

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 27 SEPTEMBER 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 27 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	MOD2023/0273 - 24 HILLSIDE ROAD NEWPORT - MODIFICATION OF DEVELOPMENT CONSENT N0235/15 GRANTED FOR DEMOLITION OF AN EXISTING HOUSE AND CONSTRUCTION OF A NEW DWELLING AND SWIMMING POOL
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/595605
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 Mod2023/0273 for Modification of Development Consent N0235/15 granted for demolition of an existing house and construction of a new dwelling and swimming pool on land at Lot 152 DP 825989, 24 Hillside Road NEWPORT, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0273
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 152 DP 825989, 24 Hillside Road NEWPORT NSW 2106
Proposed Development:	Modification of Development Consent N0235/15 granted for demolition of an existing house and construction of a new dwelling and swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Brett Alan Raphael
Applicant:	Brett Alan Raphael
Application Lodged:	23/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	12/06/2023 to 26/06/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This application seeks consent for modification of Development Consent N0235/15.

The application is referred to the referred to the Development Determination Panel (DDP) as it is made under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 and the condition proposed to be deleted by the application (B2), in relation to a garage and secondary dwelling, was amended by the former Pittwater Development Unit, being equivalent to the current DDP.

The reasons for the deletion of the garage and secondary dwelling in N0235/15 have been considered and formed part of the assessment of this application.

The concerns raised in the objections have been addressed and resolved by demonstration that the application is substantially the same and compliant with applicable controls.

The critical issue in relation to the reinstatement of the garage/storage element of the development has been the subject of additional shadow impact analysis and amended plans, which reduced the size and scale of the garage/storage structure, has been reviewed and found to be compliant with the provisions of P21 DCP and is satisfactory.

This report concludes with a recommendation that the DDP should grant approval to the application.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent No N0235/15 as follows:

- Deletion of Condition B2, which stipulated design changes relating to the deletion of a garage, secondary dwelling and southern stairs from the approved plans, and replacement with an open parking hardstand area only.
- Amendment of the approved plans, which initially proposed the following:
 - Reinstatement of the double garage and secondary dwelling below
 - Stairs;
 - Bin storage area;
 - Front fencing; and
 - Landscaping works.

Amended plans reducing the size and scale of the proposed built form were received on 18 August 2023.

Importantly, it is noted that the garage and secondary dwelling structure was deleted from N0235/15 due to concerns in relation to solar access impacts on the adjoining property.

The plans originally submitted with this application, and amended on 18 August 2023, included a secondary dwelling under the garage, as described above. Amended plans deleting the secondary dwelling and replacing it with a storage area were submitted on 7 September 2023.

In accordance with the Northern Beaches Community Participation Plan, public notification of the amended plans was not required, as the amendments result in a lesser environmental impact.

The development approved under N0235/15 is underway, though the area of works subject to this application have not commenced at the time of writing this report.

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 - 7.1 Acid sulfate soils
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 Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - C1.4 Solar Access

SITE DESCRIPTION

Property Description:	Lot 152 DP 825989 , 24 Hillside Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Hillside Road, Avalon Beach.</p> <p>The site is irregular in shape with a frontage of 14.02 metres along Hillside Road, and a maximum depth of 75.4 metres. The site has a surveyed area of 1,258m².</p> <p>The site is located within the C4 Environmental Living zone and the development approved under N0235/15 is under construction.</p> <p>The site slopes approximately 16 metres down from west (front) to (east) and is largely cleared of vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one- and two-storey detached dwelling houses in vegetated settings.</p>

Map:



SITE HISTORY

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

- N0235/15 for demolition of existing house, construction of a new dwelling, granny flat and swimming pool was approved by the Development Unit of the former Pittwater Council on 25 February 2016, which was approved by the Pittwater Development Unit (equivalent of DDP).

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 N0235/15, 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 N0235/15, as the proposal retains the approved built form of the house and retains the single residential use of the subject site. The proposed garage with storage under does not introduce substantially new or different works, as Condition B2 applied to N0235/15 contemplated a parking structure in the location of the proposed garage and storage is ancillary to the dwelling house use.
(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 N0235/15 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55 (2) - Other Modifications	Comments
of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to overshadowing. Amended plans were received on 18 August 2023 in response.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 addendum was submitted with the application (prepared by Bushfire Planning Services dated 20 April 2023) stating that the modified development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report addendum have been included as recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/06/2023 to 26/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Andrew John Gerry	16 Hillside Road NEWPORT NSW 2106
Doyle Consulting Group Mr Alan Gordon Crosky	3A Kendall Road CASTLE COVE NSW 2069

The following issues were raised in the submissions:

- Reiteration of objections to the original development application.
- Concern about overshadowing to Nos. 14 and 16 Hillside Road.
- Concern that the proposed modification cannot be considered substantially the same as the approved development, given the inclusion of a secondary dwelling.
- Objection to the bin storage area immediately on the southern side boundary.

The above issues are addressed as follows:

Reiteration of Objections to N0235/15

Comment:

Objections relating to the approved development are noted. Assessment under this application remains as related to the proposed modifications only.

Overshadowing

Comment:

The proposed modifications (as per amended plans received on 18 August 2023) are compliant with the applicable solar access requirements, as detailed in the section of this report relating to Clause C1.4 Solar Access of the P21 DCP.

Substantially the Same

Comment:

Modification applications made under Section 4.55 of the *Environmental Planning and Assessment Act 1979* must be substantially the same as the development for which consent was originally granted. A secondary dwelling was proposed in the original DA under N0235/15, but not ultimately consented to, being deleted by condition. As such, it is agreed that the proposal as originally submitted under

Mod2023/0273 was not substantially the same as the development for which consent was originally granted under N0235/15, given the inclusion of the secondary dwelling. A modification application cannot introduce a use (such as a secondary dwelling) for which consent was not granted in the original application. However, on 7 September 2023, the applicant submitted amended plans that deleted the secondary dwelling and replaced it with a storage area. The modified proposal is now substantially the same as the development for which the consent was originally granted under N0235/15. The proposal retains the approved built form of the dwelling house and retains the single residential use of the subject site. The proposed garage with storage under does not introduce substantially new or different works, as Condition B2 applied to N0235/15 contemplated a parking structure in the location of the proposed garage and the storage area is ancillary to the dwelling house.

Bin Storage Area

Comment:

Amended plans received on 18 August 2023 demonstrate that the bin storage area is now a minimum of 2.5 metres from the southern side boundary, being compliant with the applicable side setback control under Clause D1.9 Side and Rear Building Line of the P21 DCP.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent N0235/15 as described in reports and as illustrated in plans, to reinstate the proposed granny flat and garage structure deleted under the development consent. The proposed location of the granny flat and garage structure is located upon predominately hardstand and small garden areas, now all removed, under development works.</p> <p>Landscape Referral raise no concerns with the modification proposal. The relevant landscape conditions under the development consent remain valid and unaltered.</p> <p><u>Assessing Officer's Note:</u> The secondary dwelling ('granny flat') has been deleted from plans and replaced with storage.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks modification to development consent N0235/15 to delete Condition B2 and as such reinstate the the originally proposed granny flat and garage. The proposed modifications will take place in existing developed areas that have since been demolished and as such, no significant impacts to flora or fauna are likely to result. Subject to original conditions, no objections are raised by Councils Biodiversity Referrals team.</p> <p><u>Assessing Officer's Note:</u> The secondary dwelling ('granny flat') has been deleted from plans and replaced with storage.</p>
NECC (Development Engineering)	<p>The proposed modification involves the reinstatement of a garage and granny flat. The site drains to the rear. The original consent includes the provision of an on site detention system and an absorption trench. A letter from the consulting engineer has been provided indicating the suitability of the existing design to facilitate the proposed amendments. The proposed amendments are not expected to impact negatively on downstream properties or the</p>

Internal Referral Body	Comments
	environment. <u>Assessing Officer's Note:</u> The secondary dwelling ('granny flat') has been deleted from plans and replaced with storage.
NECC (Flooding)	The property is not identified to be affected by flood. There are no applicable flood related development controls from: <ul style="list-style-type: none"> Section B3.11 Flood Prone Land from the Pittwater 21 DCP 2021. Clause 5.21 of the Pittwater LEP 2014

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1390334S dated 3 May 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	50

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
<p>(2) Development consent must not be granted for development to which this Part applies unless—</p> <p>a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and</p> <p>b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and</p> <p>c) The total floor area of the secondary dwelling is:</p> <ul style="list-style-type: none"> 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 secondary dwelling has been deleted from the application.

Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
a) For a detached secondary dwelling - a minimum site area of 450m ² .	N/A
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.	N/A

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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	Max. 8.5m	Garage: Not approved - (Deleted under N0235/15 by way of Condition B2)	Reinstated Garage: Max. 6.5m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	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

Clause	Compliance with Requirements
7.10 Essential services	Yes

Detailed Assessment

7.1 Acid sulfate soils

Clause 7.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The proposed works are not anticipated to result in additional risk with respect to acid sulfate soils.

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

7.6 Biodiversity protection

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

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

Comment:

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

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

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

- (b) the consent authority is satisfied that:*

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

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed

development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

Comment:

The subject site is currently supplied with the above essential services. The approved and modified developments retain and rely upon these existing services.

Pittwater 21 Development Control Plan

Built Form Controls

The following table assesses the proposed works only, and does not consider the approved dwelling house, which remains as approved.

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Garage, secondary dwelling and stairs not approved (Deleted under N0235/15 by way of Condition B2)	Min. 6.5m	Yes
Side building line	N: 2.5m		Min. 5.5m	Yes
	S: 1m		Min. 1.6m	Yes
Building envelope	N: 3.5m		Within envelope	Yes
	S: 3.5m		Within envelope	Yes
Landscaped area	Min. 60% (754.8m ²)		Unchanged	As approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	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
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D9.17 Scenic Protection Category One Areas	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D10.14 Fences - General	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.4 Solar Access

Submissions received in relation to this application raised concern that the proposed new works (being the garage and storage under) result in non-compliant and unreasonable overshadowing to Nos. 14 and 16 Hillside Road. The garage and secondary dwelling element of the original application were deleted with reference to unreasonable overshadowing. The amended plans submitted for this modification application intend to address the overshadowing concerns.

The Applicant has submitted detailed and certified shadow diagram plans that demonstrate compliance with the requirements of this control as follows:

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

Comment:

The following is an analysis of the impact on solar access to the private open space for Nos. 14 and 16 Hillside Road as a result of the proposed new works.

No. 14 Hillside Road: The main private open space is located in the rear yard, accessed from the dining room.

- 9am: The main POS will be fully overshadowed by the approved dwelling house at No. 24 Hillside Road. The proposed new works do not impact upon the main POS at this time.
- 10am: The main POS is in full shadow due to the approved dwelling house at No. 24 Hillside Road.
- 11am: The main POS is in full shadow due to the approved dwelling house at No. 24 Hillside Road.
- 12pm: The main POS is 50% in sun.
- 1pm: The main POS is in full sun.
- 2pm: The main POS is in full sun.
- 3pm: The main POS is unaffected by shadow, with shadow from No. 18 Hillside Road approaching.

This totals three hours between 9am and 3pm on 21 June during which the main POS is in at least 50% sun, in accordance with the sunlight planning principle set by *The Benevolent Society v Waverley Council [2010] NSWLEC 1082*.

No. 16 Hillside Road: The main private open space is located in the rear yard, accessed from the kitchen and dining room.

- 9am: The main POS is predominantly in shadow due to the proposed garage.
- 10am: The main POS is predominantly in shadow due to the proposed garage.
- 11am: The main POS is in full sun.
- 12pm: The main POS is in full sun.
- 1pm: The main POS is almost completely in sun.
- 2pm: The main POS is almost completely in sun.
- 3pm: The main POS is predominantly overshadowed by No. 18 Hillside Road.

This totals four hours between 9am and 3pm on 21 June during which the main POS is in at least 50% sun, in accordance with the sunlight planning principle set by *The Benevolent Society v Waverley Council [2010] NSWLEC 1082*.

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

Comment:

The proposed development does not impact upon living room windows at Nos. 14 and 16 Hillside Road.

Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.

Comment:

No solar collectors are impacted upon by the proposed works.

Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.

Comment:

Given the above, the proposal retains adequate sunshine for the purpose of clothes drying on the subject site and adjoining sites.

The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.

Comment:

The above analysis is based on the planning principle under *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082.

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 modification of Development Consent N0235/15 has been referred to the Development Determination Panel (DDP) as it is made under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* and the condition proposed to be deleted by the application (B2) was amended by the former Pittwater Development Unit, being equivalent to the current DDP.

The concerns raised in the objections have been addressed and resolved by confirmation that the modified proposal is substantially the same as the originally approved development and is compliant with the applicable planning controls.

The critical issue in relation to the impacts of the garage/storage structure on the solar access of the adjoining properties has been the subject of a detailed review, which found that the modified proposal, which reduces the size and scale of the structure, is compliant with the solar access requirements of the P21 DCP and is considered satisfactory.

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 is 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. Mod2023/0273 for Modification of Development Consent N0235/15 granted for demolition of an existing house and construction of a new dwelling and swimming pool on land at Lot 152 DP 825989, 24 Hillside Road, NEWPORT, 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-332766 Mod2023/0273	The date of this notice of determination	<p>Deletion of Condition B2 and inclusion of a garage with stairs and storage under, a bin storage area, front fencing, and landscaping works.</p> <p>Additional Conditions:</p> <ul style="list-style-type: none"> Condition A7 Modification of Consent - Approved Plans and Supporting Documentation

		<ul style="list-style-type: none"> Condition A8 No Approval for Secondary Dwelling Condition A9 Compliance with Other Department, Authority or Service Requirements <p>Deleted Conditions:</p> <ul style="list-style-type: none"> Condition B2
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Modified conditions

A. Add Condition A7 - Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A.01	E	Site Plan	Gartner Trovato Architects	10 August 2023
A.02	E	First Floor Plan	Gartner Trovato Architects	10 August 2023
A.03	F	Ground Floor Plan	Gartner Trovato Architects	6 September 2023
A.04	E	North & South Elevations	Gartner Trovato Architects	10 August 2023
A.05	E	East & West Elevations	Gartner Trovato Architects	10 August 2023
A.06	F	Sections A	Gartner Trovato Architects	6 September 2023
SW1cc	CC	Stormwater Management Plan	Barrenjoey Consulting Engineers	22 March 2018

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Assessment Addendum	2015-001	Crozier Architects	19 April 2023
Bushfire Risk Assessment Addendum	-	Bushfire Planning Services	20 April 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Add Condition A8 No Approval for Secondary Dwelling to read as follows:

No approval is granted or implied under this consent for the purpose of a secondary dwelling, granny flat or separate occupancy in the area underneath the garage or elsewhere on the site. Any and all references to a secondary dwelling or granny flat are to be deleted from plans. Any intention to introduce such as use is to be the subject of further development consent.

Details demonstrating compliance with this condition are to be provided to the satisfaction of the Certifier prior to the issue of the Construction Certificate.

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

C. Add Condition A9 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:

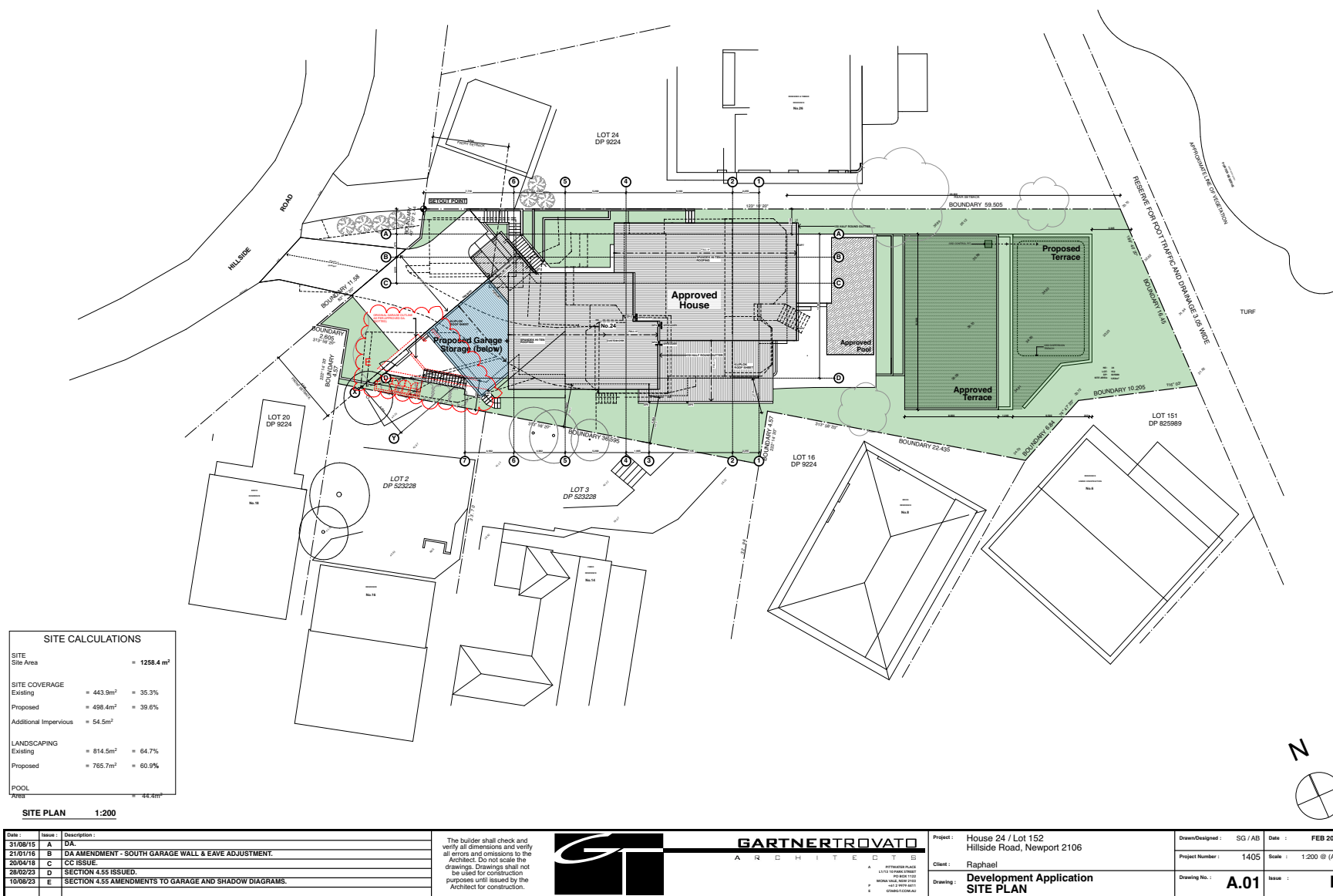
Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	2023/349548 Ausgrid Referral Response - Letter of Consent OH and UG Cables	1 June 2023

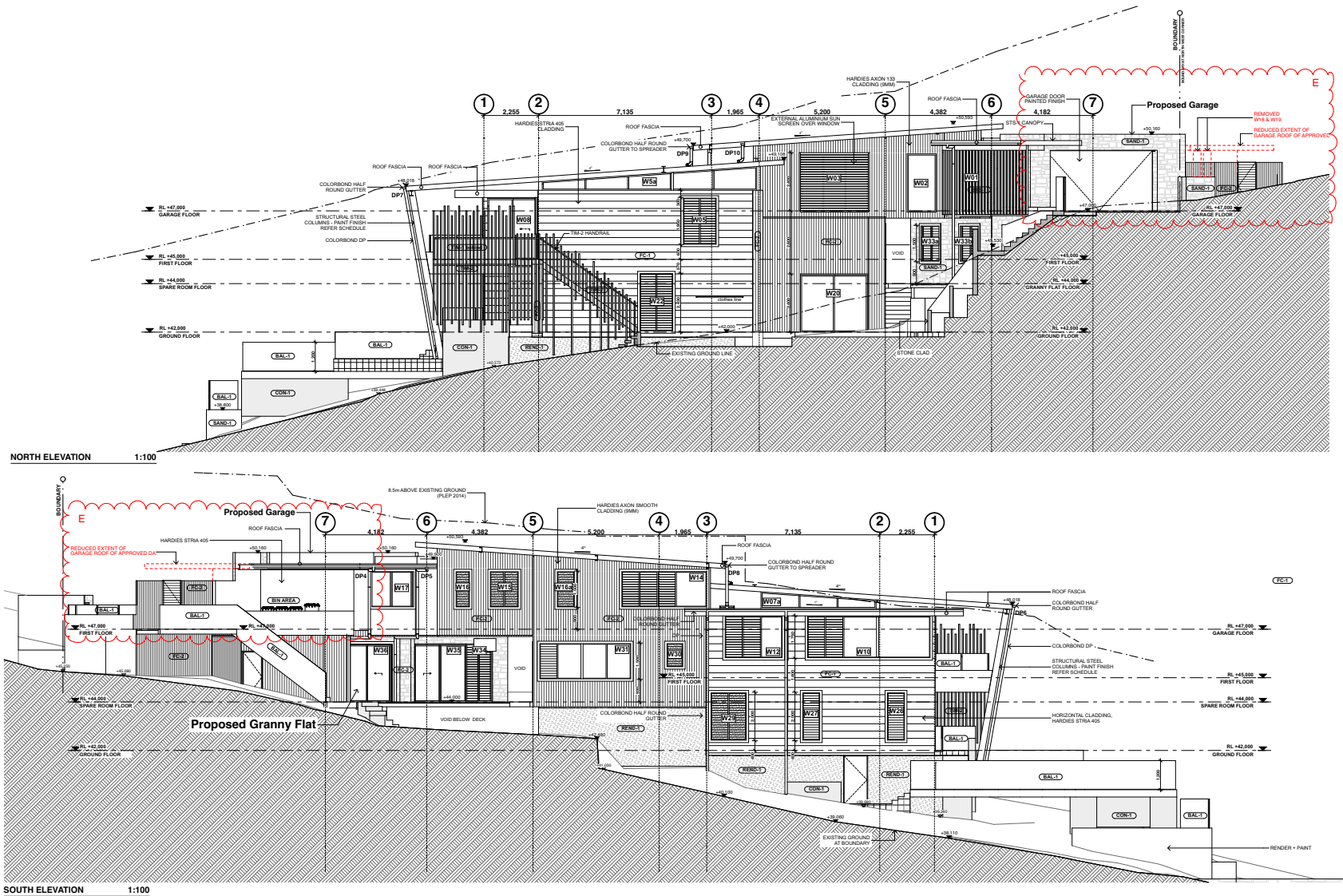
(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

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

D. Delete Condition B2 as follows:

DELETED





Date	Issue	Description
21/08/15	A	D.A.
21/01/18	B	DA AMENDMENT - SOUTH GARAGE WALL & EAVE ADJUSTMENT.
20/04/18	C	CC ISSUE.
28/02/23	D	SECTION 4.55 ISSUED.
19/09/23	E	SECTION 4.55 AMENDMENTS TO GARAGE AND SHADOW DIAGRAMS.

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.



GARTNER TROVATO
ARCHITECTS

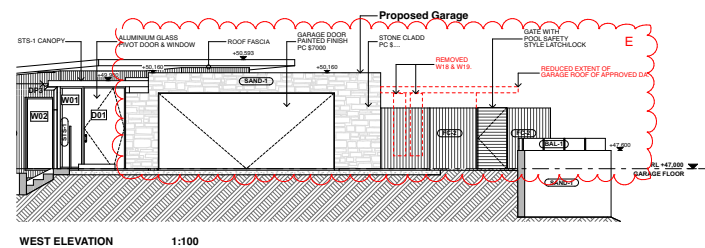
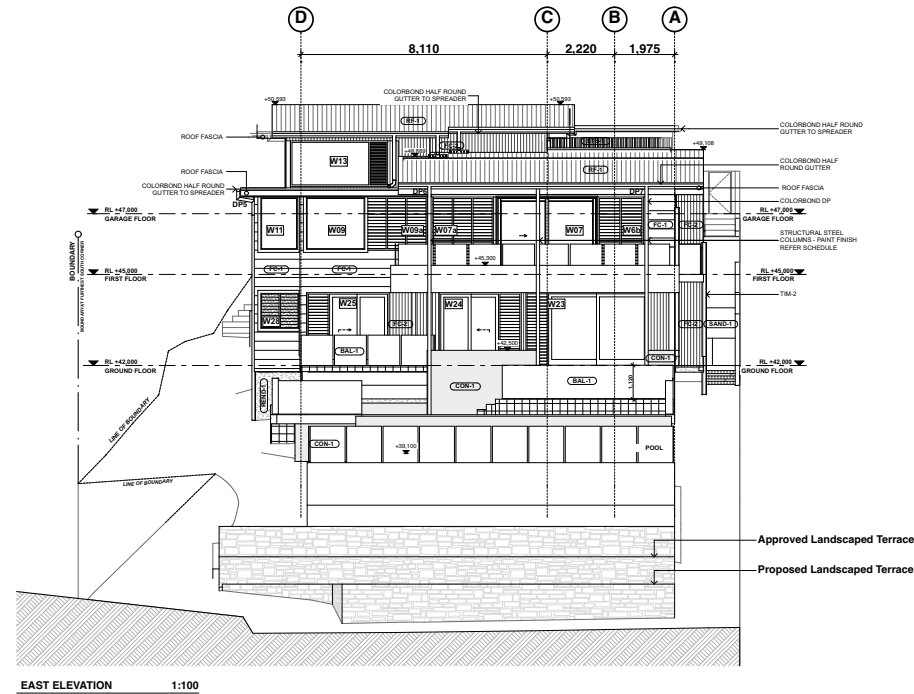
Project: House 24 / Lot 152
Hillside Road, Newport 2106

Client: Raphael
Development Application
NORTH & SOUTH ELEVATIONS

Drawn/Designed: SG / AB Date: FEB 2023

Project Number: 1405 Scale: 1:100 @ (A2)

Drawing No.: A.04 Issue: E



Date:	Issue:	Description:	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.	GARTNER TROVATO ARCHITECTS A 1/100 TO SCALE (PLAN) A 1/100 TO SCALE (SECTION) A 1/100 TO SCALE (ELEVATION) A 1/100 TO SCALE (SHADOW DIAGRAM)	Project: House 24 / Lot 152 Hillside Road, Newport 2106	Drawn/Designed: SG / AB	Date: FEB 2023
21/08/15	A	DA.			Client: Raphael	Project Number: 1405	Scale: 1:100 @ (A2)
20/04/18	C	CC ISSUE.			Drawing: Development Application EAST & WEST ELEVATIONS	Drawing No.: A.05	Issue: E
28/02/23	D	SECTION 4.55 ISSUED.					
19/09/23	E	SECTION 4.55 AMENDMENTS TO GARAGE AND SHADOW DIAGRAMS.					

ITEM 3.2	DA2023/0648 - 14 ROSEDALE AVENUE FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2023/595433
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 DA2023/0648 for alterations and additions to a dwelling house on land at Lot 1 DP 165920, 14 Rosedale Avenue FAIRLIGHT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0648
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 1 DP 165920, 14 Rosedale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stephen Nicholas Lowes Simone Kate Lowes
Applicant:	Anna Jane Williams

Application Lodged:	09/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/06/2023 to 03/07/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 28.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 384,300.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house on the subject site.

The development application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling. The building height of the proposed dwelling house has been measured at 10.94 metres which represents a variation of 28.7% to the maximum prescribed building height of 8.5 metres via Clause 4.3 Height of buildings of Manly Local Environmental Plan 2013 (MLEP 2013).

The clause 4.6 variation request for the non-compliance with height standard arises from the site being previously excavated underneath the dwelling where the existing garage is located under the dwelling house and proposed first floor additions.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties and received one (1) submission in relation to solar access from 12 Rosedale Avenue (neighbouring property to the south).

Despite being technically non-compliant with the prescribed building height requirement, the proposal represents a built form compatible with the prevailing character of the locality and would not result in unreasonable amenity impacts to neighbouring properties.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed seeks consent for alterations and additions to the existing dwelling. The extent of works propose:

- *Demolition works,*
- *Alterations and additions to the existing Garage Level, to provide two compliant parking, storage and internal access to the upper level,*
- *Alterations to the existing Ground Floor Level, to provide open plan living/kitchen/dining, new internal access stairs, new bathroom and new laundry,*
- *Construction of a new First Floor, to provide a master bedroom with balcony, WIR and ensuite, three bedrooms, a rear balcony and a bathroom,*
- *Widened vehicle crossing, and*
- *Landscaping works.*

Amended Plans

On 21 August 2023 Council received amended plans addressing the following issues:-

- Northern side setback to the proposed first floor;
- Solar access diagrams to demonstrate the impact of the proposal to the southern property/dwelling (No. 12 Rosedale Avenue, Fairlight)
- Amendments to the proposed balustrades for the front terrace which has been reduced from the proposed 1.5m high to 1m high clear glazing balustrades to ensure reasonable view sharing is maintained to adjoining properties/dwellings to the northwest.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 1 DP 165920 , 14 Rosedale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northeastern side of Rosedale Avenue.</p> <p>The site is regular in shape with a frontage of 9.145 metres along Rosedale Avenue and a depth of 35.05 metres. The site has a surveyed area of 320.5m².</p> <p>The site is located within the R1 General Residential zone and accommodates a single storey residential dwelling with a double garage at the front of the site.</p> <p>The site is burdened by a stormwater easement that runs from the rear eastern corner of the site across to the north-western side boundary, and along the southern-western side of the dwelling to Rosedale Avenue.</p> <p>The site falls approximately 10 metres from the northeast towards the southwest.</p> <p>The site contains a small lawn area and gardens at the rear of the dwelling and some trees and plants.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is generally characterised by low density residential dwellings with</p>

some medium density residential flat buildings interspersed throughout the locality.

Map:



SITE HISTORY

DA254/12 - Construction of front retaining wall approved 11 December 2012.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to solar access diagrams, side setback of the first floor (northern elevation) and amendment to the height of the front terrace (Clause 3.4.3 Maintenance of Views - MDCP).</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/06/2023 to 03/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr David Malcolm Allan	12 Rosedale Avenue FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

- **Solar access**

The above issues are addressed as follows:

- **Solar access**

The submissions raised concerns about the solar access diagrams and potential impact on 12 Rosedale Avenue.

Comment: As identified under 3.4.1 Sunlight Access and Overshadowing section of this report, the development has been found to not strictly comply with the solar access provisions of the DCP. However for the reasons discussed and primarily due to the prevailing pattern of built form, the development is found to be acceptable in this regard.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Supported subject to conditions</i></p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings <p>No significant trees will be removed to accommodate the proposed</p>

Internal Referral Body	Comments
	works, which is supported. All trees and vegetation shown to be retained shall be protected during works, subject to the imposed conditions. All natural rock outcrops outside the approved construction footprint shall also be protected during works. Planting is shown indicatively only and all new planting shall be installed in accordance with the requirements outlined in the conditions of consent.
NECC (Development Engineering)	<i>Supported subject to conditions</i> The proposed works are in Zone 1 of Region 3. On site detention is required and has been shown on submitted plans. Vehicle Crossing construction is proposed.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A478306).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.94m	28.7%	No
Floor Space Ratio:	0.6:1 (192.3m ²)	0.59:1 (190.6m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
Part 6 Additional local provisions	Yes
6.1 Acid sulfate soils	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

4.6 Exceptions to development standards

HEIGHT OF BUILDINGS - Clause 4.6 Variation

Description of Non-compliance

Development standard:	Building Height
Requirement:	8.5m
Proposed:	10.94m
Percentage variation to requirement:	28.7%

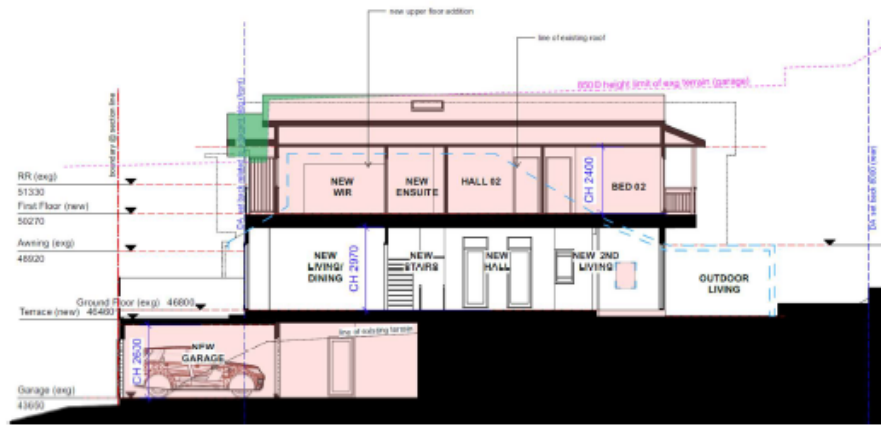


Figure 1 - Extract of Section AA with height non-compliance highlighted in green
Source: Your Beautiful Home

Figure 1: Height line to extrapolated (purple line) and non-compliance with the (excavated) existing ground level line at 8.5 metres height (red line). The maximum breach occurs at the Level 2 roof area, over master bedroom and new front balcony.

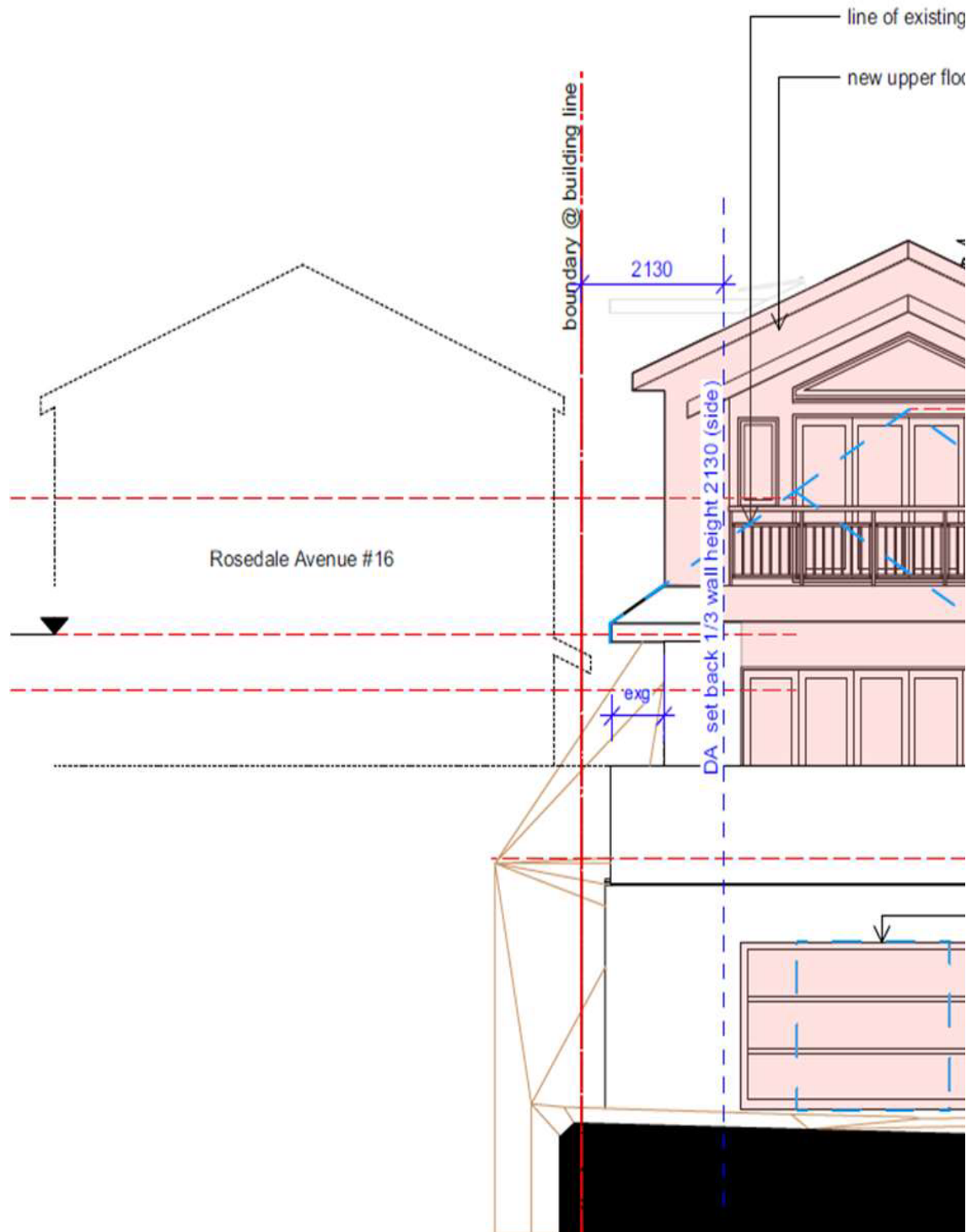


Figure 2: Note the proposed height of the proposed pitched roof is generally consistent with the height of the adjoining and surrounding dwellings in this portion (side) of Rosedale

Avenue.**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, andComment:

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

In summary, the Applicant's written request is considered below within this report, and the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"The proposed height of the dwelling is consistent with that of adjoining dwellings. The pitch of the upper floor roof is proposed at RL 54.59m AHD, exactly the same as that of the adjoining dwelling at 12 Rosedale Avenue and generally consistent with that at 16 Rosedale (54.25m AHD).*
- *The non-compliance is associated with a pitched roof form, that has been designed in response to the architectural style of the existing dwelling and also that of adjoining and nearby development. Non-compliance with the height standard does not detract from consistency with this objective.*
- *The height non-compliance is limited to the pitch of the upper roof form and the roof over the front verandah. Neither of these elements contribute to excessive bulk or scale. Rather they ensure a cohesive built form outcome with surrounding development and articulation of the front façade.*
- *It is apparent that the dwellings to the rear of the site enjoy harbour views over the subject site and adjoining properties. However, these properties are elevated well above the level of the subject site, such that the proposed additions are unlikely to result in any adverse impacts upon these views.*
- *Non-compliance with the maximum height development standard does not result in any adverse impacts upon adjoining properties with regard to solar access, and compliance with the solar access provisions of clause 3.4.1.2 is achieved.*
- *The height breach, being both the breach associated with the upper floor roof pitch and the roof over the front balcony, 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 land, can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of MLEP 2013."*

Consideration and Comment

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

The building height does not raise unreasonable impacts of privacy (acoustic or visual) or overshadowing to surrounding land, including the public domain.

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

Therefore, Council is satisfied that the applicant's written request has adequately addressed the

matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

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

Objectives of Development Standards

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

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

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

Comment:

The proposal maintains a similar visible exposure to the topographic landscape as surrounding development due to the backdrop of the site rising toward Rosedale Avenue. The building is consistent with the prevailing building height of surrounding dwellings and when measure from the unexcavated ground level the building would otherwise be compliant with the height of building control.

b) to control the bulk and scale of buildings,

Comment:

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

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

c) to minimise disruption to the following:

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

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

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

Comment:

The building is part two/three storeys and steps up the slope with the building when viewed from North Harbour and it is considered that the proposed building height variation maintains

consistency with this objective of visual impact and views.

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

Comment:

Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create unreasonable impacts of overshadowing in terms of solar access to adjacent land. The height non-compliance relates to a front pitched roof over level 2, over the master bedroom and new front balcony and does not create unreasonable amenity impacts on adjacent land.

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

Comment:

Views of the site from the harbour area and surrounding land are not unreasonably impacted by the non-compliance with the building height. It is considered that the proposed height variation maintains consistency with this objective. The non-compliance with the building height not readily discernible in the broader view of the pattern and density of surrounding development when viewed from the foreshore or North Harbour areas.

Zone Objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment: The dwelling will remain a single dwelling as a result of the proposed alterations and additions.

- *To provide for a variety of housing types and densities.*

Comment: The proposal will not alter the existing housing type or density.

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

Comment: Other land uses that provide facilities or services to meet the day to day needs of residents within the locality will still be able provided and the proposal will not alter this occurring.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 324.9m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	NW: 7.4m	6.2m - 7.1m	-	Yes
	SE: 7.4m	6m - 7.1m	-	Yes
4.1.2.2 Number of Storeys	2	3 (existing)	-	Unaltered
4.1.4.1 Street Front Setbacks	Prevailing building line (Nil)	Nil, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NW: 2.4m (based on wall height)	0.82m - 0.87m (garage & ground floor) 0.9m (first floor)	62.5% - 65.8%	No
	SE: 2.4m (based on wall height)	0.92m - 0.97m (garage & ground floor & first floor)	59.6% - 61.7%	No
4.1.4.4 Rear Setbacks	8m	13.8m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (176.3m ²)	57% (183m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (61.7m ²)	52.5% (92.6m ²)	-	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	30m ²	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	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	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4 Other Development (all LEP Zones)	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
Part 5	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5 Special Character Areas and Sites	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The submission raised concern regarding the overshadowing impacts resulting from the proposed development.

Subclause 3.4.1.2 states that for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June).

According to the most recent development approval for No. 12 Rosedale Avenue under Council's records (Consent No. DA2018/1062), the adjoining dwelling to the south contains three (3) living areas on the ground floor consisting of a lounge room, kitchen and dining area. The solar access diagrams provided with the application result in the below impacts (see Figures 3, 4 and 5 below).

- Solar access to the dining room at the southeast portion of No.12 are unaffected by the proposed development.
- The southwest lounge room contains two windows at the western end and northern side of the room. It is noted that the window on the western window will be unaffected, however the northern facing window will be impacted by the proposal.
- The kitchen is located at the rear of the house on the ground floor (southeast end). The kitchen contains a number of windows to allow for solar access into this room with windows on the east, south and northern elevations of the room. The northern window is impacted by the proposed development and receives a non-compliant amount of solar access. However, this window faces the common side boundary and solar access to this window is vulnerable to a development on the subject site (noting the proposed height at this part of the building is compliant with the building height control). Therefore to maintain a compliant amount of solar access to this window would highly restrict development on the subject site to an unreasonable extent. The eastern window to this room currently receives a non-compliant amount of solar access on the winter solstice, however this existing arrangement is generally unimpacted and unchanged by the proposed development between 9am - 3pm. The southern window is unaffected by the proposal.

It is considered that despite the non-compliance in relation to solar access that the proposal is

consistent with the principles established in *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082.



Figure 3 - Photo of kitchen at 12 Rosedale Avenue looking to the northern side boundary

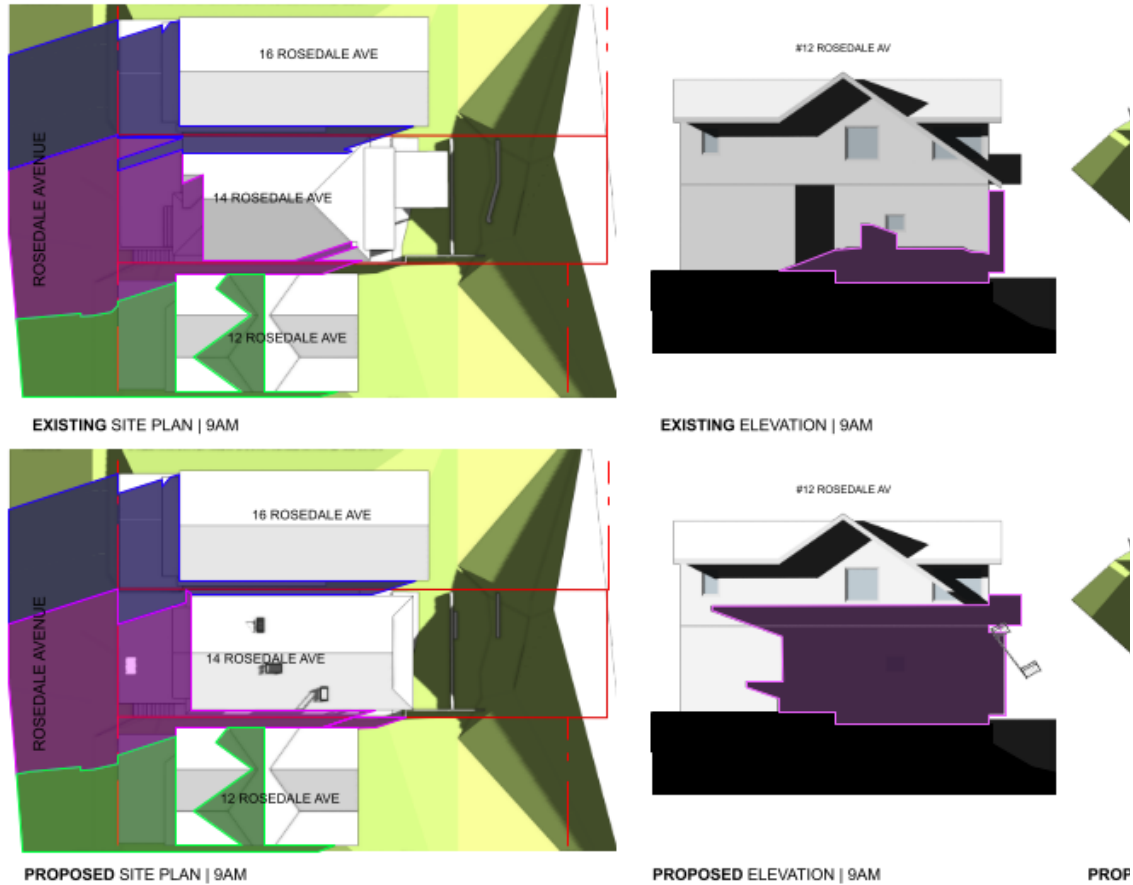


Figure 4 - Shadow Diagrams demonstrating existing and proposed solar access at 9am

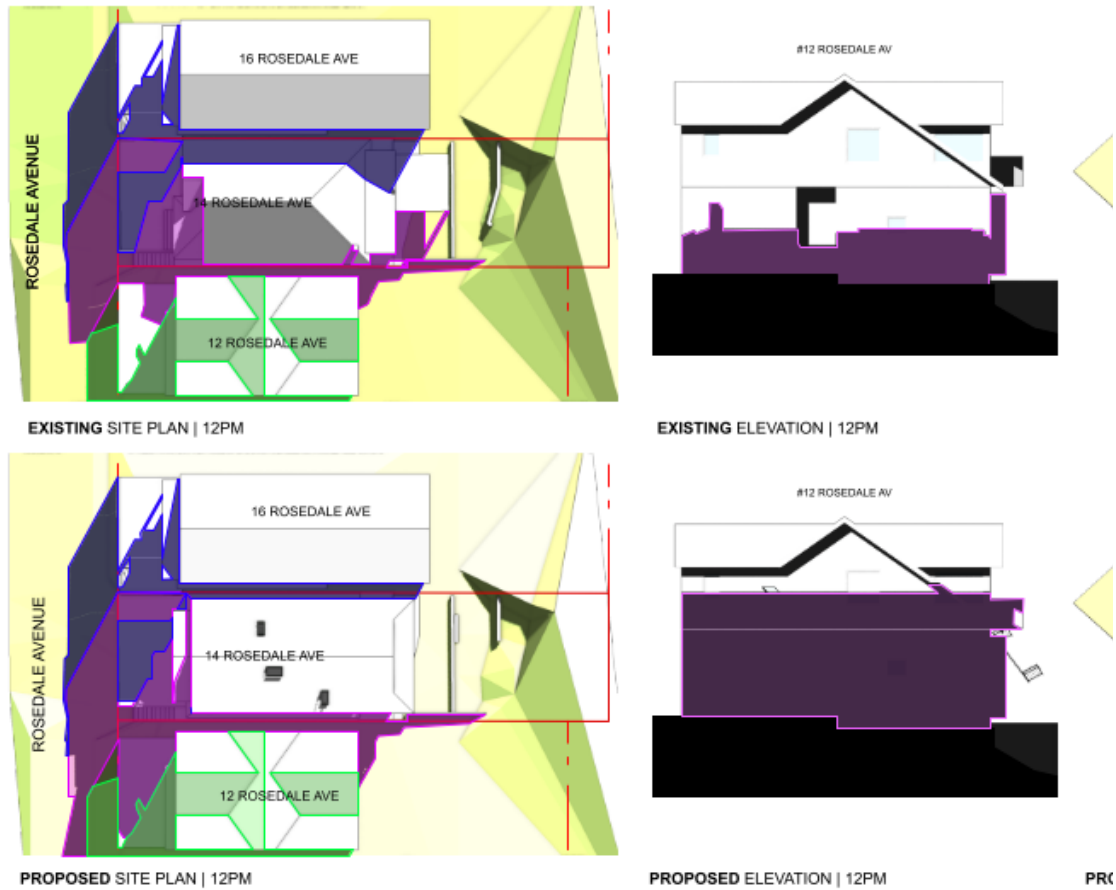


Figure 5 - Shadow Diagrams demonstrating existing and proposed solar access at 12pm

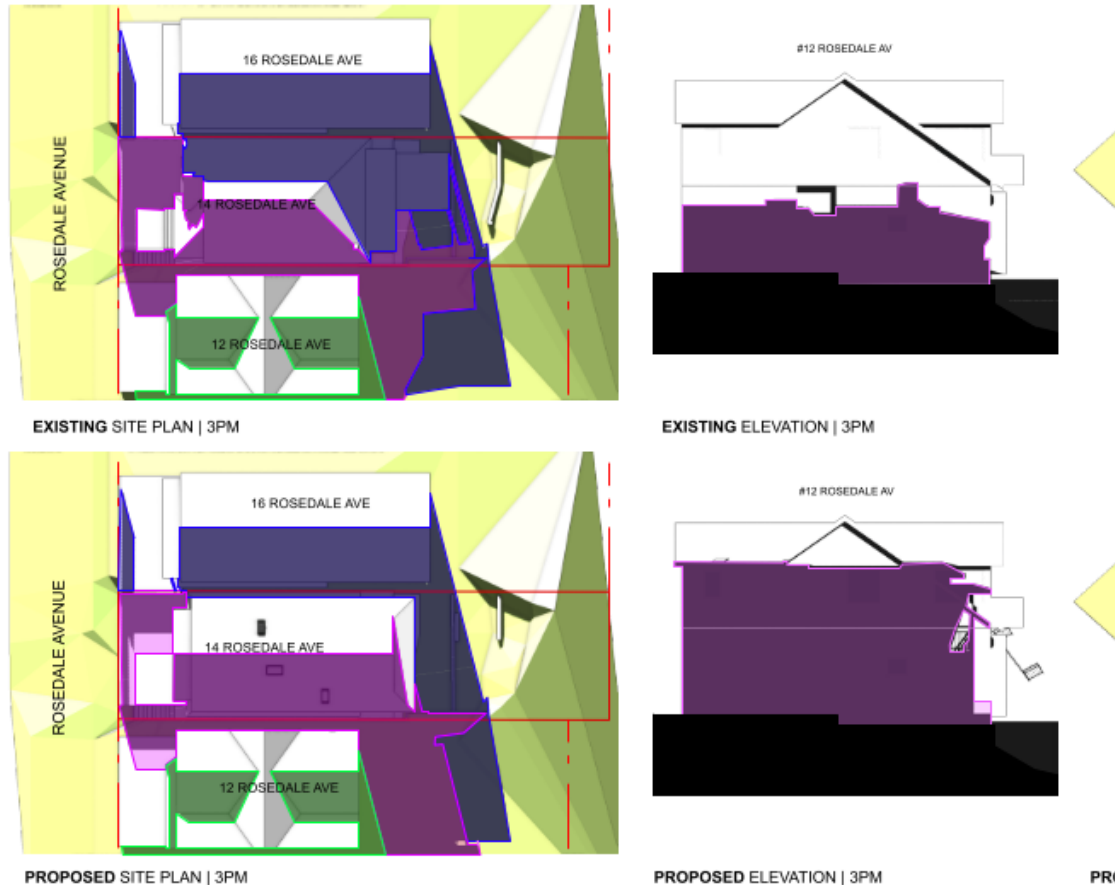


Figure 6- Shadow Diagrams demonstrating existing and proposed solar access at 3pm

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 provide equitable access to light and sunshine.

Comment:

The proposal is considered to provide equitable access to sunlight for adjoining properties. It is important to note that the southern adjacent site (12 Rosedale Avenue) is particularly vulnerable to further shadowing than what is currently experienced given the orientation of the allotments along Rosedale Avenue and the steep topography of the land (particularly to the rear portion of these site given steep rockface and rock outcrops leading to the adjoining properties to the rear fronting Fairlight Street). The proposed development complies with the floor space ratio development standards and complies with the front and rear setback controls.



Figure 7 - Rockface and rock outcrops located at the rear of the subject and adjoining properties

Objective 2) To allow adequate sunlight to penetrate:

- private open spaces within the development site; and
- private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

Comment:

Whilst the impact to the adjoining property to the south is acknowledged, these impacts are considered to be reasonable in the context of existing development on the respective allotments. Furthermore, occupants of the adjoining dwelling will have access to areas of private open space in direct sunlight throughout most of the day.

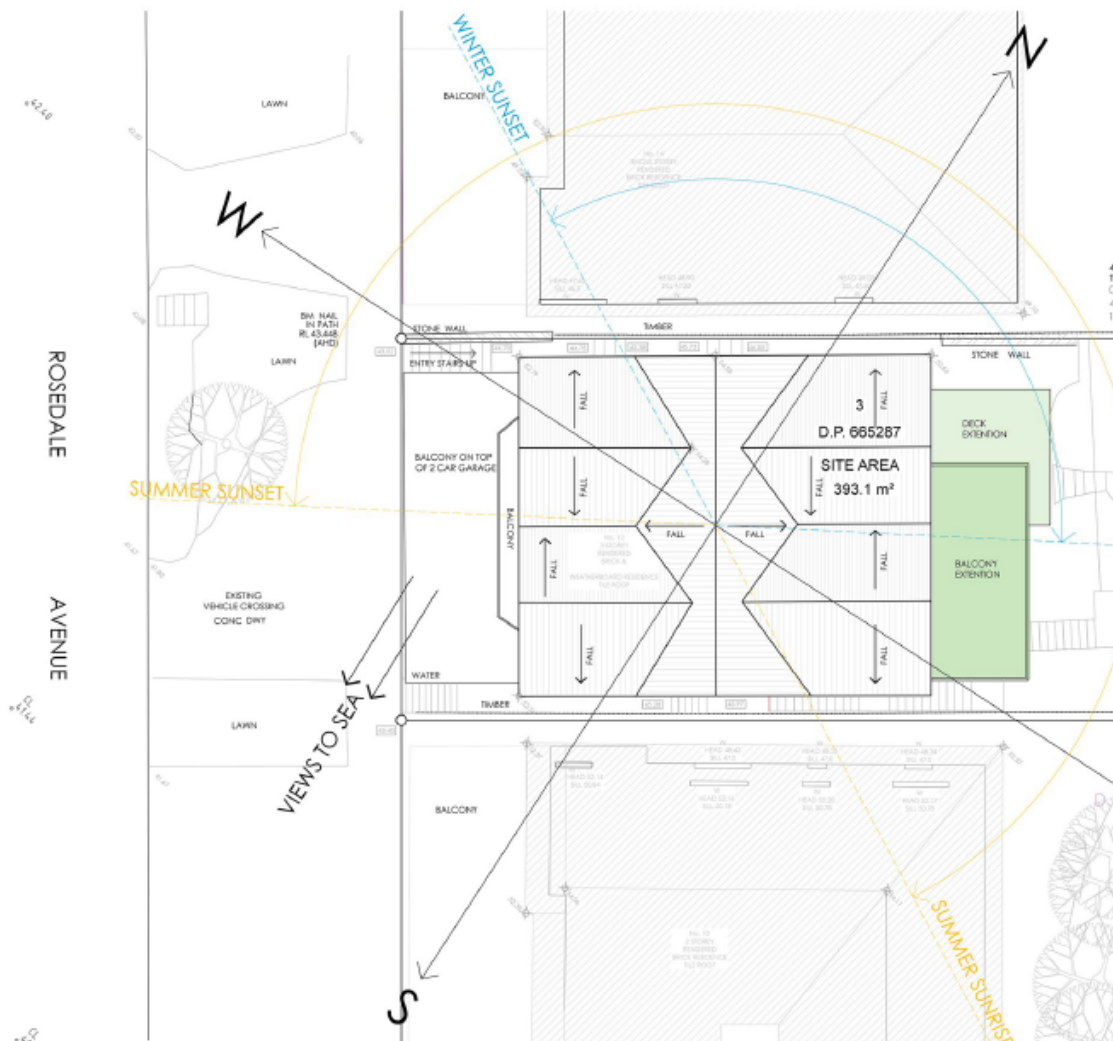


Figure 8 - Demonstrating approval granted under DA2018/1062 with a ground floor deck extension and upper floor balcony extension leading to further areas of private open space (which are higher up due to the topography).

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposed development contains a consistent side setbacks and building bulk to result in a reasonable development in the context of the site and locality.

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

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

Description of non-compliance

4.1.4.2 Side setbacks and secondary street frontages

Setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building.

With a maximum height of 7.1m on the northwest side and 7.1m on the southeast side, the minimum setbacks are 2.4m respectively.

The existing dwelling and proposed extensions have a setback 0.82m - 0.87m to the garage and to the ground floor and 0.9m to the first floor to the northwest side boundary, leading to variations of 62.5% - 65.8% to the side setback requirement. On the southeast side the existing dwelling and proposed extensions have a setback 0.92m - 0.97m to all levels of the building, leading to variations of 59.6% - 61.7% to the side setback requirement.

Merit consideration:

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

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

Comment:

The proposed development is generally consistent with the built form of the existing dwelling. The proposed extension are not expected to unreasonably impact upon the compatibility of the dwelling

with the spatial proportions of the streetscape and landscape character.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions. The positioning and sizes of habitable room windows on the side elevations are considered to be appropriate in limiting privacy impacts between dwellings.

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

Comment:

The proposed development is considered to be appropriately sited as it generally maintains the existing building footprint. The proposed setbacks of the first floor is not considered to cause unreasonable impact to the adjacent properties as most dwellings have similar structures.

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 proposed development achieves the minimum landscape area requirement and no significant vegetation is required to be removed to facilitate the development. Existing landscape area at the rear of the dwelling is not to be impacted by the proposed development.

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

Comment:

Not applicable.

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 s1.3 of the Environmental

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

4.1.8 Development on Sloping Sites

The site is identified as being in Area G2 and Area G4 of the Landslip Hazard Map. The G2 area is focused to the majority of the site, while the G4 area is focused only to the front northwest corner of the site. Sites located within the G2 area may require the submission of a Site Stability Report (Geotechnical Investigation).

A Geotechnical Investigation was completed by the White Geotechnical Group dated 21 December 2022.

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 \$3,843 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$384,300.

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the development exceeding the building height development standard by more than 10%.

The Clause 4.6 is considered to be well founded and is supported. Additionally, the side setbacks non-compliance is supported on the basis of no demonstrable impacts and the character and bulk and scale are satisfactory.

The concerns raised in the objection relating to overshadowing have been addressed under Clause 3.4.1 Sunlight Access and Overshadowing and it is considered that the proposal is deemed to be acceptable given the orientation of the properties (east/west), the existing topography of land which includes a rock face/rock outcrops located at the rear of these properties.

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. 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.

The proposal has therefore been recommended for approval.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 *Height of Building* development standard pursuant to clause 4.6 of the 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 DA2023/0648 for Alterations and additions to a dwelling house on land at Lot 1 DP 165920, 14 Rosedale Avenue, FAIRLIGHT, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA100	B	SITE & ROOF PLAN PROPOSED	YOUR BEAUTIFUL HOME	15 August 2023
DA101	B	GROUND FLOOR PLAN PROPOSED	YOUR BEAUTIFUL HOME	15 August 2023
DA102	B	FIRST FLOOR PLAN PROPOSED	YOUR BEAUTIFUL HOME	15 August 2023
DA103	B	GARAGE PROPOSED	YOUR BEAUTIFUL HOME	15 August 2023
DA104	B	DRIVEWAY PROPOSED	YOUR BEAUTIFUL HOME	15 August 2023
DA200	B	ELEVATION SOUTH/WEST (front) PROPOSED	YOUR BEAUTIFUL HOME	15 August 2023
DA201	B	ELEVATION NORTH/EAST (rear) PROPOSED	YOUR BEAUTIFUL HOME	15 August 2023
DA202	B	ELEVATION SOUTH/EAST (side) PROPOSED	YOUR BEAUTIFUL HOME	15 August 2023
DA203	B	ELEVATION NORTH/WEST (front) PROPOSED	YOUR BEAUTIFUL HOME	15 August 2023

DA400	B	SECTIONS PROPOSED AA	YOUR BEAUTIFUL HOME	15 August 2023
DA401	B	SECTION ROPOSED BB	YOUR BEAUTIFUL HOME	15 August 2023
DA500	B	SCHEDULE OF COLOURS AND MATERIALS	YOUR BEAUTIFUL HOME	15 August 2023
DA700	B	DEMOLITION & EXCAVATION PLAN GF	YOUR BEAUTIFUL HOME	15 August 2023
DA701	B	DEMOLITION & EXCAVATION PLAN LOWER GF	YOUR BEAUTIFUL HOME	15 August 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX CERTIFICATE (A478306)	-	YOUR BEAUTIFUL HOME	7 March 2023
GEOTECHNICAL INVESTIGATION (J4723)	-	WHITE GEOTECHNICAL GROUP	21 December 2022
WASTE MANAGEMENT PLAN	-	Anna Williams	8 March 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Prescribed Conditions

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

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

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

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

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. 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.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected

- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$3,843.00 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 \$384,300.00.

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

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

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

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

5. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**6. Stormwater Disposal**

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

of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the street in accordance with the Stormwater Management Plan by Taylor Consulting Drawing No. Storm-1/A dated 15.02.2023.

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.

7. 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.

8. Vehicle Crossings Application

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing which shall be the greater of 3 metres wide or the existing width on the kerb line and a maximum of 5 metres wide on the property boundary. The driveway longitudinal profile shall ensure that the existing concrete footpath levels are maintained in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

9. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and

monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

10. **Compliance with Standards**

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

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

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

11. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

12. **Sydney Water "Tap In"**

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

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

- "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

13. **Pre-Construction Dilapidation Report**

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

Property / Properties: Nos. 12 & 16 Rosedale Avenue, Fairlight

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.

14. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for

Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

DURING BUILDING WORK

15. 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.

16. Tree and Vegetation Protection

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be

retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

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

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

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

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

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

viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,

ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

17. 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.

18. 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.

19. **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.

20. **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.

21. **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.

22. **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 Certifying Authority.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**23. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; to achieve at least 6 metres height at maturity; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- d) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

24. 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.

25. 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.

26. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

27. **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.

28. **Waste Management Confirmation**

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

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

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

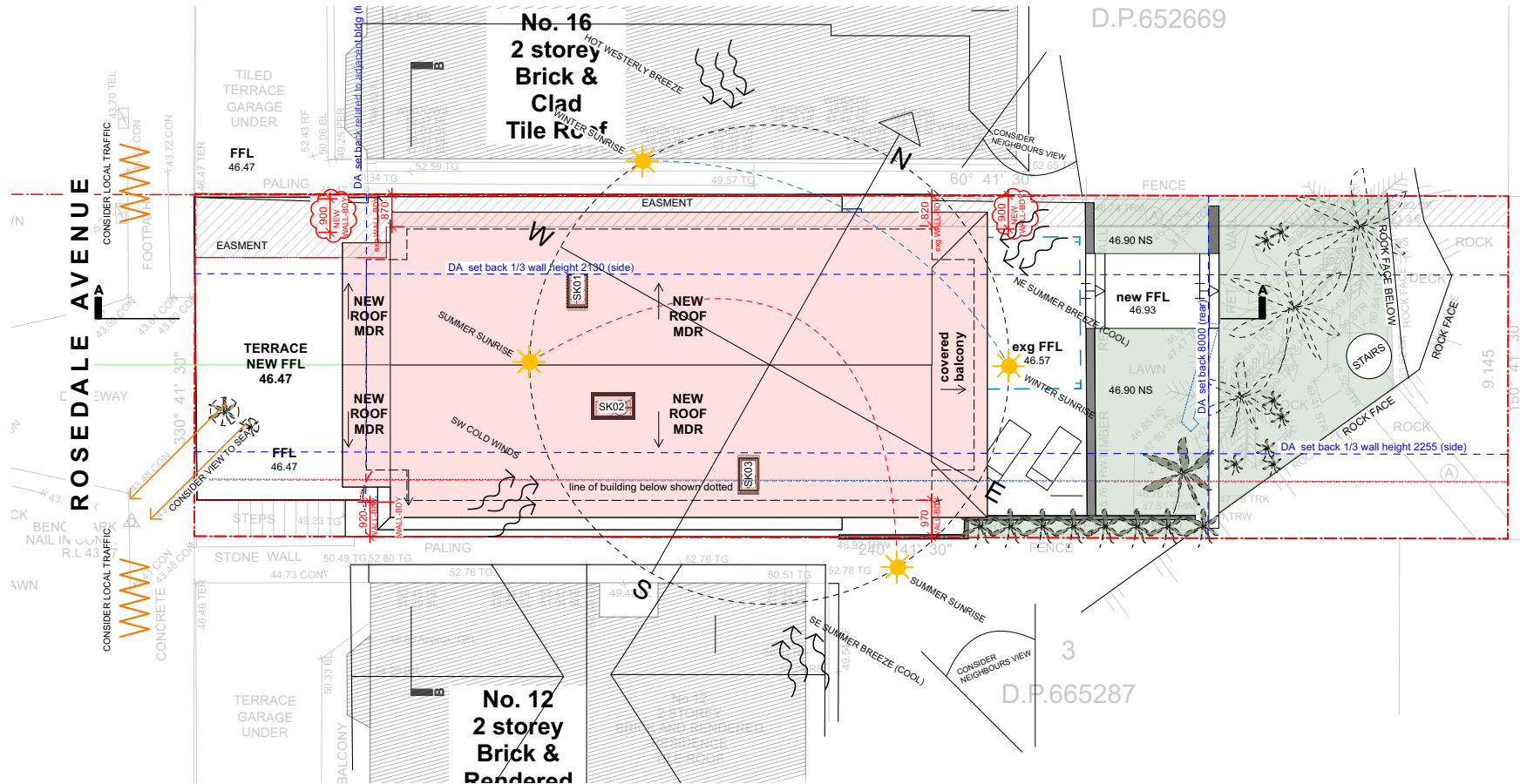
29. **Landscape Maintenance**

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.



**YOUR
BEAUTIFUL
HOME**

PROJECT ADDRESS
14 Rosedale Avenue
Fairlight NSW 2094
Lot 1 165920 320.55sqm

DATE
October 2022

CLIENT/S
Simone & Steve
Lowes

STATUS
Development Application

REVISION
A 17/5/2023
B 15/8/2023

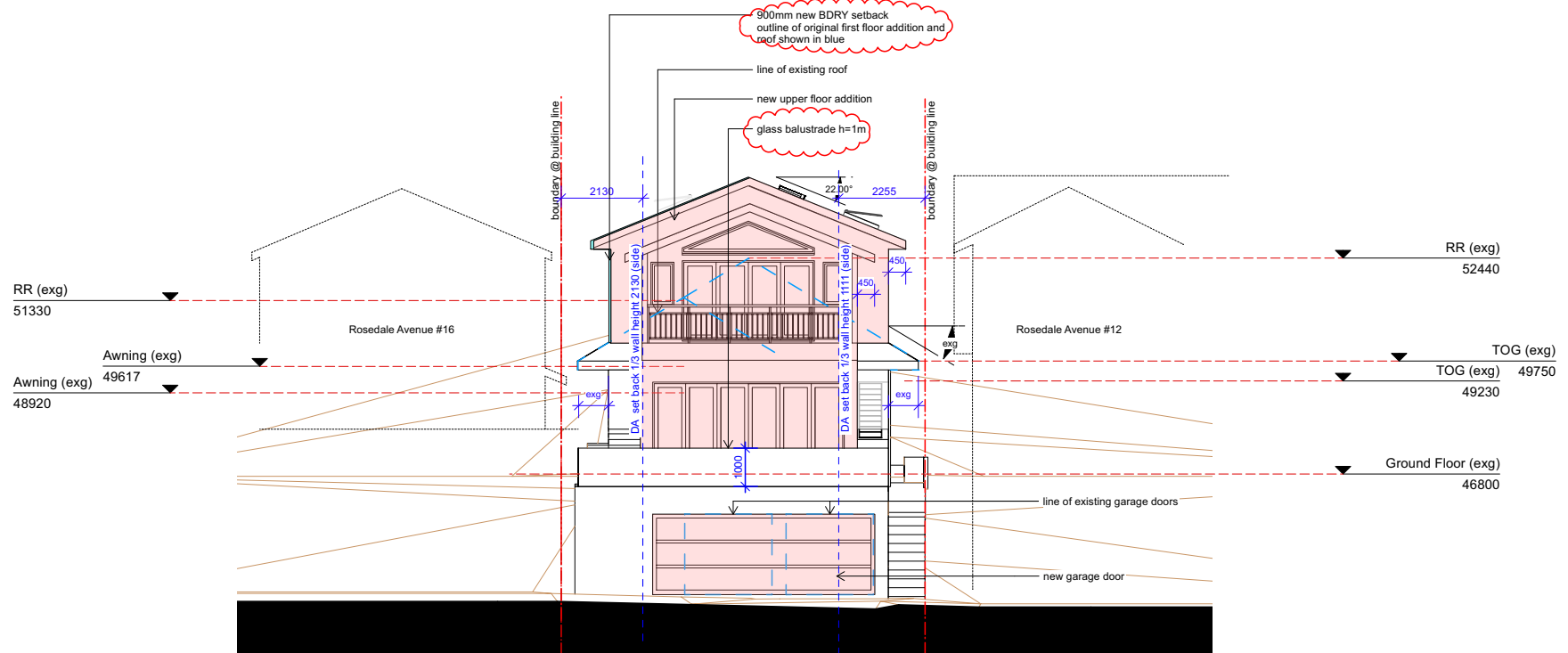
For Approval
Following Council Review

**SITE & ROOF PLAN
PROPOSED**

DEVELOPMENT APPLICATION
NOT FOR CONSTRUCTION

DA100

SCALE
1:100



Drawing Key

- New work
- Demolish

YOUR
BEAUTIFUL
HOME

PROJECT ADDRESS
14 Rosedale Avenue
Fairlight NSW 2094
Lot 1 165920 320.5sqm

DATE
October 2022

CLIENT/S
Simone & Steve
Lowe

STATUS
Development Application

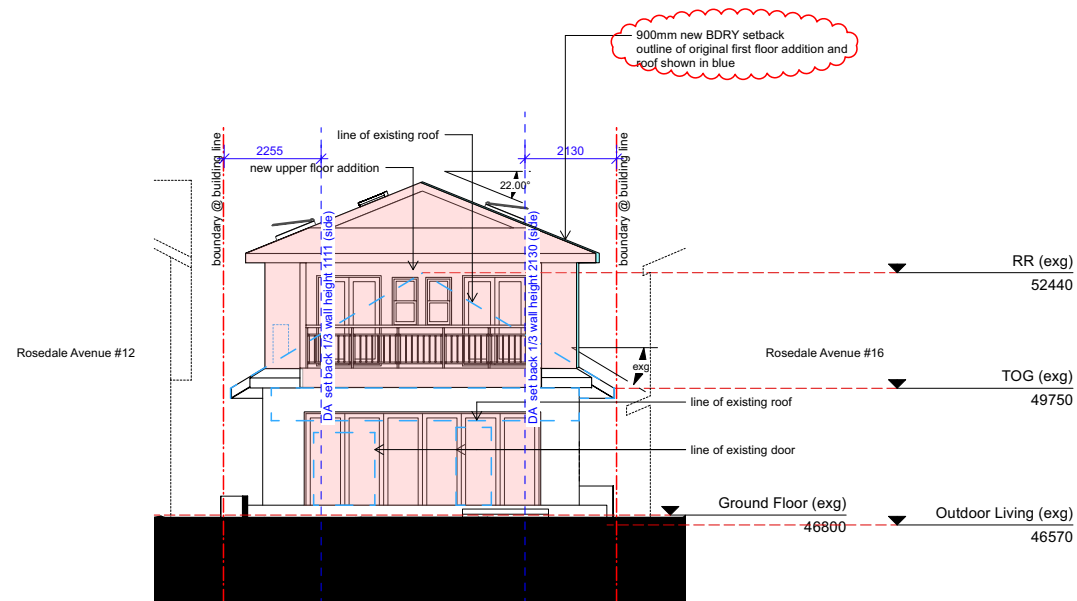
REVISION
A 17/5/2023
B 15/8/2023

For Approval
Following Council Review

ELEVATION
SOUTH/WEST (front)
PROPOSED
DEVELOPMENT APPLICATION
NOT FOR CONSTRUCTION

DA200

SCALE
1:100



Drawing Key

- New work
- Demolish

**YOUR
BEAUTIFUL
HOME**

PROJECT ADDRESS
14 Rosedale Avenue
Fairlight NSW 2094
Lot 1 165920 320.5sqm

DATE
October 2022

CLIENT/S
Simone & Steve
Lowes

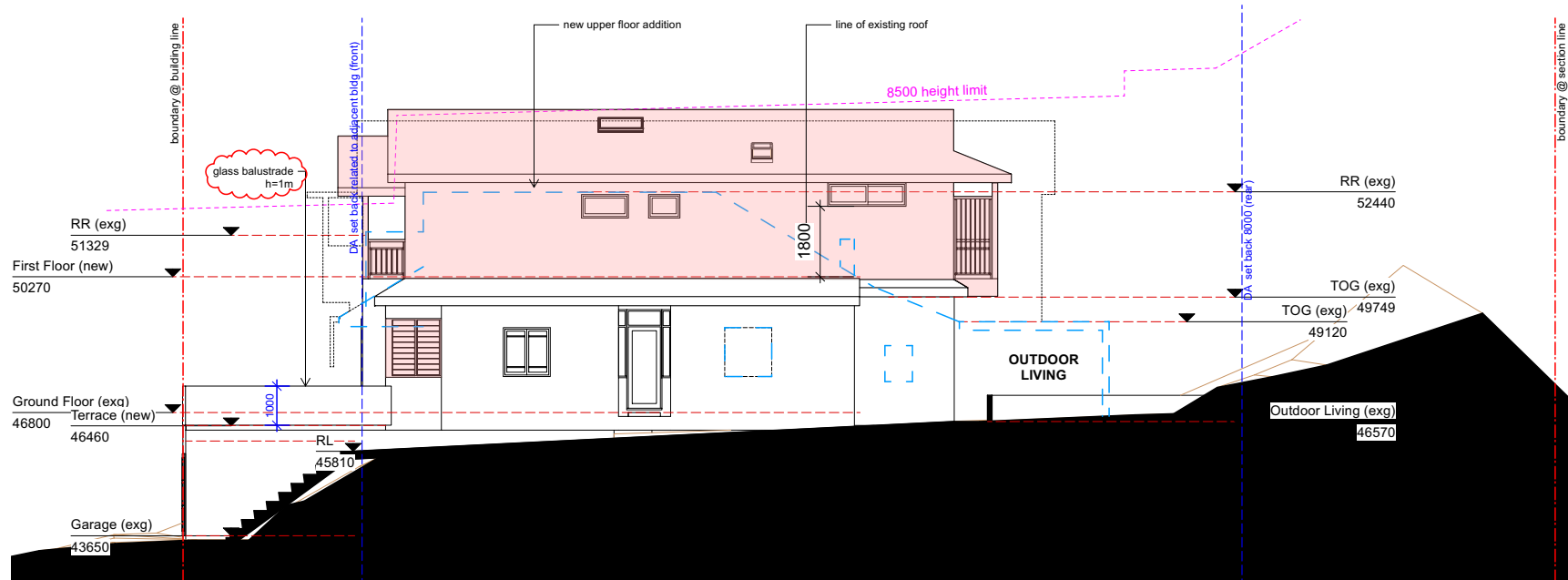
STATUS
Development Application

REVISION
A 17/5/2023 For Approval
B 15/8/2023 Following Council Review

ELEVATION
NORTH/EAST (rear)
PROPOSED
DEVELOPMENT APPLICATION
NOT FOR CONSTRUCTION

DA201

SCALE
1:100



Drawing Key

- New work
- Demolish

**YOUR
BEAUTIFUL
HOME**

PROJECT ADDRESS
14 Rosedale Avenue
Fairlight NSW 2094
Lot 1 165920 320.5sqm

DATE
October 2022

CLIENT/S
Simone & Steve
Lowes

STATUS
Development Application

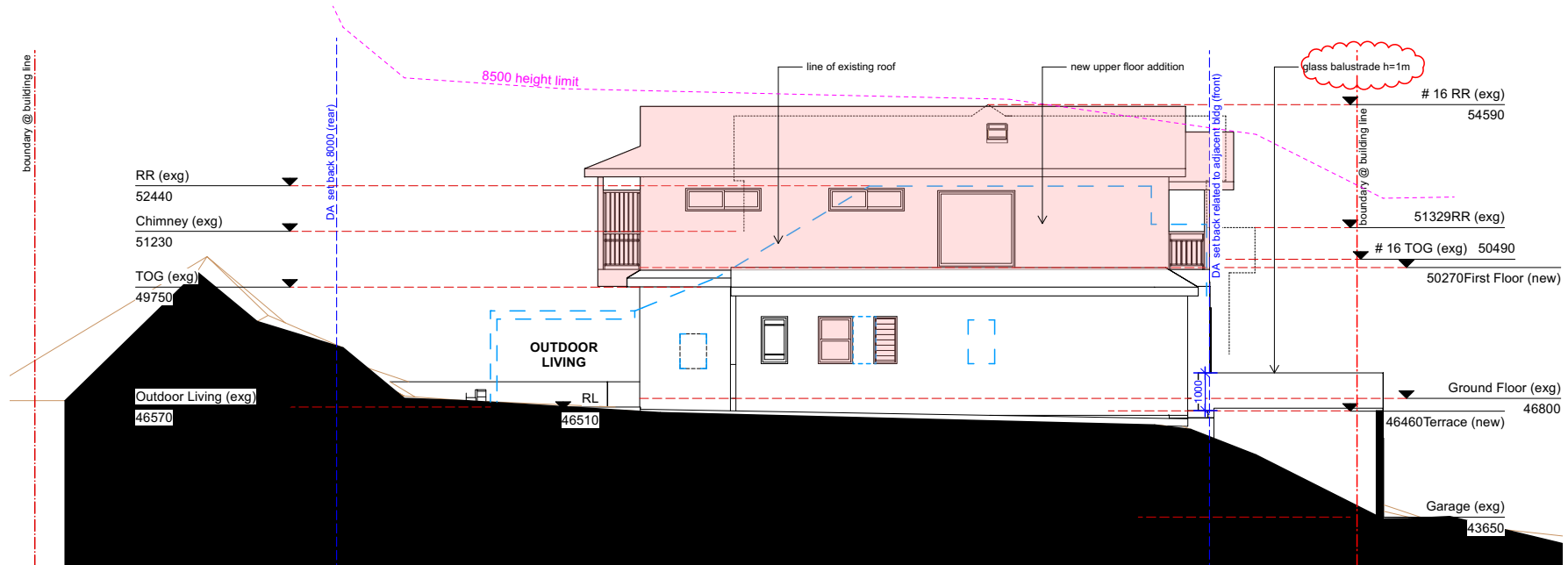
REVISION
A 17/5/2023
B 15/8/2023

For Approval
Following Council Review

**ELEVATION
SOUTH/EAST (side)
PROPOSED**
DEVELOPMENT APPLICATION
NOT FOR CONSTRUCTION

DA202

SCALE
1:100



Drawing Key

- New work
- Demolish

**YOUR
BEAUTIFUL
HOME**

PROJECT ADDRESS
14 Rosedale Avenue
Fairlight NSW 2094
Lot 1 165920 320.5sqm

DATE
October 2022

CLIENT/S
Simone & Steve
Lowes

STATUS
Development Application

REVISION
A 17/5/2023
B 15/8/2023

For Approval
Following Council Review

ELEVATION
NORTH/WEST (side)
PROPOSED
DEVELOPMENT APPLICATION
NOT FOR CONSTRUCTION

DA203

SCALE
1:100



*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD

14 ROSEDALE AVENUE
FAIRLIGHT NSW 2093

April 2023

Disclaimer

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northern beaches planning

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introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of Simone & Steve Lowes in relation to a development application for alterations and additions to an existing dwelling at 14 Rosedale Avenue, Fairlight (**site**). This request is made pursuant to clause 4.6 of Manly Local Environmental Plan 2013 (**MLEP 2013**) and with regard to relevant case law.

standard to be varied

With a maximum height of 10.94m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of MLEP 2013. The maximum building height prescribed by clause 4.3 of MLEP 2013 is a development standard, as defined by the Environmental Planning and Assessment Act (**EP&A Act**):

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

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

Accordingly, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of MLEP 2013, 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 MLEP 2013 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 has a maximum height of 10.94m associated with the pitch of the upper floor roof at the front south-western elevation, where it overlaps with the existing excavated garage below. The proposed height is 2.44m or 28.7% variation to the 8.5m maximum building height development standard.

The extent of variation is highlighted in Section AA (**Figure 1**) by Your Beautiful Home.

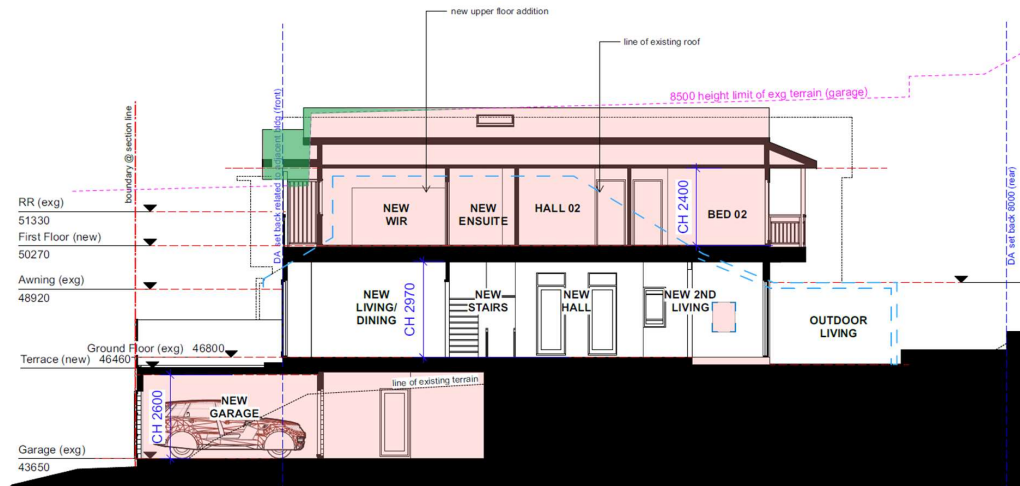


Figure 1 - Extract of Section AA with height non-compliance highlighted in green
Source: Your Beautiful Home

unreasonable or unnecessary

Pursuant to clause 4.6(4) of MLEP 2013, 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 MLEP 2013. Clause 4.6(3)(a) of MLEP 2013 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, 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 4.4(1) of MLEP 2013, as follows:

1. *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: As demonstrated on the South-West Front Elevation (DA200), the proposed height of the dwelling is consistent with that of adjoining dwellings. The pitch of the upper floor roof is proposed at RL 54.59m AHD, exactly the same as that of the adjoining dwelling at 12 Rosedale Avenue and generally consistent with that at 16 Rosedale (54.25m AHD). Further, as demonstrated in the Site and Roof Plan (DA100) the south-western projection and alignment of the upper floor roof is also consistent with that of neighbouring dwellings at 12 and 16 Rosedale Avenue.

The non-compliance is associated with a pitched roof form, that has been designed in response to the architectural style of the existing dwelling and also that of adjoining and nearby development. Non-compliance with the height standard does not detract from consistency with this objective.

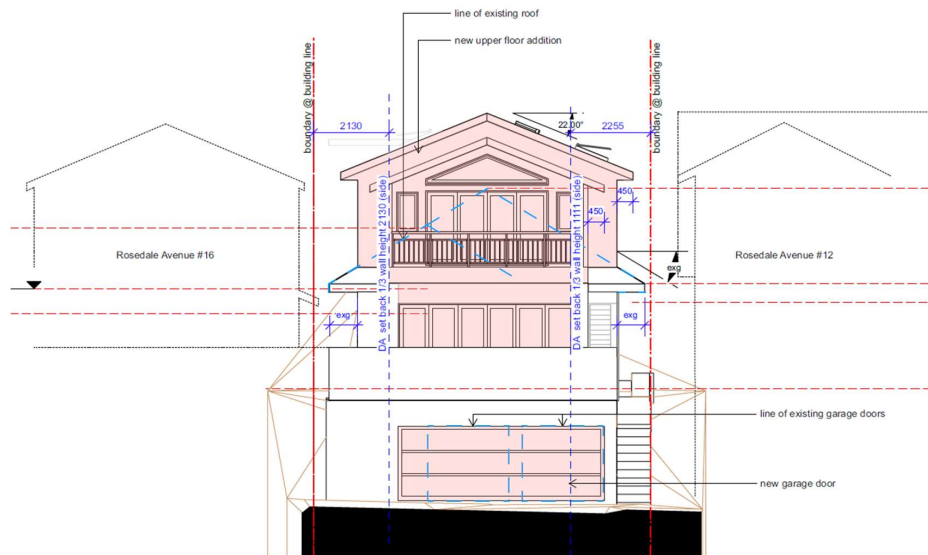


Figure 2 - Extract of South-West Elevation (DA200)

Source: Your Beautiful Home

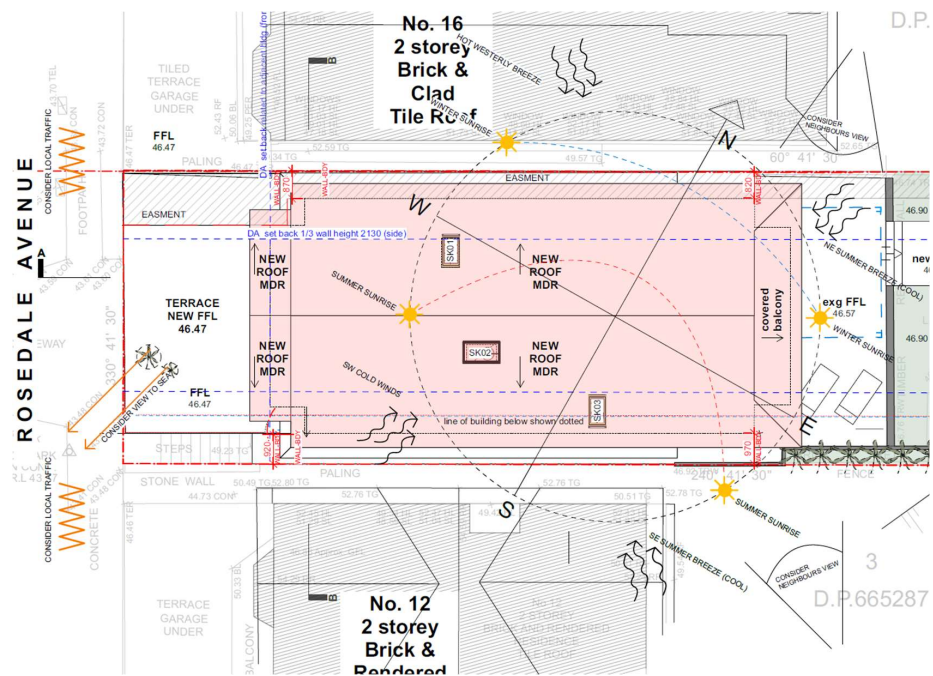


Figure 3 - Extract of Site and Roof Plan (DA100)

Source: Your Beautiful Home

2. *to control the bulk and scale of buildings,*

Comment: The primary means to control the bulk and scale of development is the floor space ratio. The proposed development is compliant with the floor space ratio development standard, with a gross floor area less than the maximum prescribed. The proposed development is entirely consistent with the general bulk and scale of dwellings along the high side of Rosedale Avenue and in this respect, the proposed distribution of floor space is considered to be appropriate.

The height non-compliance is limited to the pitch of the upper roof form and the roof over the front verandah. Neither of these elements contribute to excessive bulk or scale. Rather they ensure a cohesive built form outcome with surrounding development and articulation of the front façade. Furthermore, it is noted that clause 3.1.1.3 of MDCP 2013 prescribed that roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings. As demonstrated in Figure 4, both the dominant pitched roof form and the inclusion of a lower awning are appropriately responsive to the form of neighbouring and nearby roof forms, and will complement the character of the streetscape.



Figure 4 – Rosedale Avenue Streetscape
Source: NBP

The height non-compliance does not detract from consistency with this objective.

3. *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: It is apparent that the dwellings to the rear of the site enjoy harbour views over the subject site and adjoining properties. However, these properties are elevated well above the level of the subject site, such that the proposed additions are unlikely to result in any adverse impacts upon these views.

Images of existing view corridors have been obtained from historical real estate listings (Figures 5 and 6), which demonstrate that the primary views from upslope properties are to be retained. Non-compliance with the height control does not detract from consistency with this objective.



Figure 5 – Views in a south-westerly direction 75 Fairlight Street
Source: Realestate.com.au



Figure 6 – Views in a southerly direction from 75 Fairlight Street
Source: Realestate.com.au

4. *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment: The application is supported by Shadow Diagrams by Your Beautiful Home that demonstrate that the proposed development will not-

- eliminate more than 1/3 of existing sunlight to the rear yard of the adjoining property at 12 Rosedale Avenue between 9am and 3pm in midwinter, or
- Reduce the level of solar access to living room windows at 12 Rosedale Avenue to less than 2 hours between 9am and 3pm, noting that there are living room windows located on the north-eastern rear façade of the dwelling.

Non-compliance with the maximum height development standard does not result in any adverse impacts upon adjoining properties with regard to solar access, and compliance with the solar access provisions of clause 3.4.1.2 is achieved.

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

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

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) of MLEP 2013 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 building height development standard are as follows:

1. Historical excavation

The height breach, being both the breach associated with the upper floor roof pitch and the roof over the front balcony, 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 land, can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of MLEP 2013.

2. Consistency with surrounding built form

As discussed with regard to the objectives of the building height control, the height and alignment of the proposed roof form is consistent with that of adjoining and nearby dwellings. The development will sit comfortably in the streetscape setting, with the appearance of a two storey dwelling above an excavated garage, consistent with surrounding built form.

The proposed design response is also consistent with the streetscape controls of MDCP 2013, which at clause 3.1.1.1 prescribes the need to complement the predominant building form, distinct building character, building materials and finishes and architectural style in the locality and at clause 3.1.1.3 prescribes the need for roof forms to complement that of surrounding development.

Strict compliance with the height control would push the upper floor back onto the site, which would be inconsistent with the provisions of clause 4.1.4.1 of MDCP 2013 which prescribes that front setbacks should relate to adjoining dwellings, with the aim to maintain and enhance the desired spatial proportions of the street and the street edge.

Strict compliance would also require the front awning roof over the balcony to be removed, which would be disadvantageous, as it provides weather protection and articulation to the front south-westerly façade.

The proposed development is of superior architectural quality and 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 objects (g) and (h) of the EP&A Act.

Upholding a variation that arises due to historical excavation and the height and alignment of neighbouring dwellings also promotes the orderly and economic development of the land, consistent with object (c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the floor space ratio development standard in this particular instance.

public interest

Under the provisions of clause 4.6(4)(a) of MLEP 2013, 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 R1 General Residential zone, as follows:

- *To provide for the housing needs of the community.*

Comment: The proposed development provides for the growing needs of the occupants of the existing dwelling.

- *To provide for a variety of housing types and densities.*

Comment: The proposed development will continue to contribute to the variety of residential housing types in the surrounding locality.

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

Comment: Not applicable – residential development is proposed.

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 building height development standard.

concurrence

Pursuant to clause 4.6(4) of MLEP 2013, 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 MLEP 2013 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 MLEP 2013 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 3.3**DA2023/0745 - 69 POWDERWORKS ROAD NORTH
NARRABEEN - ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE INCLUDING SECONDARY DWELLING****REPORTING MANAGER** Adam Richardson**TRIM FILE REF** 2023/590435**ATTACHMENTS**
1 [↓Assessment Report](#)
2 [↓Site Plan & Elevations](#)
3 [↓Clause 4.6](#)**PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0745 for alterations and additions to a dwelling house including secondary dwelling on land at Lot 33 DP 811426, 69 Powderworks Road NORTH NARRABEEN, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0745
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 33 DP 811426, 69 Powderworks Road NORTH NARRABEEN NSW 2101
Proposed Development:	Alterations and additions to a dwelling house including 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:	Bradley Robert Martin Sophie Margrethe Kelman
Applicant:	Bradley Robert Martin
Application Lodged:	14/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/06/2023 to 07/07/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 27.3%
Recommendation:	Approval
Estimated Cost of Works:	\$ 395,175.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including the provision of a secondary dwelling on the subject site.

The development application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10% and involves a Class 1 dwelling. The building height of the proposed secondary dwelling house has been measured at 7 metres which represents a variation of 27.3% to the maximum prescribed building height of 5.5 metres via Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014 (PLEP 2014).

The clause 4.6 variation request for the non-compliance with height standard arises from the site being previously partially excavated underneath the proposed secondary dwelling based.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. No submissions have been received.

Despite being technically non-compliant with the prescribed building height requirement, the proposal represents a built

form compatible with the prevailing character of the locality and would not result in unreasonable amenity impacts to neighbouring properties. The non-compliant elements of the proposal will be commensurate with the built form of the existing dwelling.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling and a secondary dwelling as follows:

- *"Upper Floor: Alterations and additions to provide for a reconfigured pedestrian entrance, enlarged bathroom, open plan kitchen/living/dining area and an enlarged rear balcony,*
- *Lower Floor: Alterations and additions to provide for an additional bedroom, and a larger bathroom and rumpus room,*
- *Secondary Dwelling: Alterations and additions to the existing detached studio to provide a one bedroom secondary dwelling,*
- *External: New roof over existing dwelling, new cabana and terrace adjacent to swimming pool, new access walkway and stairs to dwelling, stormwater infrastructure and landscaping."*

Amended Plans

No shadow diagrams were lodged with the application. On 12 September 2023 the applicant lodged the shadows diagrams with Council which will be taken in to consideration for this assessment.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D11.9 Building envelope

SITE DESCRIPTION

Property Description:	Lot 33 DP 811426 , 69 Powderworks Road NORTH NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Powderworks Road.</p> <p>The site is irregular in shape with a frontage of 15.525m along Powderworks Road and a depth of 69.92 metres along the southern</p>

	<p>side boundary and 62.48 metres along the northern side boundary. The site has a surveyed area of 1043.4m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates a two storey dwelling, with a detached double carport addressing Powderworks Road, a detached single storey studio and swimming pool at the rear of the dwelling house.</p> <p>The site falls in excess of 14 metres from the front boundary (Powderworks Road) down to the rear boundary (approximately slope of 20%).</p> <p>The site has a mix of native and exotic species of plants, shrubs and trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by single, double and three storey dwelling houses with associated outbuildings/structures with landscaped gardens.</p>
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Map:



SITE HISTORY

DA309/94 - Alterations and additions to a dwelling house approved 19 April 1994

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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested for solar access diagrams which was submitted by the applicant on 12 September 2023.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/06/2023 to 07/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to conditions</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>Supported, subject to conditions</p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D11 North Narrabeen Locality <p>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.</p> <p>Landscape Referral raises concern that the proposed development does not achieve the 60% landscaped area under the PDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer.</p> <p>Should the development application be approved, all trees and vegetation shown to be retained shall be protected in accordance with the recommendations in the Arboricultural Impact Assessment and the imposed conditions.</p> <p>All proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. Any works proposed in the road reserve shall be assessed and determined by Council's Road Reserve referral team.</p>
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>The proposal is for alterations and additions to the existing dwelling and secondary dwelling. Refusal of easement letter has been provided. The submitted stormwater plan with an alternative method of discharge is acceptable subject to conditions.</p> <p>No objections to approval subject to conditions as recommended.</p>

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

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. A490800_02 dated 9 June 2023 and A490804_02 dated 9 June 2023).

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
<p>(2) Development consent must not be granted for development to which this Part applies unless—</p> <p>a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and</p> <p>b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and</p> <p>c) The total floor area of the secondary dwelling is:</p> <ul style="list-style-type: none"> 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. 	Compliant as floor area for secondary dwelling is 59.6m ²

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.

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 (primary dwelling) 5.5m (secondary dwelling)	9.6m (primary dwelling) 7m (secondary dwelling)	- 27.3%	Yes* No

* Note: Refer Part 4.3 Height of buildings

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
1.9A Suspension of covenants, agreements and instruments	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
Part 5 Miscellaneous provisions	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes

Clause	Compliance with Requirements
Part 7 Additional local provisions	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The 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 is centrally located within subject site, which is moderately steep. The proposed earthworks are localised to the dwelling, secondary dwelling and cabana footprint and 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.

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

Comment:

The development will not have an adverse effect on any special ecological, scientific or aesthetic values.

- To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The proposed additions to the dwelling house, secondary dwelling and cabana is minimal in scale and has been suitably integrated with the landform and landscape.

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

Comment:

The development will not effect wildlife corridors nor will it have an effect on riparian and foreshore vegetation.

Conclusion:

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

4.3 Height of buildings

The site is located within Area I on the Pittwater LEP 2014 Height of Buildings Map. Within this area, the maximum building height permitted is 8.5m above the existing ground level. The maximum height of the proposed development is 10 metres above the existing ground level, which exceeds the 8.5 metres prescribed requirement.

Notwithstanding, Clause 4.3(2D) of the Pittwater LEP 2014 contains an exemption provision that stipulates that the maximum building height within Area I can be increased to 10 metres, providing the following is demonstrated:

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

Comment:

The areas of the dwelling house that protrude above the 8.5 metres height plane are confined to minor portions of the roofline within this portion of the dwelling. The breaches occur for a horizontal length of 0.4 metres for a maximum height of 1.1 metres (Figure 1 below depicts the areas that protrude above the 8.5 metres height plane). These areas above the 8.5 metres height limit are considered minor given the low percentage (1.8%) these areas demonstrate overall versus the high percentage (98.2%) of the building demonstrates compliance with the 8.5 metres height control. The sections of roof which breaches the height limit is attributed to a section of roof associated with the first floor balcony as it extends down the site, where there is an abrupt change topography due to previous excavation of the site.

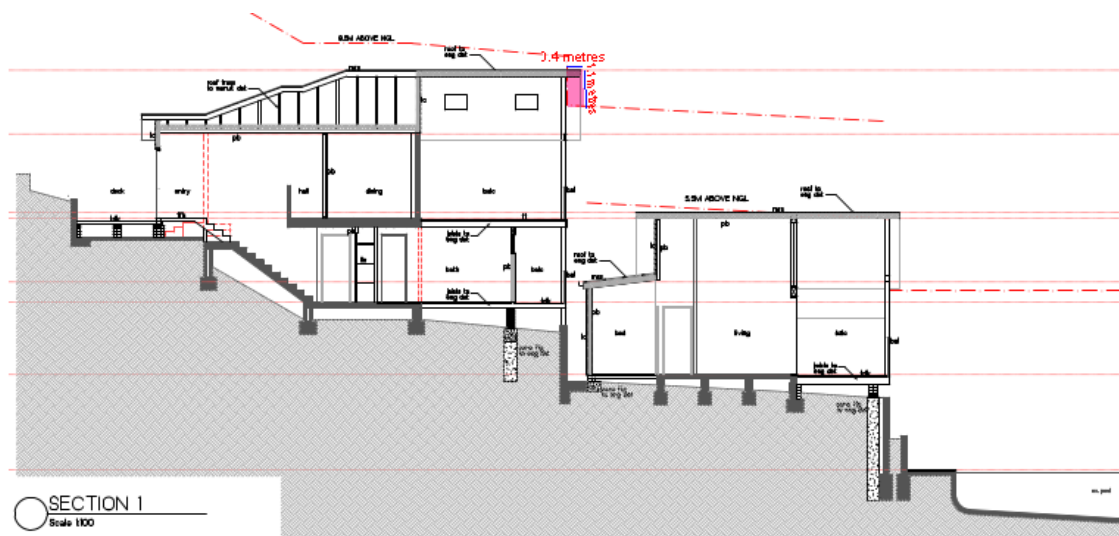


Figure 1 - Area above 8.5m height plane highlighted in purple and calculation of slope under the building footprint

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

Comment:

A detailed assessment against the objectives of Clause 4.3 of Pittwater LEP 2014 is provided below. In summary, the proposal is found to be consistent with the objectives of this clause.

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

Comment:

The slope of the land under the building footprint is 21.3 degrees (39%).

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

Comment:

The building provides a terraced style design that steps down in height with the slope of the land to integrate with the landform and landscape.

When considered against the objectives of Clause 4.3 of Pittwater LEP 2014, it is noted as follows:

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

Comment:

The built form is considered consistent with the desired scale of development within low density residential areas. Sufficient landscaping has been maintained and has also been incorporated into the proposal to ensure the development is a secondary component to the landscape setting.

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

Comment:

The height, bulk and scale of the proposed development is commensurate with established low density residential development within the North Narrabeen area.

(c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal is not considered to result in unacceptable overshadowing of adjoining properties and the shadow cast is minor.

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

Comment:

This matter is discussed in detail within the section of this report relating to Clause C1.3 of the Pittwater 21 DCP. In summary, it is concluded that the proposal allows for reasonable view sharing.

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

Comment:

The proposal steps down in height with the slope of the land to integrate with the landform and landscape. Thus, it is considered that the proposal responds sensitively to the natural topography.

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

Comment:

The site does not contain a heritage item, is not located within a heritage conservation area and is not located in close proximity to heritage items. Therefore, the proposal will not have an adverse impact upon environmental and built heritage. Additionally, the dense vegetation located within the foreshore area will soften the built form when viewed from Whale Beach and the wider foreshore area. The chosen colours and materials also harmonise with the coastal setting.

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements of Clause 4.3(2D) of Pittwater LEP 2014. Therefore, the 10m maximum building height is applied to the site. The maximum height of the proposed development is a maximum 9.6 metres above the existing ground level, which is less than the 10 metres maximum provision.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	5.5m
Proposed:	7m

Percentage variation to requirement:	27.3%
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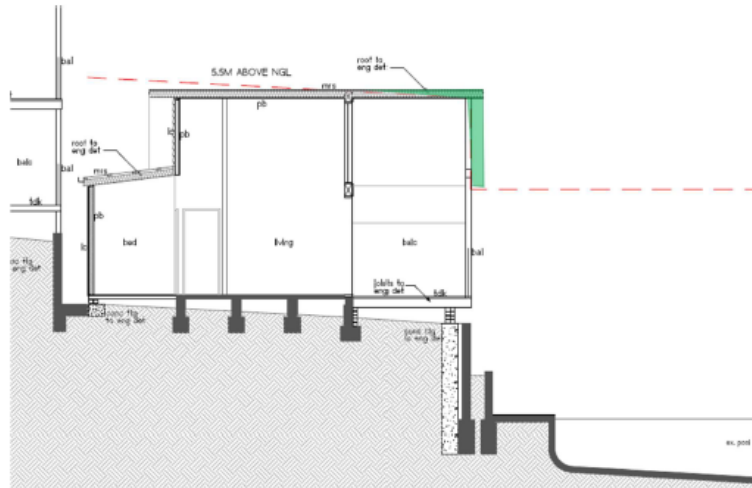


Figure 1 – Section 1, with the height non-compliance highlighted in green
Source: Pittwater Design + Draft and NBP

Figure 2 - extent of height breach - secondary dwelling

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

- (1) *The objectives of this clause are as follows:*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

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

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The proposed secondary dwelling is limited to one storey in height and will be maintained below existing and proposed tree canopy. The one storey height of the detached secondary dwelling is consistent with the requirements of clause C1.11 (Secondary Dwellings and Rural Workers' Dwellings) which prescribes that where a secondary dwelling is separate from the principal dwelling, only one storey will be allowed. The portion*

of the roof that exceeds the 5.5m height plane does not detract from consistency with the desired future character of the North Narrabeen locality.

- *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. The non-compliant portion of the secondary dwelling does not give rise to any unreasonable impacts upon surrounding properties or nearby public land. The pitch of the roof has been designed to match that of the primary dwelling, to ensure architectural cohesion between the two structures. Overall, the proposal is compatible with the height and scale of nearby development.*
- *The height breach predominantly occurs where the proposed roof form is situated over the excavated swimming pool terrace. 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 PLEP 2014.*
- *Whilst the proposal exceeds the 5.5m height limit by up to 1.5m, the portion of the development that extends above the height plane is nominal (as highlighted in Figure 1). In consideration of the scale of the development as a whole, the proposed variations are reasonably described as minor.*
- *The non-compliant elements do not attribute to any unreasonable impacts upon the amenity of future occupants of the development or neighbouring sites or the wider public domain. Further, the non-compliance does not detract from the intent of the height limit, which is to limit detached secondary dwellings to single storey in height, as outlines in clause C1.11 of P21 DCP.*
- *Consistent with the findings of Commissioner Walsh in Eather v Randwick City Council [2021] NSWLEC 1075 and Commissioner Grey in Petrovic v Randwick City Council [2021] NSWLEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.*

It is considered that the applicant's justification to vary the building height development standard is adequate and provides sufficient environmental planning grounds. It is considered the proposed development will not unreasonably impact the amenity of the site, adjacent properties or public domain by way of building bulk, privacy, solar access and view impact. The excavated area beneath the proposed secondary dwelling exasperates the numerical non-compliance. However, the material impacts on this non-compliance are considered to be minor and in keeping with existing and approved development in the locality.

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, 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 unreasonably impact upon the existing and desired streetscape character.

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 secondary 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:

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	9.5m (dwelling) Nil (carport)* 22.4m (secondary dwelling)	- - -	Yes Unaltered Yes
Rear building line	6.5m	41.3m (dwelling) 31.3m (secondary dwelling) 13.3m (cabana)	- - -	Yes Yes Yes
Side building line	2.5m (South)	1.7m (dwelling)* 2.6m (secondary dwelling) 4.2m (cabana)	- - -	Unaltered Yes Yes
	1m (North)	1.4m (dwelling) 1.4m (secondary dwelling) 1m (cabana)	- - -	Yes Yes Yes
Building envelope	3.5m (South)	Outside envelope*	-	Unaltered
	3.5m (North)	Outside envelope	34.3%	No
Landscaped area	60% (626m ²)	61.8% (639.8m ²)**	-	Yes

* Existing (unaltered)

** Landscaping (577.2sqm + 62.6sqm (6% variation allowable under D11.11 Landscaped Area - Environmentally Sensitive Land).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater	Yes	Yes
A1 Introduction	Yes	Yes
A1.7 Considerations before consent is granted	Yes	Yes
A4 Localities	Yes	Yes
A4.11 North Narrabeen Locality	Yes	Yes
Section B General Controls	Yes	Yes
B1 Heritage Controls	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3 Hazard Controls	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4 Controls Relating to the Natural Environment	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5 Water Management	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6 Access and Parking	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8 Site Works 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
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
Section C Development Type Controls	Yes	Yes
C1 Design Criteria for Residential Development	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
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
Section D Locality Specific Development Controls	Yes	Yes
D11 North Narrabeen Locality	Yes	Yes
D11.1 Character as viewed from a public place	Yes	Yes
D11.3 Building colours and materials	Yes	Yes
D11.6 Front building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11.7 Side and rear building line	Yes	Yes
D11.9 Building envelope	No	Yes
D11.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D11.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D11.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D11.9 Building envelope

Description of non-compliance

Under Clause D11.9 of the DCP, buildings are required to be sited within the building envelope which is measured from a height of 3.5 metres above ground level and projected 45 degrees at the side boundaries.

The proposal presents a building envelope encroachment on the northern with a maximum 1.2 metres (see Figure 3 below).

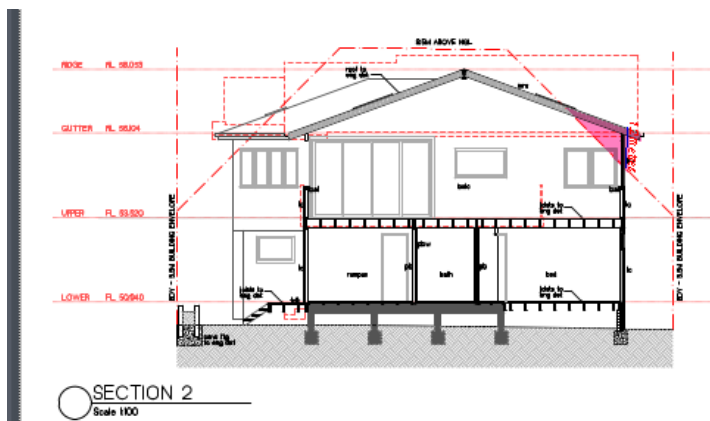


Figure 3 - Northern elevations building envelope breach (indicated in purple)

The encroachment of the envelope is for the roof and portion of the wall on the northern elevations.

Merit Consideration:

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

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

Comment:

The proposed development maintains the low density residential nature of the North Narrabeen locality in line with the desired future character of the area.

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

Comment:

The proposal will not involve the removal of any mature trees or significant vegetation. Furthermore, the proposed development will be sited below the height of the trees in the surrounding natural environment, preserving a building scale and density that is consistent with the existing streetscape.

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

Comment:

The proposed alterations and additions follow the existing built form on the site. In this regard, the proposal is considered to respond to, reinforce, and sensitively relate to the existing spatial characteristics of the built and natural environment.

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

Comment:

The proposed development is compliant with the development standard for building height prescribed by the LEP. Moreover, given the existing numerically non-compliant building envelope encroachments, the proposal is not anticipated to result in any additional unreasonable height, bulk or scale.

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

Comment:

The proposed development will not unreasonably obstruct views from neighbouring properties or the public domain.

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

Comment:

The building envelope non-compliances are not anticipated to result in any adverse impacts to privacy, overshadowing or loss of amenity to adjoining and surrounding residential properties. The existing levels of amenity enjoyed by neighbouring properties will be preserved given the resultant dwelling house will be of a similar size and scale to adjoining dwellings.

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

Comment:

The subject site contains a range of shrubs and canopy trees to soften the built form. The retention of vegetation will assist in softening the proposed development's visual impact.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$3,952 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$395,175.

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 EPs
- 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 Environment 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 including secondary dwelling has been referred to the Development Determination Panel (DDP) due to the development exceeding the building height development standard by more than 10%.

The Clause 4.6 is considered to be well founded and is supported. Additionally, the side boundary envelope non-compliance is supported on the basis of no demonstrable impacts and the character and bulk and scale are

satisfactory.

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.

The proposal has therefore been recommended for approval.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/0745 for Alterations and additions to a dwelling house including secondary dwelling on land at Lot 33 DP 811426, 69 Powderworks Road, NORTH NARRABEEN, 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

- Approved Plans and Supporting Documentation**
Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-01	3	Site Plan & Analysis	Pittwater Design & Draft	9 March 2023
DA-02	1	Cabana Plan	Pittwater Design & Draft	15 November 2022
DA-03	3	Secondary Dwelling Plan	Pittwater Design & Draft	9 March 2023
DA-04	3	Lower Floor Plan	Pittwater Design & Draft	9 March 2023
DA-05	3	Upper Floor Plan	Pittwater Design & Draft	9 March 2023
DA-06	3	Roof Plan	Pittwater Design & Draft	9 March 2023
DA-07	3	North-East Elevation	Pittwater Design & Draft	9 March 2023
DA-08	3	South-East Elevation	Pittwater Design & Draft	9 March 2023
DA-09	3	North-West Elevation	Pittwater Design & Draft	9 March 2023
DA-10	3	South-West Elevations	Pittwater Design & Draft	9 March 2023
DA-11	3	South-East & North-West Elevations - Cabana	Pittwater Design & Draft	9 March 2023
DA-12	3	Section - Sheet 1	Pittwater Design & Draft	9 March 2023
DA-13	3	Sections - Sheet 2	Pittwater Design & Draft	9 March 2023

DA-15	3	Landscape Plan	Pittwater Design & Draft	9 March 2023
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Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Investigation (J3721)	1	White Geotechnical Group	2 December 2022
Arboricultural Impact Assessment	1	Sydney Arborist	5 June 2023
Waste Management Plan	1	Sophie Kelman & Bradley Martin	10 May 2023
Basix Certificate (A490804_02)	2	Leigh Sym	9 June 2023
Basix Certificate (A490800_02)	2	Leigh Sym	9 June 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Received
Ausgrid	Ausgrid Referral Response	21 June 2023

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
 - Building construction and delivery of material hours are restricted to:
 - 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 following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. 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.

- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$3,951.75 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 \$395,175.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by ACOR Consultants, project number NS222118, drawing number C08-001, C08-301, dated 24/4/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The discharge from OSD tank 1 and OSD tank 2 to be connected to a suitably designed level spreader to

ensure no concentration of flows.

ii. Proposed roof areas only to be connected to OSD tanks 1 & 2.

iii. Level spreader to be located approximately along the contour line RL44 m.

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

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

10. **Fire Separation of External Walls**

The external walls of the proposed Secondary Dwelling and any openings within these walls is required to comply with Clause 9.2.1 of the National Construction Code – Housing Provisions 'External walls of a Class 1 building'.

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety

11. **Laundry Facilities**

The existing building that is proposed to be used as a secondary dwelling is required to comply with Part 10.4.1 of the National Construction – 'Required Facilities'. A kitchen sink or washbasin must not be counted as a laundry washtub.

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

Reason: To ensure adequate provision is made for building occupant health and amenity

12. **Compliance with Standards**

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

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

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

13. **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.

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

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

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

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

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

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

DURING BUILDING WORK

15. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

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

ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

16. Condition of Trees

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

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

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

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

Reason: Protection of trees.

17. 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.

18. 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.

19. 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.

20. **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.

21. **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.

22. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

23. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing DA-15 by Pittwater Design + Draft dated 03/01/23), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- d) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

24. **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.

25. **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.

26. **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.

27. **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.

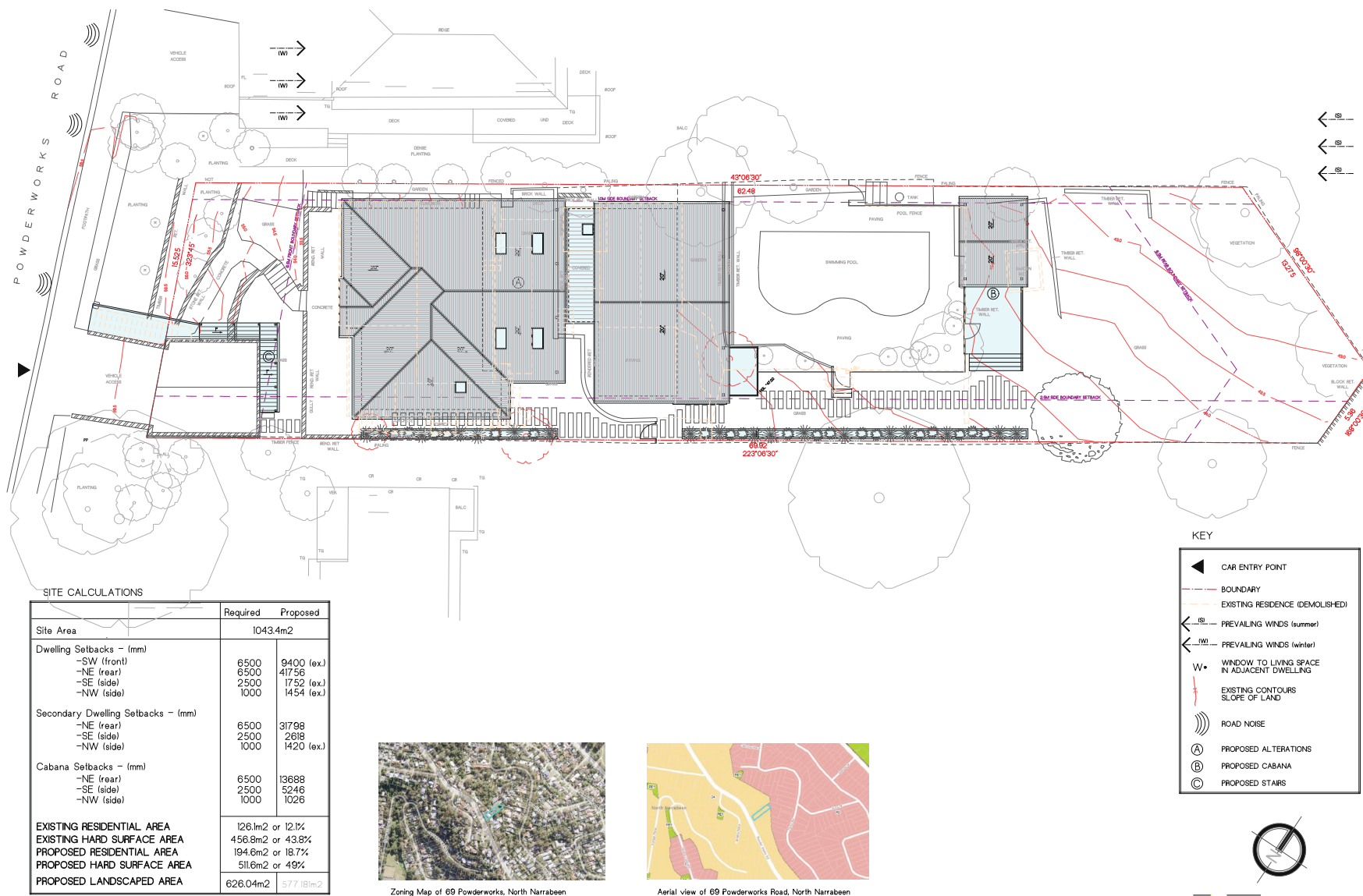
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

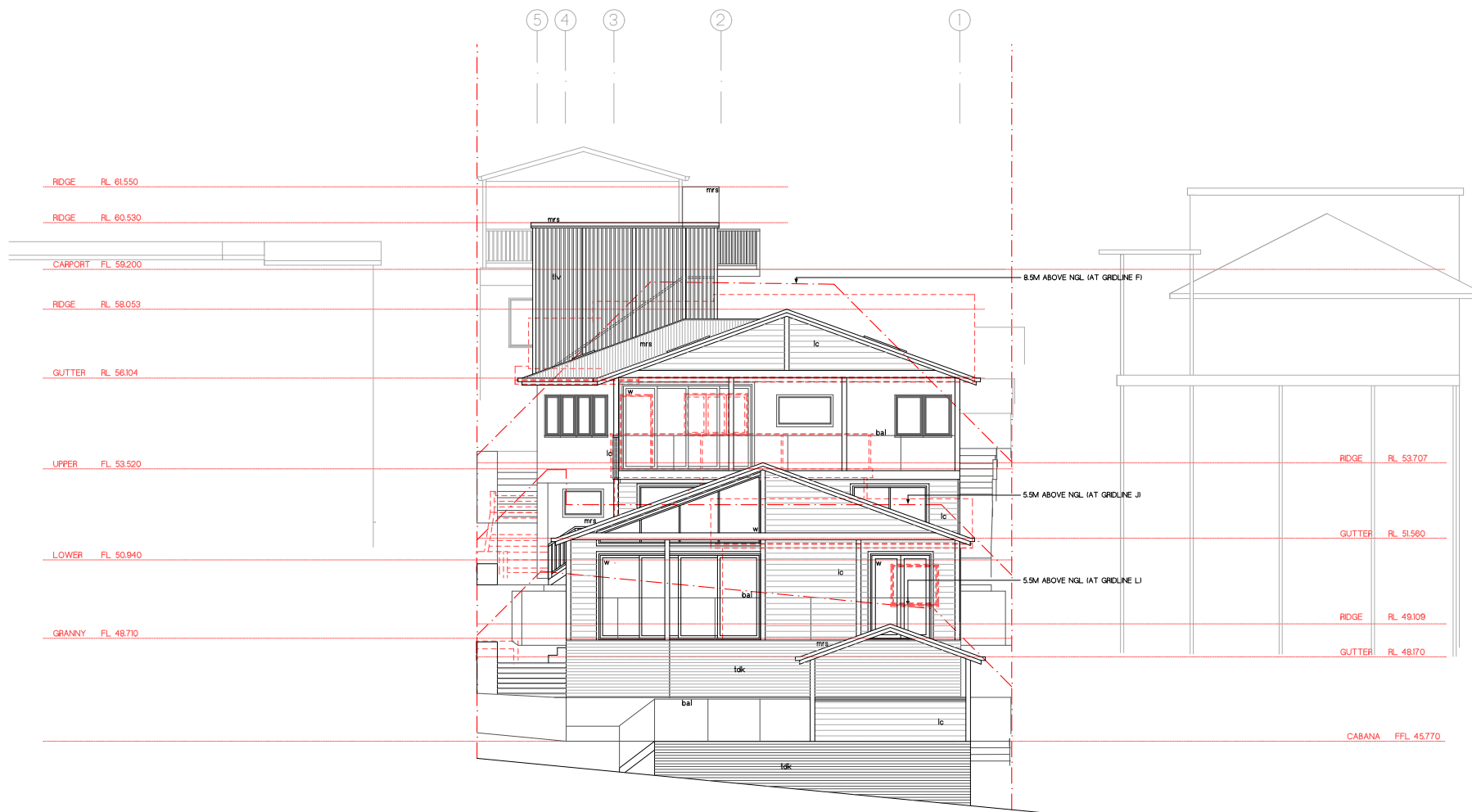
28. Landscape Maintenance

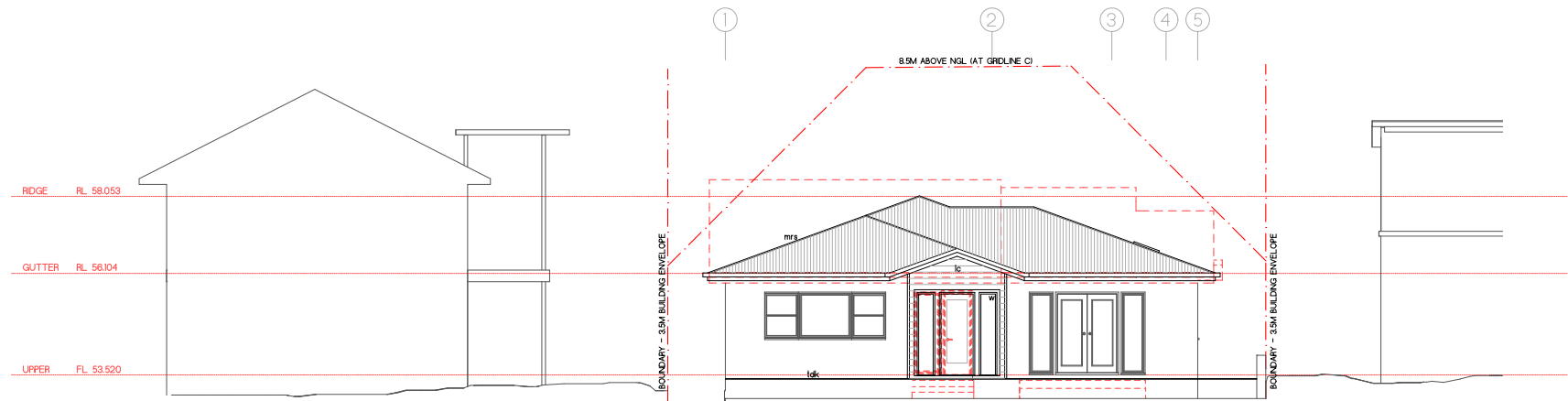
If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub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

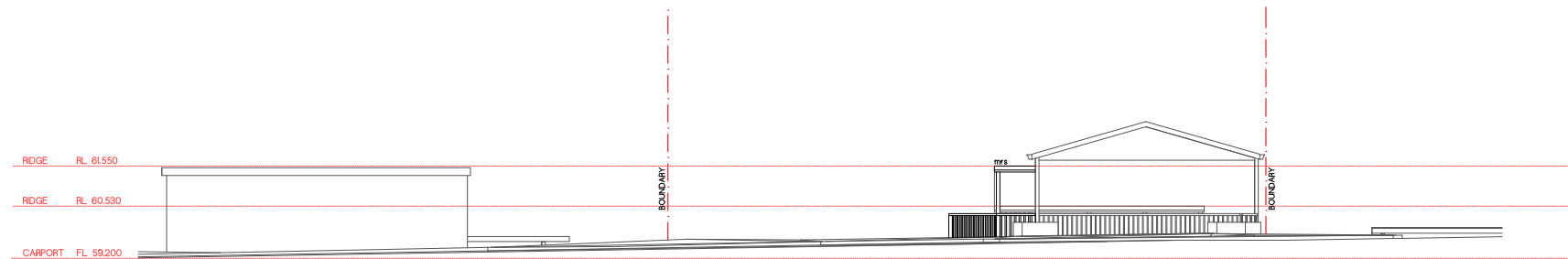
Reason: To maintain local environmental amenity.







SOUTH-WEST ELEVATION
Scale 1:100



**SOUTH-WEST ELEVATION
AT STREET LEVEL**
Scale 1:100

PITTWATER
DESIGN+DRAFT

+61 422 050 001 / info@pittwaterdd.com.au / pittwaterdd.com.au

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DO NOT SCALE FROM DRAWINGS. BUILDERS/CONTRACTORS ARE TO VERIFY ALL DIMENSIONS PRIOR TO COMMENCEMENT OF SITE WORK OR OFF-SITE FABRICATION.

ISSUE	DATE
1	15.11.22
2	03.01.23
3	09.03.23

AMENDMENT
CONCEPT ISSUE
DA ISSUE 1
DA ISSUE 2

ADDRESS:
LOT 33, IN D.P 811426
69 POWDERWORKS ROAD, NORTH NARRABEEN

CLIENT:
MARTIN RESIDENCE

SHEET TITLE:
SOUTH-WEST ELEVATIONS

DATE
03.01.23

SCALE:
1:100 @ A3

PROJECT No:
2204

DWG No:
DA-10

ISSUE
3

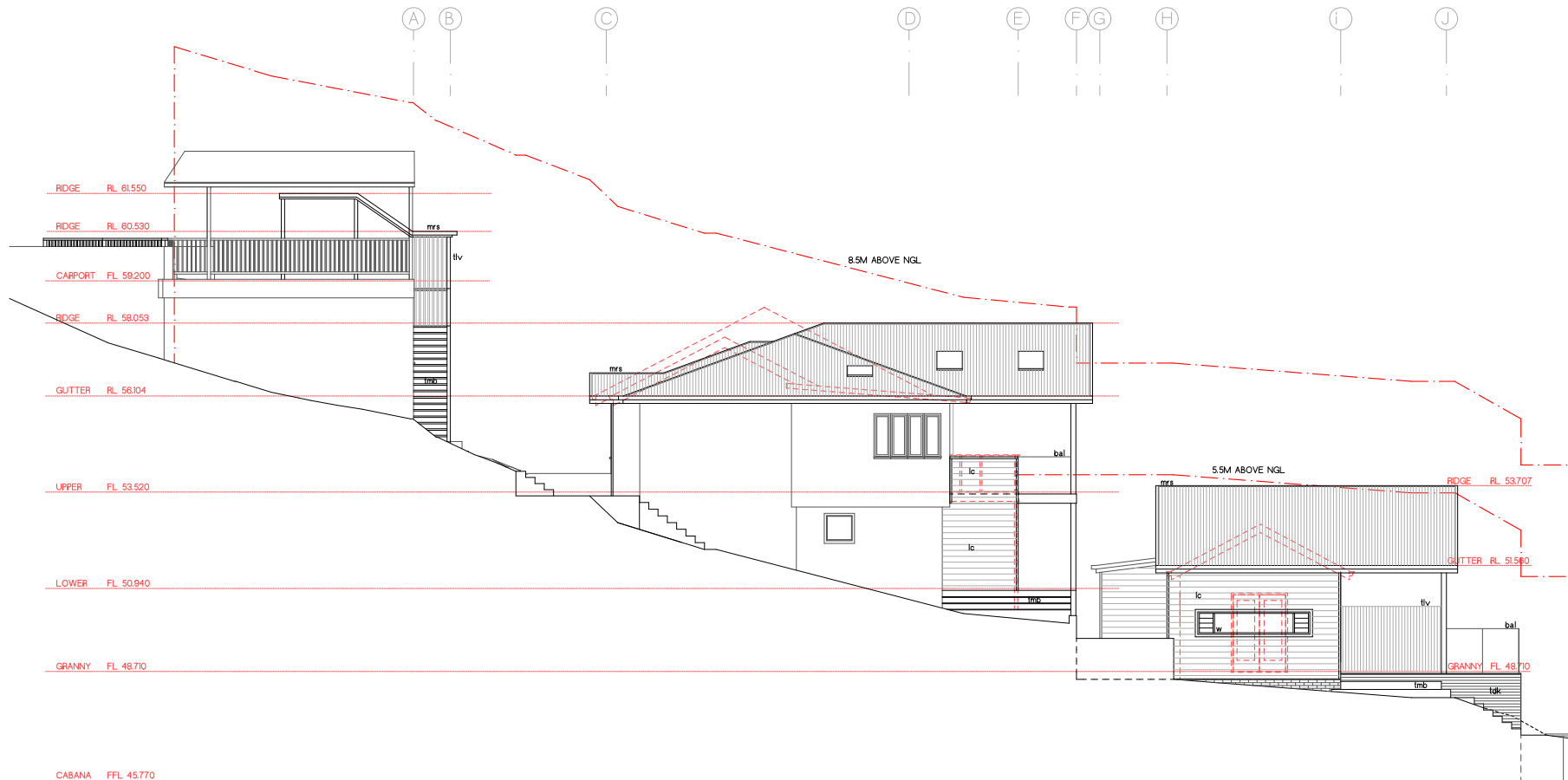
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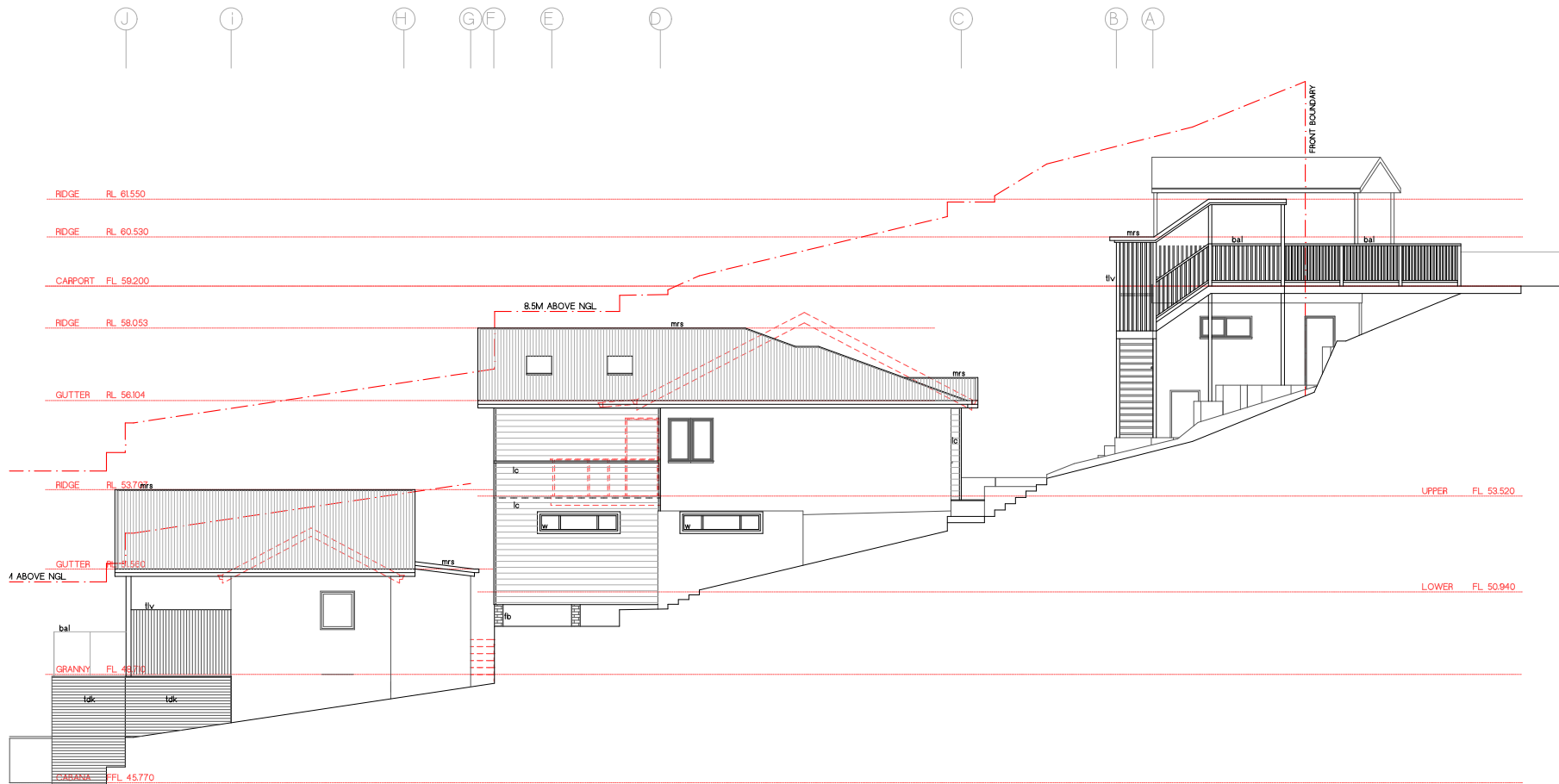
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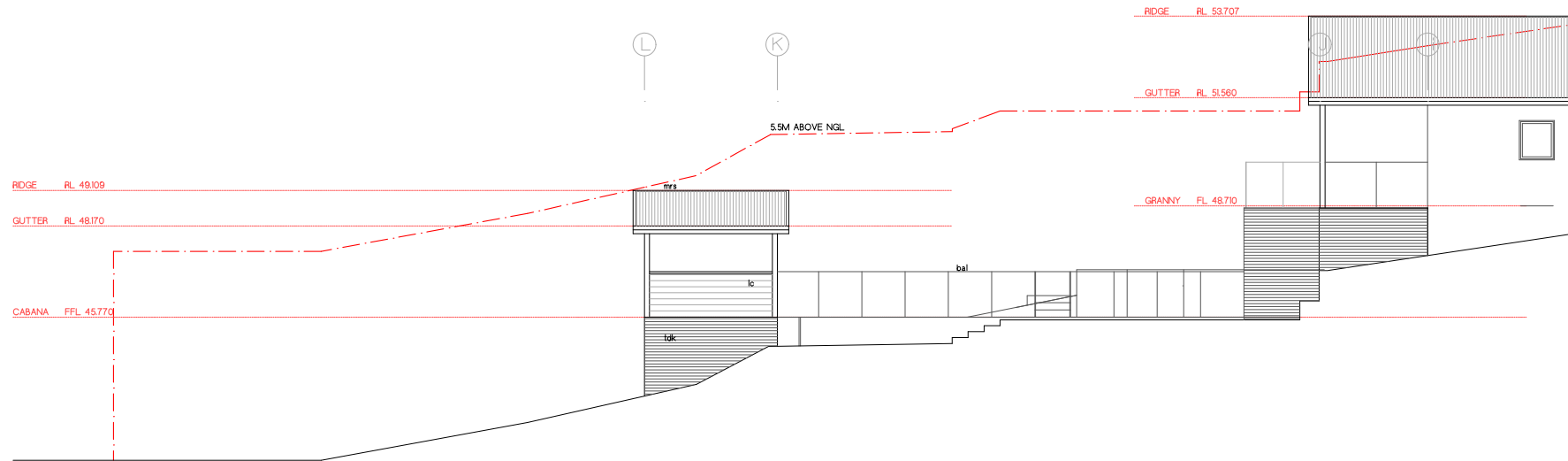
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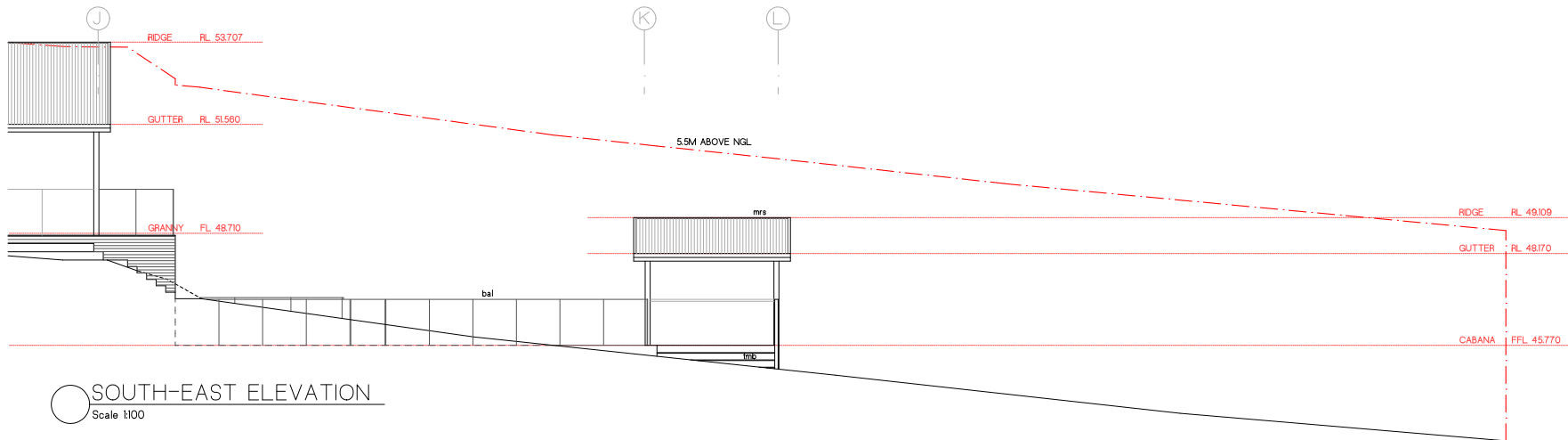
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NORTH-WEST ELEVATION
Scale 1:100



SOUTH-EAST ELEVATION
Scale 1:100

0 0.5 1 2 5



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+61 422 050 001 / info@pittwaterdd.com.au / pittwaterdd.com.au

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ISSUE	DATE	AMENDMENT
1	15.11.22	CONCEPT ISSUE
2	03.01.23	DA ISSUE 1
3	09.03.23	DA ISSUE 2

ADDRESS:
LOT 33, IN D.P 811426
69 POWDERWORKS ROAD, NORTH NARRABEEN

CLIENT:
MARTIN RESIDENCE

SHEET TITLE:
SOUTH-EAST + NORTH-WEST ELEVATIONS
- CABANA

DATE
03.01.23

SCALE:
1:100 @ A3

PROJECT No:
2204

DWG No:
DA-11

ISSUE
3



*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD

69 POWDERWORKS ROAD
NORTH NARRABEEN NSW 2101

May 2023

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introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of Sophie Kelman and Brad Martin in relation to a development application for alterations and additions to the existing dwelling and a secondary dwelling at 69 Powderworks Road, North Narrabeen (**site**). This request is made pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014 (**PLEP 2014**) and with regard to relevant case law.

standard to be varied

With a maximum building height of 7.0m, the proposed detached secondary dwelling is non-compliant with the 5.5m maximum building height prescribed by clause 4.3(2FA) of PLEP 2014. The maximum building height is a development standard, as defined by the EP&A Act:

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

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

Accordingly, the provisions of clause 4.6 of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, 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 for secondary dwellings of clause 4.3(2FA) of PLEP 2014 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 detached secondary dwelling reaches a maximum height of 7.0m, representative of a 1.5m or 27% variation to the 5.5m maximum building height development standard. The maximum height exceedance occurs at the rear façade of the secondary dwelling, where the balcony roof form extends over an existing retaining wall. The extent of non-compliance with the 5.5m maximum building height development standard is highlighted in Section 1 by Pittwater Design + Draft, an extract of which is provided in Figure 1, over the page.

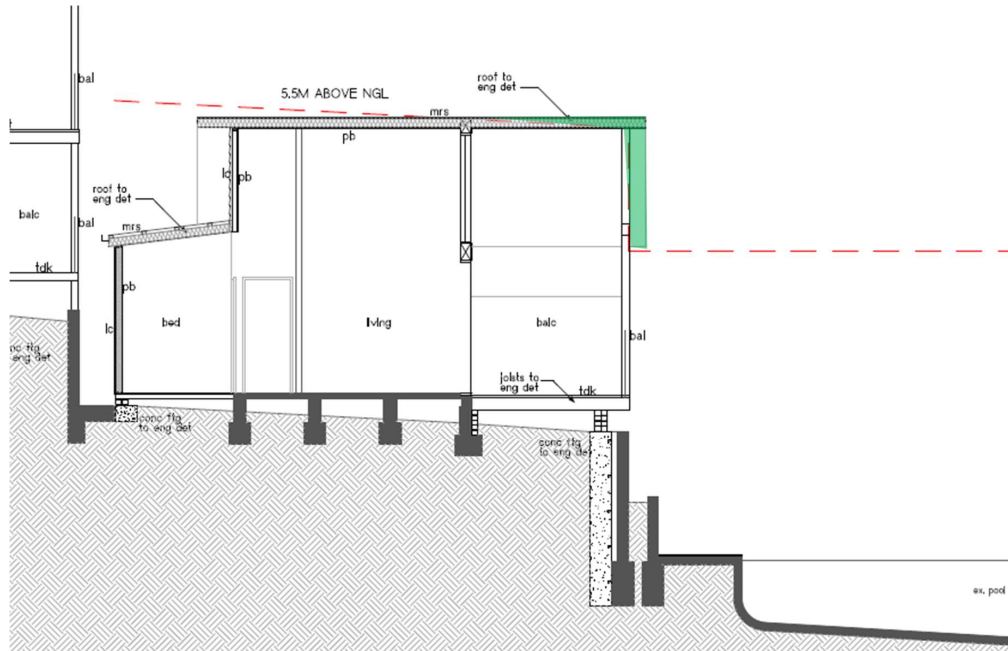


Figure 1 – Section 1, with the height non-compliance highlighted in green
Source: Pittwater Design + Draft and NBP

unreasonable or unnecessary

Pursuant to clause 4.6(4) of PLEP 2014, 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 PLEP 2014. Clause 4.6(3)(a) of PLEP 2014 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 PLEP 2014, as follows:

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

Comment: The desired future character statement for the North Narrabeen locality states that future development will maintain a building height limit below the tree canopy and minimise bulk and scale, reaching a maximum of two storeys in any one place. The proposed secondary

dwelling is limited to one storey in height and will be maintained below existing and proposed tree canopy. The one storey height of the detached secondary dwelling is consistent with the requirements of clause C1.11 (Secondary Dwellings and Rural Workers' Dwellings) which prescribes that where a secondary dwelling is separate from the principal dwelling, only one storey will be allowed.

The portion of the roof that exceeds the 5.5m height plane does not detract from consistency with the desired future character of the North Narrabeen locality.

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

Comment: 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. The non-compliant portion of the secondary dwelling does not give rise to any unreasonable impacts upon surrounding properties or nearby public land. The pitch of the roof has been designed to match that of the primary dwelling, to ensure architectural cohesion between the two structures. Overall, the proposal is compatible with the height and scale of nearby development.

- (c) *to minimise any overshadowing of neighbouring properties,*

Comment: The non-compliant portion of the secondary dwelling roof does not result in any adverse impacts upon the amenity of adjoining properties with regard to solar access.

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

Comment: Whilst it is apparent that the dwelling to the north-west enjoys district and ocean views over the subject site, the roof of the proposed secondary dwelling sits well below the floor levels of the adjoining dwelling and will not result in any adverse impacts upon these views.

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

Comment: The proposed development seeks minor additions to an existing detached studio, retaining the floor structure of the existing building with extensions to accommodate a new kitchen area, study and balcony. The new elements have been designed to marry existing floor levels and are elevated above existing ground level, minimising site disturbance. The proposed non-compliance with the height plane can be attributed to the fall of the land below the footprint of the secondary dwelling and existing excavation associated with the swimming pool.

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

Comment: The proposed secondary dwelling is highly articulated, with varied setbacks and materiality, to ensure that the apparent size of the building is reasonably reduced. The proposal is limited to a single storey in height and is subservient to the primary dwelling house. The development as a whole is stepped in response to the fall of the land and will be screened and softened by existing and proposed landscaping. The proposal will not result in any adverse visual impacts upon the surrounding natural environment.

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 PLEP 2014 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 predominantly occurs where the proposed roof form is situated over the excavated swimming pool terrace. 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 PLEP 2014.

2. Minor nature of breach

Whilst the proposal exceeds the 5.5m height limit by up to 1.5m, the portion of the development that extends above the height plane is nominal (as highlighted in Figure 1). In consideration of the scale of the development as a whole, the proposed variations are reasonably described as minor.

The non-compliant elements do not attribute to any unreasonable impacts upon the amenity of future occupants of the development or neighbouring sites or the wider public domain. Further, the non-compliance does not detract from the intent of the height limit, which is to limit detached secondary dwellings to single storey in height, as outlines in clause C1.11 of P21 DCP.

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

Overall, there are sufficient environmental planning grounds to justify contravention of the maximum height development standard.

public interest

Under the provisions of clause 4.6(4)(a) of PLEP 2014, 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 C4 Environmental Living zone, as follows:

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

Comment: The proposed development does not give rise to any unreasonable environmental impacts and maintains consistency with both the existing and desired future character of the North Narrabeen Locality and the streetscape of Powderworks Road. The proposed development will sit harmoniously on the site and in its wider context.

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

Comment: The proposed development will not have any adverse impacts upon the special values of the site. Specifically, the proposal does not result in any adverse impacts upon the surrounding natural environment, with an acceptable degree of site disturbance and limited vegetation removal. Furthermore, the visual impact of the development remains minimal, with appropriate articulation and shade elements to ensure that the dwelling remains secondary to landscaping as seen from the street.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment: The resultant development remains a low density residential development, consistent with the low density character of the locality. The proposed development is integrated into the site, with a built form that steps in response to the fall of the land.

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

Comment: The site does not contain any riparian or foreshore vegetation and is not identified as a wildlife corridor. Nonetheless, the proposed development allows for vegetation on the site to be enhanced.

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 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 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 PLEP 2014 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 PLEP 2014 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 of clause 4.3(2FA) of PLEP 2014.



Rebecca Englund

B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning