

AGENDA - Amended

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 11 OCTOBER 2023

**Amendment: Additional item added to Agenda – Item 3.7 –
DA2023/0710 - 681 Barrenjoey Road ALAVON BEACH**

**Ashleigh Sherry
Manager Business System and Administration**

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 11 October 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 13 SEPTEMBER 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 13 September 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 REV2023/0016 - 166 PITTWATER ROAD MANLY - REVIEW OF DETERMINATION OF DA2022/2270 FOR ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING HOUSE

REPORTING MANAGER Adam Richardson

TRIM FILE REF 2023/635687

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuses** Development Consent to REV2023/0016 for Review of Determination of DA2022/2270 for alterations and additions to a semi-detached dwelling house on land at Lot 107 DP 1176623, 166 Pittwater Road MANLY, for the reasons for refusal set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0016
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 107 DP 1176623, 166 Pittwater Road MANLY NSW 2095
Proposed Development:	Review of Determination of DA2022/2270 for Alterations and additions to a semi-detached dwelling house
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Benjamin Matthew Laws Chloe Jean Wallace
Applicant:	Viewthru Pty Ltd

Application Lodged:	18/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/07/2023 to 07/08/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 326,798.21
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EXECUTIVE SUMMARY

This review application seeks consent for review of determination of DA2022/2270 for alterations and additions to a semi-detached dwelling house, which was refused on 6 June 2023.

The application is referred to the Development Determination Panel (DDP) due to Council's DDP criteria, which requires all Review Applications be referred to the DDP for determination.

During the notification period, two (2) submissions were received which raised concerns in relation

to overshadowing and solar access, works to the party wall, safety considerations, wall height and side setback non-compliances, sewage considerations, inconsistent plans, request for additional information, the installation of solar panels and air-conditioning units as well as the impact of the proposed development upon the party wall easement.

Critical assessment issues included Section 8.3 Environmental Planning and Assessment Act 1979, Zone R3 Medium Density Residential, 5.10 Heritage conservation, 6.9 foreshore scenic protection area, 3.2 Heritage considerations, 3.4.1 Sunlight access and overshadowing, 4.1.2 Height of buildings, 4.1.4 Setbacks, 4.1.5 Open space and landscaping, 4.1.6 Parking, vehicular access and loading.

While it is considered that the proposed development satisfies the relevant controls within the MDCP and MLEP 2013 and represents an acceptable built form, it is inconsistent with subclause (1)(b) of Clause 23 of the Environmental Planning and Assessment Regulations 2021, which requires owner's consent of the owner of the land. The assessment finds that there is insufficient information / detail which demonstrates that the proposed development does not breach the terms of the party wall easement and an absence of owners consent from 168 Pittwater Road inhibits the development from being supported, despite its merits.

This report concludes with a recommendation that the DDP review the determination of DA2022/2270 and concur with that determination and **refuse** this review application.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks a review of determination DA2022/2270, which sought consent for alterations and additions to a semi-detached dwelling, comprising the following works:

Ground Floor

- Reconfiguration of the rear floor plate in the following ways:
 - replacement of the living room with a bathroom and laundry
 - replacement of the dining room, study, kitchen, bedroom and bathroom with an open-plan kitchen, dining and living area.
 - internal staircase
 - new wall adjacent to the party wall
 - bi-fold doors at the rear of the dwelling

First Floor

- master bedroom with en-suite
- home office

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
 Manly Local Environmental Plan 2013 - Zone R3 Medium Density Residential
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 107 DP 1176623 , 166 Pittwater Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Pittwater Road.</p> <p>The site is irregular in shape with a splayed frontage of 7.1 metres along Pittwater Road with a depth of 38.8 metres. The site has a surveyed area of 244.5m².</p> <p>The site is located within the R3 Medium Density Residential and accommodates a single storey semi-detached brick dwelling.</p> <p>The site is relatively flat by nature.</p> <p>The site contains two pockets of landscaped area within the site's frontages. There is no evidence of any endangered species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by a mixture of multi dwelling housing, semi detached dwellings and commercial developments along the western side of Pittwater Road.

Map:



SITE HISTORY

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

DA2020/0482

Development application for the construction of a swimming pool and spa was approved on 30 June 2020, subject to conditions.

DA2022/2270

Development application for alterations and additions to a semi-detached dwelling house was refused on 6 June 2023. The following was the reason for refusal of this application:

Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, the Development Application does not comply with the provisions of Clause 23 of the EP&A Regulation 2021 and must be refused as the application does not constitute a legitimate Development Application.

Particulars:

i). The application is not accompanied by sufficient information in the form of owners consent from No. 168 Pittwater Road for the works on and over the common boundary and those subject to the existing easement for support of the party (or common) wall between the two properties.

APPLICATION HISTORY

- This application was uploaded to the NSW Planning Portal on 10 July 2023.

- Council accepted this application on 18 July 2023.
- This application was publicly notified between 24 July 2023 to 7 August 2023. Two (2) submissions were received, both of which came from or on behalf of the owners of 168 Pittwater Road, Manly.
- A preliminary assessment was undertaken, which included comments from internal referrals. Council's Heritage Officer raised concern regarding the removal of the fireplace from the ground floor bathroom, and the inconsistency with the proposed amended plans and the Heritage Impact Statement. A Request for Further Information (RFI) letter was prepared and sent to the Applicant on 17 August 2023 requesting the Heritage Impact Statement be updated to show the correct ground floor plan. The Applicant provided an updated Heritage Impact Statement on the same day it was requested.
- Throughout the assessment process it was found that the proposed amendments to address the reason for refusal was unsatisfactory and insufficient information was provided to satisfy Council's concerns regarding the impact upon the easement between 168 and 166 Pittwater Road, Manly.
- On 24 August 2023, another RFI was sent to the Applicant advising there was an issue with land owner's consent, noting that while the amended plans show an attempt to rectify the previous reason for refusal it was not to the level of satisfaction of Council with regards to the terms of the easement. The Applicant was requested to obtain and provide land owner's consent from the owner(s) of 168 Pittwater Road, Manly or provide information that shows any works to the party wall is to be removed, and such amendments are to be diagrammatically supported through detailed construction drawings and construction methodology which is to demonstrate how the proposed development complies with the terms of the existing easement.
- On 31 August 2023, the Applicant provided a response to the second RFI with drawing no. 1/1 Rev A dated 17 February 2023 'Plans, Sections and Details' prepared by Geoff Hopkins & Associates.
- On 6 September 2023, Council advised the Applicant that there remains insufficient information that the proposed development will not impact upon the easement, and that the application would be referred to the DDP (in accordance with Council's DDP Charter) by way of **refusal**. Furthermore, the Applicant was also advised to obtain a copy of the easement terms via a search of the NSW Land Registry Services.
- On 7 September 2023, Council was advised by the Applicant's Planner that the owner's were in the process of obtaining a copy of the terms of the easement.
- As of 18 September 2023, Council has not received further correspondence from the Applicant, or on behalf of the Applicant.
- On 20 September 2023, the Applicant was again advised that the information provided did not satisfy Council's concerns relating to the potential impact upon the terms of the easement. The Applicant was also advised again that the application would be referred to DDP by way of a **refusal**, and that they would have the opportunity to address the DDP should they wish to do so. The Applicant was also advised that no additional information would be accepted.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly 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>Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a condition of consent, should the development be approved.</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 an updated Heritage Impact Statement via a Request for Further Information (RFI) through the NSW Planning Portal and email on 17 August 2023. On the same day, the Applicant provided an amended Heritage Impact Statement to the satisfaction of Council's Heritage Planner. Upon further assessment, an additional RFI letter was sent to the Applicant on 24 August 2023 advising that the amendments made to address the previous reason for refusal did not satisfy Council's concerns regarding land owner's consent and compliance with the terms of the easement applicable to the subject site and the adjoining property, being 168 Pittwater Road, Manly. On 31 August 2023, the Applicant provided a response to the second RFI with drawing no. 1/1 Rev A dated 17 February 2023 'Plans, Sections and Details' prepared by Geoff Hopkins & Associates. As this information did not alter the proposed development, in accordance with Council's Community Participation Plan (CPP), the application is not required to be re-notified.</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 clause is capable of compliance by condition in the event that the development is approved.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is not relevant to this</p>

Section 4.15 Matters for Consideration	Comments
	<p>application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is capable of being addressed via a condition of consent, in the event that the development is approved.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is capable of being addressed via a condition of consent, in the event that the development is approved.</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.

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 6 June 2023 and the notice of determination was issued on 7 June 2023. The review was lodged on the NSW Planning Portal on 10 July 2023 and formally accepted by Council on 18 July 2023. The application is to be considered by the Development Determination Panel on 11 October 2023, which is within 6 months of the date of determination.

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

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report. Notwithstanding the amendments made to the proposed development, Council remains unsatisfied that these changes have addressed the reason for refusal of DA2022/2270, which stipulated the following:

Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, the Development Application does not comply with the provisions of Clause 23 of the EP&A Regulation 2021 and must be refused as the application does not constitute a legitimate Development Application.

Particulars:

i). The application is not accompanied by sufficient information in the form of owners consent from No. 168 Pittwater Road for the works on and over the common boundary and those subject to the existing easement for support of the party (or common) wall between the two properties.

The easement details is as follows:

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFIT À PRENDRE
INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF
THE CONVEYANCING ACT, 1919**

(Sheet 1 of 2 sheets)

Plan: **DP1176623**

Plan of Redefinition of Lots 7 & 8 in D.P.456032

Full Name and Address
of the Registered Proprietor
of the Land:

Lawrence Melville Tomlinson of 7 Queen Street,
Mosman, NSW, 2088

PART 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement or profit à prendre to be created and referred to in the plan.	Burdened lots or parcels	Benefited lots road(s), bodies or Prescribed Authorities
1.	Easement for Services Variable Width [A]	107	108
2.	Easement for Services Variable Width [B]	108	107
3.	Easement for Support 0.13 wide [C]	107	108
4.	Easement for Support 0.13 Wide [D]	108	107

PART 2 (Terms)

Terms of Easement for Support 0.13 wide thirdly and fourthly referred to in the plan:

1. The owner of the lot benefited:-

(a) may insist that improvements on that part of the lot burdened specified by the letter [C] or [D] as appropriate and any future improvements erected on the same foundations and requiring for stability the same or any less support than the said improvements from the soil and other improvements erected on the lot burdened be supported, upheld and maintained by the soil and improvements on the said part of the lot burdened and shall remain supported, upheld and maintained by the soil and existing improvements on the lot burdened to ensure the stability of improvements on the lot benefited;

(b) must keep the improvements supported in good repair and safe condition;

(c) may do anything reasonably necessary for the above purposes including -

- entering the lot burdened
- taking anything on to the lot burdened
- carrying out work

Based on the information provided with this review application, Council is not satisfied that the proposed development can comply with the terms of the easement, as the easement extends to the foundations and footings of the dwelling. The easement restrictions are that no more structural load can be placed upon those footings and the soil to which lot relates. The information which accompanies this application does not adequately address this.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/07/2023 to 07/08/2023 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:
Collard Maxwell Architects Pty Ltd	Level 1 2 Glen Street MILSONS POINT NSW 2061
Mr Sebastian De Brennan	Level 7 53 Martin Place SYDNEY NSW 2000

The following issues were raised in the submissions:

- **Overshadowing and solar access**
- **Common boundary, wall height and side setback non-compliances & safety considerations**
- **Sewage considerations**
- **Inconsistent plans**
- **Request for additional information**
- **Solar panels and air conditioning units**
- **Easement for services**

The above issues are addressed as follows:

- **Overshadowing and solar access**

The submissions raised concerns that the proposed first floor addition will create unreasonable overshadowing to adjoining properties.

Comment:

The proposed development is accompanied by shadow diagrams, which shows overshadowing to the adjoining property to the south, being 164 Pittwater Road. The proposal has been assessed against the requirements of control 3.4.2 Sunlight Access and Overshadowing of the Manly DCP. The assessment has found that the proposal is reasonable with the provisions for solar access and does not unreasonably overshadowing the adjoining properties.

This issue does **not** warrant reason for refusal of this application.

- **Common boundary, wall height and side setback non-compliances & safety considerations**

The submissions raised concerns that the proposed development results in a numerically non-compliant wall height along the southern elevation, which is inconsistent with the requirements of control 4.1.2.1 Wall Height of the Manly DCP. Further, a submission raised concerns that the proposed works will continue to give rise to unreasonable impacts to the party wall (including concerns about the safety of the wall) that is shared with 168 Pittwater Road.

Comment:

It is acknowledged that the proposed development results in non-compliances to the wall height and side setback controls stipulated within the Manly DCP. The merits of these non-compliances have been assessed against the objectives of the controls 4.1.2.1 Wall Height and 4.1.4.2 Side Setbacks and Secondary Street Frontages of the Manly DCP. The assessment has found that the proposed development is consistent with the objectives of these controls and thus responds appropriately to the constraints of the subject site. Further, the proposal remains commensurate with the existing and surrounding built form of residential developments, without creating unreasonable amenity impacts upon adjoining properties.

Finally, an existing easement is located along certain areas of the first floor for support of the party (or common) wall. As works to the party wall formed a reason for refusal under the original development application, the Applicant endeavored to minimise this by introducing an additional wall along the party wall so there was no impact. However, the information provided has not been to the satisfaction of Council whereby there remains insufficient information as to whether the proposal complies with the terms of the easement.

This issue **warrants** reason for refusal of this application.

- **Sewage considerations**

The submissions raised concerns that the existing services may be impacted by the increased number of fixtures connected to the sewer line.

Comment:

In accordance with Clause 6.12 Essential Services of the Manly LEP 2013, the maintenance or extension of existing services is not a relevant consideration when issuing a development consent.

This issue does **not** warrant reason for refusal of this application.

- **Inconsistent plans**

The submissions raised concerns that DA//05 Site // Entry level plan // existing shows the steps between the lawn and the deck across the full width of the lawn rather than against the pool fence. The submission is seeking clarity as to whether this is really existing or proposed.

Comment:

The boundary identification survey shows that the steps from the rear deck to the lawn are against the pool fence. As such, the 'existing' ground floor plan is accurate. The proposal does not seek to change the steps from the deck to the lawn.

This issue does **not** warrant reason for refusal of this application.

- **Request for additional information**

The submissions requested that the following information is provided prior to the issue of a Construction Certificate:

- a Dilapidation Report is provided.
- a Structural Engineers Report and structural adequacy certificate is issued by a suitably qualified structural engineer
- an Acoustic report to ensure appropriate acoustic separation between the subject site and 168 Pittwater Road.

Further, should consent be granted, this submission requests that a condition related to the management of hazardous material is included within the consent.

Comment:

Where it is deemed necessary and should the application be approved, conditions would be recommended to ensure the appropriate and necessary reports are provided prior to the issue

of the Construction Certificate or the Occupation Certificate.

This issue does **not** warrant reason for refusal of this application.

- **Solar panels and air conditioning units**

The submissions note that the application does not appear to include solar panels or air-conditioning units. The submission requests that, should these become part of the development, the submission requests that standard conditions are recommended to prevent noise issues from any equipment.

Comment:

The proposed plans do not show air-conditioning units and solar panels. As such, Council cannot impose conditions relating to works that are not part of the proposal.

This issue does **not** warrant reason for refusal of this application.

- **Easement for services**

The submissions raised concerns that the proposed development will impact upon the easement for services at the rear of the properties.

Comment:

The proposed plans (specifically DA/08 Roof Plan, Review D, dated 23 June 2023) shows that the existing roof over the easement for services (indicated as [A] on the deposited plan) is to be retained, with the notation stating 'existing lean to roof retained'.

However, the assessment of this application has found that insufficient information has been provided to show that the proposed development will not impact upon the easement for support (as indicated as [C] on the deposited plan).

This issue **warrants** reason for refusal of this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, subject to conditions.</i></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>

Internal Referral Body	Comments				
Environmental Health (Solid Fuel/Oil Heater)	<p>Supported. No conditions required.</p> <p>General Comments The applicant has advised</p> <p>"the layout of the ground floor bathroom under this review application does not have the fireplace. For external visual appearances to adhere to the Heritage Conservation Area.... and the retention of the chimneys and fireplaces in Bedrooms 2 and 3.</p> <p>As a heritage listed building we do not wish to contradict any heritage requirements; therefore if fireplaces are not to be used or be upgraded no action is required. Council would prefer open fireplaces not be used at all due to air pollution and inefficient burning mainly. However any use causing a nuisance can be dealt with at that time.</p> <p>Any future conversion to Australian Standard approved solid fuel heaters would require approval from Council at that time.</p> <p>Environmental Health supports the proposal.</p> <p>Planner Note: The subject site is not a heritage listed item. Rather, it is located within a Heritage Conservation Area.</p>				
Landscape Officer	<p>Supported, subject to conditions.</p> <p>Review application REV2023/0016, of development application DA2022/2270, is assessed by an alternative Landscape Officer.</p> <p>Landscape Referral raise no concerns as related to landscape outcomes following review of the reports and plans under this application. It is noted that landscape works under a previous consent are completed, and as such and in review of this application Landscape Referral provide standard Council conditions for tree and vegetation protection should the application be approved.</p>				
Strategic and Place Planning (Heritage Officer)	<p>Supported. No conditions required.</p> <table><tr><td>HERITAGE COMMENTS</td></tr><tr><td>Discussion of reason for referral</td></tr><tr><td>The proposal has been referred to Heritage as the subject site is located within a conservation area and in the vicinity of a heritage item: C1 - Pittwater Road Heritage Conservation Area Item I208 - Service station (former) - 167 Pittwater Road, Manly</td></tr><tr><td>Details of heritage items affected</td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject site is located within a conservation area and in the vicinity of a heritage item: C1 - Pittwater Road Heritage Conservation Area Item I208 - Service station (former) - 167 Pittwater Road, Manly	Details of heritage items affected
HERITAGE COMMENTS					
Discussion of reason for referral					
The proposal has been referred to Heritage as the subject site is located within a conservation area and in the vicinity of a heritage item: C1 - Pittwater Road Heritage Conservation Area Item I208 - Service station (former) - 167 Pittwater Road, Manly					
Details of heritage items affected					

Internal Referral Body	Comments		
	<p>Details of the Heritage Conservation Area as contained within the Manly Heritage inventory are:</p> <p>C1 - Pittwater Road Heritage Conservation Area</p> <p><u>Statement of Significance</u></p> <p>This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.</p> <p><u>Physical Description</u></p> <p>The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed separately. Adjacent streets generally comprise a consistent pattern of one and two story residential cottages, with the occasional terrace. Some streets have intermittent street plantings and remnant stone kerbs. The flat topography is accentuated by the escarpment to the west which provides an important visual, vertical and vegetated backdrop.</p>		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions including a first floor addition to the existing semi-detached dwelling, that contributes positively to the Heritage Conservation Area and its context. The existing property is an intact example of a pair of single-storey semi-detached dwellings from the Federation era. This application is for the review of DA2022/2270, which was refused on 6 June 2023. The current proposal involves an amendment to the party wall between the adjoining semi and does not involve any modifications which impact upon the heritage values of the dwelling and the HCA.</p>		

Internal Referral Body	Comments
	<p>Previous comments on this Revision required the Heritage Impact Statement (HIS) to be updated to reflect the plans submitted with this application, in particular the proposed ground floor plan on page 23 of the report.</p> <p>As an amended HIS has been submitted with the amended plan included, Heritage now has no further concerns with this application.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><i>Supported, subject to Conditions</i></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent, should this application be approved.</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. A463505_02, dated 13 July 2023).

Should this application be approved, 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. Should this application be approved, a relevant condition would be recommended within this report to ensure compliance with Ausgrid recommendations.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

This Clause applies to the subject site. As the proposed development is sited entirely over the existing building footprint, it is considered that the proposal will not adversely or unreasonably impact upon the matters as prescribed in the above clause.

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

Comment:

As the proposed development is sited entirely over the existing building footprint, it is considered that the proposal will not adversely or unreasonably impact upon the matters as prescribed in the above clause.

Division 5 General

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

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

Comment:

The proposed development is unlikely to create an increased risk of coastal hazards.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.6m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (146.76m ²)	FSR: 0.56:1 (137.0m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone R3 Medium Density Residential

Proposed Use	Permitted or Prohibited
Alterations and additions to a semi-detached dwelling house	Permitted with consent

The underlying objectives of the R3 Medium Density Residential zone:

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

Comment:

The proposed development will retain the existing semi-detached dwelling and, therefore, continues to provide for the housing needs of the community within the R3 Medium Density Residential zone.

The proposal **achieves** this objective.

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

Comment:

The proposed development will continue to provide for a variety of housing types within the R3 Medium Density Residential zone by retaining the use of the existing dwelling house.

The proposal **achieves** this objective.

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

Comment:

Zone R3 Medium Density Residential permits for a variety of land uses, subject to consent. The proposed development seeks to retain the existing residential use of the site. In this instance, the proposal continues the current land use that will provide facilities or services that meets the day to day needs of the residents.

The proposal **achieves** this objective.

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

Comment:

The proposed development will positively contribute to the revitalisation of the surrounding residential area. Further, the proposed development is considered to be suitable in the context of the subject site and its surrounds.

The proposal **achieves** this objective.

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

Comment:

The proposed development seeks to maintain the existing use of the dwelling house. Therefore not impacting upon the retention of tourist accommodation of Manly.

The proposal **achieves** this objective.

5.10 Heritage conservation

The subject site is located within the Pittwater Road Conservation Area, which is generally defined by its 19th century atmosphere due to its scale, width and the number of extant Victorian structures.

The proposed development comprises works to the internal ground floor area and the addition of a first floor addition at the rear of the dwelling. In this instance, the proposed works will not be easily discernible when viewed from Pittwater Road.

Notwithstanding, the proposal was referred to Council's Heritage Planner, who raised no objections to the proposal.

6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) *impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) *measures to protect and improve scenic qualities of the coastline,*
- (c) *suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) *measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

The proposed development is sited entirely over the existing building footprint, which includes internal alterations to the ground floor and the addition of a modest first floor addition to accommodate a master bedroom, en-suite and study. The proposal achieves compliance with both relevant development standards of Clause 4.3 Height of Building and Clause 4.4 Floor Space Ratio of the *Manly Local Environmental Plan 2013* (MLEP 2013). The proposal generally achieves compliance with the relevant built form controls, and where it fails to do so, it does not create unreasonable amenity impacts upon the subject site and adjoining properties. Further, the location of the subject site is such that the surrounding built and natural environments will obscure it from view of Manly Beach and Manly Wharf.

In this instance, the proposed development will not create a detrimental impact upon the visual amenity of the harbour or coastal foreshore, nor will it overshadow these areas or create any loss of views. For the reasons as detailed above, the proposal protects and improves the scenic quality of the coastline. Further, the proposed development is suitable for the context of the subject site. The proposed development will not create conflict between land-based and water-based coastal activities.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 244.6m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	Southern Elevation 6.5m (based on gradient 0)	6.55m	0.7%	No
	Northern Elevation 6.5m (based on gradient 0)	6.95m	6.9%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.4m	N/A	Yes

	Pitch: maximum 35 degrees	29 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	2.7m	N/A	No, existing & unchanged
4.1.4.2 Side Setbacks and Secondary Street Frontages	Southern Boundary 2.18m (based on proposed wall height)	Ground Floor 0.8m - 2.38m	63.3% max.	No, existing & unchanged
		First Floor 0.9m - 2.97m	58.7% max.	No
	Northern Boundary 2.31m (based on proposed wall height)	Ground Floor Nil (party wall) - 0.5m	N/A	No, existing & unchanged
		First Floor Nil (party wall) - 0.5m	100% max.	No
	Windows: 3m	Ground Floor 0.8m - 2.38m	73.3% max.	No
		First Floor 2.0m - 2.5m	33.0% max	No
4.1.4.4 Rear Setbacks	8m	Ground Floor <i>Dwelling: 9.0m</i> <i>Deck: 6.35m</i>	N/A N/A	No, existing & unchanged
		First Floor 9.0m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (134.53m ²) of site area	39% (96.0m ²)	28%	No, existing & unchanged
4.1.5.2 Landscaped Area	Landscaped area 35% (33.6m ²) of proposed open space	44.2% (42.4m ²)	N/A	Yes, existing & unchanged
4.1.5.3 Private Open Space	18.0m ²	69.6m ²	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	100%	No, existing & unchanged

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

Description of non-compliance

The subject site is located within a Heritage Conservation Area and thus the proposed design is expected to consider the heritage character of the locality. The proposed first floor addition is sited at the rear of the dwelling, ensuring that the impact upon the street frontage and heritage conservation area is minimal. Council's Heritage Officer has reviewed the proposed development and, subject to recommended conditions, are satisfied that the proposal satisfactorily integrates into the Heritage Conservation Area.

Merit consideration:

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

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

Comment:

The proposed development has been reviewed by Council's Heritage Officer, who has not identified any issues with the amended proposal. This assessment has found that the proposed development provides a design that is consistent and appropriate within the context of the subject site and the heritage character of the locality. The subject site, while located within the foreshore scenic protection area, is not within visual proximity to the foreshore areas surrounding Manly. Therefore, the proposal does not unreasonably impact upon the heritage conservation area to which the subject site is located. The subject site is not known to have any Indigenous artefacts or items/places of natural significance.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

Comment:

As detailed above, and throughout this assessment report, the assessment has found that the proposed first floor addition is considered to be an appropriate design that reasonably contributes to the Heritage Conservation Area.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

Comment:

As detailed above, and throughout this assessment report, the assessment has found that the proposed first floor addition is considered to be an appropriate design that reasonably contributes to the Heritage Conservation Area.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

Comment:

For the reasons detailed above, the proposed development is compatible with the surrounding character of the locality with regard to the Heritage Conservation Area.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

Comment:

The proposed development was referred to Council's Heritage Officer who raised no concern with the proposed development.

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

with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

3.4.1 Sunlight Access and Overshadowing

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 proposed development creates overshadowing to the windows of the adjoining property, being 164 Pittwater Road. These windows are sited to service rooms, bedrooms and a kitchen.

This assessment has found that the proposed development provides equitable access to light and sunshine when considering that existing site constraints and the compliant building height of the proposed development. The subject site is located within a Heritage Conservation Area and from a heritage perspective the proposed works were not to be visible from the street frontage and thus limits the first floor addition to the rear of the existing building footprint. Further, the east-west orientation of the site and adjoining properties means that the windows along the northern elevation on the ground floor of 164 Pittwater Road are more vulnerable to overshadowing. In this particular instance, and the fact the subject site and surrounding properties are located within the R3 Medium Density Residential zone means that protection of solar access is harder to achieve.

Based on the above, the extent of overshadowing to 164 Pittwater Road is considered to be reasonable in the context of the site and surrounding allotments.

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:

3.4.1.2 (a) of the Manly DCP requires at least 2 hours of solar access be retained for the living room windows that presently enjoy solar sunlight between 9am and 3pm on 21 June (being the winter solstice). As detailed above, the windows along the northern elevation of the ground floor of 164 Pittwater Road are vulnerable to overshadowing due to the lot configuration and medium residential zoning of the subject site and adjoining properties, which makes strict compliance with solar access requirements difficult. It shall be noted that a submission was not received from the occupants of 164 Pittwater Road.

As indicated within the shadow diagrams provided, the north-facing windows of 164 Pittwater Road will be overshadowed between 9am and 3pm. While this is insufficient solar access to these windows, it is unavoidable. Any first floor addition will create an impact upon solar access to these windows. The proposed development has been sited to the rear of the dwelling so as to mitigate any unreasonable

impact through a compliant building height and increased first floor setbacks. Based on this, the proposed development provides equitable access to sunlight when considering the overall impact to 164 Pittwater Road and the outdoor private open space.

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 first floor addition provides varied side setbacks, ranging between 0.9 metres and 2.97 metres to the southern boundary. The site has a total width of 7.5 metres and the existing building is a semi-attached dwelling, which creates site constraints that limits the ability for development on the site. In this instance, the proposal provides a high level of modulation and results in a reasonable and acceptable building bulk. The side setbacks are maximised to the point where the proposed internal habitable areas of the first floor addition provide reasonable internal amenity.

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

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

Description of non-compliance

4.1.2.1 Wall Height

This control requires development to result in a maximum wall height that is calculated based on the slope of the land sited under the proposed wall. The subject site is located on a flat block, with a gradient of 0, which requires a maximum wall height of 6.5 metres along the northern and southern elevation.

The proposed wall heights are as follows:

- Northern boundary: 6.95 metres (which presents a variation of 6.9%)
- Southern boundary: 6.55 metres (which presents a variation of 0.7%)

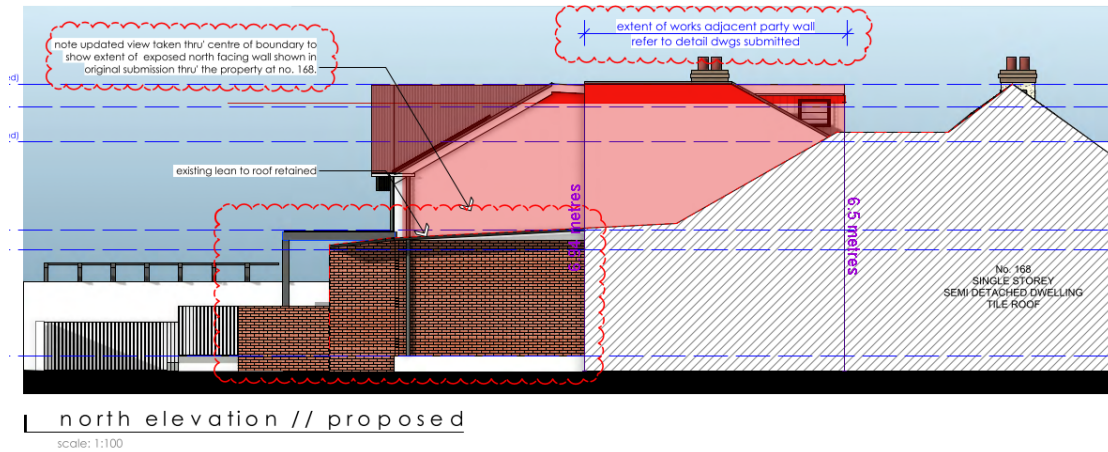


Figure 1. Northern elevation wall height non-compliance (extent shaded as red).



Figure 2. Southern elevation wall height non-compliance (extent shaded as red).

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause, instead, relies on the objectives for the Height of Buildings at Clause 4.3 in the Manly LEP 2013.

An assessment against these objectives is as follows:

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

Comment:

The proposed maximum building height is 6.6 metres, which is significantly lower than the maximum building height of 8.5 metres as prescribed within Clause 4.3 of the MLEP 2013, with a low pitch roof and varied side setbacks which provides for building mass articulation. Further, the proposed first floor addition is sited at the rear of the dwelling, with minimal impact upon the existing streetscape. The non-compliances will not be easily discernible from the street frontage. Therefore, the non-compliances along both the northern and southern elevations are reasonable within the context of the subject site and its surrounds.

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

Comment:

The proposed first floor addition is reasonably articulated with varied setbacks to the southern boundary. Further, the proposed first floor addition makes use of alternative materials and colours which further contributes to breaking up the built form. The proposal provides a low roof pitch at the rear of the dwelling which further minimises the bulk and scale of the built form. A flat roof design was considered, which would further reduce the built form, however a flat roof would be inconsistent with the character of the area. In light of this, the proposed development has been designed in such a way that is consistent with the character of the locality, with minimal unreasonable impacts upon adjoining properties.

(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 proposed development does not result in view loss.

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

Comment:

The extent of overshadowing has been addressed elsewhere in this report under section 3.4.1 Sunlight Access and Overshadowing. This assessment found that, in the context of the subject site, the overshadowing is considered acceptable.

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

Comment:

The subject site is located within, and surrounded by, the R3 Medium Density Residential zone.

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

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

Description of non-compliance

4.1.4.2 Side Setbacks and Secondary Street Frontages

This control requires development to be setback from the side boundary at a distance calculated from one third of the proposed wall height.

Based on these requirements, the proposed wall heights are as follows:

- *Northern elevation:* 6.95 metres
- *Southern elevation:* 6.55 metres

Therefore, the required side setbacks are:

- *Northern elevation:* 2.31 metres
- *Southern elevation:* 2.18 metres

The proposed side setbacks are:

- *Northern Elevation:*
 - Ground floor: Nil - 0.5 metres (presents a maximum variation of 100%). This is existing and unchanged.
 - First floor: Nil - 0.5 metres (presents a maximum variation of 100%).
- *Southern Elevation:*
 - Ground floor: 0.8 metres - 2.38 metres (presents a maximum variation of 63.3%). This is existing and unchanged.
 - First floor: 0.9 metres - 2.97 metres (presents a maximum variation of 58.7%).

Windows

This control requires windows to be setback 3.0 metres from the side boundaries. Due to the existing site constraints, any proposed windows will result in a numerical non-compliance to this requirement. One (1) window is proposed along the southern elevation on the first floor level which is sited 2.49 metres from the side boundary. This window is sited to a home office, which is a low-use room. As such, there privacy impact arising from this window is considered acceptable.

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 existing ground floor non-compliances are not changing under this development application. The proposed first floor addition, however, results in numerical non-compliances to both the northern and southern boundaries (noting that the northern boundary is shared with adjoining dwelling at 168

Pittwater Road). The nil setback to the party is required and acceptable. Further, in accordance with the services easement, the 0.5 metre setback to the northern boundary continues to allow access for services. As the proposed first floor addition is sited at the rear of the dwelling, the impact upon the existing streetscape is considered acceptable and reasonable in the context of the site's constraints.

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:

As detailed above, the additional window along the southern elevation is considered to result in a reasonable privacy impact between properties. The proposal will result in overshadowing to the northern elevation of 164 Pittwater Road. The assessment of the proposal against the requirements of control 3.4.1 Sunlight Access and Overshadowing found that the proposal results in a reasonable level of overshadowing, with consideration of the site constraints and orientation of the subject site and adjoining allotments. Finally, the proposal does not result in any view loss.

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

Comment:

Notwithstanding the proposed non-compliance, the ground floor level side setbacks do not change. Thus allowing for continued site access.

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 is sited entirely over the existing building footprint. Therefore, the proposal does not impact upon the existing landscape features on the subject site.

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

Comment:

The subject site is not located within bushfire zone. Therefore, this objective is not applicable.

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

4.1.5 Open Space and Landscaping

The site, as existing, is numerically non-compliant with the required minimum total open space provision. The proposed development is sited entirely over the existing building footprint and, therefore, does not impact upon the existing non-compliant total open space.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The subject site, as existing, does not have any off-street parking. The proposed development does not seek to change this. As such, a detailed merit assessment is not required in this instance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$3,268 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$326,798.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- 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 review of determination of DA2022/2270 for alterations and additions to a semi-detached dwelling house, has been referred to the Development Determination Panel (DDP) in accordance with Council's DDP criteria, which requires all Review Applications be determined by DDP.

The concerns raised in the objections have been addressed within the assessment report. The proposal is considered to be unacceptable due to insufficient information relating to the impact upon the existing easement, as indicated as C on the survey plan.

The critical assessment issues include Section 8.3 Environmental Planning and Assessment Act 1979, Zone R3 Medium Density Residential zone, 5.10 Heritage considerations, 6.9 Foreshore scenic protection area, 3.4.1 Sunlight access and overshadowing, 4.1.2 Height of buildings, 4.1.4 Setbacks, 4.1.5 Open space and landscaping and 4.1.6 Parking, vehicular access and loading.

While it is considered that the proposed development satisfies the relevant controls within the MDCP and MLEP 2013, it is inconsistent with subclause (1)(b) of Clause 23 of the Environmental Planning and Assessment Regulations 2021, which requires owner's consent of the owner of the land. As there is an issue surrounding works that may impact upon the easement, the lack of owner's consent from the owner's of 168 Pittwater Road means the DDP must refuse this development application.

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

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

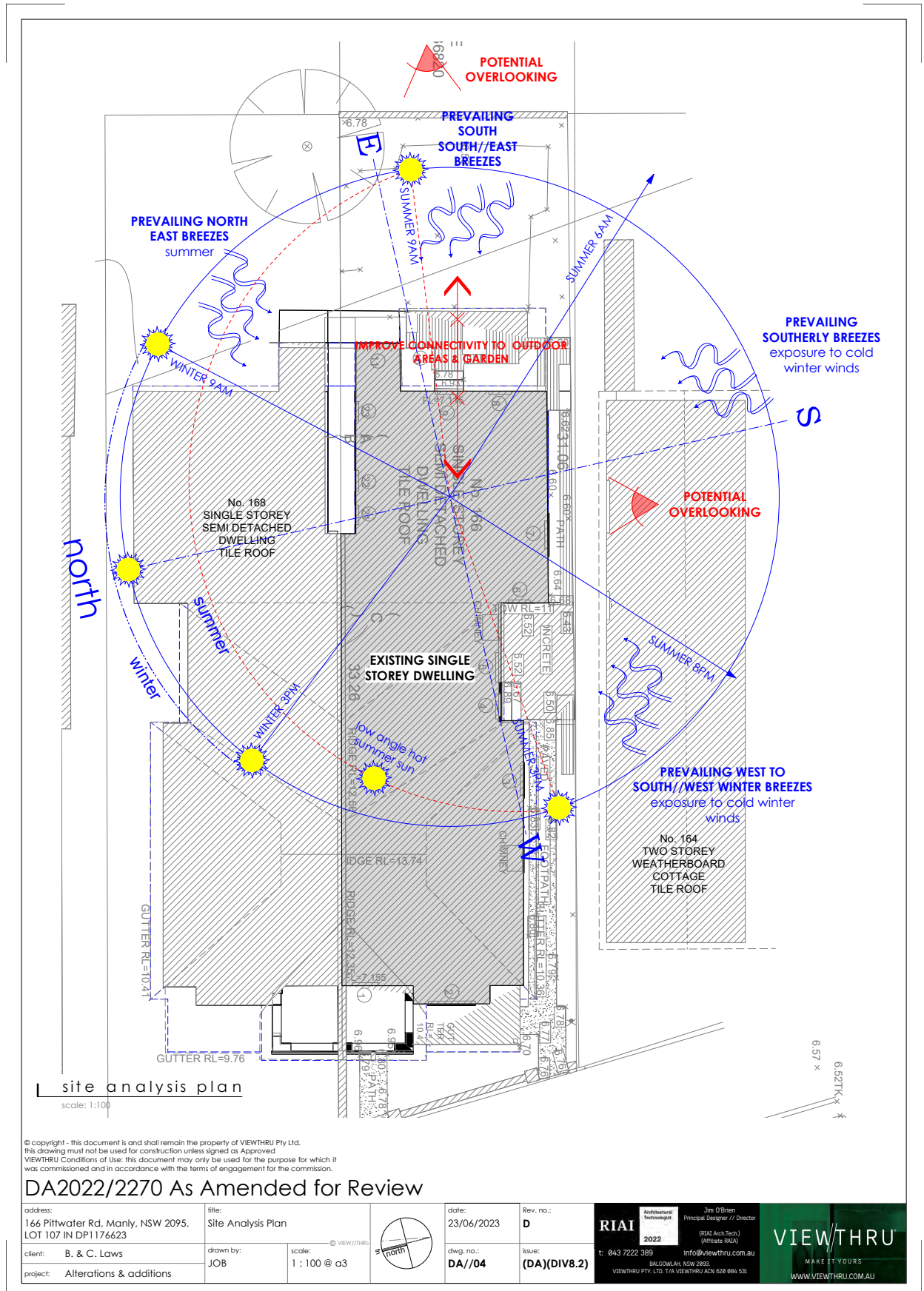
RECOMMENDATION

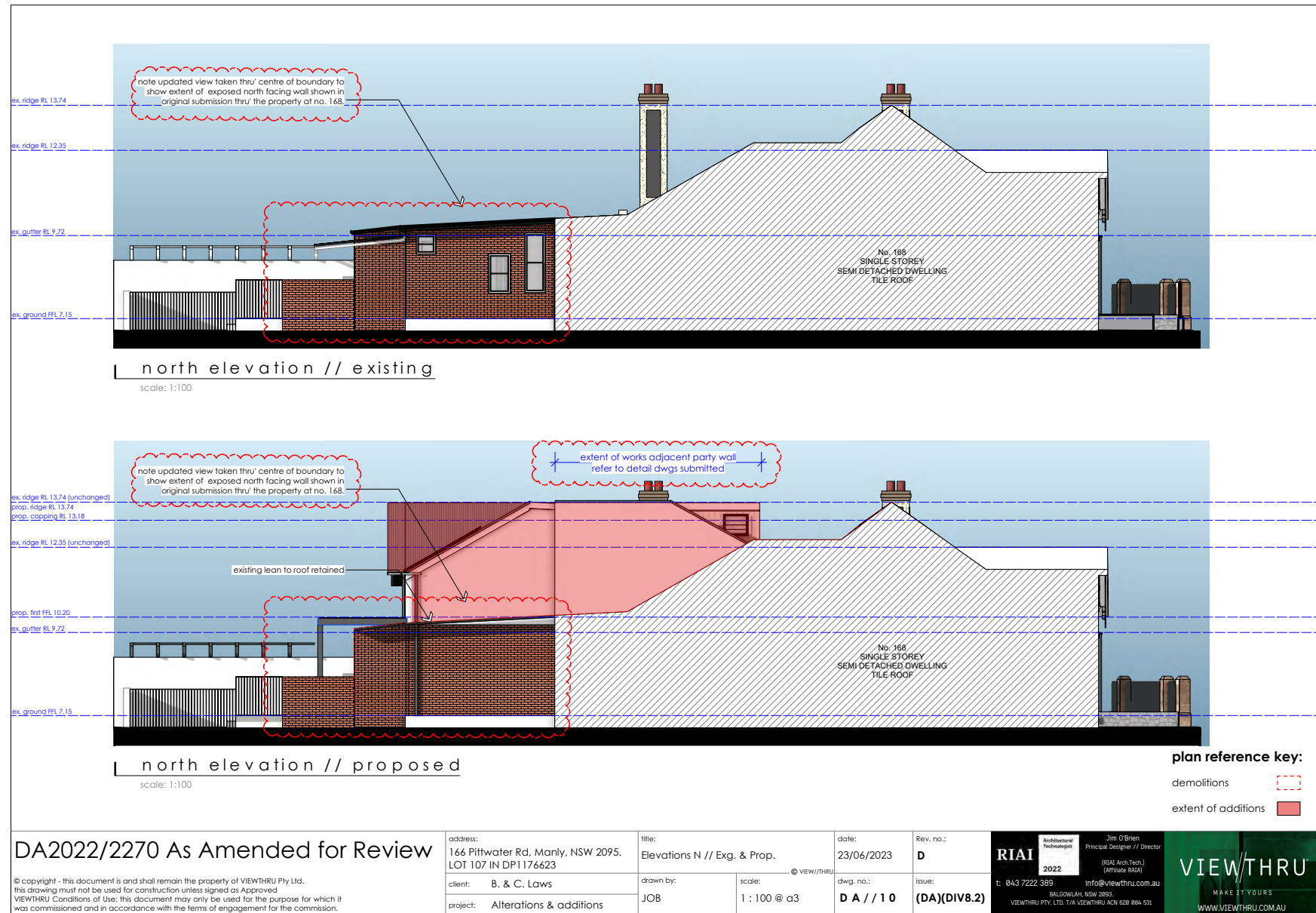
THAT Council, as the consent authority REFUSE Development Consent to Development Application No REV2023/0016 for the Review of Determination of DA2022/2270 for Alterations and additions to a semi-detached dwelling house on land at Lot 107 DP 1176623, 166 Pittwater Road, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, the Review Application does not comply with the provisions of Clause 23 of the Environmental Planning & Assessment Regulation 2021 and must be refused as the application does not constitute a legitimate review application.

Particulars:

- i) The application is not accompanied by sufficient information to satisfy Council's concerns that the proposed development can comply with the terms of the Easement.
- ii) In the absence of sufficient information that the proposal can comply with the terms of the Easement, the application is not accompanied by sufficient information in the form of land owner's consent from No. 168 Pittwater Road, Manly for the proposed works to the existing dwelling at 166 Pittwater Road, Manly.







south elevation // existing



scale: 1:100



south elevation // proposed

scale: 1:100

plan reference key:

demolitions 
extent of additions 

DA2022/2270 As Amended for Review

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address:
166 Pittwater Rd, Manly, NSW 2095.
LOT 107 IN DP1176623

client: B. & C. Laws

project: Alterations & additions

title:
Elevations S // Exg & Prop.

drawn by:
JOB

scale:
1 : 100 @ a3

date:
23/06/2023

dwg. no.:
D A // 1 1

Rev. no.:
D

issue:
(DA)(DIV8.2)

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ITEM 3.2

**DA2022/1917 - 11 NAMBA ROAD DUFFYS FOREST -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING A SWIMMING POOL, TENNIS COURT, AND
EQUINE FACILITIES**

REPORTING MANAGER**Steve Findlay****TRIM FILE REF****2023/635741****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/1917 for demolition works and construction of a dwelling house including a swimming pool, tennis court, and equine facilities on land at Lot 382 DP 752017, 11 Namba Road DUFFYS FOREST, subject to the conditions set out in the Assessment Report,

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1917
----------------------------	-------------

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 382 DP 752017, 11 Namba Road DUFFYS FOREST NSW 2084
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool, tennis court, and equine facilities
Zoning:	Warringah LEP2011 - Land Zoned RU4 Primary Production Small Lots
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Michelle Ann Siroky
Applicant:	Michelle Ann Siroky

Application Lodged:	11/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	17/11/2022 to 01/12/2022
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: 9.4%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,796,039.00
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EXECUTIVE SUMMARY

This application seeks approval for demolition works and construction of a dwelling house including a swimming pool, tennis court, guest accommodation and equine facilities.

The application is referred to the DDP under the relevant delegations, as the proposal has attracted six (6) submissions.

The application involves a departure from the height of buildings development standard, but which is

less than 10%, which does not trigger DDP. The maximum height of the proposed equestrian arena has been measured at 9.3 metres, which represents a variation of 9.4% to the prescribed 8.5 metre building height limit.

Concerns raised in the objections predominantly relate to:

- *Characterisation of development*
- *Equestrian arena*
- *Inadequate Clause 4.6 Request*
- *Setbacks*
- *Environmental impacts*
- *Earthworks*
- *Stormwater and water treatment*
- *Landscaped area*
- *Commercial use*
- *Light pollution*
- *Acquisition of unmade road and impact on Waratah Park*
- *Contamination*

The 4.6 request for the non-compliance with height standard arises from the sloping nature of the site towards the western boundary. The majority of the equestrian arena complies with the 8.5 metre development standard and the extent of the non-compliance is limited to to the western portion of the roof of the arena.

There were a number of amendments made to the proposal during the assessment of this application, to address the issues raised during the assessment of the application.

This report concludes with a recommendation that the DDP support the Clause 4.6 variation and grant **APPROVAL** to the application, subject to attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

This Development Application is for demolition works and construction of a dwelling house, including a swimming pool, tennis court, guest accommodation and equine facilities.

Specifically, the proposed works comprise the following:

Dwelling-House:

- Single storey dwelling, including five bedrooms with ensuites, three bathrooms, double garage, living areas, games room, office and storage.
- Excavated basement, including 10 parking spaces, storage, gym, media room, cellar, bar, sauna, and bathroom.

Guest Pavilion:

- Single storey outbuilding, including two bedrooms with bathrooms and living area.

External Works:

- Driveway and forecourt,
- In-ground swimming pool,
- Tennis court with pavilion,
- Stables,
- Covered equestrian arena,
- Associated earthworks, including the filling of the existing dam.

AMENDED PLANS

Following a preliminary assessment of the application, Council issues an RFI to the applicant on 23 February 2023, outlining concerns with the application.

The concerns related to land use, building height, earthworks, cost of works and referral issues (Landscaping, Biodiversity, Water Management, and Riparian Lands and Creeks).

The applicant lodged amended plans and additional information to address the concerns on 16 May 2023.

Additional revised stormwater plans were lodged with Council on 25 August 2023.

The amended plans incorporated the following changes:

- Reduction of the equestrian arena height to 9.3m (1.9m reduction)
- Reduction of ten (10) parking spaces within the basement and convert to habitable floor space
- Removal of the mezzanine level and kitchen in guest pavilion
- Additional excavation for the rainwater tank (2.4% increase or 240m³) to minimise the amount of imported fill
- Revised landscaping scheme and stormwater details

Community Participation Plan

The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. Therefore, formal re-notification was not required in accordance with Northern Beaches Community Participation Plan, however, an informal notification was carried out on 29 August 2023 to ensure previous objectors could make any further comments.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - Zone RU4 Primary Production Small Lots
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - C7 Excavation and Landfill
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation

SITE DESCRIPTION

Property Description:	Lot 382 DP 752017 , 11 Namba Road DUFFYS FOREST NSW 2084
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Namba Road, Duffys Forest.</p> <p>The site is irregular in shape with a frontage of 82.37m along Namba Road and a maximum depth of 207.89m along the western boundary that adjoins an unformed road. The site has a surveyed area of 2.42ha.</p> <p>The site is located within the RU4 Primary Production Small Lots zone and accommodates a single storey dwelling with detached carport, and two outbuildings to the south of the house. The eastern portion of the site has been cleared and levelled to provide paddocks and a sand horse arena. In addition, the subject site's southwest corner contains a large dam.</p> <p>The site falls to the south-east corner and contains pockets of trees along the boundaries.</p> <p>Detailed Description of Adjoining/Surrounding</p> <p>Development Adjoining and surrounding development is characterised by rural residential uses including a range of single and two storey detached dwellings on allotments which are typically similar in size to that of the subject allotment.</p>

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>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 in relation to amended plans and supporting documentation.</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 Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <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 17/11/2022 to 01/12/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Andrew McLennan Mrs Helen Mary McLennan	9 Namba Road DUFFYS FOREST NSW 2084
Wendy May Smallwood	311 / 0 Weemala Road TERREY HILLS NSW 2084
Mrs Judith Ann Fenn	12 Birramal Road DUFFYS FOREST NSW 2084
Jennifer Harris	Address Unknown
Withheld	DUFFYS FOREST NSW 2084
Bartier Perry Lawyers Mr Brent Lawson	10/77 Castlereagh Street SYDNEY NSW 2000

The following issues were raised in the submissions:

- **Characterisation of development**
- **Equestrian arena**
- **Inadequate Clause 4.6 Request**
- **Setbacks**
- **Environmental impacts**
- **Earthworks**
- **Stormwater and water treatment**
- **Landscaped area**
- **Commercial use**
- **Light pollution**
- **Acquisition of unmade road and impact on Waratah Park**
- **Contamination**

The above issues are addressed as follows:

- **Characterisation of Development**

The submissions raised concerns that the proposed development has been insufficiently described and incorrectly notified.

Comment:

Council's records indicate that the subject application was correctly notified in accordance with the Northern Beaches Community Participation Plan from 17 November 2022 to 01 December 2022 (14 days). Formal re-notification of the amended plans (dated 16 May 2023) was deemed unnecessary because the amendments, however an informal notification was carried out. On

balance, the amendments will reduce the environmental impact on nearby properties and the public domain.

This matter does not warrant the refusal of the application.

- **Equestrian Arena**

The submissions raised concerns that the proposed building height of the equestrian arena and gives rise to adverse neighbouring impacts. Specifically, it is considered that the proposal results in unacceptable overshadowing and detracts the scenic qualities of the area.

Comment:

In response to concerns raised by neighbouring properties, the Applicant has submitted amended plans that reduce the height of the equestrian arena by 1.9m (totaling 9.3m) and include a detailed analysis of the shadowing impact.

In regards to the overshadowing impacts, the proposed arena will cast minor shadowing on the adjoining southern property. However, shadow diagrams indicate a high level of compliance with Part D6 Access to Sunlight of Warringah DCP. In terms of the height, bulk, and visual impact of the proposed arena structure, the amended design aligns with nearby comparable developments in both location and height. This positioning ensures the integration of the structure within the visual landscape of the area. Furthermore, the proposal will be situated more than 100m away from the nearest dwelling, with acceptable boundary setbacks featuring vegetative screening.

Overall, the proposed equestrian arena will be a single-storey, non-habitable structure substantially separated from neighbouring dwellings and reasonably screened by vegetation. It is therefore not expected to result in unreasonable bulk or amenity impacts.

This matter does not warrant the refusal of the application.

- **Inadequate Clause 4.6 Request**

The submissions raised concerns that the proposal is not supported by a well-founded Clause 4.6 written request.

Comment:

An assessment of the revised Clause 4.6 variation request has been undertaken within the relevant section of this report. The assessment finds that the applicant's amended written request adequately demonstrates that strict compliance with the development standard is unreasonable, and there are sufficient environmental planning grounds to justify contravening the development standard. It is considered that the proposal is consistent with the aims and objectives of the RU4 Primary Production Small zone and the Height of Buildings development standard under Warringah LEP 2011.

This matter does not warrant the refusal of the application.

- **Setbacks**

The submissions raised concerns that the proposal provides inadequate setbacks.

Comment:

The submissions indicate that the proposal provides inadequate rear and side setbacks. However, it is important to note that the subject site contains dual frontages and does not have a traditional rear boundary. Nevertheless, the proposal does not comply with the numerical requirements of the Warringah DCP side setback control. Consequently, the merits of this non-compliance have been assessed against the objectives of the relevant control. In summary, the amended proposal is found to be consistent with the objective of this control, as it has appropriately addressed the site constraints while remaining compatible with the existing built form and not causing any adverse amenity impacts.

This matter does not warrant the refusal of the application.

- **Environmental Impacts**

The submissions raised concerns that the proposed development will adversely impact surrounding bushland and local fauna.

Comment:

Impacts on the surrounding environment have been assessed by Council's Landscape, Riparian Lands, Water Management, and Bushland & Biodiversity Officers (refer to the Referrals section of this report). Their assessments have concluded that the proposed works are satisfactory, subject to conditions of consent.

The application is further supported by a Flora and Fauna Assessment Report prepared by Narla Environmental Pty Ltd, which concludes, 'If the appropriate recommendations in this report are followed, the proposed development should have minimal ecological impact.' This report outlines a series of environmental management measures to mitigate any potential residual impacts on biodiversity and habitat resulting from the project. These recommendations will be incorporated into the consent if approval is granted in this instance.

Additionally, appropriate conditions have been recommended to manage and mitigate impacts during construction, including erosion and sediment control, dewatering management, and compliance with the Waste Management Plan.

Subject to these comments and conditions, the concerns are considered to have been satisfactorily addressed.

This matter does not warrant the refusal of the application.

- **Earthworks**

The submissions raised concerns that the proposal includes extensive excavation and fill works across a large proportion of the site, resulting in inconsistencies with the objectives/requirements of Clause 6.2 of WLEP.

Comment:

It is acknowledged that the original proposal involved substantial earthworks across the site to facilitate the development. The proposal has been revised to minimise the net cut and fill, ensuring that earthworks are largely balanced and retained on-site. The amended proposal

requires 543.28m³ of imported fill, which accounts for 5.1% of the total landfill volume. The application is supported by a comprehensive geotechnical assessment that provides information about the site's subsurface conditions and demonstrates that the proposed earthworks are acceptable, with negligible impacts on surrounding properties, provided the recommendations in the report are followed. Additionally, the report has been reviewed by Council's Development Engineer, who raised no objections to the proposal in relation to earthworks, subject to recommended conditions.

This matter does not warrant the refusal of the application.

- **Stormwater and Water Treatment**

The submissions raised concern with the proposed stormwater treatment and management measures.

Comment:

Council's Development Engineers and Water Management officer have reviewed the proposed stormwater management for the site and have raised no objections to the design.

This matter does not warrant the refusal of the application.

- **Landscaped Area**

The submissions raised concerns that proposal results in a significant reduction of landscaped area across the site.

Comment:

It is noted that the proposal involves a reduction of landscaped area, however, it still remains extensive and compliant at 63.8%, noting that the WDCP requires a minimum landscaped area of 30%.

This matter does not warrant the refusal of the application.

- **Commercial Use**

The submissions raised concerns that the proposal includes commercial uses associated with the equine facilities.

Comment:

Following a preliminary review of the proposal, Council raised concerns with the Applicant regarding the intended use of the site, particularly the inclusion of guest accommodation and substantial car parking provision in conjunction with the equine facilities. In response, the Applicant submitted amended plans that involved a notable reduction (10 spaces) in basement car parking and to the guest pavilion, including the removal of the mezzanine level and kitchen. It is considered that the amended plans, subject to the recommended conditions of consent, align with surrounding rural residential development.

This matter does not warrant the refusal of the application.

- **Light Pollution**

The submissions raised concerns that the proposed tennis court and equestrian arena will result in unreasonable light pollution for the surrounding residential properties.

Comment:

Imposed conditions will ensure that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of adjacent dwellings. In addition, as per the requirements of Part D17 Tennis Courts of Warringah DCP it is recommended that artificial lighting of the tennis court not be permitted under this application.

This matter does not warrant the refusal of the application.

- **Acquisition of unmade road and impact on Waratah Park**

The submissions raised concerns that the proposal will potentially impact Waratah Park, which is of State historical significance, as the applicant seeks to acquire the unmade Crown road that is located between the subject site and the heritage item.

Comment:

The proposal has undergone a review and received support from Council's Heritage Advisor, taking into consideration potential impacts on Waratah Park. Furthermore, the potential acquisition of the unmade Crown Road is not a relevant consideration for assessing this proposal. Any future acquisition and development of this land will be subject to a separate application assessment.

This matter does not warrant the refusal of the application.

- **Contamination**

The submissions raised concerns that the subject site is potentially contaminated from previous uses and that the Statement of Environmental Effects has not adequately addressed State Environmental Planning Policy (Resilience and Hazards) 2021.

Comment:

It is acknowledged that the applicant, in their response to Council, initially referred to previous shed structures as 'industrial.' However, further clarification has been provided, indicating that the term was used to describe the physical construction rather than the use of these structures. Council records indicate that the subject site has been used for residential purposes for an extended period of time, with no evidence of any approved industrial uses of the site. Consequently, it is considered that the site poses no risk of contamination, and therefore, no further consideration is required under SEPP (Resilience and Hazards) 2021. The land is deemed suitable for residential land use.

This matter does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Supported – Subject to Conditions</p> <p>The proposal is supported with regard to landscape issues.</p> <p><u>Additional Information Comment 19/06/23:</u> The amended plans are noted.</p> <p>The Arboricultural Impact Assessment (AIA) identified 13 exempt trees (trees 3-11, 15-17, and 26) within the property boundary for removal which can be managed or removed at the discretion of the applicant without consent. Should the development application be approved, 25 prescribed trees (trees 2, 14, 23, 25, 28, 66, 72-75, 86, 101, 102, 105, 109, 117, 135, 136, 137, 141, 144, 145, 147, 148, and 149) will require removal. Tree 28 is located in the road reserve and to offset its loss a locally native tree shall be installed in the front setback, subject to the imposed conditions. A Project Arborist shall be engaged to supervise all work in the tree protection zone of trees to be retained, and all trees not approved for removal shall be protected in accordance with the tree protection recommendations outlined in the AIA, subject to the imposed conditions.</p> <p>The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent.</p> <p><u>Original Comment Summary:</u> Landscape Referral raised the following concerns:</p> <ul style="list-style-type: none"> • <i>Further consideration shall be given to the retention of trees with a high amenity value as outlined in the Arboricultural Impact Assessment, and in particular:</i> <ul style="list-style-type: none"> ◦ <i>trees 1, 12 and 13,</i> ◦ <i>tree 28,</i> ◦ <i>tree 66,</i> ◦ <i>trees 135, 136, 137, 141, and 145,</i> • <i>Insufficient information provided on the Landscape Plan to be able to accurately assess the application. Please refer to Northern Beaches Council's Development Application Lodgement Requirements for what is required of the Landscape Plan, and in particular;</i> <ul style="list-style-type: none"> ◦ <i>proposed planting scheme including species selection, location, quantities, mature heights and pot sizes,</i> ◦ <i>existing trees and other vegetation to be retained or removed. All trees are to be located, identified and numbered, and shall coincide with the arborists report.</i>
NECC (Bushland and Biodiversity)	<p>Supported – Subject to Conditions</p> <p>AMENDED COMMENTS:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> The removal of trees 66, 135, 136, 137, 141, and 145 will be allowed considering the amendments to the landscape plan. The new canopy trees proposed for planting in the amended landscape plan are appropriate for the area and the ecological community. The deletion of <i>Rahpialepis indica</i> from the landscape plan is noted and appreciated. The replacement of <i>Murraya paniculata</i> is also recommended as there is a General Biosecurity Duty for this plant in NSW as per the Biosecurity Act 2015 The note on the minimisation of impacts to trees considered in the location of the level spreader is also noted. <p>ORIGINAL COMMENTS 21/02/2023</p> <p>The proposal seeks approval for demolition works and construction of a dwelling house including a swimming pool, tennis court, and equine facilities.</p> <p>The proposal has been assessed against the following provisions:</p> <ul style="list-style-type: none"> NSW Biodiversity Conservation Act 2016 Warringah DCP - Clause E2 Prescribed Vegetation Warringah DCP - Clause E5 Native Vegetation Warringah DCP - Clause E6 Retaining unique environmental features State Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 4 Koala habitat protection 2021 <p>It is noted that an Arboricultural Impact Assessment (AIA) and Flora and Fauna Assessment (FFA) have been submitted with the proposal.</p> <p>The AIA assessed a total of 193 trees of which 42 are proposed for removal, 23 of which are native species.</p> <p>Tree 28 is located outside of the property, and as such is required to be retained. Retention of the tree may require the location of the proposed driveway and gate to be adjusted.</p> <p>The FFA was prepared by an Accredited Assessor (Narla Environmental, August 2022) which confirmed that the proposal did not trigger entry into the Biodiversity Offset Scheme (BOS) and as a result a Biodiversity Development Assessment Report (BDAR) was not required to be submitted. The FFA calculated that a total of 0.13ha of Sydney North Exposed Sandstone Woodland will be required to be removed from the south-west corner of the property. Vegetation within this patch of native vegetation is to be retained where possible. Given the size of the lot, using the avoid and minimise principal, it seems likely that much of the vegetation within this patch can be retained. This includes Trees 135 (<i>Eucalyptus</i></p>

Internal Referral Body	Comments
	<p><i>haemostoma</i>), 136, 137 and 141 (<i>Corymbia gummifera</i>) which are characteristic canopy species of Sydney North Exposed Sandstone Woodland. The AIA identified that these trees are located within the footprint of the proposed stormwater dispersion level spreader, however this is not clearly identified within Appendix A of the On-Site Wastewater Report (Broadcrest Consulting Pty Ltd, September 2022). Retention of these trees will assist in compliance with the applicable WDCP controls including cl. E5, by maintaining the amount, local occurrence and diversity of native vegetation in the area and promoting the retention of native vegetation in parcels of a size, condition and configuration which will as far as possible enable local plant and animal communities to survive in the long term.</p> <p>The Landscape Plan is to be amended to include a clear depiction of existing trees to be retained and removed as a result of the proposed development. Appendix A of the On-Site Wastewater Report is required to be updated to include a map of the entire lot and proposed impacts.</p> <p>Council's Biodiversity Referrals team will recommence assessment of the proposal upon receipt of requested information.</p>
NECC (Development Engineering)	<p>Supported – Subject to Conditions</p> <p>The subject site drains in two directions with a portion of the site draining to Namba Road and a portion draining to the unformed section of road off towards Guwarra Road. The submitted stormwater management plans include the provision of an on-site stormwater detention system which captures the impervious areas of the proposed dwelling, stables, horse arena, tennis court, terrace areas and associated driveways and controls the discharge via an on-site stormwater detention basin which connects to a level spreader. The driveway leading off Namba Road will drain to Namba Road. The proposed stormwater design is satisfactory subject to conditions for the control of the discharge.</p> <p>The proposed driveway crossing is also satisfactory subject to conditions.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>Supported – No Conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy <p>The proposal sits high in the catchment for Kierans Creek and Duffys</p>

Internal Referral Body	Comments								
	Creek. The development must not significantly impact on the biophysical, hydrological or ecological integrity of the waterways and riparian land, or the quantity and quality of surface and ground water flows that it receives.								
NECC (Water Management)	<p>Supported – Subject to Conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none">• Supplied plans and reports;• Northern Beaches Water Management for Development Policy (WM Policy); and• Relevant LEP and DCP clauses. <p>This site is located in the headwaters of Cowans Creek. Stormwater runoff from the stables, yards and other areas has the potential to carry a high nutrient loads, pathogens and sediment. As a result, stormwater treatment and management measures are needed to avoid any impacts on water quality. The nutrient and sediment loading collected by the stormwater network needs to be captured and treated prior to the runoff being discharged from the property. Runoff from horse yards, enclosures, outdoor arenas and access areas must be captured and treated on site. All stormwater management systems must be protected from impacts by horses and vehicles by using fencing.</p> <p>The proposed stormwater strategy is satisfactory subject to detail design for construction certificate stage.</p>								
Strategic and Place Planning (Heritage Officer)	<p>Supported – No Conditions</p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td>The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage item</td></tr><tr><td>SHR N0.1944 - Waratah Park - 13 Namba Road Duffys Forest</td></tr><tr><th>Details of heritage items affected</th></tr><tr><td>Details of the item as contained within the State Heritage Register is as follows:</td></tr><tr><td><u>Statement of Significance</u> Waratah Park is of State historical significance as the site where the iconic television series 'Skippy the Bush Kangaroo' was set and filmed 1967-1969.</td></tr><tr><td><u>Physical Description</u></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage item	SHR N0.1944 - Waratah Park - 13 Namba Road Duffys Forest	Details of heritage items affected	Details of the item as contained within the State Heritage Register is as follows:	<u>Statement of Significance</u> Waratah Park is of State historical significance as the site where the iconic television series 'Skippy the Bush Kangaroo' was set and filmed 1967-1969.	<u>Physical Description</u>
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<u>Physical Description</u>									

Internal Referral Body	Comments		
	Waratah Park comprised 12.6 hectares of bushland adjoining Ku-Ring-Gai National Park in Duffys Forest Reserve, near Sydney's northern beaches. Within the site are several built elements.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	Waratah Park is on the SHR
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance		
	Other		
	Consideration of Application		
	The proposal seeks consent for a new dwelling, paddocks, guest accommodation, stables and a horse arena on the subject property. Buildings will be generally aligned to the eastern boundary of the site with the open paddocks aligned to the western angled boundary. The heritage item is located to the west of the subject site, across an unformed and vegetated road reserve. Given the separation afforded by the road reserve and its screening vegetation, the proposal is considered to not impact upon the heritage item or its significance.		
	Therefore Heritage raises no objections and requires no conditions.		
	Consider against the provisions of CL5.10 of WLEP.		
Is a Conservation Management Plan (CMP) Required? No			
Has a CMP been provided? No			
Is a Heritage Impact Statement required? No			
Has a Heritage Impact Statement been provided? No			

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<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>

External Referral Body	Comments
Aboriginal Heritage Office	<p>Supported – Subject to Conditions</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1342239M dated 4 October 2022).

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

Commitment	Required Target	Proposed
Water	40	42
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 (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	7.2m (Dwelling) 7.1m (Guest house)	N/A N/A	Yes Yes

		7.4m (Stables) 9.3m (Equestrian arena)	N/A 9.4%	Yes No
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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone RU4 Primary Production Small Lots

The proposal seeks consent for an ancillary guest pavilion. Following a preliminary assessment, concerns were raised with the applicant regarding the pavilion's potential for separate habitation due to its design, including multiple bedrooms, bathrooms, and a kitchen, it being noted that the RU4 zone under the Warringah Local Environmental Plan 2011 prohibits dual occupancies and secondary dwellings.

Amended plans were submitted on 16 May 2023, which removed the mezzanine level and kitchen. Considering the revised design's size, intended use, and its clear separation from the main dwelling, it is deemed acceptable. If this application is approved, a condition will be included to ensure the guest pavilion is not used for separate habitation and does not contain cooking facilities.

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.3m
Percentage variation to requirement:	9.4%

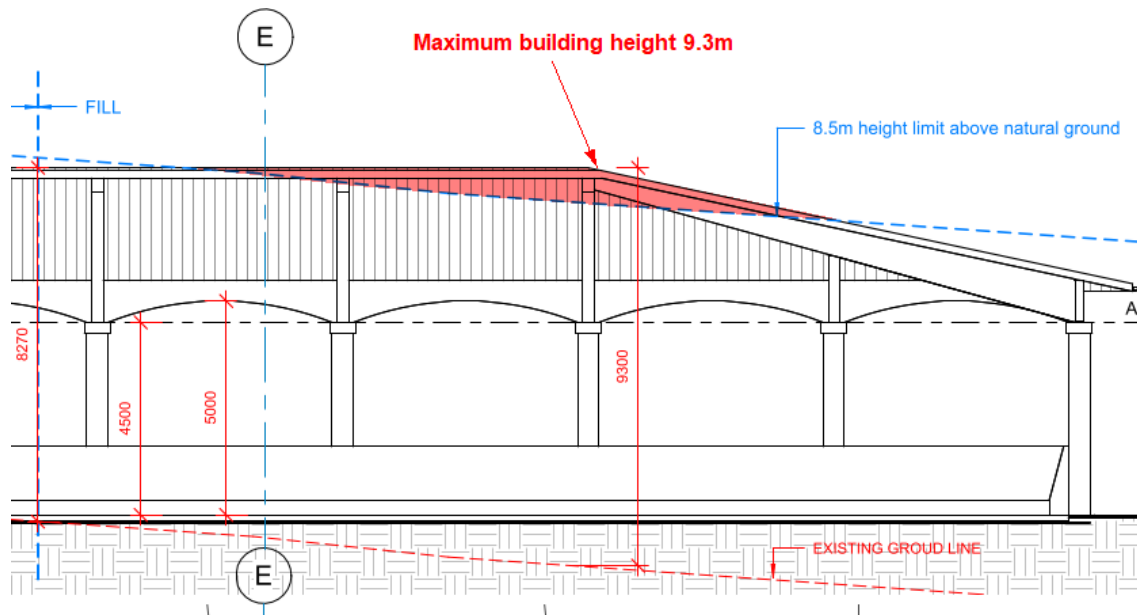


Figure 1. Building height non-compliance - long section.

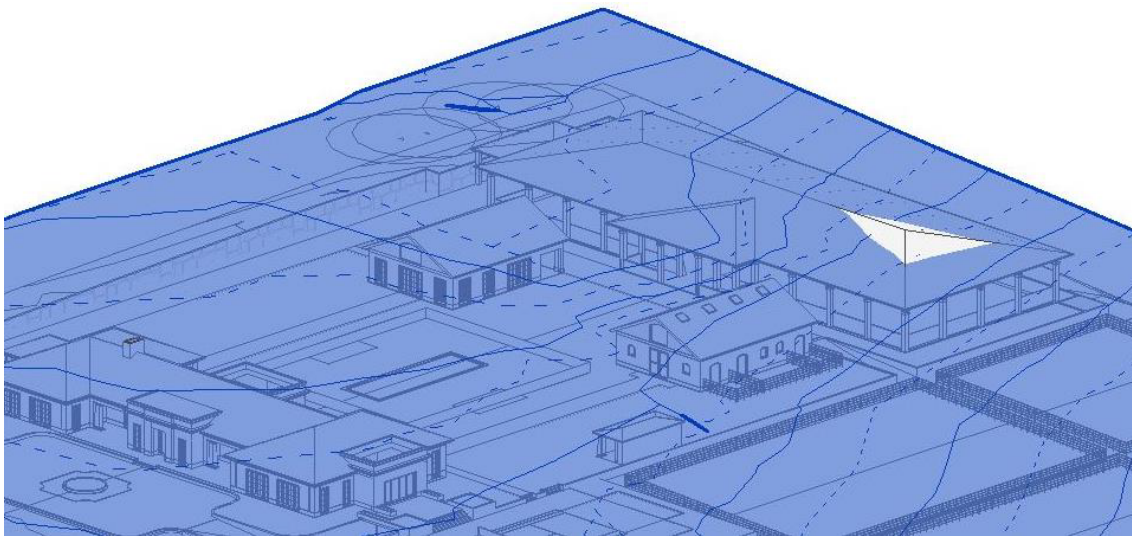


Figure 2. Building height non-compliance - 3D diagram*.

*The above height plane diagram is not certified, however the portions of building projecting above the 8.5m height plane are generally in alignment with Council's calculations, and are presented in a more practical format than a two dimensional elevational drawing.

Assessment of request to vary a development standard:

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

[2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

Clause 4.6 (4)(a)(i) (Justification) Assessment

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

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

Comment:

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

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

Applicants Written Request

The applicants written request argues, in part:

The proposed development does not comply with the maximum height of a building development standard pursuant to clause 4.3 of WLEP which specifies a maximum building height of 8.5m. As a

consequence of the site's slope and the need for the structure to provide for safe and appropriate internal vertical clearances for the horse and riders, the proposal will present a height of up to 9.3m.

The locality includes other similar horse arenas or primary production buildings which exceed the maximum height control where additional internal vertical clearance is necessary for the safe function of the proposed use.

The overall building height respects the surrounding character and the design seeks to minimise the visual height by providing for a hip roof to minimise overall height and maintaining substantial setbacks from the nearby dwellings.

The proposed external colour and materials palette utilises recessive finishes and is intended to ensure that the building's visual height and scale is further minimised.

Planner's Comment

The applicant's written request is reasonable and is accepted. The non-compliance is limited to the western portion of the arena's roof. It is worth noting that the site slopes to the west, posing a challenge in meeting the numerical building height requirement while ensuring adequate vertical clearances for horses and riders. Moreover, it is also considered that this non-compliance will not lead to adverse effects on neighbouring amenity or create unreasonable impacts on the streetscape.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the RU4 Primary Production Small Lots zone. An assessment against these objectives is provided below.

Objectives of Development Standard

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

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

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

Comment:

The height non-compliance in this development is limited to the roof section of the proposed equestrian pavilion, which reaches a maximum height of 9.3 metres above the existing ground level. This non-compliance is a result of the topographical changes beneath this section of the arena and the necessity for adequate vertical clearances. In the immediate vicinity, other equestrian arenas and primary production buildings have been designed to provide similar internal vertical clearances for safe use. In summary, the height of this development aligns with nearby structures, and the additional height will not impose a burden on neighboring properties.

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

Comment:

Given the significant distance between the proposed development and the nearest dwelling, there are no adverse impacts on views, privacy, or solar access.

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

Comment:

The proposed equestrian pavilion will be constructed on a site that has undergone extensive clearing and previous building works, requiring the removal of one prescribed tree (T66). The application was reviewed by Council's Natural Environment sections, including Bushland and Biodiversity, Coast and Catchments, Landscaping, and Riparian Lands and Creeks, all of which raised no objections to the proposal, provided the recommended conditions of consent are complied with.

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

Comment:

The proposed development is unlikely to be readily visible from any public locations or reserves. The proposal is located in the subject site's southeast corner benefiting from a substantial vegetated setback from Namba Road.

Zone Objectives

The underlying objectives of the RU4 Primary Production Small Lots zone are addressed as follows:

- *To enable sustainable primary industry and other compatible land uses.*

Comment:

The proposed development includes construction of a rural residential dwelling and equine

facilities, which is are considered suitable for accommodating equipment for rural land uses.

- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*

Comment:

The proposed works are primarily residential in nature. Should primary enterprises be proposed at a future time in this location, the site would be able to comfortably accommodate any such use.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment:

The surrounding properties are currently used as rural residential dwellings with some accommodating equine facilities. The proposal is not considered to create any conflict with these adjoining properties.

- *To minimise the impact of development on long distance views of the area and on views to and from adjacent national parks and bushland.*

Comment:

The subject site is substantially separated from any national parks or bushland areas and does not impact on any long distance views of the area.

- *To maintain and enhance the natural landscape including landform and vegetation.*

Comment:

The proposed works include excavation and construction in an area of the site which is cleared and contains existing structures. Natural areas along the site's peripheries are not adversely impacted by the proposed works.

- *To ensure low intensity of land use other than land uses that are primary industry enterprises.*

Comment:

The primary use of this site with the proposed works is for a rural residential dwelling house which is considered low intensity development.

- *To maintain the rural and scenic character of the land.*

Comment:

The proposed development is representative of surrounding substantial rural properties and will maintain the scenic aspects of the site when viewed from the Namba Road frontage.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the RU4 Primary Production Small Lots zone.

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

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

Planning Circular PS20-002 dated 5 May 2020 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

6.2 Earthworks

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

(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and

(b) to allow earthworks of a minor nature without requiring separate development consent.

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment:

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

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

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

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

6.4 Development on sloping land

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

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

Comment:

The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

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

Comment:

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

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

Comment:

The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	<7.2m	N/A	Yes
B5 Side Boundary Setbacks	10.0m - East	8.0m (Car parking)	20%	No
	10.0m - South	9.8m (Equestrian arena)	2%	No
B7 Front Boundary Setbacks	20.0m - Namba Road	40.8m (Forecourt)	N/A	Yes
B7 Secondary Front Boundary Setbacks	10.0m - Guwara Road	10.0m (Paddock)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	30%	63.8% (15,450m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D17 Tennis Courts	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of Non-compliance

Clause B5 requires development to provide a minimum side setback of 10.0m.

The development provides a side setback of 8.0m at the east boundary, which results in a variation of 20% (i.e. 2.0m). The non-compliant element is a roofed trailer parking area, which has a height of between 1.7m and 2.9m above existing ground level.

In addition, the development provides a side setback of 9.8m at the south boundary which results in a variation of 2% (i.e. 0.2m). The non-compliant elements are the columns and eaves of the equestrian arena, which have a maximum height of 4.5m.

The figures below indicates the area of non-compliance.

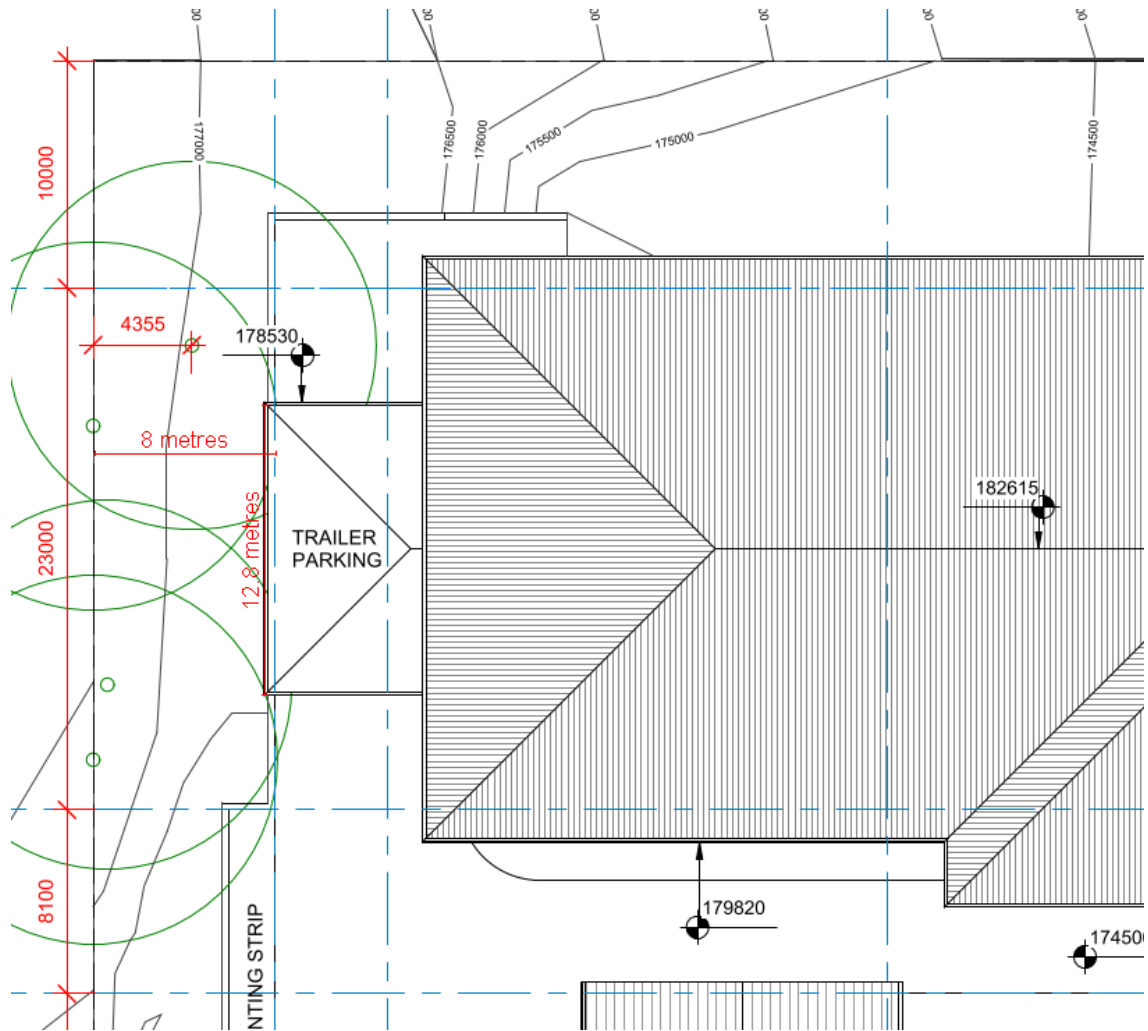


Figure 3. Eastern boundary side setback non-compliance.



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

- The reduced side setbacks are landscaped by trees and shrubbery to provide screening and is considered to be able to plant more significant sized trees if so desired. Therefore, the reduced setback does not limit the provision of opportunities for deep soil landscape areas.

- The proposed equestrian arena and attached parking area align with nearby developments by virtue of their location within the subject site's southeast corner. The non-compliant elements maintain a height well below 8.5m and are situated at a significant distance from the frontage, with an approximate 148m setback to Namba Road. Furthermore, the proposed landscape plan seeks to heavily vegetate the intervening area between these setbacks. As such, the structure will not appear visually dominant when viewed from the street or surrounding properties.

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Comment

The non-compliant element is an unroofed terrace and is considered to be a minor feature such that it would not add to the scale and bulk of the development.

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

Comment

The proposed elements within site's side setbacks would be below the required height limit, within the required building envelope and significantly setback from the front boundaries. The proposal would also be surrounded by trees and screen vegetation. As such, the scale and bulk of the building is adequately minimised.

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

Comment

As previously mentioned, the proposed equestrian arena and attached parking have been thoughtfully positioned in the southeast corner of the subject site to maintain alignment with nearby, comparable developments. This placement ensures the integration of the structure within the visual landscape of the area. Furthermore, the non-compliant elements have a modest scale and will not obstruct existing views from or to public and private properties.

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

C4 Stormwater

Details have been provided by the applicant to address stormwater management for the proposed development.

Please refer to Council's Development Engineer and Water Management Referral for more information.

C7 Excavation and Landfill**Description of Development**

The proposal seeks approval for substantial earthworks across the site to facilitate the development. Specifically, the proposal includes:

- Cut - 10169.10m³
- Fill - 10712.39m³

The proposal has been amended to minimise the net cut and fill to 543.28m³.

Merit Consideration

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

- *To ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.*

Comment:

The earthworks will be largely situated in the southern part of the site (behind the dwelling) and below the proposed dwelling, which is primarily centrally located on the site. This placement ensures that there will be no adverse effects on the visual and scenic quality of the area.

Additionally, the proposal has undergone thorough assessment by various Council officers, including the Bushland and Biodiversity Officer, Landscape Officer, Coasts and Catchments Officer, Environmental Health Officer, Water Management Officer, and Development Engineer. No objections to the proposal concerning its impact on the natural environment have been raised, subject to recommended conditions.

Furthermore, in order to ensure that there are no adverse impacts on the adjoining neighbours, conditions have been imposed which:

1. Ensure structural adequacy of landfill and excavation work;
 2. Ensure the Waste Management Plan is adhered to;
 3. Ensure the Geotechnical report is adhered to;
 4. Ensure the proper installation and maintenance of sediment and erosion control;
 5. Ensure topsoil is stockpiled on site and stabilised during construction works; and
 6. Advise no works are permitted on adjoining land.
- *To require that excavation and landfill does not create airborne pollution.*

Comment:

The filling will be largely sourced from the subject site and would not create airborne pollution.

- *To preserve the integrity of the physical environment.*

Comment:

The proposal, subject to conditions, will preserve the integrity of the physical environment.

- *To maintain and enhance visual and scenic quality.*

Comment:

The proposal, subject to conditions, will maintain and enhance the visual and scenic qualities of the streetscape.

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

E1 Preservation of Trees or Bushland Vegetation

In summary, the proposal is deemed to be compliant with the requirements and objectives of this control, as well as Clauses E2 (Prescribed Vegetation), E5 (Native Vegetation), and Clause E6 (Retaining Unique Environmental Features) of WDCP. This compliance is subject to specific conditions that include tree protection measures and the preparation of an updated landscape plan. It's noted that Council's Biodiversity Officer has not expressed any concerns regarding the impact on threatened species.

Please refer also to the comments provided by Council's Bushland and Biodiversity and Landscape Officers regarding vegetation and tree removal

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 \$27,960 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,796,039.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

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

The issues raised in the six (6) submissions are considered to be addressed by way of the amended plans and suitable conditions of consent to manage and mitigate the environmental and operational impacts.

The Clause 4.6 variation in relation to building height is considered to be well founded and is supported.

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

Overall, the proposal, as amended, is considered a reasonable response to the site constraints and relevant planning controls.

Accordingly, the application is referred to the DPP with a recommendation that the Panel support the Clause 4.6 variation and **APPROVE** the application.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2022/1917 for Demolition works and construction of a dwelling house including a swimming pool, tennis court, and equine facilities on land at Lot 382 DP 752017, 11 Namba Road, DUFFYS FOREST, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 - RevB: Site plan	12 May 2023	Sachs Architecture P/L
DA02 - RevB: Site sections	12 May 2023	Sachs Architecture P/L
DA03 - RevB: Driveway sections	12 May 2023	Sachs Architecture P/L
DA04 - RevB: Floor plan - Residence	12 May 2023	Sachs Architecture P/L
DA05 - RevB: Floor plan - Residence - Basement	12 May 2023	Sachs Architecture P/L
DA06 - RevB: Residence - Elevations	12 May 2023	Sachs Architecture P/L
DA07 - RevB: Stable - Floor plan, Elevations & Section	12 May 2023	Sachs Architecture P/L
DA08 - RevB: Guest / Pool House - Plan, Elevations & Section	12 May 2023	Sachs Architecture P/L

DA09 - RevB: Arena - Floor plan & Long Section	12 May 2023	Sachs Architecture P/L
DA10 - RevB: Arena - Elevations & Cross Section	12 May 2023	Sachs Architecture P/L
DA12 - RevB: Cut & Fill Diagram	12 May 2023	Sachs Architecture P/L
DA13 - RevB: Demolition Plan	12 May 2023	Sachs Architecture P/L
DA14 - RevB: Finishes Schedule - Residence	12 May 2023	Sachs Architecture P/L
DA15 - RevB: Finishes Schedule - Guest Accommodation	12 May 2023	Sachs Architecture P/L
DA16 - RevB: Finishes Schedule - Stable	12 May 2023	Sachs Architecture P/L
DA17 - RevB: Finishes Schedule - Arena	12 May 2023	Sachs Architecture P/L
DA19 - RevB: Paddocks - Infill Depth	12 May 2023	Sachs Architecture P/L

Engineering Plans		
Drawing No.	Dated	Prepared By
2203121 (Civil): B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B20, B21, B22, B23, B24 and B25 - Issue A	28 October 2022	NB Consulting Engineers
2203121 (Stormwater): D01, D02, D03, D04, D05, D06, D07, D08, D09, D10, D11, D12, D13, D14 and D15 - Issue A	10 October 2022	NB Consulting Engineers
2203121 (Water treatment) : D101, D102, D103, D104, and D105 - Issue C	18 August 2023	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment Report - Rev A	25 October 2023	Hugh The Arborist
BASIX Certificate No.1342239M	4 October 2023	MJ Suttie Architects
Flora and Fauna Assessment Report - V1.0	16 September 2022	Narla Environmental
Geotechnical Report - Issue No. 0	18 February 2022	Crozier Geotechnical Consultants
On-Site Wastewater Report	28 September 2022	Broadcrest Consulting

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Sheet 1 - Rev DA-2: Tree removal and retention plan	9 March 2023	Paul Bangay
Sheet 2 - Rev DA-2: Landscape plan	9 March 2023	Paul Bangay
Sheet 3 - Rev DA-2: Details	9 March 2023	Paul Bangay

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	1 July 2022	Michelle Siroky

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	21 November 2022
Aboriginal Heritage Office	AHO Referral Response	21 September 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. No Approval for Secondary Dwelling

No approval is granted or implied under this Development Consent for the use of any part of the guest pavilion for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed.

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

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished

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

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in 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 \$27,960.39 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 \$2,796,039.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

7. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$10,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any turfing works and removal of any redundant driveways required as part of this consent.

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

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**8. No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

9. Amendment of Landscape Plans

The submitted Landscape Plan is to be amended in accordance with the following:

- Deletion of *Muraya paniculata*

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifier prior to issue of the Construction Certificate.

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

10. 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.

11. Erosion and Sediment Control Plan

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

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

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

Reason: Protection of the receiving environment.

12. Detailed Design of Stormwater Treatment Measures

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the stormwater plan from NB Consulting Engineers (project 2203121, 18.08.2023, rev C) and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

13. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NB Consulting Engineers, drawing number 2203121 D01, D02, D03, D04, D05, D06, D07, D08, D09, D10, D11, D12, D13, D14 and D15 Issue A, dated 10/10/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The design of the energy dissipating / spreader are to be approved by the Geotechnical Engineer to ensure slope stability and site suitability and no scouring on the unformed road reserve.
2. The stormwater outlet along the proposed driveway is to be connected via an appropriately sized RHS pipe to a new kerb and gutter provided between the existing kerb and gutter in Namba Road up to the proposed driveway crossing.

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

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

14. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of the kerb and gutter, driveway crossing and reinstatement of the old crossings in Namba Road which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified Civil engineer. The design must include the following information:

1. Kerb and gutter design between the existing kerb and gutter in Namba Road to the proposed driveway crossing.
2. 5 metre wide driveway crossing including a layback.
3. Reinstatement of the existing crossings to a suitably designed table drain.

4. Provision of turf between the boundary of Namba Road and the table drain and/or kerb and gutter.
5. Outlet(s) for the stormwater from the proposed internal driveway to the new kerb and gutter.

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

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

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

15. Vehicle Driveway Gradients

The Applicant is to ensure driveway gradients within the private property do not exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

16. Structural Adequacy and Excavation Work

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

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

Reason: To provide public and private safety.

17. Dewatering Management

In order to manage the environmental impacts that may arise from dewatering dams, a range of issues must be considered including:

- The quality and quantity of the water to be released/dewatered;
- Environmental impacts to the dam site including effects on native flora/fauna, threatened or protected species and potential for relocation
- Potential downstream impacts of the released waters
- The spread of invasive flora and fauna species

Council's dewatering permit

A dewatering permit application supported by a dewatering management report must be made to Council prior the dewatering of the dam.

A dewatering management report must include the following:

- water quality information

- sediment quality information
- proposed method of dam water disposal
- proposed method of sediment disposal
- dewatering program including rates and quantities
- environmental protection measures
- aquatic ecology and wildlife protection

The quality of the dam water is to be assessed against the Australian and New Zealand Guidelines for Fresh and Marine Water Quality ANZG (2018) guidelines for protection of aquatic ecosystems, specifically freshwater 95% level of protection trigger values. Dewatering into the stormwater drainage system or local creek will only be approved in instances where evidence has been provided confirming that the water meets the requirements of ANZG (2018) Guidelines, specifically freshwater 95% level of protection trigger values and the recreational water faecal coliforms trigger values for secondary contact and there is no other practical option for dam water disposal.

As a minimum the water to be discharged must be compliant Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request. catchment@northernbeaches.nsw.gov.au

Reason: Ensuring that dams are dewatered in an environmentally sensitive manner is important for the protection of land and water

18. Compliance with Standards

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

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

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

19. External Finishes to Walls and Roof

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

Details demonstrating compliance are to be submitted to the Certifying Authority 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with

AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

- a) The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:
- i) all cut/fill work in the tree protection zone of trees to be retained; existing levels shall only be altered after approval from the Arborist,
 - ii) tree protection and works under section 9 Recommendations (and in particular 9.6-9.9), 10 AMS and Tree Protection Requirements, and 11 Hold Points.
- b) All tree protection measures specified must:
- i) be in place before work commences on the site, and
 - ii) be maintained in good condition during the construction period, and
 - iii) remain in place for the duration of the construction works.

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

Note:

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

Reason: Tree protection.

21. Tree Removal Within the Property

- This consent approves the removal of existing trees on the subject site as listed below:
- a) tree 2 - *Photinia* spp., tree 14 - *Acmena smithii*, trees 23 and 25 *Allocasuarina littoralis*, tree 66 - *Eucalyptus grandis*, trees 72,73, 74, 75 and 86 - *Melaleuca linariifolia*, trees 101, 102, 105, 109, and 117 - *Allocasuarina littoralis*, tree 135 - *Eucalyptus haemastoma*, trees 136, 137, and 141 - *Corymbia gummifera*, tree 144 - *Melaleuca linariifolia*, tree 145 - *Allocasuarina littoralis*, trees 147, 148 and 149 - *Melaleuca linariifolia*,
 - b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

22. Tree Removal Within the Road Reserve

- This consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:
- a) tree 28 - *Eucalyptus haemastoma*,
 - b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

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

Reason: Public liability.

DURING BUILDING WORK**23. Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

24. 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.

25. **Wildlife Protection**

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

Reason: To protect native wildlife.

26. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

27. **Road Reserve**

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

Reason: Public safety.

28. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

29. **Substitution of Stormwater Treatment Measures**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must submitted to the Principal Certifier for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

30. **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.

31. **Survey Certificate**

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

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

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

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

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

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

32. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practicing Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

33. **Notification of Inspections (infrastructure works to be handed over to Council)**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Prior to pouring of kerb and gutter
- (b) Formation of table drain

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

34. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Drawing Normal High Profile and the Section 138 Roads Act application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to swale and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

35. **Site filling - Virgin Excavated Natural Material (VENM)**

Where site fill material is necessary, fill materials must:

1. Be Virgin Excavated Natural Material (VENM) only, as defined in: The Protection of the Environment Operations Act 1997
2. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
3. The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifier for approval prior to importation of material.

Reason: To ensure protection of the natural environment.

36. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

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

37. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

38. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing DA-2 by Paul Bangay dated 09/03/23), 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; 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) one additional locally native canopy tree shall be installed in the front setback, selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward, and to achieve at least 8 metres height at maturity,
- d) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) 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,
- f) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

39. Condition of Retained Vegetation - Project Arborist

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

40. No Weeds Imported On To The Site

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

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

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

41. Priority Weed Removal and Management

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed.

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

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

42. **Certification for the Installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the construction certificate plans. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifier prior to the release of an Occupation Certificate.

Reason: Protection of the receiving environment.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

45. **Certification of Civil Works and Work as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

Reason: To ensure compliance of works with Council's specification for engineering works.

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

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

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

Reason: To ensure bushland management. (DACPLF01)

47. **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.

48. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

49. **Lighting compliance**

Prior to the issue of Occupation Certificate, the Principal Certifier must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of Australian Standard 1158.3:2020 Pedestrian area (Category P) lighting – Performance and design requirements and Australian Standard 4282:2019 Control of the obtrusive effects of outdoor lighting.

Reason: To protect public health and amenity

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

50. **Landscape Maintenance**

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

Reason: To maintain local environmental amenity.

51. **Maintenance of Stormwater Treatment Measures**

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

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

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

Reason: Protection of the receiving environment.

52. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

53. **Swimming Pool/Spa Motor Noise**

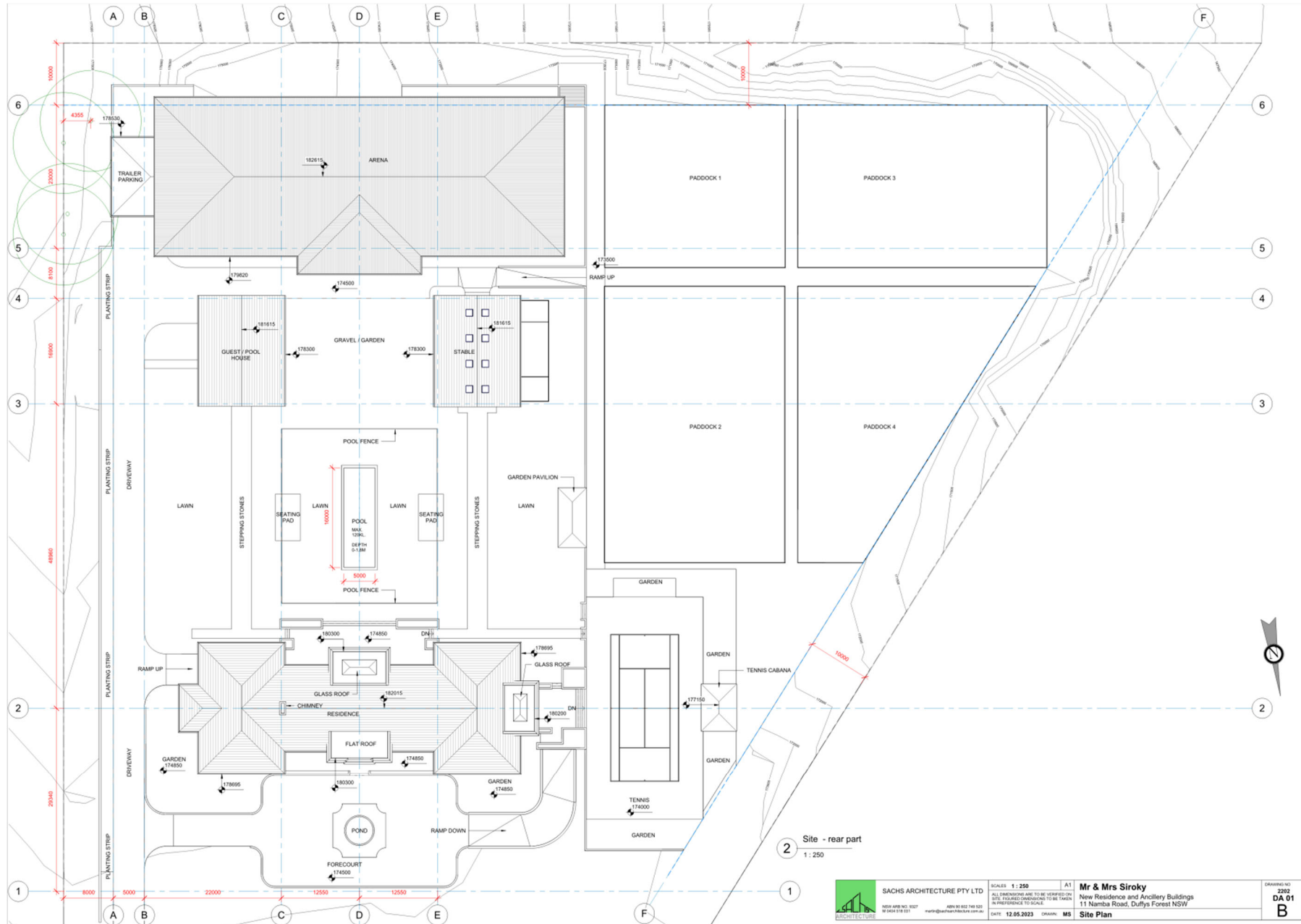
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

54. **No lighting for tennis court**

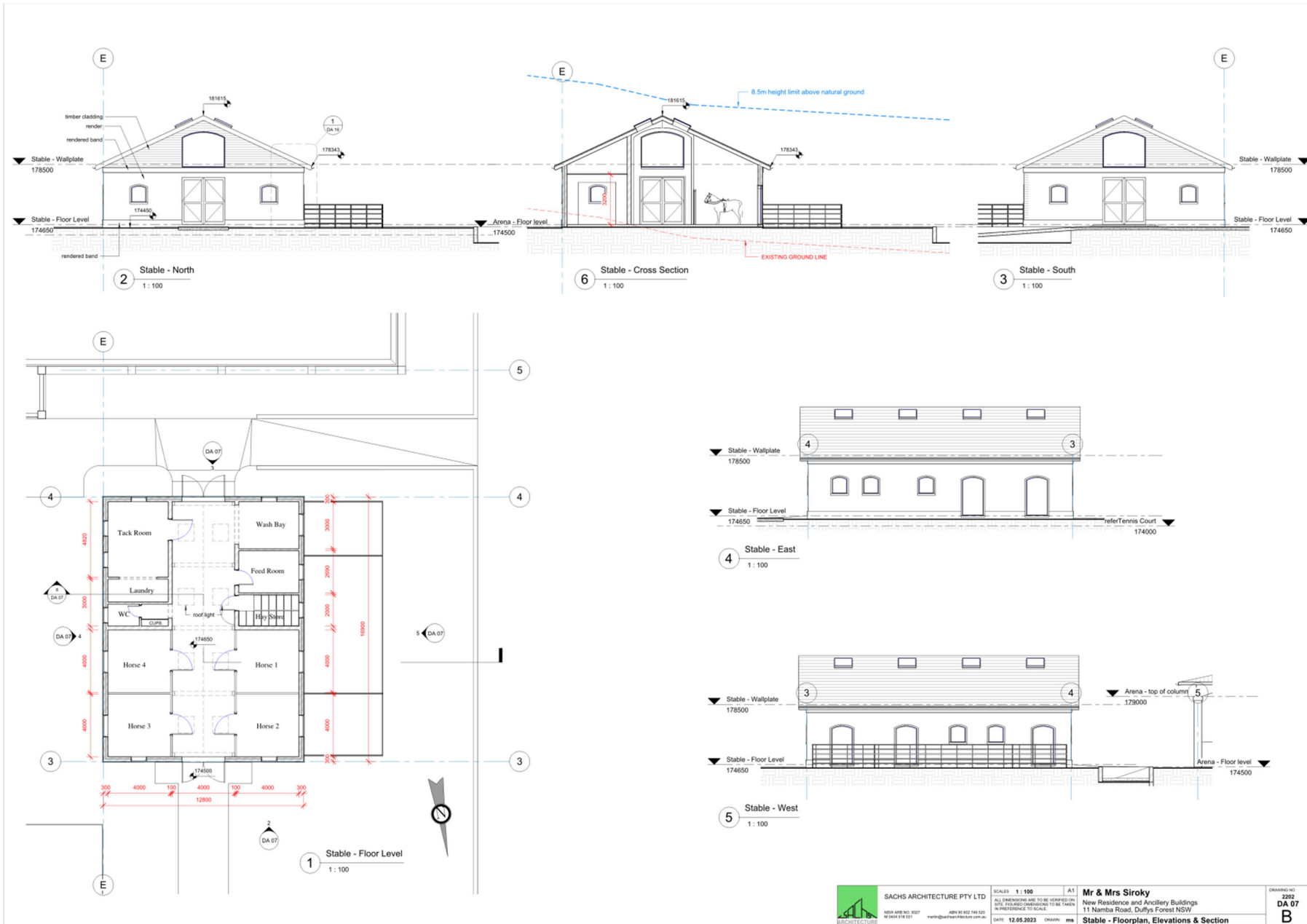
No consent is given or implied for any form of artificial illumination for the tennis court.

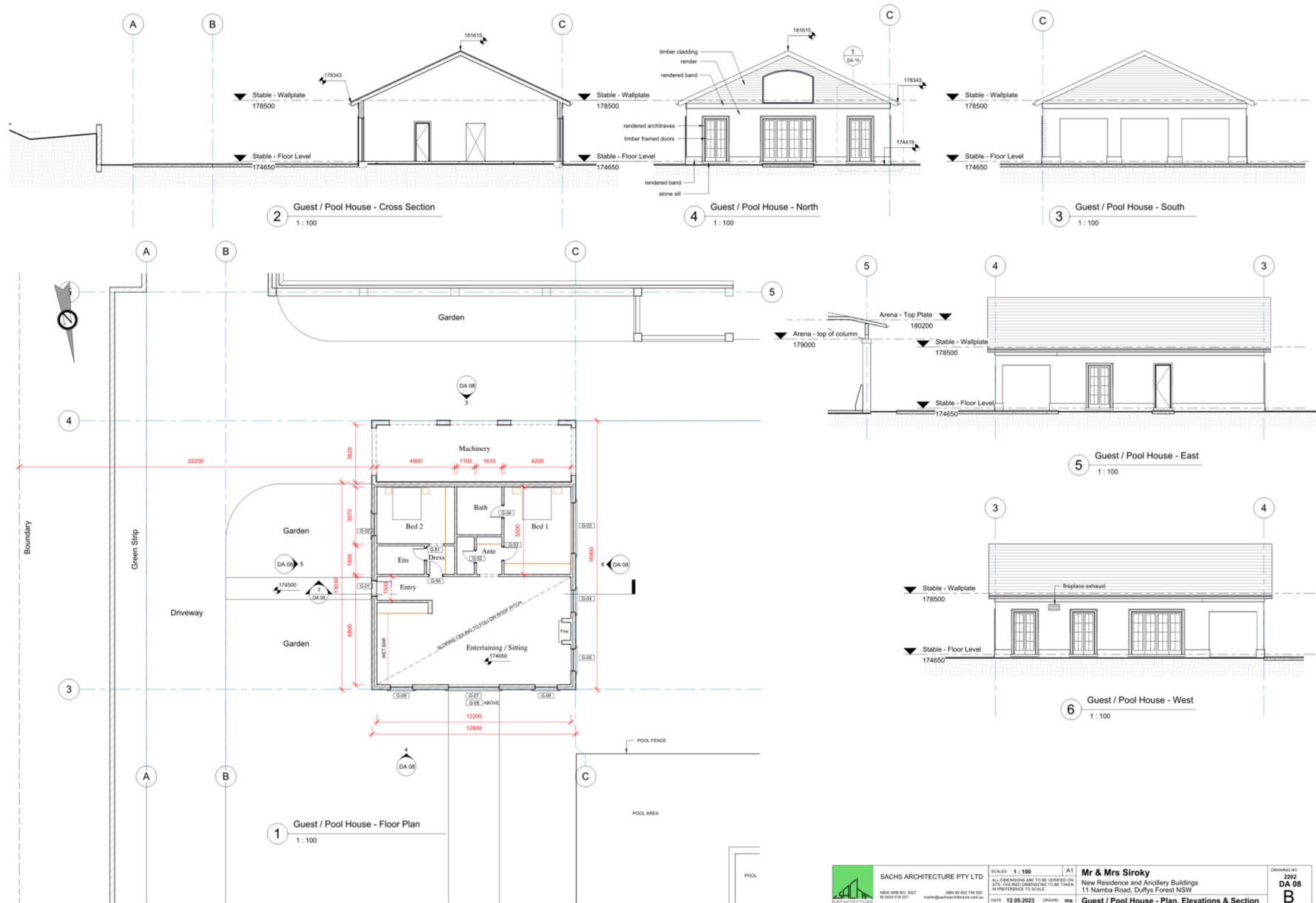
Reason: To ensure the amenity of the surrounding natural environment is protected.



SACHS ARCHITECTURE PTY LTD <small>NSW APTD NO. 9057 OF APTD 518 031</small>	<small>ALL DIMENSIONS ARE TO BE VERIFIED ON SITE. TO BE USED AS A GUIDE TO BE TAKEN IN PREFERENCE TO SCALE.</small>	<small>SCALE: 1: 250</small> <small>DATE: 12.05.2023</small> <small>DESIGNER: MS</small>	Mr & Mrs Siroky New Residence and Ancillary Buildings 11 Namba Road, Duffys Forest NSW	DRAWING NO: 2202 DA 01 B







ITEM 3.3**DA2023/1047 - 139 GEORGE STREET AVALON BEACH -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND
CONSTRUCTION OF A SWIMMING POOL****REPORTING MANAGER** Steve Findlay**TRIM FILE REF** 2023/635768**ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Site Plan and Elevations](#)
3 [↓ Clause 4.6](#)**PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1047 for alterations and additions to a dwelling house and construction of a swimming pool on land at Lot 4 DP 204164, 139 George Street AVALON BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1047
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 4 DP 204164, 139 George Street AVALON BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house and construction of a 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:	Philippa Simone Kershaw Darren John Kershaw
Applicant:	Darren John Kershaw

Application Lodged:	02/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/08/2023 to 22/08/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 29.41%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,040,500.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the existing dwelling house and construction of a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to a variation of the height of buildings development standard (8.5m) of 29.41%, which equates to a maximum height of 11.05m.

No submissions were received in relation to this application.

The critical assessment issues included a variation to the height of building development standard, a breach to the building envelope to the western elevation, and a non-compliant total landscaped area. Despite the non-compliant elements, the proposed development is acceptable on merit for the reasons detailed throughout this assessment.

The 4.6 request for the non-compliance with height standard arises due to existing excavation, resulting in a ground level lower than the natural ground, and due to the existing building height. The proposal results in a 29.41% variation for a small section of the building. Based on extrapolated natural ground levels, the height would be measured at a maximum of approximately 9.2m.

This report concludes with a recommendation that the DDP support the Clause 4.6 variation and grant **APPROVAL** to the application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling house, as follows:

- Level 1: Demolition of the existing northern deck, internal reconfiguration, changes to windows and doors;
- Levels 2 and 3 (split level): Replacement of the northern deck with privacy screening, addition of a swimming pool, changes to internal and external walls, internal reconfiguration, changes to windows and doors;
- Level 4: Changes to internal and external walls, internal reconfiguration, changes to windows and doors, addition of a northern balcony with privacy screening;
- Inclusion of an internal lift;
- Reconstruction of the roof;
- Landscaping works;
- Retaining wall works; and
- Reconfiguration of the driveway.

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

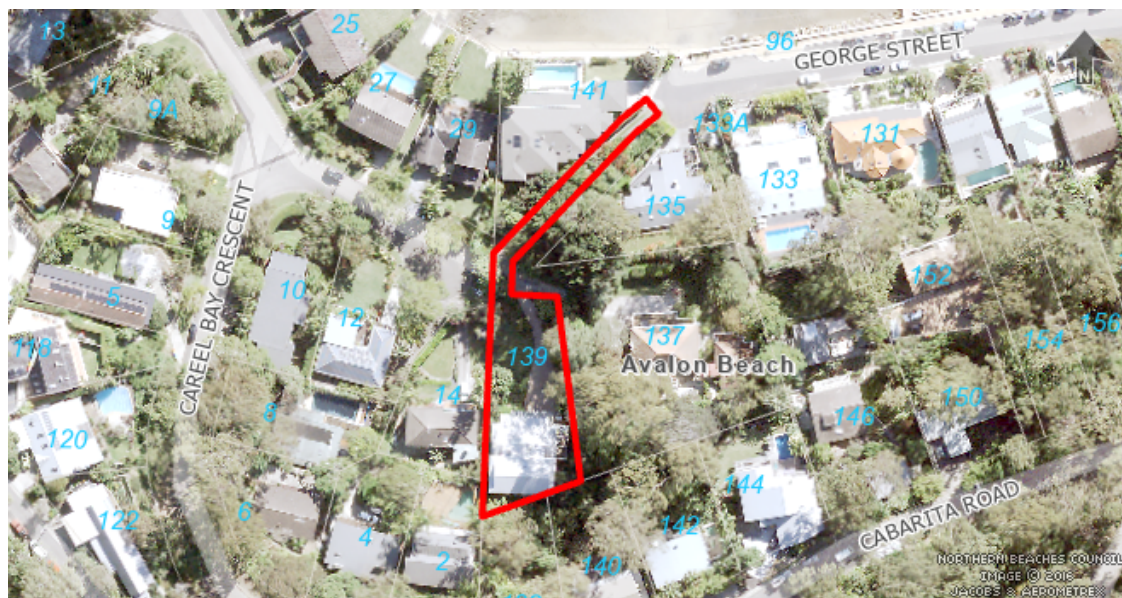
SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
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 - 7.8 Limited development on foreshore area
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 4 DP 204164 , 139 George Street AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one battleaxe allotment located on the southern side of George Street, Avalon Beach.</p> <p>The site is irregular in shape with a battleaxe handle of 4.7 metres at the cul-de-sac of George Street. The main portion of the site is a maximum of 51.6 metres deep and 22.6 metres wide. The site has a surveyed area of 1,170m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates a four-storey split-level detached dwelling house with attached double garage and single carport. The site has vehicular access via the access handle to the north to George Street and to the north-east to Careel Bay Crescent.</p> <p>The main portion of the site slopes up approximately 10 metres from front (north) to rear (south). The driveway slopes up approximately 6 metres from the street to the main portion of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by multi-storey detached dwelling houses in landscaped 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:

- DA2022/1198 for alterations and additions to a dwelling house including a swimming pool was withdrawn by the Applicant on 18 November 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. 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	No submissions were received in relation to this application.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 08/08/2023 to 22/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<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 • D1 Avalon Beach 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, the screen planting shown indicatively on the plans, adjacent to the pool, is supported</p>

Internal Referral Body	Comments
	<p>and shall be installed in accordance with the requirements outlined in the conditions of consent. No significant trees exist within the property boundary which is contrary to the requirements of the Pittwater DCP, and should the development application be approved with the non-compliant landscaped area, one canopy tree shall be installed as outlined in the conditions of consent.</p> <p>Some shrub planting will be removed to facilitate the location of the pool which is exempt, and as such can be removed or managed at the discretion of the applicant. All trees and vegetation not shown for removal shall be retained and protected, and any works in the vicinity of trees (irrespective of property boundaries) shall comply with the tree protection requirements outlined in the conditions of consent.</p>
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for alterations and additions to a single dwelling including a swimming pool.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) 2021 - Chapter 2 Coastal Use Area • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>Two shrubs are to be removed to allow for the proposed pool to be built. However, the proposed alterations and additions are to take place in previously disturbed areas of the site and are unlikely to impact on native flora and fauna. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	<p>SUPPORTED WITH CONDITIONS</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement</p>

Internal Referral Body	Comments
	<p>of Environmental Effects (SEE) report prepared by BBF Town Planners dated July 2023 the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.57m AHD would apply at the subject site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated July 2023 the ground floor level for the proposed additions and alterations is above the applicable EPL for the site, sitting at 11.87m AHD.</p> <p>The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p>
NECC (Development Engineering)	<p>Original Comments:</p> <p>Development Application is for alterations and additions to existing dwelling house including addition of a swimming pool and widening of existing driveway.</p> <p><u>Access</u></p> <p>Site is accessed via Right of Carriageway, Proposal is to</p> <ul style="list-style-type: none"> widen Right of Carriageway by moving existing retaining wall further 300mm, Applicant to provide concurrence from all the parties benefitted/burdened from this Right of Carriageway.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> widen the interval driveway by demolishing existing retaining wall and constructing new one. This retaining wall is on Council easement. Council can allow demolishing existing wall but construction of new wall within the easement is not permitted as no permanent structures are permitted over Council stormwater easement. <p><u>Stormwater</u> Site is burdened with Council stormwater pipe. Proposal is to connect site stormwater to existing pit over easement. This will be assessed under Stormwater Drainage Application (S68A) and can be condition accordingly.</p> <ul style="list-style-type: none"> There appears to be an inconsistency of location of Council stormwater pipe and easement on the survey and the architectural plans. Existing pipeline and Easement location should be plotted accurately on the architectural plans Architectural plans to show setback of proposed Pool piers from the existing pipeline and should not be placed within influence zone of Council pipe. Location of Council pipe is shown on the survey plan, this plan refers to an asset location report, this report is to be provided. <p><u>Geotech</u> Site is mapped as H1 Geotechnical Hazard. Geotechnical letter and Report by White Geotechnical Group, Ref: J4120A, Dated 15th June, 2023 and J4120, Dated 23rd March 2022 with form 1 and 1A is provided.</p> <p>Updated Comments (21 September 2023): Asset location report by MGP Pty Ltd, Job No 2021-0365, Dated 13/08/2021 is provided. Architectural plans shows that proposal is outside of Council Easement. Applicant to provide concurrence from all the parties benefited/burdened from this Right of Carriageway.</p> <p>Final Comments (27 September 2023): No objections to approval subject to conditions as recommended.</p> <p><u>Assessing Officer's Comment:</u> A condition of consent has been included in the recommendation to require unimpeded access for owners benefiting from the right of way during constructions works.</p>
NECC (Flooding)	<p>The application seeks consent for alterations and additions to the existing dwelling house, including a new swimming pool.</p> <p>The property is partially affected by the low flood risk precinct.</p>

Internal Referral Body	Comments
	There are no applicable flood related development controls from Section B3.11 of the Pittwater DCP.
NECC (Riparian Lands and Creeks)	<p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> - Supplied plans and reports; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water Management for Development Policy. <p>The site is close to Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater estuary, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p>Subject to conditions, the proposal is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater estuary.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many

provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A450176_02 dated 4 July 2023). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who 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 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

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

Comment:

The proposed development has been reviewed by Council's Development Engineering, Bushland & Biodiversity, Riparian Lands, Flooding, and Coast & Catchments teams, as well as the Aboriginal Heritage Office. Each referral body is supportive of the proposed development, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the proposed development is not likely to cause adverse impact on the matters above at (1)(a).

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

Comment:

Given the above, the proposed development is designed, sited and will be managed to avoid adverse impact as at (1)(a).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

*sited and will be managed to minimise that impact, or
if that impact cannot be minimised—the development will be managed to
mitigate that impact, and*

- c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed development does not impact upon access along any public land. The proposal does not result in unreasonable amenity impacts with respect to overshadowing or wind funnelling, visual amenity, or heritage of any description. The proposed development is designed, sited and will be managed to avoid adverse impact as at (1)(a). The proposed bulk and scale of the development has been considered throughout the assessment process and is established to be acceptable on merit.

Division 5 General

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

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

Comment:

Given the matters above, the proposed development is designed and sited so as not to cause increased risk of coastal hazards on the subject site or surrounding land.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	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	11.05m	29.41%	No

Compliance Assessment

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Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 Height of Buildings, 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 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 Clause 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.'

Section 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 Applicant's written request argues, in part:

- The excavation of the site for the purpose of the existing dwelling house distorts the maximum building height plane.
- The existing dwelling house exceeds the height of building development standard.
- The proposal presents compatible built form, bulk and mass.
- The proposal is of good design and is orderly and economic use and development of land.

The assessment made by the Applicant is agreed with. The subject site is of such a steep slope that it would qualify for consideration under Clause 4.3 (2D), were it not for the existing height of building being retained. The existing house is excavated into that topography, and the maximum building

height must be measured to the excavated ground level, in accordance with recent caselaw, under *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. The existing dwelling house reaches a maximum height of 11.05 metres above that excavated ground level and the proposed development either matches or reduces the height of the house, as demonstrated by the submitted elevations and sections. The proposed development (being alterations and additions) generally retains the setbacks of the existing dwelling house, and results in a minor increase in floor space of approximately 25m². The proposal is of a bulk and scale anticipated for the locality, and is comparable to and compatible with surrounding development.

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 Objects (c) and (g) of Clause 1.3 of the EPA Act.

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

Council is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

Clause 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 are addressed as follows:

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

Comment:

The proposed development generally retains the envelope of the existing dwelling house. The proposed development maintains or improves setbacks at each level, and either matches or reduces the overall building height, by way of better design. Despite being multiple levels, the proposed development is designed and sited so as to remain compatible with the desired character of the locality, and comparable to existing surrounding developments, directly attributable to its height and scale.

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

Comment:

As above, the proposed development matches or reduces the overall building height of the existing

dwelling house, by way of better design. The resultant building height is of comparable and compatible scale to surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal remains compliant with the requirements of Clause C1.4 Solar Access of the P21 DCP. The proposal in fact results in a minor reduction in overshadowing, by way of reduced roof form.

d) to allow for the reasonable sharing of views,

Comment:

Given the general retention of the existing built form (height and setbacks), the proposal does not result in any further obscuring of views and thereby retains equitable view sharing.

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

Comment:

The proposal does not require additional excavation for the works to the dwelling house, and is therefore acceptable with respect to the natural topography of the site. The proposal works with the current excavation made for the existing dwelling house. Excavation works are required for the construction of the pool, though this is reasonable and anticipated for the site.

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

Comment:

The proposed development is of a comparable bulk and scale to the existing dwelling house. The proposal uses suitable materials and finishes so as to complement the natural environment in which it is set. As such, the proposed development does not result in an unreasonable visual impact from adjoining land or the public domain. The subject site and surrounding sites are not heritage-listed or classified as within a heritage conservation area.

Objectives of the Zone

The underlying objectives of the C4 Environmental Living zone are addressed as follows:

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

Comment:

The proposed development is low impact in that it does not rely on earthworks other than for the pool, which is reasonable in the context. Further, the proposal retains the general building envelope, so is not of greater bulk or scale. In this way, the proposal is respectful of and responsive to the special ecological, scientific and aesthetic values of the land.

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

Comment:

The proposed development is designed and sited so as not to have an adverse impact on the special ecological, scientific and aesthetic values of the land.

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

Comment:

The proposal retains the low density residential use of the site, being for a single detached dwelling house. The proposal retains the existing integration of the built form into the landform, in that it does not rely on additional excavation, with the exception of for the pool.

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

Comment:

The proposed development suitably retains and proposes landscaping and vegetation such that it is acceptable with respect to the riparian and foreshore nature of the site, and with respect to the site being classified as a wildlife corridor.

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

Clause 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).

5.21 Flood planning

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

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

Comment:

The proposed development has been reviewed by Council's Flooding team, who is supportive of the works with no recommended conditions of consent. As such, the consent authority can be satisfied that the proposed development is acceptable with respect to the matters above.

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

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

area is impacted by flooding or coastal erosion.

Comment:

The proposed development has been reviewed by Council's Flooding team, who is supportive of the works with no recommended conditions of consent. As such, the consent authority can be satisfied that the proposed development is acceptable with respect to the matters above.

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 risk with respect to acid sulfate soils.

7.2 Earthworks

The objective of Clause 7.2 Earthworks requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

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

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

Comment:

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

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

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

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the

proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.8 Limited development on foreshore area

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

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The northern-most portion of the access handle of the site is mapped as being within the foreshore area. The proposed development does not include works to this portion of the site.

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

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

Comment:

The proposed development does not include works to the portion of the site mapped as being in the foreshore area. As such, the proposed development is acceptable with respect to the matters above.

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

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

Comment:

The proposed development does not include works to the portion of the site mapped as being in the foreshore area. As such, the proposed development is acceptable with respect to the matters above.

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 supplied with the above essential services. The proposed development retains and relies upon these services.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Min. 6.5m	Min. 15.4m	-	Yes
Rear building line	Min. 6.5m	Min. 1.3m	80%	No - Existing and unchanged
Side building line	E: 2.5m	Carport: 700mm	72%	No - Existing and unchanged
		New works: Min. 4.7m	-	Yes
	W: 1m	Min. 1.4m	-	Yes
Building envelope	E: 3.5m	Within envelope	-	Yes
	W: 3.5m	Outside envelope (Max. 3.7m)	62.7%	No
Landscaped area	Min. 60% (702m ²)	54.96% (643m ² , incl. 6% hard space)	8.4%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
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
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D1.21 Masterplan - Careel Bay	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

This clause requires that dwelling houses be a maximum of two storeys. The proposal retains the existing four storey (split level) design. While this is not in strict compliance, the proposal (being alterations and additions to the existing dwelling) relies on this existing non-compliance and does not exacerbate the matter. The proposal retains compatible with the desired character of the locality by way of good design, and in that it is comparable to existing surrounding development.

C1.4 Solar Access

The proposal results in morning overshadowing to Nos. 2 and 14 Careel Bay Crescent, midday overshadowing to No. 138 Cabarita Road, and afternoon overshadowing to No. 140 Cabarita Road. The proposal remains compliant with the requirements of Clause C1.4 Solar Access.

D1.14 Landscaped Area - Environmentally Sensitive Land

The proposed development includes 54.96% of the site (643m², incl. 6% hard space) as landscaped area, where 60% (702m²) is required. The underlying outcomes of the control are addressed as follows:

Achieve the desired future character of the Locality.

Comment:

The proposed development is consistent with the requirements of Clause A4.1 Avalon Locality, which details the desired future character for the subject site and surrounds.

The bulk and scale of the built form is minimised.

Comment:

The proposed development is classified as alterations and additions to the existing dwelling house. The non-compliant elements are the result of maintaining existing building height and setbacks, and are acceptable on merit for the reasons detailed throughout this report.

A reasonable level of amenity and solar access is provided and maintained.

Comment:

The proposed development is designed and sited so as not to result in any unreasonable amenity or solar access impacts to the subject site or adjacent sites.

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

Comment:

The proposed development is supported by suitable vegetation and landscaping, in order to reduce the visual impact of the proposed built form.

Conservation of natural vegetation and biodiversity.

Comment:

The proposed development does not unreasonably remove natural vegetation, nor unreasonably impact upon biodiversity, in that it generally retains the existing footprint, with additional hard space being for minor dwelling extensions, addition of the swimming pool, and reconfiguration of the driveway.

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

Comment:

The proposed development is designed in consistency with Council's Water Management for Development Policy, and retains ample soft land to assist in reduction of runoff, as well as prevention of soil erosion and siltation.

To preserve and enhance the rural and bushland character of the area.

Comment:

The subject site is not rural. The proposed development retains all significant vegetation, thereby retaining the bushland character of the area.

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment:

The proposed development maintains ample soft landscaping for infiltration to the water table and minimisation of run off.

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 \$20,405 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,040,500.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to the existing dwelling house has been referred to the Development Determination Panel (DDP) due to a variation of the height of buildings development standard of 29.41%.

No submissions were received in relation to this application.

The critical assessment issues included a variation to the height of building development standard, a breach to the building envelope to the western elevation, and a non-compliant total landscaped area.

The Clause 4.6 variation is well founded and is supported.

Despite the non-compliant elements, the proposed development is acceptable on merit for the reasons detailed throughout this assessment.

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.

It is recommended that the Panel support the Clause 4.6 variation and **APPROVE** the application.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of Clause 4.3 Height of Buildings development standard pursuant to Subclause (3) of Clause 4.6 of the PLEP 2014 as the Applicant's written request has adequately addressed the merits required to be demonstrated. 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 DA2023/1047 for Alterations and additions to a dwelling house and construction of a swimming pool on land at Lot 4 DP 204164, 139 George Street, AVALON BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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
A101	3	Site Plan	Blue Sky Building Designs	29 May 2023
A104	3	Level 1 - Proposed	Blue Sky Building Designs	29 May 2023
A106	3	Level 2 & 3 - Proposed	Blue Sky Building Designs	29 May 2023
A108	3	Level 4 - Proposed	Blue Sky Building Designs	29 May 2023
A109	3	Roof Plan	Blue Sky Building Designs	29 May 2023
A110	3	Pool Plan	Blue Sky Building Designs	29 May 2023
A111	3	North Elevation	Blue Sky Building Designs	29 May 2023
A112	3	North Elevation incl. Pool	Blue Sky Building Designs	29 May 2023
A113	3	East & South Elevations	Blue Sky Building Designs	29 May 2023
A114	3	West Elevation	Blue Sky Building Designs	29 May 2023
A115	3	Sections	Blue Sky Building Designs	29 May 2023
A116	3	Sections	Blue Sky Building Designs	29 May 2023
A117	3	Sections	Blue Sky Building Designs	29 May 2023

1 of 6	A-01	Title Page & General Notes	Broadcrest Engineering and Environmental Consultants	13 April 2022
2 of 6	A-01	Roof Drainage Plan	Broadcrest Engineering and Environmental Consultants	13 April 2022
3 of 6	A-01	2nd Floor - Drainage Plan	Broadcrest Engineering and Environmental Consultants	13 April 2022
4 of 6	A-01	1st Floor - Drainage Plan	Broadcrest Engineering and Environmental Consultants	13 April 2022
5 of 6	A-01	G Floor - Drainage Plan	Broadcrest Engineering and Environmental Consultants	13 April 2022
6 of 6	A-01	RWT Details	Broadcrest Engineering and Environmental Consultants	13 April 2022

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A450176_02	-	Blue Sky Building Designs	4 July 2023
Flood Risk Review	1813-FR-A-02	Broadcrest Engineering and Environmental Consultants	26 June 2023
Geotechnical Investigation	J4120	White Geotechnical Group	23 March 2022
Geotechnical Investigation Addendum	J4120A	White Geotechnical Group	15 June 2023
Waste Management Plan	-	Applicant	27 July 2023

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	2023/493138 Ausgrid Referral Response	4 August 2023

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

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

3. Prescribed Conditions

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

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

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than

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

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$20,405.00 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 \$2,040,500.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

7. Construction, Excavation and Associated Works Security Bond(s)

The applicant is to lodge a bond with Council for the following:

Drainage Works

As security against any damage to council pipe and pit or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$30,000.00.

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

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. 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 council pit present within site.

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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical letter and Report prepared by White Geotechnical Group, Ref: J4120A, Dated 15th June, 2023 and J4120, Dated 23rd March 2022 respectively are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to

be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. Vehicle Driveway Gradients

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility.

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

Reason: To ensure suitable vehicular access to private property.

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

The Applicant shall submit a suitably qualified Structural and Geotechnical Engineers' certification that the completed works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans are to be provided to Council for acceptance.

Council's acceptance is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

12. Stormwater Drainage Application

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

Engineering Plans must include the following information:

- 1) Council's stormwater pipe within site shall be accurately located with confirmed dimensions including depth, and plot to scale. This should be carried out by a service locating contractor and registered surveyor (evidence of methodology used for locating stormwater system should be provided).
- 2) Council's stormwater pipeline and associated infrastructure to be shown on the stormwater plans that outline the proposal.
- 3) Engineers design certificate for the site stormwater and further its connection to Council pit to be provided.

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

Certifier prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development

13. Pre-Construction Stormwater Assets Dilapidation Report

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

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

14. Stormwater Management

Stormwater shall be disposed of in accordance with Council's Policy. A stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Water quality is not to be reduced from pre-development conditions and water quantity is not to be increased from pre-development levels.

Details demonstrating compliance are to be prepared by a registered professional stormwater engineer with chartered professional status (CP Eng) and who has an appropriate level of professional indemnity insurance and must be submitted to the Principal Certifier for approval prior to issue of the Construction Certificate.

Reason: To ensure that the generation of additional stormwater discharge from the site, due to increases in impervious surfaces, does not adversely impact receiving waters.

15. Erosion and Sediment Control Plan

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

16. **Compliance with Standards**

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

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

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

17. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Installation and Maintenance of Sediment and Erosion Control**

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

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

DURING BUILDING WORK

19. **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 AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in

arboriculture,

- iii) Removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) Structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) Excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) Should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) Any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
- ix) The activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) Tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
- xi) The tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) The Principal Certifier must ensure that:

- i) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

20. Condition of Trees

a) 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:

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

b) Any mitigating measures and recommendations required by the Arborist/Project Arborist are

to be implemented.

c) 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.

21. **Wildlife Protection**

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

Reason: To protect native wildlife.

22. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

23. **Road Reserve**

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

Reason: Public safety.

24. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

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

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

Reason: To protect the receiving environment.

25. **Survey Certificate**

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

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

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

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

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

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

26. Installation and Maintenance of Sediment Control

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

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

27. 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.

28. Access to Rights of Carriageway

Access to the rights of carriageway labelled (C), (D), and (E) on the submitted survey must remain unimpeded for all benefiting parties during works.

Reason: To maintain access to the right of way.

29. Geotechnical Issues

All conditions outlined in Geotechnical investigation prepared by White Geotechnical Group dated March 2022 are to be complied with and adhered to throughout development.

Reason: To ensure excavations, foundations, footings, stormwater management, vibrations from works are undertaken in an appropriate manner and structurally sound.

30. Aboriginal Heritage

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

31. Required Tree Planting

a) One (1) locally native tree shall be planted within the property boundary to achieve at least 6 metres height at maturity. Tree planting shall be a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn.

b) 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.

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

Reason: To maintain environmental amenity

32. Required Screen Planting

a) Screen planting shall be installed in accordance with the following:

- i) Along the western boundary for the entirety of the pool area, from the dwelling to at least the northern end of the pool,
- ii) The selected planting is to comprise of species capable of attaining a height of 2.5 metres at maturity,
- iii) Plants are to be installed at minimum 1 metre intervals (or less) and be a suitable pot size so that plant height is at least 1 metre at installation, planted in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- iv) Where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS 1926.1 for a non-climbable zone.

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

Reason: To maintain environmental amenity.

33. Native Landscaping

Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

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

34. No Weeds Imported On To The Site

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

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

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

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

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

Reason: Protection of Council's infrastructure.

36. **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.

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

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

38. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**
The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

39. **Geotechnical Certification Prior to Occupation Certificate**
The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

40. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

41. **Landscape Maintenance**

a) If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) Trees and shrubs required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

c) If any tree or shrub 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 any conditions of consent.

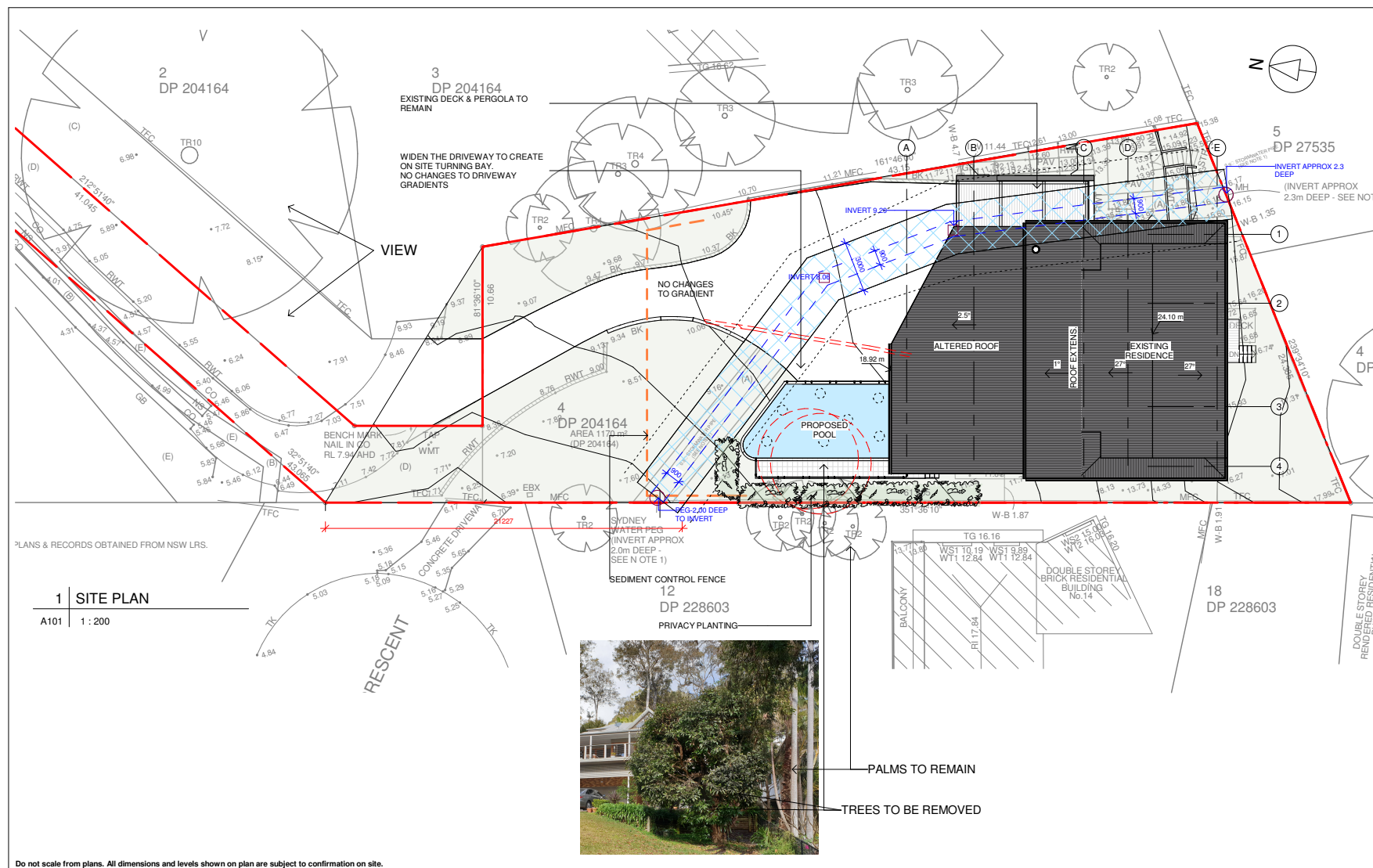
d) The approved landscape planted areas, whether containing lawn, gardens or planters, or other shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

42. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.



ISSUE	DATE	DESCRIPTION	DRWN	CHKD
1	12.10.2022	DA 1	KM	
3	29.05.2023	DA 2	KM	

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PROJECT TITLE: ALTERATION & ADDITION

PROJECT NO.: AVA.2021012

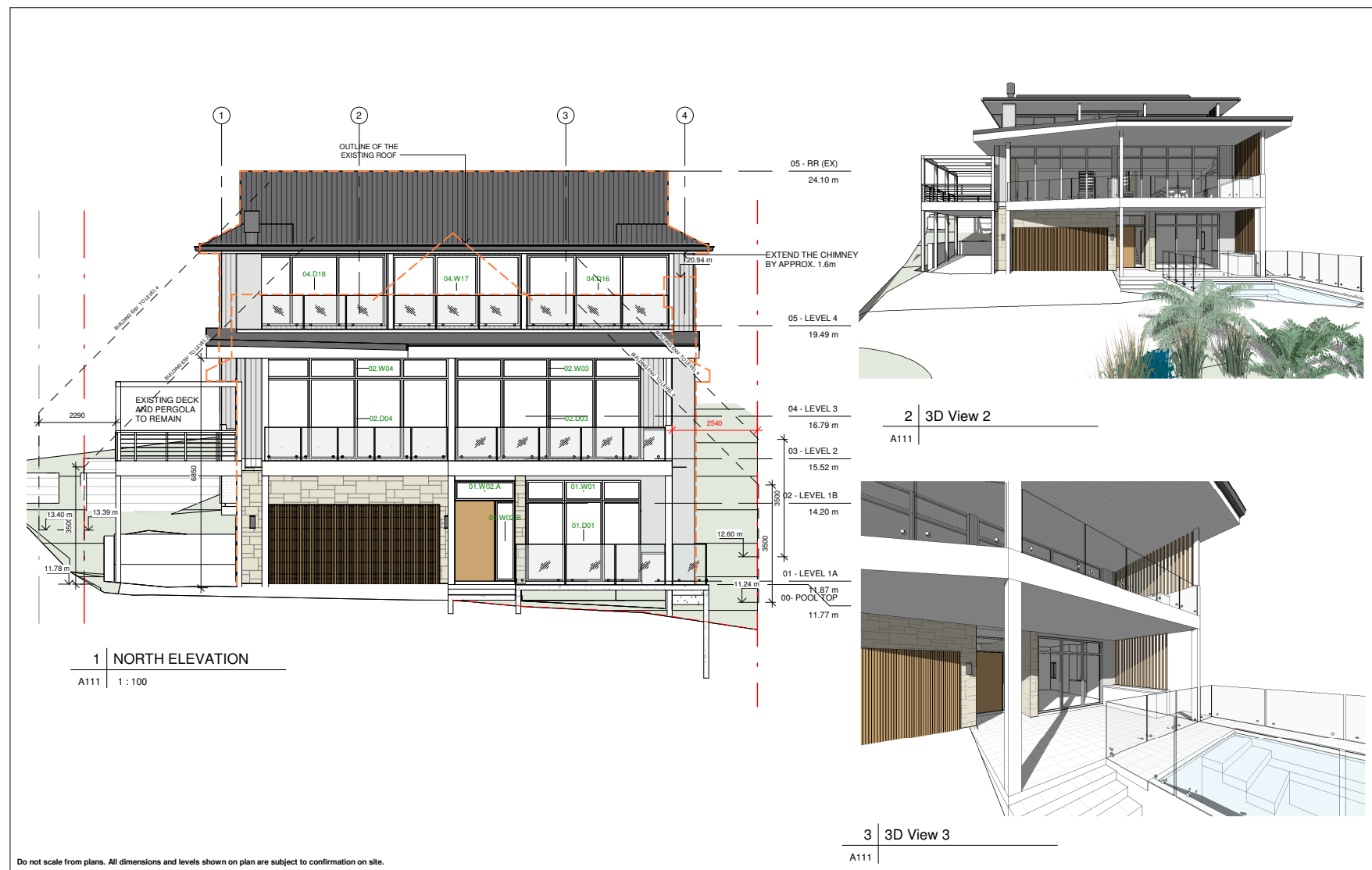
AT: 139 GEORGE ST, AVALON 2107

FOR: DARREN KERSHAW

SHEET TITLE: SITE PLAN

SHEET NO: A101

SCALE A3: 1 : 200



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3	29.05.2023	DA 2	KM	

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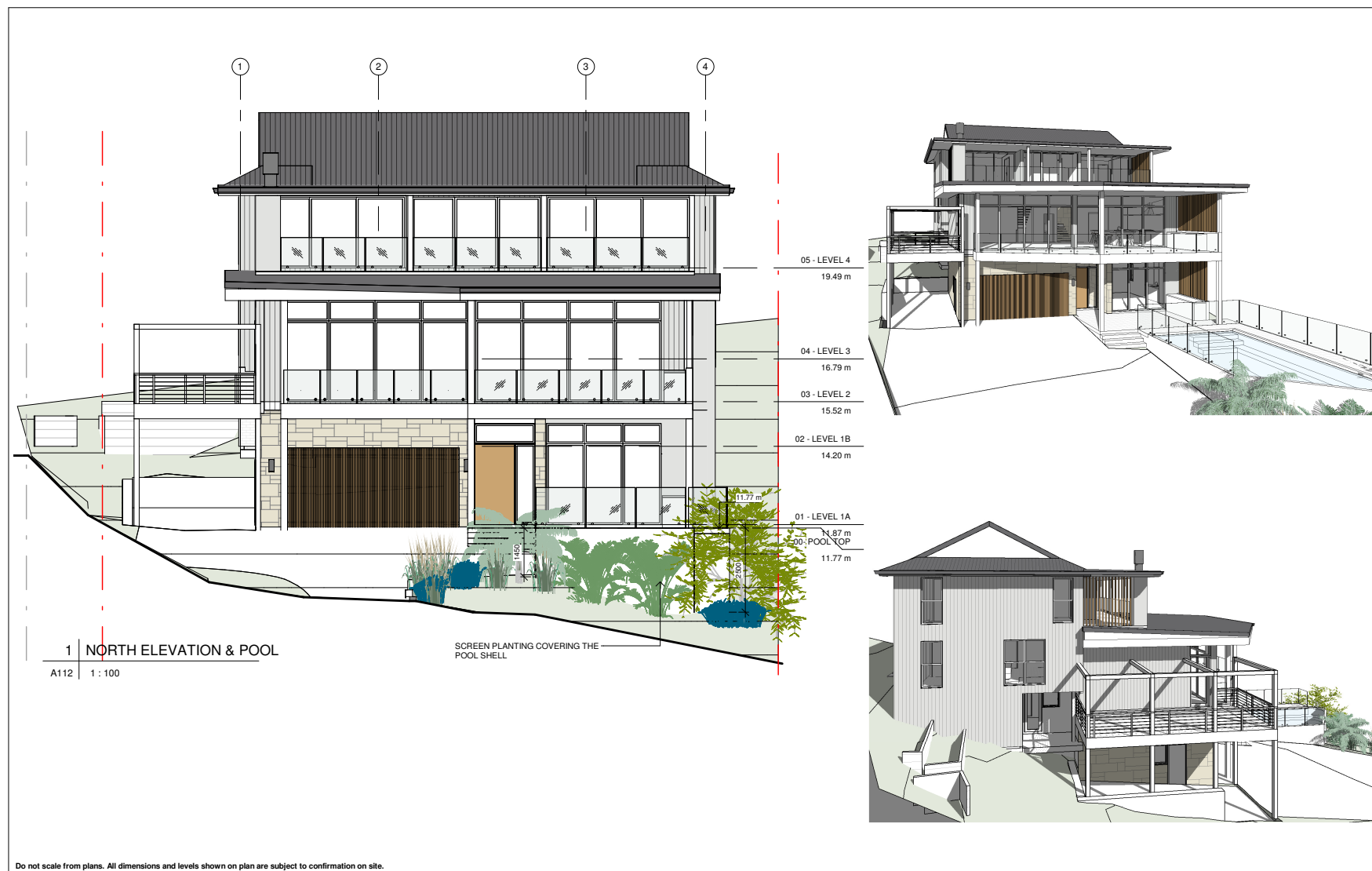
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PROJECT TITLE: ALTERATION & ADDITION
PROJECT NO.: AVA.2021012
AT: 139 GEORGE ST, AVALON 2107
FOR: DARREN KERSHAW

SHEET TITLE: NORTH ELEVATION

SHEET NO: A111

SCALE A3: 1 : 100



Do not scale from plans. All dimensions and levels shown on plan are subject to confirmation on site.

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1	12.10.2022	DA 1	KM	
3	29.05.2023	DA 2	KM	

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PROJECT TITLE: ALTERATION & ADDITION
PROJECT NO.: AVA.2021012
AT: 139 GEORGE ST, AVALON 2107
FOR: DARREN KERSHAW

SHEET TITLE: NORTH ELEVATION INCL POOL

SHEET NO: A112

SCALE A3: 1 : 100

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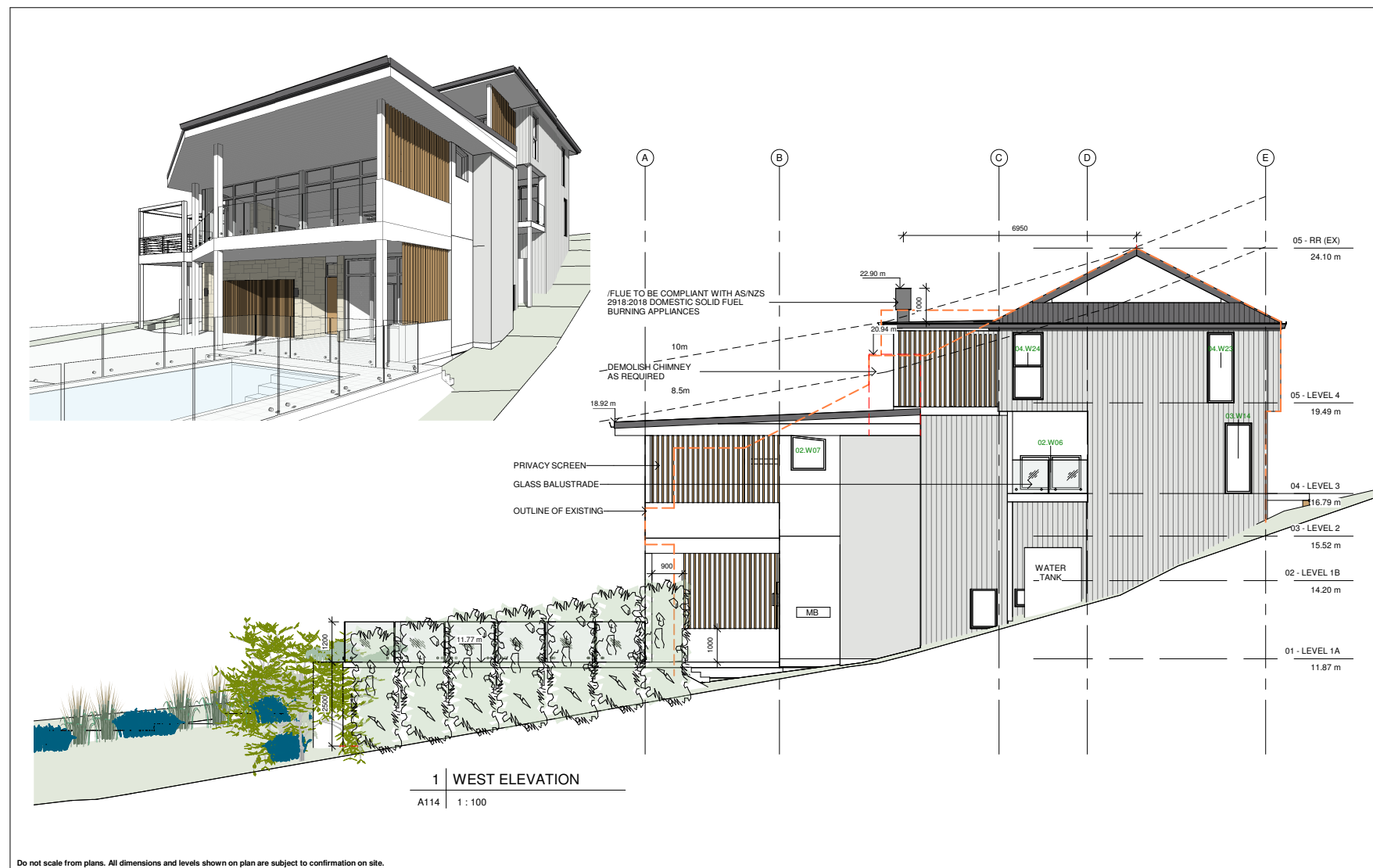
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PROJECT TITLE: ALTERATION & ADDITION
PROJECT NO.: AVA.2021012
AT: 139 GEORGE ST, AVALON 2107
FOR: DARREN KERSHAW

SHEET TITLE: EAST & SOUTH ELEVATIONS

SHEET NO: A113

SCALE A3: 1 : 100



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3	29.05.2023	DA 2	KM	

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PROJECT TITLE: ALTERATION & ADDITION
PROJECT NO.: AVA.2021012
AT: 139 GEORGE ST, AVALON 2107
FOR: DARREN KERSHAW

SHEET TITLE: WEST ELEVATION

SHEET NO: A114

SCALE A3: 1 : 100



CLAUSE 4.6

Height of Building

**139 George Street,
Avalon Beach**

Suite 1, 9 Narabang Way Belrose NSW 2085
Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

RESPONSIBLE FOR THIS REPORT:

Michael Haynes	Director - BBF Town Planners
	Master Urban and Regional Planning Sydney University

July 2023

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CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING

1 Clause 4.6 exception for Height of Building

1.1 Overview

Clause 4.6 of the Pittwater LEP 2014 (LEP) provides a mechanism for an exception to a development standard.

The proposal contravenes LEP Clause 4.3 'Height of Building' (building height), which is a development standard, and an exception is sought.

The building height applicable to the site is 8.5m pursuant to cl 4.3 and 10m cl 4.3(2D).

The existing and proposed developments exceed the building height standard.

The DA has used the *Merman* method of calculating building height in response to the Commissioner's judgment in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

In summary:

- the existing building height exceeds the development standard as shown within figure 8 below and on the architectural plans. It displays maximum building heights of:
 - Approx. 9.9m at the rear part of the house
 - Approx. 11.05m
- the proposed building height is variable and ranges up to 10.1m above the existing ground level (Figure 8).

1.2 Additional height provision for sloping land

Clause 4.3 2(D) applies to the proposal because the building footprint is situated on a slope that is in excess of 16.7 degrees. However, the provision is not rely upon this provision because the proposal exceeds 10m and therefore does not satisfy the numerical limit (10m) within clause 4.3 2(D). Notwithstanding, the clause 4.6 exception provides the necessary mechanism to approve the proposed building height.

1.3 Site and location description

The site is located at 139 George Street, Avalon Beach and legally described as Lot 4 in Deposited Plan 204164. The site has an area of 1,170m².

The site is located on the southern side of George Street and is accessed via a long 'battle-axe shaped' driveway from George Street.

The allotment is of irregular shape, with a narrow northern street frontage of 4.57m.

The allotment has a second egress from its western side via Careel Bay Crescent.

The property contains an existing large split-level dwelling house, carport, double garage, with various elevated decks above the ground level.

The site has a long, narrow driveway which provides access to the rear of the lot where the dwelling is situated. The existing dwelling house is positioned close to the rear boundary.

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING

The topography slopes steeply from the rear of the dwelling to the front of the site. There is a level difference of approximately 9.46m between the rear of the dwelling house and the front boundary (RL 17.99 to RL 8.53).

The property is within a north facing hillside that enjoys views over Careel Bay and Pittwater. There is dense vegetation to the east and south of the site.

The undulating topography results in dwelling houses being sited at different levels and within an irregular pattern within the hillside.

Neighbouring properties to the east, south, south-east and south-west are significantly separated, elevated and screened by vegetation.

The figures on the following pages depict the character of the property and its existing development.

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING

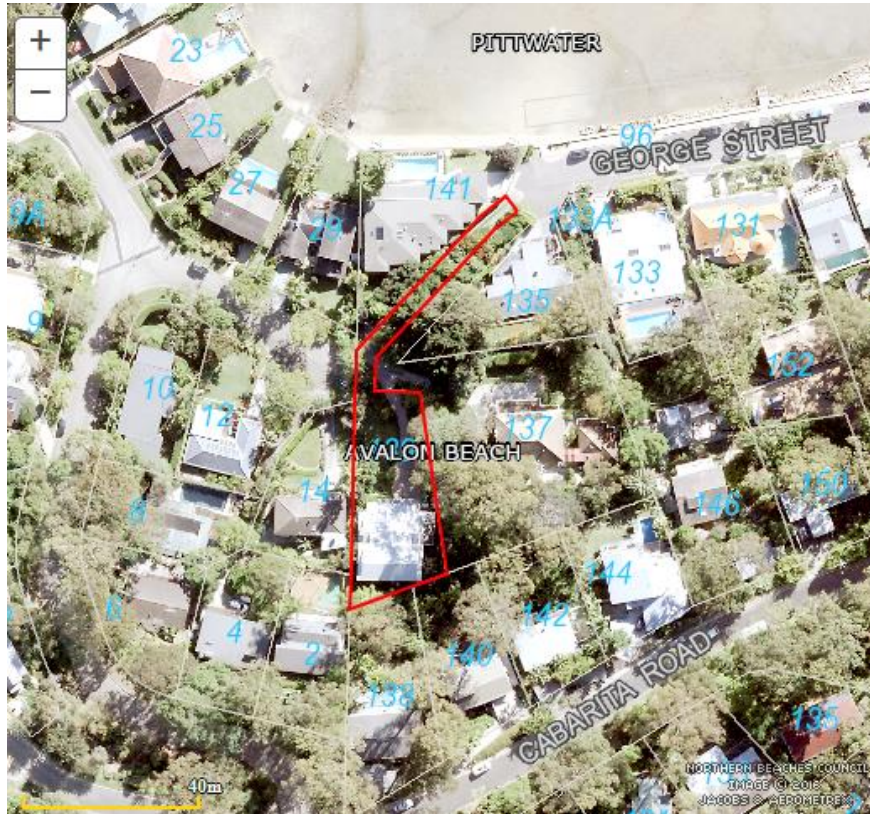


Figure 1 – Alignment, orientation, and spatial layout of the subject site and adjoining dwellings (courtesy Northern Beaches Council)

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING



Figure 2 – the configuration and orientation of the subject site (courtesy Northern Beaches Council Maps)

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING



Figure 3 – existing northern elevation



Figure 4 – proposed northern elevation

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING

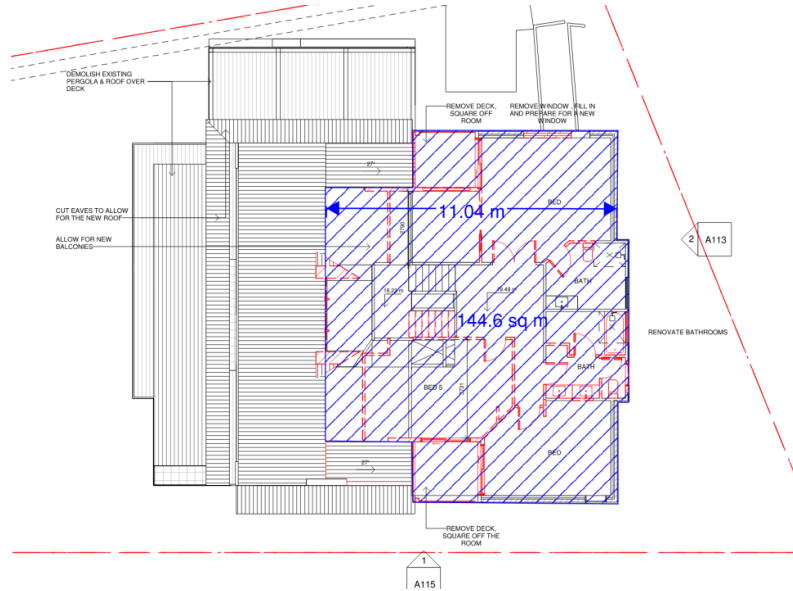


Figure 5 – existing floorplate of the upper building level; the floor plate is 11m deep and approx. 144m² in area

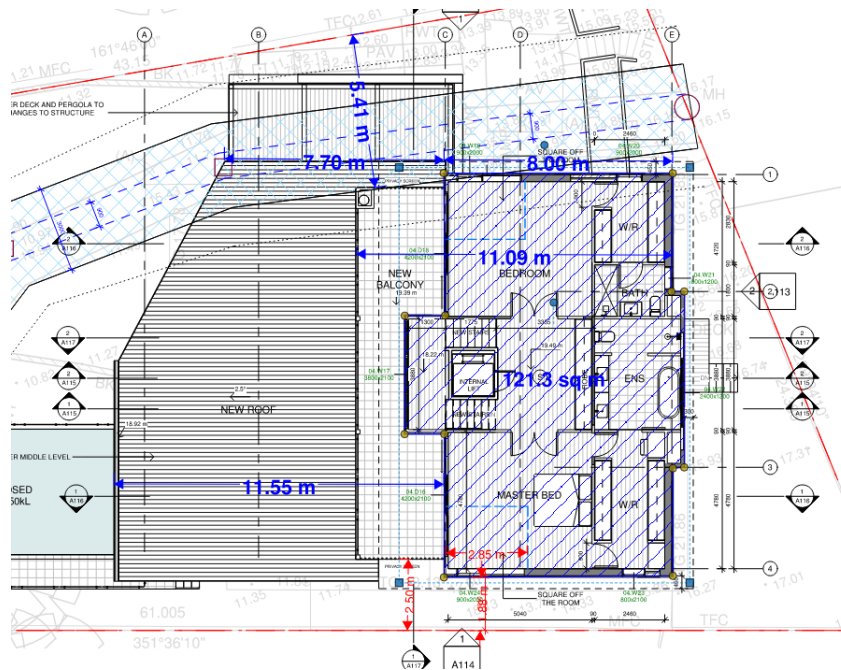


Figure 6 – proposed floorplate of the upper building level; the floor plate is approx. 8m deep and 121m² in area

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING

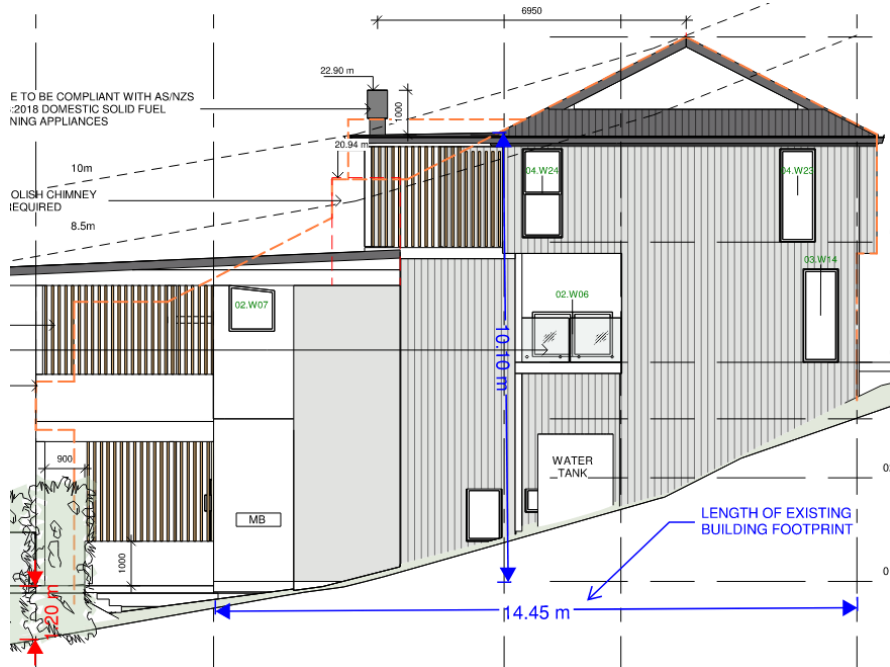


Figure 7 – extent of the proposed exception – west elevation

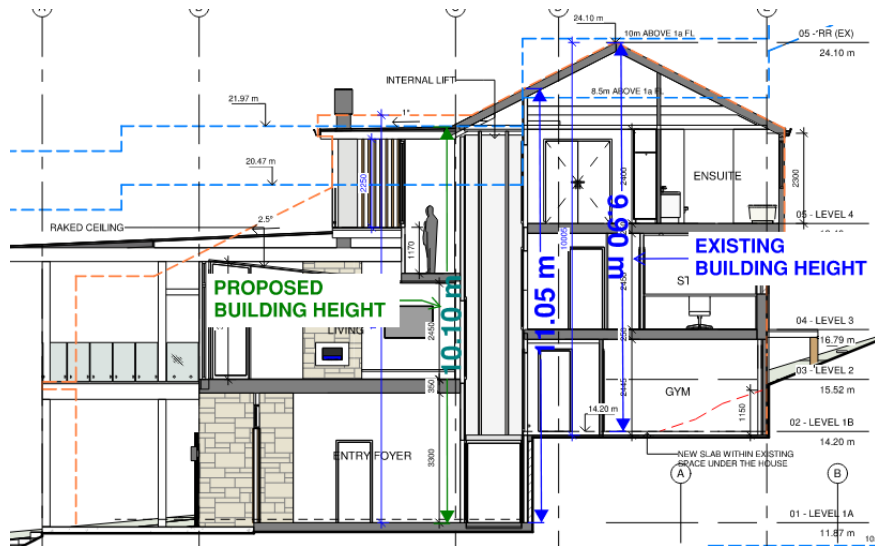


Figure 8 – extent of the existing and proposed exception at the section 4-4

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING

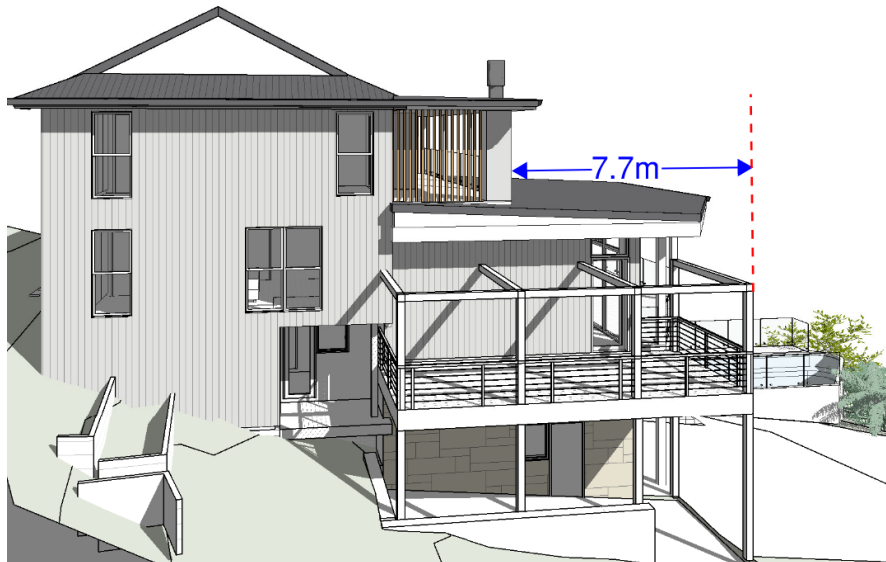


Figure 9 – the upper-level height exception is significantly set back from the front of the dwelling and will present as a recessive form to downslope areas



Figure 10 – existing dwelling frontage as viewed from shared access driveway

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING



Figure 11 – existing presentation of site to Careel Bay Crescent. The existing dwelling is obscured in this photograph

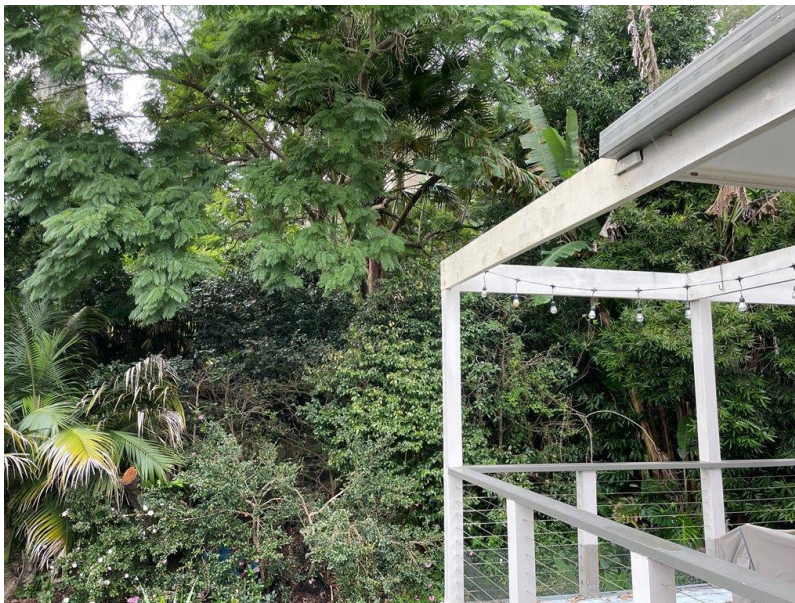


Figure 12 – existing privacy interface with eastern adjoining property at 137 George Street

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING



Figure 13 – existing privacy Interface with south eastern adjoining property at 142 Cabarita Road

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING



VIEW FROM 139 GEORGE ST, AVALON - RIDGE LINE
(IMAGE FROM REALESTATE.COM.AU)



VIEW FROM 2 CAREEL BAY CRES, AVALON
(IMAGE FROM REALESTATE.COM.AU)



VIEW FROM 140 CABARITA RD, AVALON
(IMAGE FROM REALESTATE.COM.AU)



VIEW FROM 138 CABARITA RD, AVALON
(IMAGE FROM REALESTATE.COM.AU)

Figure 14 – the character of views to Pittwater from four nearby / adjoining properties

KEY STATUTORY CONSIDERATIONS

2 Key statutory considerations

2.1.1 Objectives of clause 4.6

The objectives of clause 4.6 are as follows:

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

2.1.2 Objectives of Clause 4.3 Height of Building

The objectives of Clause 4.3 Height of Building are:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

2.1.3 Ground level (existing)

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

2.1.4 Objectives of the C4 Environmental Living Zone

The objectives of the C4 Environmental Living zone are:

- To provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.*
- To ensure that residential development does not have an adverse effect on those values.*
- To provide for residential development of a low density and scale integrated with the landform and landscape.*
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

ASSESSMENT

3 Assessment

Within the spirit of the objectives of clause 4.6, the matters in support of the proposed exception are demonstrated by the characteristics of the proposal and circumstances of the case as set out below.

As required by clause 4.6 (3) the following is a *written request* for the consent authority's consideration.

3.1 4.6 (3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances

Having regard for the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, and in accordance with 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the height standard are satisfied.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The first possible way is relevant to the subject matter and is repeated below:

1st *'The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.'*

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable'.

. In summary, the proposed height exception does not threaten the proposal's ability:

- to achieve a development is consistent with the desired character of the locality;
- to achieve a development that is compatible with the height and scale of development within the property's visual catchment;
- due to the battle-axe location of the site, and the dwelling house's location at the rear of the site, has a small visual catchment. From where it can be seen, the design minimises its visual impact on surrounding land due to its recessive form.
- to achieve an appropriate shading outcome to neighbouring properties;
- to achieve view sharing noting the additional building form is at the front, north and lower than the existing dwelling house.
- to achieve a building form and mass that is responsive to the site sloping topography and presents appropriately to adjoining land;
- to achieve a development on the property that results in an enhanced visual quality through improved materials and building design.

ASSESSMENT

Strict compliance with the development standard would therefore be unreasonable and unnecessary in these circumstances.

The objectives of the height of buildings standard are addressed in further detail within section 3.4.1 below.

3.2 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard. The environmental planning grounds in support of the exception are described below.

3.2.1 Ground 1 - the prior excavation of the site distorts the maximum building height plane.

The method of calculating the building height follows the Commissioner's judgment in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

In accordance with the Merman judgement [at 74]

'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 cl 4.6(3)(b) of LEP 2014'.

It is clear from the various survey and architectural plans accompanying the application that the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. The proposed building height is compatible with the building heights of the existing development upon the site and nearby dwelling houses, as further addressed below.

3.2.2 Ground 2 – the existing development exceeds the height standard and the proposal involves a lower building height

The existing development has a maximum building height of approx. 11.05m and already exceeds the building height standard. The proposed addition results in a lower building height.

The design, form, and location of the existing development limits the ability for the proposal to achieve strict compliance with the numerical standard. The proposed additional building form is at the front, north, and lower than the existing dwelling house.

The additions will provide a recessive upper- level, and a more contemporary design that is responsive to the site conditions.

3.2.3 Ground 3 – a compatible built form, bulk, and mass is proposed

The proposed developments' height, mass, and form is compatible with other residential dwelling forms within the visual catchment. This is further addressed in response to objective (a) of the standard within section 3.3.1 of this report.

ASSESSMENT

The proposal displays an appropriate bulk and scale within a vegetated landscaped setting noting:

- The proposal maintains the existing developments setback pattern.
- The property has a limited visual catchment due to its position within a battle-axe allotment and the vegetated character of the surrounding land.
- The proposal involves a modest GFA/FSR increase noting the existing GFA is 322m² (FSR of 0.28:1) and the proposed GFA is 347m² / 0.29:1, maintaining a suburban character below 0.5 to 1 as per the planning principle for 'Compatibility in a suburban context' established in *Salanitro-Chafei v Ashfield Council* [2005] NSWLEC 366 at 23-28.
- The proposal appropriately responds to, and sensitively relates to the site's setting and characteristics including, the sloping topography, irregular dwelling house pattern, allotment configuration, established landscape screen planting, orientation, outlook, and built form context. The proposed building height exception is setback from the northern façade, comprises a reduced volume of the dwelling's first floor level, and are recessed.
- The proposal is located appropriately upon the site in terms of the topography and the landscaped hillside setting. The proposed recessed upper-level will contribute to achieving a development of reduced bulk and scale that is integrated with the sloping landform.

The proposed developments' height is compatible with the scale and form of residential DWELLINGS within the visual catchment. This is further addressed in response to objective (a) of the standard within section 3.3.1 of this report.

3.2.4 Ground 4 – the proposal is of good design and satisfies the relevant objectives of the Environmental Planning and Assessment Act

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

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

In response to (c), the proposal results in a residential development that will promote orderly and economic use and development of land.

The levels and configuration of the existing dwelling house limits the ability to achieve strict compliance with the building height development standard.

The proposed development responds appropriately to the height, bulk, scale, and alignment of the adjoining development.

The proposed design is successful in minimising its impacts. It incorporates an upper-level floor plate with increased setbacks, that are appropriately articulated to create a recessive building mass.

The design incorporates a contemporary, low profile roof form that is appropriate in improving solar access and views to the dwelling house.

The design incorporates an appropriate mix of high-quality materials and finishes in a manner that will enhance the property's aesthetic character and form.

ASSESSMENT

The proposed development will have an appropriate mass and form that is compatible with adjoining development, will not be visually intrusive, and will present appropriately to adjoining private and public land.

3.3 4.6 (4)(a)(ii) - the public interest

3.3.1 Objectives of the Development Standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the LEP Clause 4.3 Height of Buildings (as such objectives relate to the C4 Environmental Living zone) which are repeated and responded to below

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

Response –

Despite a section of the proposed building displaying heights of up to 10.10m the proposed building height exceedance does not compromise the proposal's ability to be consistent with the desired character of the locality.

'Desired future character' is a term which is undefined within the LEP but described at a suburb level within the DCP (key excerpts below). In terms of compatibility with desired future character, three recent court matters have considered the term 'desired future character'¹ and how such terms should be applied. Guidance may therefore be appropriately taken from the range of environmental planning instruments, the court's findings, and the DCP provisions applicable to the land.

Key observations from the desired future character statement at A4.1 of the DCP include:

'The most important desired future character is that Avalon Beach will continue to provide an informal relaxed casual seaside environment. The locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity, fewer hazards and other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, commercial, community and recreational facilities will serve the community.'

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including

¹ Big Property Pty Ltd v Randwick City Council [2021] (Big Property),
HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] (HPG),
SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112 and Woollahra Municipal Council v
SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD)

ASSESSMENT

canopy trees, will be integrated with development. The objective is that there will be houses amongst the trees and not trees amongst the houses.

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

Most houses are set back from the street with low or no fencing and vegetation is used extensively to delineate boundary lines. Special front building line setbacks have been implemented along Avalon Parade to maintain the unique character of this street. This, coupled with the extensive street planting of canopy trees, gives the locality a leafy character that should be maintained and enhanced'.

The desired feature character of the suburb is not proposed to change by the planning controls and therefore the existing character is relevant to consider.

The property's visual catchment is very limited noting:

- The site is not a standard suburban lot. It is of a regular shape and characterised by steep topography. This topography is also characteristic of the adjoining properties to the east and west; it establishes a context to which the proposed built form has appropriately responded.
- The site has a long, narrow driveway which provides access to the rear of the lot where the dwelling is situated. The existing dwelling house is positioned close to the rear boundary.
- The property is within a north facing hillside that enjoys views over Careel Bay and Pittwater. There is dense vegetation to the east and south of the site.
- The undulating topography results in dwelling houses being sited at different levels and within an irregular pattern within the hillside.
- Neighbouring properties to the east, south, south-east and south-west are significantly separated, elevated, and screened by vegetation.

The proposed exception will:

- not be visible from George Street
- be significantly setback (by approx. 35m) from Careel Bay Crescent
- be visible from limited locations. From where it can be seen, it will not be visually intrusive due to its significant set back from the front facade of the levels below.

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

Response –

Despite a section of the proposed building displaying heights of upto 10.10m the proposed development will be compatible with the height and scale of the surrounding and nearby development. The following characteristics are noted:

- The proposed additions will have a lower maximum building height than the existing dwelling house. The proposed development involves additions that are down-slope and

ASSESSMENT

in front of the dwelling house that has an existing building height of 11.05m (Figure 8). The proposed eave and roof ridge heights are lower than the height/ maximum level (RL 24.10) of the existing building height dwelling houses.

- The proposed building height exception is compatible because:
 - it is located appropriately upon the site in terms of the topography and the landscaped hillside setting. The recessed upper-level proposed will contribute to achieving a development of reduced bulk and scale that is integrated with the sloping landform and landscape.
 - it will be positioned within a landscaped and heavily vegetated setting, compatible with the surrounding development.
 - The existing building form will be enhanced by the proposed modifications the upper-level. It will result in a more contemporary building form, increased amenity to the dwelling via additional north facing openings, a recessive building form with appropriate visual presentation to neighbouring land.
 - The proposal maintains the existing development's setback pattern.
 - The property has a limited visual catchment due to its position within a battle-axe allotment and the vegetated character of the surrounding land.
 - The proposal involves a modest GFA/FSR increase noting the existing GFA is 322m² (FSR of 0.28:1) and the proposed GFA is 347m² / 0.29:1, maintaining a suburban character below 0.5 to 1 as per the planning principle for 'Compatibility in a suburban context' established in *Salanitro-Chafei v Ashfield Council* [2005] NSWLEC 366 at 23-28.

(c) to minimise any overshadowing of neighbouring properties,

Response -

Despite a section of the proposed building displaying heights of upto 10.10m the proposed building will result in an acceptable level of overshadowing on adjoining land. In this regard the proposal is accompanied by shadow diagrams demonstrating the extent of proposed shading.

They show that shade will be cast over the rear of the adjacent property at 2 Careel Bay Crescent at 9am and over the rear of 138 and 140 Cabarita Road at 3pm. This represents a modest and even distribution of shade to the adjoining properties. s

The shade will not be cast onto the principal private open space but onto landscaped areas at the rear of the properties and for a compliant period of time.

It is concluded that the proposal will not significantly or unreasonably reduce the available sunlight to the adjoining land and the provisions of the control are satisfied.

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

Response -

Despite a section of the proposed building displaying heights of upto 10.10m the proposed building will allow for the reasonable sharing of views. The following characteristics are noted:

- There are significant views of Pittwater and Careel Bay to the north of the location.

ASSESSMENT

- The proposed additional building form is at the front, north, and lower than the existing dwelling house.
- As shown within the photographs in figure 14, the three properties to the south of the site enjoy these views. It is observed from this photograph that the roofs of the dwellings in the foreground of the photos do not impede on these views. The proposed development involves a lowering of the existing roof level and there are unlikely to be adverse view sharing impacts.
- Given the sloping topography and the siting of the proposed structure, the proposal is not anticipated to adversely impact on the established views from surrounding residential properties or any public vantage points and achieves a reasonable sharing of views in accordance with the control.

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

Response -

Despite a section of the proposed building displaying heights of upto 10.10m the proposed height exception does not threaten the proposal's ability to achieve a building form and mass that is responsive to the site sloping topography and that presents appropriately to adjoining land.

The proposed upper level displays increased setbacks from the lower floor levels, including a significant 7.7m setback from the front façade of the dwelling house.

The proposed additional building form is at the front, north, and lower than the existing dwelling house.

The proposed upper-level alterations involve a reduced depth and area of the floor plate. The depth (north to south) reduces from 11.4m to 8m; the area of the floorplate reduces from approx. 144m² to 121m² (figures 5 and 6).

From where it can be seen, it will be recessive when viewed from downslope areas to the north of the dwelling house.

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

Response -

Despite a section of the proposed building displaying heights of upto 10.10m:

- The existing building form will be enhanced by the proposed modifications.
- The proposed additions will have a lower maximum building height than the existing dwelling house. The proposed development involves additions that are down-slope and in front of the dwelling house that has an existing building height of 11.05m (Figure 8).
- The proposed development will result in a more contemporary building form, increased amenity to the occupants via additional north facing openings, a recessive building form with appropriate visual presentation to neighbouring land.

ASSESSMENT

- As a result of the above, the proposal will not have an adverse visual impact on the natural environment.

The property is not within a heritage conservation area nor is the property a heritage item or near a heritage item.

3.3.2 Objectives of the zone

The proposed development will be in the public interest because it is consistent with the objectives for development within the C4 Environmental Living zone under the LEP in which the development is proposed to be carried out.

The objectives of the C4 Environmental Living zone are:

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

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

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

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

It is assessed that the proposed development is consistent with, or not antipathetic to the zone objectives as it:

- will provide a low-impact augmentation of the existing dwelling house that is compatible with the other dwelling houses within the visual catchment.
- will provide an augmentation of the existing dwelling house that is not antipathetic to the ecological, scientific, or aesthetic values of the land.
- retains a low impact residential use on the site which, based on the information accompanying this DA, does not give rise to any unacceptable ecological, scientific or aesthetic impacts.

Accordingly, the proposal has had sufficient regard to the zone objectives and there is no statutory impediment to the granting of consent.

3.4 Secretary's considerations

With regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning consistent with 4.6 (5)(a).
- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).

CONCLUSION

4 Conclusion

The variation proposed to the *Height of Building* development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control. In conclusion, Council can be satisfied that:

- this written request has adequately addressed the matters required to be addressed by cl 4.6(3) and
- that the proposed development will be in the public interest because it is consistent with the objectives of the contravened development standard and the zone, at cl 4.6(4),

The proposal should be granted development consent.

ITEM 3.4	DA2023/0749 - 9 FRANCIS STREET FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/636409
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 DA2023/0749 for alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 978391, 9 Francis Street FAIRLIGHT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0749
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 7 DP 978391, 9 Francis Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
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:	Lucien Carl Schneller Madeline Skye Colebatch Baker
Applicant:	Eugene Du Plessis

Application Lodged:	16/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/06/2023 to 10/07/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 15.3%
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,135,000.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a variation to the development standard contained within Clause 4.3 Height of Buildings of the MLEP 2013 of 15.3%.

Concerns raised in the objections predominantly relate to privacy to No. 7 Francis Street to the south, boundary fencing, and tree removal.

The critical assessment issues included height of buildings, front and side setbacks, and pool setback to the southern side boundary. These matters are established as acceptable on merit for the reasons detailed throughout this report.

The 4.6 request for the non-compliance with height standard arises from the existing building height being maintained, being alterations and additions to the existing dwelling house.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling house, as follows:

External

- Remove existing driveway at the rear and replace with landscaped area
- New swimming pool in the rear yard
- Screen planting along rear boundary
- New carport and storeroom on southern side of the lot
- Replacement of rear timber dividing fence with new 1.8 metre high timber dividing fence
- New retaining wall and fence on northern boundary

Lower Ground Floor

- Convert existing single garage to a new rumpus room
- New study, laundry and storeroom
- New deck, clothesline and external stairs

Ground Floor

- New ensuite
- Alterations to internal and external walls, windows and door openings throughout
- New rear balcony

First Floor

- Enlarged rear balcony
- Alterations to internal and external walls, windows and door openings throughout
- New front terrace

Roof

- Skylights
- Solar panels

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 7 DP 978391 , 9 Francis Street FAIRLIGHT NSW 2094
Detailed Site Description:	<p>The subject site consists of one allotment located on the western side of Francis Street, Fairlight.</p> <p>The site is regular in shape with a frontage of 12.19 metres along Francis Street and a depth of 32.155 metres. The site has a surveyed area of 329m².</p> <p>The site is located within the R1 General Residential zone and accommodates a three-storey detached dwelling house</p>

	<p>with parking at the rear.</p> <p>The site slopes down approximately 5 metres from the east (front) to the west (rear) and does not contain significant vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density detached dwelling houses.</p>
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Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent relevant applications for this site. The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to calculation of gross floor area. The Applicant submitted satisfactory additional information on 7 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>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact</p>

Section 4.15 Matters for Consideration	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 26/06/2023 to 10/07/2023 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 2 submission/s from:

Name:	Address:
Mr Robert Walter Jenkins	Po Box 829 MANLY NSW 1655
Mr Iain Paterson Spittal	7 Francis Street FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

- Privacy to No. 7 Francis Street (south): The window on the southern elevation should be frosted. The deck adjacent to the southern side boundary should be treated with a fence. The privacy screen to the southern elevation of the first floor deck should be increased to 1.8 metres.
- Opposition to the replacement of boundary fencing between Nos. 9 and 11 Francis Street.
- Concern about the method of removal of trees (T8 and T9) with respect to the nearby sewer.

The above issues are addressed as follows:

Privacy

Comment:

Amended plans received 7 September 2023 show that the first floor window on the southern elevation is translucent ('frosted') to prevent unreasonable loss of privacy. The deck adjoining the southern boundary is for the purpose of east-west access between the garage and rear yard, and for the purpose of an outdoor shower. The portion of the deck that includes the shower adjoins a neighbouring wall that achieves a height of 1.9 metres above the finished floor level of the deck. This wall provides suitable privacy to No. 7 Francis Street with respect to users of the outdoor shower. The remainder of the deck is recommended to be reduced by way of condition of consent, so as to reduce its usability and retain suitable privacy for the adjoining property. The first floor balcony to the rear is proposed to be treated with 1.7 metre high privacy screening to the northern and southern side elevations. This is sufficient in providing privacy to adjoining properties, being higher than average eye height, and given the minimum required is generally accepted to be 1.65 metres.

Boundary Fence

Comment:

No approval for side and rear boundary fencing is given under this consent, as this is a matter for civil negotiation between relevant property owners under the Dividing Fences Act 1991. A condition of consent has been included in the recommendation to remove reference to all side and rear boundary fencing from plans to ensure consistency with the relevant legislation under the Dividing Fences Act 1991.

Tree Removal

Comment:

No trees are proposed to be removed under this development application. The application has been referred to Council's Landscape Officer, who is supportive of the proposal, subject to recommended conditions of consent (including conditions for protection of trees). It should be noted that removal of tree T9 requires consent from the owner of No. 11 Francis Street, being located on the common boundary.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have considered the application against the Manly 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>The Arboricultural Impact Assessment (AIA) identified nine trees, and no trees are proposed for removal which is supported. Landscape Referral supports the recommendations outlined in the AIA. The Project Arborist shall be engaged to supervise works in the tree protection zone of trees.</p> <p>The landscape proposal includes a significant increase in landscaped area which will provide amenity for the applicant and space for tree planting. All proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent.</p>
NECC (Development)	The submitted stormwater plan is acceptable. The existing driveway crossing is to remain acceptable.

Internal Referral Body	Comments		
Engineering)	Development Engineering support the proposal, subject to conditions as recommended		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	This application has been referred as the subject property is located within the vicinity, being Item 152 - Group of 6 houses, 12–22 Francis Street, Fairlight , listed in Sched Local Environmental Plan 2013.		
	Details of heritage items affected		
	Details of the item as contained within the Manly heritage inventory is as follows: Item 152 - Group of 6 houses, 12–22 Francis Street, Fairlight <u>Statement of significance</u> A group of modest, single storey cottages spanning the period 1890's-1915. <u>Physical description</u> Nos. 12-16 late Victorian rendered brick cottages with symmetrical fronts. Extant elements include roof, bullnose verandah and cast iron fringe. No.18. c. 1900 weatherboard cottage. Nos. 20-22 stone and rendered brick or stone semi-detached houses with timber additions.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	This application is for alterations and additions to the existing dwelling house, including carport on the front building line, a new front verandah and a swimming pool and landscaping. There are a number of alterations to the existing house, the majority of which are contained within the existing building envelope, with the exception of an addition on the southern elevation. The roof tiles are to be replaced with metal roofing. The elements visible from Francis Street include the carport, fencing and proposed changes to the front facade, including the new roofing and landscaping.		
	This property is located on the western side of Francis Street, a distance of approximately 100m from the southern most property of the heritage listed group, being No. 12 Francis Street. The property on Francis Street, is a divided road, which has a significant level change from the western to the eastern side of the street. There is also landscaping in the centre of the road, providing a buffer between 9 Francis Street and the group heritage item on the eastern side of Francis Street. Any changes to the divided road and the landscaping, any changes to the dwelling at 9 Francis Street will		

Internal Referral Body	Comments
	<p>the context of the group heritage item on the eastern side of the road. The proposed development should be in keeping with other dwellings in this section of Francis Street.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of MLEP 2013:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided</p>

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. A489161 dated 2 May 2023). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.8m	15.3%	No
Floor Space Ratio	0.6:1 235.2m ²	0.59:1 232.1m ²	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

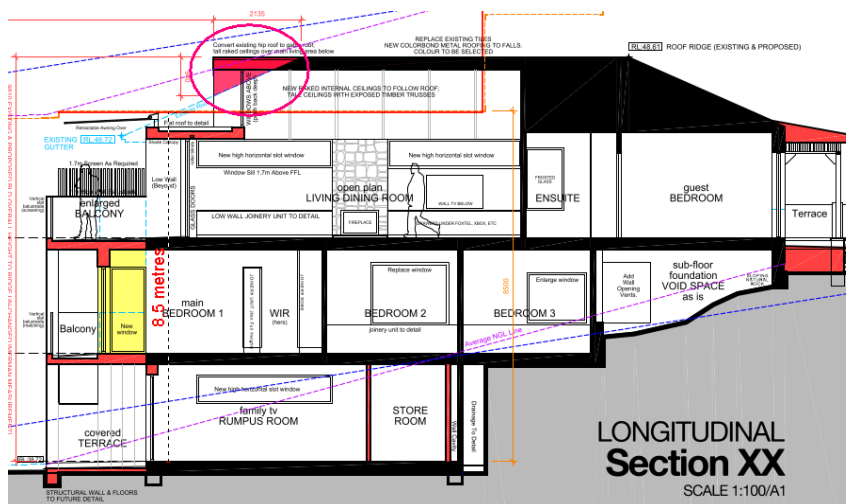
Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.8m
Percentage variation to requirement:	15.3%



Above: The extent of the height breach for the new works, marked in pink.

Assessment of request to vary a development standard:

The following assessment of the variation to the development standard contained within Clause 4.3 Height of Buildings has taken into consideration the recent judgements of *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 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 Clause 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 Applicant's written request argues:

"1. The existing building exceeds the building height standard. The proposed development maintains roof ridge levels that is the same or lower than the existing roof ridge (RL 48.61). As alterations and additions, the existing development upon the site limits the extent to which numerical compliance with the building height standard can be achieved.

2. The existing development footprint, form, bulk, scale, number of storeys and setbacks are established on the property. Only modest changes are proposed to the shape and form of the existing residential building. The existing one to three storey building exceeds the building height standard (figures 1 to 4). Only a minor rear extension of up to 2.5m is proposed to the rear of the building.

3. The design minimises its building height exceedance by replacing an existing section of pitched roof with a section of skillion roof over the rear addition (figure 4). Maintaining a pitched roof over the proposed rear addition would result in an increased extent to building height exceedance.

4. The exception does not result in additional gross floor area or bulk above the building height plane. The rear additions are designed to step, responsive to the slope of the land, and therefore the design minimises its visual bulk (figures 3 and 4).

5. The proposed rear additions follow the pattern, scale, and building setbacks along the western side of Francis Street. The proposal is compatible with the height and scale of adjacent residential dwelling houses along the western side of Francis Street, located on the lower side of the road level (figures 2, 8, and 9).

6. There will not be any significant or inappropriate disruption to the streetscape or local amenity from the proposed building height exceedance.

7. The nature and extent of the exceedance is minor, located at the rear and obscured from the street and any public viewing points. The proposed extension complies with the DCP's rear setback control

and the landscaped area on the site is increased by the proposal.

8. Despite the building height exception the proposed development maintains a similar roof ridge level to the adjacent dwelling houses..."

It is agreed that there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard. The proposed development is guided by on an existing height non-compliance. The proposed development is of a height, bulk and scale anticipated for the site. The proposed development minimises the impact of the non-compliance by way of good design. The proposed development is compliant with the floor space ratio development standard, which serves to control bulk and scale. The proposed development retains the existing built form pattern in the locality and is consistent with the streetscape character and character of nearby development.

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 Clause 1.3 Objects (c) and (g) of the EPA Act.

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

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

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

Clause 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 Clause 4.3 Height of Buildings and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

The objectives of Clause 4.3 Height of Buildings are addressed 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:

In accordance with recent caselaw via the NSW Land and Environment Court (*Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*), building height is to be taken from the existing ground level, whether disturbed or undisturbed. The non-compliance in this regard is attributable to the existing excavation. If the subject site were undisturbed, the proposed development would be considered compliant with the height of buildings development standard. As such, the proposed development is of a height that is anticipated for the site. Further, the proposed development steps down to the rear, in line with the topography of the site, so as not to present as a visual imposition with respect to building height. The non-compliant portion of the development is to the rear,

and is therefore not visible from the streetscape.

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

Comment:

The proposed development is compliant with the floor space ratio control, thereby demonstrating consistency with the bulk and scale anticipated for the site. The proposed development is generally compliant with the built form controls applicable to the site. Where non-compliances exist, they are either existing and retained, or new and acceptable on merit for the reasons detailed throughout this report. Further the As such, the proposed development is of a suitable bulk and scale.

(c) to minimise disruption to the following—

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

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

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

Comment:

The proposed development generally retains the building form of the existing dwelling house. In this way, the proposed development provides for suitable view sharing with respect to views to, from, and between public and private places.

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

Comment:

The proposed development results in a nominal and acceptable increase to overshadowing to the south, given it has generally retained the building form of the existing dwelling house. Adequate sunlight to the south is maintained.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation 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 subject site is in the R1 General Residential zone.

Objectives of the Zone

The objectives of the R1 General Residential zone are addressed as follows:

To provide for the housing needs of the community.

Comment:

The proposal retains the existing dwelling house on the subject site, which contributes to the housing needs of the community.

To provide for a variety of housing types and densities.

Comment:

The proposal retains the existing housing type and density on site, being a three-storey detached dwelling house, which contributes to the variety within the zone.

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

Comment:

Not applicable. The proposal retains the residential use of the site.

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

Clause 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).

6.1 Acid sulfate soils

Clause 6.1 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 development is not anticipated to result in risk associated with acid sulfate soils.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

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

Comment:

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

6.4 Stormwater management

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

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment:

On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are

available or that adequate arrangements have been made to make them available when required:

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

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 392m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 250m ²	1 dwelling on existing 392m ² site	-	Yes
	Dwelling Size: Min. 122m ²	232.1m ²	-	Yes
4.1.2.1 Wall Height (based on gradient 1:4.5)	N: Max. 7.8m	Max. 7m	-	Yes
	S: Max. 7.8m	Max. 7m	-	Yes
4.1.2.2 Number of Storeys	Max. 2 storeys	3 storeys	-	Existing
4.1.2.3 Roof Height	Height: Max. 2.5m	2.1m	-	Yes
	Pitch: Max. 35 degrees	23 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (Variable, though predominantly <6m)	Garage/Bin Room: 0m	100%	No
		Porch: 4.7m	-	Yes (Prevailing)
		Dwelling: 6.1m	-	Yes (Prevailing)
4.1.4.2 Side Setbacks (based on wall height)	N: Min. 2.33m	Lower Ground: 1.2m	-	Existing
		Ground: 1.2m	-	Existing
		First: 1.2m	-	Existing
	S: Min. 2.33m	Lower Ground: 2m	14.16%	No
		Ground: Storage/Void: 0m Deck: 0m Dwelling: 2m	- 100% 14.16%	Existing No No
		First: Carport/Garage/Deck: 0m Dwelling: 2m	100% 14.16%	No No
	Windows: Min. 3m	N: 1.2m	60%	No
		S: 2m	33.3%	No

4.1.4.4 Rear Setbacks	8m	8m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of site area (215.6m ²)	61.8% (242.5m ²)	-	Yes
	Above Ground: Max. 25% of total open space (60.6m ²)	9% (21.9m ²)	-	Yes
4.1.5.2 Landscaped Area	Min. 35% of TOS (84.9m ²)	41.1% (99.8m ²)	-	Yes
	Min. 1 Native Tree	1	-	Yes
4.1.5.3 Private Open Space	Min. 18m ²	151.5m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage (up to 6.2m)	32% (3.9m)	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	Height Above Ground: Max. 1m	0m	-	Yes
	Coping: Min. 1m	Side (S): 0.2m	80%	No
		Rear (W): 1m	-	Yes
	Water: Min. 1.5m	Side (S): 1.5m	-	Yes
		Rear (W): 1.5m	-	Yes
Schedule 3 Parking and Access	Min. 2 Spaces	2 Spaces	-	Yes

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	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
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

The proposed development includes built form elements that are not compliant with the front setback and southern side setback controls. The proposal is also not compliant with the northern side setback control, though this is due to an existing non-compliance. The new non-compliant elements include a new single garage and bin room immediately at the front boundary where the control relies on the prevailing building line (approximately 3 metres from the boundary), and southern side setbacks of 0-2 metres to the dwelling, deck and ancillary structures, where a minimum of 2.33 metres is required. The control also requires a setback of 3 metres from side boundaries for new windows. The new non-compliant elements are considered against the 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:

While forward of the prevailing building line in Francis Street, the proposed garage structure is acceptable in the streetscape. The garage is single-width, so allows for a significant portion of the front setback area of the subject site to remain open. There are other examples of such parking structures in Francis Street, including next door to the south at No. 7. The garage structure and deck are also set to the southern side boundary. While this is another non-compliance, the garage aligns with the existing carport at No. 7, and also serves to obstruct the other southern side boundary non-compliances from view from the street. The proposed development results in a better overall outcome for the site, in that the concreted rear yard that is currently used for parking is replaced with landscaping and recreation. The development results in a more logical use of the site without compromising streetscape amenity, the spatial proportions of the street, the street edge, or the

landscape character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

Despite the elements of the development that are not compliant with the applicable setback controls, the proposal is suitably designed so as to provide adequate privacy to the occupants of the subject site and adjoining sites, with the exception of the southern deck, which is to be reduced in size to result in an acceptable privacy outcome. The remainder of the proposal is acceptable by way of design elements including translucent windows and privacy screening. The proposed development results in a nominal and acceptable increase to overshadowing to the south, given it has generally retained the building form of the existing dwelling house. Given the retained form, the proposed development is also respectful of view sharing principles for adjoining properties and maintains the existing character of the streetscape with respect to bulk and scale, as well as pattern and rhythm of buildings. The proposed development does not increase traffic movements, but provides a better off-street parking outcome.

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

Comment:

The proposed development is designed to allow flexibility in the siting of the building on the site, without resulting in unreasonable amenity outcomes for the subject site or adjoining sites.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal removes the existing concreted rear yard and includes compliant total open space and landscaped open space. In this way, the proposal provides a significant improvement with respect to planting and deep soil zones. The subject site is not located within the vicinity of open space land, National Parks, or urban bushland.

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

Comment:

The subject site is not classified as bush fire prone land.

4.1.9 Swimming Pools, Spas and Water Features

The proposed development introduces a pool into the rear yard of the subject site. The coping of the

pool is set 200 millimetres from the southern side boundary, where a minimum setback of 1 metre is required by this control. The non-compliance is considered against the objectives of the control as follows:

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties

Comment:

The proposed pool is located in the south-western rear corner of the subject site, behind existing 1.7 metre-high boundary fencing. The fencing provides suitable protection to No. 7 Francis Street to the south with respect to visual privacy. A condition of consent has been included in the recommendation of the report with respect to filter noise.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality

Comment:

The proposed pool is located in the south-western rear corner of the subject site, which is well below the street level. As such, the pool is not visible from the streetscape and does not impact upon the established character of the area.

Objective 3) To integrate landscaping

Comment:

The proposal incorporates a significant improvement to the landscaped setting of the site with the removal of concreting in the rear yard. The proposal is compliant with the total open space and landscaped area controls of the MDCP. Despite the side setback non-compliance, the proposal integrates suitable landscaping in the context of the site.

Objective 4) To become an emergency water resource in bush fire prone areas

Comment:

The subject site is not classified as bush fire prone land.

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 \$21,350 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,135,000.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant 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 Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to the existing dwelling house has been referred to the Development Determination Panel (DDP) due to a variation to the development standard contained within Clause 4.3 Height of Buildings of the MLEP 2013 of 15.3%.

The concerns raised in the objections have been addressed and resolved by way of explanation of the plans with respect to privacy, deletion of references to boundary fencing, and confirmation that no trees are proposed for removal.

The critical assessment issues included height of buildings, front and side setbacks, and pool setback to the southern side boundary. These matters are established as acceptable on merit for the reasons detailed throughout this report.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of Clause 4.3 Height of Building 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 DA2023/0749 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 978391, 9 Francis Street, 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
A.00	I1	Site Plan	Du Plessis + Du Plessis Architects	6 September 2023
A.04	I1	Lower Ground Floor Plan	Du Plessis + Du Plessis Architects	6 September 2023
A.05	I1	Ground Floor Plan	Du Plessis + Du Plessis Architects	6 September 2023
A.06	I1	First Floor Plan	Du Plessis + Du Plessis Architects	6 September 2023
A.07	I1	Roof Plan	Du Plessis + Du Plessis Architects	6 September 2023
A.08	I1	Side South Elevation	Du Plessis + Du Plessis Architects	6 September 2023

A.09	I1	Side North Elevation	Du Plessis + Du Plessis Architects	6 September 2023
A.09	I1	East Elevation (Front) / West Elevation (Rear)	Du Plessis + Du Plessis Architects	6 September 2023
A.11	I1	Section X-X / Section Y-Y	Du Plessis + Du Plessis Architects	6 September 2023
L102	E	DA Landscape Concept Plan	Alterre	6 June 2023
D2	A	Stormwater Management Lower Ground Floor Plan	NY Civil Engineering	1 March 2023
D3	A	Stormwater Management Site Plan	NY Civil Engineering	1 March 2023
D4	A	Stormwater Management First Floor/Roof Plan	NY Civil Engineering	1 March 2023
D5	A	Stormwater Details	NY Civil Engineering	1 March 2023
D6	A	Stormwater Details	NY Civil Engineering	1 March 2023
D7	A	Sediment Control Plan	NY Civil Engineering	1 March 2023
D8	A	Sediment Control Details	NY Civil Engineering	1 March 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A489161	-	Du Plessis + Du Plessis Architects	2 May 2023
Preliminary Geotechnical Investigation	J4813	White Geotechnical Group	6 March 2023
Arboricultural Impact Assessment	-	Seasoned Tree Consulting	15 March 2023
DA Construction & Waste Management Plan		Du Plessis + Du Plessis Architects	10 May 2023

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	26 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 Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than

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

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$21,350.00 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 \$2,135,000.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Stormwater shall be conveyed from the site generally in accordance with the stormwater plan by NY Civil Engineering, drawing number E230099 D to D6, Revision A dated 01/03/2023. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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.

8. Amendments to the Approved Plans

The following amendments to the plans are required:

- The deck on the southern elevation is to be amended. The deck is to be full width between the southern wall of the dwelling and the adjacent fence, for a depth of 1 metre from the western edge of the garage. The remainder of the deck is to be reduced in width to match the adjoining western stairs.
- The height of the replacement timber fencing at the rear is to match the height of the existing fencing.
- Plans are to be amended to remove reference to all side and rear boundary fencing. No approval for side or rear boundary fencing is given under this consent, as this is a matter for civil negotiation between relevant property owners under the Dividing Fences Act 1991.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

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. **Waste Management Plan**

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

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

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

11. **Compliance with Standards**

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

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

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

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

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

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

- "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.

13.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. **Project Arborist**

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

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

i) tree protection requirements under section 8.4, 8.5, 8.7-8.11, and Appendix 1A.

b) All tree protection measures specified must:

i) be in place before work commences on the site, and

ii) be maintained in good condition during the construction period, and

iii) remain in place for the duration of the construction works.

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

Note:

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

Reason: Tree protection.

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 compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

16. **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. **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

19. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing L102 by Alterre Design dated 06/06/23), 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; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
- d) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- f) 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.

20. **Condition of Retained Vegetation**

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

Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

21. **Stormwater Disposal**

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

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

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

22. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

23. **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.

24. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.











CLAUSE 4.6

Height of Building

**9 Francis Street,
Fairlight**

Suite 1, 9 Narabang Way Belrose NSW 2085

Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

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RESPONSIBLE FOR THIS REPORT:

Michael Haynes	Director - BBF Town Planners
	Master Urban and Regional Planning Sydney University

June 2023

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CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING

1 Clause 4.6 exception for Height of Building

1.1 Overview

Clause 4.6 of the Manly LEP 2013 (LEP) provides a mechanism for an exception to a development standard.

The method used to calculate building height responds to the Commissioner's judgment in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

The building height applicable to the site is 8.5m. The existing and proposed developments exceed the 8.5m height standard.

The proposed alterations and additions, which involves (upto) a 2.5m (approximate) extension to the rear of the dwelling house, contravene LEP Clause 4.3 'Height of Building' (height), which is a development standard, and an exception is sought.

In summary:

- the existing and proposed building height is upto 9.81m at the rear (figures 1 to 4)
- the existing and proposed building height is up to 1.31m above building height plane (figures 1 to 4).

1.2 Site and location description

The site is located at 9 Francis Street, Fairlight and legally described as Lot 7 Sec A in DP 978391. The site has an area of 392m².

The site is rectangular in shape with an eastern frontage of 12.19m to Francis Street, and rear, western boundary of 12.19m. The north and south side boundaries are 32.15m.

The land contains a three storey render and brick dwelling house with a tiled roof. A driveway is located along the southern side of the property providing access to a manoeuvring area at the rear and a single garage within the lower level of the dwelling house accessed via the rear of the site.

The topography slopes from Francis Street with a level difference of approximately 4.57m between the front and the rear boundaries (RL43.13 at street level and RL38.56 at the rear boundary).

The existing (and proposed) developments present as one storey to the street and three storeys to the rear due to the slope of the land.

Francis Street adjacent to the subject site is at 2 levels, divided by a treed landscaped embankment (figure 6).

There is a pattern of garages and carports located at the front and or sides of dwellings, within the side set back in Francis Street (figures below).

There has been excavation of the natural topography to accommodate the existing development (to varying degrees) on the subject site and those adjacent.

The figures on the following pages depict the character of the property and its existing development.

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CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING

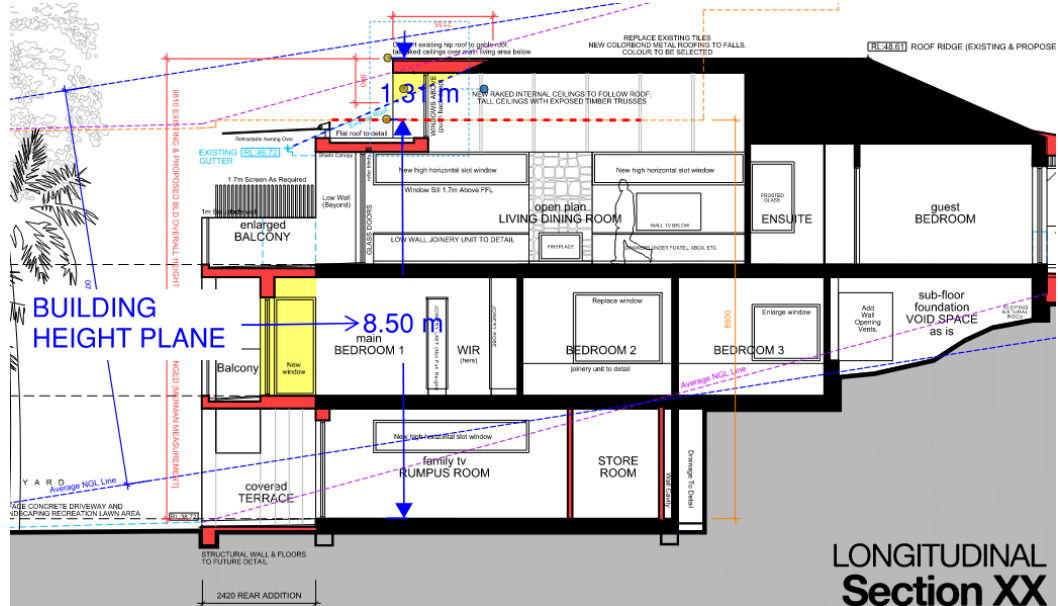


Figure 1 – the location and extent of the proposed development's height exception – viewed from the south (section XX)

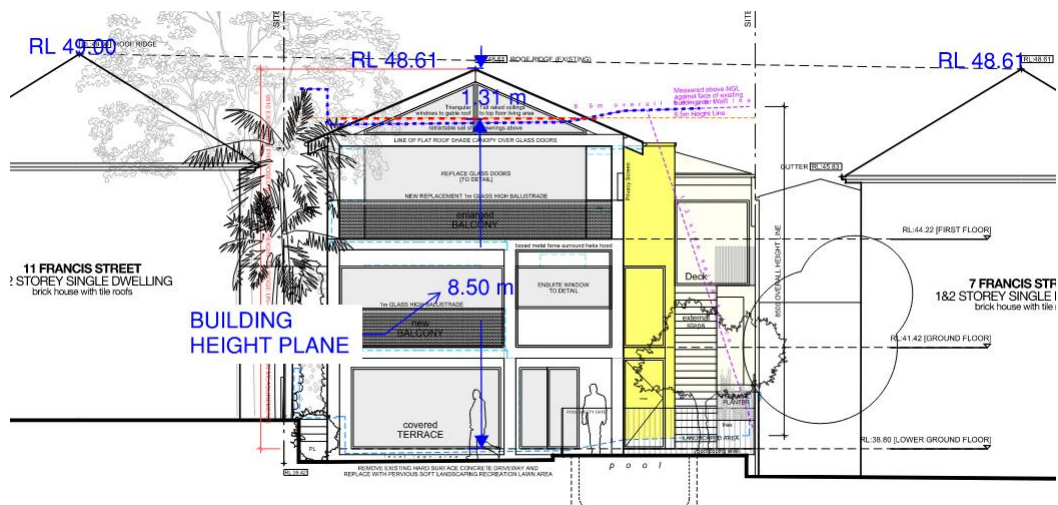


Figure 2 – the location and extent of the proposed development's height exception, as viewed from the west/rear

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING

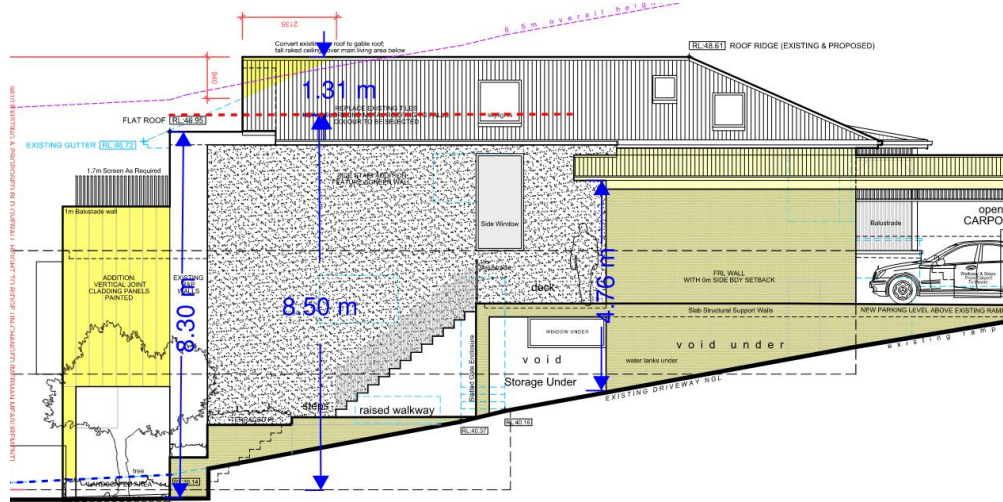


Figure 3 – southern elevation and minor extent (610mm) of the proposed building height exception

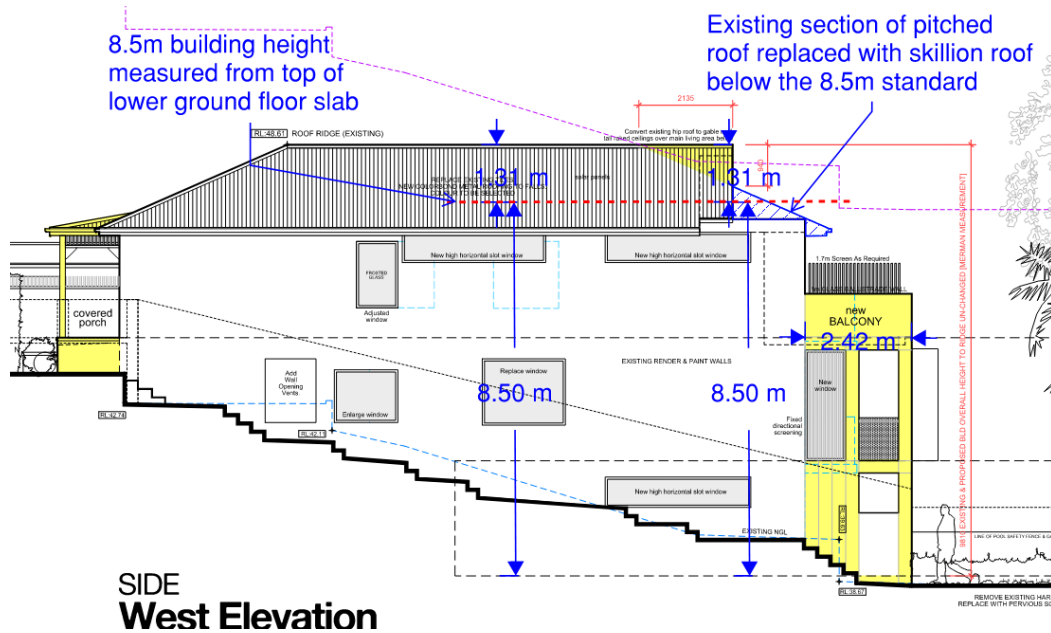


Figure 4 – northern elevation and minor extent (400mm) of the proposed building height exception

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING



Figure 5 – Alignment, orientation and spatial layout of the subject site, adjoining dwellings (Northern Beaches Council Maps)

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING



Figure 6 – the existing 3 storey development as viewed from the rear



Figure 7 – the existing steep driveway along the southern side of property

CLAUSE 4.6 EXCEPTION FOR HEIGHT OF BUILDING



Figure 8 – existing single storey building as viewed from the street

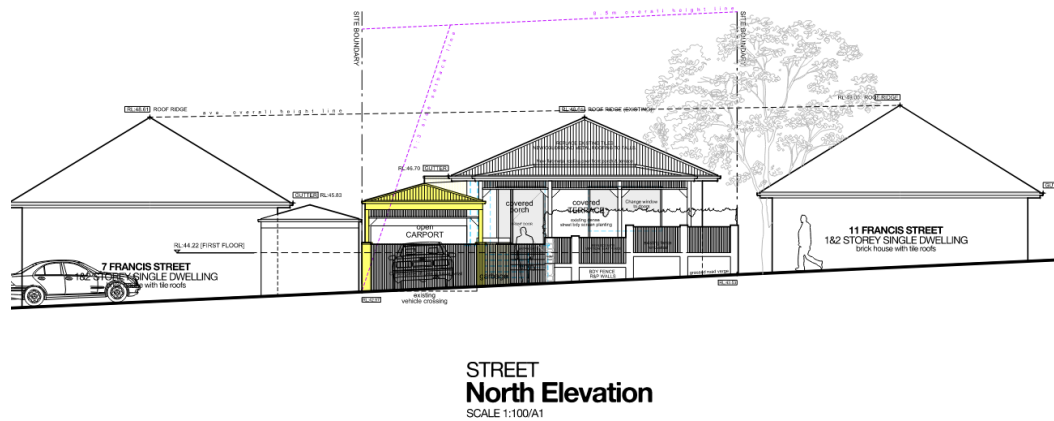


Figure 9 – the proposed development maintains its single-storey streetscape presentation (excerpt from architectural plans)

ASSESSMENT

2 Assessment

As required by clause 4.6 (3) the following is a *written request* to vary the height of building development standard for the consent authority's consideration.

2.1 4.6 (3)(a) - compliance with the development standard is unreasonable or unnecessary in the circumstances

Having regard for the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, and in accordance with 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the height standard are satisfied.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The first possible way is relevant to the subject matter and is repeated below:

1st *'The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.'*

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable'.

Despite the building height exception, the proposal satisfies the relevant planning provisions having regard to the circumstances of the DA. The objectives of the height standard are addressed within section 3.4.1 below. In summary, the proposed building height exception does not threaten the proposal's ability:

- to achieve a height and scale that is compatible with the building height, scale and form of the existing dwelling house and surrounding residential development.
- to achieve a development that is compatible with the scenic quality of the local area and streetscape.
- to achieve a presentation that is not visually intrusive, that does not result in inappropriate view disruption, and satisfies privacy and solar access controls.
- to achieve a residential development that is compatible with its setting that will enhance the built form and landscape quality on the site to the benefit of the local amenity of the site and nearby land.

Strict compliance with the development standard would therefore be unreasonable and unnecessary in these circumstances.

ASSESSMENT

2.2 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify the exception to the development standard. The environmental planning grounds in support of the exception are listed as follows and described below.

1. The existing building exceeds the building height standard. The proposed development maintains roof ridge levels that is the same or lower than the existing roof ridge (RL 48.61). As alterations and additions, the existing development upon the site limits the extent to which numerical compliance with the building height standard can be achieved.
2. The existing development footprint, form, bulk, scale, number of storeys and setbacks are established on the property. Only modest changes are proposed to the shape and form of the existing residential building. The existing one to three storey building exceeds the building height standard (figures 1 to 4). Only a minor rear extension of up to 2.5m is proposed to the rear of the building.
3. The design minimises its building height exceedance by replacing an existing section of pitched roof with a section of skillion roof over the rear addition (figure 4). Maintaining a pitched roof over the proposed rear addition would result in an increased extent to building height exceedance.
4. The exception does not result in additional gross floor area or bulk above the building height plane. The rear additions are designed to step, responsive to the slope of the land, and therefore the design minimises its visual bulk (figures 3 and 4).
5. The proposed rear additions follow the pattern, scale, and building setbacks along the western side of Francis Street. The proposal is compatible with the height and scale of adjacent residential dwelling houses along the western side of Francis Street, located on the lower side of the road level (figures 2, 8, and 9).
6. There will not be any significant or inappropriate disruption to the streetscape or local amenity from the proposed building height exceedance.
7. The nature and extent of the exceedance is minor, located at the rear and obscured from the street and any public viewing points. The proposed extension complies with the DCP's rear setback control and the landscaped area on the site is increased by the proposal.
8. Despite the building height exception the proposed development maintains a similar roof ridge level to the adjacent dwelling houses (figure 2). The Merman method of measurement is addressed further below.

2.2.1 Merman method of measurement

The method of calculating the building height follows the Commissioner's judgment in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

The existing development located on the property has been excavated into the slope of the land.

The garage, laundry, and storeroom within the lower ground floor level results in the existing and proposed development breaching the height plane by approximately 1.31m.

ASSESSMENT

In accordance with the Merman judgement at 74:

'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 cl 4.6(3)(b) of LEP 2014'.

It is clear from the land survey plan and various architectural plans accompanying the application that the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. The proposed building height is compatible with the building heights of the adjacent dwelling houses (figure 2).

2.2.2 Objectives of the Environmental Planning and Assessment Act

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with the following objectives at under Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act):

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

(g) to promote good design and amenity of the built environment, through consistent streetscape alignment and increased landscaping at the street edge.

In response to (c), the proposal will facilitate the orderly and economic use and development of the land, in an appropriate location, in a manner that satisfies the applicable planning considerations because it will facilitate renewal of the land/dwelling, in a established residential location, designed to meet contemporary living needs and building sustainability (BASIX) requirements.

In response to (g), the proposal results in a residential development that will promote good design and amenity of the built environment and increased landscaped deep soil area and planting at the site's street edges, noting:

- As shown in the accompanying architectural and landscaped plans, the DA proposes increased landscaped area on the property and reduction of impervious, concrete surfaces, resulting in increased landscape planting, increased stormwater absorption, and improved appearance of the property from adjoining land.
- Increased residential amenity is achieved by the proposed open plan living area at the upper level and increased solar access to this main living zone by the roof alterations.
- Improved passive solar design through the replacement of the existing hip roof with a gable and glazed infill with (raked) ceiling. This design change will improve solar access further into the principal, open-plan living rooms on the upper level.
- Increased extent and quality of private open space is achieved.
- The site is challenged by its orientation and topography in achieving good solar access. Maintaining a pitched roof (with raked ceiling) over the proposed rear addition provides a valuable living space that achieves good solar access on a west facing property. Despite its building height exceedance the pitched roof is assessed as a positive feature of the proposal that promotes good design and amenity.

ASSESSMENT

2.3 4.6 (4)(a)(ii) - the public interest

2.3.1 Objectives of the Development Standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the Clause 4.3 Height of Building of LEP 2013 (as such objectives relate to the R2 Low Density Residential zone which are repeated and responded to below:

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

Objective (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'.*

Response -

The local character is established and not for a shadowed to change by the local planning controls. Therefore, the existing character is relevant to assess in determining the proposals consistency with objective (a).

Building heights of one to three storeys are established on the land. The proposed development maintains the existing single storey presentation to Francis Street and 3 storeys to the rear.

Figures 2 and 9 show the heights of the adjacent development and the proposal being consistent with these heights. The proposal is compatible with the building height of adjacent development when viewed from the front (east) and rear (west).

The proposal incorporates a pitched roof that matches the existing roof pitch and form and that is of similar shape, angle, and proportions to other roofs within the local area (figures 2, 5, 8, and 9).

The proposed development maintains a roof ridge level that is the same or lower than the existing roof ridge (RL 48.61). It also maintains a similar and compatible roof ridge level to the adjacent dwelling houses (figure 2).

ASSESSMENT

The proposed rear additions follow the pattern, scale, and building setbacks along the western side of Francis Street. The proposal is compatible with the height and scale of adjacent residential dwelling houses along the western side of Francis Street.

Therefore the proposed building height and roof form is appropriate and the proposed development will therefore be consistent with topographic landscape, prevailing building height existing and desired future streetscape character in the locality.

Objective (b) - to control the bulk and scale of buildings,**Response –**

The proposed additions to the existing building height exception are minor, located at the rear, and do not inappropriately add to the bulk and scale of the development when viewed from adjoining land. The following aspects are noted:

- The proposed extension to the existing building height exception has a small visual catchment and will not be visible from the street.
- The existing one to three storey building exceeds the building height standard (figures 1 to 4). Only a minor rear extension of upto 2.5m is proposed to the rear of the building.
- The design minimises its bulk by replacing an existing section of pitched roof with a skillion roof over a section of the rear addition (figure 4). Maintaining a pitched roof over the proposed rear addition would result in an increased extent to the building height exceedance. In this way the rear additions are designed to step, responsive to the slope of the land, and therefore minimises its visual bulk (figures 3 and 4).
- The exception does not result in additional gross floor area or bulk above the building height plane.
- Additional soft landscaping and planting is proposed at the rear. This will enhance / soften the appearance of the rear of the dwelling house when viewed from adjoining residential properties.

Therefore, the design of the building height exception appropriately responds to the objective to *control the bulk and scale of buildings*.

Objective (c)(i) - to minimise disruption to (i) views to nearby residential development from public spaces (including the harbour and foreshores).**Response -**

The proposal involves a modest addition to the rear of the existing dwelling house.

The land is not near public spaces including the harbour or foreshores. Aside from Francis Street, the proposed building height exception is not near public spaces.

The proposed development maintains the existing single storey presentation to Francis Street.

The proposed building height exception is located at the rear of the dwelling house, and owing to the slope of the land, will be imperceptible to a casual observer from the streetscape.

ASSESSMENT

Therefore, the proposed building height exception will not disrupt views to nearby residential development from public spaces including the harbour and foreshores.

Objective (c)(ii) - to minimise disruption to (ii) views from nearby residential development to public spaces (including the harbour and foreshores),

Response -

It is noted that the proposed development is within an established urban area that is characterised (mostly) by low density residential development; it is not near (or visible from) coastal land, the harbour, or foreshores.

The proposed building height exception is located at the rear of the dwelling house and will be imperceptible to a casual observer from the streetscape.

The proposed development maintains the existing single storey presentation to Francis Street.

Therefore, the proposed building height exception will not disrupt views from nearby residential development to public spaces (including the harbour and foreshores).

Objective (c)(iii) - to minimise disruption to '(iii) views between public spaces (including the harbour and foreshores)'

Response -

The streetscape is the only public space from which the property can be seen.

The land is not near public spaces. Aside from Francis Street, the proposed building height exception from public spaces.

The proposed building height exception is located at the rear of the dwelling house and will be imperceptible to a casual observer from the streetscape.

The proposed development will maintain its existing single storey (compliant building height) streetscape presentation.

Therefore, the proposed development will minimise disruption to views between public spaces (including the harbour and foreshores)'.

Objective (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,

Response -

The proposed additions to the existing building height exception are minor. The proposed building height exception involves a modest addition to the rear of the existing dwelling house.

Shadow diagrams showing the existing and proposed shadows accompany and support the proposal. The following key aspects are noted:

- The site and the adjoining properties have an east / west orientation to Francis Street. As a result, shadow diagrams demonstrate that shade will be relatively evenly shared

ASSESSMENT

between the rear yard (morning) and front yard (afternoon) of the adjacent property at 7 Francis Street.

- This reflects the existing development and shading pattern for properties along the western side of Francis Street, and provides a relatively even distribution of shade, consistent with the development pattern along the street.
- In accordance with Clause 3.4.1 of the DCP, the sunlight available to the private open space of the adjoining dwelling will not be impacted by more than 3 hours between 9am and 3pm on 22 June.

This is a reasonable and acceptable shadowing outcome and therefore the proposed development provides adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.

Objective (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*.

Objective (e) is not applicable to the subject site as it is not located within a *recreation or environmental protection zone*.

2.3.2 Objectives of the zone

The proposed development will be in the public interest because it is consistent with the objectives for development within the R2 Low Density Residential zone under the LEP in which the development is proposed to be carried out.

The objectives of the R2 Low Density Residential zone are:

To provide for the housing needs of the community with a low density residential environment.

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

In response, the proposal is consistent with the zone objectives in that it:

- will provide for the housing needs of the community, by facilitating renewal of the existing dwelling house to meet contemporary living needs.
- will provide for the housing needs of the community in a manner that is respectful of, and not disruptive to, the character of the local development context.

2.4 Secretary's considerations

With regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning consistent With 4.6 (5)(a).

ASSESSMENT

- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).

CONCLUSION

3 Conclusion

The variation proposed to the *Height of Buildings* development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control. In conclusion, Council can be satisfied that:

- this written request has adequately addressed the matters required to be addressed by cl 4.6(3) and
- that the proposed development will be in the public interest because it is consistent with the objectives of the contravened development standard and the zone, at cl 4.6(4),

The proposal should be granted development consent.

ITEM 3.5**DA2023/0806 - 12 CRESCENT ROAD MONA VALE -
ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING-
HOUSE AND SECONDARY DWELLING, INCLUDING
CONVERSION TO A SINGLE DWELLING-HOUSE****REPORTING MANAGER** Steve Findlay**TRIM FILE REF** 2023/635803**ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Site Plan and Elevations](#)
3 [↓ Clause 4.6](#)**PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0806 for alterations and additions to an existing dwelling-house and secondary dwelling, including conversion to a single dwelling-house on land at Lot 1 DP 207839, 12 Crescent Road MONA VALE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0806
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 1 DP 207839, 12 Crescent Road MONA VALE NSW 2103
Proposed Development:	Alterations and additions to an existing dwelling-house and secondary dwelling, including conversion to a single dwelling-house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	John Robert Hellyar
Applicant:	John Robert Hellyar

Application Lodged:	04/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/07/2023 to 25/07/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 20%
Recommendation:	Approval

Estimated Cost of Works:	\$ 476,545.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to the principal and secondary dwelling, and to convert back to a single dwelling-house.

The application is referred to the Development Determination Panel (DDP) as the application requests a greater than 10% breach of the height of buildings development standard as prescribed by Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.

The application has been publicly exhibited in accordance with the Northern Beaches Community

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

The 4.6 request for the non-compliance with the height standard arises from the construction of alterations and additions to an existing building that are within the footprint of the existing building. The proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed. The existing ridge height of the structure is 10.2m above ground level (existing), resulting in a 20% non-compliance to the 8.5m control, as works are proposed to this existing structure.

The only other non-compliance of note is with Clause D9.9 Building Envelope of the Pittwater 21 Development Control Plan. The breach is existing, with proposed works occurring to this existing structure.

Overall, the proposed development is considered acceptable. Non-compliances largely result from the layout of existing structures that are the subject of alterations and additions as part of this application. The works do not significantly increase these non-compliances and are not considered to result in any unreasonable amenity impacts to adjoining and surrounding properties.

This report concludes with a recommendation that the DDP support the Clause 4.6 variation and grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the carrying out of alterations and additions to the principal and secondary dwellings and to revert back to a single dwelling-house.

Specifically, the proposal comprises of the following:

Lower Ground Floor

- Remove the existing kitchen facilities and replace with a small bar sink to allow the use on the property to be converted to a single residential dwelling with the existing attached carport and swimming pool in the yard area.

Ground Floor

- Relocate the kitchen area.
- Remove the internal wall between the existing kitchen and living/sitting room.
- Extend the laundry into the rear section of the carport space (still allowing for car parking).
- Redesign the internal stairway that interconnects the ground floor to the first floor level.
- Enlarge the dining and kitchen area to allow for an expanded living and dining space by moving the northern wall to match with the existing external wall on the north side.

First Floor

- Extend the first floor area over part of the existing ground floor area so as to provide increased floor area to bedrooms 2, 3 and 4.
- Extend the roof on the north side to match the changes to the lower floor.
- Provide an ensuite to bedroom 2.

- Remove the existing first floor balcony on the east, north and south sides to enable the first floor extension as shown on the architectural plans.
- Provide anew small balcony on the north side within the existing roof envelope.
- Provide a new office area adjoining the balcony.

External

- The modified roof will retain the current pitch and will be sheeted with colour bond metal covering to match the existing roof profiles.
- The external cladding to the new areas where there have been wall changes will be weather board profile to match the existing building.
- The roof water is to be connected to the existing stormwater system that is directed to the rear.

This consent changes the use of the on-site structure from use as a principal and secondary dwelling to a single dwelling house.

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.

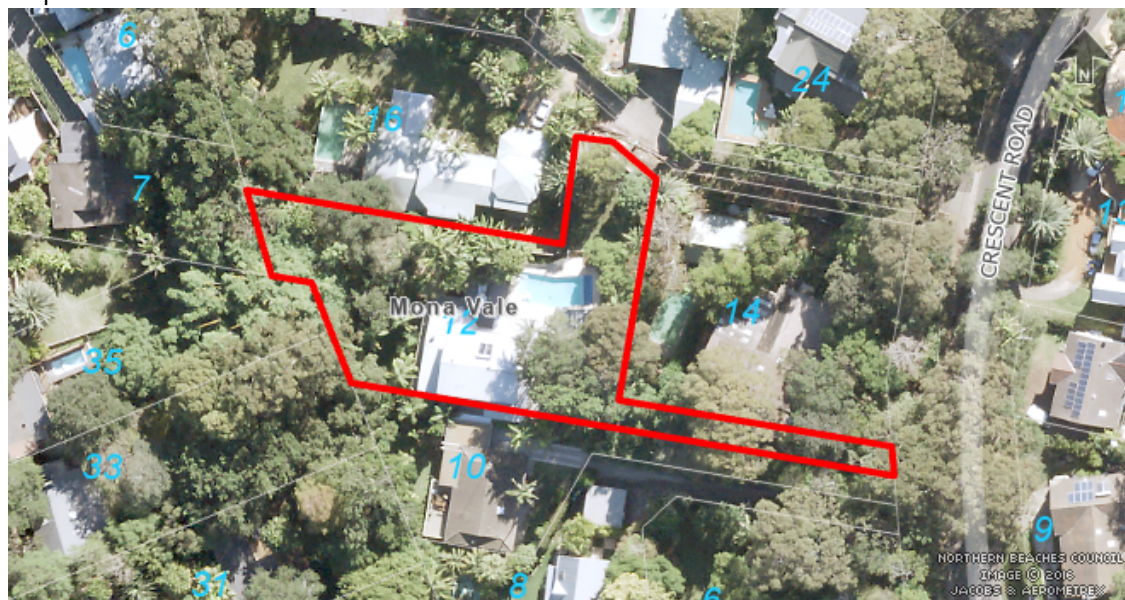
SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - B3.1 Landslip Hazard
Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation
Pittwater 21 Development Control Plan - D9.9 Building envelope
Pittwater 21 Development Control Plan - D9.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 1 DP 207839 , 12 Crescent Road MONA VALE NSW 2103
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Crescent Road.</p> <p>The site is irregular in shape with a frontage of 4.725m along Crescent Road and a depth of 96.39m. The site has a surveyed area of 1,925sqm.</p> <p>The site is in a 'battle-axe' style configuration.</p> <p>The site is located within the C4 Environmental Living zone and currently accommodates a principle dwelling house, attached secondary dwelling and swimming pool.</p> <p>The site slopes from front (east) downhill to the rear (west), with an approximate crossfall across the surveyed area of 15.8m.</p> <p>The site contains lawn areas, garden beds and trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses.</p>

Map:



SITE HISTORY

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

Development Application No. N0137/09 for 'A secondary dwelling'. This application was withdrawn from Pittwater Council on 29 May 2009.

Development Application No. N0372/09 for 'Attached secondary dwelling and new detached home office and garage'. This application was approved on 11 December 2009.

Modification Application No. N0372/09/S96/1 for 'Modification of Development Consent N0372/09 for Attached secondary dwelling and new detached home office and garage at 12 CRESCENT ROAD MONA VALE NSW 2103'. This application was approved on 31 March 2011.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. 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</p>

Section 4.15 Matters for Consideration	Comments
	<p>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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/07/2023 to 25/07/2023 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, without conditions</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p>
NECC (Bushland and Biodiversity)	<p>Supported, subject to conditions</p> <p>Councils Biodiversity Referrals team have assessed the Development Application for compliance against the following applicable controls:</p> <ul style="list-style-type: none"> • Biodiversity Conservation Act 2016 • Biodiversity Conservation Regulation 2017 • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor • SEPP (Resilience and Hazards) 2021 cl. 2.7 Development on certain land within littoral rainforest area • SEPP (Resilience and Hazards) 2021 cl. 2.8 Development on land in proximity to littoral rainforest <p>The Development Application seeks consent for alterations and additions to principal and secondary dwelling to create a single dwelling.</p> <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). As the proposal is situated within the footprint of the existing dwelling, and does not require the removal of any vegetation, the BOS is not triggered and a BDAR is not required.</p> <p>Councils Biodiversity Referrals team raise no objections, subject to conditions.</p>
NECC (Flooding)	<p>Supported, without conditions</p> <p>The rear of the property is flood affected, but the proposed alterations are located outside of the PMF extent. Also, all existing and proposed floor levels are above the FPL (RL 10.78). The development complies with Section B3.11 of the Pittwater Council DCP.</p>
NECC (Riparian Lands and Creeks)	<p>Supported, subject to conditions</p> <p>This application was assessed in consideration of:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. <p>The proposed development is minor in nature with no change in the impervious surfaces.</p> <p><i>Riparian</i> The site is located near a creek and its riparian area and as such proposed development must not significantly impact on the biophysical, hydrological or ecological integrity of the creek or the quantity and quality of surface and ground water flows that it receives.</p> <p><i>Sediment Management</i> Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</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. A499521, dated 13 June 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

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

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

Comment:

The subject site is located on land mapped as “littoral rainforest” and “proximity area for coastal wetlands” on the Coastal Wetlands and Littoral Rainforests Area Map. Council's Bushland and Biodiversity Officer and Riparian Lands and Creaks Officer have reviewed the proposal, including in regard to the SEPP (Resilience and Hazards) 2021, and are both supportive, subject to conditions. The proposal is situated within the footprint of the existing dwelling and does not require the removal of any vegetation.

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

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

Comment:

The subject site is located on land mapped as “littoral rainforest” and “proximity area for coastal wetlands” on the Coastal Wetlands and Littoral Rainforests Area Map. Council's Bushland and Biodiversity Officer and Riparian Lands and Creaks Officer have reviewed the proposal, including in regard to the SEPP (Resilience and Hazards) 2021, and are both supportive, subject to conditions. The proposal is situated within the footprint of the existing dwelling and does not require the removal of any vegetation.

Division 2 Coastal Vulnerability Area**2.9 Development on land within the coastal vulnerability area**

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

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

Comment:

There is no Coastal Vulnerability Area map adopted by Council. However, the subject site is outside the Coastal Use and Coastal Environment Area, and is not considered to pose a risk of increasing coastal hazards, or at risk from coastal hazards.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	10.2m (existing ridge height)	20%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The subject site is located in Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of the zone as detailed below:

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

Comment:

The proposal maintains the ecological, scientific and aesthetic values of the area, given that the site as existing has been disturbed for low density residential use.

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

Comment:

The proposal does not impact the above values.

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

Comment:

The proposal is of a low density scale and is integrated with the landform and landscape.

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

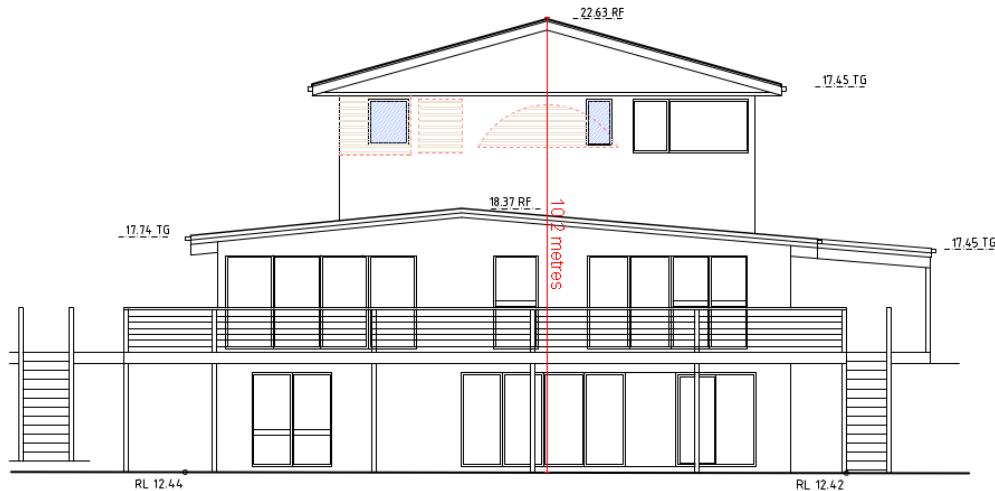
Comment:

The proposal does not adversely impact on riparian and foreshore vegetation and wildlife corridors.

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.2m
Percentage variation to requirement:	20%



WEST ELEVATION

SCALE 1:100

Figure 1 - Extract from plans (Drawing No. 3/3 941 21, West Elevation, dated October 2022) depicting building height.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The development complies with the relevant objectives of the C4 Environmental Living Zone of the PLEP 2014.
- The development complies with the relevant objectives of the Height of Buildings development standard of the PLEP 2014, notwithstanding the non-compliance.
- The new works to the existing dwelling on the site will maintain a dwelling on the subject site that will be generally consistent with the adjoining residential development, in regard to size and configuration.
- New works maintain the existing boundary setbacks and landscape provision, noting all works are proposed on the existing building footprint.
- The proposal will not impact neighbouring amenity or create any environmental concerns.
- The proposed non-compliance is the result on an existing non-compliance to the height of buildings development standard, with works proposed seeking to alter this existing building.

The arguments provided by the applicant are considered reasonable and acceptable. The technical non-compliance arises as the building as existing is non-compliant with the height of building development standard. The proposal seeks to undertake internal renovations to the building and some extensions that are all within the footprint of the existing dwelling (extending floor space on areas of existing decking). The non-compliance arises on the western side of the building, with sloping topography also a factor. Furthermore, the resulting development is considered to be commensurate to surrounding residential development within the area and does not impose unreasonable amenity impacts on adjoining properties.

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

Therefore, the applicant's written request has adequately demonstrated that there are sufficient

environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

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

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

The proposal is considered to be consistent with the height and scale of buildings in the surrounding locality. Due to the battle-axe nature of the subject site and ample surrounding vegetation, the property is not readily discernable from the street. Furthermore, the proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed, which occur within the footprint of the existing dwelling.

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

Comment:

The proposal is considered to be compatible with the height and scale of surrounding and nearby development. As above, the proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed, which occur within the footprint of the existing dwelling.

c) to minimise any overshadowing of neighbouring properties,

Comment:

As above, the proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed, which occur within the footprint of the existing dwelling. As such, the existing solar access to surrounding properties will be largely unaffected, or

minimally affected.

d) to allow for the reasonable sharing of views,

Comment:

As above, the proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed, which occur within the footprint of the existing dwelling. No concerns have been raised in regards to views. As such, the existing view sharing to surrounding properties will be largely unaffected.

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

Comment:

As above, the proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed, which occur within the footprint of the existing dwelling. The design does not extend the upper floor of the dwelling to the west, where the downhill topography would result in an increased height. The development is considered to respond sensitively to the natural topography, considering existing non-compliances and the nature of alterations and additions.

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

Comment:

As above, the proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed, which occur within the footprint of the existing dwelling. Due to the battle-axe nature of the subject site and ample surrounding vegetation, the property is not readily discernable from the street. As such, the proposal is considered to have little visual impact on the natural environment, heritage conservation areas and heritage items, considering the existing residential use of the property and surrounding area.

Zone Objectives

The underlying objectives of the C4 Environmental Living Zone are:

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

Comment:

The proposal maintains the ecological, scientific and aesthetic values of the area, given that the site as existing has been disturbed for low density residential use.

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

Comment:

The proposal does not impact the above values.

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

Comment:

The proposal is of a low density scale and is integrated with the landform and landscape.

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

Comment:

The proposal does not adversely impact on riparian and foreshore vegetation and wildlife corridors.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the Height of Buildings development standard and the 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).

7.7 Geotechnical hazards

A small portion of the subject site at the front entrance driveway adjoining Crescent Road is identified as being within the H2 area on the Geotechnical Hazard Map (see *Figure 2*).

A Geotechnical Report has not been submitted with the application. However, considering that works proposed are situated within the footprint of the existing dwelling, and the area of Geotechnical Hazard H2 area is located approximately 50m away from the proposed works, covering only a small are of driveway at the front boundary, the provision of a Geotechnical Report is considered unnecessary, in this instance.

For these reasons, and the minor nature of the works, it is considered that the application is satisfactory in regard to geotechnical risks.



Figure 2 - Map of subject site with Geotechnical Hazard H2 area in orange.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	>6.5m	-	Yes
Rear building line	6.5m	>6.5m	-	Yes
Side building line	North 2.5m	14.6m	-	Yes
	South 1m	3.1m	-	Yes
Building envelope	North 3.5m	Within envelope	-	Yes
	South 3.5m	Existing dwelling outside envelope (see Figure 3) containing works within	N/A	No but works within existing dwelling
Landscaped area	60% (1,155sqm)	Approx. 56.7% (1,091.2sqm)	Approx. 5.5% (63.8sqm)	Yes*

*No reduction in landscaped area is proposed, nor does the application require the removal of any vegetation. All works are within the footprint of the existing dwelling / impervious areas. Therefore, site will retain its existing landscape outcome. Refer to the section of this report on D9.11 Landscaped Area - Environmentally Sensitive Land for details.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	No	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	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
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	Yes	Yes
D9.9 Building envelope	No	Yes
D9.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

Detailed Assessment

B3.1 Landslip Hazard

A small portion of the subject site at the front entrance driveway adjoining Crescent Road is identified as being within the H2 area on the Geotechnical Hazard Map (see Figure 2). A Geotechnical Report has not been submitted with the application.

However, considering that works proposed are situated within the footprint of the existing dwelling, and the area of Geotechnical Hazard H2 area is located approximately 50m away from the proposed

works, covering only a small area of driveway at the front boundary, the provision of a Geotechnical Report is considered unnecessary, in this instance.

For these reasons, and the minor nature of the works, it is considered that the application is satisfactory in regard to geotechnical risks.

B8.3 Construction and Demolition - Waste Minimisation

The application has not been accompanied by a Waste Management Plan. To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to submit a detailed Waste Management Plan to the Certifying Authority prior to the issue of the Construction Certificate.

The Waste Management Plan must be prepared in accordance with Council's Waste Management Guidelines.

Subject to compliance with the conditions of consent, the proposal will demonstrate consistency with the requirements and outcomes of this control.

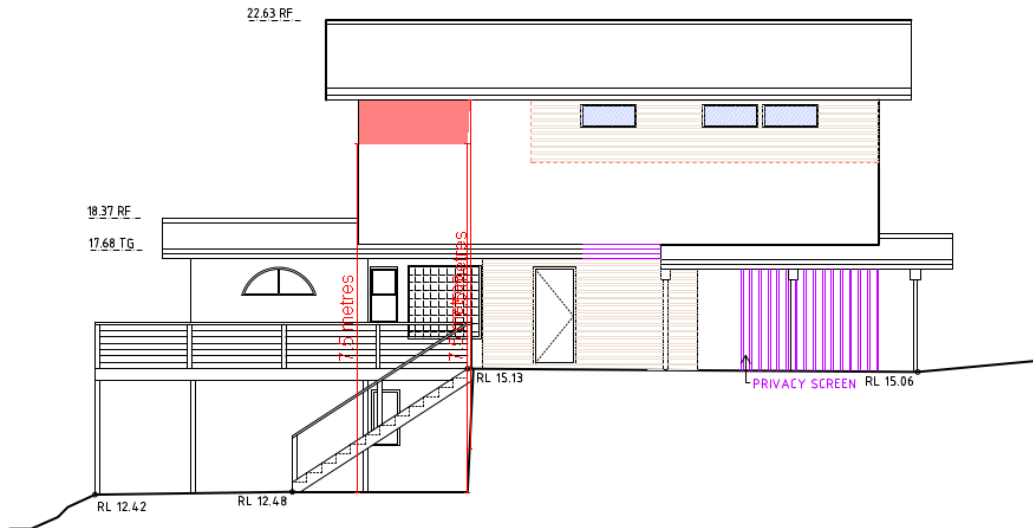
D9.9 Building envelope

Description of Non-compliance

This control requires that a building must be sited within a building envelope which is determined by projecting planes at 45 degrees from a height of 3.5m above the ground level at the side boundary.

The existing dwelling exhibits a breach on the southern elevation, as depicted in *Figure 3*. This breach is existing, however, the proposal includes internal alterations to this portion of the dwelling within the breaching first floor level.

No changes to the external facade are proposed within the area of the breach.



SOUTH ELEVATION

SCALE 1:100

Figure 3 - Southern Elevation with envelope breach in red.

Merit consideration

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

- To achieve the desired future character of the Locality.

Comment:

The proposal maintains the low density residential form of the area and therefore achieves the desired future character of the Locality.

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

Comment:

The proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed, which occur within the footprint of the existing dwelling. The envelope breach is existing, with works proposed to the existing structure. Due to the battle-axe nature of the subject site and ample surrounding vegetation, the property is not readily discernable from the street. The existing dwelling, and by extension the proposed development, is of a scale and density that is below the height of the trees of the natural environment

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

Comment:

The additions and alterations reinforce and sensitively relates to spatial characteristics of the existing natural environment. The envelope breach is existing, with works proposed to the existing structure.

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

Comment:

The proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed, which occur within the footprint of the existing dwelling. The envelope breach is existing, with works proposed to the existing structure. As such, the bulk and scale of the built form is minimised.

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

Comment:

As above, the proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed, which occur within the footprint of the existing dwelling. No concerns have been raised in regards to views. Again, the envelope breach is existing, with works proposed to the existing structure. As such, the existing view sharing to surrounding properties and public spaces will be unaffected by the envelope breach, which remains as existing.

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

Comment:

Again, the envelope breach is existing, with works proposed to the existing structure. As such, the existing level of privacy, amenity and solar access to surrounding properties and public spaces will be unaffected by the envelope breach, which remains as existing.

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

Comment:

No reduction in landscaped area is proposed, nor does the application require the removal of any vegetation.

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

D9.11 Landscaped Area - Environmentally Sensitive Land

A Site Plan noting landscaped area across the subject site was not provided with the application. Therefore, the exact landscaped area of the proposal cannot be ascertained. Estimated from the Site Survey, combined with information sourced from aerial imagery and a site visit, there is approximately 56.7% (1,091.2sqm) of landscaped area.

Nonetheless, all works proposed are located within the footprint of the existing dwelling. Consent is

sought for internal alterations within the existing building and additions which either take the form of enclosing existing balconies or deck areas, or minor extension of the ground floor on existing impervious areas.

Furthermore, Clause D9.11 Landscaped Area - Environmentally Sensitive Land provides for a variation which allows for the inclusion of up to 6% of impervious site area to be included as landscaped area, provided it is used for outdoor recreational purposes. The site has a large pool area and swimming pool which are used for outdoor recreation. If this additional variation was applied to the approximate landscaped area, the site would comply with the control.

No reduction in landscaped area is proposed, nor does the application require the removal of any vegetation. Therefore, site will retain its existing landscape outcome.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$4,765 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$476,545.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

PLANNING CONCLUSION

This proposal, for alterations and additions to the principal and secondary dwellings and to revert back to a single dwelling-house, has been referred to the Development Determination Panel (DDP) due to a greater than 10% breach of the height of buildings development standard as prescribed by Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.

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

The 4.6 request for the non-compliance with the height standard arises from the construction of alterations and additions to an existing building that are within the footprint of the existing building. The proposal does not seek to increase the existing ridge height of the structure, with only alterations and additions proposed. The existing ridge height of the structure is 10.2m above ground level (existing), resulting in a 20% non-compliance to the 8.5m control, as works are proposed to this existing structure. The Clause 4.6 is well founded and is supported.

The only other non-compliance of note is with Clause D9.9 Building Envelope of the Pittwater 21 Development Control Plan. The breach is existing, with proposed works occurring to this existing structure.

Overall, the proposed development is considered acceptable. Non-compliances largely result of the layout of existing structures that are the subject of alterations and additions within this proposal. The works do not significant increase these non-compliances and are not considered to result in any unreasonable amenity impacts on adjoining and surrounding properties.

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/0806 for Alterations and additions to an existing dwelling-house and secondary dwelling, including conversion to a single dwelling-house on land at Lot 1 DP 207839, 12 Crescent Road, MONA VALE, 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
1/3 941 21	-	Site Plan	High Design Architectural Design and Drafting Service	October 2022
2/3 941 21	-	Existing & Proposed Floor Plans	High Design Architectural Design and Drafting Service	October 2022
3/3 941 21	-	Elevations & Section	High Design Architectural Design and Drafting Service	October 2022

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A499521	Sustainability-Z Pty Ltd	13 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	Dated
Ausgrid	Ausgrid Referral Response	10/07/2023 (on EDMS)

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

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

3. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

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

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

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

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

5. **Approved Land Use**

This consent changes the use of the on-site structure to a dwelling house.

Nothing in this consent shall authorise the use of the on-site structure as detailed on the approved plans for any land use beyond the definition of a dwelling house, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

Dwelling house means a building containing only one dwelling.

Note - Dwelling houses are a type of residential accommodation.

Any variation to the approved land use and/occupancy of the on-site structure as detailed on the approved plans beyond the scope of the above definition will require the submission to Council of a new development application.

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

6. **No Approval for Secondary Dwelling**

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

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

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,765.45 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 \$476,545.00.

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

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

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

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

8. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

10. **Erosion and Sediment Control Plan**

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

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

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

Reason: To protect the receiving environment.

11. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

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. **Sydney Water "Tap In"**

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

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

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

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

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

14. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan and Council's Waste Management Guidelines.

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

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

DURING BUILDING WORK

15. **Wildlife Protection**

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

Reason: To protect native wildlife.

16. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

17. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

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

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

Reason: To protect the receiving environment.

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. 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.

20. 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**21. Native Landscaping**

Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the

relevant section of the Native Planting Guide available on Council's website.

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

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

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

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

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

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

23. **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 Waste Management Plan for this development.

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

24. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

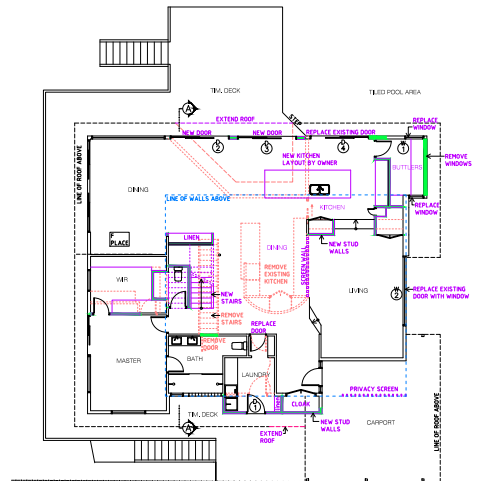
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

25. **Protection of Habitat Features**

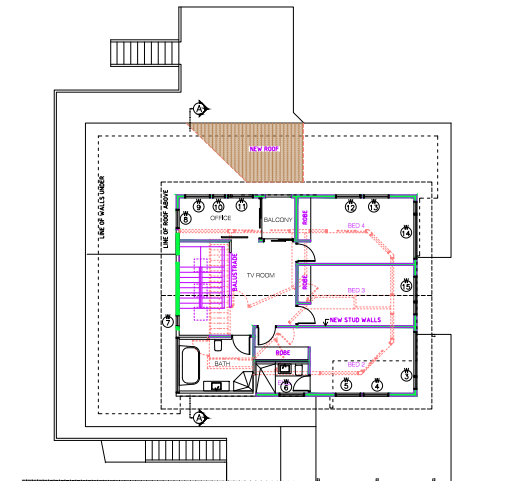
All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

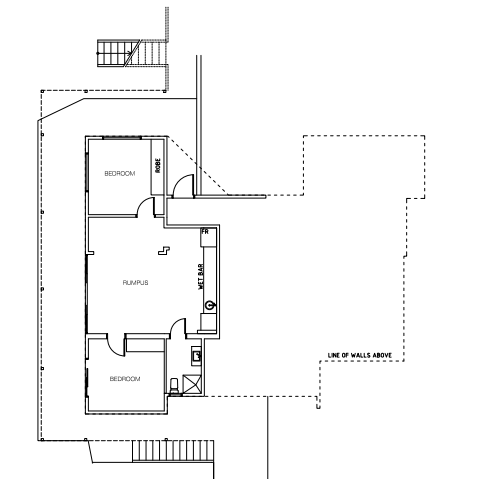
**SITE AREA 1925 sqm
LANDSCAPE AREA - NO CHANGES**



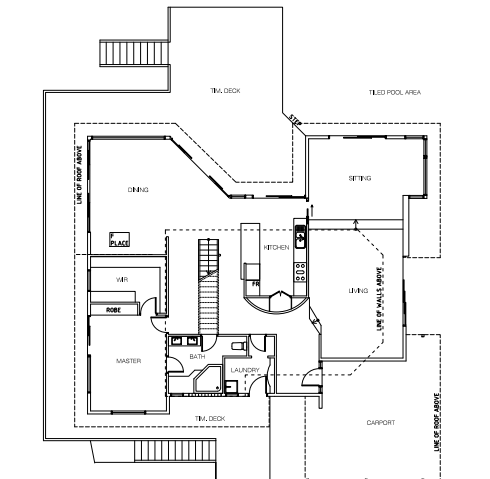
PROPOSED UPPER GROUND FLOOR PLAN
SCALE 1:100



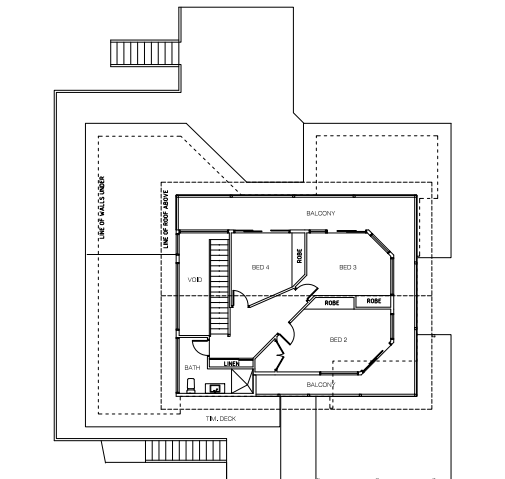
PROPOSED FIRST FLOOR PLAN
SCALE 1:100



EXISTING LOWER GROUND FLOOR PLAN
SCALE 1:100



EXISTING UPPER GROUND FLOOR PLAN
SCALE 1:100



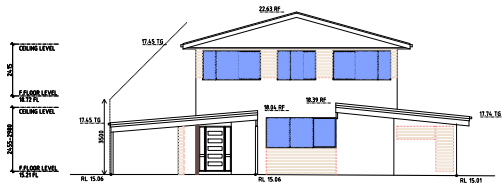
EXISTING FIRST FLOOR PLAN
SCALE 1:100

1. BUILDING TO CHECK AND CORRECT ALL NECESSARY DIMENSIONS ON SITE PRIOR TO CONSTRUCTION. DO NOT SCALE THE DRAWING.
2. ALL DIMENSIONS THAT RELATE TO SITE DIMENSIONS, TRACKS AND LOCATIONS ARE SUBJECT TO VERIFICATION BY A SITE SURVEY.
3. ALL VIEWS TO BE IN ACCORDANCE WITH LOCAL COUNCIL REQUIREMENTS. TO BE VERIFIED BY LOCAL COUNCIL REQUIREMENTS.
4. ALL DIMENSIONS THAT RELATE TO THE BUILDING TO BE CONSTRUCTED TO BE IN ACCORDANCE WITH LOCAL COUNCIL REQUIREMENTS.
5. NEW KITCHEN LAYOUT BY OWNER TO BE VERIFIED BY LOCAL COUNCIL REQUIREMENTS.
6. ALL ELECTRICAL, PLUMBING AND GAS WORK TO BE IN ACCORDANCE WITH LOCAL COUNCIL REQUIREMENTS.
7. THE DRAWING DOES NOT SHOW ALL EXISTING PROPOSED DIMENSIONS BY NEW WORK. MAKE EXISTING MATERIAL WHERE POSSIBLE.
8. ALL NEW DIMENSIONS TO BE IN ACCORDANCE WITH LOCAL COUNCIL REQUIREMENTS.
9. ALL DIMENSIONS TO BE IN ACCORDANCE WITH LOCAL COUNCIL REQUIREMENTS.
10. ALL DIMENSIONS TO BE IN ACCORDANCE WITH LOCAL COUNCIL REQUIREMENTS.

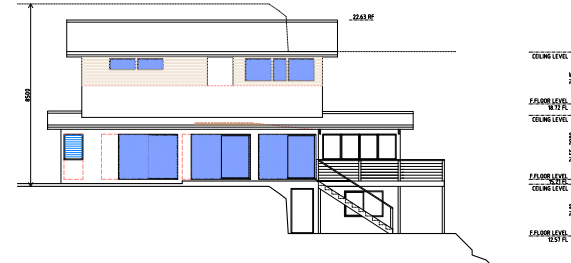
PROJECT ADDRESS:
12 CRESCENT ROAD
NOMA VALE
CLIENT:

DATE: 2023
DRAWN BY: [Signature]
CHECKED BY: [Signature]
DATE: 2/3/21

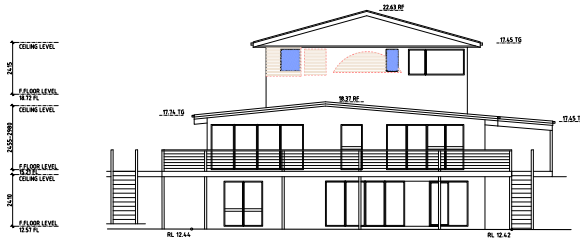
"HIGH DESIGN" - ABN 51 476 054 183
architectural design and drafting service
mobile: 041 3389 036
E-mail: hd@highdesign.com.au
Webb: highdesign.com.au



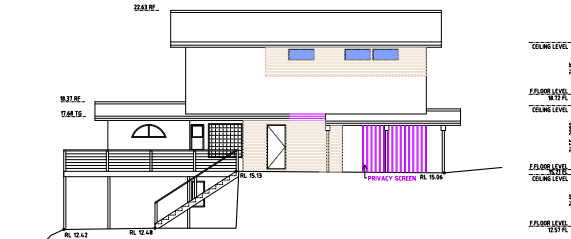
EAST ELEVATION
SCALE 1:100



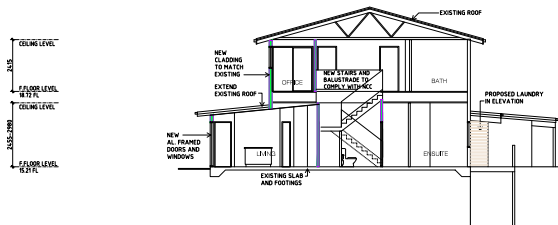
NORTH ELEVATION
SCALE 1:100



WEST ELEVATION
SCALE 1:100



SOUTH ELEVATION
SCALE 1:100



SECTION A-A
SCALE 1:100

1. BUILD TO CHECK AND CORRECT ALL NECESSARY DIMENSIONS ON SITE PRIOR TO CONSTRUCTION. DO NOT SCALE THE DRAWING.
2. ALL DIMENSIONS THAT RELATE TO SITE DIMENSIONS, SETBACKS, AND COORDINATES ARE SUBJECT TO VERIFICATION BY A SITE SURVEY.
3. ALL DIMENSIONS TO BE IN ACCORDANCE WITH THE DIMENSIONS OF THE DRAWING. VERIFICATION BY LOCAL COUNCIL REQUIREMENTS.
4. ALL DIMENSIONS TO BE IN ACCORDANCE WITH THE DIMENSIONS OF THE DRAWING. VERIFICATION BY LOCAL COUNCIL REQUIREMENTS.
5. ROOF WATER'S FLOW DIRECTION TO BE DETERMINED BY THE APPROVED NUMBER OR AS DIRECTED BY LOCAL COUNCIL.
6. ALL DIMENSIONS TO BE IN ACCORDANCE WITH THE DIMENSIONS OF THE DRAWING. VERIFICATION BY LOCAL COUNCIL REQUIREMENTS.
7. THERE SHALL BE NO DIMENSIONS TO BE DETERMINED BY THE APPROVED NUMBER OR AS DIRECTED BY LOCAL COUNCIL.
8. ALL NEW DIMENSIONS TO BE IN ACCORDANCE WITH THE DIMENSIONS OF THE DRAWING. VERIFICATION BY LOCAL COUNCIL REQUIREMENTS.
9. ALL DIMENSIONS TO BE IN ACCORDANCE WITH THE DIMENSIONS OF THE DRAWING. VERIFICATION BY LOCAL COUNCIL REQUIREMENTS.
10. ALL DIMENSIONS TO BE IN ACCORDANCE WITH THE DIMENSIONS OF THE DRAWING. VERIFICATION BY LOCAL COUNCIL REQUIREMENTS.

PROJECT ADDRESS:
12 CRESCENT ROAD
MOMA VALE
CLIENT:

DATE:
OCT 2022
DESIGNED BY:
B. V.
CHECKED BY:
B. V.
DATE:
3/3 9/12 21



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Webb: highdesign.com.au

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NSW 2448
0408024973
nfletcher@bigpond.net.au

13th June 2023

**General Manager
Northern Beaches Council
725 Pittwater Road
Dee Why
NSW 2099**

Re: Development Application 2 Crescent Road Mona Vale

In reference to the above application Council is advised that this submission is in support of the application and seeks consideration to the varying of development standards as required by Clause 4.6 of the Pittwater Local Environmental Plan 2014.

The standard that is requested to be varied is the Height Control (Clause 4.3) as indicated for the locality in the Pittwater Local Environmental Plan 2014.

❖ Submission to vary the Height Control

Clause 4.6 Exceptions to development standards has the following objectives:

- (1) The objectives of this clause are as follows—
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Planning Secretary has been obtained.

Justification to Vary the Controls

Therefore to justify the contravening of the Building Height and particularly why the Control is unreasonable and unnecessary in the circumstances as proposed with the development application the following is submitted to the Northern Beaches Council:

The site is within **Zone C4 Environmental Living**

Objectives of the Zone, is to:

Provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
Ensure that residential development does not have an adverse effect on those values.
Provide for residential development of a low density and scale integrated with the landform and landscape.
Encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors

Comment

The proposal is for alterations and addition to an existing residential building that includes a lower ground, ground and first floor section.

The new works are within the existing established building height and envelope.

The area where the variation occurs to the 8.5 m height control is at the rear. The new works do not increase or change the existing height of the established residential building on the property.

The new works do not significantly will add to the bulk of the residential building when viewed from the adjoining properties or at the street frontage.

There will no increase in water discharge from the new works as the additions are within the existing roof area and envelope.

The works will not change the existing residential use of the site and will not be contrary to the objectives of the C4 Environmental Living Zone.

Height Control

The objectives of this clause are as follows:

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

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- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

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

The Height of Buildings Maps indicates that the maximum building height for the locality is 8.5 m.

Comment

The new works are within the established building floor areas and do not change the existing building height. The area where the variation to the height control exists is at the rear gable section of the roof and the new works do not increase the established height of the building.

The proposed alterations and additions will have no impact on the adjoining residential properties or the street frontage in regard to bulk and scale.

It is considered that the proposal will meet with the objectives of the Clause in that it is an existing departure that would have been approved by Council when the original building was constructed.

The existing departure to the height should be acceptable as the impact on the locality is minor and the works would not be out of character with the immediate residential development.

Summary

The proposal is generally consistent in regard to the bulk and scale of existing residential development in the immediate locality.

The proposed departure from the prescriptive controls as indicated on the submitted architectural plans, being the Height Control will enable the existing residential to be provided with additional floor space within the existing height and building foot print.

The design of the new works to the existing dwelling on the site, will maintain a dwelling on the subject site that will be generally consistent with the adjoining residential development, in regard to size and configuration.

The new works maintain the existing boundary setbacks, landscape provision and also ensure reasonable view sharing is maintained to the adjacent properties and also from the street frontage.

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The design maintains a reasonable level of solar provision to the adjoining residential properties and meets with the Development Control Plan objectives.

The full compliance with the Building Height Ratio control is considered to be unreasonable as the new proposal meets with the Objectives of the C4 Environmental Living Zone of the Pittwater Local Environmental Plan 2014.

The proposal will not create any additional environmental concerns for the locality as it is indicated on the development application plans nor have any detrimental impact on the amenity of the locality.

In conclusion it is recommended to Council that the existing non-compliance with the Height Control in the Pittwater Local Environmental Plan 2014 be considered as a variation Under Clause 4.6 so to allow the alterations and additions to proceed as indicated in the design submitted with the development application at 2 Crescent Road Mona Vale.

Regards



Norm Fletcher
MEIANZ.

ITEM 3.6	DA2023/0929 - 147 MCCARRS CREEK ROAD CHURCH POINT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/635838
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0929 for alterations and additions to a dwelling house on land at Lot 1 DP 243387, 147 McCarrs Creek Road CHURCH POINT subject to the conditions set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0929
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 243387, 147 McCarrs Creek Road CHURCH POINT NSW 2105
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Franziska Goyo
Applicant:	Franziska Goyo
Application Lodged:	17/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/07/2023 to 07/08/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 19.8%
Recommendation:	Approval
Estimated Cost of Works:	\$ 45,100.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a departure from the height of buildings development standard by more than 10%. The maximum height of the proposed development has been measured at 10.18m, which represents a variation of 19.8% to the prescribed 8.5m building height limit.

The clause 4.6 request for the non-compliance with the building height standard arises from the sloping nature of the site towards the north-west and the existing excavation beneath the dwelling, based on the height measurement under the relevant LEC caselaw known as *Merman*. Based on

extrapolated natural ground levels under the LEC caselaw known as *Bettar*, the height of the balcony roof would be below the 8.5m height limit. The Clause 4.6 variation request in relation to building height is well founded and is supported.

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

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 alteration to the landform.

This report concludes with a recommendation that the DDP support the Clause 4.6 variation and grant **APPROVAL** to the development application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling including the following elements:

First Floor

- Extend existing front deck towards the northwest
- Extend roof to cover deck
- Increase window and door opening to provide new door openings from dining room, kitchen and living room to deck

Second Floor

- Replace existing deck
- Provide new roof over deck

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D4.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 1 DP 243387 , 147 McCarrs Creek Road CHURCH POINT NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of McCarrs Creek Road.</p> <p>The site is battle-axe in shape with a frontage of 4.575m along Bakers Road, an access handle length of 49.21m, a width of 45.72m and a depth of 52.47m. The site has a surveyed area of 930.8m² (705.7m² excluding the access handle).</p> <p>The site is located within the C4 Environmental Living zone and accommodates a three-storey residential dwelling house and a swimming pool.</p> <p>The site has a complex topography and falls approx. 20m from the southeast towards the northwest (excluding the fall of the access handle) with an average gradient of 39%.</p> <p>The site is predominantly vegetated with several canopy trees and undergrowth vegetation. Several exposed rock outcrops are found throughout the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings within a bushland setting.</p>

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. 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 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Bushfire Consultancy Australia, dated 16/05/2023). The report stated that the bushfire attack level of the site is "Flame Zone".

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

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/07/2023 to 07/08/2023 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
NECC (Bushland and Biodiversity)	<p>Additional Comments - 19/09/2023</p> <p>It is noted that RFS have submitted their recommendation that <i>"from the start of building works, and in perpetuity to ensure ongoing protection from the impact of bush fires, the property must be managed as an inner protection area (IPA) for a distance of 10 meters from the proposed works (or to the property boundary if closer) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019"</i>.</p> <p>As no prescribed trees or vegetation will be removed as a result of the proposed development, nor will Biodiversity Values within the site be impacted, Council's Biodiversity referrals team raise no objections, subject to conditions.</p> <p>Original Comments - 25/07/2023</p> <p>The proposal seeks approval for alterations and additions to a</p>

Internal Referral Body	Comments
	<p>dwelling house.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Planning for Bushfire Protection 2019 (PBP 2019) • SEPP (Resilience and Hazards) 2021 - Littoral Rainforest and Proximity Area <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS.</p> <p>No arborist report has been submitted with the application with works taking place within 5 metres of an existing tree. However, a desktop survey has confirmed that the tree identified in the Plan - Survey is an <i>Archontophoenix cunninghamiana</i> (Bangalow palm) palm which is exempt and may be removed without consent.</p> <p>A bushfire report has been submitted with the application and has awarded the site a BAL-FZ (Flame zone) risk level. As the bushfire report has awarded a Flame Zone risk level to the property, a referral to the RFS is required. The Biodiversity referral assessment will continue upon reception of this referral.</p>

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.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The NSW Rural Fire Service has considered the information submitted and raises no objection to the proposed development, subject to conditions.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all</p>

External Referral Body	Comments
	Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been

carried out as follows:

Division 1 Coastal Wetlands and littoral rainforest area

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

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

Comment:

The access handle of the site is partially located in an area identified as littoral rainforest. The proposed works fall outside of this area, therefore this section is considered to be satisfied.

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

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

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the nearby littoral rainforest.

Division 5 General

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

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

Comment:

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

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

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

Comment:

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

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used 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	10.18m	19.8%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes

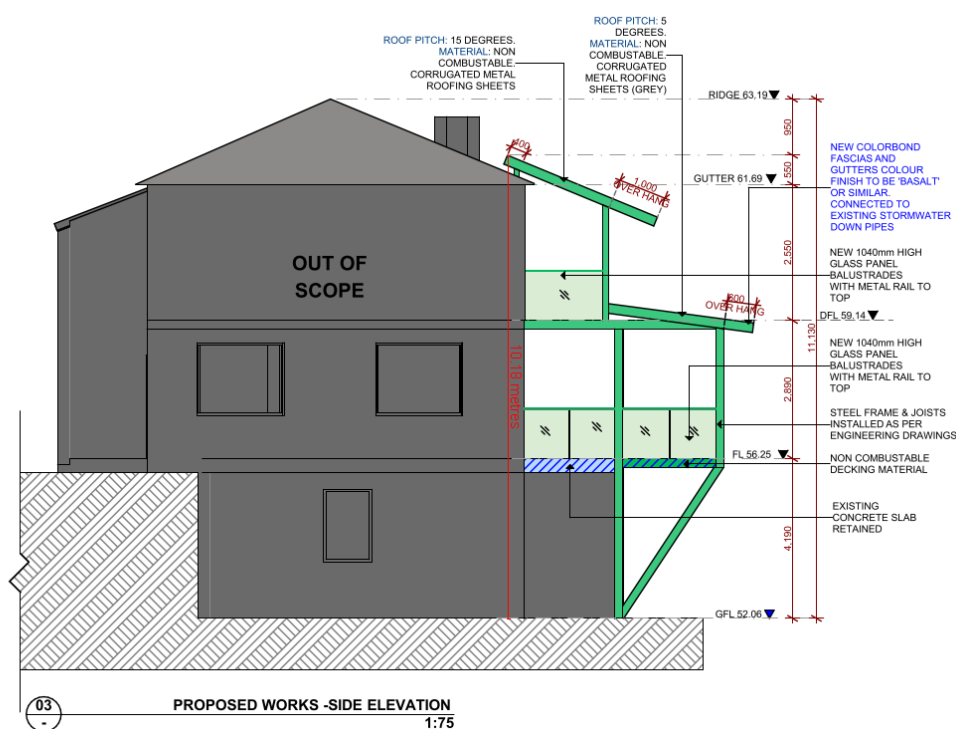
Clause	Compliance with Requirements
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.18m
Percentage variation to requirement:	19.8%



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.*

Applicants Written Request

The applicants written request argues, in part:

It is evident that the existing dwelling required excavation, altering the ground level from which height is now measured. Based on the assumed ground line ... the roof of the deck remains below the maximum 8.5 metre height limit. In accordance with the findings of Commissioner O'Neill in Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582 prior excavation within the building footprint constitutes an environmental planning ground within the meaning of cl.4.6(3)(b) of the LEP.

The provision of the roof over the deck also provides positive planning outcomes including reducing the perceived bulk and improving the visual appearance of the front façade of the building, providing weather protection to the deck and shade for north-west facing windows enabling a more sustainable building and greater amenity for residents.

On this basis it is evident that there are sufficient environmental planning grounds to justify non-compliance with the 8.5 metre height control.

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

- *The building height is artificially accentuated due to the existing area of excavation relative to the prevailing slope of the site and surrounds.*
- *The proposed development generally maintains the pattern of the neighbourhood including predominant heights.*
- *The development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property while maintaining suitable amenity for adjoining properties.*

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

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

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

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

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

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

Comment:

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

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

While the proposal includes some numerically non-compliant built form elements, the bulk and scale of the development is considered to be reasonably managed to limit impact on other properties, given the geographical characteristics of the site and surrounds. The proposed development will not impact upon the existing and desired streetscape character as the dwelling is not readily viewable from McCarrs Creek Road.

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

Comment:

The height and scale of the proposed garage and dwelling is generally consistent with that of similar structures and dwellings in the site vicinity.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development will not cause unreasonable overshadowing of adjacent properties.

d) to allow for the reasonable sharing of views,

Comment:

No views or vistas are expected to be unreasonably impacted as a result of the development

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

Comment:

The proposed development is appropriately stepped to respond with the steep topography of the site while also ensuring functional residential development can be provided on the site.

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

Comment:

Existing trees and vegetation are to be retained. The existing canopy trees and vegetation on and around the site will soften the built form and its visual impact on the natural environment.

Zone Objectives

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

Through its design and siting, the proposed development is considered to have low impact on the ecological and aesthetic values of the site.

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

Comment:

The proposed development is not expected to cause adverse impacts to the ecological and aesthetic values on the site.

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

Comment:

The proposed development provides for a low density residential dwelling with ancillary structures that provide greater functionality than the existing conditions.

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

Comment:

The proposed development is not expected to cause unreasonable impact to wildlife corridors that the site may contain.

Conclusion

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

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
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Front building line	6.5m	57m	N/A	Yes
Rear building line	6.5m	Front of dwelling	N/A	Yes
Side building line	W - 2.5m	1.7m	32%	No
	NE - 1m	1.25m	N/A	Yes
Building envelope	W - 3.5m	Within envelope	N/A	Yes
	NE - 3.5m	Within envelope	N/A	Yes
Landscaped area	60% (558.5m ²)	Unaltered	N/A	As existing

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.6 Side and rear building line	No	Yes
D4.8 Building envelope	Yes	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

D4.6 Side and rear building line

Description of Non-compliance

The control prescribes a side setback of 2.5m to one side and 1.0m to the other sides and a rear setback of 6.5m. For this assessment, the 2.5m side building line applied to the western boundaries and the 1.0m side building line is applied to the northeastern boundary. The rear setback building line is applied to the southern boundary.

The proposed development is setback 1.7m from the western side boundary, which is a 32% variation to the control requirement.

The proposed development demonstrates compliance with all other building setback requirements.

Merit Consideration

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

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

Comment:

The proposed works will maintain a low density residential build, with spatial proportions that are considered consistent with the surrounding development. The works will achieve the desired future character of the Church Point and Bayview Locality.

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

Comment:

The side and rear setback areas consists of well-maintained landscaped areas including various shrubs and trees, the vegetation will aid in the mitigation of any perceivable bulk and scale. The proposal retains existing rear setback and is expected to be of a built form that is compatible with the surrounding streetscape. In addition, existing canopy trees on site will be maintained to continue to soften the built form.

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

Comment:

The proposed works are positioned in an acceptable manner and are not considered to result in unacceptable view loss to surrounding private properties or the public domain.

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

Comment:

As above, the proposal is not considered to result in unacceptable view loss.

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

Comment:

It is considered that the proposal provides adequate spatial separation between adjoining buildings and will not cause any unreasonable overshadowing. The works are not considered to unacceptably impact upon the amenity or reduce privacy levels the to neighbouring properties.

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

Comment:

As mentioned above, the site will retain existing canopy trees and will comprise of amply vegetation within the building setbacks. The proposed works do not necessitate in the removal of any significant trees or plantings and is considered to continue to aid in the visual reduction of the the built form.

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

Comment:

The proposal maintains the original access arrangements on site and will remain flexible in terms of the siting of the building.

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

Comment:

The existing vegetation and mature trees on site will be retained and will continue to enhance and reduce the built form of the development. In addition, the proposal provides a compliant landscaped area.

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

Comment:

Not applicable.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

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

The critical assessment issues are the variations to the permitted building height and side setback.

The Clause 4.6 variation request in relation to building height is well founded and is supported.

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 referred to the DDP with a recommendation that the Panel support the Clause 4.6 variation and **APPROVE** the application.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/0929 for Alterations and additions to a dwelling house on land at Lot 1 DP 243387, 147 McCarrs Creek Road, CHURCH POINT, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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
ID001	P4	Site Plan	Unnamed	30/09/2023
ID004	P4	Proposed Plan GF	Unnamed	30/09/2023
ID004	P4	Demo Plan First Floor	Unnamed	30/09/2023
ID004	P4	Proposed Plan First Floor	Unnamed	30/09/2023
ID004	P4	Demo Plan Second Floor	Unnamed	30/09/2023
ID004	P4	Proposed Layout Plan Second Floor	Unnamed	30/09/2023
ID004	P4	Proposed Elevation	Unnamed	30/09/2023
ID004	P4	Proposed Elevation	Unnamed	30/09/2023
ID004	P4	Proposed Elevation	Unnamed	30/09/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Bushfire Assessment Report (Ref: 147Mcc-01)	-	Bushfire Consultancy Australia	16/05/2023
Geotechnical Site Inspection (Ref: P2309633JC01V02)	-	Martens Consulting Engineers	01/06/2023
Waste Management Plan	-	Unnamed	Undated

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	26/07/2023

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of the site beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014.

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

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

4. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times

until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the 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

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. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

8. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

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

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

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.

10. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

11. **Compliance with Standards**

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

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

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

12. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (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.

13. **Sydney Water "Tap In"**

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

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

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

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

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

DURING BUILDING WORK

14. **Wildlife Protection**

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

Reason: To protect native wildlife.

15. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- 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.

16. **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.

17. **Survey Certificate**

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

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

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

18. **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.

19. Aboriginal Heritage

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**20. No Weeds Imported On To The Site**

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

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

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

21. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system 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 authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system 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 satisfactory management of stormwater.

22. **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.

23. **Waste Management Confirmation**

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

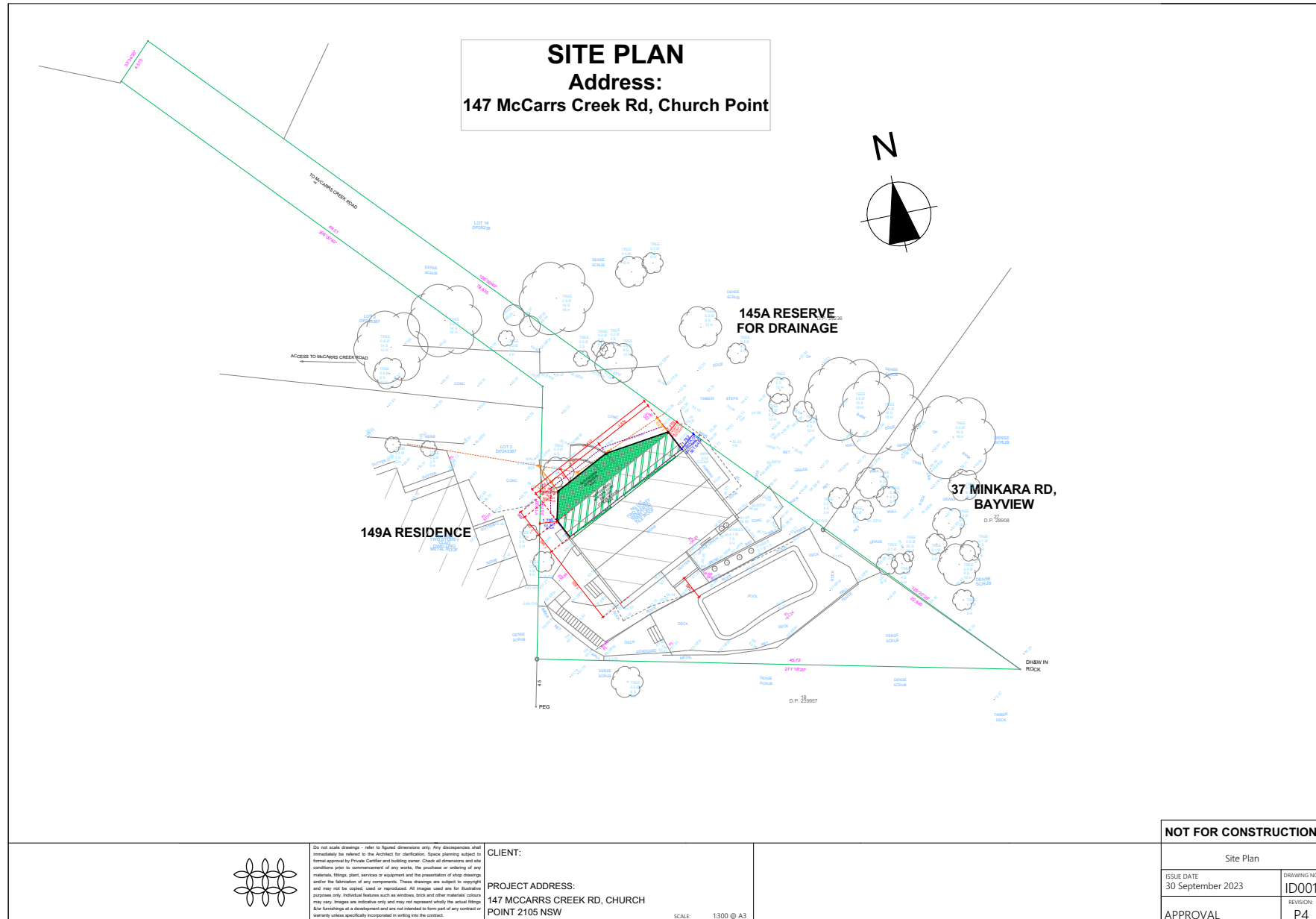
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

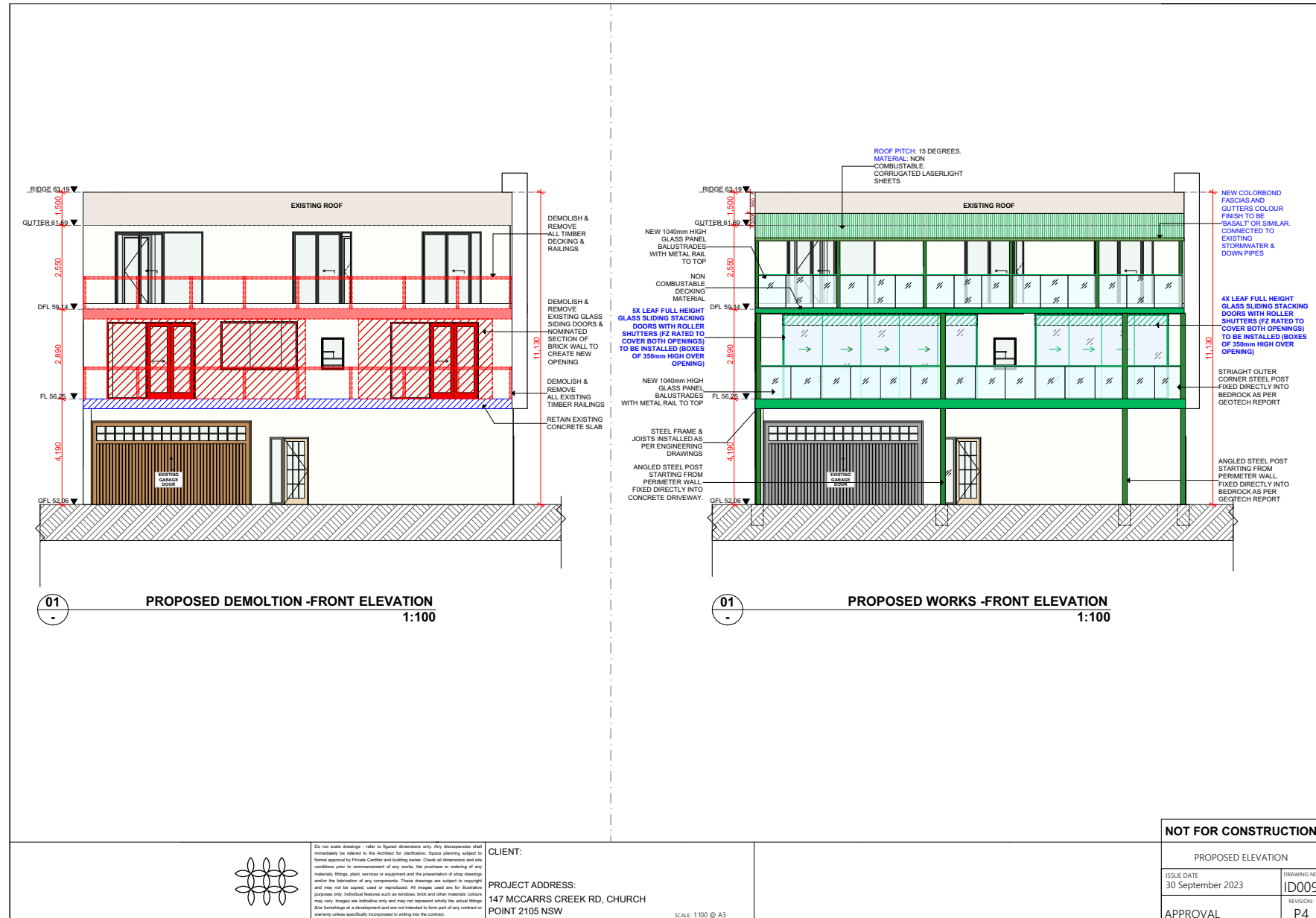
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

24. **Geotechnical Recommendations**

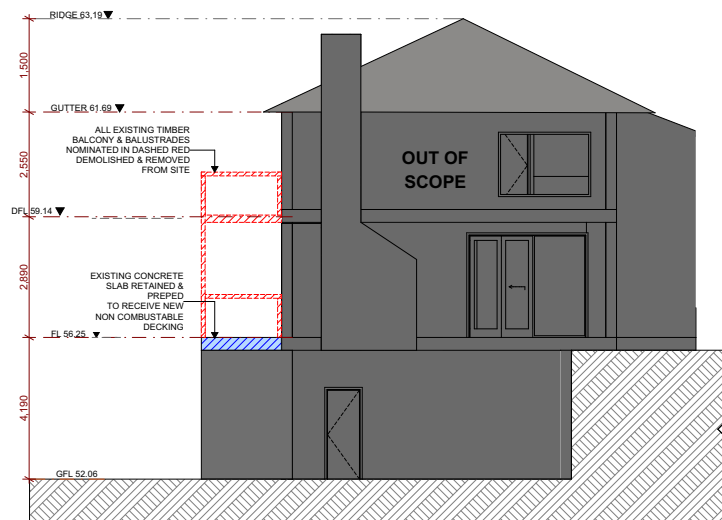
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



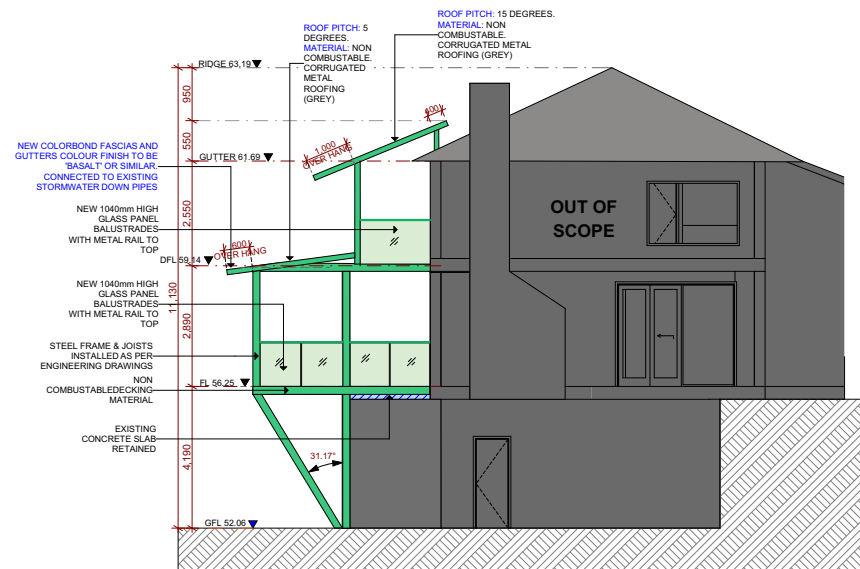


Do not scale drawings - refer to figured dimensions only. Any discrepancies shall immediately be referred to the Architect for clarification. Space planning subject to final approval by Private Council and building owner. Check all dimensions and site conditions prior to commencement of any works, the purchase or ordering of any materials, fittings, plant, services or equipment and the presentation of shop drawings and/or the fabrication of any components. These drawings are subject to copyright and may not be copied, used or reproduced. All images used are for illustrative purposes only. Individual features such as windows, doors and other materials colours may vary. Images are indicative only and may not represent exactly the actual fittings and furnishings at a development and are not intended to form part of any contract or warranty unless specifically incorporated in writing into the contract.



02
-

PROPOSED DEMOLITION -SIDE ELEVATION
1:100



02
-

PROPOSED WORKS -SIDE ELEVATION
1:100



Do not scale drawings - refer to figured dimensions only. Any discrepancies shall immediately be referred to the Architect for clarification. Space planning subject to formal approval by Private Council and building owner. Check all dimensions and site conditions prior to commencement of any works, the purchase or ordering of any materials, fittings, plant, services or equipment and the presentation of shop drawings and/or the fabrication of any components. These drawings are subject to copyright and may not be copied, used or reproduced. All images used are for illustrative purposes only. Individual features such as windows, doors and other material elements may vary. Images are indicative only and may not represent wholly the actual fittings. All furnishings at a development are not intended to form part of any contract or warranty unless specifically incorporated in writing into the contract.

CLIENT:

PROJECT ADDRESS:
147 MCCARRS CREEK RD, CHURCH
POINT 2105 NSW

SCALE: 1:100 @ A3

NOT FOR CONSTRUCTION

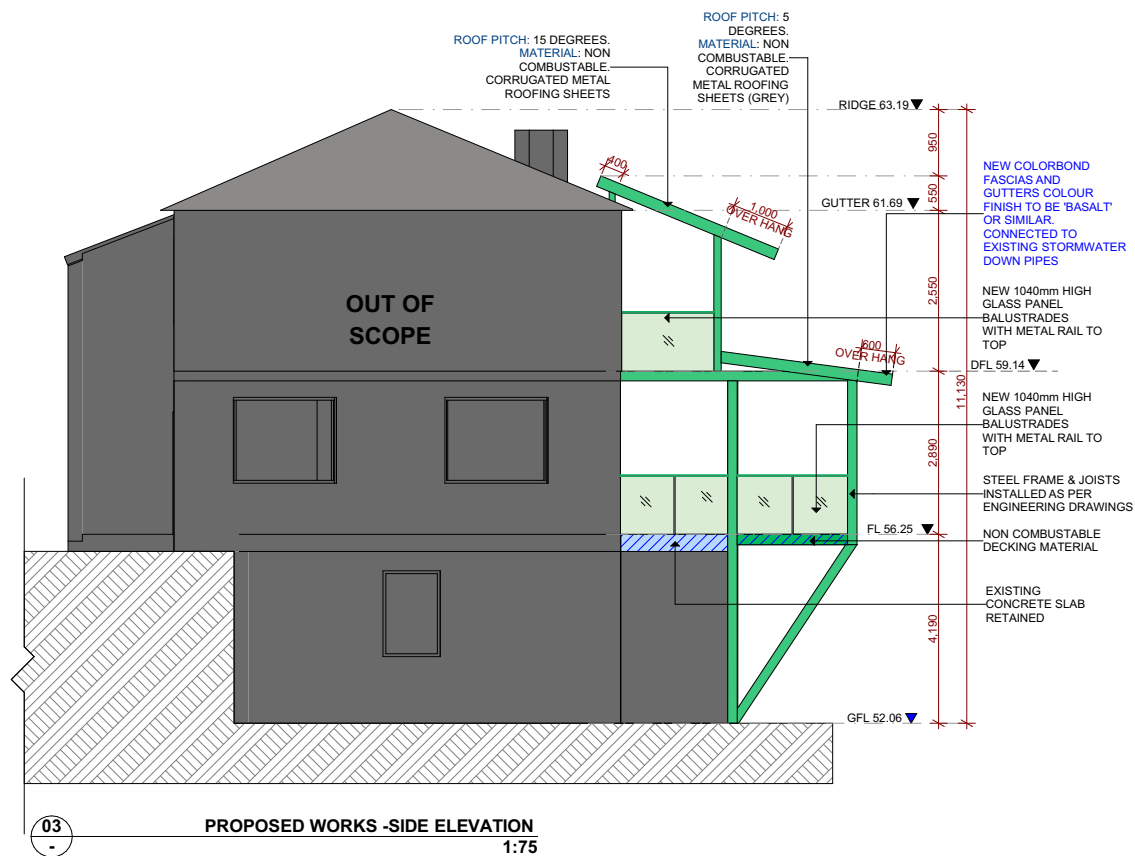
PROPOSED ELEVATION

ISSUE DATE
30 September 2023

DRAWING NO
ID010

APPROVAL

REVISION:
P4



NOT FOR CONSTRUCTION

PROPOSED ELEVATION

ISSUE DATE
30 September 2023

DRAWING NO
ID011

APPROVAL

REVISION:
P4



Do not scale drawings - refer to figure dimensions only. Any discrepancies shall immediately be referred to the Architect for clarification. Space planning subject to final approval by Private Council and building owner. Check all dimensions and site conditions prior to commencement of any works, the purchase or ordering of any materials, fittings, plant, services or equipment and the presentation of shop drawings and/or the fabrication of any components. These drawings are subject to copyright and may not be copied, used or reproduced. All images used are for illustrative purposes only. Individual features such as windows, doors and other materials colours may vary. Images are indicative only and may not represent exactly the actual fittings. All furnishings at a development are not intended to form part of any contract or warranty unless specifically incorporated in writing into the contract.

CLIENT:

PROJECT ADDRESS:
147 MCCARRS CREEK RD, CHURCH
POINT 2105 NSW

SCALE: 1:75 @ A3



ARNOTT PLANNING

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Request for Variation of Development Standard under Clause 4.6 of Pittwater LEP 2014 - 8.5m Height Control

Introduction:

Clause 4.6 of *Pittwater Local Environmental Plan 2014* (PLEP 2014) allows for development consent to be granted for a development even though it contravenes a development standard where the consent authority has considered a written request justifying the contravention of the standard and it is satisfied that the proposed development will be in the public interest. Such written request is required to demonstrate that:

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

This clause 4.6 request seeks to vary the 8.5metre height control specified in clause 4.3 of PLEP 2014 to enable the construction of a roof over an upper level deck at 147 McCarrs Creek Road, Church Point. The proposed roof has a maximum height of 10.18metres above existing ground level and sits 0.95metres lower than the existing ridge height of the building. This variation request accompanies a development application for alterations to the dwelling house at 147 McCarrs Creek Road which includes the proposed roof.

Relevant Land and Environment Court cases have been considered in seeking a variation of the development standard and principles established by the Court applied in addressing the clause 4.6 legislative requirements.

Clause 4.6 Matters to be Addressed:

1. Cl.4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining whether compliance with the 8.5metre height control is unreasonable or unnecessary in the circumstances of this application it is appropriate to determine if the objectives of the zone and the objectives of the height standard are satisfied notwithstanding the non-compliance (*Whebe v Pittwater Council* [2007] 156 LGERA 446; [2007] NSWLEC 827).

Objectives of the C4 Environmental Living Zone:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values and to ensure development does not have adverse effect on those values.*

The location of the existing dwelling and proposed roof is identified on the Biodiversity Values Map as being in proximity to littoral rainforest. The proposal will not result in the removal of any vegetation or alter the drainage regime for the area. Whilst the existing dwelling and proposed roof is not easily visible from a public place not having direct frontage to McCarrs Creek Road, the incorporation of the roof will assist in providing articulation and reduce the visual bulk of the existing front façade of the building.

The proposed roof will not result in any additional impact to the ecological or scientific values of the area and will improve the visual appearance of the building better integrating with the aesthetics of the area.

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

The proposed development does not incorporate additional floor space nor increase density, retaining the property as a four bedroom single dwelling house. The design of the roof falls to the front reflecting the fall of the land thereby integrating with its natural setting.

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

There is no loss of vegetation resulting from the development. The proposal will not have any detrimental impact on the riparian and foreshore vegetation and wildlife corridors within the area.

Objectives of the 8.5metre Height Control:

- *To ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality and compatible with that of surrounding and nearby development,*

The height and scale of the existing building is consistent with that of surrounding dwelling houses. The proposed roof over the upper level deck is 0.95metres lower than the ridge height of the building thereby maintaining the scale of development and sitting lower than the existing surrounding tree canopy. The inclusion of the roof over the deck also helps in reducing the perceived bulk of the building by providing depth to the façade and introducing shadow lines.

- *To minimise any overshadowing of neighbouring properties,*

The dwelling itself and proposed roof sits well below adjoining neighbouring buildings including sensitive areas of the neighbouring dwelling to the west (149A McCarrs Creek Road). No significant overshadowing impacts will occur as a result of the proposed roof.

- *To allow for the reasonable sharing of views,*

The proposed development including the roof over the upper level deck will not result in any view loss for neighbouring dwellings.

- *To encourage buildings that are designed to respond sensitively to the natural topography,*

The slope of the roof corresponds to the fall of the land thereby integrating well with the topography and natural setting.

- *To minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

The site is not within a Heritage Conservation Area or within proximity to a Heritage Item. The provision of the roof to the upper level deck reduces the perceived bulk of the building by introducing depth and shadow to what is currently a bland walled façade. This, together with the use of colours to blend with the bushland setting will improve the visual impact of the natural environment.

Is Compliance with the Standard Unreasonable and Unnecessary?

The proposed roof is located 0.95metres lower than the existing ridge height of the dwelling, is below the canopy height of surrounding trees and bushland and has been designed to follow the natural topography of the site. The roof does not result in any detrimental impact to neighbouring properties by way of overshadowing or view loss and improves the aesthetics of the building by reducing the visual impact of the currently blank upper level façade.

Having regard to the above, compliance with the standard is considered unreasonable and unnecessary in the circumstances of this case.

2. Cl.4.6(3)(b) Are there sufficient environmental planning grounds to justify contravening the development standard?

It is evident that the existing dwelling required excavation, altering the ground level from which height is now measured. Based on the assumed ground line (as shown in Figures 1 and 2 and evidenced from Photos 1 and 2 below) the roof of the deck remains below the maximum 8.5metre height limit. In accordance with the findings of Commissioner O'Neill in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* prior excavation within the building footprint constitutes an environmental planning ground within the meaning of cl.4.6(3)(b) of the LEP.

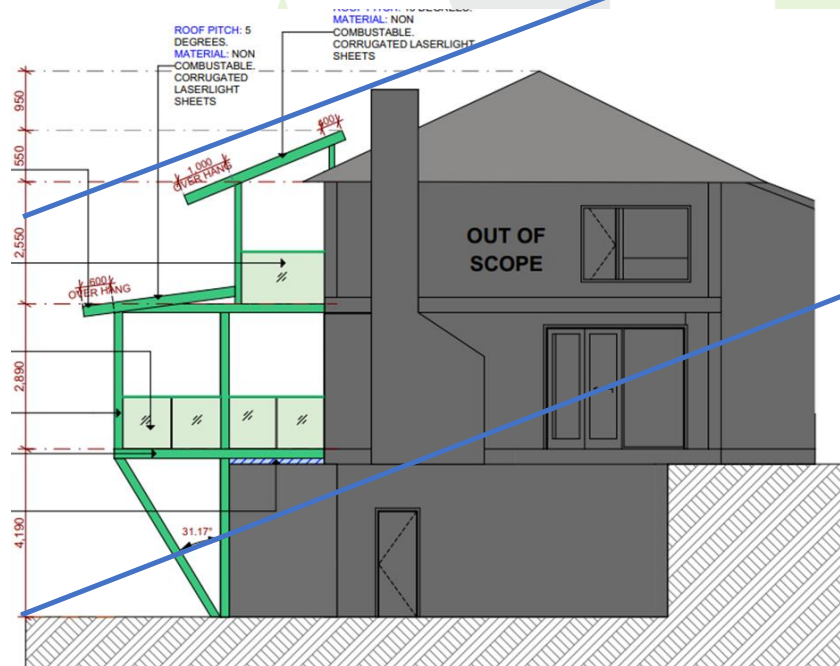


Figure 1: South-west elevation including assumed ground line with height plane

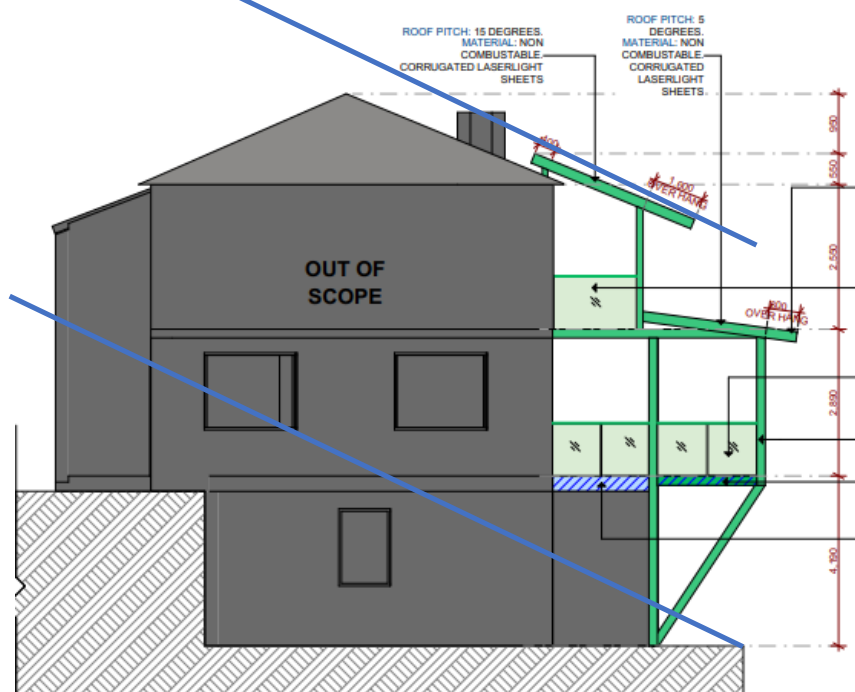


Figure 2: North-east elevation including assumed ground line with height plane



Photo 1: Photo showing natural ground at rear



Photo 2: Photo showing natural ground at side

The provision of the roof over the deck also provides positive planning outcomes including reducing the perceived bulk and improving the visual appearance of the front façade of the building, providing weather protection to the deck and shade for north-west facing windows enabling a more sustainable building and greater amenity for residents.

On this basis it is evident that there are sufficient environmental planning grounds to justify non-compliance with the 8.5metre height control.

3. Cl.4.6(4)(a)(ii) Will the proposed development 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?

As outlined in Point 1 above the development is consistent with both the objectives of the C4 Environmental Living zone and the objectives for the height of building standard. On this basis the consent authority can be satisfied that the proposed development will be in the public interest.

4. Cl.4.6(4)(b) Has the concurrence of the Planning Secretary been obtained?

In accordance with the Department of Planning and Environment Circular, PS 20-002 issued 5 May 2020 the consent authority can assume the concurrence of the Planning Secretary for the variation to the development standard proposed.

Conclusion

This clause 4.6 request for variation is submitted in conjunction with an application for alterations to a dwelling at 147 McCarrs Creek Road, Church Point. The variation sought is to allow a roof over an existing upper level deck extending to a height of 10.18metres above existing ground level, noting the maximum permissible height for a building on the site under clause 4.3 of PLEP 2014 is 8.5metres.

This written request has demonstrated that compliance with the 8.5metre height control is unreasonable and unnecessary in this case for the following reasons:

- The ridge of the new roof is 0.95metres below the existing ridge height of the dwelling;
- The variation is primarily a result of previous excavation of the site;
- The roof is consistent with scale of the existing building and surrounding development;
- The roof design responds sensitively to the surrounding natural environment following the natural contours of the land and ensuring no impact on vegetation or drainage patterns;
- The roof is consistent with the objectives of the C4 Environmental Living zone and the height control;
- The roof does not result in detrimental impact to neighbouring properties or the area generally in respect to overshadowing, loss of views or visual intrusion;

- The roofing of the deck results in a better environmental outcome reducing the perceived bulk of the building, providing weather protection for deck users and providing shade to internal areas from north-western sun.

On this basis the consent authority can be satisfied that, in accordance with clause 4.6(4)(a)(i) this written request has adequately addressed the matters required to be demonstrated under clause 4.6(3) of *Pittwater Local Environmental Plan 2014*.

ITEM 3.7

**DA2023/0710 - 681 BARRENJOEY ROAD AVALON BEACH -
USE OF PREMISES AS A RECREATION FACILITY (INDOOR),
INCLUDING FIT-OUT AND SIGNAGE**

REPORTING MANAGER Steve Findlay

TRIM FILE REF 2023/639804

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2023/0710 for use of Premises as a Recreation Facility (indoor), including fit-out and signage on land at Lot 1 DP 15295, 681 Barrenjoey Road AVALON BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0710
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 15295, 681 Barrenjoey Road AVALON BEACH NSW 2107
Proposed Development:	Use of Premises as a Recreation Facility (indoor), including fit-out and signage
Zoning:	E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Three Crowns Investments Pty Ltd
Applicant:	Grey Industries Pty Limited

Application Lodged:	21/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	28/06/2023 to 12/07/2023
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 379,500.00
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EXECUTIVE SUMMARY

This development application seeks consent for a change of use to allow for a Recreational Facility (indoor). Specifically, this involves the operation of a 24 hour gym, known as "Anytime Fitness."

The application is referred to the Development Determination Panel (DDP) as there were more than 5 submissions received in response to the notification of the application.

In particular, the six (6) submissions raised concerns in relation to noise and lighting impacts to the neighbouring residential property and traffic concerns.

There are numerous noise management and mitigation measures employed, through a combination of design, plan of management, and conditions.

Due to the close proximity of the use to sensitive residential receivers and the nature of the submissions received from those southern neighbours, a special condition is recommended which imposes a 6 month trial period for the 24 hour operation, to allow the amenity performance of the gym to be evaluated before permanent 24 hour operation is deemed appropriate.

All windows along the southern boundary, adjoining the residential receiver are to be infilled to prevent noise transmission and escape.

The applicants Plan of Management also has a comprehensive list of rules to manage the noise of patrons and equipment, and provides measures for complaint recording and resolution.

The referrals in relation to noise and traffic raise no objection to the application, subject to conditions. Council's Environmental Health Officer has reviewed the updated Plan of Management and Acoustic Report and supports the application based on the mitigation measures provided in the plan, subject to recommended conditions.

This report concludes with a recommendation that the DDP should grant **APPROVAL** to the application, subject to suitable conditions regarding the use and amenity protection for neighbours, including the 6 month trial period for the hours of operation.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks a change of use from an office to a gymnasium (Recreation Facility - indoor).

The use involves the following:

- 24 hours operation for 7 days a week
- Maximum of four (4) staff
- Maximum patronage of forty (40)
- Signage
- Internal fit-out, including acoustic abatement
- Infilling of windows along the southern boundary

The application is accompanied by a Plan of Management, which was amended during the assessment of the application.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - C2.12 Protection of Residential Amenity

SITE DESCRIPTION

Property Description:	Lot 1 DP 15295 , 681 Barrenjoey Road AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of an allotment located on the western side of Barrenjoey Road.</p> <p>The site is an irregular shape with a frontage of approximately 17m along Barrenjoey Road and a depth of up to 45m.</p> <p>The site is located within the E1 Local Centre zone and accommodates an office building.</p> <p>The site is relatively flat and has a basement carpark access from Edmond Hock Avenue.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential area.</p>

Map:



SITE HISTORY

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

- N0278/00 - Alterations and additions to existing commercial premises including new internal stairs, roof skylight, office fit out and new pergola and water feature approved on 26/07/2000.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report. The NSW employment zones reforms have been made and will come into force on 26 April 2023. These reforms will result in this property changing from a B2 Local Centre zone to a E1 Local Centre zone. The proposed use will remain permissible in the new zone.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</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 clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider 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 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 28/06/2023 to 12/07/2023 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 6 submission/s from:

Name:	Address:
Mr Malcolm Arthur Long	6 / 679 Barrenjoey Road AVALON BEACH NSW 2107
Ms Claire Joanna Worlidge	8 / 679 Barrenjoey Road AVALON BEACH NSW 2107
Mr Michael Richard Milman	21 Delecta Avenue CLAREVILLE NSW 2107
Miss Michaela Louise Cuthbert	23 Patrick Street AVALON BEACH NSW 2107
Miss Stephanie Alexis Pizarro	2 / 679 Barrenjoey Road AVALON BEACH NSW 2107
Scott Michael Graham	9 / 679 Barrenjoey Road AVALON BEACH NSW 2107

The above issues are addressed as follows:

- Noise Impacts**

The submissions raised concerns with noise impacts generally, as to whether there is obligation on the operator to follow the Plan of Management, and questions as to how complaints are to be handled and escalated.

Comment:

A condition is imposed, requiring the applicant to comply with the Plan of Management. This Plan of Management is also to be amended to allow provision for a 24 hour complaints phone line, and all of these complaints are to be logged.

A condition also requires a 6 month trial period for the 24 hour operation of the gym.

Council's Environmental Health officer is satisfied with the amended acoustic report and amended Plan of Management, subject to the recommended special conditions.

The design of the building including the infilling of all windows facing the southern boundary (the closest residential receivers), provides a suitable design to mitigate noise and will be the subject of a 12 month trial period.

- Lighting Impacts**

Comment:

All windows on the southern boundary are to be infilled. This appropriately reduces impact of

lighting toward the nearest residential receiver.

A condition also requires all lighting to be adjustable so that concerns raised by neighbours can be appropriately mitigated, if necessary.

- **Increase in the number of cars parking on the road**

Comment:

A review of onsite and street parking was carried out by Councils Traffic Officer and Assessment Officer, which has found the proposed parking arrangements for the change in use satisfy the requirements of the P21 DCP and are adequate and reasonable for the type and intensity of the use, as outlined later in this report.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>SUPPORTED (with 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>
Environmental Health (Industrial)	<p>SUPPORTED (With Conditions)</p> <p>General (original) Comments</p> <p>The applicant advises: The application seeks consent to change the land use of the existing three storey building located at 681 Barrenjoey Road, Avalon Beach, NSW, 2107 from a former commercial "Office" to a 24-hour 'Anytime Fitness' gymnasium ("Recreation Facility – Indoor"), including internal fit-out for the proposed purpose and associated business identification signage.</p> <p>Proposed land use parameters:</p> <ul style="list-style-type: none"> • Open 24hrs a day, 7 days a week, including all bank and public holidays. • Expected maximum of 4 staff on site (gym manager and assistants depending on demand) during staffed hours of 8:00am – 7:00pm Monday – Thursday; 8:00am – 3:00pm Friday; 8:00am – 12:00pm Saturday; and Sunday unstaffed; • Expected maximum usage of 40 persons at any one time during absolute highest peak hours and maximum average

Internal Referral Body	Comments
	<p>hourly usage of approx. 20 – 25, based on usage statistics for the existing Anytime Fitness Avalon facility (to be relocated) as well as numerous other Anytime Fitness gymnasiums in the Local Government Area (please refer to Annexure B).</p> <p>Proposed business identification signage: (Please refer to the attached elevation drawings for further details) Sign 1: The installation of 1 x Internally LED Illuminated “Anytime Fitness” Wall Sign, to be 4000mm x 616mm in size and to be located on the Barrenjoey Road/Eastern Façade. Sign 2: The installation of transparent graphic vinyl artwork applied to the internal glazing of the exterior windows along the Barrenjoey/Eastern façade for privacy. Proposed internal fit-out works:</p> <ul style="list-style-type: none"> • An internal commercial fit out for the proposed purpose, including the installation of bathrooms, showers and changeroom facilities as well as a fully accessible suite for patrons living with a disability. • The construction of various stud walls to improve the layout for the proposed purpose. • The installation of a high-tech security system. • Installation of various appropriate acoustic abatement materials, flooring and finishes. • The infilling of the existing windows along the Southern boundary with a fire resistant composition to fire engineering specifications. <p>An acoustic operational noise emission assessment has been carried out by Acoustic Dynamics dated the 8th of June 2023.</p> <p>The assessment states that compliance can be achieved with relevant noise legislation and standards to avoid a nuisance to neighbouring residential receivers.</p> <p>However Environmental Health is concerned that the most likely affected receivers are at 679 Barrenjoey Rd where there are 9 residential units;</p> <p>Noise issues we believe will be related to the use of the car park 24/7 and the dropping of weights, with the other noise related issues managed with construction and management tools.</p> <p>Environmental Health has been the recipient of complaints concerning a number of gyms the issues being music and in particular the dropping of weights.</p> <p>Management proposed on a 24 hour basis, by way of signage only about not dropping weights, does not appear to be a fail-safe mechanism for sleep disturbance avoidance in the early hours of the</p>

Internal Referral Body	Comments
	<p>morning.</p> <p>Relocation of the weights area furthest from 679 may assist as an option. It should not be up to adjoining affected neighbours to notify by way of a complaint (after the event - when staff arrive) the operator on each occasion weights are dropped.</p> <p>We accept that Barrenjoey Road at Avalon is a busy thoroughfare masking most noise, however traffic at this location is passing traffic and so starting of vehicles and limited closing of car doors from residential premises, is different from the commercial basement car park to operate 24 hours a day with rotating patron vehicles and without any direct supervision.</p> <p>Windows and doors are to be kept closed as part of noise control measures however implications for air conditioning running 24/7 don't appear to be addressed adequately.</p> <p>The acoustic assessment cannot effectively ensure offensive noise will not occur during sleeping hours, however we accept that other general operational noise can be compliant.</p> <p>Another option may be to prohibit weights during certain hours eg 10pm to 7am and soundproofing measures of the carpark.</p> <p>Environmental Health has not currently viewed any representations from potentially affected residents and will not support the proposal at this time and seeks feedback from the applicant of our comments where appropriate.</p> <p>UPDATE REVIEW 15.08.2023</p> <p>The applicant has submitted the following additional/amended documents:</p> <ul style="list-style-type: none"> Operational Noise Emission Assessment dated 4 August 2023 Master plans Plan of Management <p>Our concerns previously raised have been adequately addressed in the submissions and Environmental Health can now support the proposal with conditions.</p>
NECC (Flooding)	<p>SUPPORTED (without conditions)</p> <p>The proposal seeks consent to change the land use of the existing three storey building from a commercial office to a fitness facility. The works involve internal fit-out for the new facility and associated external signage.</p>

Internal Referral Body	Comments
	<p>The proposal is not expected to impact or be impacted by the predicted flood extents. Therefore, there are no flood related objections to the proposal.</p>
Traffic Engineer	<p>SUPPORTED (with conditons)</p> <p>The development application is for a change of use of an existing 3 storey building from an office use to a 24 hour gymnasium. The development will have exclusive access to 12 off-street parking spaces and is proposed to cater for up to 40 clients at any one time with 4 staff.</p> <p>The following comments are made in terms of the traffic and parking impacts:</p> <p><u>Parking</u></p> <p>The existing office use would have required 2.5 spaces per 100m² GLA whereas the gym use requires 4.5 spaces per 100m² GFA (based upon parking rates in the RMS Guide to Traffic Generating Development). The change of use would therefore be expected to result in a higher off-street parking requirement than the previous office use with the 529m² GFA requiring 23 off-street parking spaces. It is however noted that RMS commissioned consultants to review traffic and parking generation associated with gym uses in 2014. The data from those surveys suggests that parking accumulation associated with gym uses are now lower with an average peak parking accumulation of 2.8 vehicles per 100m² GFA. Based up the updated surveys the parking demands associated with the gym use are unlikely to differ significantly from the previous office use.</p> <p>It is noted that the traffic and parking impact assessment report and the Statement of Environmental Effects have highlighted that the peak times of operation of the gym (based upon data from the existing Anytime Fitness premises at Avalon) are expected to be 5am-8am and 4pm to 6pm. At these times parking demands associated with other premises in the Avalon Town Centre area are not at their highest and vacant space on street would be generally available. The traffic report has also highlighted that the proposed 24 hour operation is likely to spread usage of the gym over a broader range of hours which will tend to reduce peak occupancy levels and hence reduce peak parking demands. Finally the traffic report also includes an analysis of travel surveys conducted at Anytime Fitness's Botany premises which suggests that private vehicle use accounts for only 30% of visits to the gym, with many gym patrons carpooling and some walking or cycling or using public transport to access the gym. It is also note that the existing Anytime Fitness premises in Avalon does not benefit from any parking so relocating from that premises will result in an improved situation in terms of parking availability. Given the above factors, the 12 parking spaces available on site are considered to satisfactorily cater for the parking needs</p>

Internal Referral Body	Comments
	<p>generated by the development.</p> <p>There are no changes proposed to the vehicle access or the layout or dimensions of the existing off-street parking provisions on the site and they are therefore deemed to be acceptable.</p> <p>It is noted that the data from the Anytime Fitness development at Botany found relatively high levels of bicycle usage for travel to and from the gym. This is considered likely to be repeated for the Avalon premises and to facilitate such use the development should provide off-street bicycle parking racks/rails for members who chose to ride to the premises. The Pittwater DCP requires business premises to provide a minimum of 4 bicycle parking racks. This will be conditioned.</p> <p><u>Traffic Generation</u></p> <p>The gym will cater for a maximum of 40 patrons and 4 staff and the RMS Guide to Traffic Generating Development suggests that for gym uses the peak generation generally occurs between 6pm and 7pm on weekday evenings with a 9 trips per 100m² of GFA in metropolitan sub-regional areas. For a gym with a GFA of 529m² this would equate to 47.6 trips per hour. This rate of traffic is considered unlikely to be achieved by a gym catering for a maximum of 40 patrons. It is noted that the updated parking and traffic generation surveys commissioned by Transport for NSW in 2014 found that traffic generation associated with gym uses was now considerably lower with an average peak vehicle trips per 100m² GFA of 3.6 trips. This would equate to 19 trips per hour which is considered a more likely scenario for a gym use on this site. At these levels, the traffic generation will not have a discernable impact on the surrounding road network</p>

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 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
1. Character of the area Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The proposed signage is located on a commercial site, zoned E1 Local Centre. The site also adjoins a residential zone to the south. The proposed signage aligns with existing openings, presents to the street, and does not protrude from the building. As such, the proposal is consistent with desired future character, having regard adjoining residential site.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The proposal maintains signage that appropriately meets the theme by identifying the use on site, at the entry point.	YES
2. Special areas Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposed sign is of a scale that matches existing elements of the building including alignment with existing front opening. The signage also does not protrude away from the building to an extent in which the visual amenity of the area would be negatively impacted.	YES
3. Views and vistas Does the proposal obscure or compromise important views?	The proposed signage is attached to the existing wall of the building and would not have any unreasonable impact on views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The proposed signs are at the level of the existing building and would not have an unreasonable impact on vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The proposed signage is well separated from other signage so as to no have any unreasonable impact on other advertisers.	YES

4. Streetscape, setting or landscape Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The scale and proportion is appropriate given the alignment with the existing buildings openings, and the consistency of this with surrounding commercial development.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The proposed signage will add an element of visual interest to the existing blank section of the wall.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	No existing signage exists within close proximity to this location	YES
Does the proposal screen unsightliness?	The proposal does not introduce any unsightliness due to reasonable bulk and scale.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The proposed signage remains below tree canopies and generally within the confines of the existing building envelope and footprint	YES
5. Site and building Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	The signage provides information and identification for the use.	YES
Does the proposal respect important features of the site or building, or both?	The proposal provided signage to be flush to the existing wall so as to not provide a bulk or scale that would have an unreasonable impact on neighbouring residential properties.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The proposal involves signage with colouring to add interest to the existing blank section of the wall.	YES
6. Associated devices and logos with advertisements and advertising structures Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	No	YES
7. Illumination Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	An illuminated sign is appropriate to identify the 24 hour use. The proposal faces the street and is well separated from sensitive receivers. A condition is imposed to require that illumination can be adjusted, if necessary	YES
Can the intensity of the illumination be adjusted, if necessary?		YES
Is the illumination subject to a curfew?		YES
8. Safety Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	As a result of the signage being maintained generally within the confines of the existing footprint, and due to appropriate size and colouring, there would be no unreasonable safety	YES

Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	impact.	YES
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Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

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 commercial 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 commercial 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

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.11 Signage	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.2 Safety and Security	Yes	Yes
C5.4 View Sharing	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.2 Character - Avalon Beach Village	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.4 Scenic protection - General	Yes	Yes
D1.19 Character of Public Domain - Avalon Commercial Centre	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

The proposed gym use requires a parking rate of 4.5 spaces per 100sqm. The Gross Floor Area (GFA) is 529sqm. The required parking is therefore 23 spaces. The proposal provides for 12 spaces.

Despite the shortfall, Council's Traffic Officer has reviewed the applicants Traffic Report and considers the amount of parking suitable for the site.

Further to this, there are a number of factors that contribute to the case for varying the DCP requirements, including:

- The site is well serviced by public transport, being close to the Avalon Town Centre.
- The use of public transport to access the gym is positive for environmental sustainability.
- The 24 hour use of the gym is likely to spread the patronage and reduce peak patronage.
- Bicycle parking will be required.
- Traffic generation surveys commissioned by Transport for NSW in 2014 found that traffic generation associated with gym uses was now considerably lower with an average peak vehicle trips per 100m2 GFA of 3.6 trips (as stated by Council's Traffic Officer)

C2.12 Protection of Residential Amenity

The application is accompanied by an amended Acoustic Report (Operational Noise Emission Assessment) which details the potential noise receivers and recommends mitigation measures to ensure that there is no unreasonable acoustic impact upon surrounding land.

The acoustic report (as amended) provides various recommendations for the Plan of Management. These recommendations have been adopted in the POM and required to be complied with at all times.

The amended acoustic report has been reviewed by Council's Environmental Health Officer and is considered adequate and satisfactory.

Further to this, a condition is imposed to require a 24 hour phone line be part of the Plan of Management for the logging of complaints.

All windows on the southern boundary which directly face residential receivers are also proposed to be infilled to prevent noise transmission and escape.

All reasonable controls and measures will be put in to place to ensure the use of the premise will operate so as to suitably minimise acoustic impacts upon the surrounding residential receivers.

As a safeguard, a special condition will be imposed for a 6 month trial period for the 24 hour operation,

so that Council has the opportunity to review the performance of the 24 hour operation, and ascertain whether it is appropriate to allow continued 24 hour operation or impose more stringent measures after that period of initial operation. This is a prudent and cautious approach in light of the concerns raised by neighbours and the close proximity of sensitive residential receivers to the building and the more intense use.

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 \$3,795 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$379,500.

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 application seeks consent for a change of use to allow for an recreational facility (indoor). Specifically, the proposal is the operation of a 24 hour gym, known as "Anytime Fitness".

The application is referred to the Development Determination Panel as more than 5 submissions have been received.

The six (6) submissions received have been addressed and special conditions are recommended to address potential impacts in terms of noise and lighting management and mitigation. In particular, there are various measures required by condition and within the Plan of Management that will assist in management and mitigation of noise and lighting impacts.

A specific condition has been provided to require a 6 month trial period for the 24 hour operation of the gym, which will allow the first stage in the gym's operations to be evaluated as to whether permanent 24 hour operation should be allowed.

Council's Environmental Health Officer and Assessment Officer have reviewed the updated Acoustic Report and Plan of Management, and appropriate measures for noise mitigation will be required to protect residential amenity.

The referral responses raise no objection to approval, subject to conditions.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/0710 for Use of Premises as a Recreation Facility (indoor), including fit-out and signage on land at Lot 1 DP 15295, 681 Barrenjoey Road, AVALON BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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_SP_A00_01	01	Site Plan	Studio_P	29.05.23
A_SP_A01A_03	03	Basement Plan	Studio_P	29.05.23
A_SP_A01_07	07	Floor Plan	Studio_P	27.07.23
-	-	External Signage	Steve Hegarty	23.05.23

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Plan of Management	-	Prestige Town Planning	9 August 2023
Operational Noise Emission Assessment	2	Acoustic Dynamic	4 August 2023
BCA and Fire Safety	R1.0	Hontas and Hatzi & Co	29 May 2023
Parking Demand Assessment	1.1	Auswide Consulting	June 2023
Waste Management Plan	-	Prestige Town Planning	2 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	Dated
Ausgrid	Ausgrid Referral Response	26/06/2023

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

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

3. 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 \$3,795.00 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 \$379,500.00.

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. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- Detail is to notate that the illumination to the signage is to be adjustable.
- The exterior of the south-western elevation is to match the existing render.
- The materials are to meet fire resistant and meet fire engineering specifications, to be confirmed by a fire consultant.
- The materials and design are to be confirmed as suitable by an acoustic consultant.

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

Reason: To ensure compliance with SEPP 64 Advertising and Signage.

8. Plan of Management

The Plan of Management is to be amended/added to as follows:

- Provisions for a 24 hour hotline to be distributed to all neighbouring residences, and manned at all times. Complaints received through the hotline are to be logged and provided to an acoustic engineer for potential corrective action. The log is to detail who made the call, at what time/date, what the complaint was and what action has been taken.
The log is to be available to Council upon request and will be considered at the conclusion of the trial period.
- Any lighting that is visible from neighbouring living spaces is to be adjustable.

Reason: To minimise amenity impact.

9. Building Code of Australia Fire Safety Requirements

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA and Fire Safety DA Assessment Report prepared by HONTAS HATZI & Co, dated 1/6/2023, Report No. BCADAR_23094_r1.0, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

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

10. Access and Facilities for Persons with Disabilities

Access and facilities to and within the building are to be provided as required for Persons with a Disability in accordance with the Building Code of Australia and AS1428. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

11. Bicycle Parking

The plans are to be amended to show the location of a minimum of 4 bicycle parking racks. These racks are to be located offstreet within the basement carpark in a location that does not impede ingress or egress from any parking spaces OR located on the gym floor in a location adjacent to the lift.

Details to be provided to Council's Traffic Engineer for review and approval prior to release of the construction certificate.

Reason: to encourage and cater for travel by bicycle

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**12. Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are monitored and installed correctly.

DURING BUILDING WORK**13. Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

14. 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**15. Acoustic Design Recommendations**

Prior to the issuing of any Occupation Certificate or the business operating, documentation is to be submitted to the satisfaction of the Principal Certifier (copy to Council) that design recommendations within the acoustic report by Acoustic Dynamics 4 August 2023 have been implemented / incorporated into the design of the premises and also incorporated in the Plan of Management where ongoing measures are required.

Reason: To prevent noise nuisance by using mitigation measures in design.

16. Lighting compliance

Prior to the issue of Occupation Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent residential units and that the outdoor lighting complies with the relevant provisions of Australian Standard 1158.3:2020 Pedestrian area (Category P) lighting – Performance and design requirements and Australian Standard 4282:2019 Control of the obtrusive effects of outdoor lighting.

Reason: To protect public health and amenity

17. Allocated Parking Spaces (retail/commercial)

The 12 parking spaces allocated to this development must be clearly signposted and linemarked as being for the exclusive use of staff and customers of this development. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To ensure parking availability.

18. 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.

19. Garbage and Recycling Facilities

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**20. Acoustic review**

Within 60 days from the operations commencing under the terms of this consent, an acoustic review of the findings and recommendations of Acoustic Dynamics 4 August 2023 shall be carried out on site (during a busy period of trading) and any necessary action to obtain acoustic compliance, shall be completed within a further 30 days of the assessment. The report associated with the compliance testing is to be furnished to Council for its records.

Reason: To ensure acoustic compliance in an operational situation.

21. Parking

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

No parking spaces, or access thereto, shall be constrained or enclosed by any form of structure such as fencing, cages, walls, storage space, or the like, without prior consent from Council.

Reason: To ensure minimum impact of construction activity on local parking amenity, and ensure parking is maintained.

22. **Landscaping adjoining vehicular access**

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway intersection with Edmund Hock Lane must not exceed a height of 1m

Reason: To maintain unobstructed sight distance for motorists.

23. **Site Occupancy**

That the number of (customers/visitors/guests/patrons) on the site at any one time be limited to 40.

Reason: To ensure that all parking generated by the site is contained on the site.

24. **Plan of Management and Acoustic requirements Ongoing**

Ongoing compliance with the Plan of Management (dated 9 August 2023) and acoustic requirements (Acoustic Dynamics Operational Noise Emission Assessment 4 August 2023)

Reason: To minimise impacts of operations on neighbouring residential receivers

25. **6 Month Trial Period for Hours of Operation**

The gymnasium may be open for business 24 hours a day, 7 days a week for a trial period of 6 months from the date of first occupation/operation of the premises (Council is to be informed of this date). Following the expiry of this period, the gymnasium must revert to the following hours of operation:

5.00am – 10.00pm – Monday – Friday;
7.00am – 7.00pm – Saturday – Sunday (inclusive).

In order for the above trial hours of operation to be confirmed as on-going, a Section 4.55 modification application must be lodged with Council prior to the expiration of the trial period.

The assessment of the application to continue the 24 hour use of the gymnasium will consider, inter alia, the impact of the use on surrounding areas and the performance of the operation in relation to compliance with development consent conditions.

Note: Any person acting on this consent is advised that any modification application concerned with the trial hours of operation should be submitted to Council within sixty (60) days minimum prior to the expiration of the trial period otherwise the trial period must lapse.

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

26. **Commercial Waste Collection**

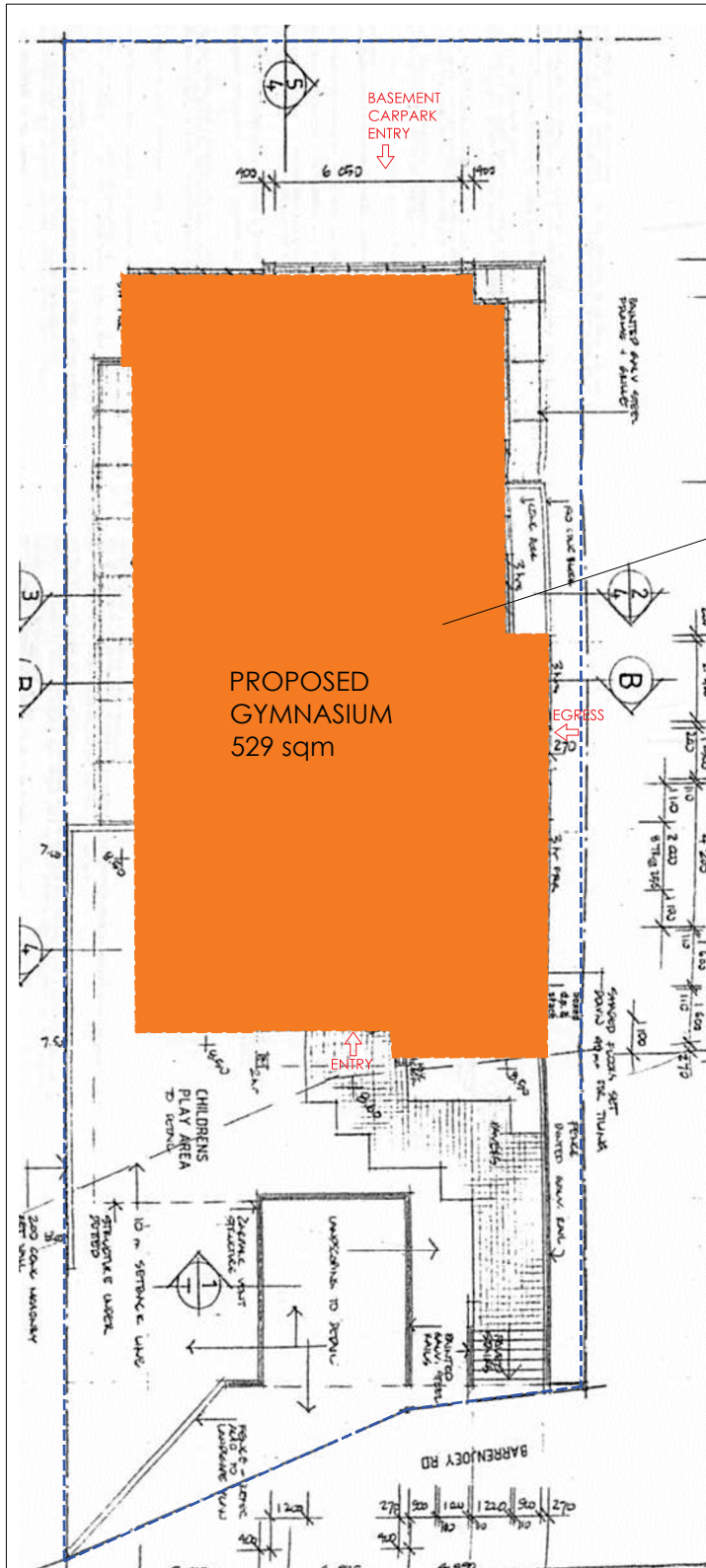
Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

27. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.



SITE PLAN: 1:100 (A2)

PROPOSED TENANCY LAYOUT APPROX 529 sqm



LOCATION PLAN: NTS (A2)

LEGEND:	
	EXISTING BASEBUILDING
	PROPOSED NEW WORK
	DEMOLITION
	PROPOSED GYMNASIUM 529 sqm
	SITE BOUNDARY

DA
NOT FOR CONSTRUCTION

ALL BUILDING WORK MUST BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA

PLEASE REFER TO THE ANYTIME FITNESS SUPPLY MANUAL FOR ALL FINISHES AND SPECIFICATIONS UNO

STUDIO_P
architecture & interiors

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PH: 0414 434 848
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ABN: 24 968 801 044
ARN: 8959

CLIENT:
Anytime Fitness - AVALON

PROJECT:
PROPOSED FITNESS CLUB FITOUT
681 BARRENJOEY ROAD
AVALON NSW

DRAWING TITLE_NUMBER:
SITE & LOCATION PLAN A_SP_A00_01

REVISION_AMENDMENTS_DATE
01 DEVELOPMENT APPLICATION

29.05.23

NOTE:
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DRAWN BY:
EM
CHECKED BY:
PP

P

SCALE: 1:100 (A2)