

Although the maximum height technically breaches the standard, the dwelling remains consistent with the desired character of the locality and compatible with the height and scale of surrounding and nearby development, satisfying the objectives of the standard.

Figure 2. Aerial 3D montage of the proposal in context with surrounding properties

4.0 CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

The objectives of Clause 4.6 are:

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

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

Reference is drawn to the court precedent of *Initial Action* where the conclusion was that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operation provisions.

Pursuant to clause 4.6(2) consent may…*"subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause".*
This clause applies to the clause 4.3 Height of Buildings Development Standard

Clause 4.6(3) states that… *"consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

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

The proposed development does not comply with the height of buildings development standard at clause 4.3 of PLEP 2014 which specifies a maximum height of 8.5m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) states….."*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.*

Reference is drawn to *Initial Action* for 4.6a)(i), where the test of unreasonable or unnecessary, and sufficient environmental planning grounds, are dealt with below in section 5 of this report.
Reference is further drawn to *Initial Action* for 4.6a)(ii), where the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development in the zone, also dealt with in section 5 of this report.

In terms of satisfying clause 4.6 (4)b), we refer to section 5 of this report.

The remaining clauses 4.6 (5) through (8) are not relevant to this application.

5.0 REQUEST FOR VARIATION

Unreasonable or Unnecessary

Clause 4.6 (3)a) requires demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstance.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The proposed development is consistent with the objectives of the Building Height development standard, as prescribed by clause 4.3 of PLEP 2014, as follows:

- *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
  Comment: The non-compliance arises as a consequence of existing excavation on the garage floor. The proposed development is limited to a maximum of two storeys in height as it steps up a sloping site and maintains a building below the tree canopy. The proposal achieves this outcome.

- *to ensure that buildings are compatible with the height and scale of surrounding and nearby development*
  Comment: The non-compliance has no impact on the ability of the proposal to be compatible with surrounding development. The elevation from the battle-axe driveway in figures 3 below shows how the proposal is consistent with the height and scale of surrounding development (noting that the area in red is in the background).

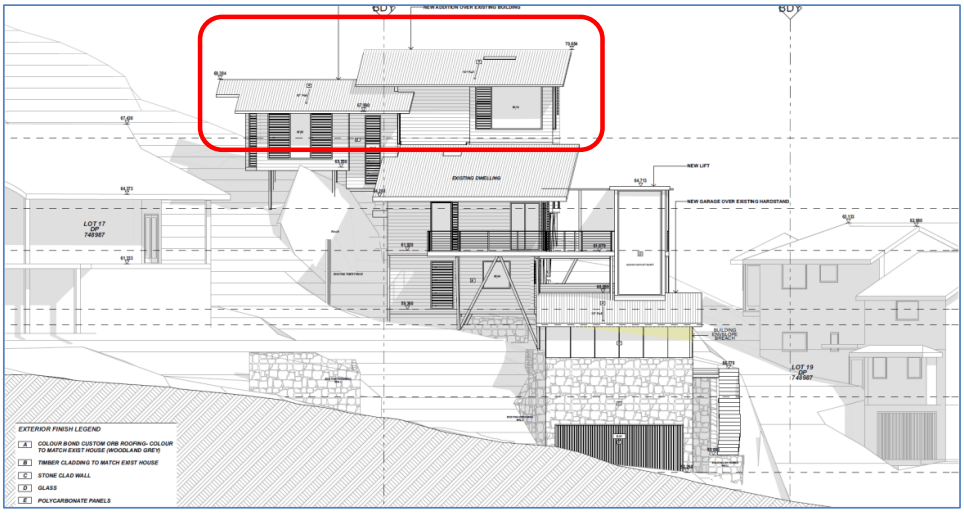


Figure 3. Extract of South driveway elevation

- *To minimise any overshadowing of neighbouring properties*
  Comment: The proposal has no additional overshadowing to the neighbouring properties to living areas of private open space as demonstrated in the shadow diagram drawings.

- *to allow for the reasonable sharing of views*
  Comment: Views to all properties to Pittwater are maintained with no affect due to height. The proposed lift sits level with the front of the dwelling roof and the view from 25a is not affected up Pittwater, as the best part of the view is to the south east under tree canopy (figure 4 below).

  Figure 4. View to the south east to Pittwater

The objective is satisfied notwithstanding the non-compliance with the building height development standard.

- *to encourage buildings that are designed to respond sensitively to the natural topography,*
  Comment: The proposed development achieves the objective with a design that blends into the built form of the surrounding area and has no affect on the scenic quality of the coastal and bushland setting. As the proposal contains the additions entirely within the existing building footprint, there is no loss of vegetation or bush environment.

  The objective is satisfied notwithstanding the non-compliance with the building height development standard.

- *to minimise any adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*
  Comment: The proposed development achieves the objective with a design that improves landscaped settings by building within the existing footprint and enhancing surrounding natural areas. There are no herniate conservation areas or heritage items in the vicinity of the proposal.

  The objective is satisfied notwithstanding the non-compliance with the building height development standard.

As demonstrated above, the proposal achieves the objectives and as such, strict compliance with the building height development standard is unreasonable and unnecessary in the circumstances of this case.

Sufficient Environmental Planning Grounds

Clause 4.6 (3)b) requires demonstration that there are sufficient environmental planning grounds to justify contravention of the standard. These grounds are as follows:

1. Existing Excavation.

   The proposed height breach is a direct consequence of existing excavation at the garage floor level. As demonstrated in Figure 1, the proposed upper floor is maintained below the 8.5m height plane when measured to extrapolated/assumed pre-existing ground levels.

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

2. Superior Architectural Design

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

   Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments*, most observers would not find the proposed development offensive, jarring or unsympathetic as seen from adjoining properties or as viewed from the waterway. The proposed development is compatible with other development in the visual catchment of the site, and the character of the wider C4 Zone.

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

Public Interest

Clause 4.6 (4)a) requires that consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest. A development can be considered in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

As identified above, the proposed development is consistent with the objectives of the foreshore building line development standard. The following commentary demonstrates that the development is also consistent with the objectives of the C4 zone:

- *to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values*
  Comment: The proposal is low impact and in a landscaped setting. There are no identified special values to the site. The proposal achieves this objective.

- *To ensure that residential development does not have an adverse effect on those values*
  Comment: The proposed works will not impact the values of the area.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
  Comment: The proposal will retain the low density character with a single dwelling. The scale of the dwelling is entirely consistent with the landforms and adjoining development and increases the landscaped area on site from the existing dwelling, improving the amenity of landscape on site

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*
  Comment: The proposal retains bushland areas and has a landscape ratio well in excess of the council minimum and achieves this objective.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the Height of Buildings standard.

Secretary's Concurrence

Pursuant to clause 4.6(4) of PLEP 2014, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained.

In terms of satisfying clause 4.6 (4)b), advice is provided by the Department of Planning, Industry & Environment by letter dated 2 November 2021;

> *Development applications for Class 1 buildings (single dwelling houses) with a Clause 4.6 variation greater than 10% to building height within the Warringah Local Environment Plan 2011, Manly Local Environment Plan 2013 and Pittwater Local Environment Plan 2014 and floor space ratio under the Manly Local Environment Plan 2013, may be determined by Council staff under delegation in accordance with Council procedures*

6.0 CONCLUSION

Pursuant to clause 4.6 of PLEP 2014, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

As such we have submit that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Sean Gartner
B.Arch | Registered Architect #6072 (BoA, NSW)

Director
Gartner Trovato Architects Pty Ltd

ITEM 3.8	**DA2023/0123 - 9 LINCOLN AVENUE COLLAROY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/557928**
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 **refuses** Development Consent to DA2023/0123 for alterations and additions to a dwelling house including a swimming pool on land at Lot 1 DP 16998, 9 Lincoln Avenue COLLAROY, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0123

Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 1 DP 16998, 9 Lincoln Avenue COLLAROY NSW 2097
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Peter Gerard Prendergast Vanessa Jane Hodgson
Applicant:	Your Beautiful Home Pty Ltd

Application Lodged:	03/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/03/2023 to 23/03/2023
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	4.3 Height of buildings: 20.4%
Recommendation:	Refusal

Estimated Cost of Works:	$ 1,134,906.28

EXECUTIVE SUMMARY

This development application seeks consent for the alterations and additions to a dwelling house including a swimming pool, and is referred to the Development Determination Panel (DDP) due to the proposal resulting in five (5) unresolved objections, and a variation of more than 10.0% to Clause 4.3 Height of Buildings under the provision of the *Warringah Local Environmental Plan 2011* (*WLEP 2011*). The maximum permitted building height is 8.5 metres, and the proposed building height is 10.235 metres, resulting in a variation of 20.4%.

The 4.6 variation to building height arises from the construction of a first floor addition and

accompanying roof form and pitch, located over existing excavated levels of the lower ground floor.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, which received nine (9) submissions. Five (5) being objections, and four (4) being in support of the development.

Concerns raised in the objections predominantly relate to the proposed building height and building bulk of the development, that cause amenity impacts to the surrounding properties (i.e. view loss, privacy, solar access).

Amendments were requested on the 28 April 2023, in light of those concerns as well as additional planning issues. An amended application was submitted by the applicant on 27 July 2023, however, the amendments are not considered to adequately address the issues raised.

Critical assessment issues include the proposed building height variation, which, in conjunction with the non-compliance to wall height, side building envelope, and overall building bulk, contribute to an unacceptable building mass resulting in amenity impacts (i.e. view loss and privacy) to surrounding properties.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is unsuitable and does not present an acceptable form of development for the subject site for the reasons outlined in this report.

This report concludes with a recommendation that the DDP **refuse** the development application, for the reasons cited within this report.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the alterations and additions to a dwelling house including a swimming pool.

Specifically, the works comprise of the following:

- Construction of an upper level to accommodate for two (2) additional bedrooms and bathrooms and one (1) additional living room;
- Addition of an upper floor terrace;
- Internal alterations;
- Excavation and construction of a swimming pool including associated deck area and landscaping; and
- Several window and door replacement and/or additions.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear 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 1 DP 16998 , 9 Lincoln Avenue COLLAROY NSW 2097
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Lincoln Avenue. The subject site is legally identified as Lot 1 in Deposited Plan 16998, No. 9 Lincoln Avenue, Collaroy. The site is irregular in shape with a primary street frontage to Lancaster Crescent, and secondary street frontage to Lincoln Avenue. The site has a surveyed area of 558.9m². The site is located within the R2 Low Density Residential zone under the provisions of the *Warringah Local Environmental Plan 2011* and accommodates a dwelling house. The site topography slopes downward from north to south by approximately 7.13m. The site consists of a lawn area to the north and south with various garden beds. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised

	predominately by both two (2) and three (3) storey dwelling houses of various architectural designs.

Map:

SITE HISTORY

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

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

Current Application History

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan, which resulted in nine (9) submissions. Five (5) of which are objections, and four (4) being in support of the development.
Amended plans and additional information were requested on the 28 April 2023 to address the following:

- Clause 4.3 Height of Buildings of the *WLEP 2011*;
- Clause B1 – Wall Heights, Clause B3 Side Boundary Envelope, Clause B7 Front Boundary Setbacks, Clause D1 Landscaped Open Space and Bushland Setting, Clause D7 Views, Clause D8 – Privacy and D9 Building Bulk of the WDCP 2011.

Amended Plans and supporting information (including a view loss study) were received on 27 July 2023, however this information is deficient in resolving the concerns identified in the assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a condition of consent, if the application was approved. Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested (see '*Site History*' for further detail) Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is capable of being addressed via a condition of consent, if the application was approved. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is capable of being addressed via a condition of consent, if the application was approved. 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 is capable of being addressed via a condition of consent, if the application was approved.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development, in its current form.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Consultancy Australia, dated 12 October 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 would form part of the recommendations for approval, were the application to be approved.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/03/2023 to 23/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Benjamin Baxter	11 Lincoln Avenue COLLAROY NSW 2097
Ms Karlie Samantha Bombardier	31 D The Serpentine BILGOLA BEACH NSW 2107
Mr Themis Garagounis	34 Cromer Road CROMER NSW 2099
Mr Gregory John Maynard	24 Lincoln Avenue COLLAROY NSW 2097
Mr Julian Kenneth Edwards	1 Suffolk Avenue COLLAROY NSW 2097
Todd Azzopardi	15 Lincoln Avenue COLLAROY NSW 2097
Adam Michael Cheers	17 Lincoln Avenue COLLAROY NSW 2097
Mr Stephen Peter Johnco Mrs Linda Elizabeth Johnco	4 Lincoln Avenue COLLAROY NSW 2097
Robert Francis Kean	41 Lancaster Crescent COLLAROY NSW 2097

Nine (9) submissions were received in response to the proposed development. Five (5) being objections, and four (4) being in support of the application.

The following issues were raised in the received objections:

- **Solar access impacts to internal areas of No. 11 Lincoln Avenue due to the proposed roofline/height and first floor terrace addition.**

  Comment
  Clause D6 Sunlight Access of the WDCP 2011 requires that at least 50.0% of the required area of private open space of each dwelling and at least 50.0% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. The submitted shadow diagrams demonstrate that the sunlight access to the main private open space areas being the rear of the property at No. 11 Lincoln Avenue, will be in shadow from 9am - 12pm. When comparing the proposed shadows to what is existing, this area of shadow will remain unchanged. Additional shadow however as a result of the development will be cast over the the eastern side of the dwelling at No. 11 Lincoln Avenue at 9am. However, this area is not considered 'main private open space'. Therefore, the proposed development, although acknowledged will result in additional shadow on the dwelling of No. 11 Lincoln Avenue at 9am, will comply with the requirements of Clause D6 Sunlight Access of the WDCP 2011.

- **Proposed building height in excess of 8.5 metres and roof pitch, results in a negative precedence for the street and view loss impacts to No. 4, 6 and 8 Lincoln Avenue.**

  Comment
  It is acknowledged that the proposed roof pitch and building height encroachment result in loss of views to No. 4, 6 and 8 Lincoln Avenue. Refer to 'Clause 4.6' for a detailed discussion on the unacceptability of the proposed building height, and 'Clause D7 Views' for a detailed view loss assessment, elsewhere within this report.

- **The submitted View Loss Study is not an accurate representation of the extent of view loss to affected properties.**

Comment
Concern is raised about the misrepresentation of the submitted view loss study to address the concerns raised by Council and affected neighbour's. Refer to 'Clause D7 Views' for a detailed view loss assessment, elsewhere within this report.

- **The proposed roofing do not meet the side setback distance required by the council, this being 0.9 metres from the relevant boundary. Proposed roofing encroaches boundary of No. 41 Lancaster Crescent.**

Comment
The proposed development exhibits compliance with the 0.9 metres side setback requirement, in exception of an existing non-compliance when measured from the lower and upper ground floor levels to the southern adjoining boundary. This area of the dwelling will remain unchanged. The eaves of the replacement roofing to this area will abut the southern adjoining boundary. As per the definition within the WLEP 2011, a building line or setback means the horizontal distance between the property 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.

Therefore, roofing and/or eaves are excluded from side setback measurements. However, if the development was approved, a condition would be recommended to reduce the length of the eave, shifting it off the adjoining boundary line.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	***Supported, subject to conditions.*** The proposal seeks approval for alterations and additions to a dwelling house including a swimming pool. The comments on this referral relate to the following applicable controls and provisions: • Planning for Bushfire Protection 2019 • Warringah 2011 DCP - Clause E2 Prescribed Vegetation • Warringah 2011 DCP - Clause E4 Wildlife Corridors • Warringah 2011 DCP - Clause E6 Retaining unique environmental features The proposed alterations and additions take place in a previously disturbed area within the site. The proposal does include landscaping works but no planting schedule has been provided. Therefore, conditions would apply to ensure compliance with WDCP 2011 Controls, if the application were to be approved.

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 would be included as a condition of consent, if the application were to be approved.
Aboriginal Heritage Office	***Supported, subject to conditions.*** No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. 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.

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. A476712 dated 9 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 would form part of any approval were the application to be approved.

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?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5 metres	Dwelling: 10.235 metres	20.4% (1.73 metres)	**No** *(Refer to Clause 4.6)*

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No

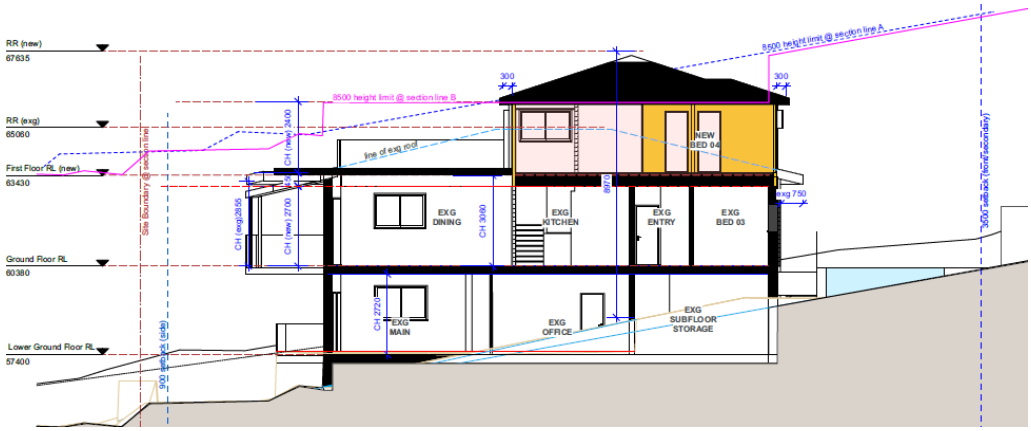
Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-Compliance

Development Standard	Height of Buildings
Requirement	8.5m
Proposed	10.235m
Percentage variation to requirement	20.4%



(Figure 1: Section BB - Proposed Building Height)

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 not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In this regard, the Applicant's written request has not 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 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 (from submitted Clause 4.6 Variation Report):

- *"The height breach occurs where the proposed upper roof form is situated over the excavated footprint of the existing dwelling;*
- *The topography of the site is unusual, falling both north-south and east-west...the extent of non-compliance is responsive to the unusual topography of the site;*
- *The proposed development is appropriately characterised as alterations and additions to the existing dwelling and is bound by the levels of the existing development;*
- *The development has been designed to marry the architectural style of the existing dwelling, with a pitched roof proposed at the upper most level. A flat or skillion roof would reduce the extent of the height breach, particularly with respect to natural ground levels, however this would be an inferior architectural outcome for the site;*
- *There is a strong precedence of three storey development and exceedance of the 8.5m height limit in the vicinity of the site, including the recent developments approved by Council at:*
  - 4 Lincoln Avenue.
  - 6 Lincoln Avenue.
  - 8 Lincoln Avenue.
  - 20 Lancaster Crescent.

  In addition to these, there are a number of dwellings that have the appearance of a height that exceeds the height limit, having had the benefit of being developed without the inclusion of areas of existing excavation.

- *Allowing for the development to appropriately respond to the individual context of the site, including the levels of the existing dwelling and the irregular terrain of the site, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.*
- *Furthermore, allowing for a variation to the height plane that is consistent with the height and scale of nearby development promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act."*
-

In summary, the applicant has argued that the height breach is a direct result from the unusual topography of the site and the previous excavated footprint of the existing dwelling house. The applicant states however, that the extent of height breach could be reduced via an alternative roof form and/or pitch, nevertheless, argues that this will be a detriment to the overall architectural outcome for the site, and that the height breach is compatible with recent development approved by Council.

The assessment of the application identifies that a more 'skillful design' which may include the exploration of an alternative roof form and the reduction of floor space to the proposed upper level could result in a design that significantly reduces the extent of height breach. The exploration of such amendments were requested within Council's 'Request for Information Letter' dated 28 April 2023, where it was advised that the planning grounds used were not deemed to be sufficient to support this proposal. No amended Clause 4.6 Variation was submitted in response to the letter.

In terms of compatibility and recent approvals from Council, the listed properties noted above by the applicant all consisted (in exception of 20 Lancaster Crescent) with height variations between 0.5 - 7.25%, and were limited to minor portions of the dwelling. The height breach to No. 20 Lancaster Crescent was approved in 2015, with a variation of 14.1%, however this property is located around the corner from the subject site, and considered an isolated example which forms a minority in terms of the majority height and scale of the area. It is not considered that the characteristic of that property is consistent with that of the properties within the immediate vicinity of No. 9 Lincoln Avenue. Despite this, all properties mentioned are identified to exhibit building height variations below 15.0%, where this proposal seeks for a 20.4% variation. Therefore, it is not considered that the proposed height breach is compatible with surrounding properties.

The applicant’s written request has not sufficiently 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 not satisfying clause 1.3 (c) and (g) of the EP&A Act.

The applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Council is therefore, not 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.

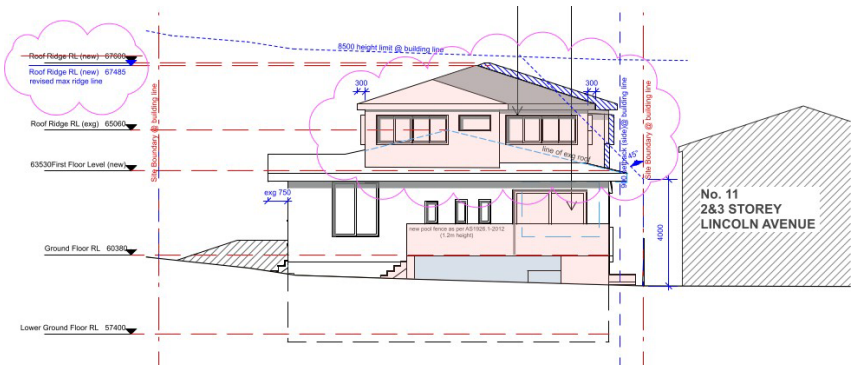
Objectives of development standard

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
The proposal as discussed above, is not considered to be compatible with the height and scale of surrounding and nearby development. As it is evident that the three (3) storey dwelling house characteristic exists within the area, many of these properties include height breaches to an isolated portion of the dwelling, with a height variation significantly less than that of this proposal. As depicted in Figure 2 below, the proposed upper floor and roof form demonstrate that the dwelling will be situated at a higher level, above the dwelling at No. 11 Lincoln Avenue, and overall perched higher than all dwellings along the low side of Lincoln Avenue, resulting in a visually dominant design. It is noted that the subject site is an undersized allotment, particularly when compared to majority of sites in the area. Therefore, the built form that would be considered acceptable for this site would be of lesser bulk and scale of a dwelling situated on a larger allotment. It must also be acknowledged that the breach of building envelope that is prescribed by the DCP is symptomatic of the excessive building mass proposed.



(Figure 2: North Elevation - View from Lincoln Avenue).

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

Comment
The height breach combined with the excessive bulk and scale of the build (further discussed under Clause B1 Wall Height, B3 Side Boundary Envelope and Clause D9 Building Bulk) will result in unacceptable view loss, particularly to several properties along the northern side of

Lincoln Avenue. A View Loss Study was provided, however lacks sufficient detail in determining an accurate extent of impact. Despite this, the view loss impact that was assessed is unacceptable (given the reasons discussed in 'Clause D7 - Views', elsewhere within this repot. Privacy concerns have been raised in relation to the proposed terrace, which has not been addressed in the amended plans.

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

Comment
As mentioned the excessive bulk and scale and proposed height breach will create an adverse visual impact, which is likely to effect 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,

Comment
As the site is located within a dominant location (corner allotment situated atop a hill), the extent of height breach and bulk and scale of the dwelling will not acceptably manage the visual impact when viewed from public places

Conclusion
For the reasons detailed above, the proposal is considered to be **inconsistent** with the objectives of the of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the *WLEP 2011.*

Zone objectives

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

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

  Comment
  The proposal provides for a dwelling house that will provide or 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.***

  Comment
  This objective is not relevant to the application.

- ***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, although demonstrates a height breach, is considered to be situated below

surrounding canopy trees. The proposed landscaped area would also increased via a recommended condition, involving the requirement for specific plantings to be included, if the proposal were to be approved. Therefore, ensuring the landscaped setting is in harmony with the natural environment of Warringah.

Conclusion
For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone of the *WLEP 2011*..

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).

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	West: 8.5m South: 8.3m - 8.5m	Maximum: 18.1%	**No**
B3 Side Boundary Envelope	4.0m Western Elevation	Proposed Works: Outside Envelope	Maximum: 82.5%	**No**
	4.0m Southern Elevation	Proposed Works: Within Envelope	-	Yes
B5 Side Boundary Setbacks	0.9m Western Boundary	First Floor: 1.2m - 2.1m Ground Floor: 1.0m - 1.3m (Existing) Lower Ground Floor: 0.1m - 1.3m (Existing) Pool: 1.3m	- No Change No Change -	Yes N/A N/A Yes
	0.9m Southern Boundary	First Floor: 6.1m - 12.4m Ground Floor: 0.7m - 9.6m (Existing) Lower Ground Floor: 0.7m - 9.6m (Existing)	- No Change No Change	Yes N/A N/A
B7 Front Boundary Setbacks	6.5m Eastern Boundary	Ground Floor: 4.7m - 10.3m First Floor: 7.1m - 7.4m	No Change -	N/A Yes

	3.5m Northern Boundary	Pool Decking: 1.5m - 2.0m	Maximum: 57.1%	**No**
D1 Landscaped Open Space (LOS) and Bushland Setting	40.0% (223.6m²)	29.8% (166.4m²)	25.5% (57.2m²)	**No**

Compliance Assessment

Clause	**Compliance with Requirements**	**Consistency Aims/Objectives**
A.5 Objectives	No	No
B1 Wall Heights	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	N/A	N/A
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
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B1 Wall Heights of the Warringah Development Control Plan 2011 (WDCP 2011).

Clause B1 Wall Heights stipulates that walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building

The proposed development includes a wall height of 8.5 metres on the western elevation, and 8.3 meters - 8.5 metres on the southern elevation, with a maximum variation of 18.1%.

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 proposed development presents a maximum building height of 10.235 metres when measured from the existing ground level to the roof ridge of the upper floor level, significantly breaching the numerical development standard of 8.5 metres and relevant objectives under Clause 4.3 Height of Building of the *WLEP 2011*. The building height breach, in conjunction with the proposed wall height non-compliance discussed above, contributes to an unacceptable visual dominance of the building when viewed from both the public domain and adjoining properties.

  The proposed development does **not** achieve this objective.

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

  Comment
  The proposed development does not contain any canopy trees on site, however, it is considered that the development may be situated below the height of surrounding canopy trees within the area.

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

  Comment
  The extent of height breach when viewed conjointly with the numerically non-compliant wall height of the development, particularly to the western elevation, gives rise to unacceptable loss of views to numerous properties along the northern-side of Lincoln Avenue. Refer to 'D7 Views' for further detail, elsewhere within this report.

The proposed development does **not** achieve this objective.

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

  Comment
  The development exhibits multiple WDCP 2011 and *WLEP 2011* non-compliances, which is discussed throughout the entirety of this report, particularly in relation to unacceptable building mass. This resultant dominance of the built form has been identified as generating unreasonable amenity impacts to surrounding properties.

  The proposed development does **not** achieve this objective.

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

  Comment
  It is acknowledged that the proposed build is located to the higher side, being the northern portion of the site. However, as the proposed building height is breached the development is not considered to have been designed to acceptably respond to the sloping topography and historical excavation levels of the lower ground floor.

  The proposed development does **not** achieve this objective.

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

  Comment
  The proposed roof form and pitch, although does not contribute to the wall height non-compliance, does contribute to the overall building height breach of the dwelling. It was requested that exploration into an alterative roof design to occur, which would result in a significant reduction of the maximum building height and minimise amenity impacts to surrounding properties. Amended plans show that the roof form and pitch would remain generally the same as originally proposed, with no significant changes identified.

  A streetscape analysis identified a variation in roof designs along Lincoln Avenue, with numerous dwelling houses consisting of low pitched skilion or flat roofing. Any properties that included roof forms such as the proposed is situated at a much lower level and restricted to two (2) storeys. It is therefore, considered that the proposal does not provide sufficient scope for an innovative roof pitch.

  The proposed development does **not** achieve this objective.

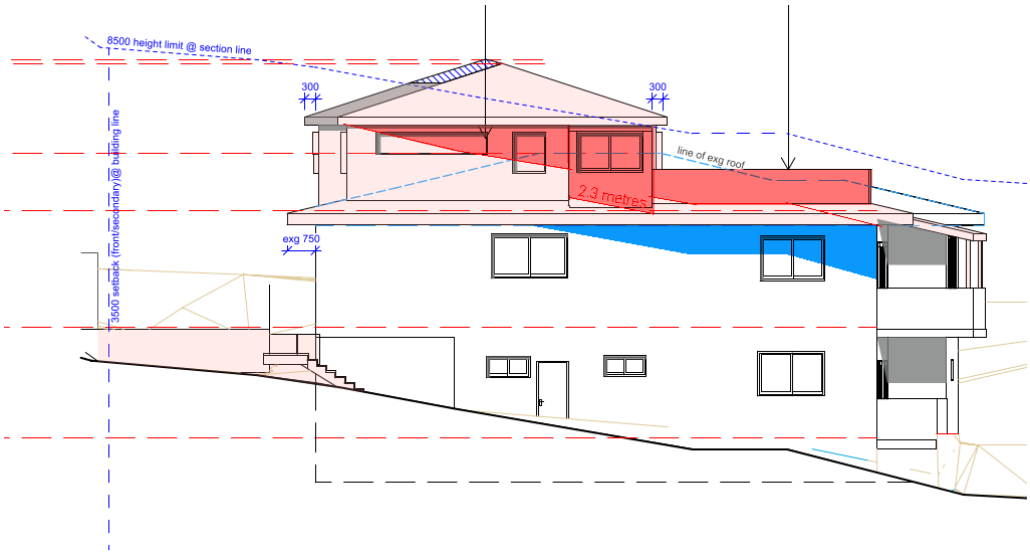
Having regard to the above assessment, it is concluded that the proposed wall height is inconsistent with the aims and objectives of the control. Therefore, the application is **not** supported, in this particular circumstance.

B3 Side Boundary Envelope

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B3 Side Boundary Envelope of the Warringah Development Control Plan 2011 (WDCP 2011).

Clause B3 Side Boundary Envelope requires development to be sited within a 4.0 metres building envelope to ensure acceptable bulk and scale of the built form.

The proposed development encroaches the side boundary envelope on the western elevation, with a maximum variation to the numerical requirements of 82.5% (Figure 3).



(Figure 3: Western envelope encroachment - Red shading proposed, blue shading existing).

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 upper floor and accompanying terrace demonstrates an encroachment beyond the prescribed side boundary envelope numerical requirement. The encroachment generally extends the entire length of the upper floor along the western elevation (shown in red in above figure), which will amalgamate with the non-compliant building envelope of the existing dwelling (shown in blue in the above figure), further exacerbating this non-compliance. The non-conforming elements being the building height, wall height and side boundary envelope indicates that the upper floor addition in its current form is an over development of the site, resulting in a dwelling house that is visually dominant by virtue of its height and bulk.

  The proposed development does **not** achieve this objective.

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

  Comment
  The submitted solar access diagrams in relation to the amended architectural plans, demonstrate that the development will not further shadow the private open space areas of the western adjoining property, due to this area being in constant shadow as a result of the

existing development. The proposal will however, limit sunlight access along the eastern elevation of the western neighbouring dwelling. Although, further shadowing will occur, it is considered that the proposal will comply with the solar access requirements of Clause D6 Access to Sunlight of the WDCP 2011. Privacy however, has not been adequately addressed in relation to the proposed upper floor terrace, refer to 'Clause D8 Privacy' for further detail about this non-compliance. In addition, the variation of the side building envelope determines that the spatial separation from not only the boundary but the adjoining western building is insufficient and provides for minimal articulation.

The proposed development does **not** achieve this objective.

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

  Comment
  As previously discussed under Clause B1 Wall Heights, the proposal as a whole in relation to the height breach and size of the upper floor addition, does not ensure that the development has been designed to respond to the sloping topography of the site. This is confirmed by the significant extent in building envelope breach along the western elevation.

  The proposed development does **not** achieve this objective.

Having regard to the above assessment, it is concluded that the proposed wall height is inconsistent with the aims and objectives of the control. Therefore, the application is **not** supported, in this particular circumstance.

B5 Side Boundary Setbacks

The proposed development exhibits compliance with the 0.9 metres side setback requirement, in exception of an existing non-compliance when measured from the lower and upper ground floor levels to the southern adjoining boundary. This area of the dwelling will remain unchanged, and will not require further assessment.

The eaves of the replacement roofing to this area will abut the southern adjoining boundary. As per the definition within the *WLEP 2011*, a building line or setback means the horizontal distance between the property 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,

Therefore roofing and/or eaves are excluded from side setback measurements. However, if the development were to be approved a condition would be recommended to reduce the length of the eave, shifting it off the boundary line.

No further assessment is required, in this instance.

B7 Front Boundary Setbacks

Description of Non-Compliance
Clause D7 Front Boundary Setbacks stipulate that all structures should maintain a minimum setback of 6.5 metres to the road frontage.

The subject site is a corner allotment with double street frontage, with the primary frontage being to Lancaster Crescent and the secondary frontage being to Lincoln Avenue. An exception is provided within Clause B7 for double frontage sites located within R2 Low Density Residential zone, allowing for the front building setback to be reduced to a minimum of 3.5 metres for the secondary frontage, in this case Lincoln Avenue.

The proposal consists of a swimming pool and associated decking located within the secondary front setback area, with a setback of 1.5 metres - 2.0 metres. If the application were to be approved, a recommended condition would be included to increase the secondary front setback to 3.5 metres, resulting in compliance with both the clause numerical requirements and objectives. This in turn would result in additional landscaped space within the front setback areas of the site.

The existing dwelling house exhibits a primary front setback between 4.7 metres - 10.3 metres, with a partial non-compliance to the clause requirements. As the non-compliance is existing, no further assessment is required.

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 recommended condition discussed above, would aid in maximising the landscaped areas within the front setbacks of the site, creating a sense of openness.

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

  Comment
  The recommended condition discussed above, would aid in maintaining acceptable visual continuity and pattern of buildings and would increase the landscape elements on site.

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

  Comment
  The secondary street frontage includes a front boundary wall which is to be retained, the proposed swimming pool would not be viewed from the public domain. However, the recommended condition as discussed would increase landscaped areas on site, providing additional landscape opportunities and plantings and in turn would enhance the visual quality of the site as a whole.

- ***To achieve reasonable view sharing.***

  Comment
  The proposed swimming pool and decking does not result in any view loss. The development as a whole however, and the impacts to view loss are discussed within 'Clause D7 Views', elsewhere within this report.

Having regard to the above assessment, it is concluded that the outcomes of the clause would be achieved, via a recommended condition to increase the front setback of the swimming pool and associated decking, if the application were to be supported.

B9 Rear Boundary Setbacks

Clause B9 Rear Boundary Setbacks under the Warringah Development Control Plan states that for corner allotments zoned within the R2 Low Density Residential where the minimum rear building setback is 6.0 metres, the rear building setback does not apply. In this case, the subject site has two (2) front and two (2) side boundaries.

D1 Landscaped Open Space and Bushland Setting

Description of Non-compliance
Clause D1 Landscape Open Space and Bushland Setting requires a minimum of 40.0% of the subject site to be landscaped open space, which equates to 223.6m². Any open space areas with a dimension of less than 2.0 metres are excluded from this calculation.

The proposed development provides a landscaped area of 166.4m² or 29.8%, therefore presenting a variation of 25.5% or 57.2m² to the numerical requirements of this clause. The landscape variation is a direct result of the proposed swimming pool and deck area.

It was requested that the proposed swimming pool, coping and associated decking be reduced in overall size and dimension to allow for an acceptable increase in landscape open space. The 'amended plans' did not acceptably increase the landscaped area. As a result, if the proposal was to be supported, a recommended condition (as discussed under 'Clause B7 Front Boundary Setbacks') would be included to increase the front setback of the swimming pool area, which would provide for additional landscaping areas, to be included within the calculation.

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 streetscape of Lincoln Avenue consists of garden beds located within the front setback area, the recommended condition discussed above, would provide for additional landscape space within the front setback to Lincoln Avenue. The presence of additional landscaping would result in an enhancement of this streetscape.

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

  Comment
  No indigenous vegetation and topographical features for wildlife habitats were identified on site.

- ***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 recommended condition discussed above, would provide for adequate space (additional areas of 2.0 metres in dimensions) to enable opportunities for the planting of vegetation i.e. low to medium shrubbery and the establishment of canopy trees. Additional landscaping areas, may aid in the mitigation of the bulk and scale of the build.

- ***To enhance privacy between buildings.***

  Comment
  Additional landscaping, as a result of the discussed condition above, would increase privacy to the swimming pool area by the addition of screen planting etc.

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

  Comment
  The recommended condition discussed above, would contribute to additional areas around the swimming pool for outdoor recreational opportunities.

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

  Comment
  The site provides space for service functions, including clothes drying.

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

  Comment
  Stormwater runoff is not expected result in any unreasonable impacts to soil erosion and siltation of natural drainage channels, which would be ensured by a recommended conditions, if the proposal was to be supported.

having regard to the above assessment, it is concluded that the outcomes of the clause would be achieved, via a recommended condition to increase the front setback of the swimming pool and associated decking, which in turn would increase the landscaped areas on site, if the application were to be supported.

D7 Views

Merit Consideration
Three (3) submissions were received from the following properties which included concerns regarding view loss:

- No. 4 Lincoln Avenue, Collaroy.

- No. 6 Lincoln Avenue, Collaroy.
- No. 8 Lincoln Avenue, Collaroy.

A site inspection was conducted at each property and the photos taken from the inspection will be referenced in this assessment.

Note: No. 9 Lincoln Avenue, Collaroy will be referenced as 'subject site' under this view loss assessment.

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
  The nature of the views affected will be discussed below for each property:

  No. 4 Lincoln Avenue: The views of concern obtained by this site is achieved towards the south, south-east and south-west partly over the subject site. The views consist of a partial view of Dee Why Beach (land/water interface), Dee Why Lagoon, North Curl Curl Headland, district views and a distant partial view of North Head and St. Patrick's Estate. The ocean views enjoyed by this property are slightly obstructed by powerlines and vegetation.

  No. 6 Lincoln Avenue: The views of concern obtained by this site is achieved towards the south, south-east and south-west partly over the subject site. The views consist of a partial view of Dee Why Lagoon, Dee Why Beach (land/water interface), North Curl Curl Headland, district and ocean views and a distant partial view of North Head and St. Patrick's Estate. The views enjoyed by this property are not heavily obstructed.

  No. 8 Lincoln Avenue: The views of concern obtained by this site is achieved towards the south, south-east and south-west partly over the subject site. The views consist of an extensive view of Dee Why Lagoon and Dee Why Beach (land/water interface), ocean views, North Curl Curl Headland, district views and distant partial view of North Head and St. Patrick's Estate. The views enjoyed by this property are not heavily obstructed.

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

  "*The second step is to consider from what part of the property the views are obtained. For*

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

Comment to Principle 2
The location of the obtained views will be discussed below for each property:

No. 4 Lincoln Avenue: The views mentioned above are obtained from both the upper ground floor and first floor living rooms (i.e. Kitchen, lounge room, dining), bedrooms and balconies. These rooms are situated south (front of the dwelling house). The views are obtained primarily from a standing perspective, however, majority of the views can be obtained in a sitting position.

No. 6 Lincoln Avenue: The views mentioned above are obtained from both the upper ground floor and first floor living rooms (i.e. Kitchen, lounge room, dining), bedrooms and balconies. These rooms are situated south (front of the dwelling house). The views are obtained primarily from a standing perspective, however, majority of the views can be obtained in a sitting position. A small portion of ocean views can be obtained from the lower ground floor.

No. 8 Lincoln Avenue: The views mentioned above are obtained from both the upper ground floor and first floor living rooms (i.e. Kitchen, lounge room, dining), bedrooms and balconies. These rooms are situated south (front of the dwelling house). The views are obtained primarily from a standing perspective, however, majority of the views can be obtained in a sitting position.

(Image 1: View from No. 4 Lincoln Avenue - Upper Ground Floor Balcony off main living area).

(Image 2: View from No. 4 Lincoln Avenue - Upper Ground Floor Master Bedroom).

(Image 3: View from No. 4 Lincoln Avenue - First Floor Balcony off 2nd Living Room).

(Image 4: View from No. 4 Lincoln Avenue - First Floor Bedroom).

(Image 5: View from No. 6 Lincoln Avenue - Upper Ground Floor Balcony off Living Area).

(Image 6: View from No. 6 Lincoln Avenue - Upper Ground Floor Living Area).

(Image 7: View from No. 6 Lincoln Avenue - First Floor Bedroom and Balcony).

(Image 8: View from No. 6 Lincoln Avenue - First Floor Master Bedroom Window).

(Image 9: View from No. 8 Lincoln Avenue - Upper Ground Floor Living Area and Balcony).

(Image 10: View from No. 8 Lincoln Avenue - First Floor Bedroom and Balcony).

3. Extent of impact

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

Comment to Principle 3
The extent of impact will be discussed below for each property:

No. 4 Lincoln Avenue: The view towards the south including a partial view of Dee Why Lagoon, district views and view of Dee Why Beach (land/water interface) will be reduced when viewed from the upper ground floor living rooms and balcony. These views and the view of North Curl Curl Headland will be reduced when viewed from the upper ground floor master-bedroom. The view of Dee Why Beach (land/water interface) including ocean views, will be obliterated from the master-bedroom. Ocean views towards the south-east and the distant partial view of North Head and St. Patrick's Estate, are likely to be obtained.

The first floor will lose a portion of Dee Why Lagoon from all affected rooms and possibly a further reduction of views towards Dee Why Beach (land/water interface). Ocean views towards the south-east will be obtained through obstructing vegetation. Majority of district views should be retained from this level, including views of North Curl Curl Headland and distant partial view of North Head and St. Patrick's Estate.

Overall view loss is considered to be **moderate to severe.**

No. 6 Lincoln Avenue: The view towards the south of Dee Why Beach (ocean view) and North Curl Curl Headland will be reduced from the upper ground floor living room, bedroom and balcony. From the kitchen/dining areas these views will be obliterated. The distant partial view of North Head may be retained.

The first floor will lose a portion of Dee Why Beach (land/water interface) and sections of water views. It is considered that North Curl Curl Headland, Dee Why Lagoon and the distant partial view of North Head and St. Patrick's Estate will be retained, including other ocean and district views.

Overall view loss is considered to be **moderate to severe.**

No. 8 Lincoln Avenue: Ocean views obtained from the upper ground floor and first floor will be slightly reduced. However, the views of Dee Why Lagoon and Beach (land/water interface), North Curl Curl Headland, district views and distant partial view of North Head and St. Patrick's Estate will be retained.

Overall view loss is considered to be **minor**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4
The alterations and additions have been found to exhibit non-compliance with the side boundary envelope, wall height and building bulk controls of the WDCP 2011, including a 20.4% variation to the building height standard of the *WLEP 2011,* resulting in excessive building mass and an overdevelopment of the site. These non-compliances were found to be unacceptable, inconsistent with the objectives of the controls and have subsequently not supported. The resultant affect of the proposed building mass is considered to impact on existing view corridors to No. 4, 6 and 8 Lincoln Avenue, Collaroy.

The question of a more 'skillful design' which provides the residents of the subject site with a similar development potential and amenity, whilst also retaining or reducing the extent of view loss impact to the current view corridors, were requested to be explored within a 'Request for Further Information Letter' dated 28 April 2023. Amendments to be considered included reducing the maximum building height, reduction in floor space to the proposed upper level and side building envelope encroachment, including an alternate roof form. It is noted that the submitted Clause 4.6 Variation Request acknowledged that the height breach could be reduced via an alternative roof form and/or pitch, nevertheless, argues that this will be a detriment to the overall architectural outcome for the site. This justification is not deemed as a sufficient planning ground for such a height variation, which results in view loss impacts.

An amended proposal was submitted, which included increasing the side setback from the western boundary line and slightly reducing the floor space of the first floor addition. However, no changes to the height or roof form took place. This amended proposal included a 'view loss study' of the affected properties. The view loss study generally aligns with the observations made in relation to the extent of view loss discussed in the above assessment, however, concerns are raised of the study's accuracy. Despite the concerns of accuracy, such an impact

caused by the built form control non-compliances and the development standard contravention as discussed within the entirety of this report are not deemed acceptable, particularly given that a more 'skillful' or 'sensitive' design can be achieved.

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

  Comment
  As discussed, an innovative design solution would include reducing the overall mass of the proposed upper floor level and the extent of building height non-compliance. This may of been achieved by exploring an alternate roof/pitch and a design that sensitively responds to the subject site constraints, size and compatibility to surrounding areas. This however, was not achieved.

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

  Comment
  No canopy trees are proposed for removal, ensuring vegetation has priority over views.

As a result of insufficient information and lack of acceptable amendments being implemented to address the view loss impacts, it is considered that the proposed development is inconsistent with the relevant objectives of the WDCP 2011. Accordingly, this assessment finds that the proposal is **not** supported, in this particular circumstance.

D8 Privacy

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy of the Warringah Development Control Plan (WDCP 2011).

The proposal includes a terrace area to the upper level addition, which is located less than 9.0 metres away from adjoining dwellings, in particular No. 11 Lincoln Avenue and their main private open space area. The proposed terrace being located at a higher level than the western neighbour, may result in downward viewing. Given the size and location of the terrace (attached to an internal living area towards ocean views), the purpose is likely to be for entertaining, with a high level of usage.

It was requested that a privacy element and redesign of this terrace were to be explored. The 'amended plans' included a 0.4 metres increase in setback from the western boundary, which did not address Council's privacy concerns, and would not meet the objectives of this clause being:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To provide personal and property security for occupants and visitors.*

As a result of insufficient privacy elements being incorporated within the design of the terrace, the proposal is considered to result in unacceptable visual privacy impacts, it is considered that the proposed development is inconsistent with the relevant objectives of the WDCP 2011. Accordingly, this assessment finds that the proposal is **not** supported, in this particular circumstance.

D9 Building Bulk

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan 2011 (WDCP 2011).

Clause D9 Building Bulk stipulates the following requirements:

On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised.

- *Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
- *Building height and scale needs to relate to topography and site conditions.*
- *Side and rear setbacks are to be progressively increased as wall height increases.*
- *Articulate walls to reduce building mass.*

The proposed development does **not** achieve all the requirements, and therefore will be assessed against the objectives of the clause.

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

  Comment
  In response to Council's letter dated 28 April 2023, the proposal included an amendment to increase the side setbacks along the western elevation to the proposed upper level. However, this amendment did not sufficiently address the wall height, maximum building height or building envelope concerns, which result in unacceptable building mass and amenity impacts to surrounding properties. Therefore, it is considered that the application as amended does not promote good design and innovative architecture to improve the urban environment.

  The proposed development does **not** achieve this objective.

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

  Comment
  The proposal presents a visually dominant design by virtue of its height and scale, directly related to the proposed building and wall height, non-compliant side building envelope and minimal landscaped areas. The proposal in its current form presents an over development of the site, with the dwelling house breaching it’s built form limitations.

  The proposed development does **not** achieve this objective.

Having regard to the above assessment, it is concluded that the proposed wall height is inconsistent with the aims and objectives of the control. Therefore, the application is **not** supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of $11,349 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,134,906.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council is not 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 the alterations and additions to a dwelling house including a swimming pool has been referred to the Development Determination Panel (DDP) as the proposal results in a variation of more than 10.0% to Clause 4.3 Height of Buildings under the provision of the *Warringah Local Environmental Plan 2011* (*WLEP 2011*) and includes five (5) unresolved objections.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, which received nine (9) submissions. Five (5) being objections, as noted above, and four (4) being in support of the development.

On balance, and considering the preceding detailed assessment of the application, including a detailed analysis of the unacceptability of the variation to Clause 4.3 of the *WLEP 2011*, combined with the non-compliance of built form controls such as wall height and side building envelope, which overall contribute to the excessive building bulk of the proposal, finds that the application is unacceptable in design, and would detrimentally impact the character and amenity of the area.

It is considered that the proposed development does not satisfy the appropriate controls and has not satisfactorily addressed Council's concerns. Accordingly, the application is referred to the DDP with a recommendation for **refusal**.
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/0123 for the Alterations and additions to a dwelling house including a swimming pool on land at Lot 1 DP 16998,9 Lincoln Avenue, COLLAROY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 4.3 Height of Buildings and Clause 4.6 Exception to development standards of the Warringah Local Environmental Plan 2011.

Particulars

i) The proposal seeks consent to contravene the maximum building height by 20.4% and fails to present sufficient planning grounds to justify such a variation to a development standard.

2. Pursuant to Section 4.15(1)(a)(i) Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011.

Particulars

i) The proposed development seeks consent for multiple non-compliances to the built form which, collectively, results in adverse amenity impacts upon surrounding properties. These

non-conforming elements and the extent of variations sought, in conjunction with an allotment considered to be undersized, does not promote a design that is compatible with neighbouring development or the existing streetscape.

3. Pursuant to Section 4.15(1)(a)(iii) and 4.15(1)(b) & (c) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following controls within the Warringah Development Control Plan: A.5 Objectives, B1 Wall Heights, B3 Side Boundary Envelope, D7 Views, D8 Privacy and D9 Building Bulk.

Particulars

i) The proposed development fails to meet the numerical requirements and underlying objectives of the controls as listed above, presenting a design of unacceptable building mass, resulting in an overdevelopment of the site, with the dwelling house breaching it's built form limitations that are set by both the LEP and DCP. The consequence of the development contributes to amenity impacts to surrounding properties.

ii) The proposed development by way of its building mass, and height breach gives arise to an unacceptable impact on views obtained by adjacent properties. It is considered that the impact to these views is not representative of view sharing and the outcome is contrary to the planning principle established in Tenacity v Warringah Council.

ii) The amended proposal failed to provide sufficient privacy elements and an innovative design solution to protect the visual privacy of the surrounding dwellings, given that the upper floor terrace is located at a high level resulting in the likeness of downward viewing.

4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Particulars

i) The extent of non-compliances of relevant controls within the Warringah Development Control Plan and clauses within the Warringah Local Environmental Plan 2011, and the resultant unreasonable amenity impacts upon adjoining and nearby properties, is such that approval of the proposed development would not be within the public's interest.

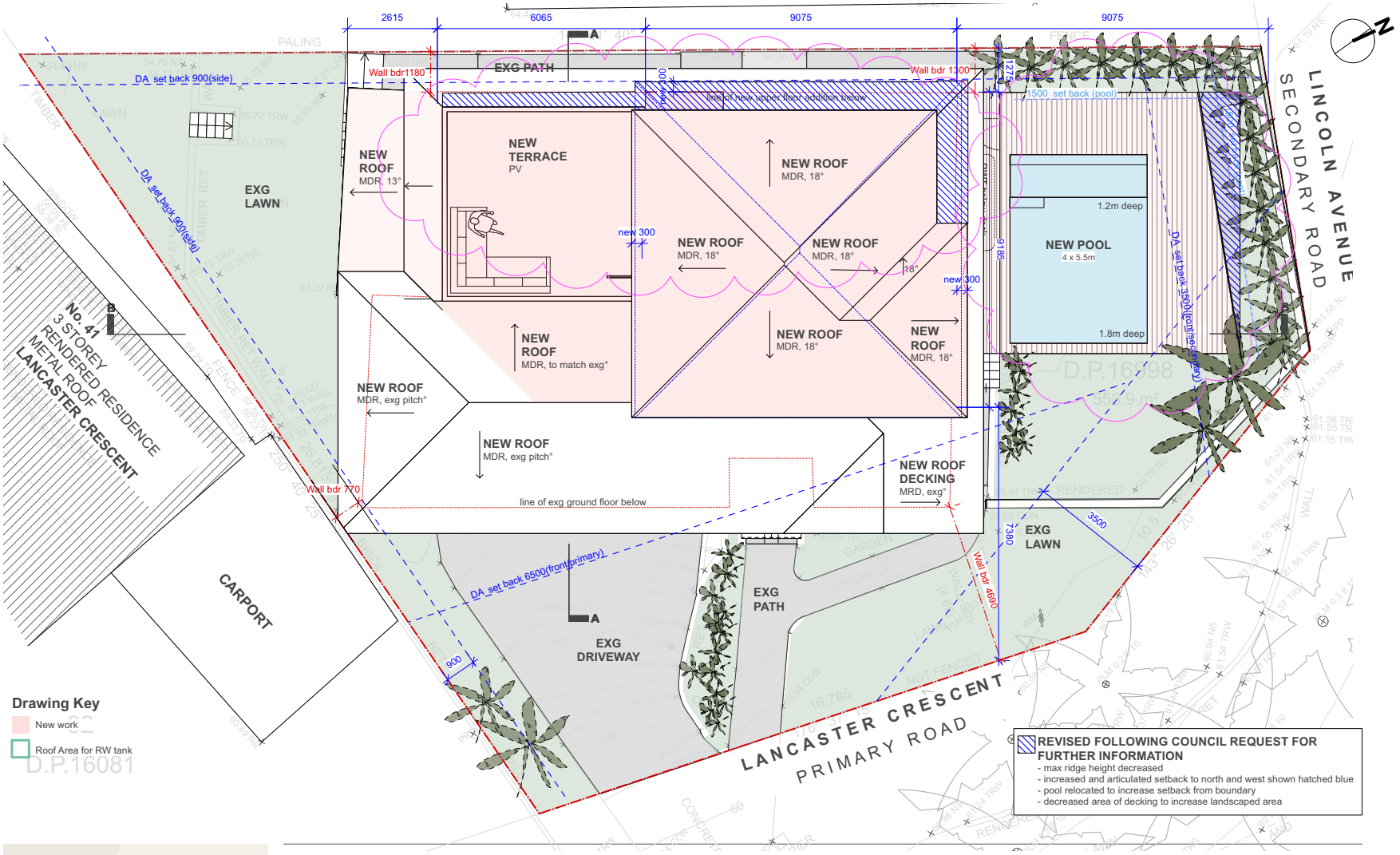
In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Adam Richardson, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Adam Richardson, Manager Development Assessments



VOUR BEAUTIFUL HOME

PROJECT ADDRESS
9 Lincoln Avenue
Collaroy NSW 2097
Lot 1 DP16998 558.9sqm

CLIENT/S
Vanessa & Peter Hodgson

DATE
September 2022

STATUS
DA Application

REVISION

B	30/8/2022	Revised FF layout
C	12/10/22	Draft
D	24/7/23	updated for DA approval

SITE & ROOF PLAN PROPOSED

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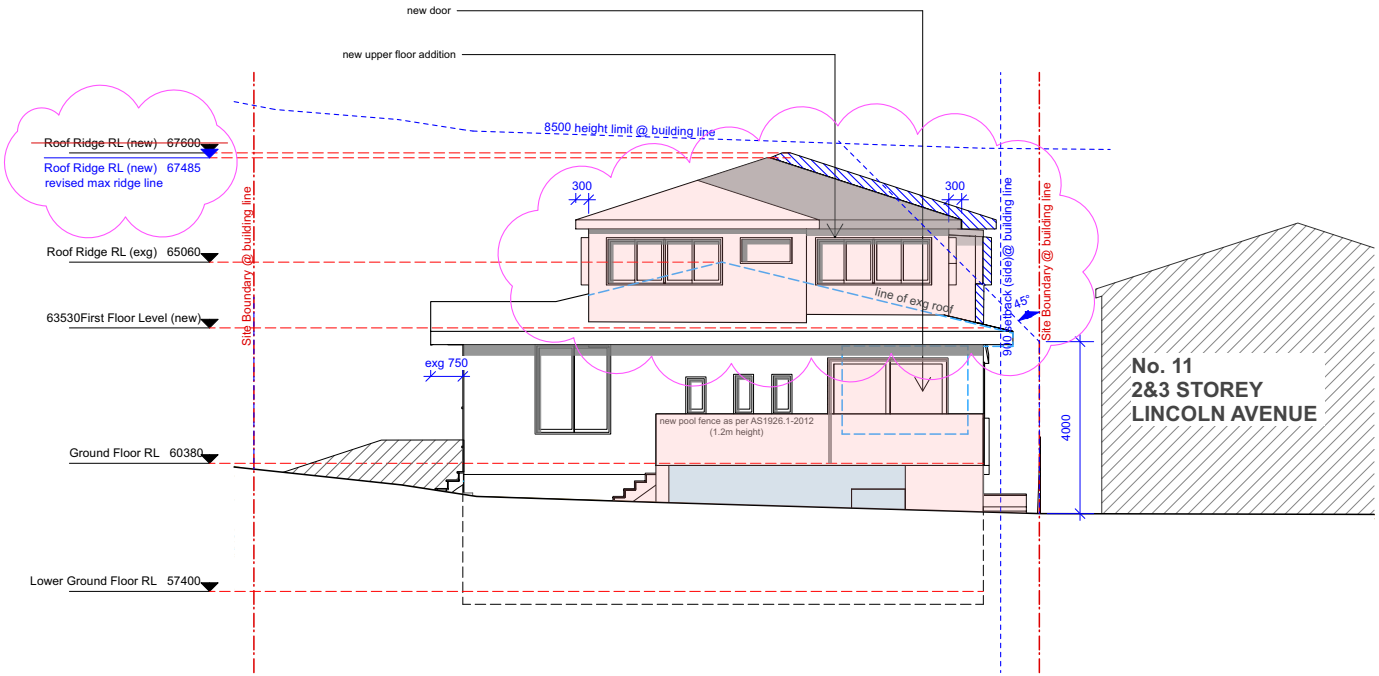

Drawing Key

- New work
- New Walls
- Existing walls
- Demolish
- Fill

1 PROPOSED NORTH ELEVATION
Scale: 1:100

REVISED FOLLOWING COUNCIL REQUEST FOR FURTHER INFORMATION
- max ridge height decreased
- increased and articulated setback to north and west shown hatched blue
- pool relocated to increase setback from boundary
- decreased area of decking to increase landscaped area

VOUR BEAUTIFUL HOME

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Lot 1 DP16998 558.9sqm

CLIENT/S
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DATE
September 2022

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ELEVATION NORTH PROPOSED

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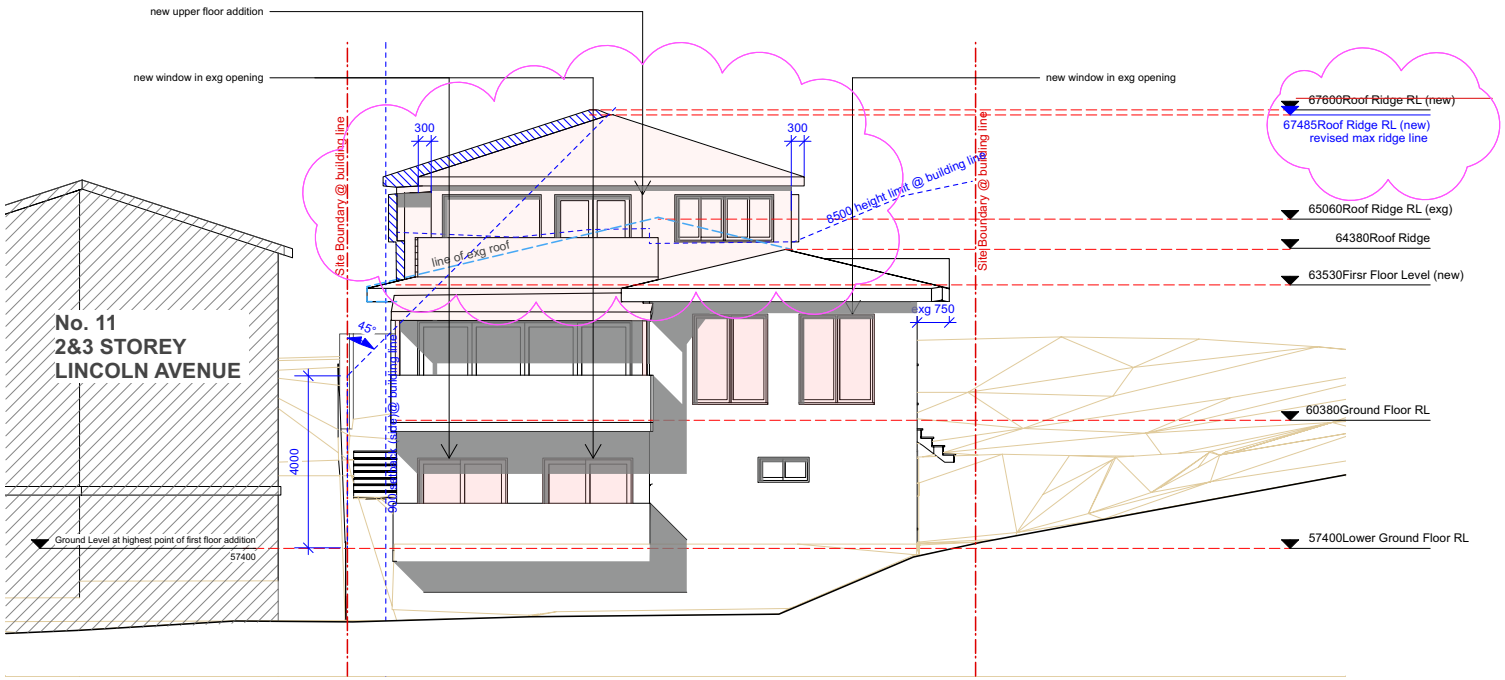

Drawing Key

- New work
- New Walls
- Existing walls
- Demolish
- Fill

1 PROPOSED SOUTH ELEVATION
Scale: 1:100

REVISED FOLLOWING COUNCIL REQUEST FOR FURTHER INFORMATION
- max ridge height decreased
- increased and articulated setback to north and west shown hatched blue
- pool relocated to increase setback from boundary
- decreased area of decking to increase landscaped area

VOUR BEAUTIFUL HOME

PROJECT ADDRESS
9 Lincoln Avenue
Collaroy NSW 2097
Lot 1 DP16998 558.9sqm

CLIENT/S
Vanessa & Peter Hodgson

DATE
September 2022

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DA Application

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D	24/7/23	updated for DA approval

ELEVATION SOUTH PROPOSED

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SK210

SCALE
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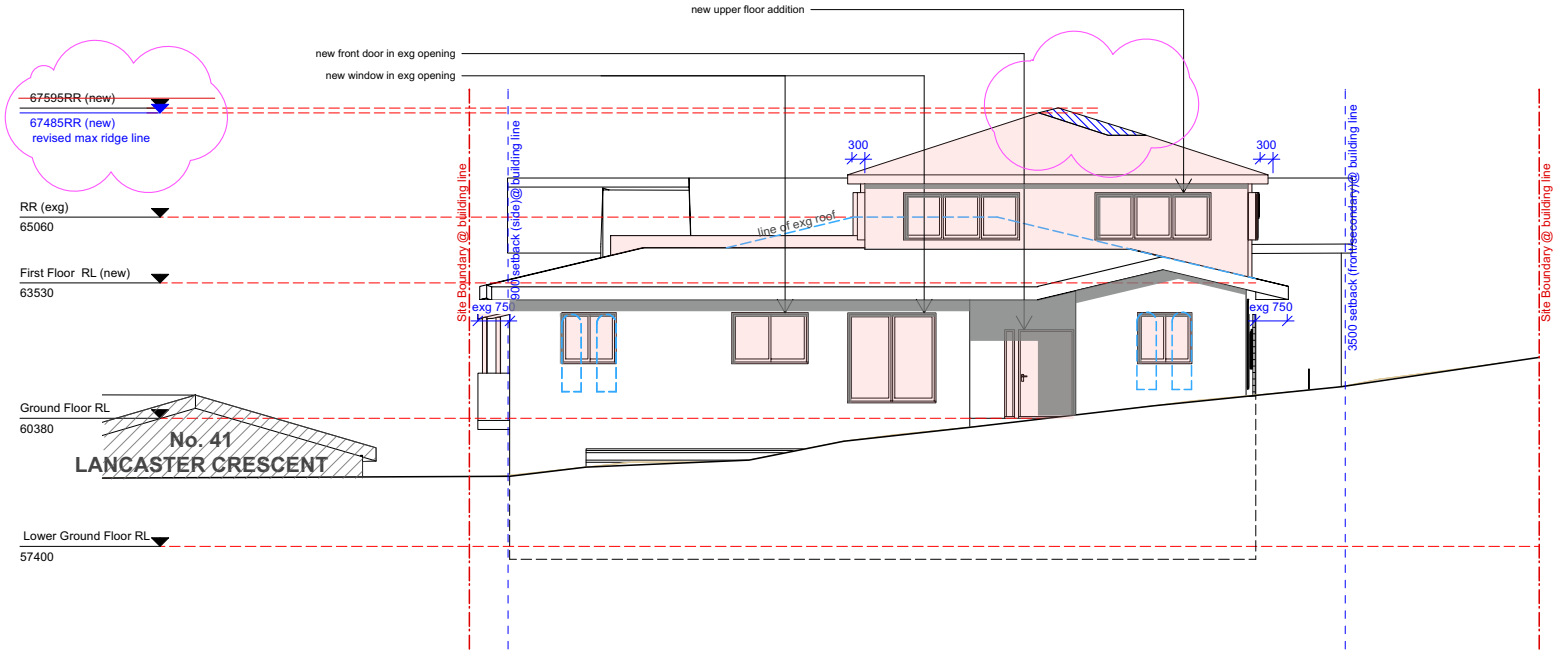

Drawing Key

- New work
- New Walls
- Existing walls
- Demolish
- Fill

1 PROPOSED EAST ELEVATION
Scale: 1:100

REVISED FOLLOWING COUNCIL REQUEST FOR FURTHER INFORMATION
- max ridge height decreased
- increased and articulated setback to north and west shown hatched blue
- pool relocated to increase setback from boundary
- decreased area of decking to increase landscaped area

VOUR BEAUTIFUL HOME

PROJECT ADDRESS
9 Lincoln Avenue
Collaroy NSW 2097
Lot 1 DP16998 558.9sqm

CLIENT/S
Vanessa & Peter Hodgson

DATE
September 2022

STATUS
DA Application

REVISION

B	30/8/2022	Revised FF layout
C	12/10/22	Draft
D	24/7/23	updated for DA approval

ELEVATION EAST PROPOSED

DRAFT ONLY
NOT FOR CONSTRUCTION

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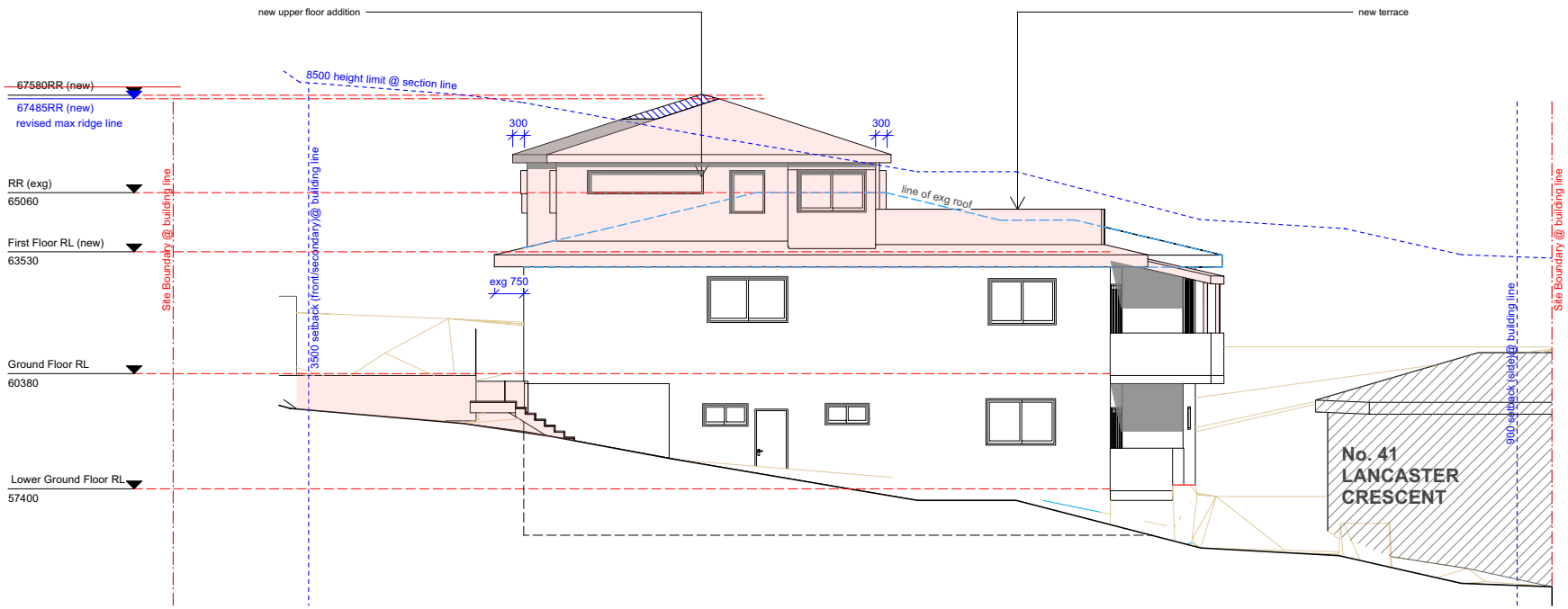
SK220

SCALE
1:100



Drawing Key

- New work
- New Walls
- Existing walls
- Demolish
- Fill

1 PROPOSED WEST ELEVATION
Scale: 1:100

REVISED FOLLOWING COUNCIL REQUEST FOR FURTHER INFORMATION
- max ridge height decreased
- increased and articulated setback to north and west shown hatched blue
- pool relocated to increase setback from boundary
- decreased area of decking to increase landscaped area

VOUR BEAUTIFUL HOME

PROJECT ADDRESS
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ELEVATION WEST PROPOSED

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SK230

SCALE
1:100

request to vary a development standard

REQUEST TO VARY A DEVELOPMENT STANDARD

9 LINCOLN AVENUE

COLLAROY NSW 2097

January 2023

Disclaimer

This report has been prepared on the basis of information available at the date of publication. Whilst attempts have been made to ensure the accuracy of the information in this document, Northern Beaches Planning accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance on information in this publication or referenced in this publication. Reproduction of this report (or part thereof) is not permitted without prior permission from Northern Beaches Planning.

introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of Vanessa and Peter Hodgson in relation to a development application for the alterations and additions to the existing dwelling and the construction of a swimming pool at 9 Lincoln Avenue, Collaroy (**site**). This request is made pursuant to clause 4.6 of Warringah Local Environmental Plan 2011 (**WLEP 2011**) and with regard to relevant case law.

standard to be varied

With a maximum building height of 10.235m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the building height development standard of clause 4.3 of WLEP 2011 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The proposed development reaches a maximum height of 10.235m, representative of a 1.735m or 20.4% variation to the 8.5m maximum building height development standard. The maximum height exceedance occurs at the pitch of the proposed upper floor roof (RL 67.635m AHD) over an area of historical excavation (RL 57.40m AHD) associated with the existing subfloor storage area. The extent of non-compliance with the 8.5m maximum building height development standard is highlighted in the Section BB of the Architectural Plans prepared by Your Beautiful Home (**Figure 1)** and the Height Blanket Diagram (**Figure 2**).

However, the extent of variation is considerably reduced in consideration of pre-existing or assumed natural ground levels, excluding excavation that has already occurred on side. The reduced extent of non-compliance based on natural ground levels is highlighted in the Section BB of the Architectural Plans prepared by Your Beautiful Home (**Figure 3**) and the Height Blanket Diagram (**Figure 4**).

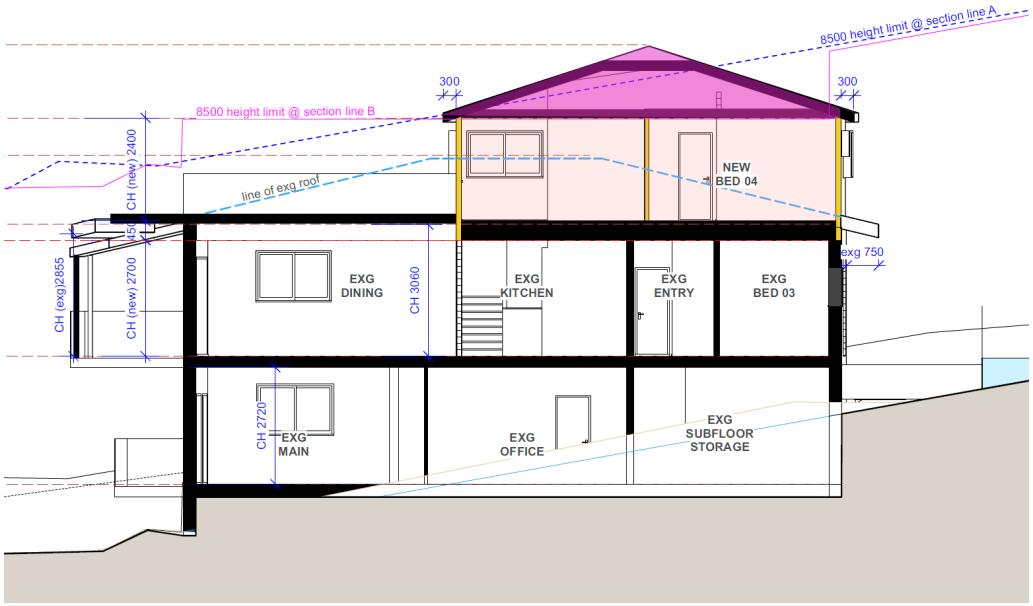


Figure 1 – Section BB, with the height non-compliance measured to existing ground levels highlighted in pink
Source: Your Beautiful Home

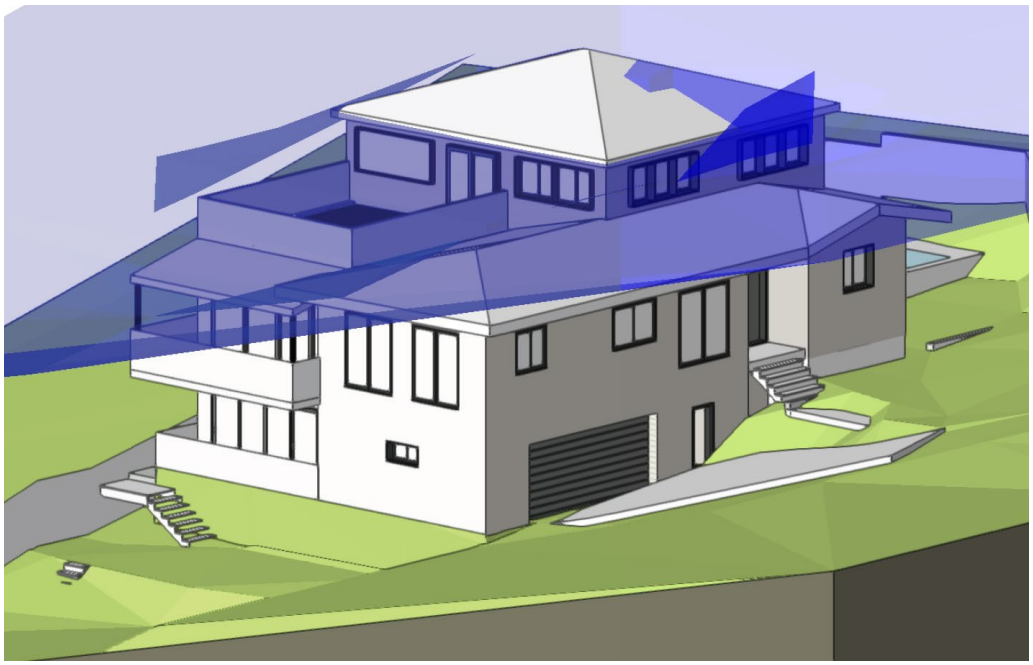


Figure 2 – Height Blanket Diagram (existing ground levels)
Source: Your Beautiful Home

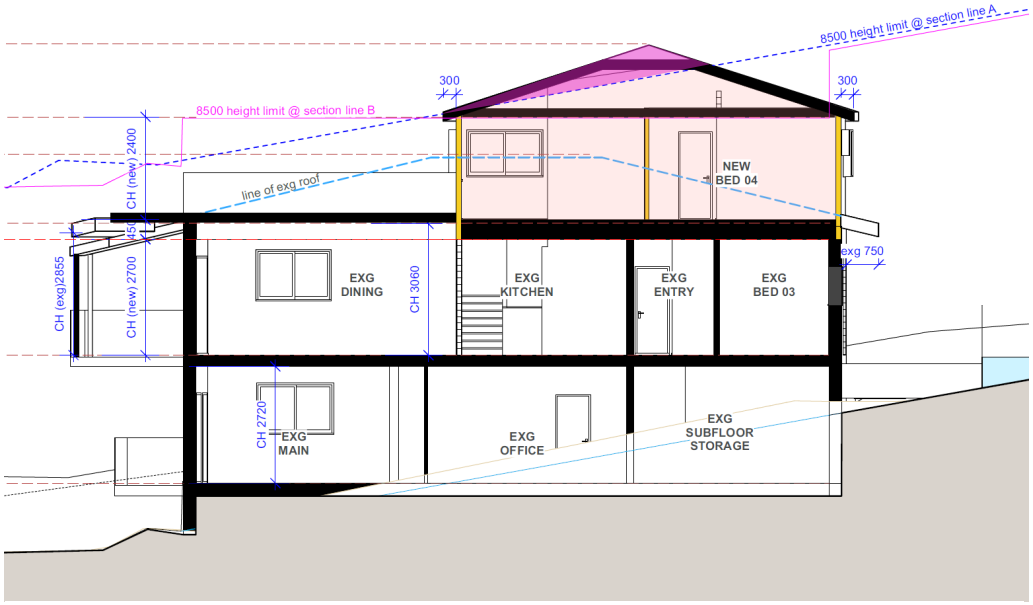


Figure 3 – Section BB, with the height non-compliance measured to assumed natural ground levels highlighted in pink
Source: Your Beautiful Home

Figure 4 – Height Blanket Diagram (existing ground levels)
Source: Your Beautiful Home

unreasonable or unnecessary

Pursuant to clause 4.6(4) of WLEP 2011, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of WLEP 2011. Clause 4.6(3)(a) of WLEP 2011 requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 and as confirmed in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the building height development standard, as prescribed by clause 4.3(1) of WLEP 2011, as follows:

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

Comment: As seen from Lincoln Avenue, the proposed development presents as a one and two storey dwelling. As seen from Lancaster Crescent, the dwelling presents as a two storey dwelling that steps down the slope of the site. A minor portion of the proposal reaches three storeys however this is not perceived from the public domain, with appropriate setbacks and articulation to ensure that the apparent size of the dwelling is minimised.

However, the incorporation of a third storey is not uncommon within the visual catchment of the site. Rather, three storey dwellings are becoming characteristic of the locality, with contemporary development presenting three storeys in one plane to the public domain, as evident in Figures 5-8 on the following page.

Consistent with the findings of the NSW LEC in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, to be compatible in an urban design context is to be capable of existing in harmony together.

Visually, the height and scale of the proposed two-three storey dwelling is entirely compatible with of surrounding and nearby development. The non-compliance associated with the upper roof form, being a roof form associated with a portion of the dwelling that has a two storey appearance to the public domain, does not detract from consistency with this objective.

Figure 5 – Dwellings on the high side of Lincoln Avenue, from 2 Lincoln Avenue (far right) to 8 Lincoln Avenue (far left)
Source: NBP

Figure 6 –24 Lancaster Crescent
Source: NBP

Figure 7 –28 (right) and 30 Lancaster Crescent (left)
Source: NBP

Figure 8 –20 Lancaster Crescent
Source: NBP

Figure 9 –25 Suffolk Avenue
Source: NBP

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

Comment: As discussed above, the proposed development has been designed to minimise the visual appearance of the development, with a high degree of articulation and varied setbacks to ensure that no three storey element presents to the public domain.

The proposed development will not result in adverse or unreasonable overshadowing of adjoining properties as demonstrated by the Shadow Diagrams prepared by Your Beautiful Home to accompany the application.

The non-compliant portions of the development are limited to the roof, which does not attribute to any adverse impacts upon privacy of adjoining properties.

Whilst the proposed roof will impact upon existing views obtained over the existing development, it is unlikely that this impact will be unreasonable. The extent of impact has been reasonably minimised, with a limited floor plate proposed at the upper level and considerable portions of the developable area maintained well below the height plane.

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

Comment: The proposed development is compatible with the form and scale of surrounding and nearby development and will not be visually offensive in the streetscape context or when

seen at a distance from Dee Why Beach. The proposed upper floor addition has been designed to integrate with the form of the existing dwelling and the resultant development is a well-articulated and skilful design solution that is appropriately responsive to the context of the site.

(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 development presents as a one and two storey dwelling as seen from Lincoln Avenue, and as a two storey dwelling that steps down the slope of the site from Lancaster Crescent. When viewed from a distance, the proposed development would not be readily distinguishable in its context, which is characterised by comparably large dwellings with limited landscaping.

As such, strict compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Clause 4.6(3)(b) of WLEP 2011 requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the height standard are as follows:

1. **Historical excavation**

   The height breach occurs where the proposed upper roof form is situated over the excavated footprint of the existing dwelling. In accordance with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of WLEP 2011.

2. **Topography**

   The topography of the site is unusual, falling both north-south and east-west. This is evident in the Height Plane Blanket in Figure 4, which reflects the natural fall of the land and highlights that the extent of non-compliance is responsive to the unusual topography of the site.

3. **Characterisation of development**

   The proposed development is appropriately characterised as alterations and additions to the existing dwelling and is bound by the levels of the existing development. The development has been designed to marry the architectural style of the existing dwelling, with a pitched roof proposed at the upper most level. A flat or skillion roof would reduce the extent of the height

breach, particularly with respect to natural ground levels, however this would be an inferior architectural outcome for the site.

4. **Contextual response**

   There is a strong precedence of three storey development and exceedance of the 8.5m height limit in the vicinity of the site, including the recent developments approved by Council at:

   - 4 Lincoln Avenue (DA2021/0077)
   - 6 Lincoln Avenue (DA2021/0324)
   - 8 Lincoln Avenue (DA2016/1321)
   - 20 Lancaster Crescent (DA2015/0171)

   In addition to these, there are a number of dwellings that have the appearance of a height that exceeds the height limit, having had the benefit of being developed without the inclusion of areas of existing excavation.

Allowing for the development to appropriately respond to the individual context of the site, including the levels of the existing dwelling and the irregular terrain of the site, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.

Furthermore, allowing for a variation to the height plane that is consistent with the height and scale of nearby development promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the maximum height development standard.

public interest

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

As identified above, the proposed development is consistent with the objectives of the building height development standard. Furthermore, the proposal is consistent with the objectives of the R2 Low Density Residential zone, as follows:

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

Comment: The proposed development provides for the growing/changing needs of the occupants of the dwelling within a low density environment.

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

  Comment: Not applicable.

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

  Comment: The resultant development has an appropriate landscaped character, commensurate with that of surrounding development.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the maximum height limit.

concurrence

Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Council's DDP Charter (in response to advice received from the Department of Planning, Industry and Environment, dated 2 November 2021), applications for Class 1 buildings with a variation greater than 10% to the building height development standard within WLEP 2011 may be determined by the DDP.

As such, the Secretary's concurrence can be assumed by the DDP in this instance.

conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of WLEP 2011 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the building height development standard.

Rebecca Englund
B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

ITEM 3.9	**DA2023/0246 - 18 HILLCREST AVENUE MONA VALE - CONSTRUCTION OF A SECONDARY DWELLING**
REPORTING MANAGER	**Adam Richardson**
TRIM FILE REF	**2023/558180**
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 **refuses** Development Consent to DA2023/0246 for construction of a secondary dwelling on land at Lot 1 DP 818730, 18 Hillcrest Avenue MONA VALE, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0246

Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 1 DP 818730, 18 Hillcrest Avenue MONA VALE NSW 2103
Proposed Development:	Construction of a secondary dwelling
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jennifer Lee Robins
Applicant:	Jennifer Lee Robins

Application Lodged:	14/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	17/07/2023 to 31/07/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	$ 583,000.00

EXECUTIVE SUMMARY

This development application seeks consent for construction of a secondary dwelling.

The application is referred to the Development Determination Panel (DDP) due to the application receiving five objections.

Concerns raised in the objections predominantly relate to view loss, character, scenic protection, privacy, access and parking, zone objectives and landslip safety.

The assessment of the proposed development has found that the development fails to meet the Objectives of the C4 Environmental Living Zone of the Pittwater Local Environmental Plan 2014, and

is inconsistent with the requirements of A4.9 Mona Vale Locality of the Pittwater 21 Development Control Plan, C1.3 View Sharing of the Pittwater 21 Development Control Plan, C1.5 Visual Privacy of the Pittwater 21 Development Control Plan, and D9.2 Scenic Protection - General of the Pittwater 21 Development Control Plan. In summary, the proposed development is not considered to be appropriately designed and sited as it results unacceptable visual and amenity impacts to adjoining properties.

This report concludes with a recommendation that the DDP refuse the development application for the reasons outlined at the end of this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of the construction of a detached secondary dwelling. The secondary dwelling includes a bedroom with ensuite, living room, kitchen and dining area. External decks adjoin the dwelling to the north-west, north and east.

Application History
Additional information was requested in relation to Foreshore Area, View Sharing, Visual Privacy and Floor Space. The applicant provided amended plans and height poles were requested to be erected. The application was then re-notified from 17/07/2023 to 31/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the 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

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning
Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality
Pittwater 21 Development Control Plan - B3.4 Coastline (Bluff) Hazard

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D9.2 Scenic protection - General

SITE DESCRIPTION

Property Description:	Lot 1 DP 818730 , 18 Hillcrest Avenue MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of one (1) allotment located on the north-eastern side of Hillcrest Avenue. The site is irregular in shape with a frontage of 7.035 metres along Hillcrest Avenue. The site has a surveyed area of 3495m². The site is located within the C4 Environmental Living Zone under the PLEP 2014. The site is currently occupied by a single storey dwelling house. The site slopes down gradually to the north and falls steeply to the east down the cliff edge to the beach. The site consists of a grassed area and does not contain any significant trees or vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by residential dwellings of varying sizes and styles.

Map:

SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a condition of consent, in the event that the development is approved. Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Foreshore Area, View Sharing, Visual Privacy and Floor Space. Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is capable of being addressed via a condition of consent, in the event that the development is approved. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home

Section 4.15 Matters for Consideration	Comments
	Building Act 1989. This matter is capable of being addressed via a condition of consent, in the event that the development is approved. 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 is capable of being addressed via a condition of consent, in the event that the development is approved.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) **Social Impact** The proposed development will have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not 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	Approval of the application is not considered to be within the public's 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 17/07/2023 to 31/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mrs Robyn Annette Terrell	6 Park Avenue BEECROFT NSW 2119

Name:	Address:
Object	8/ 123 Headland Road NORTH CURL CURL NSW 2099
Mr Angelo Auricchio	16 Hillcrest Avenue MONA VALE NSW 2103
Mrs Margaret Jennifer Scott	14 Hillcrest Avenue MONA VALE NSW 2103
Mr Geoffrey Ian Webster	12 Hillcrest Avenue MONA VALE NSW 2103

The subject development application was first notified from 20/03/2023 to 3/04/2023. A submission was received from Robyn Terrell at No. 10 Hillcrest Avenue and a submission from iObject on behalf of No. 12, 14 and 16 Hillcrest Avenue and 154 Barrenjoey Road.

The subject development application was then re-notified from 17/07/2023 to 31/07/2023. A submission was received from Margaret Scott at No. 14 Hillcrest Avenue, Angelo Auricchio at No. 16 Hillcrest Avenue and iObject on behalf of Geoffrey Webster at No. 12 Hillcrest Avenue.

The following issues were raised in the submissions:

- Local Character and Scenic Protection
- View Loss
- Privacy
- Landslip, Safety and Cliff Track
- Foreshore Building Line
- Access and Parking
- Zoning and Secondary Dwelling Controls
- Loss of Habitat

The above issues are addressed as follows:

- **Local Character and Scenic Protection**

  The submissions note that Clause D9.2 Scenic Protection seeks the following "Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment." The submissions raised concerns that the proposed secondary dwelling will alter the natural vista presented by North Mona Vale Headland and will visually dominate the natural features of the landscape when viewed from Bungan Beach. Bungan Headland and Mona Vale Headland is typified by development with generous rear setbacks to the cliff edge providing a green corridor for scenic protection. The submissions raised concerns that the siting of the proposed secondary dwelling is inconsistent with the pattern of surrounding development.

  Comment:

  This matter is further discussed in this report under A4.9 and D9.2. The assessment found the proposal to be contrary to the controls and warrants refusal.

- **View Loss**

  The submissions raised concerns that the proposal disrupts significant views from No. 12, 14

and 16 Hillcrest Avenue and does not allow for view sharing.

Comment:

A detailed assessment on view loss has been provided under C1.3 View Sharing of this report. The proposal was found to be inconsistent with the requirements and outcomes of this clause, forming a reason for refusal.

- **Privacy**

  The submissions raised concerns that the siting and layout of the rear elevated entertainment space results in acoustic privacy impacts for the surrounding properties. The submissions raised concerns that the secondary dwelling could be used as an Airbnb and party house generating significant acoustic impacts. Additionally, concerns are raised regarding the removal of the timber slatting to the western edge of the deck in the south-western corner which creates additional privacy impacts to No. 12.

  Comment:

  The proposal provides extensive decked areas which are not compatible with the low scale nature anticipated for a secondary dwelling. A detailed assessment is provided under C1.5 Visual Privacy finding the proposal to be unsupported, forming a reason for refusal.

- **Landslip, Safety and Cliff Track**

  The submissions raised concerns that the site is identified as a geotechnical hazard area and coastal risk area and the development presents landslide and coastal erosion risk. Concerns are also raised regarding an illegal cliff track from the subject site down to Bungan Beach which poses a safety risk.

  Comment:

  The proposal has been reviewed by Council's Coast and Catchments Team and Development Engineering Team with regards to coastal risk and geotechnical risk. The application is supported by a Geotechnical Assessment Report and a Coastal Engineering Report. As per the referral comments, the proposal is supported in relation to coastal and landslip risk subject to the recommended conditions. In relation to the cliff track to Bungan Beach, this is not a matter for assessment under this development application.

- **Foreshore Building Line**

  The submissions raised concerns that the proposal varies Clause 7.8 and encroaches over the foreshore building line and the Clause 4.6 variation request is insufficient.

  Comment:

  The proposal has been amended to comply with Clause 7.8 and the development is outside the foreshore area.

- **Access and Parking**

  The submissions raised concerns that the proposal does not provide additional parking or a driveway for the proposed secondary dwelling. Hillcrest Avenue currently experiences high

parking demand due to the Bicentennial Coastal Walkway attracting tourists and adding parking pressures.

Comment:

A detailed assessment on parking is provided under B6.3 Off-street Vehicle Parking Requirements of this report. In summary, the Housing SEPP does not require additional parking spaces to be provided for a secondary dwelling provided the existing number of parking spaces is retained. As the SEPP prevails over the P21 DCP, compliance with this control is not required. This matter does not warrant refusal.

- **Zoning and Secondary Dwelling Controls**

  The submissions raised concerns that the proposed secondary dwelling, while permissible in the zone, does not meet the C4 zone objectives. Specifically, the proposal does not enhance foreshore vegetation, does not consider the aesthetic values of the area, does not integrate with the landform and landscape and is not low-scale. Additionally, the proposal does not meet DCP control C1.11 which requires secondary dwellings to be only one storey. Concerns are raised that the overall visual bulk and scale of the development is inconsistent with surrounding development.

  Comment:

  A detailed assessment is provided against the C4 zone objectives in this report. This assessment found the proposal to be inconsistent with the zone objectives, forming a reason for refusal. Whilst the design of the secondary dwelling is slightly stepped, it provides only a ground floor level and one storey in total. As such, the proposal complies with C1.11.

- **Loss of Habitat**

  The submissions raised concerns that the proposal results in a loss of habitat and passageway for native animals and disrupts the green corridor viewed from Bungan Beach.

  Comment:

  The proposed secondary dwelling is located upon cleared land and existing trees are to be retained. Council's Landscape Officer has provided conditions to ensure appropriate tree and vegetation protection, if the application were to be approved.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	***Supported, with conditions*** The proposed secondary dwelling is located upon cleared land. The site is exposed to the coastal environment and in terms of landscape outcome, a Landscape Plan is submitted providing planting to common residential boundaries and conditions shall be imposed to ensure the planting is nominated as shrub planting able to reach no more than 3 metres in height to both the south and west boundaries

Internal Referral Body	Comments
	to preserve existing neighbouring views. Existing trees within the property are noted as retained and standard consent conditions shall be imposed for protection.
NECC (Coast and Catchments)	***Supported, with conditions*** The application has been assessed in consideration of the plans and documents submitted, the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against the requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is generally consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016. **State Environmental Planning Policy (Resilience & Hazards) 2021** The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Divisions 3, 4 and 5 of the SEPP R & H apply for this DA. On internal assessment and as assessed in the submitted Coastal Engineering Advice report prepared by Horton Coastal Engineering Pty Ltd, dated 23 February 2023, the DA satisfies requirements under Divisions 3, 4 and 5 of the SEPP R&H. As such, it is considered that the application does comply with the provisions of the State Environmental Planning Policy (Resilience & Hazards) 2021 subject to conditions. **Pittwater LEP 2014 and Pittwater 21 DCP** Coastline Bluff Hazard Management The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site. A Geotechnical Assessment Report by Crozier Geotechnical Consultants dated February 2023 assessing coastline (bluff)/coastal cliff or slope instability has been submitted with the DA. A coastal engineering report prepared by Horton Coastal Engineering Pty Ltd, dated 23 February 2023 has been submitted with the Geotechnical Report. The Coastal Engineering Report determined that coastal inundation is not a significant risk to the proposed development over a planning period of well over 100 years. Further an allowance for erosion/weathering of 6mm/year of the cliff at 18 Hillcrest Avenue Mona Vale, with sensitivity testing up to 12mm/year, should be

Internal Referral Body	Comments
	considered and assessed by the geotechnical engineer. The Geotechnical report concluded that the landslip risk was assessed as Acceptable when assessed against the criteria of the AGS 2007. As such, it is considered that the application does comply, subject to conditions, with the requirements of the coastal relevant geotechnical clauses of the Pittwater LEP 2014 and Pittwater 21 DCP, as well as those contained in SEPP R&H. Development on Foreshore Area A section of the subject property is seaward of the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area. Assessment of this control will be undertaken by the planning officer. No other coastal planning or development controls relevant to the subject proposal were identified.
NECC (Development Engineering)	***Supported, with conditions*** The proposed development is mapped as a geotechnical hazard H1. A geotechnical engineers and coastal engineers report has been provided. The site falls away from the street frontage to the rear. It is proposed to drain the secondary dwelling to the rear using a dispersion trench. This is acceptable.
NECC (Water Management)	***Supported with conditions*** This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy); and • Relevant LEP and DCP clauses The geotechnical report provided states that, due to the presence of impermeable bedrock/clay soils, the property is not suitable for onsite absorption disposal system. The site may be suitable for a dispersion system utilising an Onsite Detention System (OSD) and a level spreader designed by a suitably qualified Hydraulic Engineer. The applicant must ensure that the stormwater system meets the requirements of the geotechnical report for site slope stability. On assessment, the proposal is considered acceptable regarding water quality management.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	***Supported, without conditions*** The proposal was referred to Ausgrid who provided a response stating that there are no Ausgrid assets present near the proposed development and their decision is not required.

External Referral Body	Comments
Aboriginal Heritage Office	***Supported, with conditions*** No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. 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.

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. 1364242S dated 19 January 2023).

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

Commitment	Required Target	Proposed
Water	40	45
Thermal Comfort	Pass	Pass
Energy	50	60

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	**Compliance/Comment**
(2) Development consent must not be granted for development to which this Part applies unless— a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and c) The total floor area of the secondary dwelling is: i) no more than 60m², or ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	The total floor area of the secondary dwelling is 59.9m^2.

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 450m².	The site area is 3495m^2.
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The number of parking spaces provided on the site is the same as the number of parking spaces provided on the existing site.

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 has been reviewed by Council's Coast and Catchments Team deeming it acceptable subject to conditions. The Aboriginal Heritage Officer has also reviewed the proposal deeming it acceptable subject to conditions, in the event that the development is approved. As such, the proposed development is not likely to cause adverse impacts on the biophysical, hydrological and ecological environment, coastal environmental values and natural coastal processes, water quality, vegetation and habitats, public open space and foreshore access, Aboriginal cultural heritage, or the

use of the surf zone.

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

Comment:
The proposed development is sited on the southern headland of Bungan Beach which consists of other residential development. As such, the proposed development is designed and sited to avoid adverse impacts on the above matters.

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:
As above, the proposed development is sited on the southern headland of Bungan Beach adjoining existing residential development. The proposed development is not likely to cause adverse impacts on foreshore access, overshadowing, wind funnelling, view loss from public places, visual amenity, scenic qualities and Aboriginal Cultural Heritage. The proposal consists of a secondary dwelling that is minor in size and scale and is compatible with surrounding development.

Division 5 General
2.12 Development in coastal zone generally—development not to increase risk of coastal

hazards

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

Comment:
The proposed development is not likely to cause increased risk of coastal hazards.

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

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

Comment:
The proposal has been reviewed against all relevant legislation and policies.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	5.5m	5.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The underlying objectives of the C4 Environmental Living zone

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

  Comment:

  The proposal provides a secondary dwelling located on the edge of Mona Vale Headland in an area with special ecological, scientific and aesthetic values. The siting and design of the development is not considered to be low-impact and will have an adverse impact on the aesthetic values on the Mona Vale Headland to which it is proposed to be located.

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

  Comment:

  The proposal is incompatible with surrounding development which consists of low-impact headland development. Surrounding development consists of buildings with adequate spatial separation from the cliff edge providing foreshore vegetation. The proposed development disrupts visual continuity and the aesthetic values of Mona Vale Headland.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

  Comment:

  The size of the proposed secondary dwelling is excessive for the site with the extent of decking contributing to the unsympathetic scale of the development. The proposal requires significant excavation near the cliff edge and is not appropriately integrated with the landform and landscape.

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

Comment:

The proposed development does not facilitate the establishment of riparian and foreshore vegetation and wildlife corridors.

7.5 Coastal risk planning

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

(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions that could be applied in the event that the development is approved. It is considered that the development is not likely to cause detrimental increases in coastal risks to other development or properties.

(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions that could be applied in the event that the development is approved. It is considered that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

(c) incorporates appropriate measures to manage risk to life from coastal risks, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions that could be applied in the event that the development is approved. It is considered that the development incorporates appropriate measures to manage risk to life from coastal risks.

(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions that could be applied in the event that the development is approved. Therefore, it is considered that the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards.

(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions that could be applied in the event that the development is approved. It is considered that the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

(f) has regard to the impacts of sea level rise, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions that could be applied in the event that the development is approved. It is considered that the development has regard to the impacts of sea level rise.

(g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions that could be applied in the event that the development is approved. It is considered that the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	50.8m	N/A	Yes
Rear building line	FBL	Above	N/A	Yes
Side building line	SW - 2.5m	3.0m	N/A	Yes
	NW - 1m	2.5m	N/A	Yes
Building envelope	SW - 3.5m	Within Envelope	N/A	Yes
	NW - 3.5m	Within Envelope	N/A	Yes
Landscaped area	60%	89.6% (3104.6m^2)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	No	No
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	No	No
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	Yes	Yes
D9.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D9.12 Fences - General	Yes	Yes

Detailed Assessment

A4.9 Mona Vale Locality

The desired character of the Mona Vale Locality includes the following:

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. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations.

Comment:
The proposed secondary dwelling is sited on the edge of Mona Vale Headland within a coastal risk area and geotechnical hazard area. This is an environmentally sensitive area of special ecological and aesthetic value and is not considered an appropriate location for a secondary dwelling, due to the built form dominance over the landscape. The proposal requires significant excavation near the cliff edge and is not appropriately integrated with the landform and landscape. The proposed secondary dwelling is located quite a distance from the primary dwelling and is not considered to provide compact housing.

The proposed secondary dwelling does not align with the character and low scale nature anticipated by the applicable controls. Clause 5.4(9) of the PLEP 2014 requires the total floor area of the secondary dwelling to not exceed 60m^2 or 25% of the total floor area of the principal dwelling. The total floor area of the secondary dwelling is 59.9m^2 which complies with this clause. However, the proposal also includes an additional 68.7m^2 of decking surrounding the secondary dwelling, which exacerbates its bulk. This adds significant scope, bulk and scale to the secondary dwelling which is inconsistent with the character and nature anticipated for secondary dwellings.

B3.4 Coastline (Bluff) Hazard

The subject site is affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site.

A Geotechnical Assessment Report by Crozier Geotechnical Consultants dated February 2023 assessing coastline (bluff)/coastal cliff or slope instability has been submitted with the application along with a Coastal Engineering Report prepared by Horton Coastal Engineering Pty Ltd, dated 23 February 2023.

The Coastal Engineering Report determined that coastal inundation is not a significant risk to the proposed development over a planning period of well over 100 years. Further an allowance for erosion/weathering of 6mm/year of the cliff at 18 Hillcrest Avenue Mona Vale, with sensitivity testing up to 12mm/year, should be considered and assessed by the geotechnical engineer. The Geotechnical report concluded that the landslip risk was assessed as Acceptable when assessed against the criteria of the AGS 2007.

Council's Coast and Catchments Team have reviewed the proposal and it is considered that the application does comply, subject to conditions to be included as part of any approval for the development, with the requirements of the coastal relevant geotechnical clauses of the Pittwater 21 DCP.

B6.3 Off-Street Vehicle Parking Requirements

This control requires two (2) off-street parking spaces for a dwelling house, and an additional one (1) space for a secondary dwelling.

The subject site currently provides off-street parking for two (2) vehicles within the existing garages. The existing driveway also provides space for one (1) vehicle in an informal arrangement.

The proposed development does not seek additional on-site parking spaces.

Chapter 3, Part 1, Clause 53(b) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) stipulates the following:
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.

While the proposal is technically numerically non-compliant with the requirements of this control, the Housing SEPP prevails over the Pittwater 21 Development Control Plan. In this instance, consideration of this control for this assessment is not required.

C1.3 View Sharing

Merit consideration

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

- *A reasonable sharing of views amongst dwellings.*

  Comment:

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

  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:

  No. 12 Hillcrest Avenue
  This property enjoys whole water views to the north of Bungan Beach including the land and water interface and extends to Bungan Headland. Whole water views are also available to the east of the Pacific Ocean. The views are obtained from the upper ground floor kitchen and dining area, lower ground floor living area, first floor bedrooms and balcony, studio/home office and eastern side decks all from both sitting and standing positions.

Figure 1 - View from 12 Hillcrest Ave Living Room

Figure 2 - View from 12 Hillcrest Ave Kitchen and Dining Area

Figure 3 - View from 12 Hillcrest Ave First Floor Bedroom

Figure 4 - View from 12 Hillcrest Ave First Floor Balcony

Figure 5 - View from 12 Hillcrest Ave Studio/Home Office

Figure 6 - View from 12 Hillcrest Ave Eastern Side Deck

No. 14 Hillcrest Avenue
This property enjoys predominantly whole water views to the north of Bungan Beach including the land and water interface and extends to Bungan Headland. The views are partly obstructed by the dwelling to the north at No. 12 and medium high vegetation. Water views are also available to the east of the Pacific Ocean which are partly obstructed by vegetation and fencing. The views are obtained from the ground floor kitchen, living and dining area, rear deck and yard, first floor bedroom, study and deck and stairwell.

Figure 7 - View from 14 Hillcrest Ave Kitchen, Living and Dining Area

Figure 8 - View from 14 Hillcrest Ave Rear Deck

Figure 9 - View from 14 Hillcrest Ave Rear Yard

Figure 10 - View from 14 Hillcrest Ave First Floor Bedroom

Figure 11 - View from 14 Hillcrest Ave First Floor Study

Figure 12 - View from 14 Hillcrest Ave First Floor Deck

No. 16 Hillcrest Avenue
This property enjoys whole water views to the north of Bungan Beach including the land and

water interface and extend to Bungan Headland. Water views are also available to the east of the Pacific Ocean which are party obstructed by vegetation and fencing. The views are obtained from the ground floor kitchen, living and dining area, rear patio, swimming pool and yard, first floor kitchen, living area and balcony.

Figure 13 - View from 16 Hillcrest Ave Ground Floor Kitchen

Figure 14 - View from 16 Ave Ground Floor Living Area and Swimming Pool

Figure 15 - View from 16 Hillcrest Ave Rear Patio

Figure 16 - View from 16 Hillcrest Ave Rear Yard

Figure 17 - View from 16 Hillcrest Ave First Floor Kitchen

Figure 18 - View from 16 Hillcrest Ave First Floor Living Area

Figure 19 - View from 16 Hillcrest Ave First Floor Balcony

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

"*The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of*

views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Principle 2:

The water views to the north of Bungan Beach from No. 12, 14 and 16 are obtained over the rear boundaries from both sitting and standing positions as per above. The water views to the east are obtained across the side boundaries from both sitting and standing positions as per above.

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. 12 Hillcrest Avenue
The views to the north of the land and water interface of Bungan Beach and Bungan Headland from the dwelling and external decks will remain largely unaffected by the proposed development. However, the views to the east of the Pacific Ocean will be largely obstructed by the proposed development from all locations where are views are currently available. In particular the views from the ground floor living area, eastern side decks and studio/home office will be most affected. Given the high use nature of these rooms and high value of the view, the view loss is considered moderate to severe.

No. 14 Hillcrest Avenue
The water views to the north of Bungan Beach from the ground floor, first floor and rear yard will be partly obstructed by the proposed development. The view of the land and water interface and Bungan Headland will be largely retained along with the ocean views to the east which will be unaffected. The affected views are obtained from high use areas included the kitchen and living room along with private open space areas and the view loss is considered minor to moderate.

No. 16 Hillcrest Avenue
The water views to the north of Bungan Beach and Bungan Headland will be largely retained from the ground floor kitchen, living area, rear patio and swimming pool. As one moves further north in the rear yard towards the rear boundary, the view loss becomes more severe obstructing the land and water interface of Bungan Beach. A portion of the land and water interface views from the first floor balcony will be obstructed but the northern portion of Bungan Beach and Bungan Headland view will be retained. Additionally, the view to the east of the Pacific Ocean will remain unaffected. Given the the high use nature of the affected areas, the view loss is considered moderate.

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:

Whilst the proposed development is numerically compliant with the built form controls, the nature and extent of the development renders it incompatible with the character of the area. The floor area of the secondary dwelling and roofed deck areas provide a development with quite a large footprint in an area of high ecological and aesthetic significance. This assessment has found the proposal to be inconsistent with the controls and outcomes prescribed for the Mona Vale Locality and Scenic Protection areas. It is considered that a more skilful design including a reduction in the building footprint, would provide the same development potential and reduce the impact on views. As such, the proposal and resultant view loss is considered unreasonable.

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

  Comment:

  The proposed secondary dwelling is located on the edge of Mona Vale Headland and will be highly visible from Bungan Beach. As such, the proposal does not appropriately protect, maintain or enhance views and vistas of the headland.

- *Canopy trees take priority over views.*

  Comment:

  The proposal does not impact on any canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C1.5 Visual Privacy

This control requires private open space area including swimming pools and living rooms of any proposed and any existing adjoining dwellings to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation.

Comment:
Concerns were raised regarding the proposed northern deck given its elevated nature and close proximity to No. 12. Amended plans were subsequently provided reducing the extent of the deck and a privacy screen is included to the north-western edge.

However, the amended plans also involved the deletion of the privacy screen to the north-western edge of the deck in the south-western corner which is setback 2.5m from the side boundary. This creates potential opportunities for overlooking within 9 metres of the dwelling and private open spaces areas at No. 12. The proposal provides a total of approximately 68.7m^2 of decking surrounding the secondary dwelling which is considered excessive for the nature and scope of the development. Given the extent of decking along the northern and western edge of the secondary dwelling, the south-western deck is not necessary and results in unreasonable privacy impacts.

D9.2 Scenic protection - General

This control stipulates that development shall minimise any visual impact on the natural environment when viewed rom any waterway, road or public reserve. The following outcomes are to be achieved:

- *Achieve the desired future character of the Locality.*
- *Bushland landscape is the predominant feature of Pittwater with the built form being the secondary component of the visual catchment.*

Comment
The proposed secondary dwelling is located on the edge of Mona Vale Headland and will be highly visible from Bungan Beach. The siting and scope of the development does not allow for the visual impact to be minimised when viewed from the waterway and public reserve. The proposed development becomes the dominant feature when viewed from Bungan Beach and surrounding properties. The proposal does not allow for bushland landscape to be the predominant feature of the headland and the development is a visually dominating building contrary to the DCP control.

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 $5,830 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $583,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

PLANNING CONCLUSION

This proposal, for construction of a secondary dwelling has been referred to the Development Determination Panel (DDP) due to receiving five objections.

The concerns raised in the objections have been addressed within this assessment report. The applicant provided amended plans during the assessment period, however the objections remain unresolved.

The assessment of the proposed development has found that the development fails to meet the Objectives of the C4 Environmental Living Zone of the Pittwater Local Environmental Plan 2014, A4.9 Mona Vale Locality of the Pittwater 21 Development Control Plan, C1.3 View Sharing of the Pittwater 21 Development Control Plan, C1.5 Visual Privacy of the Pittwater 21 Development Control Plan, and D9.2 Scenic Protection - General of the Pittwater 21 Development Control Plan. In summary, the proposed development is not considered to be appropriately designed and sited resulting in unacceptable visual and amenity impacts.

This report concludes with a recommendation that the DDP refuse the development application for the reasons outlined at the end of this report.
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/0246 for the Construction of a secondary dwelling on land at Lot 1 DP 818730,18 Hillcrest Avenue, MONA VALE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979.

Particulars:

i) Given the adverse visual impact upon adjoining properties and the public domain, the site is not considered to be suitable for the proposed development.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of Clause Zone C4 Environmental Living of the Pittwater Local Environmental Plan 2014.

Particulars:

i) The proposed development disrupts visual continuity and the aesthetic values of the area. It does not provide for low impact residential development in an area of special aesthetic value.

ii) The proposed development if not appropriately integrated with the landform and landscape as it dominates and augments the existing landform.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.9 Mona Vale Locality of the Pittwater 21 Development Control Plan.

Particulars:

i) The proposed secondary dwelling is sited in an environmentally sensitive area and is not considered to be an appropriate location, as it is inconsistent with the prevailing low density character of the surrounding locality.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.

Particulars:

i) The proposed development results in moderate to severe view loss impacts to adjoining properties and does not maintain a reasonable sharing of views.

ii) A more skilful design would provide the same development potential and reduce the impact on views.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.5 Visual Privacy of the

Pittwater 21 Development Control Plan.

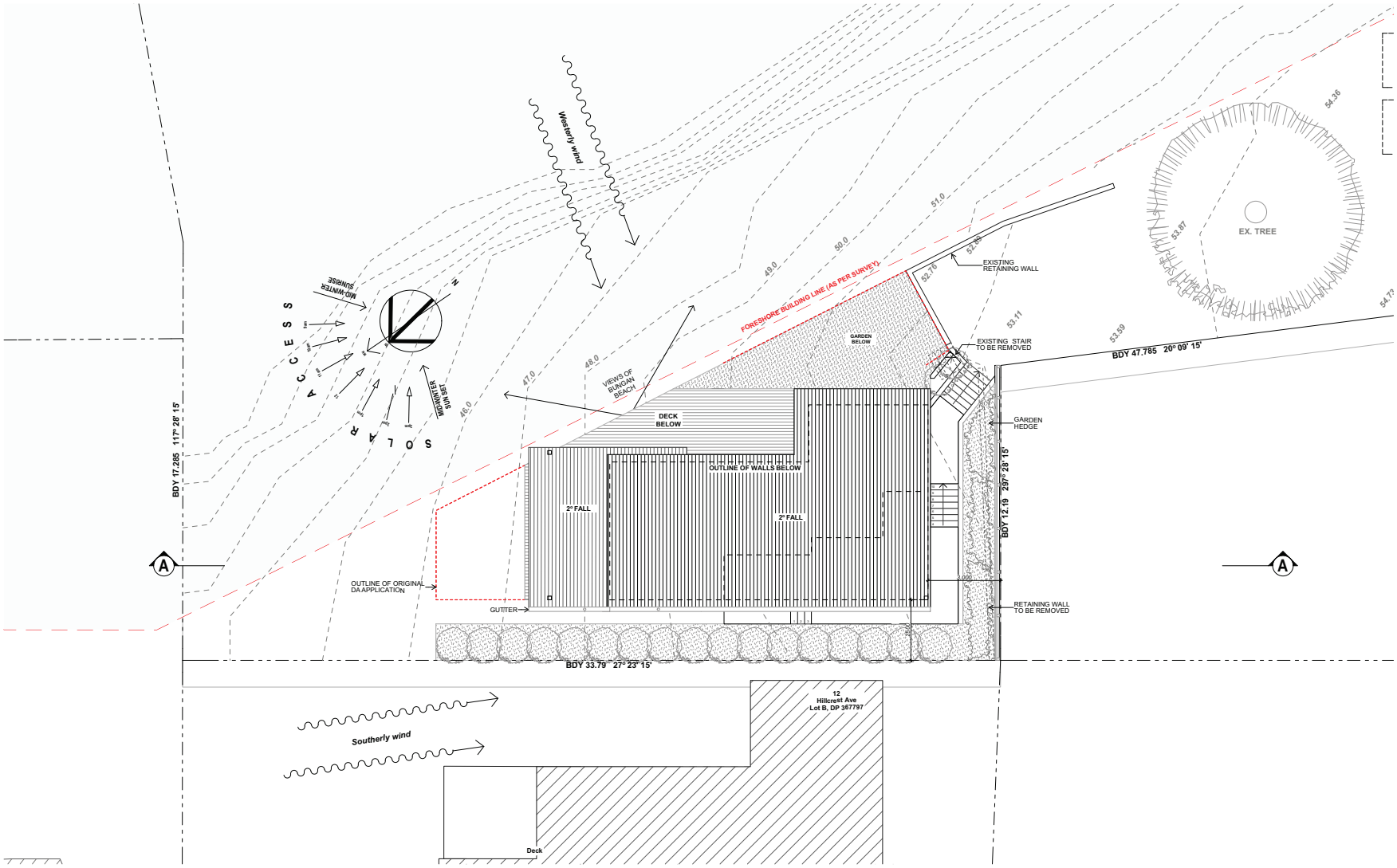
Particulars:

i) The proposed south-western deck is located in close proximity to the adjoining dwelling and generates unreasonable privacy impacts.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9.2 Scenic protection - General of the Pittwater 21 Development Control Plan.

Particulars:

i) The proposed secondary dwelling is of significant visual impact and does not allow the natural Mona Vale Headland to be the predominant feature when viewed from the waterway and surrounding properties. Rather, it dominates the natural landscape with unsympathetic built form.



GARTNERTROVATO ARCHITECTS

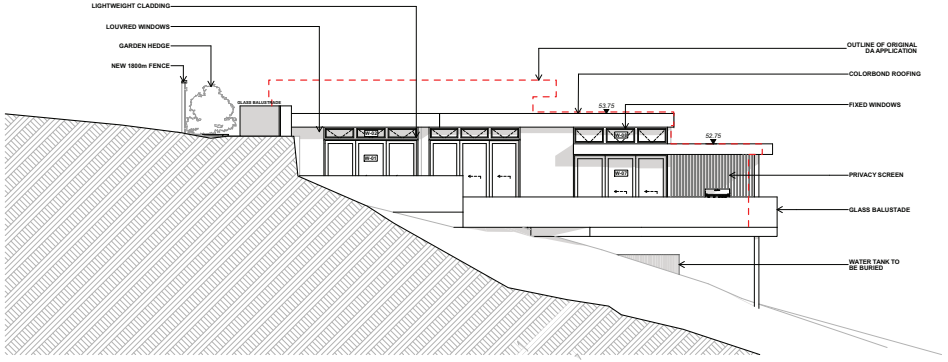
47/90 MONA VALE ROAD
PO BOX 1122
MONA VALE, NSW 2103
P +61 2 9979 4411
F +61 2 9979 4422
E GTA@GT-GTA.COM.AU

Issue Date	Rev	Description	Drawn	Checked
1/12/22	A	ISSUE FOR DA		

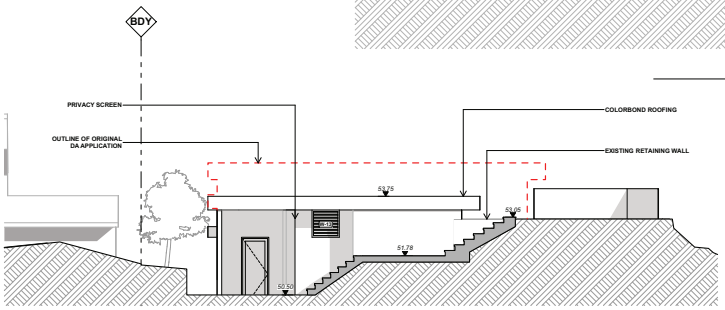
PROJECT
SECONDARY DWELLING
No. 18 HILLCREST AVENUE, MONA VALE, NSW 2103
SITE LOT 1, D.P. 23008
FOR BURNARD FAMILY

DRAWING TITLE
SITE PLAN / SITE ANALYSIS

SCALE	DRAWN BY	PLOT DATE
1:100 @ A2	IA/ LT	13/06/2023
PROJECT NO.	DRAWING NO.	REVISION
2231	A.01	A



SOUTH EAST ELEVATION



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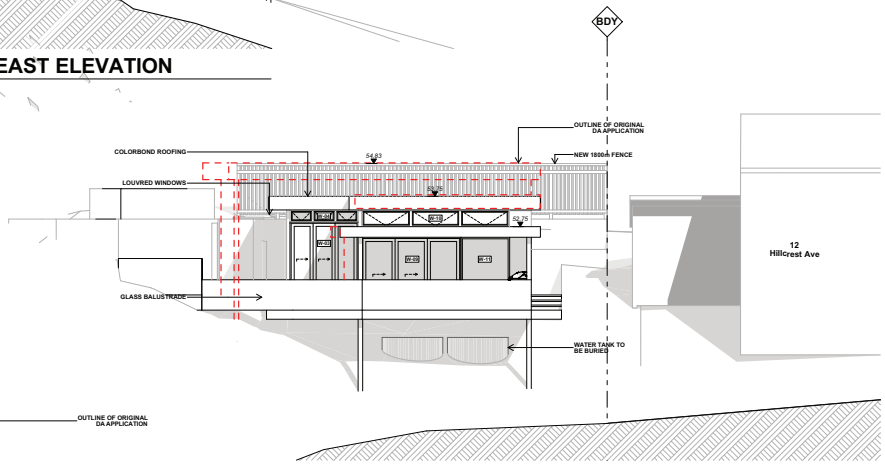

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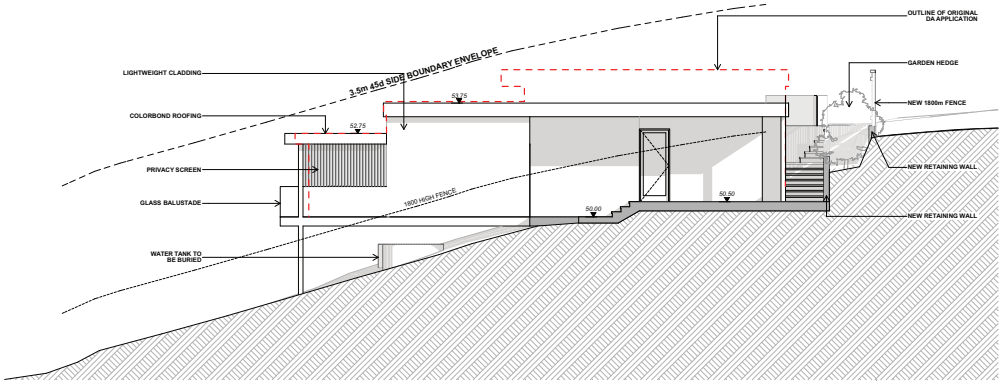
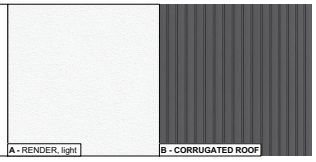


NORTH WEST ELEVATION

EXTERIOR FINISHES LEGEND

A. RENDER, light
B. CORRUGATED ROOF, vertical
C. TIMBER DECKING, vertical



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FOR BURNARD FAMILY

DRAWING TITLE: ELEVATIONS

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1:100 @ A2	IA/ LT	13/06/2023
PROJECT NO.	DRAWING NO.	REVISION
2231	A.03	A